

THE ORIGINAL  
UNITED STATES SUPREME COURT JUDICIAL DATABASE  
1953-2007 TERMS

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DOCUMENTATION

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Harold J. Spaeth  
principal investigator

Research Professor of Law and Emeritus Professor  
of Political Science

Michigan State University  
East Lansing, MI 48824

Distributed by the University of South Carolina  
Judicial Research Initiative (JuRI)

Department of Political Science  
University of South Carolina

Professor Kirk Randazzo, Director

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GENERAL INTRODUCTION This database is continuously updated with cases being added as the decisions are handed down, read, coded, and entered into the database.

Because the database is now freely available at [www.cas.sc.edu/poli/juri](http://www.cas.sc.edu/poli/juri) you are urged to pay attention to the date your version appeared on the website and check whether it is the current one. As decisions are handed down, read, coded, and entered into the database during the course of the term, the data are updated as many as 15 to 20 times.

The variables in this database, which begins with the first term of the Warren Court, continues through the Burger and Rehnquist Courts, and terminates with the most recent term of the Roberts Court, concern six distinct aspects of the Court's decisions: 1) identification variables -- e.g., citations and docket numbers; 2) background variables -- e.g., how the Court took jurisdiction, origin and source of case, the reason the Court granted cert; 3) chronological variables -- e.g., date of decision, term of Court, natural court; 4) substantive variables -- e.g., legal provisions, issues, direction of decision; 5) outcome variables -- e.g., disposition of case, winning party, formal alteration of precedent, declaration of unconstitutionality; 6) voting and opinion variables -- e.g., how the individual justices voted, their opinions and interagreements, the direction of their votes.

These variables appear in the database in the same order that they appear in the documentation. The variable view option in SPSS numbers each variable identically with the table of contents of this documentation.

You may consider this documentation unduly lengthy. Much of it results from the need to specify the decision rules governing the entry of data into the various variables. If you wish to accept my specifications, you need not bother with what I have written about the variables you employ in your research. If convention applies, I adhere to it. But for many variables and their specific entries, none exists.

I perhaps should apologize for continuing to compile the data using an SPSS template. Notwithstanding that it rests on a DOS platform, SPSS does admit of easy data entry. And inasmuch as accuracy is the name of the game, I hesitate to switch to a less

familiar program. For those who find *Stata* preferable, it is, of course, able to accept and read SPSS data files.

Unlike the earliest updates, the vast majority of the variables have been converted to numeric, many of which are dummies. Users may determine the type of each variable by accessing the data type column in SPSS' variable view option.

In addition to the conversion of variables to numeric, variable labels are provided along with a listing of the values that the variable possesses. The former may be accessed by simply using the variable view option and accessing the label and/or values column. Most users will find this information sufficient for their purposes. Abbreviations used for string variables are specified in the section of this documentation pertaining to that variable.

Note also, that the names of the variables and the values each contains may be sequentially printed out by resorting to the utilities drop down menu at the top of the SPSS screen and selecting 'file info.'

It is absolutely crucial that users fully inform themselves about variables 5 (ANALU) and 33 (DEC TYPE) before undertaking any analyses. Failure to do so will produce woefully inappropriate and grossly misleading results.

Although students partially coded a few of the non-interpretative variables -- e.g., docket number (DOCKET), manner in which the Court determines to take jurisdiction (JUR), origin and source of case (ORIGIN and SOURCE), and the various dates relating to the Court's decision (ORAL, REORAL, DEC), the responsibility for what is contained in each of the variables that comprises the database rests solely with me.

I wish to thank Professor Jeffrey Segal of the State University of New York at Stony Brook for his extremely valuable comments and suggestions on all phases and aspects of the database since its creation, and especially for his assistance in the creation of the SPSS commands used to create a number of the variables. I also thank Harriet Dhanak, the former programming and software specialist in the Department of Political Science at Michigan State University, for her expert guidance and assistance. Her successor, Lawrence Kestenbaum, continued and extended the stellar services on which I had become dependent. Most recently I have depended on the superb knowledge and skills of John Schwarz of the Michigan State University Institute for Political and Social Science Research. Professor Tim Hagle of the University of Iowa continues to inform me of errors and missing data that I have overlooked. My former graduate students, now bona fide professors - Sara C. Benesh and Wendy L. Martinek - have shepherded me through the more arcane byways of current versions of SPSS and

other related statistical packages.

I also thank Professor Kirk Randazzo and the Department of Political Science at the University of South Carolina for their willingness to distribute this and other judicial databases.

Compilation of this database was supported by grants from the National Science Foundation, SES-8313773 and SES-8812935. Without its assistance, the database would not exist.

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NOTE: Throughout the database missing data result because a justice was not a member of the Court at the time the case was decided, chose not to participate in the case, or because the variable in question does not admit to specification under the values provided for that variable. In which cases, a blank space, a '0,' a '9,' or a '.' will appear. The variable's type and the value for each of the value labels for each variable will indicate which of these it is.

Variables 1, 2, 3

### case citations (US, SCT, LED)

The three variables in these fields provide the citation to each case from the official *United States Reports* (US) and the two major unofficial Reports, the *Lawyers' Edition* of the *United States Reports* (LED) and the *Supreme Court Reporter* (SCT). The volume number precedes the slash bar; the page number on which the case begins follows. When these citations appear in printed form, any zeros that precede any other cardinal number are dropped. Thus, the database LED citation, 086/0011, should be read as 86 L Ed 2d 11. Note that all LED citations are to the second series except for volumes 98, 99, and 100 which are cited without "2d." These three volumes cover the first three terms of the Warren Court (1953-1955). Note that the database does not distinguish between citations to volumes 98, 99, and 100 of the first series and volumes 98, 99, and 100 of the second series. The latter cover a portion of the 1987 term. This overlap should cause no trouble unless you use as a 'select if' command reference to these volumes of the LED.

All US and LED citations were copied directly from the published volumes. SCT citations were derived from the conversion table to the *United States Reports* which is located in the front of the various volumes of the *Supreme Court Reporter*.

Citations to the *Lawyers' Edition* are current. Those to the other two Reporters are not. Because of the ready availability of case citations to the *United States Reports* and the *Supreme Court Reporter* I stopped entering these data a number of terms ago.

Not every record is cited to each source. I do not find either *Olin Mathieson Chemical Corp. v. N.L.R.B.*, 352 U.S. 1020 (1957), or *United States v. Louisiana*, 409 U.S. 17 (1972), in the *Lawyers' Edition*. On the other hand, the *United States Reports* do not contain those cases in which a justice dissents from the granting of an attorney's request for admission to the Bar of the United States Supreme Court. E.g., *In the Matter of Admission of Leda M.C. Hartwell, William Evans Benton, and Michael T. Rose*, 71 L Ed 2d 641, 859, and 862 (1982), respectively. Relative to the Court's formally decided cases, this sort of memorandum decision is trivial. Because citations to the *Supreme Court Reporter* are derived from a conversion table, as mentioned above, cases not cited in the *United States Reports* will have no parallel SCT citation, as will cases that the conversion table otherwise omits.

Pagination does not invariably proceed chronologically throughout the volumes. Hence, do not assume that because a given citation has a higher page number than that of another case it was decided on the same or a later date as the other case. The only accurate way to sequence the cases chronologically is by indexing or otherwise sequencing each case's date of decision (DEC), variable 20).

Variable 4

### **docket number (DOCKET)**

This variable contains the docket number that the Supreme Court has assigned to the case. During the Warren Court and the first two terms of the Burger Court, different cases coming to the Court in different terms could have the same docket number. The Court eliminated the possibility of such duplication by including the last two digits of the appropriate term before the assigned docket number. Since the 1971 Term, the Court has also operated with a single docket. Cases filed pursuant to the Court's appellate jurisdiction have a two-digit number corresponding to the term in which they were filed, followed by a hyphen and a number varying from one to four digits. Cases invoking the Court's original jurisdiction have a number followed by the abbreviation, "Orig."

For administrative purposes, the Court uses the letters, "A," "D," and "S," in place of the term year to identify applications ("A") for stays or bail, proceedings of disbarment or discipline of attorneys ("D"), and matters being held indefinitely for one reason or another ("S").

Several dozen records in the database do not contain a docket number; e.g., *Arkansas v. Texas*, 346 U.S. 368 (1953), and *Alabama v. Texas*, 347 U.S. 272 (1954), and cases in which a justice dissents from the grant of a lawyer's application for admission to the Bar of the United States Supreme Court. In these cases, this variable has no entry.

### **Variable 5 unit of analysis (ANALU)**

Explanation of the use of this variable requires definition of what a "record" and a "case" are. A record is the computerized listing of the variables contained in a case. Each record is distinctive; that is to say, no two records in the database are identical in all respects. The entry in at least one variable will differ from that contained in another record. A "case," on the other hand, refers to a citation or a docket number. A case may theoretically have an unlimited number of records.

The ANALU variable provides options among units of analysis:

ANALU = 0 : case citation

ANALU = 1 : docket number

ANALU = 2 : multiple issue case

ANALU = 3 : cases containing multiple legal provisions

ANALU = 4 : split vote case

ANALU = 5 : case with multiple issues and multiple legal provisions

Most research uses either case citation or docket number.

In using case citation as the unit of analysis only the information contained in the first record for that citation is provided. Choosing docket number in a multiple record case will specify possible differences in the court in which the case

originated (variable 10), the court whose decision the Supreme Court reviewed (variable 11), the parties to the case (variables 14 and 15), the "direction" of the Court's decision (variable 31), direction based on dissent (variable 32), the disposition the Court made of the case (variable 35), or an unusual disposition (variable 36). If any of these matters are of interest, docket number is the appropriate unit of analysis. To define a case as each separate docket number requires selection of ANALU=0 and ANALU=1.

Users whose interest lies in certain legal provisions (variable 24) or issues (variable 29) should go more or less directly to these variables without concerning themselves with a unit of analysis as such. But again take care to choose the appropriate type of decision (variable 33).

The final option that the ANALU variable provides is the identification of cases that contain a split vote. This phrase refers to those cases with a common citation, docket number, legal provision, and issue in which one or more of the justices voted with the majority on one issue or aspect of the case and dissented on another. An extreme example is *Wolman v. Walter*, 433 U.S. 229 (1977), in which no single voting alignment can capture how each of the justices voted toward the series of parochial programs that were at issue in this case. Note that a "4" will appear in the ANALU variable only if the docket number, legal provision, and the issue are the same in the original record in the case (ANALU=0) as they are in the record(s) in which ANALU=4.

Note that in two split vote cases not only did a justice vote with the majority on one issue and dissent on another, but that these two cases -- both decided during the 1990 term -- also contain two separate opinions of the Court, each written by a different justice: *Arizona v. Fulminante*, 113 L Ed 2d 302, and *Gentile v. State Bar of Nevada*, 115 L ed 2d 888. In both cases, the justice who wrote the opinion of the Court in the ANALU=4 record is Rehnquist. If you are interested in who writes the opinion of the Court, these two cases should be counted as containing two majority opinions.

Use of any of the ANALU options other than 0, will cause the unit of analysis to be docket number, not case citation. In other words, if you wish to analyze only cases with multiple legal provisions, what the database will provide you are such cases by docket number, not just case citation. Thus, for example, if a cited case contains two docket numbers and three legal provisions, each of the two docket numbers will appear three times in order to account for the distinctive legal provisions that each docket number addresses. Hence, if a docket number concerns more than one legal provision, it will appear once for each such legal provision. Thus, a docket number with four legal provisions will appear four times, each of which -- in pertinent part -- will differ from the other three only in the content of the legal provision (LAW) variable (variable 24) and, in addition, by the appearance of a "3" in the second through the

fourth of these records. The citation and docket number will be identical in all four of these records, as the following hypothetical example shows:

US	DOCKET	LAW	ANALU
366/0666	234	1A	
366/0666	234	5ADP	3
366/0666	234	RICO	3
366/0666	234	AFDC	3

Clearly then, to use the appearance of a 2, 3, 4, or 5 in the ANALU variable to count the number of case citations or docket numbers with multiple issues, multiple legal provisions, split votes, or a combination of multiple issue and legal provisions will produce a drastic overcount.

Also see the following variables: type of decision (33), multiple legal provisions (25), and number of records per unit of analysis (4).

The coding instructions for this variable follow:

If the citation has more than one docket number, enter a "1" in this variable (ANALU) for each record other than that containing the first citation.

If the docket number of a case pertains to more than one issue as defined by the issue variable, enter a "2."

If the docket number of a case concerns more than one legal provision as specified by the decision rules of the legal provisions at issue considered by the Court variable, enter a "3."

If the citation contains more than one docket number, and each separate docket number pertains to a legal provision and/or issue different from those of the other docket number(s) of the citation, enter a "1" rather than a "3," "2," or "5." (This rarely occurs.)

If the docket number concerns a split vote in the sense that one or more of the justices voted with the majority on one issue or aspect of the case and dissented on another, enter a "4." Identify split votes by the number of majorities which the summary of the case reports, or where the disposition is partial affirmation and partial reversal (e.g., a "5" or "6" in the disposition of case (variable 35), and one or more of the justices dissents only in part. If the split votes occur because of a legal provision or issue distinct from the one that appears in the original record for this citation, a "3" or "2" overrides a "4" and should appear in this variable. In other words, a "4" may appear in this variable only when the legal provision and the issue, as well as the docket number, are the same as they are in another record with the same citation.

If the split vote pertains to distinctive issues or legal provisions, and if this distinction also occurs between or among separate docket numbers, this variable should contain a "1."

If the case pertains to more than one issue as defined by the issue variable and more than one legal provision as specified by the legal provisions at issue considered by the Court vari-

able, enter a "5."

Any combination of "1," "2," "3," "4," or "5" may appear.

Note that each entry in this variable (1-5) relates to the original entry for that docket number. Hence, if in the second record, the legal provision and the issue both differ from the first record, enter a "5." If the third record has a different legal provision but the same issue as the second record, again enter a "5" because its legal provision and issue both differ from the first record. (See 379 U.S. 148 for an example.)

Variable 6  
**number of records per unit of analysis (REC)**

This variable specifies the number of records per unit of analysis for each citation whose docket number appears more than once. Thus, if a given docket number contains five legal provisions (indicated by a "3" in variable 5 [the unit of analysis] for the second, third, fourth, and fifth appearances of the case's docket number), the number, "4," will appear in this variable in the first record that contains a "3" in the unit of analysis (ANALU) variable.

This variable also contains the number of docket numbers that pertain to a given citation. Thus, if a citation has three docket numbers, a "2" will appear in the record of this variable that contains the first "1" in the unit of analysis variable. The "2" in the REC variable indicates that this citation has three docket numbers (the original record, plus two additional records containing the second and third docket numbers, respectively).

Note that in the first record of every citation (which is also the first record of that docket number) this variable has no entry. Also note that the entry in the REC variable is meaningful only in relation to the presence of a "1," "2," "3," "4," or "5" in the unit of analysis variable. Thus, if a given record has a "3" in the ANALU variable and a "1" in the REC variable, the citation (the docket number) has two legal provisions from the codes specified for the legal provisions at issue considered by the Court variable (variable 24). Further note that cases containing multiple legal provisions and multiple docket numbers should have separate entries in the REC variable. For example, if a citation contains two docket numbers, each of which contains three legal provisions, the unit of analysis variable (ANALU) will be empty in the first record, as will the REC variable. The second record will have a "1" in ANALU and also a "1" in REC to indicate a cite with two docket numbers. The third and fourth records, which correspond to the second legal provision for the two separate docket numbers, will contain a "3" in ANALU and a "2" in REC to signify that this case has three legal provisions. The fifth and sixth records will again contain a "3" in ANALU, but no entry in REC because the number of legal provisions — minus one — that each docket number contains has already been

specified.

This variable basically acts as a check on coding accuracy. Users are not likely to use the REC variable except to know if any citations contain multiple docket numbers, multiple legal provisions, multiple issues, or split votes.

A technical explanation of the REC variable follows:

If a citation to a case has more than a single record either because it has more than a single docket number, is multi-issue, contains multiple legal provisions, was decided by a split vote, or has both multiple issues and legal provisions, this variable specifies the number of such additional records in the first record in which the unit of analysis variable (ANALU) indicates the reason for the multiple records. Thus, if a "2" appears in the REC variable of a case in which ANALU=1, it means that this particular case has three docket numbers: the original docket number, which as explained in the ANALU variable never contains an entry in the record in which it initially appears, and the two additional records that contain the second and third docket numbers, respectively. As a further example, consider a citation whose second record has a "1" in the REC variable. This record contains a "3" in its ANALU variable. This means that this case contains two legal provisions as defined and specified by the LAW variable. Inspection of the two records for this case will show that the entry for the LAW variable in the first of these two records differs from the entry for the LAW variable in the second of these two records.

Note that the entry in the REC variable is meaningful only in relation to the presence of the appropriate code from the ANALU variable. A "2" in the latter and a "1" in the former, for example, means that this case has two issues as defined and identified by the issue variable. Similarly, a "4" in the REC variable and a "1" in the ANALU variable means that this case has five docket numbers.

It bears repeating that the first record of every case citation will have no entry in the REC variable.

Also note that a case may show some combination of the ANALU codes in its various records, rather than a "1," "2," "3," "4," or "5" exclusively. For example, if a citation has two docket numbers, each of which concerns three distinct legal provisions, the ANALU and REC variables will both be empty in the first record. The second record will contain a "1" in the REC variable and also a "1" in the ANALU variable to signify that this case has two docket numbers. The next record -- the third -- will show a "3" in the REC variable and a "3" in ANALU to indicate that this docket number concerns four separate legal provisions. The fourth and fifth records, assuming that their docket number is the same as that which appears on the third record, will show a "3" in the ANALU variable while the REC variable has no entry. It has no entry because the number of legal provisions that this docket number addresses has already been specified. The sixth record, parallel to the third one, will show a "3" in the REC variable and a 3 in the ANALU variable to indicate that the

second docket number in this case also contains four distinct legal provisions. The final two records, paralleling the fourth and fifth ones, will have a "3" in their ANALU variable while their REC variable has no entry. The visual representation of this hypothetical example would appear as follows:

US	DOCKET	ANALU	REC
366/0666	234		
366/0666	567	1	1
366/0666	234	3	3
366/0666	234	3	
366/0666	234	3	
366/0666	567	3	3
366/0666	567	3	
366/0666	567	3	

Finally, note that if a "5" appears in the ANALU variable signifying a case that has multiple legal provisions and multiple issues, the number in the REC variable will correctly identify only the number of legal provisions, minus one, that the docket number addresses. It will not necessarily indicate accurately the number of issues to which the docket number applies. All that you may conclude about multiple issues is that the docket number pertains to more than one. Greater precision does not obtain because the "5" in the ANALU variable relates to the original record for this docket number. Thus, the number specified in the REC variable of the second record, say "2," will indicate that the docket number applies to three distinct legal provisions, but that the second and third of these legal provisions may relate to a common issue which differs from that entered in the first record. Alternatively, the second and third records may not only contain legal provisions different from that entered in the first record, but they may also contain distinctive issues. Without visual inspection, you will not be able to determine whether this docket number has two or three issues. You will know, however, that this docket number does concern three legal provisions.

Most of the citations that show both a "3" and a "5" in their ANALU variable produce a situation akin to the following:

US	DOCKET	ANALU	REC	LAW	LAWS	ISSUE
396/0398	190			21-174	1	501
396/0398	190	3	1	5ADP	1	501
396/0398	190	5	1	26-4704	1	175

Here the ANALU=3 and the ANALU=5 records each treat separate legal provisions. To rectify the situation in cases containing records in which both a "3" and a "5" appear in the ANALU variable, focus instead on the multiple legal provisions (LAWS), variable 25). Each record pertaining to a docket number that concerns a legal provision distinct from any other that a different record lists will show a "1" in the LAWS variable. To deter-

mine the number of distinct legal provisions that the Court considered, simply sum the number of times a "1" appears in the LAWS variable for a particular docket number that has more than a single record.

Because the REC variable is a single column variable, three cases – from the later Warren Court and one from the Rehnquist Court – that contain more than nine records cannot be accommodated. All have a double digit number of dockets: 389 U.S. 486 (12), 390 U.S. 747 (14), 394 U.S. 310 (15), and 502 U.S. 16 (17). A "9" has been entered in the REC variable of the second record of each of these cases, with the remainder entered in the third record.

Also see unit of analysis (variable 5) and multiple legal provisions (variable 25).

#### Variable 7

##### **manner in which the Court takes jurisdiction (JUR)**

This information is found in the *United States Reports* following the name of the case and before the docket number. SPSS lists the values for this variable.

Also see reason for granting certiorari (variable 13).

#### Variable 8

##### **administrative action preceding litigation (ADMIN)**

This variable pertains to administrative agency activity prior to the onset of litigation. Note that the activity may involve an administrative official as well as that of an agency. The general rule for an entry in this variable is whether administrative action occurred in the context of the case.

Determination of whether such action occurred in the context of the case was made by reading the material which appears in the summary of the case (the material preceding the Court's opinion) and, if necessary, those portions of the prevailing opinion headed by a "I" or "II."

An entry should appear in this variable if reference appears to action by a "board," "commission," "department," or "agency," or to "administrative" action; or if application of agency "rules," "guidelines," "regulations," or remedies" occurs; or the use of agency "hearings" or "proceedings"; or the holding or issuing of a "permit," "license," or "certificate."

Action by an agency official is considered to be administrative action except when such an official acts to enforce criminal law. However, action by a parole board or administrative action within a prison (e.g., transfer of prisoners without a hearing) is included as agency action. Investigations conducted by agency officials and noncriminal prosecutions are defined as agency action.

If an agency or agency official "denies" a "request" that action be taken, such denials are considered agency action.

The admissibility and dismissal of students from public educational institutions are considered administrative action.

The delegation of licensing authority to a private body (e.g., a board of bar examiners) is considered administrative action.

Excluded from entry in this variable are:

A "challenge" to an unapplied agency rule, regulation, etc.

A request for an injunction or a declaratory judgment against agency action which, though anticipated, has not yet occurred.

A mere request for an agency to take action when there is no evidence that the agency did so.

Agency or official action to enforce criminal law.

The hiring and firing of political appointees or the procedures whereby public officials are appointed to office.

Attorney general preclearance actions pertaining to voting.

Filing fees or nominating petitions required for access to the ballot.

Actions of courts martial.

Land condemnation suits and quiet title actions instituted in a court.

Federally funded private nonprofit organizations.

When a state agency or official acts as an agent of a federal agency, it is identified as federal agency action.

Where the record is unclear as to the presence of such action, a "?" will appear.

Administrative action may be either state or federal. If administrative action was taken by a state or a subdivision thereof, the two-letter ZIP Code abbreviation of the state in question will identify it. If administrative action results from an agency created under an interstate compact, the letters, "IC," identify it.

If two federal agencies are mentioned (e.g., INS and BIA), the one whose action more directly bears on the dispute will appear; otherwise the agency that acted more recently. If a state and federal agency are mentioned, the federal agency will appear.

If agency action is federal, an abbreviation from the following list is used.

AAFX = Army and Air Force Exchange Service

AEC = Atomic Energy Commission

AF = Secretary or administrative unit or personnel of the  
U.S. Air Force

AGRI = Department or Secretary of Agriculture

APC = Alien Property Custodian

ARMY = Secretary or administrative unit or personnel of the

U.S. Army

BIA = Board of Immigration Appeals  
BINA = Bureau of Indian Affairs  
BOP = Bureau of Prisons  
BPA = Bonneville Power Administration  
BRB = Benefits Review Board  
CAB = Civil Aeronautics Board  
CENS = Bureau of the Census  
CIA = Central Intelligence Agency  
CFTC = Commodity Futures Trading Commission  
COMM = Department or Secretary of Commerce  
COMP = Comptroller of Currency  
CPSC = Consumer Product Safety Commission  
CRC = Civil Rights Commission  
CSC = Civil Service Commission, U.S.  
CUCO = Customs Service or Commissioner of Customs  
DBCR = Defense Base Closure and Realignment Commission  
DHS = Department of Homeland Security  
DEA = Drug Enforcement Agency  
DOD = Department or Secretary of Defense (identify components  
-- Army, Navy, Air Force -- separately, unless more  
than one is present, in which case use DOD)  
DOE = Department or Secretary of Energy  
DOI = Department or Secretary of the Interior  
DOJ = Department of Justice or Attorney General  
DOS = Department or Secretary of State  
DOT = Department or Secretary of Transportation  
EDUC = Department or Secretary of Education  
EECC = U.S. Employees' Compensation Commission, or Commission-  
er  
EEOC = Equal Employment Opportunity Commission  
EPA = Environmental Protection Agency or Administrator  
FAA = Federal Aviation Agency or Administration  
FBI = Federal Bureau of Investigation or Director  
FBP = Federal Bureau of Prisons  
FCA = Farm Credit Administration  
FCC = Federal Communications Commission  
FCUA = Federal Credit Union Administration  
FDA = Food and Drug Administration  
FDIC = Federal Deposit Insurance Corporation  
FEA = Federal Energy Administration  
FEC = Federal Election Commission  
FERC = Federal Energy Regulatory Commission  
FHA = Federal Housing Administration  
FHLB = Federal Home Loan Bank Board  
FLRA = Federal Labor Relations Authority  
FMBD = Federal Maritime Board  
FMC = Federal Maritime Commission  
FMHA = Farmers Home Administration  
FPB = Federal Parole Board  
FPC = Federal Power Commission  
FRA = Federal Railroad Administration

FRB = Federal Reserve Board of Governors  
 FRS = Federal Reserve System  
 FSLI = Federal Savings and Loan Insurance Corporation  
 FTC = Federal Trade Commission  
 FWA = Federal Works Administration, or Administrator  
 GAO = General Accounting Office  
 GENL = Comptroller General  
 GSA = General Services Administration  
 HEW = Department or Secretary of Health, Education and  
       Welfare  
 HHS = Department or Secretary of Health and Human Services  
 HUD = Department or Secretary of Housing and Urban  
       Development  
 IC = administrative agency established under an interstate  
       compact (except for the MTC)  
 ICC = Interstate Commerce Commission  
 INCC = Indian Claims Commission  
 INS = Immigration and Naturalization Service, or Director of,  
       or District Director of, or Immigration and Natural  
       ization Enforcement  
 IRS = Internal Revenue Service, Collector, Commissioner, or  
       District Director of  
 ISOO = Information Security Oversight Office  
 LABR = Department or Secretary of Labor  
 LRB = Loyalty Review Board  
 LSC = Legal Services Corporation  
 MSPB = Merit Systems Protection Board  
 MTC = Multistate Tax Commission  
 NASA = National Aeronautics and Space Administration  
 NAVY = Secretary or administrative unit of the U.S. Navy  
 NCUA = National Credit Union Administration  
 NEA = National Endowment for the Arts  
 NEC = National Enforcement Commission  
 NHTS = National Highway Traffic Safety Administration  
 NLRB = National Labor Relations Board, or regional office or  
       officer  
 NMB = National Mediation Board  
 NRAB = National Railroad Adjustment Board  
 NRC = Nuclear Regulatory Commission  
 NSA = National Security Agency  
 OEO = Office of Economic Opportunity  
 OMB = Office of Management and Budget  
 OPA = Office of Price Administration, or Price Administrator  
 OPM = Office of Personnel Management  
 OSHA = Occupational Safety and Health Administration  
 OSHC = Occupational Safety and Health Review Commission  
 OWCP = Office of Workers' Compensation Programs  
 PATO = Patent Office, or Commissioner of, or Board of Appeals  
       of  
 PAY = Pay Board (established under the Economic Stabilization  
       Act of 1970)  
 PBGC = Pension Benefit Guaranty Corporation

PHS = U.S. Public Health Service  
 PRC = Postal Rate Commission  
 PRRB = Provider Reimbursement Review Board  
 RNGB = Renegotiation Board  
 RRAB = Railroad Adjustment Board  
 RRRB = Railroad Retirement Board  
 SACB = Subversive Activities Control Board  
 SBA = Small Business Administration  
 SEC = Securities and Exchange Commission  
 SSA = Social Security Administration or Commissioner  
 SSS = Selective Service System  
 TREA = Department or Secretary of the Treasury  
 TVA = Tennessee Valley Authority  
 USFS = United States Forest Service  
 USPC = United States Parole Commission  
 USPS = Postal Service and Post Office, or Postmaster General,  
           or Postmaster  
 USSC = United States Sentencing Commission  
 VTAD = Veterans' Administration  
 WPB = War Production Board  
 WSB = Wage Stabilization Board

Note that the foregoing entries may also be found in the parties variables (variables 14 and 15).

Variable 9  
**three-judge district court (J3)**

This variable will contain an entry only if the case was heard by a three-judge federal district court. Recent congressional legislation has reduced the kinds of lawsuits that must be heard by such a court. As a result, the frequency of entries in this variable is less for the Burger Court than for the Warren Court, and all but nonexistent for the Rehnquist Court.

Variable 10  
**origin of case (ORIGIN)**

The focus of this variable is the court in which the case originated, not the administrative agency (see variable 8). For this reason a number of cases show a state or federal appellate court as the one in which the case originated rather than a court of first instance (trial court). This variable has no entry in cases that originated in the United States Supreme Court.

Cases that arise on a petition of habeas corpus and those removed to the federal courts from a state court are defined as originating in the federal, rather than a state, court system.

The court of origin is identified by an abbreviated form of that used in the current edition of *A Uniform System of Citation* (Cambridge: Harvard Law Review Assn.)

federal district courts: The geographical locus, if any,

appears as "C" (Central), "E" (Eastern), "M" (Middle), "N" (Northern), "S" (Southern), or "W" (Western). This is followed by "D" to denominate the tribunal as a federal district court. If the state contains only one federal district court, the "D" appears in the first column of this variable, otherwise in the second column. The two-letter Postal Service ZIP Code abbreviation of the state in question completes the identification of the district courts. E.g., NDIL, CDCA, DMA, DDC.

state courts: The state's ZIP Code abbreviation appears in the first two columns, followed by one of the following: "TR" to indicate a trial court of the state in question, "AP" to indicate an appellate court, and empty cells to indicate the state's supreme court. Two states, Oklahoma and Texas, have separate civil and criminal supreme courts. No distinction is made between them. The current edition of *State Court Organization* (Williamsburg, VA: National Center for State Courts) is the source used to identify a court as one of first instance, intermediate appellate, or of last resort.

federal courts of appeal: The number of the Circuit (1-11) or DC is followed by the letter "C." E.g., 1C, 8C, 11C, DCC.

Other federal courts are identified as follows:

CCPA = Court of Customs and Patent Appeals  
CIT = Court of International Trade  
CTCL = Court of Claims, Court of Federal Claims  
CTMA = Court of Military Appeals, renamed as Court of Appeals for the Armed Forces  
CTMR = Court of Military Review  
CTVA = Court of Veterans Appeals  
CUST = Customs Court  
FEDC = Court of Appeals for the Federal Circuit  
TAX = Tax Court  
TECA = Temporary Emergency Court of Appeals

This variable has no entry if the case arose under the Supreme Court's original jurisdiction (which is typically indicated by a "9" in the JUR variable), and in other proceedings with which no other court was involved (e.g., application for admission to the Supreme Court's bar).

A petition for a writ of habeas corpus begins in the federal district court, not the state trial court.

Cases removed to a federal court originate there.

Also see source of case (variable 11).

Variable 11  
**source of case (SOURCE)**

This variable identifies the court whose decision the Supreme Court reviewed. Forum identification is the same as for the preceding variable. If the case originated in the same court whose decision the Supreme Court reviewed, the entry in the ORIGIN variable (variable 10) should be the same as here. This variable has no entry if the case arose under the Supreme Court's original jurisdiction.

Also see origin of case (variable 10).

Variable 12  
**lower court disagreement (DISS)**

An entry in this variable indicates that one or more of the members of the court whose decision the Supreme Court reviewed dissented from its judgment.

If a case arose on habeas corpus, a dissent will be indicated if either the last federal court or the last state court to review the case contained one. E.g., *Townsend v. Sain*, 9 Led 2d 770 (1963). A dissent will also be indicated if the highest court with jurisdiction to hear the case declines to do so by a divided vote. E.g., *Simpson v. Florida*, 29 L ed 2d 549 (1971).

Except for memorandum cases (see variable 33), the presence of such disagreement is limited to a statement to this effect somewhere in the majority opinion. I.e., "divided," "dissented," "disagreed," "split." A reference, without more, to the "majority" or "plurality" does not necessarily evidence dissent. The other judges may have concurred.

Note that the focus of this variable tends to be a statement that a dissent occurred rather than the fact of such an occurrence. Future NSF proposals may analyze the decision and opinions of the lower court; as a result, the fact of a lower court dissent will be the criterion for an entry here rather than a statement in the Supreme Court's opinion. Presumably, the fact of a dissent is not always mentioned in the majority opinion. It may be irrelevant. See, for example, *McNally v. United States*, 97 L ed 2d 292 (1987), and *United States v. Gray and McNally*, 790 F.2d 1290 (1986).

Variable 13  
**reason for granting certiorari (CERT)**

This variable provides the reason, if any, that the Court gives for granting the petition for certiorari. If the case did not arise on certiorari, this variable will have no entry even though the Court provides a reason why it agreed to review the case. The Court, however, rarely provides a reason for taking jurisdiction (variable 7) by writs other than certiorari.

The focus in this variable is on the reason the majority gives for granting cert.

Accordingly, this variable will have no entry if it did arise on cert but is a memorandum decision (see variable 34) or was decided by a tied vote (again see variable 34).

SPSS specifies the values and value labels for this variable.

Also see variable 7, manner in which the Court takes jurisdiction.

Variables 14, 15

## **parties (PARTY\_1, PARTY\_2)**

These two variables identify the parties to the case. PARTY\_1 refers to the party who petitioned the Supreme Court to review the case. This party is variously known as the petitioner or the appellant. PARTY\_2 is conventionally labeled the respondent or the appellee. The specific codes that appear below were created inductively, with PARTY\_1 as well as PARTY\_2 characterized as the Court's opinion identifies them.

In describing the parties in the cases before it, the justices employ terminology which places them in the context of the litigation in which they are involved. Accordingly, an employer who happens to be a manufacturer will be identified as the former if its role in the litigation is that of an employer and as the latter if its role is that of a business. Because the justices describe litigants in this fashion, a fairly limited vocabulary characterizes them. Note that the list of parties also includes the list of administrative agencies and officials contained in administrative action preceding litigation (variable 8).

Also note that the Court's characterization of the parties applies whether the petitioner and respondent are actually single entities or whether many other persons or legal entities have associated themselves with the lawsuit. That is, the presence of the phrase, et al, following the name of a party does not preclude the Court from characterizing that party as though it were a single entity. Thus, each docket number will show a single PARTY\_1 and a single PARTY\_2, regardless of how many legal entities were actually involved.

Either PARTY\_1 or PARTY\_2, or both, may be blank if the record pertains to more than one memorandum decision (see variable 33). This happens because these combined cases contain a multiplicity of petitioning and/or responding parties who cannot be identified by a common descriptor. An entry for the parties appears, however, if this variable is itself without an entry, signifying a single case.

The decision rules governing the identification of parties follow.

Identify parties by the labels given them in the opinion or judgment of the Court except where the Reports title a party as the "United States" or as a named state. Textual identification of parties is typically provided prior to Part "I" of the Court's opinion. The official syllabus - the summary - which appears on the title page of the case may be consulted as well. In describing the parties, the Court employs terminology which places them in the context of the specific lawsuit in which they are involved. E.g., "employer" rather than "business" in a suit by an employee; as a "minority," "female," or "minority female" employee rather than "employee" in a suit alleging discrimination by an employer.

Where a choice of identifications exists choose that which

provides information not provided by the legal provision or the issue (see variables 24 and 29). E.g., identify a federal taxpayer or an attorney accused of a crime as TAXP or ATTY rather than AC, particularly if neither the LAW nor the ISSUE variable identifies the case as a tax matter or one involving an attorney.

Identify the parties by reference to the following list and by the list of federal agencies provided in the ADMIN variable. Pay particular attention to the related descriptors which are enclosed in parentheses at the end of many of the entries in the following list.

Enter a "?" in the first column of the appropriate variable if the Reports do not identify the character of the pertinent party.

In the list of parties appended below, the states and territories of the United States are identified by the 2-letter ZIP abbreviation used by the U.S. Postal Service. "IC" has been added to this list to identify an interstate compact.

Federal agencies are identified by the specific abbreviation used in the ADMIN variable (variable 8).

In criminal and habeas corpus cases, the name of the state which is involved in the prosecution (or the US in a federal criminal prosecution or habeas corpus against a federal official) is used rather than the office of the person who prosecutes or has custody of the accused or convicted person.

#### LIST OF PARTIES

? = party not identified in the Reports

governmental context  
[related entries are enclosed in parentheses]

AG = attorney general of the United States, or his office

\_\_ BD ED = specified state board or department of education

\_\_ CITY = city, town, township, village, or borough government or governmental unit (\_\_NONMUN, \_\_COUNTY)

\_\_ COMN = state commission, board, committee, or authority (\_\_DEPT)

\_\_ COUNT = county government or county governmental unit, except school district

\_\_ COURT = court or judicial district (\_\_JUDGE, \_\_S CT)

\_\_ DEPT = state department or agency (\_\_COMN)

\_\_ GOEE = governmental employee or job applicant, unless employee is a GOFEE (female), GOMEET (minority), or GOMFEE (minority female)

\_\_ GOFEE = female governmental employee or job applicant  
\_\_ GOMEe = minority governmental employee or job applicant  
\_\_ GOMFE = minority female governmental employee or job  
applicant  
GOVT COR = federal government corporation not listed among  
agencies in variable 8  
\_\_ GREE = retired or former governmental employee (VETERAN)  
HSE REPS = U.S. House of Representatives (LEGIS, SENATE, SENATOR)  
IC = interstate compact  
\_\_ JUDGE = judge (\_\_ COURT)  
\_\_ LEGIS = state legislature, house, or committee (HSE REPS,  
SENATE, SENATOR)  
\_\_ NONMU = local governmental unit other than a county, city,  
town, township, village, or borough (\_\_ CITY,  
\_\_ COUNTY)  
\_\_ OF = governmental official, or an official of an agency  
established under an interstate compact. The first two  
columns identify the pertinent state, the United States,  
or an interstate compact.  
\_\_ S CT = state or U.S. supreme court  
\_\_ SCHDIS = local school district or board of education  
SENATE = U.S. Senate (HSE REPS)  
SENATOR = U.S. senator  
SOVEREIG = foreign nation or instrumentality  
\_\_ TAXP = state or local governmental taxpayer, or executor of  
the estate of  
\_\_ U = state college or university  
US = United States

nongovernmental context  
[related entries are enclosed in parentheses]

AC = person accused, indicted, or suspected of crime (ARRESTEE,

CC, D, PRISONER, PROBATION, WITNESS)

AD = advertising business or agency

AGENT = agent, fiduciary, trustee, or executor (MGMT)

AIR MFR = airplane manufacturer, or manufacturer of parts of  
airplanes

AIRLINE = airline (BOAT, BUS, RR, SHIP, TRUCK)

ALCOHOL = distributor, importer, or exporter of alcoholic  
beverages (BAR, BREWERY, DISTRIBUT, WHOLESAL)

ALIEN = alien, person subject to a denaturalization proceeding,  
or one whose citizenship is revoked

AMA = American Medical Association (HEAL, HOSPITAL, PHYSICIAN)

AMTRAK = National Railroad Passenger Corp.

ARCADE = amusement establishment, or recreational facility

ARRESTEE = arrested person, or pretrial detainee (AC, CC, D,  
PRISONER, PROBATION)

ATTY = attorney, or person acting as such; includes bar appli-  
cant or law student, law firm, or bar association

AUTHOR = author, copyright holder (INVENTOR)

BANK = bank, savings and loan, credit union, investment company  
(CREDITOR)

BANKRUPT = bankrupt person or business, including trustee in  
bankruptcy, or business in reorganization (DEBTOR)

BAR = establishment serving liquor by the glass, or package  
liquor store (ALCOHOL, RESTRANT)

BOAT = water transportation, stevedore (AIRLINE, BUS, RR, SHIP-  
PER, TRUCK)

BOOK = bookstore, newsstand, printer, bindery, purveyor or dis-  
tributor of books or magazines (FILM, NETWORK, NEWS,  
PUBLISHER)

BREWERY = brewery, distillery (ALCOHOL, BAR)

BROKER = broker, stock exchange, investment or securities firm  
(STOCK)

BUILDER = construction industry (KOR)

BUS = bus or motorized passenger transportation vehicle

BUSINESS = business, corporation (AD, AIRLINE, AIR MFR, ALCOHOL, ARCADE, BANK, BAR, BOAT, BOOK, BREWERY, BROKER, BUILDER, BUS, CABLE TV, CAR DEAL, CHEM CO, COAL CO, DISTRIBUT, DRUG MFR, ELEC CO, FARMER, FOOD, FRACHISOR, FRANCHISE, HEAL, HOSPITAL, INSURE, KOR, MAGAZINE, MEDICAL, MFR, MGMT, MINE, MOTOR CO, NETWORK, NEWS, NONPROFIT, NUCLEAR, OIL CO, PARKING, PHONE, PI, PIPELINE, PRO, PU, PUBLISHER, RADIO, REALTOR, RESTRANT, RR, SHIPPER, STORE, THEATER, TIMBER CO, TRUCK, TV, WHOLESALE)

BUYER = buyer, purchaser (CONSUMER)

CABLE TV = cable TV (TV, NETWORK)

CAR DEAL = car dealer

CC = person convicted of crime (AC, ARRESTEE, D, POOR D, PRISONER, PROBATION)

CHATTEL = tangible property, other than real estate, including contraband (FILM, O)

CHEM CO = chemical company

CHILD = child, children, including adopted or illegitimate (FATHER, JUV, MOTHER, PARENT)

CHURCH = religious organization, institution, or person (ELEE)

CLUB = private club or facility

COAL CO = coal company or coal mine operator

COMPUTER = computer business or manufacturer, hardware or software

CONSUMER = consumer, consumer organization (BUYER)

CREDITOR = creditor, including institution appearing as such; e.g., a finance company (BANK)

CRIM INS = person allegedly criminally insane or mentally incompetent to stand trial (ICMP)

D = defendant (AC, CC, POOR D, PRISONER, PROBATION)

DEBTOR = debtor, excluding bankrupt person or business

(BANKRUPT)

DEVELOPE = real estate developer (O, REALTOR, SHOP CTR)

DISABLED = disabled person or disability benefit claimant  
(HANDICAPD, MED CLAIM, PATIENT)

DISTRIBU = distributor (BOOK, WHOLESALE)

DRAFTEE = person subject to selective service, including  
conscientious objector (MILITARY)

DRUG MFR = drug manufacturer

DRUGGIST = druggist, pharmacist, pharmacy

EE = employee, or job applicant, including beneficiaries of  
(FEE, MEE, MFEE, \_\_ GOEE, \_\_ GOFEE, \_\_ GOMEE, \_\_ GOMFEE  
\_\_ GREE)

EE TRUST = employer-employee trust agreement, employee health and  
welfare fund, or multi-employer pension plan

ELEC CO = electric equipment manufacturer

ELEC PU = electric or hydroelectric power utility, power co-  
operative, or gas and electric company (NUCLEAR, OIL  
CO, PU)

ELEE = eleemosynary institution or person (CHURCH, PI, NONPROFIT)

ENV = environmental organization

ER = employer. If employer's relations with employees are  
governed by the nature of the employer's business (e.g.,  
RR, BOAT), rather than labor law generally, the more  
specific designation is used in place of ER.

FARMER = farmer, farm worker, or farm organization (FOOD, TIMBER  
CO)

FATHER = father (CHILD, MOTHER, PARENT)

FEE = female employee or job applicant (MFEE, \_\_ GOFEE, \_\_  
GOMFEE)

FEMALE = female (FEE, MALE, MOTHER, WIFE)

FILM = movie, play, pictorial representation, theatrical produc-  
tion, actor, or exhibitor or distributor of (BOOK, CABLE  
TV, NEWS, NETWORK, RADIO, THEATER, TV)

FISH = fisherman or fishing company

FOOD = food, meat packing, or processing company, stockyard  
(FARMER)

FOREIGN = foreign (non-American) nongovernmental entity  
(SOVEREIGN)

FRACHISO = franchiser

FRANCHIS = franchisee

GAY = homosexual person or organization (PROT, RAMIPROT)

GUARANTO = person who guarantees another's obligations

HANDICAP = handicapped individual, or organization of devoted  
to (DISABLED, MED CLAIM, PATIENT)

HEAL = health organization or person, nursing home, medical  
clinic or laboratory, chiropractor (HOSPITAL, MEDICAL,  
PHYSICIAN)

HEIR = heir, or beneficiary, or person so claiming to be

HOSPITAL = hospital, medical center (HEAL)

HUSBAND = husband, or ex-husband (SPOUSE, WIFE)

ICMP = involuntarily committed mental patient (CRIM INSA,  
RETARDED)

INDIAN = Indian, including Indian tribe or nation

INSURE = insurance company, or surety

INVENTOR = inventor, patent assigner, trademark owner or holder  
(AUTHOR)

INVESTOR = investor (STOCK)

IP = injured person or legal entity, nonphysically and non-em-  
ployment related (PIP). If unclear whether the injury is  
physical or not, the broader category, IP, is used rather  
than PIP.

JUV = juvenile (CHILD)

KOR = government contractor or subcontract (BUILDER)

LICENSEE = holder of a license or permit, or applicant therefor  
(except to practice law. Cf. ATTY)

MAGAZINE = magazine (NEWS)

MALE = male

MED CLAI = medical or Medicaid claimant (DISABLED, HANDICAPD,  
PATIENT)

MEDICAL = medical supply or manufacturing co. (DRUG MFR, HEAL)

MEE = racial or ethnic minority employee or job applicant  
(\_\_GOMEE, \_\_GOMFEE, MFEE)

MFEE = minority female employee or job applicant (\_\_GOMEE,  
\_\_GOMFEE, MEE)

MFR = manufacturer (BUILDER, CHEM CO, COAL CO, DRUG MFR, ELEC  
CO, MEDICAL, MINE, MOTOR CO, OIL CO)

MGMT = management, executive officer, or director, of business  
entity (AGENT)

MILITARY = military personnel, or dependent of, including  
reservist (DRAFTEE, VETERAN)

MINE = mining company or miner, excluding coal, oil, or pipeline  
company (COAL CO, OIL CO, PIPELINE)

MOTHER = mother (CHILD, FATHER, PARENT)

MOTOR CO = auto manufacturer

NEWS = newspaper, newsletter, journal of opinion, news service  
(BOOK, FILM, MAGAZINE, NETWORK, PUBLISHER, REPORTER)

NETWORK = radio and television network, except CABLE TV (RADIO,  
TV)

NONPROFI = nonprofit organization or business (CHURCH, ELEE,  
ENV, PI, POL, PRO)

NONRES = nonresident (RESIDENT)

NUCLEAR = nuclear power plant or facility

O = owner, landlord, or claimant to ownership, fee interest, or  
possession of land as well as chattels (CHATTEL, DEVELOPER,  
REALTOR, SHOP CTR, TENANT)

OFFEREE = shareholders to whom a tender offer is made

OFFERER = tender offer

OIL CO = oil company, or natural gas producer (ELEC PU, PIPELINE, PU)

OLD = elderly person, or organization dedicated to the elderly

OUT OF S = out of state noncriminal defendant (NONRES)

PAC = political action committee

PARENT = parent or parents (CHILD, FATHER, MOTHER)

PARKING = parking lot or service

PATIENT = patient of a health professional

PHONE = telephone, telecommunications, or telegraph company

PHYSICIA = physician, MD or DO, dentist, or medical society (HEAL)

PI = public interest organization (ELEE, ENV, NONPROFIT)

PIP = physically injured person, including wrongful death, who is not an employee (IP)

PIPELINE = pipe line company (OIL CO)

PKG = package, luggage, container

POL = political candidate, activist, committee, party, party member, organization, or elected official (HSE REPS, SENATE, SENATOR, VOTER)

POOR = indigent, needy, welfare recipient (MED CLAIM, POOR D, UNEMPLOYD)

POOR D = indigent defendant

PP = private person

PRISONER = prisoner, inmate of penal institution (CC)

PRO = professional organization, business, or person (ATTY, DRUGGIST, HEAL, PHYSICIAN)

PROBATIO = probationer, or parolee

PROT = protester, demonstrator, picketer or pamphleteer (non-employment related), or non-indigent loiterer (GAY, RAMIPROT)

PU = public utility (ELEC PU, NUCLEAR, OIL CO)

PUBLISHE = publisher, publishing company (BOOK)

RADIO = radio station (NETWORK)

RAMI = racial or ethnic minority

RAMIPROT = person or organization protesting racial or ethnic segregation or discrimination (GAY, PROT)

RAMISTU = racial or ethnic minority student or applicant for admission to an educational institution (STUDENT)

REALTOR = realtor (DEVELOPER, O)

REPORTER = journalist, columnist, member of the news media

RESIDENT = resident (NONRES)

RESTRANT = restaurant, food vendor (BAR)

RETARDED = retarded person, or mental incompetent (ICMP, CRIM INSA)

RETIREE = retired or former employee (\_\_ GREE, VETERAN)

RR = railroad (AIR, BOAT, BUS, SHIPPER, TRUCK)

SCHOOL = private school, college, or university (CHURCH, STUDENT)

SELLER = seller or vendor

SHIPPER = shipper, including importer and exporter (AIR, BOAT, BUS, RR, TRUCK)

SHOP CTR = shopping center, mall (O, STORE)

SPOUSE = spouse, or former spouse (HUSBAND, WIFE)

STOCK = stockholder, shareholder, or bondholder (INVESTOR, OFFEREE, OFFERER)

STORE = retail business or outlet (CAR DEAL, DISTRIB, SHOP CTR, WHOLESALE)

STUDENT = student, or applicant for admission to an educational institution (RAMISTU)

TAXP = taxpayer or executor of taxpayer's estate, federal only (\_\_ TAXP)

TENANT = tenant or lessee (O)

THEATER = theater, studio

TIMBER C = forest products, lumber, or logging company (FARMER)

TOURIST = person traveling or wishing to travel abroad, or over-seas travel agent

TRUCK = trucking company, or motor carrier (AIR, BOAT, BUS, RR, SHIPPER)

TV = television station (CABLE TV, NETWORK)

UMEM = union member (EE, UNION)

UNEMPLOY = unemployed person or unemployment compensation applicant or claimant

UNION = union, labor organization, or official of (EE, EE TRUST, UMEM)

VETERAN = veteran (MILITARY)

VOTER = voter, prospective voter, elector, or a nonelective official seeking reapportionment or redistricting of legislative districts (POL)

WHOLESALE = wholesale trade (ALCOHOL, DISTRIB, STORE)

WIFE = wife, or ex-wife (HUSBAND, SPOUSE)

WITNESS = witness, or person under subpoena (AC, ARRESTEE)

Also see administrative action preceding litigation (variable 8).

Variable 16  
**disposition of case whose decision the Supreme Court reviewed  
(LODIS)**

This variable specifies the treatment the court whose decision the Supreme Court reviewed accorded the decision of the court it reviewed; e.g., whether the lower court – typically a federal court of appeals or a state supreme court – affirmed, reversed, remanded, etc. the decision of the court it (the federal court of appeals or the state supreme court) reviewed.

If the case is not a memorandum decision (see variable 33, type of decision), LODIS will not contain an entry if the decision the Supreme Court is reviewing is that of a trial court or if the case arose under the Supreme Court's original jurisdiction

(see variable 7). Memorandum cases will usually not contain an entry in this variable because the Court does not provide this information.

SPSS lists the codes for this variable.

The decision rules for entering this information follow:

Adhere to the language used in the "holding" in the summary of the case on the title page or prior to Part I of the Court's opinion. Exceptions to the literal language are the following:

Where the court whose decision the Supreme Court is reviewing refuses to enforce or enjoins the decision of the court, tribunal, or agency which it reviewed, treat this as = 2.

Where the court whose decision the Supreme Court is reviewing enforces the decision of the court, tribunal, or agency which it reviewed, treat this as = 1.

Where the court whose decision the Supreme Court is reviewing sets aside the decision of the court, tribunal, or agency which it reviewed, treat this as = 7; if the decision is set aside and remanded, treat it as = 4.

Except for DEC\_TYPE = 3 cases (see variable 33, type of decision), if the L̄ODIS variable has no entry, it means that the case arose under the Supreme Court's original jurisdiction or that the decision the Supreme Court is reviewing is that of the trial court, tribunal, or agency itself -- in which case the Supreme Court's disposition is specified in the DIS variable, variable 35. However, if the court or agency of first instance either granted (=1) or denied (=8) the petitioner's request, that entry will appear rather than the missing data symbol(.).

Also see disposition of case (variable 35) and direction of the lower court's decision (variable 17).

#### Variable 17

#### **direction of the lower court's decision (LCTDIR)**

This variable specifies whether the decision of the court whose decision the Supreme Court reviewed was itself liberal or conservative as these terms are defined in the direction of decision variable, variable 31.

LCTDIR permits determination of whether the Supreme Court's disposition of the case (see variable 35) upheld or overturned a liberal or a conservative lower court decision.

Also see disposition of case by the court whose decision the Supreme Court reviewed (variable 16), direction of decision (variable 31), disposition of case (variable 35), and winning party (variable 37).

#### Variable 18

**date of oral argument (ORAL)**

The day, month, and year the case was orally argued appear in this variable. Only formally decided cases and those decided by an equally divided vote are orally argued. For other types of decisions (see variable 33) ORAL has no entry.

On a few occasions, oral argument extended over two days. In these cases, only the first date is specified.

Unfortunately, two citations, LED=146/0254 and 146/0365, were argued on February 29, 2000. But SPSS failed to correct this Y2K problem. As a result, I have coded these oral argument dates as 28-FEB-00.

Also see reargument date (variable 19) and decision date (variable 20).

Variable 19  
**reargument date (REORAL)**

On those infrequent occasions when the Court orders that a case be reargued (less than two percent of the time), the date of such argument is specified here following the same year, month, day sequence used in the preceding variable.

Also see date of oral argument (variable 18) and decision date (variable 20).

Variable 20  
**decision date (DEC)**

This variable contains the day, month, and year that the Court announced its decision in the case. Unlike the two preceding variables, every case must contain a date of decision. Unfortunately, the Court decided a case on February 29, 2000 (LED=146/0001). For the reason specified in variable 18 (ORAL), it appears as 28-FEB-2000.

Also see date of oral argument (variable 18) and reargument date (variable 19).

Variable 21  
**term of Court (TERM)**

This variable identifies the various terms of the Warren, Burger, and Rehnquist Courts. The database begins with the 1953 term and extends through the end of the Court's most recently completed term. Each term is identified by the year in which it began.

Also see chief justice (variable 22) and natural court (variable 23).

Variable 22  
**chief justice (CHIEF)**

This variable identifies the chief justice for each case. SPSS contains the value labels.

Also see term of the Court (variable 21) and natural Court (variable 23).

Variable 23  
**natural court (NATCT)**

Although most judicial research is chronologically organized by the term of the Court (variable 21) or by chief justice (variable 22), many scholars use "natural courts" as their analytical frame of reference. To accommodate them, this variable was created.

A natural court is a period during which no personnel change occurs. Scholars have subdivided them into "strong" and "weak" natural courts, but no convention exists as to the dates on which they begin and end. Options include 1) date of confirmation, 2) date of seating, 3) cases decided after seating, and 4) cases argued and decided after seating. See Edward V. Heck, "Justice Brennan and the Heyday of Warren Court Liberalism," 20 *Santa Clara Law Review* 841 (1980) 842-843 and "Changing Voting Patterns in the Burger Court: The Impact of Personnel Change," 17 *San Diego Law Review* 1021 (1980) 1038; Harold J. Spaeth and Michael F. Altfeld, "Measuring Power on the Supreme Court: An Alternative to the Power Index," 26 *Jurimetrics* 48 (1985) 55. A strong court is delineated by the addition of a new justice or the departure of an incumbent. A weak court, by comparison, is any group of nine justices even if lengthy vacancies occurred. Thus, as is shown below, the first thirty months of the Burger Court comprise three strong natural courts, but only one weak one: the eight justices who sat during the 1969 term, the addition of Blackmun at the very end of the 1969 term, and the seven-member Court that sat from the retirements of Black and Harlan at the beginning of the 1971 term until the arrival of Powell and Rehnquist a few months later. These thirty months comprise a single weak natural court because only nine justices sat during this period, even though only six of the nine held membership from its beginning to its end.

I have divided the Warren, Burger, and Rehnquist Courts into strong natural courts, each of which begins when the Reports first specify that the new justice is present but not necessarily participating in the reported case. Similarly, a natural court ends on the date when the Reports state that an incumbent justice has died, retired, or resigned. In the description and listing of the natural courts below, I parenthetically designate the strong natural courts that constitute a weak natural court for those of you who prefer that focus. The courts are numbered consecutively by chief justice as the code at the left-hand margin indicates.

		WARREN COURT	
NATCT	duration		personnel change

WAR1	1953 term	Warren on, Jackson off
WAR2	1954 term, pre-Harlan	(weak court)
WAR3	1954 to early 1956 term	Harlan on, Minton off
WAR4	early to middle of 1956 term	Brennan on, Reed off
WAR5	most of 1956 term to early 1958 term <sup>a</sup>	Whittaker on, Burton off
WAR6	early 1958 term to middle of 1961 term	Stewart on, Whittaker off
WAR7	rest of 1961 term <sup>b</sup>	White on, Frankfurter off
WAR8	1962-1964 terms	Goldberg on, Goldberg off
WAR9	1965-1966 terms	Fortas on, Clark off
WAR10	1967 to middle of 1968 term	Marshall on, Fortas off
WAR11	rest of 1968 term	(weak court) Warren off

<sup>a</sup>includes six records prior to Whittaker's seating

<sup>b</sup>includes eight records prior to White's seating

#### BURGER COURT

NATCT	duration	personnel change
BURG1	virtually all of 1969 term	Burger on
BURG2	end of 1969 term, 1970 term	Blackmun on (weak court)
BURG3	1971 term, pre-Powell and Rehnquist	Black and Harlan off (weak court)
BURG4	middle of 1971 term to early 1975 term	Powell and Rehnquist on, Douglas off
BURG5	early 1975 term, pre-Stevens <sup>c</sup>	(weak court)
BURG6	mid 1976-1980 terms	Stevens on, Stewart off
BURG7	1981-1985 terms	O'Connor on, Burger off

<sup>c</sup>This court contains only twenty records

#### REHNQUIST COURT

NATCT	duration	personnel change
REHN1	1986 term	Scalia on, Powell off
REHN2	early 1987 term, pre-Kennedy	(weak court)
REHN3	middle of 1987 term-1989 term	Kennedy on, Brennan off <sup>d</sup>
REHN4	1990 term	Souter on <sup>e</sup>
REHN5	1991-1992 terms	Marshall off, Thomas on <sup>f</sup>
REHN6	1993 term	White off, Ginsburg on
REHN7	1994-2004 terms	Blackmun off, Breyer on

<sup>d</sup>includes one record after Brennan's retirement

<sup>e</sup>includes two records prior to Souter's seating

<sup>f</sup>includes eleven records prior to Thomas's seating

#### ROBERTS COURT

NATCT

duration

personnel change

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ROBT1 2005 term to Jan 31, 2006  
ROBT2 Jan 31, 2006-

Rehnquist off, Roberts on  
O'Connor off, Alito on

Also see term of the Court (variable 21) and chief justice (variable 22).

Variable 24

**legal provisions considered by the Court (LAW)**

This variable identifies the constitutional provision(s), statute(s), or court rule(s) that the Court considered in the case.

The basic criterion to determine the legal provision(s) is the "summary" in the *Lawyers' Edition*. Supplementary is a reference to it in at least one of the numbered holdings in the summary of the *United States Reports*. This summary, which the *Lawyers' Edition* of the U.S. Reports labels "Syllabus By Reporter Of Decisions," appears in the official Reports immediately after the date of decision and before the main opinion in the case. Where this summary lacks numbered holdings, it is treated as though it has but one number.

I use the *Lawyers' Edition* "summary," supplemented by the "syllabus" to determine the legal provisions at issue because they are a reasonably objective and reliable indicator. The scourge of analysts in this regard has been their inability to agree on just what legal provisions the Court addressed in a given case. Although one may argue that my criterion is excessively formalistic; that it is too gross; or conversely, too refined; no other feasible criterion matches it for objectivity and reliability.

I have supplemented the *Lawyers' Edition* "summary" with a set of subordinate decision rules. If the Reporters' "syllabus" has no numbered headings, treat it as though it has but one number. If more than one numbered heading pertains to a single constitutional provision, statute, or court rule, treat such legal provision as though it appeared in but one numbered heading. If separate numerical headings pertain to different sections of a statute under a given title in the *United States Code* which would not be governed by conventional use of "et seq.," treat them as separate legal provisions. (Note that this occurs very rarely.) If a numbered heading refers to more than a single constitutional provision, statute, and/or court rule, treat them as separate legal provisions. (This not uncommonly occurs.)

Observe that where a state or local government allegedly abridges a provision of the Bill of Rights that has been made binding on the states because it has been "incorporated" into the due process clause of the Fourteenth Amendment, identification is to the specific guarantee rather than to the Fourteenth Amendment.

The legal basis for decision need not be formally stated. For example, a reference in the summary to the appointment of counsel under the Constitution or to the self-incrimination clause warrants entry of the appropriate code. (E.g., *United States v. Knox*, 396 U.S. 77; *Lassiter v. Department of Social Services*, 452 U.S. 18).

Also note that occasionally an unnumbered holding may pertain to more than one legal basis for decision. In such cases, the additional basis or bases are specified as though they are numbered holdings, or as though they are a holding without numbers.

By no means does every record have an entry in the LAW variable. Only constitutional provisions, federal statutes, and court rules are entered here. This variable will have no entry in cases that concern the Supreme Court's supervisory authority over the lower federal courts; those where the Supreme Court's decision does not rest on a constitutional provision, federal statute, or court rule; provisions of the common law; decrees; and nonstatutory cases arising under the Court's original jurisdiction.

In cases where the Court considers multiple legal provisions no attempt is made to order their appearance. Where the constitutionality of a federal law is challenged, to give either the constitutional provision or the statute primacy would be arbitrary. To the extent that any order characterizes these LAW entries, it likely is the sequence in which they appear in the summary.

Beyond the foregoing, observe that an entry should appear in this variable only when the summary indicates that the majority opinion *discusses* the legal provision at issue. The mere fact that the Court *exercises* a certain power (e.g., its original jurisdiction, as in *Arkansas v. Tennessee*, 397 U.S. 91), or makes reference in its majority opinion – rather than in the summary – that a certain constitutional provision, statute, or frequently used common law rule applies (e.g., the "equal footing" principle which pertains to the admission of new states under Article IV, section 3, clause 2 of the Constitution, as *Utah v. United States*, 403 U.S. 9, illustrates) provides no warrant for any entry.

There are three exceptions to this "discussion" requirement, the first of which dismisses the writ of certiorari as "improvidently granted" – either in so many words (e.g., *Johnson v. United States*, 401 U.S. 846) or dismisses it on this basis implicitly (e.g., *Baldonado v. California*, 366 U.S. 417). In such cases, the code, WIG, should appear. More often than not, these cases have no summary. Note that the phrase is a term of art: 1) it overrides any substantive provision that the summary may mention (e.g., *Conway v. California Adult Authority*, 396 U.S. 107); 2) it does not apply where the Supreme Court takes jurisdiction on appeal (see variable 7).

In the second exception the Court, without discussion, remands a case to a lower court for consideration in light of an

earlier decision. The summary of the earlier case is then consulted and the instant case coded with the entry that appeared there (e.g., *Wheaton v. California*, 386 U.S. 267). If a discussion in the summary precedes the remand, this variable should be governed by that discussion as well as the basis for decision in the case that the lower court is instructed to consider. Usually these bases will be identical (e.g., *Maxwell v. Bishop*, 398 U.S. 262).

The third exception to the "discussion" criterion involves the legality of administrative agency action without specific reference to the statute under which the agency acted. Inasmuch as administrative agencies may only act pursuant to statute, the majority opinion was consulted to determine the statute in question (e.g., *National Labor Relations Board v. United Insurance Co. of America*, 390 U.S. 254). The same situation may characterize the statute under which a court exercises jurisdiction (e.g., the Court of Claims in *United States v. King*, 395 U.S. 1).

An exclusively numerical entry identifies a provision of the original Constitution; a number followed by the letter "A" identifies an amendment to the Constitution; an exclusively alphabetic entry indicates either a commonly litigated statute or a court rule; while a one- or two-digit number followed by a hyphen and further followed by 1-4 additional digits indicates an infrequently litigated statute. The initial set of numbers identifies the title of the *United States Code* in which the statute appears, while the second set of numbers identifies the section of the title where the statute begins. Note that occasionally the abbreviation, "Appx," precedes the section number. This abbreviation is disregarded and only the section number is entered unless no section number appears, in which case the statute appears as, for example, 18-APPX.

In a handful of Rehnquist Court decisions, five digits succeed the section number. Only the first four appear.

Occasionally, a statute is cited only to the session laws (*Statutes at Large*). In these situations, the volume precedes and the page succeeds the letter, "S." E.g., '1S329' in *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226). A treaty is identified by the word, "TREATY," and a statute of a territory of the U.S., which statute is not contained in either the *U.S. Code* or the *Statutes at Large*, by the word, "TERRITORY."

Because of the relative frequency with which certain non-positive-law rules and doctrines form bases for the Court's holdings, these are identified in this variable along with constitutional provisions, statutes, court rules, and treaties.

As indicated, this variable should usually lack an entry if the numbered holding(s) indicates that the Court's decision rests on its supervisory authority over the federal judiciary, the common law, or diversity jurisdiction. (See variables 26-28, authority for decision.)

The format used to identify provisions of the original Constitution is as follows:

1st column = Article of the Constitution  
2d column = section number of the Article  
3d column = 2d digit of the section number if the section's  
                  number has two digits, otherwise the 3d column  
                  specifies the paragraph of the section, if any  
4th column = paragraph of the section, if any

Provisions at issue in at least one decision of the Warren,  
Burger, or Rehnquist Courts are the following:

11 = delegation of powers  
110 = ex post facto  
121 = composition of the House of Representatives  
123 = apportionment of Representatives  
136 = impeachment trial  
141 = elections clause  
151 = congressional qualifications  
161 = speech or debate clause  
162 = civil appointments  
171 = origination clause  
172 = separation of powers  
181 = spending, general welfare, or uniformity clause  
183 = interstate commerce clause  
184 = bankruptcy clause  
187 = postal power  
188 = patent and copyright clause  
1811 = war power  
1814 = governance of the armed forces  
1815 = call-up of militia  
1816 = organizing the militia  
1817 = governance of the District of Columbia and lands  
      purchased from the states  
1818 = necessary and proper clause  
192 = suspension of the writ of habeas corpus  
193 = bill of attainder or ex post facto law  
194 = direct tax  
195 = export clause  
196 = preference to ports  
197 = appropriations clause  
110 = state bill of attainder or ex post facto law  
1101 = contract clause  
1102 = export-import clause  
1103 = compact clause  
21 = executive power  
218 = oath provision  
22 = commander-in-chief  
221 = presidential pardoning power  
222 = appointments clause  
311 = judicial power  
312 = good behavior and compensation clause of federal  
      judges  
32 = extent of judicial power

- 321 = case or controversy requirement (includes non-statutory "standing to sue" even though no reference to the case or controversy requirement appears)
- 322 = original jurisdiction (only if the propriety of its exercise is discussed. The mere fact that a case arises hereunder [see variable 5] does not warrant entry)
- 323 = vicinage requirement
- 33 = treason clause
- 41 = full faith and credit clause
- 421 = privileges and immunities clause
- 422 = extradition clause
- 432 = property clause
- 44 = guarantee clause
- 62 = supremacy clause
- 63 = oath provision

Constitutional amendments are identified by the number of the amendment followed by the letter "A." Where a given amendment provides more than a single guarantee, the 4th column (and the 3d, if the amendment contains a single digit) will be used to provide specific identification according to the following schedule:

- 1A = speech, press, and assembly
- 1ASN = association
- 1AEX = free exercise of religion
- 1AES = establishment of religion
- 1APT = petition clause
- 4A = Fourth Amendment
- 5ADJ = double jeopardy
- 5ADP = due process
- 5AGJ = grand jury
- 5AMI = Miranda warnings
- 5ASI = self-incrimination
- 5ATK = takings clause
- 5A=P = equal protection
- 6ACF = right to confront and cross-examine, compulsory process
- 6ACO = right to counsel
- 6AJU = right to trial by jury
- 6ASP = speedy trial
- 6A = other Sixth Amendment provisions
- 7A = Seventh Amendment
- 8AEB = prohibition of excessive bail
- 8AEF = prohibition of excessive fines
- 8A = cruel and unusual punishment
- 9A = Ninth Amendment
- 10A = Tenth Amendment
- 11A = Eleventh Amendment
- 12A = Twelfth Amendment
- 13A = Thirteenth Amendment (both sections 1 and 2)

14A1 = privileges and immunities clause  
 14A2 = reduction in representation clause  
 14AC = citizenship clause  
 14AD = due process  
 14A= = equal protection  
 14A5 = enforcement clause  
 15A = Fifteenth Amendment  
 15A2 = enforcement clause  
 16A = Sixteenth Amendment  
 17A = Seventeenth Amendment  
 21A = Twenty-First Amendment  
 24A = Twenty-Fourth Amendment

Note that where a state or local government allegedly abridges a provision of the Bill of Rights that has been made binding on the states because it has been incorporated into the due process clause of the Fourteenth Amendment, identification is to the specific guarantee rather than to 14AD.

Frequently litigated statutes are identified by an exclusively alphabetic abbreviation except for the Civil Rights Act of 1964 which contains the number of the Title at issue in the fourth column of this variable; e.g., CRA7; and the Reconstruction Civil Rights Acts which contain their section number; i.e., 1981, 1982, 1983, 1985, 1986.

In general, amendments to the following statutes are also identified by the statutory abbreviations specified below.

ADA = Americans with Disabilities Act, as amended; also see HAND  
 ADEA = Age Discrimination in Employment  
 AFDC = Aid to Families with Dependent Children provisions of the Social Security Act, plus amendments  
 AIR = Clean Air, plus amendments  
 APA = Administrative Procedure, or Administrative Orders Review  
 ATOM = Atomic Energy  
 BANK = Bankruptcy Code, Bankruptcy Act or Rules, or Bankruptcy Reform Act of 1978  
 CAID = Medicaid provisions of the Social Security Act  
 CARE = Medicare provisions of the Social Security Act  
 CLAY = Clayton  
 CRA\_\_\_\_\_ = Reconstruction Civil Rights Acts (42 USC 1971, 1978, 1981, 1982, 1983, 1985, 1986)  
 CRA\_\_ = Civil Rights Act of 1964, plus title number, as amended, except for the public accommodations provision which appears as CRAACOM  
 CRA1957 = Civil Rights Act of 1957  
 CRA1991 = Civil Rights Act of 1991  
 DC = statutory provisions of the District of Columbia  
 EAJA = Equal Access to Justice  
 EDAM = Education Amendments of 1972  
 ERIS = Employee Retirement Income Security, as amended

ESEA = Elementary and Secondary Education  
 FALSE = Federal False Claims  
 FCA = Communication Act of 1934, as amended  
 FECA = Federal Employees' Compensation  
 FEE = Civil Rights Attorney's Fees Awards  
 FELA = Federal Employers' Liability, as amended  
 FELC = Federal Election Campaign  
 FERP = Family Educational Rights and Privacy (Buckley Amendment)  
 FFDC = Federal Food, Drug, and Cosmetic, and related statutes  
 FIFR = Federal Insecticide, Fungicide, and Rodenticide  
 FLSA = Fair Labor Standards  
 FOIA = Freedom of Information, Sunshine, or Privacy Act  
 FPA = Federal Power  
 FTC = Federal Trade Commission  
 FWPC = Federal Water Pollution Control (Clean Water), plus amendments  
 GUN = Omnibus Crime Control and Safe Streets, National Firearms, Organized Crime Control, Comprehensive Crime Control, or Gun Control Acts, except for RICO (q.v.) portion  
  
 HAND = Education of the Handicapped, Education for All Handicapped Children, or Individuals with Disabilities Education Acts, or related statutes, as amended; also see ADA  
 HC = 28 USC 2241-2255 (habeas corpus)  
 HOUS = Fair Housing  
 ICA = Interstate Commerce, as amended  
 INA = Immigration and Naturalization, Immigration, Nationality, or Illegal Immigration Reform and Immigrant Responsibility Acts, as amended  
 IRC = Internal Revenue Code  
 ISA = Internal Security  
 JENK = Jencks  
 JONE = Jones, or Death on the High Seas  
 LHWC = Longshoremen and Harbor Workers' Compensation  
 LMRA = Labor-Management Relations  
 LMRD = Labor-Management Reporting and Disclosure  
 MCA = Motor Carrier  
 MILL = Miller  
 NEPA = National Environmental Policy  
 NGPA = Natural Gas, or Natural Gas Policy Acts  
 NLRA = National Labor Relations, as amended  
 NOLA = Norris-LaGuardia  
 OSHA = Occupational Safety and Health  
 PURP = Public Utility Regulatory Policy  
 REHA = Rehabilitation  
 RFRA = Religious Freedom Restoration  
 RICO = Racketeer Influenced and Corrupt Organizations  
 RLA = Railway Labor

RP = Robinson-Patman  
SEA = Securities Act of 1933, the Securities and Exchange Act of 1934, or the Williams Act  
SEL = Selective Service, Military Selective Service, or Universal Military Service and Training Acts  
SHER = Sherman  
SLA = Submerged Lands Acts  
SMIT = Smith, Subversive Activities Control, Communist Control, or other similar federal legislation except the Internal Security Act (qv.)  
SSA = Social Security, as amended, including Social Security Disability Benefits Reform Act, but excluding Medicare, Medicaid, Supplemental Security Income, and Aid to Families with Dependent Children  
SSI = Supplemental Security Income  
STATE = state or local legislative enactments  
TIL = Truth in Lending  
TORT = Federal Tort Claims, or Alien Tort Statute  
TUCK = Tucker  
TWE = Trading with the Enemy Act, as amended  
UCMJ = Universal Code of Military Justice  
VRA = Voting Rights Act of 1965, plus amendments

Decisions involving court rules are identified alphabetically according to the following schedule:

CIVP = Federal Rules of Civil Procedure, including Appellate Procedure, or relevant rules of a circuit court  
CRMP = Federal Rules of Criminal Procedure, or relevant rules of a circuit court  
FRE = Federal Rules of Evidence  
SCTR = Supreme Court Rules

Bases other than the Constitution or federal statutes are identified as follows:

ABST = Abstention Doctrine  
BACK = retroactive application of a constitutional right  
EXCL\_ = exclusionary rule (admissibility of evidence allegedly in violation of the Fourth Amendment [4], the right to counsel [6], or the Miranda warnings [5])  
HARM = harmless error  
RJ = res judicata  
STATE = state law or local ordinance  
STOP = estoppel  
WIG = writ improvidently granted (either in so many words, or with an indication that the reason for originally granting the writ was mistakenly believed to be present -- e.g., 366 U.S. 417)

International treaties and conventions, which rarely serve

as the basis for the Court's decision, are identified as TREATY, an interstate compact as IC, an executive order as EO, and a statute of a territory of the U.S., which is not in the *U.S. Code* or the *Statutes at Large*, as TERRITY.

Excluded as a numbered holding is one which states that a constitutional provision, amendment, or statute was not applied or considered in reaching the decision, or is "speculative" or "premature."

If a numbered holding pertains to the exercise of judicial power without reference to a statutory provision or to Article III, no separate record is created to identify this feature of the case. Instead, a "3" will appear in the authority for decision variable to indicate the judicial power aspect of the legal basis for the Court's decision (variables 26-28).

A case which challenges the constitutionality of a federal statute, court or common law rule will usually contain at least two legal bases for decision: the constitutional provision as well as the challenged statute or rule.

Where a heading concerns the review of agency action under a statute, but the statute is not identified, it is ascertained from the opinion (e.g., *National Labor Relations Board v. United Insurance Co. of America*, 390 U.S. 254). So also where the decision turns on the statutory jurisdiction of a federal court, and the holding does not specify it (e.g., *United States v. King*, 395 U.S. 1).

Also see multiple legal provisions (variable 25) and authority for decision (variables 26-28).

Variable 25  
**multiple legal provisions (LAWS)**

This variable indicates whether any given legal provision is the only one considered by the Court, or whether other(s) are also involved.

An entry appears in this variable in each record of such cases where there is a legal provision different from that of another record in the case. The only exception is a case where a single legal provision applies to more than one issue (see variable 29).

Also see legal provisions considered by the Court (variable 24) and unit of analysis (variable 5).

Variables 26-28  
**authority for decision (AUTH\_DEC, AUTHDEC1, AUTHDEC2)**

These variables specify the bases on which the Supreme Court rested its decision with regard to each legal provision that the Court considered in the case (see variable 24).

Because one of these bases commonly occurs conjoined with

another; e.g., the interpretation of the substantive provisions of a federal statute and the Supreme Court's exercise of its supervisory power over the lower federal courts; two separate single-column variables (AUTHDEC1 and AUTHDEC2) follow the combined variable (AUTH\_DEC). The coding is the same in all three and is specified in SPSS. In the foregoing example, the first variable will contain a "4," the second a "3." In a case involving congressional acquiescence to longstanding administrative construction of a statute, these variables should appear as "5" and "4." If two bases are identified, and if one is more heavily emphasized, it should appear in the first of the two variables.

AUTHDEC1 will have an entry in every record that is not a memorandum case (see variable 33, type of decision). Most memorandum cases, by contrast, will not have an entry in either AUTHDEC variable. If the Court has summarily denied or dismissed the petition or appeal in such a case (DIS=8) (see variable 35, disposition of case), the AUTHDEC variables lack an entry except for three unusual cases: two at 409 U.S. 905, and 466 U.S. 977. All other DEC\_TYPE=3 cases that show DIS=8 have no AUTHDEC entry.

Considerable congruence should obtain between the entry in the AUTHDEC variables and the code that appears in the LAW variable (variable 24). Thus, if a constitutional provision appears in the LAW variable, a "1" or a "2" will typically appear in either AUTHDEC1 or AUTHDEC2. Similarly, if LAW displays a statute, either AUTHDEC1 or AUTHDEC2 will likely show a "4."

A common exception is where the Court determines the constitutionality of a federal statute, or where judge-made rules are applied to determine liability under various federal statutes, including civil rights acts (e.g., *Pulliam v. Allen*, 466 U.S. 522), or the propriety of the federal courts' use of state statutes of limitations to adjudicate federal statutory claims (e.g., *Burnett v. Grattan*, 468 U.S. 42).

The decision rules governing each of the AUTHDEC codes are as follows:

Re 1: Did the majority determine the constitutionality of some action taken by some unit or official of the federal government, including an interstate compact? If so, enter a "1."

Enter a "1" if 321 appears in the LAW variable.

Enter a "1" if IC appears in the LAW variable.

Re 2: Did the majority determine the constitutionality of some action taken by some unit or official of a state or local government? If so, enter a "2."

Re 3: If the rules governing codes "1-2," "4-7" are answered negatively or do not apply, enter a "3." A "3," then, serves as the residual code for these variables.

Enter a "3" if WIG appears in the LAW variable.

Non-statutorily based Judicial Power topics (700-899) in the ISSUE variable generally warrant a "3."

Most cases arising under the Court's original jurisdiction should receive a "3."

All cases containing a "4" in the type of decision variable = 3.

Enter a "3" in cases in which the Court denied or dismissed the petition for review (indicated by an "8" in the disposition of case, variable 35) or where the decision of a lower court is affirmed by a tie vote (indicated by a "5" in the DEC\_TYPE variable, variable 33).

Re 4: Did the majority interpret a federal statute, treaty, or court rule? If so, enter a "4."

Enter a "4" rather than a "3" if the Court interprets a federal statute governing the powers or jurisdiction of a federal court. In other words, a statutory basis for a court's exercise of power or jurisdiction does not require that a "3" supplement a "4"; the latter alone suffices.

Enter a "4" rather than a "2" where the Court construes a state law as incompatible with a federal law.

Do not enter only a "4" where an administrative agency or official acts "pursuant to" a statute. All agency action is purportedly done pursuant to legislative authorization of one sort or another. A "4" may be coupled to a "5" (see below) only if the Court interprets the statute to determine if administrative action is proper.

In workers' compensation litigation involving statutory interpretation and, in addition, a discussion of jury determination and/or the sufficiency of the evidence, enter either a "4" and a "3" or a "3" and a "4." If no statute is identified in the syllabus, only enter a "3."

Re 5: Did the majority treat federal administrative action in arriving at its decision? If so, enter a "5."

Enter a "5" and a "4," but not a "5" alone, where an administrative official interprets a federal statute.

The final instruction under Re 4 applies to the use of "5."

Enter a "5" if the issue = 721.

Re 6: Did the majority say in approximately so many words that under its diversity jurisdiction it is interpreting state law? If so, enter a "6."

Re 7: Did the majority indicate that it used a judge-made "doctrine" or "rule?" If so, enter a "7." Where such is used in conjunction with a federal law or enacted rule, a "7" and "4" should appear in the two variables of this record.

Enter a "7" if the Court without more merely specifies the disposition the Court has made of the case (see variable 35) and cites one or more of its own previously decided cases; but enter a "3" if the citation is qualified by the word, "see."

Enter a "7" if the case concerns admiralty or maritime law.

Enter a "7" if the case concerns the retroactive application of a constitutional provision or a previous decision of the Court.

Enter a "7" if the case concerns an exclusionary rule, the harmless error rule (though not the statute), the abstention doctrine, comity, res judicata, or collateral estoppel. Note that some of these, especially comity issues (701-709), likely warrant an entry in both AUTHDEC variables: a "7" as well as a "3."

Enter a "7" if the case concerns a "rule" or "doctrine" that is not specified as related to or connected with a constitutional or statutory provision (e.g., 376 U.S. 398).

Also see legal provisions considered by the Court (variable 24).

#### Variable 29 **issue (ISSUE)**

This variable identifies the context in which the legal basis for decision (variable 24) appears. The First Amendment, due process, and equal protection, for example, separately apply to a substantial number of distinguishable issues as the codebook entries indicate. Thus, the equal protection clause may pertain to sex discrimination in one case, school desegregation in another, and affirmative action in yet a third — to say nothing of the employability of aliens, denial of welfare benefits, legislative districting and apportionment, the access of political parties and candidates to the ballot, durational residency requirements, the status of juveniles, of Indians, and the imposition of costs and filing fees on indigents in the justice system.

Although criteria for the identification of issues are hard to articulate, the focus here is on the subject matter of the controversy rather than its legal basis. I have attempted to identify issues on the basis of the Court's own statements as to what the case is about. The objective is to categorize the case from a public policy standpoint, a perspective that the legal basis for decision (variable 24) commonly disregards.

Unlike the LAW variable where the number of legal provisions at issue has no preordained upper bound, each legal provision should not generally have more than a single issue applied to it. A second issue should apply only when a preference for one rather than the other cannot readily be made. Of the many thousand records in the database, few have a legal basis for decision that applies to a second issue.

I have identified some 260 issues, each of which has an identifying number, that have been organized into thirteen major groupings: criminal procedure, civil rights, First Amendment, due

process, privacy, attorneys, unions, economic activity, judicial power, federalism, interstate relations, federal taxation, and miscellaneous. These comprise the codes for a separate variable, issue area, that is described immediately following this one.

The scope of these categories is as follows: criminal procedure encompasses the rights of persons accused of crime, except for the due process rights of prisoners (issue 504). Civil rights includes non-First Amendment freedom cases which pertain to classifications based on race (including American Indians), age, indigency, voting, residency, military or handicapped status, gender, and alienage. Purists may wish to treat the military issues (361-363) and Indian cases (293-294) as economic activity, while others may wish to include the privacy category as a subset of civil rights. First Amendment encompasses the scope of this constitutional provision, but do note that not every case in the First Amendment group directly involves the interpretation and application of a provision of the First Amendment. Some, for example, may only construe a precedent, or the reviewability of a claim based on the First Amendment, or the scope of an administrative rule or regulation that impacts the exercise of First Amendment freedoms. In other words, not every record that displays a First Amendment issue will correspondingly display a provision of the First Amendment in its legal provision variable (variable 24).

Due process is limited to non-criminal guarantees and, like First Amendment issues, need not show "5ADP" or "14AD" in its LAW variable. Some of you may wish to include state court assertion of jurisdiction over nonresident defendants and the takings clause (issues 506-507) as part of judicial power and economic activity, respectively, rather than due process. As mentioned, the three issues comprising privacy (531, 533, 537) may be treated as a subset of civil rights. Because of their peculiar role in the judicial process, a separate attorney category has been created (issues 542, 544, 546, 548). You may wish to include these issues with economic activity, however. Unions encompass those issues involving labor union activity. You may wish to redefine this category for yourself or combine it, in whole or in part, with economic activity. Economic activity is largely commercial and business related; it includes tort actions (issues 616-618) and employee actions vis-a-vis employers (issues 614-615, 621). Issues 650 and 652 are only tangential to the other issues located in economic activity. Judicial power concerns the exercise of the judiciary's own power. To the extent that a number of these issues concern federal-state court relationships (i.e., 701-708, 712, 754, 755), you may wish to include them in the federalism category. Federalism pertains to conflicts between the federal government and the states, except for those between the federal and state courts. Interstate relations contain two types of disputes which occur between states. Federal taxation concerns the Internal Revenue Code and related statutes. Miscellaneous contains two groups of cases that do not fit into any other category.

If interest lies in a particular issue that has a specific legal or constitutional component, comprehensive coverage may be insured by listing not only the issue(s) that bear thereon, but also the appropriate code(s) from variable 24 (legal provisions considered by the Court). Thus, if the right to counsel is the focus, issues 030 and 381-382 will fall within its scope, as will code "6ACO" from the LAW variable. Also recognize that the parties variables (variables 14-15) may also help locate the cases of interest.

The specific codes follow.

0 issue not able to be identified

#### Criminal Procedure

- 010 involuntary confession
- 013 habeas corpus (cf. 704): whether the writ should issue rather than the fact that collateral review occurred. Note that this need not be a criminal case
- 014 plea bargaining: the constitutionality of and/or the circumstances of its exercise
- 015 retroactivity (of newly announced or newly enacted constitutional or statutory rights)
- 016 search and seizure (other than as pertains to 017 and 018)
- 017 search and seizure, vehicles
- 018 search and seizure, Crime Control Act
- 020 contempt of court
- 021 self-incrimination (other than as pertains to 022 and 023)
- 022 Miranda warnings
- 023 self-incrimination, immunity from prosecution
- 030 right to counsel (cf. 381-382)
- 040 cruel and unusual punishment, death penalty (cf. 106)
- 041 cruel and unusual punishment, non-death penalty
- 050 line-up (admissibility into evidence of identification obtained after accused was taken into custody, or after indictment or information)
- 060 discovery and inspection (in the context of criminal litigation only, otherwise 537)
- 070 double jeopardy
- 080 ex post facto (state)
- 100 extra-legal jury influences, miscellaneous: no question regarding the right to a jury trial or to a speedy trial (these belong in 190 and 191, respectively); the focus, rather, is on the fairness to the accused when jurors are exposed to the influences specified
  - 101 prejudicial statements or evidence
  - 102 contact with jurors outside courtroom
  - 103 jury instructions
  - 104 voir dire
  - 105 prison garb or appearance
  - 106 jurors and death penalty (cf. 040)

- 107 pretrial publicity
- 110 confrontation (right to confront accuser, call and cross-examine witnesses)
- subconstitutional fair procedure: nonsubstantive rules and procedures pertaining to the administration of justice that do not rise to the level of a constitutional matter. This is the residual category insofar as criminal procedure is concerned. Note that this issue need not necessarily pertain to a criminal action. If the case involves an indigent, consider 381-386.
  - 111 confession of error
  - 112 conspiracy (cf. 163)
  - 113 entrapment
  - 114 exhaustion of remedies
  - 115 fugitive from justice
  - 116 presentation, admissibility, or sufficiency of evidence
  - 117 stay of execution
  - 118 timeliness, including statutes of limitation
  - 119 miscellaneous
- 120 Federal Rules of Criminal Procedure, including application of the Federal Rules of Evidence in criminal proceedings and criminal rules of a court of appeals or state supreme court.
- statutory construction of criminal laws: these codes, by definition exclude the constitutionality of these laws
  - 161 assault
  - 162 bank robbery
  - 163 conspiracy (cf. 112)
  - 164 escape from custody
  - 165 false statements (cf. 177)
  - 166 financial (other than in 168 or 173)
  - 167 firearms
  - 168 fraud
  - 169 gambling
  - 171 Hobbs Act; i.e., 18 USC 1951, not 28 USC 2341, the Administrative Orders Review Act, which is also "commonly known as the Hobbs Act." 96 L ed 2d 222, at 239.
  - 172 immigration (cf. 371-376)
  - 173 internal revenue (cf. 960, 970, 975, 979)
  - 174 Mann Act
  - 175 narcotics
  - 176 obstruction of justice
  - 177 perjury (other than as pertains to 165)
  - 178 Travel Act, 18 USC 1952
  - 179 war crimes
  - 180 sentencing guidelines
  - 181 miscellaneous
- 190 jury trial (right to, as distinct from 100-107)
- 191 speedy trial
- 199 miscellaneous criminal procedure (cf. 504, 702)

#### Civil Rights

210 voting: does not extend to reapportionment and districting, which is 250, or to litigation under the Voting Rights Act, which is 211, or to durational residency requirements, which is 341. Entries are limited to cases raising constitutional questions regarding the right to vote; typically, but not exclusively, under the 15th or 14th Amendments.

211 Voting Rights Act of 1965, plus amendments

212 ballot access (of candidates and political parties)

220 desegregation (other than as pertains to 221-223)

221 desegregation, schools

222 employment discrimination: on basis of race, age, religion, illegitimacy, national origin, or working conditions. Not alienage, which is 272, or gender, which is 284.

223 affirmative action

230 sit-in demonstrations (protests against racial discrimination in places of public accommodation): to be sharply distinguished from protests not involving racial discrimination. The latter are coded as 451.

250 reapportionment: other than plans governed by the Voting Rights Act

261 debtors' rights (other than as pertains to 381-388): replevin, garnishment, etc. Typically involve notice and/or hearing requirements or the takings clause.

271 deportation (cf. 371-376)

272 employability of aliens (cf. 371-376)

283 sex discrimination: excluding employment discrimination which is 284

284 sex discrimination in employment (cf. 283, 222)

293 Indians (other than as pertains to 294)

294 Indians, state jurisdiction over

301 juveniles (cf. 321)

311 poverty law, constitutional: typically equal protection challenges over welfare benefits, including pension and medical benefits

312 poverty law, statutory: welfare benefits, typically under some Social Security Act provision. Excludes 321 and 331.

321 illegitimates, rights of (cf. 301): typically inheritance and survivor's benefits, and paternity suits

331 handicapped, rights of: under Rehabilitation, Americans with Disabilities Act, and related statutes

341 residency requirements: durational, plus discrimination against nonresidents

— military (cf. 441, 705)

    361 draftee, or person subject to induction

    362 active duty

    363 veteran

— immigration and naturalization (cf. 172, 271-272)

    371 permanent residence

    372 citizenship

    373 loss of citizenship, denaturalization

    374 access to public education

- 375 welfare benefits
- 376 miscellaneous
- indigents (cf. 311-312): procedural protections for indigents because of their indigency. Typically in matters pertaining to criminal justice.
  - 381 appointment of counsel (cf. 030)
  - 382 inadequate representation by counsel (cf. 030)
  - 383 payment of fine
  - 384 costs or filing fees
  - 385 U.S. Supreme Court docketing fee
  - 386 transcript
  - 387 assistance of psychiatrist
  - 388 miscellaneous
- 391 liability, civil rights acts (cf. 616-617): tort actions involving liability that are based on a civil rights act
- 399 miscellaneous civil rights (cf. 701)

#### First Amendment

- 401 First Amendment, miscellaneous (cf. 703): the residual category for all First Amendment litigation other than the free exercise or establishment clauses
- 411 commercial speech, excluding attorneys which is 544
- 415 libel, defamation: defamation of public officials and public and private persons
- 416 libel, privacy: true and false light invasions of privacy
- 421 legislative investigations: concerning "internal security" only
- 422 federal internal security legislation: Smith, Internal Security, and related federal statutes
- 430 loyalty oath or non-Communist affidavit (other than in 431-434)
- 431 loyalty oath, bar applicants (cf. 546, 548)
- 432 loyalty oath, government employees
- 433 loyalty oath, political party
- 434 loyalty oath, teachers
  
- 435 security risks: denial of benefits or dismissal of employees for reasons other than failure to meet loyalty oath requirements
- 441 conscientious objectors (cf. 361-362) to military service
- 444 campaign spending (cf. 650): financing electoral costs other than as regulated by the Taft-Hartley Act. Typically involves the Federal Election Campaign Act.
- 451 protest demonstrations (other than as pertains to 230): demonstrations and other forms of protest based on First Amendment guarantees (other than the free exercise or establishment clauses) or alternatively based on the equal protection clause
- 455 free exercise of religion
- 461 establishment of religion (other than as pertains to 462)
- 462 parochiaid: government aid to religious schools, or religious

requirements in public schools  
471 obscenity, state (cf. 706): including the regulation of  
sexually explicit material under the 21st Amendment  
472 obscenity, federal

#### Due Process

501 due process, miscellaneous (cf. 431-434): the residual code  
for cases that do not locate in 502-507  
502 due process, hearing or notice (other than as pertains to 503  
or 504); hearing may be statutorily based  
503 due process, hearing, government employees  
504 due process, prisoners' rights  
505 due process, impartial decision maker  
506 due process, jurisdiction (jurisdiction over non-resident  
litigants)  
507 due process, takings clause, or other non-constitutional  
governmental taking of property

#### Privacy

531 privacy (cf. 416, 707)  
533 abortion: including contraceptives  
534 right to die  
537 Freedom of Information Act and related federal or state  
statutes or regulations

#### Attorneys

542 attorneys' fees  
544 commercial speech, attorneys (cf. 411)  
546 admission to a state or federal bar, disbarment, and attorney  
discipline (cf. 431)  
548 admission to, or disbarment from, Bar of the U.S. Supreme  
Court

#### Unions

553 arbitration (in the context of labor-management or employer-  
employee relations) (cf. 653)  
555 union antitrust: legality of anticompetitive union activity  
557 union or closed shop: includes agency shop litigation  
559 Fair Labor Standards Act  
561 Occupational Safety and Health Act  
563 union-union member dispute (except as pertains to 557)  
— labor-management disputes (other than those above)  
    575 bargaining  
    576 employee discharge  
    577 distribution of union literature  
    578 representative election  
    579 antistrike injunction  
    581 jurisdictional dispute

- 582 right to organize
- 583 picketing
- 584 secondary activity
- 585 no-strike clause
- 586 union representatives
- 587 union trust funds (cf. 621)
- 588 working conditions
- 589 miscellaneous dispute
- 599 miscellaneous union

#### Economic Activity

- 601 antitrust (except in the context of 605 and 555)
- 605 mergers
- 611 bankruptcy (except in the context of 975)
- 614 sufficiency of evidence: typically in the context of a jury's determination of compensation for injury or death
- 615 election of remedies: legal remedies available to injured persons or things
- 616 liability, governmental: tort or contract actions by or against government or governmental officials other than defense of criminal actions brought under a civil rights action. Those locate in 391.
- 617 liability, nongovernmental: other than as in 614, 615, 618
- 618 liability, punitive damages
- 621 Employee Retirement Income Security Act (cf. 587)
- 626 state tax (those challenged on the basis of the supremacy clause and the 21st Amendment may also locate in 931 or 936)
- 631 state regulation of business (cf. 910, 911)
- 636 securities, federal regulation of
- 638 natural resources - environmental protection (cf. 933, 934)
- 650 corruption, governmental or governmental regulation of other than as in 444
- 652 zoning: constitutionality of such ordinances, or restrictions on owners' or lessors' use of real property
- 653 arbitration (other than as pertains to labor-management or employer-employee relations (cf. 553)
- 656 federal or state consumer protection: typically under the Truth in Lending; Food, Drug and Cosmetic; and Consumer Protection Credit Acts
- \_\_\_ patents and copyrights
  - 661 patent
  - 662 copyright
  - 663 trademark
  - 664 patentability of computer processes
- \_\_\_ federal transportation regulation
  - 671 railroad
  - 672 boat
  - 673 truck, or motor carrier
  - 674 pipeline (cf. 685)
  - 675 airline
- \_\_\_ federal public utilities regulation (cf. 935)

- 681 electric power
- 682 nuclear power
- 683 oil producer
- 684 gas producer
- 685 gas pipeline (cf. 674)
- 686 radio and television (cf. 687)
- 687 cable television (cf. 686)
- 688 telephone company
- 699 miscellaneous economic regulation

#### Judicial Power

- comity, criminal and First Amendment (cf. 712): propriety of federal court deference to ongoing state judicial or state or federal quasi-judicial proceedings, the abstention doctrine, exhaustion of state provided remedies
  - 701 civil rights
  - 702 criminal procedure
  - 703 First Amendment
  - 704 habeas corpus
  - 705 military
  - 706 obscenity
  - 707 privacy
  - 708 miscellaneous
- 712 comity, civil procedure (cf. 701-708): propriety of federal court deference to ongoing state judicial or state or federal quasi-judicial proceedings, the abstention doctrine, exhaustion of state provided remedies
- 715 assessment of costs or damages: as part of a court order
- 717 Federal Rules of Civil Procedure, including application of the Federal Rules of Evidence, the Federal Rules of Appellate Procedure in civil litigation, and Circuit Court rules
- 721 judicial review of administrative agency's or administrative official's actions and procedures
- 731 mootness (cf. 806)
- 741 venue
- no merits: use only if the syllabus or the summary holding specifies one of the following bases
  - 751 writ improvidently granted: either in so many words, or with an indication that the reason for originally granting the writ was mistakenly believed to be present
  - 752 dismissed for want of a substantial or properly presented federal (state) question
  - 753 dismissed for want of jurisdiction (cf. 853)
  - 754 adequate non-federal grounds for decision
  - 755 remand to determine basis of state court decision (cf. 858)
  - 759 miscellaneous
- standing to sue
  - 801 adversary parties

- 802 direct injury
- 803 legal injury
- 804 personal injury
- 805 justiciable question
- 806 live dispute
- 807 parens patriae standing
- 808 statutory standing
- 809 private or implied cause of action
- 810 taxpayer's suit
- 811 miscellaneous
- judicial administration (jurisdiction of the federal courts or of the Supreme Court) (cf. 753)
  - 851 jurisdiction or authority of federal district courts
  - 852 jurisdiction or authority of federal courts of appeals
  - 853 Supreme Court jurisdiction or authority on appeal from federal district courts or courts of appeals (cf. 753)
  - 854 Supreme Court jurisdiction or authority on appeal from highest state court
  - 855 jurisdiction or authority of the Court of Claims
  - 856 Supreme Court's original jurisdiction
  - 857 review of non-final order; i.e., allegation that the decision below is not a final judgment or decree, or that it is an interlocutory judgment (cf. 753)
  - 858 change in state law (cf. 755)
  - 859 federal question (cf. 752)
  - 860 ancillary or pendent jurisdiction
  - 861 extraordinary relief
  - 862 certification (cf. 864)
  - 863 resolution of circuit conflict, or conflict between or among other courts
  - 864 objection to reason for denial of certiorari or appeal (cf. 862)
  - 865 collateral estoppel or res judicata
  - 866 interpleader
  - 867 untimely filing
  - 868 Act of State doctrine
  - 869 miscellaneous
  - 870 Supreme Court's certiorari or appeal jurisdiction
- 899 miscellaneous judicial power

#### Federalism

- 900 federal-state ownership dispute (cf. 920)
- 910 federal pre-emption of state court jurisdiction: almost always found in the context of labor union activity. Does not involve constitutional interpretation. Rests rather on a primary jurisdiction rationale
- 911 federal pre-emption of state legislation or regulation (cf. 631): rarely involves union activity. Does not involve constitutional interpretation unless the Court says it does
- 920 Submerged Lands Act (cf. 900)
- national supremacy: in the context of federal-state conflicts

- involving the general welfare, supremacy, or interstate commerce clauses, the 11<sup>th</sup> or 21st Amendments, or the enforcement clause of the 14<sup>th</sup> Amendment. Distinguishable from 910 and 911 because of a constitutional basis for decision.
- 930 commodities
  - 931 intergovernmental tax immunity
  - 932 marital and family relationships and property, including obligation of child support
  - 933 natural resources (cf. 638)
  - 934 pollution, air or water (cf. 638)
  - 935 public utilities (cf. 681-688)
  - 936 state tax (cf. 626)
  - 939 miscellaneous
- 949 miscellaneous federalism (cf. 294, 701-708, 712, 754-755, 854, 858, 860)

#### Interstate Relations

- 950 boundary dispute between states
- 951 non-real property dispute between states
- 959 miscellaneous interstate relations conflict

#### Federal Taxation

- 960 federal taxation (except as pertains to 970 and 975): typically under provisions of the Internal Revenue Code
- 970 federal taxation of gifts, personal, and professional expenses
- 975 priority of federal fiscal claims: over those of the states or private entities
- 979 miscellaneous federal taxation (cf. 931)

#### Miscellaneous

- 980 legislative veto
- 989 miscellaneous

Also see issue areas (variable 30).

#### Variable 30 **issue areas (VALUE)**

This variable simply separates the issues identified in the preceding variable into the discrete issue areas that the ISSUE variable contains. SPSS specifies these and their labels.

Note that if a case contains multiple issues that transcend a single value, the substantive value (1-8, 11-13) will typically appear in the first record of the case, succeeded by the procedural value (9 or 10).

Note further that the grossness of this variable conceals the differences among the specific issues that the issue area

contains.

Also see issue (variable 29).

Variable 31  
**direction of decision (DIR)**

In order to determine whether the Court supports or opposes the issue to which the case pertains, "direction" needs to be assigned. Specification of direction comports with conventional usage for the most part except for the interstate relations and the miscellaneous issues. An "8" has been entered in the DIR variable of these cases either because the issue does not lend itself to a pro or con description (e.g., a boundary dispute between two states), or because no convention exists as to which is the pro side and which is the con side (e.g., issue 980, the legislative veto). Except for these cases and those in which a tied vote or lack of information precludes a determination of how the Court resolved the issue in the case, each issue in each case will either indicate a liberal or conservative outcome.

It bears emphasizing that the DIR entry is determined by reference to the ISSUE variable that the record identifies. It is entirely possible for a citation to relate to a second issue whose direction is opposite that of the original issue. For example,

LED	ANALU	LAW	ISSUE	DIR
040/0607		4A	16	0
040/0607	2	4A	638	1

Here, the Court decided that the Fourth Amendment (ISSUE=16) was not violated by a health inspector's warrantless entry onto the property of a business to inspect smoke pollution (ISSUE=638).

To insure complete accuracy, consider including records in which ANALU=4, indicating citations with a split vote. In a few instances, e.g., *Wolman v. Walter*, 433 U.S. 29 (1977), some records for a citation may show DIR=1, while others display DIR=0. Counting such cases is a matter of judgment. In order to determine whether an outcome is liberal (=1) or conservative (=0), the following scheme is employed.

in the context of issues pertaining to criminal procedure, civil rights, First Amendment, due process, privacy, and attorneys

1 = pro-person accused or convicted of crime, or denied a jury trial  
pro-civil liberties or civil rights claimant, especially those exercising less protected civil rights (e.g., homosexuality)  
pro-child or juvenile  
pro-indigent

pro-Indian  
pro-affirmative action  
pro-neutrality in establishment clause cases  
pro-female in abortion  
pro-underdog  
anti-government in the context of due process, except  
for takings clause cases where a pro-government,  
anti-owner vote is considered liberal except in  
criminal forfeiture cases or those where the taking is  
pro-business  
violation of due process by exercising jurisdiction over  
nonresidents  
pro-attorney  
pro-accountability and/or anti-corruption in campaign  
spending  
pro-privacy vis-a-vis the 1<sup>st</sup> Amendment where the pri-  
vacy invaded is that of mental incompetent  
pro-jurisdiction in 506  
pro-disclosure in 537 issues except for employment and  
student records

0 = reverse of above

in the context of issues pertaining to unions and economic  
activity

1 = pro-union except in union antitrust (issue = 555)  
where 1 = pro-competition

anti-business  
anti-employer  
pro-competition  
pro-liability  
pro-injured person  
pro-indigent  
pro-small business vis-a-vis large business  
pro-state/anti-business in state tax cases  
pro-debtor  
pro-bankrupt  
pro-Indian  
pro-environmental protection  
pro-economic underdog  
pro-consumer  
pro-accountability in governmental corruption  
anti-union member or employee vis-a-vis union  
anti-union in union antitrust  
anti-union in union or closed shop  
pro-trial in arbitration

0 = reverse of above

in the context of issues pertaining to judicial power

1 = pro-exercise of judicial power  
pro-judicial "activism"  
pro-judicial review of administrative action

0 = reverse of above

in the context of issues pertaining to federalism

1 = pro-federal power  
anti-state

0 = reverse of above

in the context of issues pertaining to federal taxation

1 = pro-United States

0 = pro-taxpayer

in interstate relations and miscellaneous issues

8 for all such cases

This variable will also contain an "8" where one state sues another under the original jurisdiction of the Supreme Court and where parties or issue cannot be determined because of a tied vote or lack of information.

Each issue in cases containing multiple issues has direction assigned for each issue in accordance with the above schedule.

Also see direction of decision based on dissent (variable 32), issue (variable 29), and direction of the individual justices' votes (variables 187-215).

Variable 32  
**direction of decision based on dissent (DIRD)**

Once in a great while the majority as well as the dissenting opinion in a case will both support or, conversely, oppose the issue to which the case pertains. Thus, for example, the majority and the dissent may both assert that the rights of a person accused of crime have been violated. The only difference between them is that the majority votes to reverse the accused's conviction and remand the case for a new trial, while the dissent holds that the accused's conviction should be reversed, period. In such cases, the entry in the preceding variable should be determined relative to whether the majority or the dissent more substantially supported the issue to which the case pertains, and an entry should appear in this variable. Thus, in the foregoing example, the direction of decision variable (variable 31) should show a "0" because the majority provided the person accused of crime with less relief than does the dissent, and direction based

on dissent should show a '1.' The person accused of crime actually won the case, but won less of a victory than the dissent would have provided.

Also see direction of decision (variable 31).

Variable 33  
**type of decision (DEC\_TYPE)**

Choice of a unit of analysis (see variable 5) does not end with a selection of citation, docket number, or one of the other options that ANALU provides. Users must also choose among the types of decisions that the Supreme Court renders. SPSS identifies these.

DEC\_TYPE=1: Cases in which the Court hears oral argument and which it decides by a signed opinion. These are the Court's so-called formally decided full opinion cases.

DEC\_TYPE=2: Cases decided with an opinion but without hearing oral argument; i.e., per curiam.

DEC\_TYPE=3: Memorandum cases. These are summary decisions that deal with petitions for certiorari and appeals, requests of individuals and organizations to participate as amicus curiae, and various other motions, orders, and writs. These are segregated from the other types of decisions by their location in the back of the various volumes of the *United States Reports* beginning at page 801 or 901 or later.

DEC\_TYPE=4: Decrees. This infrequent type of decision usually arises under the Court's original jurisdiction and involves state boundary disputes. The justices will typically appoint a special master to take testimony and render a report, the bulk of which generally becomes the Court's decision. The presence of the label, "decree," distinguishes this type of decision from the others.

DEC\_TYPE=5: Cases decided by an equally divided vote. When a justice fails to participate in a case or when the Court has a vacancy, the participating justices may cast a tie vote. In such cases, the Reports merely state that "the judgment is affirmed by an equally divided vote" and the name of any nonparticipating justice(s). Their effect is to uphold the decision of the court whose decision the Supreme Court reviewed.

DEC\_TYPE=6: This decision type is a variant of the formally decided cases (DEC\_TYPE=1). It differs from type 1 only in that no individual justice's name appears as author of the Court's opinion. Instead, these unsigned orally argued cases are labeled as decided "per curiam." The difference between this type and

DEC\_TYPE=2 is the occurrence of oral argument in the former but not the latter. In both types the opinion of the Court is unsigned; i.e., per curiam.

DEC\_TYPE=7: Judgments of the Court. This decision type is also a variant of the formally decided cases. It differs from type 1 in that less than a majority of the participating justices agree with the opinion produced by the justice assigned to write the Court's opinion. Except for those interested only in the authors of the opinions of the Court, DEC\_TYPE=7 should be included in analyses of the Court's formally decided cases.

The database contains all decisions of types 1, 4, 5, 6 and 7. Because of their profusion and the very limited information that the Reports provide, the database contains only those back-of-the-book memorandum cases (DEC\_TYPE=3) in which one or more of the justices wrote an opinion. Most such cases contain no opinion; hence, the database contains only a very small percentage of these cases.

The database also does not contain all of the non-orally argued per curiam decisions that appear in the front of the book (DEC\_TYPE=2). The Reports for the last four terms of the Warren Court (1965-1968) (volumes 382-395 of the *United States Reports* and volumes 15-23 of the *Lawyers' Edition*) and the first four terms of the Burger Court (1969-1972) (volumes 395-409 of the *United States Reports* and volumes 24-34 of the *Lawyers' Edition*) list large numbers of brief, non-orally argued per curiam decisions in the main part of each volume. These cases differ from the memorandum decisions in the back of each volume (DEC\_TYPE=3) only by the presence of the phrase, "per curiam." This phrase has no practical import, except that a summary affirmance has precedential value, at least for the lower federal courts.

As a result, the database only includes those DEC\_TYPE=2 cases, decided between the 1965 and 1972 terms, for which the Court has provided a summary, as well as those without a summary, in which one or more of the justices wrote an opinion. The Court, however, stopped its practice of including memorandum cases (DEC\_TYPE=3) in the front of the Reports early in the 1972 term. Hence, beginning with volume 410 of the *United States Reports* the database includes all cases that appear in the front portion of the Reports, regardless of type.

Also see unit of analysis (variable 5) and multiple memorandum decisions (variable 34).

Variable 34  
**multiple memorandum decisions (MULT\_MEM)**

To avoid loading the database with an inordinate number of memorandum decisions (DEC\_TYPE=3), this variable will identify the number of additional such cases that pertain to the same issue and which were decided by the same voting and opinion alignment as the cited case. These multiple decisions, which may

range from one to several dozen, most often involve dissents to the imposition of the death penalty and dissents on the merits to the majority's refusal to decide obscenity cases.

Nine Warren Court DEC\_TYPE=2 cases, differing from DEC\_TYPE=3 only by their position in the front -- rather than in the back -- of the *United States Reports* have an entry in this variable: 374 U.S. 97, 374 U.S. 498, 378 U.S. 547, 378 U.S. 550, 378 U.S. 553, 378 U.S. 556, 382 U.S. 4, 386 U.S. 267, and 392 U.S. 300. All other entries in this variable are to DEC\_TYPE=3 cases.

Also see type of decision (variable 33).

Variable 35  
**disposition of case (DIS)**

The treatment the Supreme Court accorded the court whose decision it reviewed is contained in this variable; e.g., affirmed, vacated, reversed and remanded, etc. The entry in this variable governs the vote in the case (variable 40) and whether the individual justices voted with the majority or in dissent (variables 216-244).

SPSS specifies the value and the value label used. They are the same as those in (LODIS): how the court whose decision the Supreme Court reviewed disposed of the case (variable 16).

The information relevant to this variable may be found near the end of the summary that begins on the title page of each case, or preferably at the very end of the opinion of the Court.

As in the LODIS variable, the value label pertaining to the specific language used by the Court is entered. If incongruence between the Court's language and the above codes occurs, consult variable 36 (unusual disposition).

Note that in cases containing multiple docket numbers, not every docket number will necessarily receive the same disposition. Hence, in focusing on the outcome of the Court's decisions, docket number seems preferable as the unit of analysis (see variable 5) rather than case citation.

Also see unusual disposition (variable 36) and winning party (variable 37).

Variable 36  
**unusual disposition (DISQ)**

A '1' appears in this variable (DISQ) to signify that the Court made an unusual disposition of the cited case which does not match the coding scheme of the preceding variable. The disposition which appears closest to the unusual one made by the Court should be selected for inclusion in the preceding variable.

Also see disposition of case (variable 35) and winning party (variable 37).

Variable 37  
**winning party (WIN)**

A "1" in this variable indicates that the petitioning party -- i.e., the plaintiff or the appellant -- emerged victorious. The victory the Supreme Court provided the petitioning party may not have been total and complete (e.g., by vacating and remanding the matter rather than an unequivocal reversal), but the disposition is nonetheless a favorable one. Generally speaking, a favorable disposition (see the two preceding variables) is anything other than "affirmed," "denied," or "dismissed." Exceptions, however, occasionally occur. Hence, it is more accurate to use this variable rather than the disposition variables (variables 35 and 36) to determine the prevailing party.

Variable 38  
**formal alteration of precedent (ALT\_PREC)**

A "1" will appear in this variable if the majority opinion effectively says that the decision in this case "overruled" one or more of the Court's own precedents. Occasionally, in the absence of language in the prevailing opinion, the dissent will state clearly and persuasively that precedents have been formally altered: e.g., the two landmark reapportionment cases: *Baker v. Carr*, 369 U.S. 186 (1962), and *Gray v. Sanders*, 372 U.S. 368 (1963). Once in a great while the majority opinion will state -- again in so many words -- that an earlier decision overruled one of the Court's own precedents, even though that earlier decision nowhere says so. E.g., *Patterson v. McLean Credit Union*, 485 U.S. 617 (1988), in which the majority said that *Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 484, 35 L Ed 2d 443 (1973) overruled a 1948 decision. On the basis of this later language, the earlier decision will contain a "1" in this variable. Formal alteration also extends to language in the majority opinion that states that a precedent of the Supreme Court has been "disapproved," or is "no longer good law."

Note, however, that formal alteration does not apply to cases in which the Court "distinguishes" a precedent. Such language in no way changes the scope of the precedent contained in the case that has been distinguished.

Do not assume that each record of a given case indicates the formal alteration of a separate precedent. A given citation may have several docket numbers, each of which is governed by a single opinion in which only one precedent was altered. Conversely, an opinion in a citation with a single docket number may formally alter a whole series of Supreme Court precedents. To determine the number of formally altered precedents, carefully read the prevailing opinion in each citation that has an entry in this variable.

Variable 39  
**declarations of unconstitutionality (UNCON)**

An entry in this variable indicates that the Court either declared unconstitutional an act of Congress; a state or territorial statute, regulation, or constitutional provision; or a municipal or other local ordinance. SPSS specifies the coding for this variable.

An entry should appear in the record that lists the law declared unconstitutional. An entry should also appear in the record containing the constitutional provision that served as the basis for the declaration of unconstitutionality. None will appear when the Court merely cites a previous decision that has already been used to void the provision at issue; e.g., *Grisham v. Hagan*, 361 U.S. 278, 4 L Ed 2d 279, and *McElroy v. Guagliardo*, 361 U.S. 281, 4 L Ed 2d 282 (1960).

The summary frequently, though not invariably, will indicate such action in its statement of the Court's holdings. Hence, where such action may have occurred, it may be necessary to read carefully the opinion of the Court to determine whether an entry should be made in this variable.

Where federal law pre-empts a state statute or a local ordinance, unconstitutionality does not result unless the Court's opinion so states. Nor are administrative regulations the subject of declarations of unconstitutionality unless the declaration also applies to the law on which it is based. Also excluded are federal or state court-made rules; e.g., *Virginia Supreme Court v. Friedman*, 487 U.S. 59 (1988).

As with the preceding variable, do not assume that each of these records pertains to a separate statutory or constitutional provision. The Court will not uncommonly declare a particular statute void on several bases, or a number of dockets may pertain to the same voided law.

Variable 40  
**the vote in the case (VOTE)**

This variable specifies the vote in the case. Although a quorum requires the participation of six justices for a decision on the merits, as few as three suffice for the Court to take jurisdiction of a case (when only seven justices participate). Hence, the entries in this variable may range from 90 to 30.

The vote that appears in this variable pertains to the number of justices who agree with the disposition made by the majority (see disposition of case, variable 35) and not to the justices' vote on any particular issue in the case (see variable 29). Thus, for example, in *Bates v. Arizona State Bar*, 433 U.S. 350 (1977), the vote in the case was 5 to 4, even though all participants agreed that the disciplinary rule prohibiting attorney advertising did not violate the Sherman Act. Unlike the majority, the dissenters disagreed that the rule violated the First Amendment.

Jurisdictional dissents and dissents from the denial of certiorari (see the discussion of these votes in variables 42-70,

the votes, opinions, and interagreements of the individual justices) are counted as though the justice so voting did not participate in the case. Only dissents on the merits are specified in this variable.

Also see vote not clearly specified (variable 41) and the votes, opinions, and interagreements of the individual justices (variables 42-70).

Variable 41  
**vote not clearly specified (VOTEQ)**

In the vast majority of cases, the individual justices clearly indicate whether or not they agree with the disposition (see variable 35) made by the majority. In approximately one percent of the records clarity is lacking, as when a justice concurs in part and dissents in part. A justice will typically use this or equivalent language to indicate agreement with the reasoning in a portion of the majority opinion while disagreeing with the majority's disposition of the case, or vice-versa. A close reading of the justice's opinion usually indicates whether he or she has concurred (i.e., agreed with the majority's disposition) or dissented from the disposition made by the majority. But in the rare case where a justice does not clearly indicate which it is, this variable will contain an entry.

Also see the vote in the case (variable 40).

Variables 42-70  
**the votes, opinions, and interagreements of the individual justices (HAR TO ALTO)**

This portion of the database contains a separate variable for each of the justices who have served on the Warren, Burger, and Rehnquist Courts. The first column of this variable contains the individual justice's vote; the second column, the opinion, if any, that the justice wrote in the case; and the third and fourth columns, the letter that signifies the name of the justices with whose dissenting or concurring opinion the subject justice agreed.

These justices and their name abbreviations that identify which justice occupies which SPSS column are the following:

Harlan	= HAR
Black	= BLC
Douglas	= DOUG
Stewart	= STWT
Marshall	= MAR
Brennan	= BRN
White	= BW

Warren	=	WAR
Clark	=	CLK
Frankfurter	=	FRK
Whittaker	=	WHIT
Burton	=	BURT
Reed	=	REED
Fortas	=	FORT
Goldberg	=	GOLD
Minton	=	MINT
Jackson	=	JACK
Burger	=	BURG
Blackmun	=	BLKM
Powell	=	POW
Rehnquist	=	REHN
Stevens	=	STEV
O'Connor	=	OCON
Scalia	=	SCAL
Kennedy	=	KEN
Souter	=	SOUT
Thomas	=	THOM
Ginsburg	=	GIN
Breyer	=	BRY
Roberts	=	ROBT
Alito	=	ALTO

The summary listing of the voting behaviors follows:

1st column: 1 = voted with majority or plurality  
2 = dissent  
3 = regular concurrence (agreement with the Court's opinion as well as its disposition)  
4 = special concurrence (agreement with the Court's disposition but not its opinion)  
5 = nonparticipation  
6 = judgment of the Court  
7 = dissent from a denial or dismissal of certiorari (literally and only such a dissent), or dissent from summary affirmation of an appeal  
8 = jurisdictional dissent (disagreement with the Court's assertion of jurisdiction)

The second column of each justice's variable specifies whether the justice wrote an opinion (=1), wrote an opinion jointly with (an)other justice (=2), or did not write an opinion at all (= ). Thus,

2d column: 1 = justice wrote an opinion  
2 = justice co-authored an opinion  
= justice wrote no opinion

The third and fourth columns of each justice's variable indicate whether the justice agreed with a special opinion --

i.e., some sort of dissent or concurrence -- written by some other justice. The letter signifying which of the justices the named justice agreed with is as follows:

Harlan	= A
Black	= B
Douglas	= C
Stewart	= D
Marshall	= E
Brennan	= F
White	= G
Burger	= H
Blackmun	= I
Powell	= J
Rehnquist	= K
Souter	= L
Stevens	= M
O'Connor	= N
Scalia	= O
Fortas	= P
Goldberg	= Q
Minton	= R
Jackson	= S
Warren	= T
Clark	= U
Frankfurter	= V
Whittaker	= W
Burton	= X
Reed	= Y
Kennedy	= Z
Thomas	= a
Ginsburg	= b
Breyer	= c
Roberts	= d
Alito	= e

If a justice agreed with the opinion of two different justices, the letter signifying the second justice appears in the fourth column of the agreeing justice's variable. If said justice agreed with more than two justices, or wrote more than one opinion in a single case, which rarely happened, an asterisk appears in the third column of said justice's variable. In four such instances, a justice joined three opinions; in six others, he wrote two opinions. Two of these exceptional situations occurred during the 1981 term in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, and *Harlow v. Fitzgerald*, 457 U.S. 800. In the former case, Justice Blackmun, in addition to writing the Court's opinion (which is indicated by the "1" in the second column of his variable), also wrote a regular concurrence. This is evidenced by the "3" and the "I" appearing in the first and third columns of Marshall's, Brennan's, and O'Connor's variables. The "I" identifies Blackmun and indicates that these three justices

joined a regular concurrence (=3) authored by Blackmun. The same pattern applies to *Harlow v. Fitzgerald* and indicates that Brennan also wrote a regular concurrence in addition to co-authoring a joint concurring opinion, which is identified by the "2" in his second column. The presence of an "F," denoting Brennan, in the third columns of Marshall's and Blackmun's variables indicates that this must necessarily be the case.

Note that a justice cannot agree with another justice's special opinion unless said justice shows a "2," "3," "4," "7," or "8" in the first column of his or her variable. If the justice agrees with the opinion or judgment of the Court, a "1" will appear in the first column. And if a "5" appears, indicating nonparticipation, the justice by definition could not have agreed with anyone else's opinion.

Also note that if no entry appears in the first column of a justice's variable, of necessity the other three columns must also be empty. No entry in the variable means that the justice to whom that variable belongs was not a member of the Court when that case was decided, or that a particular justice may have been a member of the Court at that time but the case was decided by a tie vote. The Reports only publish the name(s) of the nonparticipating justice(s) in such cases.

Determination of how a given justice voted and whether or not he or she wrote an opinion is by no means a simple matter of culling the Reports. The justices do not always make their actions clear. Therefore, decision rules must be formulated. Furthermore, notwithstanding resort to the decision rules presented below, a judgment -- not necessarily bright line -- needs be made as to how the justices voted and whether or not an opinion was written.

With regard to special opinion writing, a justice has three options: 1) author an opinion, 2) author an opinion jointly with other justices, or 3) write no opinion. If a justice writes no opinion, the second of the four columns in the variable is left blank; if a justice solely authors an opinion, a "1" appears. If a joint opinion is written, a "2" appears.

For the purpose of determining which option a justice chose, the following decision rules apply:

1) Where a justice specifies that the opinion applies to an additional case or cases, the opinion is counted as so many separate ones. Thus, the opinions of Brennan and Marshall in *Mobile v. Bolden*, 446 U.S. 55, also apply to *Williams v. Brown*, 446 U.S. 236. Hence, each of these opinions is counted as though it were two separate opinions.

2) A justice authors no opinion unless he or she specifies a reason for his or her vote. A bare citation to a previously decided case or a simple statement that the author concurs or dissents because of agreement with a lower court's opinion suffices as an opinion.

3) When a justice joins the substance of another justice's opinion, without any personal expression of views, that justice is listed as joining the other's opinion and not as an author.

Thus, in *United States v. Havens*, 446 U.S. 620, Justices Stewart and Stevens are listed as joining Brennan's dissenting opinion notwithstanding that the pertinent language reads: "Mr. Justice Brennan, joined by Mr. Justice Marshall and joined in Part I by Mr. Justice Stewart and Mr. Justice Stevens, dissenting." 446 U.S. at 629. The opinion contains two parts of roughly equal length. Failure to list the latter pair as joiners would have required that they appear as dissenting without opinion, a manifestly inaccurate result. Similarly, Justice White's language in *Parratt v. Taylor*, 451 U.S. 527, at 545: "I join the opinion of the Court but with the reservations stated by my Brother Blackmun in his concurring opinion," is not listed as an opinion by White. He rather appears as joining Blackmun's concurrence. Conversely, where a justice, in his own words only partially agrees with one or more opinions authored by others, he or she is listed as an author. Two examples of Justice Stewart illustrate: "Mr. Justice Stewart dissents for the reasons expressed in Part I of the dissenting opinion of Mr. Justice Powell." (*Dougherty County Board of Education v. White*, 439 U.S. 32, at 47) "Mr. Justice Stewart concurs in the judgment, agreeing with all but Part II of the opinion of the Court, and with Part I of the concurring opinion of Mr. Justice Stevens." (*Jenkins v. Anderson*, 447 U.S. 231, at 241)

4) When two or more justices jointly author an opinion, a "2" will appear in the second column of each of those justice's 4-column variables. Joint authorship, however, does not include per curiam opinions.

Two problems afflict efforts to specify votes: 1) whether the vote is a regular or a special concurrence, and 2) the treatment to be accorded a vote "concurring in part and dissenting in part." The former typically manifests itself when a justice joins the opinion of the Court "except for . . ." Because such exceptions typically tend to approach de minimis status, I treat them as regular concurrences. For example, Chief Justice Burger concurred in the opinion of the Court in *New York Gaslight Club, Inc. v. Carey*, except for "footnote 6 thereof." 447 U.S. 54, at 71. Similarly, Blackmun's agreement with the Court in *Pruneyard Shopping Center v. Robins*, except for "that sentence thereof . . ." 447 U.S. 74, at 88. Where the Reports identify a justice as concurring " or "concurring in part," said justice is treated as a member of the majority opinion coalition (i.e., as = 3), rather than a merely concurring in the result (i.e., as = 4).

Whereas the preceding problem pertains to determining which type of concurrence a vote is, the problem with votes concurring and dissenting in part is whether they are special concurrences (= 4) or dissents (= 2). This matter was addressed previously in connection with variable 41 (vote not clearly specified). A vote concurring and dissenting in part is listed as a special concurrence if the justice(s) doing so does not disagree with the majority's disposition of the case. This may occur when: 1) the justice concurring and dissenting in part voices disagreement with some or all of the majority's reasoning; 2) when said jus-

tice disapproves of the majority's deciding or refusing to decide additional issues involved in the case; or 3) when in a case in which dissent has been voiced, the justice(s) concurring and dissenting in part votes to dispose of the case in a manner more closely approximating that of the majority than that of the dissenter(s).

In cases where determination of whether a vote concurring and dissenting in part is the former or the latter is not beyond cavil, an entry will appear in the VOTEQ variable (41) of the affected case to allow users of the database to make an independent judgment, if they are so minded. Note, however, that listing such votes as dissents (= 2) or special concurrence (= 4) has no effect on whether or not an opinion is written. A "1" (sole author) or "2" (co-author) will appear in the second column of the pertinent justice's variable -- as well as in that justice's opinion variable (see variables 100-128) -- regardless of whether a "2" (dissent) or "4" (special concurrence) appears in the first column of his or her variable.

The third and fourth columns of each justice's variable are used to identify the concurring and dissenting opinions with which the subject justice agreed, as are the parallel A1 and A2 single-column variables for each justice (variables 129-157 and 158-186). These columns and variables, then, enable the inter-agreement matrix of each case decided by the Court to be mapped. Each justice has been assigned a letter of the alphabet, as designated in the listing above, to indicate his or her agreement with the justice in whose variable the designated abbreviation appears.

Accordingly, the appearance of a letter in the third column of any justice's 4-column variable or in that justice's A1 or A2 variables indicates that said justice agreed with a dissenting or concurring opinion written by the justice whose letter appears. If a second letter appears in the fourth column of a justice's variable, or in the A2 variable, that means that said justice agreed with the opinion of two different justices. A second join does not occur very frequently.

Still less frequent are cases in which a justice joins three other justices' opinions. An asterisk in the third column of the joining justice's 4-column and in the A1 variables specifies these situations. An asterisk in these same places also identifies the instances when a justice wrote two opinions in a single case. Whether the asterisked justice wrote two opinions or joined the opinions of three other justices is clear from the behavior of the other justices.

Variables 71-99  
**the individual justice's vote (HARV TO ALTV)**

As explained above, the preceding variable contains four columns, the first of which indicates the justice's vote. This variable breaks out the contents of this column and places it

here. For example, assume that the entries in DOUG for a given record reveal the following data: 21BT. Variable DOUGV (for Douglas' vote) will contain a '2'; DOUGO (for Douglas' opinion) a '1'; DOUGA1 (for the name of the justice who wrote a dissent or concurrence with which Douglas agreed) a 'B'; and DOUGA2 (for the name of a second justice with whose dissent or concurrence Douglas also agreed) a 'T'. Accordingly, in this case, Douglas dissented and wrote an opinion; compatibly with the abbreviations provided in the preceding variable, he also agreed with a dissenting opinion that Black wrote, as well as one written by Warren.

The reason for breaking the 4-column variable into its singular components is because of the way SPSS searches through a data file. If we relied on the 4-column variable to identify the cases in which Justice Marshall agreed with a dissenting or concurring opinion of Chief Justice Burger, we would have to specify all of the combinations of codes that could appear in all four variables when Marshall's third or fourth column contained an "H" signifying Burger. SPSS is simply not equipped to pick out an "H" anywhere in a multi-column variable. Thus, in the example, we would need to compile an exhaustive set of SELECT IF commands: '21H ' '2 H ' '31H ' '3 H ', etc.

This set of variables uses the same name abbreviation for each of the justices as heads the variable for that justice's overall behavior, with a 'v' added to its end.

SPSS specifies the voting options.

Variables 100-128  
**the individual justice's opinions (HARO TO ALTOO)**

This field indicates the opinion, if any, that the named justice wrote. The initial abbreviation of each justice's name continues to be used, followed here by an 'O.'

SPSS specifies the opinion options.

Variables 129-157, 158-186  
**the special opinion(s) with which the individual justice agreed (HARA1 TO ALTOAI, HARA2 TO ALTOA2)**

This pair of fields follows the format of the preceding two. It contains the letter abbreviation of the justice with whose special opinion the named justice agreed. Two agreements are allowed for. The abbreviation of the named justice is followed by an 'a1' for the initial join, an 'a2' for the second one.

Asterisks in these fields means that the subject justice did not agree with any other justice's special opinion.

Variables 187-215  
**direction of the individual justices' votes (HARDIR to ALTODIR)**

This variable, like the preceding one, creates a separate

variable for each of the justices who have sat on the Warren, Burger, and Rehnquist Courts. Each justice's variable is identified by the same 2- to 4-letter abbreviation used in the preceding variable, but here the abbreviation is followed by the letters "DIR."

Whereas the pertinent portion of the preceding variable specified how a justice voted in a given case, this variable indicates whether the justice's vote was liberal or conservative. SPSS provides the coding options for each justice.

Also see the votes, opinions, and interagreements of the individual justices (variables 42-70, 71-99, 100-128, 129-157, 158-186), and direction of decision (variable 31).

Variable 216-244

**majority and minority voting by justice (HARM to ALTOM)**

Analysts commonly want to know the frequency with which given justices vote with the majority and/or in dissent overall or in certain sets of circumstances. This variable provides that information.

SPSS contains the coding of this variable.

Variable 245

**majority opinion assigner (MOA)**

This variable identifies the assigner of the opinion or judgment of the Court, as the case may be. These data are drawn from the membership in the final (report vote) coalition and from the rules governing opinion assignment: If the chief justice is a member of the majority vote coalition at the conference vote, he assigns the opinion; if not, the senior associate justice who is a member of the majority at the conference vote does so. According to the leading authorities on conference voting, Jan Palmer and Saul Brenner, considerable voting shifts occur between the final conference vote (where the assignment is made) and the vote that appears in the Reports. As a result, in approximately 16 percent of the cases, a person other than the one identified by the database actually assigned the opinion.

To overcome this discrepancy, users may consult the expanded versions of the database, which are also available from the website of the Ulmer Project at the University of Kentucky, but which include only the Vinson, Warren, and Burger Courts. Assigners in these cases are identified by direct reference to the justices' docket books.

The justices' are identified by abbreviations of their names.

Variable 246

**majority opinion writer (MOW)**

This variable identifies the author of the Court's opinion or judgment, as the case may be. The justices are identified by

abbreviations of their names.

Variable 247  
**minimum winning coalition (MWC)**

This field discloses whether the case was decided by a margin of one vote. (Tied votes are not considered because they have no majority or plurality opinion and as such automatically affirm the lower court's decision without further ado.) Minimum winning coalitions are those decided by a 5-4 or a 4-3 vote, and by those that reverse the lower court's decision by a 5-3 or 4-2 vote.

Where dissenters divide and separately locate on either ideological side of the majority opinion coalition leaving it with five votes, the decision is not considered minimum winning, but rather, for example, a pair of 7-2 decisions, one liberal and the one conservative. See 152 L Ed 2d 589 for an example.

APPENDIX I: THE RELIABILITY CHECK

This appendix reports the results of the reliability check of the variables in the Warren-Burger-Rehnquist database

Throughout the years that the database has existed, considerable time and effort has been devoted to "cleaning" - to checking the accuracy of the data that had been entered into various variables. I did so not only to insure that the entries in various variables accorded with the codes and their decision rules, but also because data were entered intermittently for every variable rather than in one consecutive undertaking. This procedure increased the probability of systematic error on the one hand, but on the other it allowed me to check the accuracy of what had previously been entered whenever I detected errors of either omission or commission. Needless to say, errors manifested themselves with aggravating - and sometimes inexplicable - frequency.

The results of the reliability check suggest, however, that the foregoing method of entering and cleaning data produces a high level of accuracy. They are reported for the Warren and Burger Courts separately for each variable, along with an assessment of the differences that did emerge between the coder and the recoder. A random sample of 267 separate citations was drawn, 96 of which were from the Warren Court and 171 from the Burger Court. No Rehnquist Court citations will be included in the reliability

check until it ceases to exist. The 267 randomly selected separate citations produced a grand total of 357 records, 141 for the 96 Warren Court citations and 216 for the 171 Burger Court citations. A graduate student did the recoding. He was familiar with the database, having used preliminary versions in his own research.

Where non-categorical data were coded and accuracy is known objectively – e.g., case citation, docket number, the author of an opinion, the court in which the case originated, date of decision – reliability is measured by the extent to which the entries correspond exactly with what appears in the official Reports. Where a variable involves the exercise of judgment and the coding falls into one of a set of previously defined values – e.g., the legal provisions considered by the Court, the issue that a case presents, the reason the Court granted cert – reliability is measured by the extent to which the coders agreed. I have not used various statistical measures of association – e.g., pi, lambda, phi, Pearson – because each makes assumptions that are arbitrary to some extent. Instead, I provide simple percentages and a specification of the errors that precluded perfect agreement, along with other information pertinent to the reliability of the particular variable.

I also recoded the sampled cases independently and subsequently of the recoder in an attempt to determine if I had unconsciously applied the discretionary codes differently at one point during the years of coding than I had at another. Although I found no appreciable indications of such conduct except for authority for decision (variable 26-28), my recoding did show substantial variance in certain variables whose entries required little, if any, exercise of discretion. The recoder's work also revealed my errors in most of these variables. As a result, these variables – number of records per unit of analysis (variable 6), three-judge district court (variable 9), lower court disagreement (variable 12), and reason stated for granting certiorari (variable 13) – have all been rechecked for all cases in both the Warren and Burger Courts.

VARIABLES 1,2,3 - citations to the Court's reports

The reliability check revealed no discrepancies in the coding of the US variable for either the Warren or the Burger Courts. In the LED variable, both coders made an identical entry for all the Burger Court records. Three Warren Court citations produced different entries because the title to the last three in a set of six cases began on the page subsequent to the page on which the first three began (100/1220 versus 100/1221). The coding in-

structions do not address the question of whether all the docket numbers of cases decided under a common set of opinions should cite the same page as the lead case or not. In the SCT variable, the reliability check showed the last two digits in one Warren Court citation to be in error, as well as the last digit in one Burger Court citation. Identity, therefore, is 99.0 and 99.4 percent, respectively. But if we count accuracy digit by digit instead of citation by citation, SCT agreement reaches 99.88 percent for the combined Courts.

#### VARIABLE 4 - docket number

One Warren Court docket number was incorrectly entered. This occurred in a companion case. Apparently the companion case was duplicated by a programming command and through oversight the docket number was not changed from that of the lead case. Identity, therefore, obtained in 111 of the 112 Warren Court citations (99.1 percent). The Burger Court produced two errors among its 194 docket numbers, both of which incorrectly list the second digit of the year in which a pair of companion cases reached the Supreme Court (78 rather than 79). Identity of entry, therefore, equals 99.0 percent. Inasmuch as the typical docket number contains five digits, these interagreement percentages could be increased by a magnitude of five.

#### VARIABLE 5 - unit of analysis

On the Warren Court, nine discrepancies occurred between the original coding and the recoding. (References to these discrepancies are LED citations.) Note that these discrepancies pertain to the number of records rather than to differences in the entry in the ANALU variable. The recoder created 141 records from the 96 randomly selected Warren Court citations. Of the recoder's 141 records, 139 are contained in the database. Hence, 139 of the 141 are common to both. The recoder duplicated two records that the database does not contain (001/0207 and 002/0282). He identified 001/0207 as a multi-issue case (ANALU=2) and the latter as having a second legal provision (ANALU=3). By contrast, the database contains seven duplicated records that the recoder did not include: 098/0168, 100/0692, 011/0004, and 015/0284. The last of these was duplicated four times with ANALU=2. It is a citation with four docket numbers. The other three records were duplicated with ANALU=5, 2, and 3, respectively.

Of these nine discrepancies, 100/0692, 001/0207, and the four times duplicated 015/0284 may equally plausibly be either single or double issue cases; the same is true of 098/0168,

which is double listed with ANALU=5. Entering 002/0282 as three records, each with a different LAW, rather than as two records, is based on the text of the majority opinion rather than the official summary. On the basis of the summary, the case should have only two records -- one statutory and the other constitutional. But reading the majority opinion indicates that the case actually concerns three separate legal provisions -- one statutory and two constitutional. On the other hand, the coding instructions do state that determination of the legal provision(s) at issue should be based on the numbered headings in the summary, not the content of the majority opinion. Finally, 011/0004 is equally plausibly a single or a double LAW inasmuch as the summary for this non-orally argued case lacks numbered headings.

Of the 139 Warren Court records common to both the coder and the recoder, two discrepancies occur: 099/0210 is listed in one as ANALU=3 twice, while the other set lists ANALU=3 in one record and as ANALU=5 in the other. Either option is equally plausible. The second entry of 001/1544 omitted the "1" in the ANALU variable. A blank appeared instead. This is clearly an error.

Nine discrepancies also occur in the Burger Court records. Out of a total of 216, 214 match. The database contains seven duplicates absent from the recoder's database: 024/0470, 033/0154, 034/0342, 036/0941, 045/0012, 047/0154, 071/0580. The recoder duplicated 2 records absent from the database: 041/0706, 083/0343.

Of the 214 common records, five disagree on the specific entry in the ANALU variable: 065/0555, 5 vs. 3; 080/0622, 2 vs. 5; 088/0598, 5 vs. 2; and the two-docket number 092/0675, 5 vs. 3. These are debatable except 080/0622, which should be a 5.

Of the nine discrepancies, it is debatable whether 034/0342 should also specify LAW=1A, along with 21A; whether 041/0706 should identify two separate standing ISSUES, 802 and 810; whether 047/0154 contains two distinct sets of votes; whether 071/0580 should specify 931 and 626 as ISSUES; and whether LAW in 088/0598 should be HC for both issues, or HARM and an empty variable.

VARIABLE 6 - number of records per unit of analysis per citation

Among the 139 Warren Court records that the recoder generated, that also appear in the database, two that should have contained a "1" in the REC variable inadvertently omitted it (001/1544 and 002/0340). This error is trivial insofar as

002/0340 is concerned because the ANALU variable contains an entry in the second record of this case. Of necessity, therefore, one record beyond the initial one must exist. Nonetheless, both these discrepancies are errors. Variable identity, therefore, equals 98.6 percent. As for the Burger Court, among the 214 records common to the database and to the recoding, 047/0483 should show a "1" in the second record, and 083/0343 should show a "2" in the second record. The latter difference should not be considered an error because the *Lawyers' Edition*, from which the original coding was done, lists only two, not three, docket numbers. Variable identity, therefore, equals 99.5 percent.

The entry in this variable for all records of both Courts have been rechecked since the completion of the reliability check.

#### VARIABLE 7 - manner in which the Court takes jurisdiction

One of the two Warren Court differences is debatable because, though the case arose on appeal, the Court granted certiorari (020/1343). The other case had no entry in this variable; neither did it have an entry in variable 16 (reason stated for granting cert). Both these variables cannot be entryless unless the case is memorandum. The alert user would therefore have known there is an error here. Nonetheless, an error. Identity, therefore, equals 99.3 percent. By comparison, five Burger Court records produced an error, all of which omitted entry of an "A." An observant user might have caught the first four because the reason for granting cert variable is also empty and these are not memorandum decisions. Identity, therefore, only equals 97.7 percent.

#### VARIABLE 8 - agency action preceding litigation

Four of the six differences between the coding and the recoding of the Warren Court are debatable: whether or not administrative action occurred in 004/0494 and 005/0403; whether action "occurred in the context of the case" as the foregoing coding instructions require in 015/0582; and whether state administrative action in 020/1089 was criminal, in which case no entry should appear. Hence, only two clear errors resulted, and identity between coding and recoding is 98.9 percent.

By comparison, 21 differences occurred in the Burger Court sample. Eight are debatable: 033/0154 arguably is a criminal matter and as such should have no entry; 048/0684, 071/0580, 078/0241, and the two records for both 054/0775 and 064/0278 as plausibly lack as possess administrative action. Four differences resulted from failure to clean the code for an agency: CFTR

should have read CFTC in the four records of 092/0675. And in the two records of 036/0771 the entry, VA, was drawn from information not in the opinions. The other seven differences are errors. Two occurred in minimally important memorandum cases (see variable 33, type of decision). As a result, identity equals only 96.8 percent.

#### VARIABLE 9 - three-judge district court

Although recoding showed complete accuracy in the Warren Court sample and only one error in the Burger Court, subsequent cleaning indicated that this variable had not been coded for certain portions of the database. Furthermore, through the first three terms of the Rehnquist Court, the modal category (no three-judge district court) exceeded 90 percent. Hence, all records were rechecked.

#### VARIABLE 10 - court in which case originated

Two errors appear in the Warren Court sample. Both specified the correct jurisdiction but the wrong court therein. Accuracy, therefore, equals 98.6 percent. A single discrepancy and three errors appear in the Burger Court sample. In 043/0530, whether ORIGIN=NHTR or NH is unclear. The case was filed in a NHTR and then transferred to the NH. Whether NHTR took any action is unspecified. One of the three errors occurred because of lack of cleaning, while the other two are omitted entries in memorandum decisions. Identity, therefore, also equals 98.6 percent for the Burger Court.

Also note that the *United States Reports* do not identify the court of origin, either in whole or in part, in 43 of the sampled records. In some of these cases, the *Lawyers' Edition* from which all cases were coded, provides this information. In the others, an assistant went to the records of the lower courts to ascertain the court in which the case originated. The recoder, however, was told to derive this information from the *United States Reports* exclusively. For purposes of the reliability check, I do not count as a discrepancy any record in which the recoding shows a "?" because the coding went behind the official Reports to locate the court of origin.

#### VARIABLE 11 - court whose decision the Supreme Court reviewed

The Warren Court sample produced one typographical error for an identity of 99.3 percent. The Burger Court produced four, one of which was one of the two memorandum decisions that had an error in its ORIGIN variable. Identity, therefore, equals 98.1 per-

cent.

#### VARIABLE 12 - lower court disagreement

Five of the 96 sampled Warren Court citations contained an error, one of which occurred because reference to a lower court dissent appeared only in the case summary, not the text of the majority opinion. The Burger Court sample also produced five errors. The low accuracy (94.8 and 97.1 percent, respectively) attained for this noninterpretive variable probably results because this information may appear anywhere in the introductory portions of the majority opinion. Moreover, it may only require a single word to describe: i.e., "divided," "split." On the basis of the relative lack of accuracy, all citations in both Courts were systematically rechecked.

#### VARIABLE 13 - reason for granting cert

Four of the six Warren Court discrepancies are errors. In the other two (LED=005/0403 and 006/0246), either a "12" may appear for both, or a "10" and a "1," respectively. Nine of the 19 Burger Court discrepancies are errors. The other ten are debatable. In the two records of LED=040/0703, 045/0374, and 066/0762, the majority opinion does not unequivocally state that the specified entry is the reason cert was granted; hence, an "11" is acceptable. In four other cases, the majority opinion gives a different reason later after stating its original reason (LED=045/0012, 052/0136, 057/0957, 081/0134). In LED=086/0168, either a "9" or a "10" is acceptable; and in LED=053/0423, either an "11" or "10."

Because of the relatively low accuracy - 97.2 and 95.8 percent for the respective Courts - all database records were rechecked for this variable.

#### VARIABLES 14 and 15 - parties

Interagreement between the coding and recoding is substantially less than complete in the parties variables for several reasons. First, the descriptors are undefined. Second, the difference between a given descriptor and others to which it is cross-referenced is one of degree rather than kind. Third, majority opinions not infrequently dually characterize parties. Nonetheless, the decision rule limits coding to singular characterization of parties. Finally, the Reports will commonly label a governmental party by his or her name and office, and thereafter substitute the name of the government for that of the official. One or more of these conditions apply to all but one of the

Warren Court's nine PARTY\_1 and seven PARTY\_2 discrepancies. The only exceptions were the entry of the less accurate CC rather than POOR D in 009/0811, and the clearly erroneous US in place of LA as the respondent in 010/0663. Accuracy may therefore be specified as 99.3 percent for both Warren Court parties. Although the Burger Court sample generated several times as many discrepancies as the Warren Court, the same factors account for them. Of the 29 differences in petitioning party, cross-referencing accounts for nine (030/0191, 032/0138, 039/0501, 045/0684, 046/0030, 051/0571, 053/0306, 073/0928, 092/0199), (the foregoing and succeeding citations are to LED) dual characterization in another ten (031/0165, 034/0307, 040/0189 [the options selected here were HUSBAND and MALE; the party actually was a widower], 040/0694, 055/0082, 062/0676, 069/0856, 070/0509, 081/0301, 083/0343), and six involved government/governmental official distinctions (035/0282, 043/0032, 043/0214, 064/0278, and the two records in 083/0720). Two errors involved a coding change from RAMI to RAMISTU and from UNION to EE TRUST; a third resulted because the codebook listed two acronyms for the Department of Transportation: DOT and TRAN; and 078/0241 should be MS GOEE rather than MS GOME. Counting only the last four as lacking identity, interagreement equals 98.1 percent. The 37 PARTY\_2 differences produce a similar result: seven cross-referenced, 18 dually characterized, and six government/governmental official distinctions. Errors occurred in 034/0296 (DC, not US), the two records of 036/0771 (VA BD ED, not the typographical error: VA DB ED), 046/0030 (US, not CA), 071/0859 (US S CT, not merely S CT), and 077/1407 (PP, not ?). Interagreement thus reaches 97.2 percent.

VARIABLE 16 - disposition of case whose decision the Supreme Court reviewed

The 21 Warren Court discrepancies locate in only ten separate citations. Eight discrepancies in three citations are equally accurate: between "10" and "4" in 002/0292, between "2" and "5" in 015/0284, and between "1" and "8" in 016/0314. In the four records of 020/0672, the majority opinion says "2," while a footnote says "4." The nine other differences may be counted as errors: the two records of 003/0450 and 023/0332 in which oversights left the variable empty; the "4" and "7" in the two records of 003/1312; the "2" and "3" in 009/0279; the "4" and "7" in 012/0129; and the error resulting from the lack of cleaning that occurred in the two records in 009/0561: the original version of the codebook specified entering the lower court's decision even if it were the trial court, which was the situation in this case. Agreement, therefore, equals 93.6 percent.

In the Burger Court sample, half the 28 discrepancies are debatable: 025/0246 can be either "8" or "10." 026/0764 mentions "1" and "8" at different places in the majority opinion; so also does 031/0110 ("1" and "8"), the two records of 042/0465 ("2" and "3"), 052/0136 ("2" and "5"), the two records of 080/0622 ("2" and "3"), and 090/0428 ("1" and "5"). The two records of 031/0551 lack clarity between "1" and "8," as does 043/0530 between 0 and "1," 060/0698 between "11" and "10," and 077/0938 between 0 and "1."

The other 14 discrepancies are ("11" = DEC\_TYPE=3): 032/0612 ("0" and "1"), 034/0296 "11" ("0" and "2"), 036/0941 ("2" and "3"), 045/0109 ("0" and "1"), 045/0684 "11" (blank and "1"), 048/0626 ("2" and "10"), the two records in 058/0007 (blank and "8" because of a coding change), 063/0325 "11" (blank and "2"), 065/0597 ("1" and "2"), 066/0234 "11" ("0" and "1"), 070/0225 "11" ("0" and "2"), 074/0643 "11" ("0" and "8"), and 078/0241 "11" ("0" and "1"). Agreement, therefore, equals 93.5 percent.

The plethora of memorandum decisions in the discrepancies of the Burger Court likely results from the fact that these cases contain only concurring and/or dissenting opinions. Unlike a majority opinion, which places dispositional information in a standard section, such data may be found anywhere or nowhere in a separate opinion.

VARIABLE 17 - direction of decision of court the Supreme Court reviewed

This variable was not subject to a reliability check because it was computer generated.

VARIABLE 18 - date of oral argument

Two inconsistencies appeared in the Warren Court sample. The day was incorrect in one record and the whole date in the other. The latter was a non-orally argued decree in which the date of decision was mistakenly entered as the date of oral argument. In the Burger Court sample, three errors occurred: the month in one record and the day in two others. Identity equals 98.6 percent for both Courts. If digits are the focus, identity increases by a factor of six.

VARIABLE 19 - reargument date

The reliability check showed 100 percent agreement.

VARIABLE 20 - decision date

The single error that occurred in the Warren Court sample was the same as the one in the ORAL variable (variable 18). The Burger Court produced one discrepancy in a memorandum decision. Cert was denied on one date and the dissenting opinion, the only reason the case is in the database, was filed a week later.

VARIABLE 21 - term of the Court

This variable was not subjected to a reliability check because it was computer created.

VARIABLE 22 - chief justice

This variable was not subject to a reliability check because it was computer created.

VARIABLE 23 - natural Court

This variable was not subject to a reliability check because it was computere generated.

VARIABLE 24 - legal provisions considered by the Court

Of the ten Warren Court discrepancies, four are non-orally argued DEC\_TYPE=2 cases (see variable 28, type of decision) that have an abbreviated summary without numerical headings (002/0001, 004/0001, 012/1041, 019/0546). In each of these cases, the variable either had no entry or contained a statutory listing (002/0001, 004/0001, and 019/0546) or a constitutional provision (012/1041). Either alternative appears equally correct. In three DEC\_TYPE=1 cases, the chosen alternatives also appear to be equally plausible: 6ACO vs. 14AD in 099/0135, and 62 vs. 5A=P in the two records of 016/0828. The other three discrepancies constitute error: 5AMI vs. 5ASI in 020/0381, 1A vs. 1ASN in 003/0462, and 1817 vs. 172 in 002/0282. The first of these could have been typographical. Identity, therefore, may be considered to be 97.9 percent.

By comparison, none of the eleven discrepancies in the Burger Court sample rises to the level of an error. In 028/0196 and 034/0651, the choice was between ABST and a blank. The summaries mention "abstention," but not the abstention doctrine. 037/0993 requires reference to cited decisions to determine the proper entry. The choice in 040/0694 falls between LHWC and nothing. In 045/0109, SLA is mentioned in the opinion, but not the summary. The choice is between this entry or none. In 046/0030,

CRMP appears only because of a reference to an opinion in chambers. Alternatively, the variable should contain no entry. In 058/0202, NLRA or a blank variable is equally plausible; while in 083/0998 and 084/0073, an equally acceptable choice may be made between TREATY or an empty variable. In the two records of 088/0598, HC versus blank or HARM is equally plausible.

VARIABLE 25 - case with multiple legal provisions

No differences in the coding of either Court occurred.

VARIABLES 26-28 - basis on which the Supreme Court rested its decision

The reliability coding of AUTHDEC treated the variable as a single two-column variable, rather than two separate variables. The variable was divided after the reliability coding was performed in order to facilitate the use of this variable for SPSS analyses. In the Warren Court sample, 107 perfect matches occurred in the 139 records common to both sets (77.0 percent). Of the 32 discrepancies, 12 merely reversed a 2-digit sequence, and all but one of these involved "45"; the other one, "75." If these 12 are considered to match, discrepancies reduce to 20 and agreement becomes 85.6 percent.

In 14 instances, one coder entered a single digit, while the other one entered two -- one of which was the same as the single digit entered by the other coder. The total number of the codes that appeared uniquely is as follows: "5" six times, "3" four times, "4" three times, and "7" one time. If these be considered matches, agreement increases to 95.7 percent.

In six instances, there was no match at all, and all of these occurred in records in which both coders entered a single digit (citations are to LED): 010/1045, "3" vs. "7"; the three records of 020/1350, "3" vs. "7"; 099/0210, "3" vs. "4"; and 100/0953, "4" vs. "5." In 099/0210 and 020/1350 either choice appears equally accurate. Hence, only two of these six non-matches are clearly incompatible. Agreement, therefore, may be considered to be as high as 98.6 percent.

Note that no discrepancies involve the two constitutional codes: "1" and "2."

In the Burger Court sample, 181 perfect matches occurred in the 214 records common to both samples (84.6 percent). Unlike the Warren Court, there were no two-digit reversals.

In 23 instances, one coder entered a single digit, while the other coder entered two -- one of which was the same as the single digit entered by the other coder. The uniquely appearing digit was: "5" twelve times, "4" five times, "3" three times, "7" two times, and "1" one time. (One "4" and the single "1" arose in 085/0764, a case with dual legal provisions, in which one coder entered "14" twice, while the other entered a "1" in one record and a "4" in the other). If these 23 records be considered matches, agreement increases to 95.3 percent.

In the remaining ten records, a choice between "73" and "74" in 043/0214 is equally accurate. The differences in 037/0993, 058/0202, and 084/0073 result because one coder made a LAW entry in the legal provision at issue variable while the other -- just as reasonably -- failed to do so. In 057/0957 and 064/0559, a choice between "7" and "43" in the former and "7" versus "1" in the latter are equally good. The other four records arguably produce error: 046/0030, "4" vs. blank in a memorandum decision; the two records of 047/0483, "4" vs. "73"; and 048/0626, "43" vs. "5." Agreement, therefore, may be considered to be as high as 98.1 percent.

#### VARIABLE 29 - issue

Fifteen of the 24 discrepancies in the Warren Court sample are debatable in the sense that either choice is equally accurate. If these are counted as identical, agreement reaches 93.6 percent. If only separate citations are counted, 16 differences occur, of which eleven are debatable. From this perspective, agreement is 94.8 percent. The list of differences follows. An asterisk indicates that either option appears to be equally good (citations are to LED).

099/0135 \* 30 vs. 502 (this discrepancy is a function of the difference in LAW)  
099/0210 (two records) 120 vs. 173  
100/0060 \* 614 vs. 852  
100/0692 21 vs. 434 (discrepancy resulted because of the addition of new codes during the original coding)  
001/0119 \* 101 vs. 107  
001/1394 \* 960 vs. 970  
002/0355 0 vs. 684 (it is necessary to refer to cases cited in the opinion to determine the issue)  
003/0462 (two records) \* 960 vs. 970  
010/0084 (four records) 222 vs. 939  
012/0129 \* 583 vs. 584  
013/0605 \* 684 vs. 685  
017/0078 \* 120 vs. 717 (DEC\_TYPE=3 in which the dissenting opin-

ion focuses on the Federal Rules of both Civil and Criminal Procedure)

020/0672 (four records) \* 361 vs. 451  
020/1089 \* 21 vs. 23  
020/1106 110 vs. 120 (typo)  
021/0546 \* 575 vs. 588

Twenty-one of the 36 differences in the Burger Court are also debatable in the sense that either choice is equally accurate. If these are considered identical, agreement reaches 93.1 percent. If only separate citations are counted, 27 differences occur, of which 14 are debatable, and agreement becomes 92.4 percent. If the four records whose issue could only be identified by going behind the summary and opinions of the cited case are also excluded, agreement reaches 94.9 percent. The list of differences follows. An asterisk indicates that either option appears to be equally good.

030/0812 (four records) \* 110 vs. 112 (DEC\_TYPE=3)  
032/0138 \* 116 vs. 863 (DEC\_TYPE=3)  
033/0484 \* 502 vs. 504  
035/0282 388 vs. 504 (lack of cleaning, 504 replaced 388)  
036/0771 (two records) 0 vs. 221 (news reports identified the issue)  
039/0501 \* 14 vs. 116  
040/0496 960 vs. 970  
040/0703 741 vs. 910  
042/0465 (two records) 575 vs. 578  
042/0477 501 vs. 502 (new code added, lack of cleaning)  
045/0109 900 vs. 920 (results because of difference in LAW)  
046/0030 21 vs. 120 (results from reference to opinion in chambers, which is DEC\_TYPE=3)  
053/0423 \* 717 vs. 867  
055/0082 960 vs. 970  
058/0007 (two records) \* 753 vs. 853  
058/0202 582 vs. 588  
058/0674 0 vs. 652 (requires reading cited case)  
065/0555 \* 391 vs. 542  
066/0234 \* 507 vs. 851 (DEC\_TYPE=3)  
070/0404 \* 576 vs. 910 (DEC\_TYPE=3)  
071/0419 563 vs. 587 (new code added, lack of cleaning)  
078/0241 \* 615 vs. 865 (DEC\_TYPE=3)  
078/0443 \* 910 vs. 911  
081/0301 \* 681 vs. 721  
083/0206 \* 191 vs. 863 (DEC\_TYPE=3)  
084/0777 0 vs. 70 (determined by going behind record)  
092/0675 (four records) \* 721/899 vs. 869

VARIABLE 30 - issue areas

This variable was not subject to a reliability check because it was computer generated.

VARIABLE 31 - direction of decision

The reliability check showed two errors in the Warren Court (agreement = 98.6 percent) and one error in the Burger Court (agreement = 99.5 percent). Failure to enter a "0" in a case in which the issue = 0 (098/0423). This is a trivial error because if ISSUE=0, directionality perforce equals 0. In 100/0692, the variable was left blank when it should have contained a "1." In 063/0325, which is a memorandum decision, DIR=2, not 1.

VARIABLE 32 - direction based on dissent

The reliability check produced no differences in either Court's sample.

VARIABLE 33 - type of decision

Complete agreement prevailed between all Burger Court records and all but one of those from the Warren Court. The error resulted because of failure to enter this datum in LED=006/0246.

VARIABLE 34 - multiple memorandum cases

This variable was not subject to reliability coding because the recoder would have had to check numerous cases other than those that were randomly selected.

VARIABLE 35 - disposition of the case

The four coding differences in the Warren Court sample occurred between "3" and "5" in 002/1097, and between "3" and "4" in 015/0026, 022/0535, and 023/0332. The substantive difference between these choices ranges from trivial to nonexistent. Nonetheless, they are errors, and agreement equals only 97.2 percent.

The Burger Court sample had only two discrepancies, both of which are errors. In 048/0775, a non-code entry appeared (an asterisk) to indicate "objections overruled." A typographical error occurred in 071/0234 ("1" versus "2"), which is evidenced by a common entry in the second record of this case. Agreement equals 98.6 percent.

VARIABLE 36 - unusual disposition

Inasmuch as the entry in the disposition variable controls the entry here, coding discrepancies become trivial when both coders entered the same datum in the DIS variable. This happened in the seven Warren Court records in which only one coder entered an asterisk in DISQ and in one of the two such Burger Court records. The disposition in the other Burger Court case – reversed in part – produced different dispositions: "2" versus "5." Hence, an error.

#### VARIABLE 37 - winning party

Two of the three errors in the Warren Court sample appear to have been an oversight because of the brevity of the per curiam decisions: 002/0355 and 002/1367. The other case is 003/1058. Identity, therefore, equals 97.9 percent.

Only one of the two Burger Court differences amounts to an error, albeit a careless one. Inasmuch as DIS=2 in 048/0039, the probability is high that WIN must contain a "1." In the other case, 025/0246, the Court's disposition was "denied and remanded." Hence, one may debate the propriety of a "1" in the WIN variable.

#### VARIABLE 38 - formal alteration of precedent

No differences emerged in the coding of either Court.

#### VARIABLE 39 - declaration of unconstitutionality

No coding differences occurred in either Court's sample.

#### VARIABLE 40 - the vote in the case

The reliability check showed four Warren Court discrepancies. Two occurred in memorandum decisions and resulted because these decisions do not always make clear the difference between "2" and "7" votes. (017/0078, 80 vs. 81; and 018/0458, 60 vs. 63). The discrepancy in 013/0527, 63 vs. 72, is not an error because variable 36 (vote not clearly specified) contains an entry in both data sets. An error, however, clearly occurred in 011/0757, 90 vs. 53. This case is a very lengthy decree. Decrees are almost always unanimous. I failed to notice the short dissent and the specification of non-participation at the end of the decree. Agreement, therefore, reaches 99.3 percent.

The following discrepancies occurred in the Burger Court sample. 024/0470 (70 vs. 71) is somewhat debatable. 046/0030 (81 vs. 72) is sloppy; the votes of the justices show two "2's" indi-

cating dissents. 047/0154 (62 vs. 53) is not an error because the case is double listed as a split vote -- i.e., ANALU=4. 057/0957 (90 vs. 72) and 066/0762 (61 vs. 52) are also not errors because variable 36 (vote not clearly specified) contains an appropriate entry. 058/0674 (81 vs. 72) is a careless error even though the case is a memorandum decision.

Therefore, two, or arguably, three errors, with agreement at either 99.1 or 98.6 percent.

#### VARIABLE 41 - vote not clearly specified

The two Warren Court discrepancies are merely that. The vote in both cases is the same, 90. The reason one coder made an entry in this variable was due to his inability to distinguish a regular from a special concurrence.

In the Burger Court, the two discrepancies concerned 057/0957 and 066/0762 in both of which the justices in question were "concurring and dissenting in part." Hence, no errors.

#### VARIABLES 42-70, 71-99, 100-128, 129-157, 158-184 - the individual justices' voting, opinions, and interagreements with other justices

The 28 total discrepancies that the Warren Court reliability check produced may be apportioned as follows:

a) Two involve interagreements (099/0453 and 010/0652). The former occurred because Clark's code was changed in midstream from "I" to "U." In cleaning, this change was overlooked. In the latter, Stewart is identified as joining himself rather than Douglas ("D" rather than the correct "C.") Identity, therefore, in the 108 Warren Court interagreements equals 98.1 percent.

b) Three cases in which the vote was not clearly specified (variable 36). The vote of one justice in each varied from that of the other coder: the two records of 001/0207 and 013/0527. Inasmuch as these discrepancies were formally noted in variable 36 of both data sets, they should not be viewed as errors here.

c) Four discrepancies in two memorandum decisions (017/0078 and 018/0458) between vote=2 and vote=7. Which they should be is very debatable.

d) Thirteen discrepancies in four records in which the only difference is between the two types of concurrences (vote=3 vs. vote=4): the two records in 002/1135, 022/0535, and 023/0656.

e) Six discrepancies that are truly errors: "31" vs. "1" in 004/0001; "1" vs. "41" in 010/1045; and "22" vs. "1," "2" vs. "1," "22" vs. "1," and "5" vs. "1" in 011/0757, which is also the case that produced the error in variable 35 (the vote in the

case). If only a), d), and e) are counted as errors, n=21, out of a total of 1337 entries (108 interagreements and 1229 votes).

Agreement, therefore equals 98.4 percent.

If only a) and e) are counted as errors, n=8, out of a total of 1337 entries. Agreement, therefore, equals 99.4 percent.

If errors are broken down by type of entry, they are as follows:

Two interagreements are wrong (a) out of a total of 108 interagreements: 98.1 percent identical.

Four opinions are wrong ("31" vs. "1," "1" vs. "41," "22" vs. "1," "22" vs. "1") [under e)] out of a total of 289 opinions: 98.6 percent agreement.

Fifteen votes are different (thirteen "3" vs. "4," one "2" vs. "1," and one "5" vs. "1") [under d) and e)] out of a total of 1229 votes: 98.8 percent agreement.

The 38 total discrepancies that appeared in the Burger Court reliability check divide as follows:

a) Six interagreements: 027/0792 occurs because the only reference to Harlan's agreement with Stewart's concurrence is found in an earlier decision. The two records of 071/0234 are typographical between "J" and "K." "K" wrote no opinion to join. The two records of 078/0443 produce a careless error. The entry should read "I" rather than "IJ." Finally, 089/0707 should read "E" rather than "F." "F" cannot join himself.

b) Five discrepancies in three cases in which the vote was not clearly specified (variable 41): 057/0957, 066/0762, and 088/0763. Because of the "1" in variable 41, these do not constitute errors.

c) Thirteen discrepancies in six memorandum decisions: 037/1020, 046/0270, 058/0674, the two records of 064/0278, and 080/0165. Two of these are debatable "3" vs. "4" concurrences. 037/1020 and 058/0674 contain three opinion errors.

d) One additional "3" vs. "4" concurrence (073/0690).

e) Eight other discrepancies: 024/0470 is a somewhat debatable "21" vs. "81." 028/0601 has a pair of "7's" that should be "8's." These probably resulted because of a midstream coding change. There was no code "8" originally. The two records of 031/0551 contain a debatable "1" vs. "4." 047/0154 is "21" vs. "41," but is no error because variable 3 (unit of analysis) identifies the case as split vote (i.e., ANALU=4). The two records in 064/0278 show Stevens with a blank rather than a "1."

If only the five incorrect entries in a), the eleven in c), the one in d), and the five in e) are counted as errors, n=22, out of a total of 2464 entries. Agreement, therefore, equals 99.1 percent.

If errors are broken down by type of entry, they are as follows:

Five interagreements are wrong out of a total of 226: 97.8 percent agreement.

Four opinions ("21"- "81," "21"- "2," "1"- "22," "21"- "22") out of a total of 386: 99.0 percent agreement.

Thirteen votes (eight "7" vs. "8," two "3" vs. "4," one "2" vs. "8," two blank vs. "1") out of a total of 1852: 99.3 percent agreement.

VARIABLES 187-215 - direction of the justices' votes

This variable was not subject to a reliability check because it was computer generated.

VARIABLES 216-244 - individual justice in majority or dissent

This variable was computer generated; hence no reliability check.

VARIABLE 245 - majority opinion assigner

This variable was not subject to a reliability check because it was computer generated.

VARIABLE 246 - majority opinion writer

This variable was not subject to a reliability check because it was computer generated.

VARIABLE 247 - minimum winning coalition

This variable was not subject to a reliability check because it was computer generated.