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Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success

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How important are lawyers in the decision making of the U.S. Supreme Court? Although legal expertise has long been assumed to benefit certain litigants, the frequency with which lawyers appear before the Court has not been directly measured. In this article, I argue that, quite apart from the status of different litigants, lawyers can be viewed as repeat players who affect judicial outcomes. Using data from the *U.S. Supreme Court Judicial Data Base* with data from the *United States Reports,* I propose and test a theory in which the informational needs of the Court are better met by more credible litigators. Thus, for example, a more experienced lawyer significantly raises the probability of a party's success. The findings testify to the efficacy of experienced counsel, irrespective of the parties they represent.

In the U.S. Supreme Court, virtually all of the advocacy is performed by lawyers. Some of them have considerable experience in Supreme Court practice; others have very little. The impact of experienced counsel who appear before the justices, however, remains largely untested. To be sure, there is substantial evidence that parties which litigate frequently—the repeat players (Galanter 1974)—accumulate disproportionate success rates, but parties and lawyers are not necessarily interchangeable (Sheehan, Mishler, and Songer 1992; Songer and Sheehan 1992). The literature generally considers litigation expertise to be endemic to repeat players, not a factor that works independent of litigant status. For the most part, however, the expertise of counsel has largely been presumed rather than directly specified. What unique role does the litigation experience of lawyers play in the decision making of the U.S. Supreme Court?

I argue that, quite apart from the status of the parties, the litigation experiences of the counsel who represent them are a significant determinant of judicial outcomes. Drawing largely upon an extra-legal framework, I present results of an analysis of the influence of the experienced litigator on decisions on the merits in the Supreme Court from 1977 to 1982. Using data from the *United States Reports* and other sources, I have determined, for each orally argued case, if a litigant was represented by counsel with a greater degree of Supreme Court experience than

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that of the opposing attorney. The results suggest that lawyers who litigate in the high court more frequently than their opponents prevail substantially more often. Indeed, even when one controls for the status of the parties, as well as other factors, such as the number of amicus briefs, the presence of the solicitor general as an amicus curiae, and the ideological direction of the lower court, lawyers still make a significant contribution to success in litigation.

Lawyers and Supreme Court Decision Making

Extra-legal explanations have shed a good deal of light on the nature of decision making in the Court, and within that general framework the theoretical benefits that attend the repeat player have received substantial empirical support (see, e.g., Caldeira and Wright 1988; Emmert 1992; Epstein and Kobylka 1992; Lawrence 1990; O'Connor 1980; Segal and Reedy 1988; Songer and Sheehan 1992; Sorauf 1976; Vose 1959; Wheeler et al. 1987; but see Sheehan, Mishler, and Songer 1992). Still, one of the primary inferences consistently sounded—that superior litigation expertise breeds success—has also gone largely untested. That is, although scholarly analyses of litigation outcomes have mustered considerable data to document the ample successes of those who are theoretically the beneficiaries of experienced counsel, these analyses have generally used only plausible surrogates for litigation experience, not quantitative measures of genuine legal expertise. This is understandable, since, as Songer and Sheehan (1992, 238) note, "specific information about the wealth of particular parties in a given case or the relative litigation experience of those parties is often not available in court opinions." As a consequence, the importance of legal skill, even the solicitor general's, remains open to speculation (Segal 1991, 379–80). A number of researchers have provided more direct evidence that litigation expertise does matter, but that evidence is limited, either to particular areas of the law or to specific litigants (Epstein and O'Connor 1988; George and Epstein 1992; McGuire and Caldeira 1993); furthermore, no one has undertaken to measure directly the amount of litigation experience individual lawyers have in all cases before the justices.

How would a lawyer's experience directly affect the Court's overall decision making? I assume that the members of the Court are motivated by ideological preferences and seek to resolve cases in a manner that most closely approximates their own individual views (Segal and Cover 1989). So, in any given case, the justices are apt to follow their attitudinal instincts when faced with the clash of two or more competing values. Those competing values, however, are articulated to the Court by lawyers; I assume, therefore, that the degree of experience that they have before the Court has implications for the manner in which the justices view the issues in a case. In particular, I argue that "lawyers are themselves RPs" (Galanter 1974, 114) and that, as repeat players, members of the bar who litigate in the Court with frequency, therefore, have an interest in maintaining their credibility (see, e.g., Sorauf 1976; Vose 1959).

In making decisions, the justices have certain informational needs; they require a clear and faithful focus on the issues presented in a case, an understanding of the relationship of those issues to existing law, a clarification of uncertainties, and a view of the implications of a decision for public policy, tempered with candor (see Harlan [1955] 1985; Wasby 1982). The lawyers—particularly those who litigate with frequency—have certain professional needs; they need to motivate the justices to view their cases sympathetically, to simplify the justices' informational requirements, to salve the concerns of the members of the Court, to highlight the argument's immunity to criticism, and, importantly, to make a positive and memorable impression (Shapiro 1984). In brief, "we would expect them to seek to optimize the clients' position without diminishing that of lawyers" (Galanter 1974, 119): the structure of the relationship is one that allows—and in fact encourages—experienced members of the bar to establish constructive links to the justices (99).

Because of their long-term links, lawyers whose Supreme Court practices transcend the single case have considerable incentive to provide candor in both their briefs and oral arguments. This is certainly not to suggest that the Court, of necessity, resolves cases in favor of the more experienced (and presumably more trustworthy) counsel; if that were so, the solicitor general would never lose a case on the merits. What this approach does assume, consistent with our notions of the benefits associated with repeat player status, is that the greater the degree of previous experience a lawyer has in litigating before the justices, the greater his or her credibility and likelihood of success.

Under this theoretical framework, I argue that a lawyer's experience before the high bench can be taken as a measure of that attorney's expertise in litigating in the Supreme Court.[1] Such expertise is both valuable—since so few lawyers practice in the Court on a sustained basis—and valued—since the informational needs of the justices are so great. Credibility being a scarce commodity, the members of the Court should reward the more experienced lawyers by giving their written and oral arguments more favorable consideration. Again, this is not to suggest that litigation strength is determinative. Rather, I posit that experience significantly alters the probability of a party's success. When neither party enjoys the comparative advantage of higher-quality counsel, there should be no traceable effects of litigation experience on the outcome; whether both parties are represented by novices or skilled veterans, the outcome should be unaffected by representation (see Wheeler et al. 1987, 410–12).

Apart from litigation expertise, I recognize that myriad other factors are likely to be brought to bear in the justices' decision making. Certainly not the least of such considerations is the status of the parties: that the "haves" should garner a disproportionate share of judicial victories, even when litigation expertise is taken into

[1]There are surely drawbacks to such an assumption; having a number of Supreme Court cases to one's credit, for instance, does not necessarily guarantee that a lawyer has gleaned proficiency from the experience. Still, a lawyer's Supreme Court practice is a direct—and therefore probably a better—indicator of expertise, since expertise has been largely a matter of conjecture based upon litigant status.

account, is well established. Of course, aside from those directly involved in cases before the Court, the voices of other interested parties—organized interests in general (Epstein 1991) and the solicitor general in particular (Segal 1988; Segal and Reedy 1988)—are often heeded by the justices (but see Songer and Sheehan 1993). Thus, a party's probability of success will likely be increased by its ability to attract to its pleading the support of broad national interests.

One basic behavior of the Court is its tendency to accept for plenary review those cases in which it intends to reverse the decision of a lower court (see, e.g., Baum 1977). So, for an ideologically driven Court, whether the lower court's decision was liberal or conservative might be a matter of some consequence. The Burger Court, while clearly more conservative than its predecessor, evinced liberal inclinations on both civil liberties (Baum 1988) and economic issues (Hagle and Spaeth 1992). For the years I examine, the justices showed considerable support for the liberal position, particularly in economic cases (Segal and Spaeth 1989, 476); one might expect, therefore, that the Court would be prone to reverse conservative decisions and to affirm liberal ones. Apart from these factors, are the assumptions regarding the impact of litigation experience supported across a broad sample of the Court's agenda?

Analysis

The general proposition to be tested is whether the party with more litigation expertise in the Supreme Court has a greater likelihood of success in cases on the merits. As scholars have noted, data on the degree of experience of counsel are fairly fugitive. In what ways, then, can direct practice before the Court be gauged? I have elected to turn to the pages of the *United States Reports,* where the lawyers who appear before the Court are duly noted. Over a six-year sample of the Court's docket, from the 1977 term through the 1982 term, I gathered data on the identity of the lawyers who argued cases and who participated on briefs; for each lawyer, I determined the number of cases in which he or she was involved over that time period.[2] This method provides a reasonably reliable measure of the litigation experience of the bar of the Supreme Court.

My measure of litigation expertise for a given party is the total number of Supreme Court cases in which that party's lawyer participated from 1977 through

[2]In virtually every case, the names of the lawyers appearing on behalf of each party are printed after the syllabus; these lawyers can be assumed to be admitted to practice before the justices, since "the Court generally will not give official recognition in its Reports or otherwise to attorneys who are not members of its Bar" (Stern, Gressman, and Shapiro 1986, 732). On occasion, lawyers whose names appear on the briefs are not reflected in the *U.S. Reports*; thus, the *U.S. Reports*, to some extent, underreport the participation of counsel. Ordinarily, the attorney who argued the case for a given side is listed first as having "argued the cause," with additional counsel who participated being listed as having been "with him or her on the brief." In collecting these data, when a name appeared in more than one case, I confirmed the identity of the lawyer by consulting the *Briefs and Records of the United States Supreme Court* and the *Martindale-Hubbell National Lawyer Directory*. Of the 3,915 different lawyers active during this period, 709 appeared in more than one case.

1982. (Where multiple counsel represented a single party in a case, the value of litigation expertise is the number of cases of the most experienced lawyer.)[3] In examining this cross-section of the Court's docket, I assume that the number of cases in which a lawyer was involved over this time period can be taken to be an indicator of a general pattern of participation before the Court. That is, lawyers involved in numerous cases within the sampling frame are more likely to have litigated additional cases before 1977 and after 1982; lawyers who appeared less frequently within those six years are less likely to have litigated additional cases. In short, I posit that the litigation experience of a lawyer at time t is a good predictor of experience at times $t - 1$ and $t + 1$.[4]

To test the assumption that the party with the more experienced counsel has a greater likelihood of success, I combined these data on lawyer experience with data from the *U.S. Supreme Court Judicial Data Base* ($N = 916$).[5] The dependent variable is the outcome of the case, whether or not the petitioning party won on the merits. Naturally, since these data cover such a broad cross-section of the justices' agenda, I make no pretense of providing a precise accounting for the Court's general behavior. Yet even at this level of aggregation, there are, as I have noted, a number of other relevant variables for which one can control. Among these variables are the status of the parties involved,[6] the number of briefs amicus curiae on

[3]This approach is attractive for its parsimony, but it does ignore potentially important information, such as the number of lawyers and the differences in experience between them. One might, for instance, calculate the average number of cases per side. Fortunately, alternatives such as these tend to be strongly related to the measure I employ.

[4]So, irrespective of whether a case was argued in, say, 1979 or 1982, the value of counsel's experience is equal to his or her total number of cases on the merits across all six years. Naturally, this approach does have its shortcomings. In earlier cases, for example, lawyers with multiple appearances are assumed to have more experience than they actually had at the time the case was heard. Moreover, this method does not control for the improvement in expertise that might be accumulated with each additional case. Still, the alternative—keeping a running tally of each lawyer's record and applying it in each case—poses a far greater predicament: it assumes that 1977 is the starting point for members of the Supreme Court bar. Under such an approach, one would assign a value of one case to the solicitor general in his first case in 1977 and a value in excess of two hundred for his last case in 1982, hardly a sound strategy.

[5]The *U.S. Supreme Court Judicial Data Base* has some 997 cases that were orally argued and decided by full opinion during this time period. In 67 cases, the lawyers representing at least one of the parties were unclear or not specified. Furthermore, in 16 cases—two of which also presented uncertainties regarding the lawyers—the ideological direction of the lower court was not specified as liberal or conservative. These 81 total cases were excluded from the analysis.

[6]The status of an individual party is derived from the advantages in litigation that it is presumed to possess. Following the lead of Wheeler et al. (1987), as well as Sheehan, Mishler, and Songer (1992), I have classified 10 litigants on an ordinal scale, ranging from weakest to strongest, as 1 for poor individuals, 2 for minorities, 3 for individuals, 4 for unions, 5 for small businesses, 6 for businesses, 7 for corporations, 8 for local governments, 9 for state governments, and 10 for the federal government. (For more information on the coding of these categories, see Sheehan, Mishler, and Songer 1992, 470n1.) In a few instances, parties did not seem to fit within any of these categories; for those cases, I simply set the party's status equal to the mean of the petitioner or respondent status, depending upon which side the party represented. The value of this predictor is equal to the status value of the petitioner minus the status value of the respondent. For a similar example, see Songer and Sheehan (1992).

TABLE 1

MODEL OF LITIGATION SUCCESS IN THE U.S. SUPREME COURT, 1977–1982

Variable	*b*	*B**	*t*
Constant	.39		8.32***
Ideological direction of lower court on civil liberties issue	.10	.15	1.22
Ideological direction of lower court on economic issue	.18	.20	2.10*
Solicitor general's amicus brief urging reversal	.84	.33	2.82**
Solicitor general's amicus brief urging affirmance	−.80	−.33	−3.61***
Amicus curiae briefs	.06	.25	2.74**
Litigant status	.04	.38	2.65**
Lawyer experience	.21	.39	3.64***

Note: $N = 916$ (598 petitioner wins, 318 respondent wins); dependent variable equals 1 where the petitioner won, 0 otherwise; B^*equals the product of the coefficient and its standard deviation divided by the standard deviation of the dependent variable; Pseudo-$R^2 = .15$; % of cases in modal category = 65, % correctly classified = 69, % reduction in error = 11; −2LLR = 83.43 ($p < .001$).

*$p < .05$; **$p < .01$; ***$p < .001$.

each side of the case,[7] the presence of an amicus brief filed by the solicitor general urging reversal or affirmance (in each instance, coded as 1 if present, 0 otherwise), and the ideological direction of the lower on civil liberties and economic issues.[8] Finally, to assess the impact of legal representation in the Court, I determined which party had a more experienced lawyer—the respondent (coded as −1), the petitioner (coded as 1), or neither party (coded as 0). I have estimated the effects of these variables on the probability of the petitioner's success, where the dependent variable is coded as 1 if the petitioner won in the Supreme Court and 0 otherwise, using a maximum likelihood probit analysis (Aldrich and Nelson 1984), and the results are presented in table 1.

In general, the model performs reasonably well: the chi-square value is significant; the fit, given the sample's broad cross-section of cases, is satisfactory (see McKelvey and Zavoina 1975); all of the variables have the expected sign and, with the exception of civil liberties issues, have statistically significant coefficients.

[7]I collected additional data on the frequency and type of participation of amici curiae from the *U.S. Reports*. This variable is equal to the total number of amicus briefs filed urging reversal minus the total number of amicus briefs filed urging affirmance. Of course, my assumption about litigation experience and the credibility of argument probably applies with comparable force to amici. Likewise, the infrequent appearance of amici at oral argument might also affect outcomes; sadly, I do not have data on the frequency of appearance of different organized interests in either capacity.

[8]Consistent with the categories in the *U.S. Supreme Court Judicial Data Base,* I define civil liberties issues as those cases which concern criminal procedure, civil rights, the First Amendment, due process, and privacy. Cases that concern unions and general economic and commercial activity are treated as economic issues (see Segal and Spaeth 1989). For civil liberties issues, the variable is coded as −1 if the ideological direction of the lower court was liberal, 1 if conservative, and 0 if no civil liberties issue was present; similarly, for economic issues, the variable assumes a value of −1 if the ideological direction of the lower court was liberal, 1 if conservative, and 0 if no economic issue was present.

Importantly, while illuminating some of the forces that influence the Supreme Court's decision making, it underscores the special impact of lawyer expertise. Clearly, the role of experienced counsel remains strong, even when other factors—the relative status of the parties, in particular—are held constant.

The primary hypothesis was that the justices place greater trust in the lawyers whose arguments they hear and whose briefs they read most frequently, and these results suggest confirmation of such a view. Lawyers who are active members of the bar of the Supreme Court, like many who are advocates in the process of federal policy-making (Nelson et al. 1987), value their reputations; the Court likewise values reliable, credible counsel. These benefits that flow from a lawyer's expertise operate quite independently from the parties that they represent. If expertise were of no discernible consequence, its coefficient would have been marginalized by the status of the parties. This, however, is not the case; the various assets generally associated with the "haves" are evident in the model,[9] but the independent effects of the advantages of a more experienced practitioner are especially pronounced.[10]

In addition to the status of the parties and the expertise of counsel, organized interests make a substantial contribution to the outcomes of cases. The relative number of amicus briefs supporting the parties, for example, varies predictably with the likelihood of their success. Among all amici curiae, the Court relies heavily upon the advocacy of the solicitor general. Thus, it is scarcely surprising to find members of the Court disposed toward those with whom the federal government joins forces. Furthermore, the manner in which lower courts decided different types of legal issues seems to have been of import. As expected, the justices displayed a marked sympathy for economic underdogs. In civil liberties cases, the Court's liberal tendencies are also evident, though less distinct.

Controlling for these competing explanations strengthens the empirical case that can be made for the expertise of the Supreme Court bar as a strong independent predictor of the Court's decision making. From a substantive perspective, though, just how important is the expertise of counsel? Recall that the theoretical framework was one in which a lawyer's experience was, while important, not determinative. That is, the arguments of a more experienced lawyer should receive greater consideration from the members of the Court, but mere expertise alone should not control the outcome. To that end, a clearer picture of the effect of expertise can be produced by generating estimated probabilities of litigant success. If, all other

[9]This finding is inconsistent with recent scholarship (Sheehan, Mishler, and Songer 1992). Of course, these data are only cross-sectional and cover a relatively brief interval. In contrast, Sheehan, Mishler, and Songer, while using the same operationalization of party status, employ time-series analysis across a much longer period. It may be that litigant status did, in fact, matter during the 1977–1982 period; alternatively, as Sheehan and his colleagues might argue, it may be that the justices were simply ideologically disposed toward the "haves" at that time.

[10]This is not a spurious manifestation of party strength: the correlation between party status and litigation expertise, while strong (.52), is far from perfect. Moreover, the frequent appearance of the solicitor general does not explain these differences in experience; when the correlation is calculated to partial out the effects of the solicitor general, the coefficient dips only to .42.

things being equal, neither lawyer has more experience, the estimated probability of the petitioner's success is .66—approximately the rate at which the petitioner secured a favorable outcome from the Court in the cases in this sample. That party's likelihood of winning increases to .73 when represented by a more seasoned appellate advocate. Conversely, when the net advantage in expertise favors the respondent's counsel, it augurs fewer victories for the petitioner, whose estimated win-ratio dips to a .58 probability. Substantively, these estimates make a good deal of sense, for no matter which side has more expertise the petitioner still wins in a majority of cases: as anticipated, litigation experience facilitates success; it does not, however, guarantee it.[11]

How important is the expertise of lawyers compared to other factors in the model? The standardized maximum likelihood estimates (McKelvey and Zavoina 1975) offer an answer, albeit one that must be viewed with some caution: the relative experience of the lawyers who represent parties is apparently as important as who the parties are. The value for counsel's experience, $B^* = .39$, is the largest in the model and is rivaled only by the status of the litigants and the amicus briefs of the solicitor general. Of course, it is difficult to say with precision how important litigation experience is compared to party status, since the model lacks more direct measures of litigant attributes, such as financial resources, long-term litigating strategies, and the like. Notwithstanding this weakness, the analysis does provide substantial evidence to confirm what has long been suspected—that litigants succeed in significant measure as a function of their representation.

Conclusion

The bar of the Supreme Court provides a vital link between legal issues and the members of the Court. As such, they are gatekeepers, determining how issues are presented to the justices. Like many governmental decision makers, the justices need reliable information and thus place a premium on its more credible suppliers. To be sure, this tendency is tempered by the ideological disposition of the Court, as well as the availability of ideas, arguments, and intelligence from alternative sources like the solicitor general and myriad other amici. Even when such influences are taken into account, though, the effects of lawyers still persist.

What implications does this analysis have for our understanding of the Supreme Court? On the one hand, the results are presented at such a broad level that they do not permit the disentangling of the many other factors which no doubt play

[11]Note that this analysis and the theory that undergirds it are predicated on the assumption that the relative difference between lawyers is the relevant consideration, not the absolute number of cases each party's counsel has. Additional analysis provides support for this belief: when the numbers of cases that the lawyers on each side had are introduced into the equation, they provide little additional predictive utility; in contrast, the importance of the experience comparison—which lawyer had more cases—remains strong. This is consistent with the view, offered by Songer and Sheehan (1992, 257), that "the addition of resources initially will increase the chances of success substantially [but] at some point, the continued addition of resources will become irrelevant."

substantial roles in resolving cases within particular areas of the law. On the other hand, because the analysis covers an ample cross-section of the Court's plenary docket, we have good reason to believe that the effects of advocacy transcend parochial areas of the Court's jurisprudence. That is, expertise is a positive value, irrespective of the case.

These results resonate with much of the literature on the effects of repeat players in the judicial process. There are, however, divergent views, among them the suggestion that, at least at the level of the Supreme Court, litigants and their relative legal resources are less important when viewed over time against the ideology of the bench (see Sheehan, Mishler, and Songer 1992). It may be that the longitudinal effects of counsel are stable while the fates of various parties follow the ebb and flow of the Court's changing ideological complexion. Given that the justices' caseload has increased so substantially over the last half-century, one might speculate that the significance of counsel would be magnified with successive growth in the Court's docket.

Importantly, the analysis does permit one to conclude that the reliability of counsel as a source of information is a commodity upon which the justices apparently place some value. Ultimately, the justices are concerned with uniformity in federal law, the ramifications of their decisions for public policy, and the like. It must be remembered, however, that in the dialogue over such issues it is lawyers who help give them voice. The strength of that voice, it would seem, has implications for judicial outcomes.

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References

Aldrich, John H., and Forrest D. Nelson. 1984. *Linear Probability, Logit and Probit Models.* Beverly Hills: Sage.

Baum, Lawrence. 1977. "Policy Goals in Judicial Gate-Keeping: A Proximity Model of Discretionary Jurisdiction." *American Journal of Political Science* 21:31–36.

Baum, Lawrence. 1988. "Measuring Policy Change in the U.S. Supreme Court." *American Political Science Review* 82:905–12.

Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82:1109–27.

Emmert, Craig. 1992. "An Integrated Case-Related Model of Judicial Decision Making: Explaining State Supreme Court Decisions in Judicial Review Cases." *Journal of Politics* 54:543–52.

Epstein, Lee. 1991. "Courts and Interest Groups." In *American Courts: A Critical Assessment,* ed. John B. Gates and Charles A. Johnson. Washington, DC: Congressional Quarterly Press.

Epstein, Lee, and Joseph F. Kobylka. 1992. *The Supreme Court and Legal Change: Abortion and the Death Penalty.* Chapel Hill: The University of North Carolina Press.

Epstein, Lee, and Karen O'Connor. 1988. "States and the U.S. Supreme Court: An Examination of Litigation Outcomes." *Social Science Quarterly* 68:660–74.

Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9:95–160.

George, Tracey E., and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review* 86:323–37.

Hagle, Timothy M., and Harold J. Spaeth. 1992. "The Emergence of a New Ideology: The Business Decisions of the Burger Court." *Journal of Politics* 54:120–34.

Harlan, John M., Jr. [1955] 1985. "The Role of Oral Argument." Reprint. In *Views from the Bench: The Judiciary and Constitutional Politics,* ed. Mark W. Cannon and David O'Brien. Chatham, NJ: Chatham House.

Lawrence, Susan E. 1990. *The Poor in Court: The Legal Services Program and Supreme Court Decision Making.* Princeton: Princeton University Press.

McGuire, Kevin T., and Gregory A. Caldeira. 1993. "Lawyers, Organized Interests, and the Law of Obscenity: Agenda Setting in the Supreme Court." *American Political Science Review* 87:746–55.

McKelvey, Richard D., and William Zavoina. 1975. "A Statistical Model for the Analysis of Ordinal Level Dependent Variables." *Journal of Mathematical Sociology* 4:103–20.

Nelson, Robert L., John P. Heinz, Edward O. Laumann, and Robert H. Salisbury. 1987. "Private Representation in Washington: Surveying the Structure of Influence." *American Bar Foundation Research Journal* 1987:141–200.

O'Connor, Karen. 1980. *Women's Organizations' Use of the Courts.* Lexington, MA: Lexington.

Perry, H. W., Jr. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court.* Cambridge: Harvard University Press.

Segal, Jeffrey A. 1988. "Amicus Curiae Briefs by the Solicitor General During the Warren and Burger Courts." *Western Political Quarterly* 41:135–44.

Segal, Jeffrey A. 1991. "Courts, Executives, and Legislatures." In *American Courts: A Critical Assessment,* ed. John B. Gates and Charles A. Johnson. Washington, DC: Congressional Quarterly Press.

Segal, Jeffrey A., and Albert Cover. 1989. "Ideological Values and the Votes of Supreme Court Justices." *American Political Science Review* 83:557–65.

Segal, Jeffrey A., and Cheryl D. Reedy. 1988. "The Supreme Court and Sex Discrimination: The Role of the Solicitor General." *Western Political Quarterly* 41:553–68.

Segal, Jeffrey A., and Harold J. Spaeth. 1989. "Decisional Trends on the Warren and Burger Courts: Results from the Supreme Court Data Base Project." *Judicature* 73:103–7.

Shapiro, Stephen M. 1984. "Oral Argument in the Supreme Court of the United States." *Catholic University Law Review* 33:529–53.

Sheehan, Reginald S., William Mishler, and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties before the Supreme Court." *American Political Science Review* 86:464–71.

Songer, Donald R., and Reginald S. Sheehan. 1992. "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36:235–58.

Songer, Donald R., and Reginald S. Sheehan. 1993. "Interest Group Success in the Courts: Amicus Participation in the Supreme Court." *Political Research Quarterly* 36:339–54.

Sorauf, Frank J. 1976. *The Wall of Separation: The Constitutional Politics of Church and State.* Princeton: Princeton University Press.

Stern, Robert H., Eugene Gressman, and Stephen M. Shapiro. 1986. *Supreme Court Practice.* 6th ed. Washington, DC: Bureau of National Affairs.

Vose, Clement. 1959. *Caucasians Only.* Berkeley: University of California Press.

Wasby, Stephen L. 1982. "The Functions and Importance of Appellate Oral Argument: Some Views of Lawyers and Federal Judges." *Judicature* 65:340–53.

Wheeler, Stanton, Bliss Cartwright, Robert A. Kagan, and Lawrence M. Friedman. 1987. "Do the 'Haves' Come Out Ahead? Winning and Losing in State Supreme Courts, 1870–1970." *Law & Society Review* 21:403–45.

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