

Jan 2008

EXPANDED BURGER COURT JUDICIAL DATABASE
(1969-1985 TERMS)

Documentation

2007 Edition

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 S. Sidney Ulmer Project for
Research in Law and Judicial Politics

Department of Political Science
University of Kentucky

Professor Kirk Randazzo, Director

©Michigan State University, 2007
All rights reserved

INTRODUCTION

This database replaces the previous version of the Burger Court database. It differs from the earlier versions by the inclusion of what may be considered two appendices: one includes the Court's relisted cases and the other includes a sample of the petitions - mostly cert - that the Court denied. Relisted cases are identified by a distinctive unit of analysis: ANALU=6. Denied petitions by DEC_TYPE=8. Omitting both will leave the user with the contents of the existing Burger Court database. Users who so limit their research will find no changes from the original version of the Burger Court database other than correction of incidental errors, the addition of an additional code in a variable or two, **and - MOST IMPORTANTLY - the addition of a number of variables that pertain to the action of the court whose decision the Supreme Court did review.** These variables are specified on pp. 75-86.

In addition to the inclusion of lower court variables to all of the Burger Court's decided cases, the other important difference between this version of the database and its predecessors concerns the denied petitions; specifically the inclusion of a stratified random sample of the cases that the Burger Court refused to decide is provided. These added variables concern the relevant features of the decision of the lower court. As a result, comparisons may be made among the variables between granted and denied petitions. No longer will users be forced to select on the dependent variable.

Motivating the inclusion of these data - and the reason for NSF support - has been the lack of data requisite for testing and analyzing variables that putatively pertain to agenda setting. The objective for including these denied petitions, then, avoids selection on the dependent variable: E.g., we know the frequency with which the Supreme Court accepts cases involving specific issues, but we do not know the proportion of such cases petitioned the Court for review; we know a great deal about amici petitions addressed to the Supreme Court, but not about such petitions in the cases that were eventually petitioned for Supreme Court review. Does the presence of amici affect the likelihood of such petitions' acceptance? Does dissent in the court whose decision the Supreme Court is asked to review enhance acceptability? Or en banc decisions? Lower court declarations of unconstitutionality?

The Vinson-Warren Court database also contains conference vote data, but it includes only those cases in which there was some support for the granting of the petition. Thus, the Vinson-Warren Court database excludes deadlisted cases and those in which no justice voted to grant. By contrast, this database includes a stratified random sample of **all** dockets that the Court refused to review, including deadlisted cases and those that the justices unanimously refused to consider. Consequently, this

database **includes** within its universe of cases those that the *U.S. Reports* specifies as certiorari denied, dismissed under a specific Court rule, vacated and remanded on appeal, or affirmed or dismissed on appeal. It **excludes** all granted cert petitions, appeals in which probable jurisdiction is noted or postponed, miscellaneous orders, and petitions for rehearing. Virtually all rehearings are denied, as are a substantial portion of the miscellaneous orders.

This database, then, provides users for the first time with data necessary to investigate the Court's agenda setting behavior over a substantial number of sequential terms: here the entire Burger Court, 1969-1986. These additional data have been added not only for cases denied review but also to all those that the Court decided: DEC_TYPES =1, 2, 4, 5, 6, and 7.

Discussions with users of the existing databases indicated that a random sample of 3.5 percent stratified by term would suffice. The actual percentage is 3.64 percent. The database spans only the Burger Court and utilizes the docket books of Justices Brennan and Douglas for conference voting data. Powell's docket books do not include conference vote data, and at the time the data were compiled, coded, and entered into the database Blackmun had not yet released his Court materials, which, in any event, do not include the Burger Court's first two terms and most of the third.

Stratification was accomplished by randomly determining which in the sequence of dockets would begin the count for each term and then proceeding at a rate that would produce a term percentage of approximately 3.5 percent. This meant the selection of every 27th case. Because of the incidence of cases with neither a citation to the case the Supreme Court declined to review, nor to a case retrievable from Lexis or Westlaw, either the case preceding or succeeding the 27th was chosen alternating between the previous and succeeding one. Note that the unit of analysis is docket number, not case citation.

The foregoing decision rules produced a total of 60,461 denied Burger Court dockets, of which 2203 have been sampled and included in this database.

It bears mentioning that the parties to the case (PARTY_1 and PARTY_2) are those listed in the *United States Reports* even though these names may differ from those in the case the Supreme Court was asked to review. The order in which the two parties appear is that contained in the *Reports*, not that of the lower court opinion.

The inclusion of denied petitions requires the addition of new codes to two of the variables in the Burger Court database. The

more important is the addition of an "8" to the types of decision the database contains (DEC_TYPE). This is necessary to distinguish the denied petitions from those that the Court did review (DEC_TYPES = 1, 2, 4, 5, 6, 7), along with the denied petitions in which one or more of the justices wrote an opinion (DEC_TYPE = 3). The original Burger Court database included all denied petitions that contain an opinion. These appear as DEC_TYPE = 3. **To avoid duplication, do not conflate DEC_TYPES 3 and 8.**

The other code added to an existing variable is a reference to en banc decisions that appears in the J3 variable. A '1' in the latter variable indicates that a three-judge district court decided the case; a '2' that a court of appeals decided the matter en banc.

One additional variable was slightly qualified: the direction of the decision of the court that the Supreme Court was asked to review (LCTDIR). For DEC_TYPE=8 decisions, LCTDIR is based on the direction of the main issue that the lower court decided. Thus, a decision that affirms a conviction but remands for consideration of probation is considered conservative (=0) rather than liberal (=1). E.g., 439 U.S. 841.

Because many users will want to use the agenda setting variables exclusively, they are listed and described together at the end of this documentation, pp. 74-86.

INTRODUCTION TO THE PRECEDING VERSION

Although one normally acknowledges others' assistance at the

end of an introduction, that rendered by Lee Epstein warrants up front recognition. In joint endeavors, of which this database is one, Lee typically takes charge and exerts magnificent task leadership. She assigns responsibilities, rides herd on their performance, and skillfully and efficiently puts all the pieces together into the final product. In this endeavor, however, Lee did what, in other contexts, is defined as the 'grunt' work. She gathered a group of her students, traipsed off to the Library of Congress, and painstakingly and systematically copied the docket and assignment sheets of Justices Brennan, Douglas, and Marshall, along with the assignment sheets of Chief Justice Burger. She and her students then ventured into the heart of Appalachia and did the same with respect to the papers of Justice Powell. Without the monotonous drudgery that that labor entailed, this database would not exist.

I have relied most heavily on Justice Powell's conference materials because he provides much more information about the justices' preliminary and conference votes than Brennan or Douglas. For the terms prior to Powell's confirmation in December, 1971, I relied more or less equally on Brennan and Douglas.

The cursory and sketchy nature of their docket sheets, plus Brennan's erasures and overwriting of initial votes, made them markedly less useful than the work of Powell. Justice Marshall made his materials available only for the last term of the Burger Court, 1985.

Note that a few records with a report vote lack either a preliminary and/or a merits vote. This likely resulted because the case was held until a related case was considered and no separate vote was taken in the case whose data are lacking.

Also note that I count 'join 3' and 'join 4' as granting the petition at issue even though these 'join' votes did not produce the minimum necessary to grant the petition. Further note that some 'join 3' votes make no sense as said justice -- voting in order of seniority -- knows that at least three justices have already voted to grant. The explanation for this would seem to be that such justices have determined their vote in advance of the conference and stick to it even though superfluous.

Finally, where two preliminary votes taken within a span of two weeks produce an identical vote, I count it as only one. These are sufficiently numerous that the redundant coding would have proven to be onerous and of not much use. Compilation of relisting will identify these instances and incorporate the relevant behaviors into this database.

This introduction assumes that the reader is familiar with the contents and use of the *Original United States Supreme Court Judicial Database*. If not, skip this section and turn to the general introduction on p. v.

In order to accommodate the justices' conference votes, the database contains eight vote variables. The first, identified by the number '1' (e.g., OCON1, BURG1) indicates whether the case arose on certiorari or appeal, the vote of the participating

justices, the date the vote was cast, the direction of the vote, and whether the petitioning party won. Inasmuch as direction does not pertain to votes to hear cases, no direction (liberal, conservative, indeterminate) applies to these preliminary votes.

The second set of votes and associated variables -- the conference vote on the merits -- is identified with the number '2,' while the third set -- the report vote and its variables -- is largely without numerical identification. These three are dedicated fields: they invariably contain the **final** preliminary, merits, and report vote taken in the case in question. The remaining vote fields -- '4' through '8' -- contain other votes cast in the case in chronological order.

Finally, my own reference to and use of the database reveals errors. I correct them as they come to my attention. Hence, users should periodically check the University of Kentucky website

<http://www.as.uky.edu/polisci/ulmerproject/sctdata.htm>

so they may acquire the most current version of the database.

I urgently request users to contact me about any real or apparent errors or omissions in the database. Though the reliability check indicated few coding errors, some undoubtedly remain. I would much appreciate being so informed. Other data entries may simply make no sense. Please call these to my attention also. I may be contacted through the following addresses:

Harold J. Spaeth, Research Professor of Law, IPPSR, 321
Berkey Hall, Michigan State University, East Lansing MI
48824; 517-355-6583; fax: 517-432-1594; e-mail:
spaeth@msu.edu

In addition to Lee Epstein, I wish to thank Jeff Segal of the State University of New York at Stony Brook for continuing to respond to my inquiries and to make his own suggestions about all phases and aspects of the database. His counsel is unfailingly keen and wise. Two of my Ph.D.'s have alleviated my less than efficient use of SPSS: Sara C. Benesh, formerly of the University of New Orleans, and now of the University of Wisconsin-Milwaukee, and Wendy L. Martinek of the State University of New York at Binghamton. Along with Lee Epstein and her students, this database would not have seen the light of day without the wholehearted and unstinting support and assistance provided by the Archivist at the Washington and Lee University School of Law, John N. Jacob, and the financial support of the Law and Social Science Program of the National Science Foundation, grant numbers SBR-9614000 and SBR-9614130.

Table of Contents

variable (ACRONYM)	pages
Identification Variables and Their Acronyms)	
case citations (US, LED, SCT)	1
docket number (DOCKET)	1
unit of analysis (ANALU)	1
number of records per unit of analysis (REC)	3
Background Variables	
manner in which the Court takes jurisdiction (JUR)	6
administrative action preceding litigation (ADMIN) . . . . .	.6
three-judge district court (J3) . . . . .	.11
origin of case (ORIGIN)	11
source of case (SOURCE) . . . . .	.12
lower court disagreement (DISS) . . . . .	.12
reason for granting cert (CERT) . . . . .	.13
parties (PARTY_1, PARTY_2)	13
disposition of case by court whose decision the Supreme Court reviewed (LODIS)	24
direction of the lower court's decision (LCTDIR)	24
Chronological Variables	
date of oral argument (ORAL)	25
reargument date (REORAL)	25

decision date (DEC) . . . . .	.25
term of Court (TERM)	25
natural court (NATCT) . . . . .	.25
date of opinion assignment (AUTDATE1, AUTDATE2, AUTDATE3)	26
dates votes occurred (VOTEDAT1-VOTEDAT2, VOTEDAT4-VOTEDAT8)	26

Substantive Variables

legal provisions considered by the Court (LAW). .26	.26
multiple legal provisions (LAWS) . . . . .	.35
authority for decision (AUTH_DEC).	35
issue (ISSUE)	36
issue areas (VALUE) . . . . .	.47
direction of decision (DIR, MDIR, DIR4, DIR5, DIR6, DIR7, DIR8)	47
direction of decision based on dissent (DIRD). .	50

Outcome Variables

type of decision (DEC_TYPE)	51
disposition of case (DIS) . . . . .	.52
unusual disposition (DISQ) . . . . .	.53
winning party (WIN) . . . . .	.53
formal alteration of precedent (ALT_PREC) . . .	.53
declarations of unconstitutionality (UNCON) . .	.54
opinion assigner (ASSIGNR1, ASSIGNR2) . . . . .	.55
opinion assignee (AUT1ST, AUT2ND, AUT3RD). . . .	55

Voting and Opinion Variables

the vote in the case (VOTE)	55
vote not clearly specified (VOTEQ)	56
minimum winning coalition (MWC, MWCMRTS)	56
the coded preliminary, merits, and other nonfinal votes of the individual justices (OCON1 to BLC1, BURG2 to BLC2, MAR4 to OCON4 . . . MAR8 to OCON8)	59
the dichotomized preliminary and merits votes (OCON1GD to BLC1GD, BURG2RA to BLC2RA)	60
the report votes, opinions, and interagree- ments of the individual justices (MAR to OCON, MARV to OCONV, MARO to OCONO, MARA1 to OCONA1, MARA2 to OCONA2)	61
direction of the individual justices' votes (MARDIR to STWTDIR, MAR2DIR to OCON2DIR)	66
majority and minority voting by justice (MARMAJ to OCONMAJ, MAR2MAJ to OCON2MAJ)	66

RELISTING ON THE BURGER COURT. . . 66

Relisting Variables

source of relisting (RELIST)	68
relisting justice (LISTJ)	68
total number of relistings (NO_LIST).	68
number of days a justice's relisting lasted (LENGTH)	69
total number of days a case's relisting lasted (TOTAL)	69
reason for relister's action (REASON).	69
whether relister won or lost (WON).	70

change in number of votes supporting relister
(CHANGE) 72

questionable vote (Q) 73

SAMPLE OF DENIED PETITIONS 74

Introduction: Discrepancies between Related
Lower Court and Supreme Court Variables . . . 74

lower court unit of analysis (LOANALU) 75

number of records per unit of analysis (LOREC).76

 New Agenda Setting Variables 76

no lower court information (NO_LCT_INFO). . . . 77

lower court direction (LCTDIR). 77

lower court dissent (LODISS). 78

lower court administration (LOADMIN). 78

legal provision considered by the lower court
(LOLAW). 78

multiple lower court legal provisions (LOLAWS).78

lower court authority for decision (LOAUTHDEC).79

lower court issue (LOISSUE). 79

lower court issue area (LOVALUE). 81

amici participation in lower court decision
(LCTAMICI). 81

lower court declarations of unconstitutionality
(LOUNCON) 81

miscellaneous observations 81

voting in cases denied review 82

 Procedures and Caveats for Comparing
 Lower Court Decisions with Those of the

Supreme Court	83
Suggestions and Caveats for Analyzing Various Features of the Expanded Burger Court Database.	85
reliability check. . . . .	.86

NOTE: Throughout the database missing data results 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," an "8," a "9," or a "." will appear. The variable's type and the value codes for the variable will indicate which of these it is.

Also note that because most of the variables were entered prior to the availability of LEXUS or WESTLAW, the origin of the case and the parties in some cases are marked with a "?." Except for time constraints I could now enter these data. However, for those who wish to know this information, the relevant case can be consulted on-line and the data entered into the user's copy of the database.

identification variables

case citations (US, LED, SCT)

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*.

Not every record is cited to each source. The Lawyers' Edition, for example, does not contain *Olin Mathieson Chemical Corp. v. N.L.R.B.*, 352 U.S. 1020 (1957). 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.

docket number (DOCKET)

Beginning with the 1970 term, the Court changed its method of numbering dockets. The last two digits of the term now precede the number assigned the case. Prior to 1970, a docket was not identified by reference to the Court's term. Hence, cases from different terms could have the same docket number.

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 computer-

ized 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 options available are specified in the values SPSS lists for this variable. 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, the court whose decision the Supreme Court reviewed, the parties to the case, the "direction" of the Court's decision, direction based on dissent, the disposition the Court made of the case, or an unusual disposition. 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 or issues 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.

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 and docket number in which one or more of the justices voted with the majority on one issue or aspect of the case and dissented on another. 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.

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 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	99-8	1A	0
366/0666	99-8	5ADP	3
366/0666	99-8	RICO	3
366/0666	99-8	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.

Note that analu=6 are relisted cases. These are described in the section, Relisting on the Burger Court (pp. 66-73).

Important caveat: If you are unconcerned with lower court action, be sure to exclude from consideration all records with LED=*. These are records in which the lower court decided more issues or addressed more legal provisions than the Supreme Court. This warning applies regardless of the unit of analysis employed.

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" 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.

REC 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.

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 unless the docket number of the first case is higher than

that of the second or any succeeding case. 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. 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.

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 unless its docket number is higher than that of another docket number of that case.

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. 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 determine 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.

Background Variables

manner in which the Court takes jurisdiction (JUR)

The database specifies the values of this variable.

administrative action preceding litigation (ADMIN)

The activity in question 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.

An entry should appear in this variable if there is reference to action by a "board," "commission," "department," or "agency," or to "administrative" action; or if there is application of agency "rules," "guidelines," "regulations," or reme-

dies"; 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.

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

Attorney general preclearance actions pertaining to voting.

Actions of courts martial.

Land condemnation suits and quiet title actions commenced 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
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 Commissioner
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
 FCUA = Federal Credit Union Administration
 FCC = Federal Communications Commission
 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 inter-
 state 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
 Naturalization 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 Administra-
 tor
 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 Stabiliza-
 tion Act of 1970)
 PBGC = Pension Benefit Guaranty Corporation
 PHS = U.S. Public Health Service
 PRC = Postal Rate Commission
 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 Gen-
 eral, 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.

three-judge district court and en banc decisions (J3)

This variable will contain an entry (=1) if the case was heard by a three-judge federal district court. It contains a 2 if a court of appeals decided the case en banc.

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:

CIT = Court of International Trade
CCPA = Court of Customs and Patent Appeals
CTCL = Court of Claims, Court of Federal Claims
CTMA = Court of Military Appeals, renamed as Court

of Appeals for the Armed forces
CTVA = Court of Veterans Appeals
CTMR = Court of Military Review
CUST = Customs Court
FEDC = Court of Appeals for the Federal Circuit
TAX = Tax Court
TECA = Temporary Emergency Court of Appeals

This variable lacks an entry if the case only involved proceedings in the Supreme Court itself (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.

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 should be the same as here. This variable lacks an entry if the case involved no proceedings other than in the Supreme Court itself.

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 the Supreme Court's decision does not specify, a reference to a dissent in the court below by a member of the Supreme Court who wrote a separate opinion suffices for an entry in this variable.

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. 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 informally decided (memorandum) cases 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. Inasmuch as none of the memorandum cases contain a majority opinion, a '1' will appear in this variable if any opinion in such a case indicates that a

lower court dissent did occur.

Note that the focus of this variable is a statement that a dissent occurred rather than the fact of such an occurrence. Presumably, the fact of a dissent is not always mentioned in the majority opinion. It may be irrelevant.

Complementing this variable is lower court dissent (LODISS), which is located among the new agenda setting variables (see p. 78). LODISS is coded for any statement in the lower court reports that a particular judge dissented.

reason for granting certiorari (CERT)

The focus in this variable is on the reason the majority gives for granting cert. Many majority opinions state, "The question presented is . . ." This is not a reason for granting cert; neither are its variations: e.g., "At issue in this case is . . ." The 12 reasons specified are reduced to four in the variable, **conflict etc.**

Accordingly, this variable will have no entry 1) if the case did not arise on writ of certiorari, or 2) if it did arise on cert but is an informally decided back-of-the-book (memorandum) decision or was decided by a tied vote.

SPSS specifies the values of these variables.

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, defendant, or 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 variable, 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.

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.

In criminal and habeas corpus cases, the name of the state that 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
(__SCHDIST)

__ 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 those of a county, city, town, township, village, or borough (__ CITY, __ COUNT)

__ 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 (__ BD ED)

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, WHOLESALE)

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 applicant or law student, or law firm

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, SHIPPER, TRUCK)

BOOK = bookstore, newsstand, printer, bindery, purveyor or distributor 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, NON
PROFIT)

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 production, 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 (O)

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-employment 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 (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 pipe

line 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 (RA-
DIO, 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, DEVEL-
OPER, 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, PIPE-
LINE, 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 (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 educa-
tional 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 (FARM-
ER)

TOURIST = person traveling or wishing to travel abroad, or
overseas 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)

**disposition of case by court 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 the type of decision variable), 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 the JUR variable). Memorandum cases will usually not contain an entry in this variable because the Court does not provide this information.

SPSS lists the values of this variable.

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, conservative, or indeterminate as these terms are defined in the direction of decision variables. For further specification of

this variable, see lower court direction on p. 77.

Chronological Variables

date of oral argument (ORAL)

The year, month, and day 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 the type of decision variable) ORAL is empty.

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

reargument date (REORAL)

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

decision date (DEC)

This variable contains the year, month, and day that the Court announced its decision in the case. Unlike the two preceding variables, every case must contain a date of decision.

term of Court (TERM)

This variable identifies the various terms of the Burger Court.

natural court (NATCT)

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 Journal* 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 justices even if lengthy vacancies occurred.

The database divides the Burger Court 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.

date of opinion assignment (AUTDATE1,AUTDATE2,AUTDATE3)

These variables show the dates, in chronological order, on which the opinion assigner(s) made the assignment. These dates are drawn from the Burger's assignment books. In a few cases, the books list no assignee.

dates votes occurred (VOTEDAT1-VOTEDAT2, VOTEDAT4-VOTEDAT8)

These variables specify the date on which the justices cast their votes in the case. Note that the date of the final report vote is DEC.

Dates appear in these variables corresponding to the associated vote (VOTETYP). If no associated VOTETYP exists, this variable lacks an entry.

Substantive Variables

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) that a case concerns 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 this summary to determine the legal provisions at issue because it is 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 this criterion with a set of subordinate decision rules. If the summary 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 be empty 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.

The order in which the LAW entries appear in the records of

a specific docket number bears no necessary relationship to their importance to the resolution of the case. Such a judgment entails too much subjectivity. Instead, the order of the LAW entries generally follows the sequence in which they appear in the summary. As a general rule, jurisdictional considerations precede a discussion of the substantive legal provisions that the case concerns. Indeed, the legal heart of a case may be the last of several legal provisions that the Court considered, or otherwise interspersed among a number that are only peripheral to the Court's decision.

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. 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.

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. 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 concerns 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. The same situation may characterize the statute under which a court exercises jurisdiction.

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.

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 be empty 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 the authority for decision variable.)

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

The list of the provisions at issue follows:

11 = delegation of powers
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
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
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 refer-
ence 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 9] 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
 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, as amended, except for RICO (q.v.) portion
 HAND = Education of the Handicapped, or Education for All Handicapped Children Acts; also see ADA
 HC = 28 USC 2241-2255 (habeas corpus), as amended
 HOUS = Fair Housing
 ICA = Interstate Commerce, as amended
 INA = Immigration and Naturalization, Immigration, or Nationality Acts, as amended
 IRC = Internal Revenue Code
 ISA = Internal Security
 JENK = Jencks
 JONE = Jones
 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
 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
 SMIT = Smith, Subversive Activities Control, Communist

Control, or other similar federal legislation except the Internal Security Act (qv.)

SSA = Social Security, 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

TIL = Truth in Lending

TORT = Federal Tort Claims

TUCK = Tucker

TWE = Trading with the Enemy Act, as amended

UCMJ = Universal Code of Military Justice, Articles of War

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

CRMP = Federal Rules of Criminal Procedure

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 or local law, ordinance, or regulation

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 TERRITORY.

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.

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. 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).

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. A '1' in this variable indicates the presence of multiple legal provisions.

The '1' 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.

authority for decision (AUTH_DEC)

This variable specifies the bases on which the Supreme Court rested its decision with regard to each legal provision that the Court considered in the case. SPSS lists the values. One of them may be combined 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. 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 before the other.

AUTH_DEC will have an entry in every record that is not a memorandum case.

Considerable congruence should obtain between the entry in the AUTHDEC variables and the code that appears in the LAW vari-

able (variable 33). Thus, if a constitutional provision appears in the LAW variable, a '1' or a '2' will typically appear. Similarly, if LAW displays a statute, a '4' should appear. 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).

issue (ISSUE)

This variable identifies the context in which the legal basis for decision 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 criminal 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 commonly disregards.

Unlike the LAW variable where the number of legal provisions at issue has no preordained upper bound, an issue should not apply to more than a single legal provision. 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, only about three percent have a legal basis for decision that applies to a second issue.

I have identified more than 260 numerical issues which 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, of 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.

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 area 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 the variable legal provisions considered by the Court. Thus, if the right to counsel is your focus, issues 030 and 381-382 will fall within your compass, as will code "6ACO" from the LAW variable. Also recognize that the parties variables 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 constitutional 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
- 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 (NOTE: issue may occasionally be constitutionally based; check LAW variable to determine)
 - 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.
- ___ 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
 - 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, religion, illegitimacy, national origin, age, 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 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, regulations, and orders
- 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 employ-

ees 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
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, 618): 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 actions against government or governmental officials other than defense of criminal actions brought under a civil rights action. These 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 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 or federal 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 or federal 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 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 (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 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.
- 920 Submerged Lands Act (cf. 900)
- national supremacy: in the context of federal-state constitutional conflicts involving the general welfare, supremacy, or interstate commerce clauses, or the 21st 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

issue areas (VALUE)

This variable simply separates the issues identified in the preceding variable into the discrete issue areas that the issue variable contains. These are listed in SPSS.

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).

direction of decision (DIR, MDIR, DIR4, DIR5, DIR6, DIR7, DIR8)

Specification of direction comports with conventional usage for the most part except for the interstate relations and the miscellaneous issues. A 0 has been entered in the respective DIR variables 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 a conservative outcome.

Direction is rarely specified in any informally decided cases (DEC_TYPE = 3, either because the vote in such cases is a preliminary one and as such not amenable to direction or because of a lack of information identifying the issue in the case. In formally decided cases, a 0 may appear in one of the other of the DIR variables. Such an entry does not indicate a change in the

direction of the Court's decision, but rather the absence of a merits vote or a report vote independent of that in another case docketed under the same citation as the docket with DIR=0. E.g., *Colgate-Palmolive Co. v. Cook Chemical Co.*, docket 43, 383 U.S. 1, in which the justices cast no report vote separate from that cast in the other two cases decided under this same citation.

Direction differs from one vote to another in a given docket only if between or among given DIR votes some =1 while others =2.

The DIR variable governs the formal vote in the case based on the issue to which the specific record in the case pertains. Recall that some dockets display multiple issues, with those beyond the first identified by ANALU=2. Each such issue need not be resolved in the same direction as the others. Thus, for example, a federalism issue may be decided conservatively (pro-state) while its economic regulatory component produces a liberal (anti-business) outcome.

DIR governs the direction of the case's final report vote; MDIR the direction of the case's final conference vote on the merits; DIR4-DIR8 the direction of any merits or report votes that the case contains other than the final one.

In order to determine whether the Court supported or opposed the issue to which a given case pertains, 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 supporting 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-accountability in campaign spending
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
pro-attorney
pro-disclosure in 537 issues except for employment and student records

2 = 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-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

2 = 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

2 = reverse of above

in the context of issues pertaining to federalism

1 = pro-federal power

anti-state

2 = reverse of above

in the context of issues pertaining to federal taxation

1 = pro-United States

2 = pro-taxpayer

in interstate relations and miscellaneous issues

0 for all such cases

This variable will also contain a 0 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 is to have direction assigned for each issue in accordance with the above schedule.

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 asterisk should appear in this variable. Thus, in the foregoing example, the direction of decision variable should contain a 2 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.

DIRD variables governing the other votes that the database includes are superfluous because the votes in these other variables either lack supporting opinions -- i.e., merits votes -- or are entered strictly in accord with the disposition the individual justice makes of the controversy; e.g., affirm, reverse, modify.

The appearance of a 1 in the DIRD variable will undoubtedly signal a discrepancy between the final vote as I have designated it and the alternative coding of this vote that the database also provides: the VOTE (see the vote in the case, variable 58). As for the merits vote, the docket books supply only the justices' votes. Direction, therefore, literally derives from these votes

and not from more or less incremental differences in the relief that one justice would provide as compared to that afforded by another justice.

Outcome Variables

type of decision (DEC_TYPE)

Choice of a unit of analysis 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. The database contains only the small fraction in which at least one justice wrote an opinion.

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. Use of the justices' docket books rather than the Reports has enabled us to include how each of the participating justices voted in these cases (see

variables MAR to OCON).

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. This is not to say that no justice was assigned to write the Court's opinion in these cases, but rather that the Court's opinion lacks a named author. The chief justice's assignment sheets show an opinion assignment in many of these cases (see variables 52, 53). Nonetheless, these unsigned, orally argued cases are labeled as decided "per curiam." The difference between this type and DEC_TYPE=2 is the presence 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. Unless you are interested only in the authors of the opinions of the Court, DEC_TYPE=7 should be included in any analysis of the Court's formally decided cases.

The database contains all citations in which at least one docket was subject to at least one vote as documented by the justices' docket books. Consequently, the database contains all types 1, 4, 5, 6 and 7 except those arising under the Court's original jurisdiction.

DEC_TYPE=8: Summary denial or dismissal. This decision type consists solely of a stratified random sample of cases in which the Supreme Court denied the petition to review the lower court's decision. For further information, see the section, sample of denied petitions, pp. 74-83.

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.

SPSS specifies the values of this variable. They are substantially the same as those in LODIS.

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 (ANALU) rather than case citation.

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.

winning party (WIN, MWIN, WIN4, WIN5, WIN6, WIN7, WIN8)

A '1' in any of these variables indicates that the petitioning party -- i.e., the plaintiff or the appellant -- emerged victorious from the specific vote to which the particular 'win' variable applies.

Note that the MWIN, WIN4, WIN5, WIN6, WIN7, and WIN8 variables appear with the set of final conference vote data (BURG2 to BLC2) and the sets of nonfinal vote data (MAR4-OCN4 . . . MAR8-OCN8).

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 these variables rather than the disposition variables (DIS and DISQ) to determine the prevailing party.

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*, 99 L Ed 2d 879 (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 1949 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 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.

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.

An entry should appear in the record that lists the law declared unconstitutional. An entry should also appear in the record containing the constitutional or statutory 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, and *McElroy v. Guagliardo*, 361 U.S. 281 (1960).

Where federal law pre-empts a state statute or a local ordinance, unconstitutionality does not result unless the Court's opinion so states.

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.

opinion assigner (ASSIGNR1, ASSIGNR2)

These variables contain the name of the justice who assigned the Court's opinion. The second of these variables is empty if only one assignment was made. The same justice's name may appear in both variables if he made more than a single assignment in the case. This occasionally occurs. The assignment made by ASSIGNR1

always occurred prior to that made by ASSIGNR2. In a handful of cases the Court made three assignments -- too few to warrant a separate variable. These cases may be identified by reference to those having a third assignee (see variable 56).

Determination of who made the assignment was had by reference to the assignment sheets of the chief justices.

Do note that the identified assigner does not always appear as a member of the majority opinion coalition. Burger was reputed to switch his vote frequently in order to control the opinion assignment. That presumably happened in these cases. Also note that orally argued per curiam decisions (DEC_TYPE=6) not uncommonly list an assigner as well as an assignee who is not a member of the majority opinion coalition. The fact that these are per curiam decisions probably produced a degree of informality on the part of both assigner and assignee.

opinion assignee (AUT1ST, AUT2ND, AUT3RD)

These variables list the name of the justice who was assigned the opinion of the Court. Multiple assignments are not uncommon. The original assignee may lose his majority; he may decline the task after the fact; or the opinion may be announced per curiam even though an assignment was made.

Where more than one assignment occurred, or where the same justice was twice assigned a case, the assignees are listed in chronological order. In no case did the Court make more than three assignments.

Voting and Opinion Variables

The remaining variables except cover the range of judicial voting behavior. The database considers voting from a number of different standpoints and perspectives as these variables indicate. Because voting is key to most uses to which the database will be put, users should become thoroughly familiar with these data and their interrelationships.

the vote in the case (VOTE)

This variable specifies the vote in the case as determined by reference to the Court's published reports. Voting conventions differ among scholars. In compiling the VOTE, I count justices who filed a jurisdictional dissent as not participating in the decision. The fact that a vote is labeled a concurrence or a dissent does not necessarily make it so; VOTE involves my

exercise of discretion. Thus, it is sometimes facially unclear whether a given vote is a concurrence or a dissent.

The decision rules governing entries in the VOTE variable may be found below. 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, DIS) and not to the justices' vote on any particular issue in the case except where the unit of analysis (ANALU) = 4. 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.

To reiterate, only dissents on the merits are specified in the VOTE variable. Jurisdictional dissents as well as dissents from the denial of certiorari (see the discussion of these votes in the report votes, opinions, and interagreements of the individual justices) are counted as though the justice so voting did not participate in the case.

vote not clearly specified (VOTEQ)

If the vote in the case is unclear, this variable will so indicate.

minimum winning coalitions (MWC, MWCMRTS)

These variables contain a '1' if the final report vote or merits vote in the case was decided by a margin of one vote. (Tied votes are not included because they contain no majority or plurality opinion and, as such, only automatically affirm the decision of the lower court without explanation.) Minimum winning coalitions are those decided 5-4 and 4-3, or by a 5-3 or 4-2 vote that reverses the decision of the lower court.

* * * * *

The next four sets of variables specify the votes of the individual justices in the types of votes that the Court takes in the individual cases on its dockets. Coupled with the justices' votes are the type of vote that the Court took (VOTETYP_), how many votes of that type the Court cast in the case (SEQ_), whether the vote was unclear (_VOTEQ), whether the petitioning party won or lost (WIN_), and the voting division that resulted (VOTE_).

We begin with VOTETYP. VOTETYP1 is the final preliminary vote cast in the case, typically either a writ of certiorari or

appeal. Because variable 7 (manner in which the Court took jurisdiction) indicates which it is, VOTETYP1 contains no entry for most cases. In analyses limited to formally decided cases; i.e., anything other than summary, or memorandum, decisions (see type of decision, variable 46), VOTETYP2 is invariably the final MRTS vote. Like VOTETYP1, I have left this variable blank simply because of its invariant character. If, however, variable 46 indicates that the case is a summary decision, a vote other than the final merits vote may appear in VOTETYP2 -- for the obvious reason that summary decisions, by definition, contain no MRTS vote. The database contains no VOTETYP3, which is the final report vote, because this information is adequately provided in variable 46 (type of decision). To determine whether a case contains a final report vote and its character, select dec_type=1, 6, and 7).

All entries in VOTETYP4 through VOTETYP8 are nonfinal votes of various types. A vote of any name may appear in any of these variables for any given case, whether formally or informally decided. The various nonfinal votes appear in VOTETYP4-VOTETYP8 in chronological order.

To repeat, apart from summarily decided cases, VOTETYP1 will always contain the **final** cert vote or, in a case arising on a writ of appeal, the **final** vote noting probable jurisdiction. VOTETYP2 will always be the **final** merits vote.

As explained in the preceding paragraph, the database's vote variables are of three types: preliminary, merits, and report. Excluding the informally decided cases, the first vote type variable (VOTETYP1) contains the last preliminary vote preceding the last merits vote cast in the case: almost always the grant or denial of certiorari or a writ of appeal. The second variable (VOTETYP2) holds the final merits vote cast preceding the final report vote. If the justices did not cast one or the other of these votes in a particular case, the dedicated votetype variable has no entry. Preliminary, merits, and report votes other than as specified are **nonfinal** and locate in variables subsequent to the third (VOTETYP4-VOTETYP8).

In many cases the justices do cast more than one cert or merits votes. Rarely more than a single report vote, however. In order to ascertain the number of such votes of a given VOTETYP the case has, a sequence (SEQ_) of vote type variables was created. Thus, if three cert votes were cast in a given case prior to the final merits vote, VOTETYP1 = CERT and SEQ1 = 3. If these are the only multiple votes, VOTETYP4 and VOTETYP5 will also read CERT, with SEQ4 = 1 and SEQ5 = 2.

Apart from the dedicated VOTE variables, VOTETYP4 through VOTETYP8 appear in chronological order. Thus, if a case has three 'dismiss' votes and no other multiples, they will be listed as 'dismiss' in chronological order in VOTETYP4, VOTETYP5, and VOTETYP6, with SEQ4=1, SEQ5=2, and SEQ6=3. The final 'dismiss' will not appear as VOTETYP1 in any formally decided case because it is neither a cert nor a note probable jurisdiction vote.

In the vast majority of cases, the individual justices

clearly indicate whether or not they agree with the disposition (see variables 47, 48) made by the majority. In a few 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. With regard to the final report vote a close reading of the justice's opinion usually indicates whether he has concurred (i.e., agreed with the majority's disposition) or dissented from the disposition made by the majority. Opinions, of course, rarely accompany votes other than the report vote. Hence, in the rare case where a justice does not clearly indicate his vote, a '1' will appear in the relevant variable.

This datum is not provided for the fifth through eighth VOTETYPs of any record: only for the variables PVOTEQ, MVOTEQ, VOTEQ, and VOTEQ4.

Associated with the justices' votes for each type of vote cast in a case is a summary total of the voting division: PVOTE, MVOTE, VOTE4-VOTE8. The vote in the case (variable 57) specifies the final report vote. Except for summary back-of-the-book decisions; i.e., DEC_TYPE=3, these votes are systemically allocated. PVOTE will always contain the final cert vote or the vote noting probable jurisdiction that antedates the final merits vote (MVOTE). Thus, if a case has three cert votes two of which antedate the first of two merits votes, the PVOTE will be the third cert vote. Similarly, the MVOTE always contains the last conference vote on the merits preceding the final report vote that the justices cast in the case governed by the citation. In the foregoing example, the second merits vote. Other votes will invariably appear in chronological order in VOTE4 to VOTE8. Thus, in the example the first PVOTE would appear in VOTE4, the second in VOTE5, and the first merits vote in VOTE6. If this case also contained an amicus or other preliminary vote other than cert or noting probable jurisdiction, it would appear in chronological order beginning with VOTE4 and not after VOTE8.

This unvarying pattern does not apply to DEC_TYPE=3 decisions (memorandum decisions). Strict chronological sequencing governs their order.

The specific vote that may appear in the PVOTE variable or in any VOTE variable of an informally decided case may range from 90 to 10 if the action requested has been granted or 1 to 9 if the action was denied. Of course, no justice need necessarily cast a substantive vote in which case the relevant VOTE variable = 0.

Not uncommonly only a couple of the justices may participate in preliminary votes. Formally decided cases, however, require a quorum -- six justices. Other than in preliminary votes of what-

ever name, the larger vote always appears first, followed by the dissenting votes, if any. If none, a zero is entered. By relating the vote to the direction of decision variables, one can ascertain whether the case was conservatively or liberally decided. Direction, however, does not apply to preliminary votes. These indicate only the grant or denial of the specified action. Determination of which course the justices took is most directly obtained by cueing on the column containing the larger number. If the first column, the Court acceded to the requested action; if the second, it did not. If the participating justices unanimously denied the request, the first column will be empty. In numerical variables, such as this, SPSS produces no entry if a 0 has been entered in the second last column.

**the coded preliminary, merits, and report votes of
the individual justices**
(OCON1 TO BLC1, BURG2 TO BLC2, MAR4 TO OCON4 . . . MAR8 TO OCON8)

Associated with the preceding variables (VOTETYP, SEQ, VOTEQ, WIN, and VOTE) are the votes of the individual justices arrayed in eight distinctive sets, seven of which are explained here.

These variables include the coded votes of each justice in the preliminary and merits vote variables (VOTETYP1 and VOTETYP2), plus the five nondedicated vote variables (VOTETYP4-VOTETYP8). The votes the individual justices cast at the final report vote are distinctively coded (see the next variable).

The coding employed in these variables - **except for the final report vote of the justices** - consists essentially of two dichotomized sets of votes, one set representing various types of grants and reversals, the other representing denials and affirmations. I combine the symbols for grants and reversals together because grants locate in the preliminary vote variables, reversals in the merits and reports variables. The same is true of denials and affirmations. Denials predominate in preliminary voting, affirmations in merits and reports voting. As previously explained, preliminary votes are those appearing anywhere in VOTETYP1, VOTETYP4-VOTETYP7 that are not labeled MRTS or REPT.

The codes that apply to these variables are listed below. Note that upper and lower case letters have opposite meanings. Do not confuse them. They are case specific. Note also that in a preliminary vote the following codes lend themselves to both preliminary and merits/report votes. In the former they translate as grant or deny; in the latter as reverse or affirm.

grant/reverse: a, b, C, E, G, J, K, M, N, P, R, s, T, T1,
V, Y, Z, @, #, 3, 4

deny/affirm: A, B, D, e, F, g, I, m, r, S, v, w, y

no decision/participation: H, O, p, Q, U, W, X, ?, no,
blank columns

The specific meaning of the upper case symbols derives from Jan Palmer's book, *The Vinson Court Era: The Supreme Court's Conference Votes* (New York: AMS Press, 1990), p. 160:

A=affirm, B=no or disapproved, C=change or certify, D=deny or refuse, E=to call for a response brief, F=remove from docket, G=grant, H=hold, relist, ask solicitor general, I=moot, J=modify or partial, K=hear, L=limit, M=remand, N=note probable jurisdiction, O=reserve judgment, P=postpone or defer consideration, Q=question mark or tentative or not at rest, R=reverse, S=dismiss, T=discharge rule, T1=transfer under provisions Title 28 of the U.S. Code, U=reargue, V=vacate, W=stay, X=pass, Y=yes or approved Z=without prejudice, @=not final, #=issue rule, 3=join three, 4=join four.

Note that I count '3' and '4' as grant votes even if they are insufficient to produce a certiorari grant.

I added the lower case entries in order to provide for a more precise indication of direction in the merits and report votes. Note that not uncommonly both columns of a justice's vote variable will contain an entry. Thus, AQ, GR, VM. Where the second entry is a Q, O, or ? one may assume the original entry is less firm than that of those who do not display any of them.

This variable exists for the convenience of those users who wish to distinguish among the entries specified above. Other users, however, will prefer the dichotomization of these variables into one common symbol denoting grant/reverse (=1) and an alternate one indicating deny/affirm (=2). This has been done in the next variable (the dichotomized preliminary and merits votes).

**the dichotomized preliminary and merits votes
(OCON1GD TO BLC1GD, BURG2RA TO BLC2RA)**

This variable recodes the final preliminary and merits vote of the individual justices into three exhaustive subsets: grant/reverse, deny/affirm, not participating. I employ the following coding:

grant/reverse = 1
deny/affirm = 2
nonparticipation = 0

The abbreviations used for these variables (GD and RA) were mnemonically chosen to represent grant/deny and reverse/affirm.

**the report votes, opinions, and interagreements
of the individual justices
(MAR to OCON, MARV to OCONV, MARO to OCONO, MARA1 to OCONA1,
MARA2 to OCONA2)**

This portion of the database focuses on the individual justices' report votes and their opinion and interagreement behavior associated therewith. Five separate variables have been created for each of the justices who have served on the Burger Court. 1) The first of these five variables — MAR to OCON — holds the individual justice's report vote, the opinion if any that that justice wrote in the case, and the abbreviated code for the name of any other justice(s) with whose dissenting or concurring opinion the subject justice agreed. 2) The second variable — MARV to OCONV — only contains the justice's vote; 3) the third — MARO to OCONO — whether the subject justice wrote an opinion; 4) the fourth — MARA1 to OCONA1 — a dissenting or concurring opinion of another justice signed by the subject justice; and 5) the fifth — MARA2 to OCONA2 — a second dissenting or concurring opinion with which the subject justice agreed.

These justices and their name abbreviations follow.

Marshall	=	MAR
White	=	BW
Stewart	=	STWT
Brennan	=	BRN
Harlan	=	HAR
Douglas	=	DOUG
Black	=	BLC
Burger	=	BURG
Blackmun	=	BLKM
Powell	=	POW
Rehnquist	=	REHN
Stevens	=	STEV
O'Connor	=	OCON

As explained above, the first of these five variables has four columns, while the last four constitute a breakout of the datum contained in each of the four separate columns of the justice's original variable. 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 abbreviated name of the justice who wrote a dissent or concurrence with which Douglas agreed) a 'B'; and DOUGA2 (for the abbreviated 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; he also agreed with a dissenting opinion that Black

wrote, as well as one written by Warren.

A justice may engage in one of eight types of voting behavior insofar as his four-column variable and the first of his one-column breakout variables (the one that attaches a "V" to the end of the above set of abbreviated names) is concerned.

- 1st column: 1 = voted with majority
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 without addressing the merits, or without providing the parties oral argument)

The second column of each justice's four-column variable and that of his "O" 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 (=).

The third and fourth columns of each justice's four-column variable and that of his "A1" and "A2" variables indicate whether the justice agreed with a special opinion written by some other justice. A special opinion is an opinion other than the opinion or judgment of the Court. I have assigned a letter to each of the justices who sat on the Burger Court according to the following schedule:

Harlan	= A
Black	= B
Douglas	= C
Stewart	= D
Marshall	= E
Brennan	= F
White	= G
Burger	= H
Blackmun	= I
Powell	= J
Rehnquist	= K

Stevens = M
O'Connor = N

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 an asterisk appears in the third column of said justice's variable.

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' or a blank appears, indicating nonparticipation or non-membership on the Court at the time the vote was cast, 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, but these votes do appear in the justices' docket books and, hence, in the individual justice's relevant merits vote (VOTE2) variable.

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.

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 the substance of 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. Hence, a jointly authored opinion can only be a dissent or a concurrence.

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 as 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 58 (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 justice 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, a '1' will appear in the VOTEQ variable 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 concurrences (= 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 single column opinion (O) variable — 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. These columns and variables, then, enable the interagreement 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 or columns 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 six 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.

It is necessary to break the 4-column variables down into their singular components 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 Justice White, 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 a 'G' signifying White. SPSS is simply not equipped to pick out a 'G' anywhere in a multi-column variable.

**direction of the individual justices' votes
(MARDIR to STWTDIR, MAR2DIR to OCON2DIR)**

These variables, specify whether the individual justices voted liberally or conservatively at the final vote and the final conference vote on the merits.

**majority and minority voting by justice
(MARMAJ to OCONMAJ, MAR2MAJ to OCON2MAJ)**

These two variables specify whether the individual justices voted with the majority or in the minority at the final vote and the final conference vote on the merits.

RELISTING ON THE BURGER COURT

This section of the documentation describes relisting and the variables that have been coded and become a part of the Burger Court database. Because individual justices began "relisting" cases early in the Burger Court and because data on the practice are not available for the Rehnquist Court, the variables and data dealing with relisting have only been added to the Burger Court database where they may be used separately from or in conjunction with the other variables that it contains.

Although relisting is little known - H.W.Perry's *Deciding to Decide* (Harvard University Press, 1991, the most extensive treatment, accords it only three pages - it does not lack importance. Beginning in the 1970 term, the Court began to allow individual justices to "relist" cases for any reason they cared to specify. Most always, a justice will relist a case when it comes to the conference at which it is scheduled to be granted or denied. A relisted case is held over to the next conference, typically a week later. On rare occasions, a relisting may be made for a time longer than the subsequent conference. A justice may request additional relisting when the original request expires. And other

justices may request further relisting after the original justice's request expires.

The Burger Court database identifies almost 2000 instances of relisting. This amounts to more than a quarter of the citations that the Burger Court database contains. Relisting, therefore, occurred frequently enough to warrant inclusion in the database. It obviously incurs delay and impedes and inhibits the Court's productive process.

The docket sheets of Justices Brennan and Powell reference the instances of relisting. Brennan's sheets list all cases, orally argued as well as those treated summarily. His agreement with the Library of Congress prohibits access to his Rehnquist Court records. Powell's sheets, at the Washington and Lee Law School Library, date from his seating in 1971 and do not include cases other than those formally decided. Their accuracy and completeness is high. See Forrest Maltzman and Paul J. Wahlbeck, "Inside the Supreme Court: The Reliability of the Justices' Conference Records," 58 *Journal of Politics* 528 (1996).

The relisted cases comprise those in which either Brennan's or Powell's docket sheets either specify the justice(s) relisting the case or, absent a named justice, the reason for the relisting.

Of the relisted cases, approximately 90 percent specify the requesting justice(s); ten percent only provide a reason.

Although the Burger Court did not end until the end of the 1985 term, a large number of cases from this term are excluded from consideration because they were decided by the Rehnquist Court, not the Burger Court.

Note: I have excluded from the relisted cases those in which the relevant docket sheet reports nothing other than the word "relisted." No justice is identified; nor is any reason provided.

I have also excluded any indication of relisting from all but the lead case decided under a single citation. The only exceptions are cases that were relisted prior to being conjoined with another case and those in which the initial vote (cert or note jurisdiction) in one differs from that in the conjoined case(s).

Relisting Variables

For user and analytical convenience, all of the codes governing the relisting variables are numeric.

Two of the existing variables in the Burger Court database have been extended for relisting purposes. **Anal=6** identifies records in which relisting data are presented. These records also contain

information on all the other Burger Court variables for which information exists. In other words, analu=6 records differ from the others in that they contain the variables pertaining to relisting. **Rec**, the variable that specifies the number of records that apply to a given citation, will have an entry in all analu=6 records. This will specify how many justices relisted the case. Typically, only one justice does so.

Source of relisting (RELIST)

This variable specifies the source of the relisting information: 1=Brennan, 2=Powell, 12= both Brennan and Powell.

Relisting justice (LISTJ)

This variable identifies the relisting justice. The codes are the following. The nonconsecutive numbers accord with those that the justices were assigned in other databases where they appear:

Douglas	= 5
Black	= 8
Harlan	= 13
Brennan	= 14
Stewart	= 16
White	= 17
Marshall	= 20
Burger	= 21
Blackmun	= 22
Powell	= 23
Rehnquist	= 24
Stevens	= 25
O'Connor	= 26

N=99 indicates a record in which the justices consensually relisted a case; e.g., for a rehearing or to associate the case before the justices with other(s) that may throw additional light on the controversy.

Total number of relistings (NO_LIST)

This variable indicates the total number of relistings a record has.

Total number of days a justice's relisting lasted (LRNGTH)

The number of days that each justice's relisting(s) for a given record lasted. Hence, if two justices relisted a given citation, this variable indicates the separate length of each of them. Not

uncommonly, two relisters was start and end their relistings simultaneously.

Where some question exists as to the length of a justice's relisting, I have tended to round the number off to a total divisible by seven. This comports with the usual length from one conference to the next.

Total number of days a case's relisting lasted (TOTAL)

The total number of days that elapsed from the beginning to the end of all the relistings that a given citation generated.

Reason for relister's action (REASON)

The reason for the relisting justice's action appears in this field. The data admit of fourteen different reasons, separately coded as follows:

1 = to reconsider, consider further, or defer consideration

2 = to grant the requested petition. In the absence of any other reason, I infer that a justice so voting hopes to persuade enough of his or her colleagues to grant the petition and, if successful, to then vote to reverse on the merits. When unsuccessful in doing so, the justice frequently writes or joins a dissent from the denial of certiorari or the dismissal of an appeal. Instances where a justice confounds this expectation by voting to grant and then affirm on the merits are specified in the **q** variable, listed below.

3 = to deny the requested petition. I infer here - again in the absence of any other reason - that a justice so voting hopes to persuade enough of his or her colleagues to deny the petition and, failing that, to then vote to affirm on the merits. Instances where a justice confounds this expectation by voting to deny and then to reverse on the merits are specified in the **q** variable, listed below.

4 = to better identify or clarify the issues a case contains; also to resolve issues in a case.

5 = to call for the record or briefs; i.e., to determine if the contents or structure of the petition seeking the Supreme Court's review is compatible with the lower court's decision, or if the proper papers have been submitted.

6 = an assertion of conflict between or among circuits or other

courts by the relisting justice, or the existence of a possible conflict.

7 = to re-examine or study the case further. To "prepare questions" for consideration. To seek further submissions from the parties. The relister is in doubt; wishes to "take another look," or "a second look."

8 = to obtain the views of the solicitor general. Most such reasons produce a "hold" rather than a "relist," and, if such, are excluded from the database.

9 = to write a per curiam opinion. Although these are assigned the same as signed opinions, not uncommonly such assignments come on top of other cases assigned a given justice. As a result, he or she may request a relisting.

10 = because of nonparticipation(s), or possible nonparticipation(s). This reason may apply to the relister's own nonparticipation, as well as to those resulting from recusal by a justice other than the relister.

11 - in order to associate, combine, or consider in light of or in conjunction with other pending cases.

12 - to obtain a rehearing.

13 - to "read."

14 - a death penalty case.

whether relister won or lost (WON)

Note that the name of this variable is to be distinguished from the variable, **win**. The latter indicates whether the petitioning party emerged victorious from the litigation. **Won**, by contrast, specifies whether a relisting justice ended on the winning or losing side of the case.

Because many of the relisted cases contain more than one vote, it is possible that the relisting justice may be on the prevailing side at the preliminary (cert) vote, but be on the losing side at the final (report) vote, or vice-versa. Hence, this variable contains four codes: won, lost, lost/won, and won/lost.

Note that the voting behavior of the relisting justice may affect the outcome of the case insofar as the relister's emerging on the prevailing side or not.

The specific codes are the following:

1 = won; i.e., a member of the prevailing vote coalition. This is determined on the basis of the last vote taken rather than the preliminary (cert) vote. However, if the only vote is the preliminary vote, typically a denial of cert or the dismissal of an appeal, with no justice writing an opinion that appears in the *U.S. Reports*, then winning is determined by this vote alone.

Do note that because of the Rule of Four a justice who votes either to grant or deny a petition in a case in which the vote is 45, 44, 34, or 33 wins. This, of course, will produce a merits and/or a report vote and the possibility that the justice will not prevail at the ultimate vote in the case. This will primarily affect the lost/won (won=2) and won/lost (won=3) codings of this variable. See below.

0 = lost; i.e., not a member of the prevailing vote coalition. If the case only has a preliminary vote, then losing is determined by this vote alone, otherwise by the last vote.

2 = lost/won; i.e., lost at the preliminary vote, won at the last vote, which may be either the merits or report vote. As mentioned, do note that as a result of the Rule of Four a vote to deny counts as a win where the preliminary vote is 45, 44, 34, or 33.

Thus, I count as lost/won cases in which the relisting justice votes to grant at the preliminary vote, after which the Court - including the relister - unanimously votes to deny the petition without any opinion written or joined by the relisting justice. In other words, the relister votes to grant the petition, but the Court's Reports show a unanimous vote denying the petition. I count this as lost/won. Such instances not only are quite frequent, but they also display a pattern by occurring in dec_type=3 (summary back-of-the-book) cases; e.g., Rehnquist's action in docket 82-702. If, however, the relister votes to grant and is accompanied by enough justices to prevail at the preliminary vote and the Court's Reports then show a unanimous denial without the relister writing or joining a special opinion, such action is coded as won; e.g. Rehnquist's action in docket 83-5825.

3 = won/lost; i.e., won at the preliminary vote, lost at the last vote, which may be either the merits or report vote. This situation occurs where the relisting justice is part of

the prevailing vote coalition at the preliminary vote and then dissents from the ultimate decision in the case. Note that here a relisting justice wins even though outvoted if the preliminary vote is 45 or 34. A tie vote also produces a win.

Change in number of votes supporting relister (CHANGE)

In cases that contain more than just the preliminary (cert) vote, this variable indicates any change in the number of votes supporting the relister's position. This variable is determined without reference to whether or not the relisting justice's action prevailed except where the justice changes voting direction from affirm to reverse, or vice-versa. In such situations, whether the change produced a gain or loss of votes becomes problematic because the reason for the relister's action is questionable. As a result, the missing data symbol (.) appears in the change variable. The missing data symbol will also appear if the relisting justice does not participate in either the initial or the final vote.

Note that the determination of the change variable depends on the relisting justice's preliminary and final vote. If a merits vote intervenes between the cert and final vote, I disregard it.

The specific codes are the following:

1 = gained votes. This, as mentioned, will apply only when the case contains more than the preliminary cert or appeals vote. Thus, for example, Douglas was one of two justices voting to grant cert in docket 71-5552 (apparently the Rule of Four does not always apply). The final vote was 81 to vacate and remand the lower court's decision. Douglas, therefore, emerged on the prevailing side because of the assumption underlying reason=2 above. Similarly, if a relister prevailing at a preliminary 45 vote ends up in a winning final vote coalition that reverses otherwise alters the lower court's decision by a 63 vote, the relisting justice's change code =1.

0 = lost votes. Again, this code will apply only when the case contains more than the preliminary cert or appeals vote. And again this decision rule operates without regard to whether the relister emerges on the winning or losing side of the decision. Thus, if the relisting justice lost in a 63 vote to deny cert and the vote on the merits was 72 to reverse, the relister will show a 0 in the change variable. Similarly, if the relisting justice prevailed in

an 81 vote to grant and the final vote is 54 to alter the lower court's decision, the change variable will again show a 0.

2 = no change. This code treats nonparticipations as equivalent to dissents or majority participation. That is, a 60 vote equals a 63 vote, assuming the same directionality for both. Similarly, a 70 and a 90 vote =2, as does a 41 and anything other than _0, again assuming common directionality. I adopt this position because nonparticipations may locate on either side of the case. But again, if the relisting justice does not participate in both the initial and final vote in case, the missing data symbol (.) will appear.

3 = lost at the initial vote, but gained at the last vote. Thus, if the relister loses at the preliminary vote, but additional colleagues join his position at the final vote, his change code =3.

4 = gained at the initial vote, but lost at the last vote. The reverse of the previous code. At least one fewer vote supports the final position of the relisting justice.

Questionable vote (Q)

The relister's vote is questionable in the sense that a vote to grant the petition is not followed by a vote or votes to reverse, and vice-versa except where the reason for relisting is specified to be =1 (reconsider) or =7 (re-examine). Thus, an entry in the relisting justice's q variable will appear when said justice votes 'D' at the preliminary vote and then 'R' at the merits vote, or exhibits the opposite pattern: 'G', 'A.' Alternatively, a 'D' at the preliminary vote followed by membership in the final vote coalition in a case that the petitioner wins or a dissent from the affirmation of the lower court warrants q=1. Or an initial 'G' where the relister's final vote either dissents from the reversal of the lower court or affirms the affirmance of the lower court. Such votes = 1 in the q column. However, as noted, no entry will appear if the relisting justice's reason for relisting is 'reconsideration' (=1) or 're-examination' (=7). By definition, these two reasons for relisting a case indicate that the justice is doubtful about whether to grant/reverse or deny/affirm. Hence, in cases where such a justice grants and then affirms or denies and then reverses do not warrant a q=1 except where such a change occurs after the merits vote and is reflected in the final vote. Thus, Blackmun in docket 85-217 voted to 'join 3' (i.e., grant) at the preliminary vote, to reverse at the merits vote, and then wrote a

special concurrence in the published decision upholding the action of the lower court. Accordingly, his q vote =1.

The only exception to the foregoing is where the relisting justice votes to grant or reverse at the initial vote and votes oppositely at the final vote - and does so with all his participating colleagues at both the initial and final vote in the case; e.g., Powell in docket 75-1216, Rehnquist in 72-6566. In such cases, q=0.

The foregoing decision rules may produce an over count of questionable votes on the part of some of the justices, particularly those cases in which the reason for relisting does not suggest an ideological reason; e.g., the clarification or identification of the issues in the relisted case (=4), call for the record (=5), or the combination of the relisted case with another containing similar facts and issue (=11). Indeed, users may go further than this and appropriately limit the questionable vote variable only to reasons =2 (grant), =3 (deny), and =14 (death penalty).

SAMPLE OF DENIED PETITIONS

New, as well as previous, users should be aware that the background variables carried over from the previous version of the Burger Court database also impinge on agenda setting as the following material indicates.

Discrepancies between Related Lower Court and Supreme Court Variables

Because the database treats the behavior of both the court whose decision the Supreme Court reviewed and that of the Supreme Court itself, special caution needs be taken. To wit:

1) ANALU and REC continue to pertain to the Supreme Court's decision, not that of the lower court. The comparable entries for the lower Court's decision are LOANALU and LOREC. **Be sure to recognize the distinction between ANALU and REC and LOANALU and LOREC. Failure to do so will preclude accurate analysis.**

2) Where the lower court renders a multi-issue decision (LOANALU = 2 or 5) or one that involves more than a single major legal provision (LOANALU = 3) and the decision of the Supreme Court addresses fewer issues and/or legal provisions, an * will appear in the *Lawyers' Edition* field (LED) for that case. **If the focus is not on lower court decisions, be sure to exclude these asterisked cases from consideration.**

3) Where the opposite situation prevails - i.e., more legal provisions addressed or issues decided than is true of the lower court's decision, as well as cases where the Supreme Court has decided more than a single docket in a given citation - the records containing this surplus will show a blank in the LOANALU and LOREC fields. Hence, a case in which the Supreme Court addressed three legal provisions, while the lower court focused on only one, the LOANALU and LOREC fields will be blank on two of these three fields. Note especially that the controlling record for each citation - lower court as well as Supreme Court - will show a 0 in the LOANALU and LOREC fields as well as in ANALU and REC.

4) Denied petitions that that are not part of the stratified sample (i.e., DEC_TYPE = 3) have not been coded for the variables coded for cases in the stratified sample (DEC_TYPE = 8); e.g., LOLAW, LOISSUE, LODISS.

5) Though the legal provisions addressed may differ between the lower court and the Supreme Court the issue may remain constant - and vice-versa. This not infrequently occurs.

6) Very few lower court decisions have more than one docket number. To focus on lower court cites, rather than dockets, simply exclude ANALU=1 from analysis. Note exclude ANALU, not LOANALU. To focus on lower court dockets, include LOANALU=1.

7) No DIR (direction of Supreme Court decision) is reported for the sampled cases (DEC_TYPE = 8), because it is the same as LODIR.

lower court unit of analysis (LOANALU)

The controlling entry of each lower court record in cases that the Supreme Court agreed to review will contain a 0 in this record and in the associated record (LOREC) [discussed below]. The record with LOANALU=0 and LOREC=0 will always be the corresponding record governing the disposition the Supreme Court made of the case and in which ANALU=0 and REC=0. This is done to facilitate comparisons between the number of legal provisions and issues addressed by the lower court and the Supreme Court.

Although the records of a citation in which ANALU, REC, LOANALU, and LOREC all equal 0, the entries of subsequent records for that citation may vary between the Supreme Court and the lower court. Thus, a citation in which the Supreme Court decided a second issue the record will show a 2 in ANALU and a 1 in REC. If the lower court decided a second legal provision but only one issue, LOANALU will show a 3 and LOREC a 1.

Of course, even though the non-primry record(s) for a given

citation may show identical entries for LOANALU - ANALU and LOREC - REC, the legal provision and issue may differ. Thus, the LOLAW entry may pertain to self-incrimination while the Supreme Court may have considered the Fourth Amendment and/or the issue in the lower court may similarly differ.

Supreme Court records of activity governed by ANALU and REC that have no lower court counterpart contain no entry for LOANALU and LOREC. The only exception are some relisted cases, all of which are identified as ANALU=6, in which there may be an entry of a 2 (>1 issue addressed), 3 (>1 legal provision considered), or 5 (both an issue and legal provision distinct from that in the controlling record where both LOANALU and LOREC = 0) in LOANALU.

The reason why the combination of ANALU=6 with a LOANALU other than 0 results is because relisted cases pertain only to the Supreme Court and not to the presence or absence of any particular lower court variable.

In all other respects LOANALU adheres to the coding of ANALU.

number of records per unit of analysis (LOREC)

LOREC specifies the number of variables for each unit of LOANALU. The decision rules governing this variable are the same as for REC and are detailed there.

New Agenda Setting Variables

These variables, without exception, concern cases to which the Supreme Court denied review. **These new variables also apply to ALL cases that the Burger Court did accept and decide.** Unaccepted cases are identified as DEC_TYPE=8. Note that all DEC_TYPE=3 cases also pertain to cases denied review. They differ from the former in that the database contains only those in which one or more of the justices wrote an opinion. The random sample of denied petitions pays no heed to the presence or absence of opinions. **Duplication will result if both types are mixed together** for the indicated reason: some of the sampled denials include cases in which one or more of the justices wrote an opinion.

Note that all pertinent variables that appear in the original Burger Court database are also entered for the DEC_TYPE=8 cases **and vice versa**. That is, the relevant variables in the original database have been added to the sample of denied petitions.

The only exceptions are LOANALU and LOREC, and ANALU and REC. Because the Supreme Court denied these petitions, nothing can be said about the Supreme Court's treatment of these cases except that they were denied review.

If the direction - liberal or conservative - of the lower court's decision (LCTDIR) cannot be determined because of lack of information it is specified as '8'.

no lower court information (NO_LCT_INFO)

This results either because the decision is unpublished (coded as =1) or because neither Lexis nor Westlaw provides any information about the lower court's decision (coded as =2). An unpublished decision requires a statement to that effect in either Lexis or Westlaw. A '3' indicates the absence of both sources. Note that Lexis and Westlaw list many cases as unpublished for which the lower court's opinion is provided. Even so, these are listed as unpublished, but they do include their relevant lower court data.

lower court direction (LCTDIR)

The same criteria (liberal, conservative, indeterminate) govern the coding of this variable as apply to the direction of the Supreme Court's own decision. Not uncommonly in cases accepted for review incompatibility between lower court and Supreme Court direction may result because the issue decided by the lower court differs from that decided by the Supreme Court - **and not necessarily because of ideological differences or disagreement over policy preferences**. Users focusing on direction are therefore advised to pay heed to the issue(s) resolved by the courts in question.

Note also that the same direction may prevail between the lower court and the Supreme Court, even though case disposition between them differs (LODIS and DIS). This may result when the two courts resolve different issues. It may also result when the Supreme Court goes further or shorter in the same ideological direction as the lower court. The same direction may also occur even though the petitioning party in the one court differs from that in the other because each petitioner partially won.

lower court dissent (LODISS)

The data in this field are drawn directly from the lower court report (Westlaw, Lexis). As such, it contrasts with the Supreme Court's own statement of the presence of a dissent in the court whose decision it is reviewing (DISS). Where lower court judges identify themselves as concurring and dissenting in part, such votes are counted as dissents.

lower court administration (LOADMIN)

This variable indicates that the lower court reviewed the action

of the specified administrative agency. This variable differs from ADMIN in that ADMIN pertains to the Supreme Court's review of action by a specified administrative agency. Most always, no difference exists between LOADMIN and ADMIN.

legal provisions considered by the lower court (LOLAW)

The only difference between LOLAW and LAW is the addition of a new code (STATE) to indicate that the lower court reviewed the decision of a state law, municipal ordinance, or constitutional provision. However, lower court decisions frequently lack clarity in their specification of the legal provision(s) at issue; e.g., between the Fourth Amendment (4A) and its exclusionary rule (EXCL4). Clarity is also occluded by the lower court's use of precedents, particularly from other lower court decisions, thus making determination of the legal provisions considerably difficult. In these situations, LOLAW is blank.

multiple lower court legal provisions (LOLAWS)

The same coding prevails here as in LAWS: Only a single provision at issue =0. More than one at issue =1.

Because many lower court decisions address a multiplicity of issues, most often in criminal cases, the operative decision rule focuses on the issue the lower court deems most important, devotes most attention to, or, alternatively, the issue that the Supreme Court would most likely address in a petition for review. This last consideration lacks objectivity, but scholars knowledgeable about the Supreme Court's docket are not likely to disagree much in this regard. In any event, users are always free to recode.

authority for decision (LOAUTHDEC)

The coding remains the same as for the Supreme Court's decisions. Users should note that the selection of the first and second entries in this variable is decidedly less than objective; so much so that a reliability check was not even feasible even though the decision rules for coding AUTHDEC are those for this variable. The very frequent proliferation of references to precedent (=7) probably produces a diminution of constitutional (=1 or =2) and legal provisions (=4). Because of only incidental references to statutes and constitutional provisions no necessary correlation exists between legal provision at issue and the authority that the lower court uses for its decision (LOLAW).

issue (LOISSUE)

Because of limited information about and the character of lower court opinions, a number of decision rules have been devised

pertaining to the issues decided by lower courts.

A) Given that lower court opinions rather faithfully address virtually all issues raised by the petitioning party (PARTY_1), three rules have been formulated for issue identification. 1) The first issue the lower court addresses - if it is one that the Supreme Court has concerned itself with - controls. 2) If the lower court addresses an issue other than the first at inordinate length and if it is one with which the Supreme Court concerns itself, this outweighs the first issue. 3) If the lower court decision contains a dissent, the issue addressed by the dissenter controls. This rule conforms to that which governs decisions on the merits. 4) If one and two appear to be equally important considerations, the case is treated as multi-issue; i.e., as unit of analysis (ANALU) =2 or =5.

B) Where the decision is unpublished or lacks lower court information, and if the defendant listed in the Reports is a prison or correctional official, the issue is considered 199 (miscellaneous criminal procedure), the petitioner as PRISONER, and LOAUTHDEC as =3.

C) In many cases, the defendant alleges insufficiency of evidence (LOISSUE = 116) with regard to violation of criminal statutes. The unreliable reliability check of this issue evidenced substantial inability to distinguish between substantive and procedural considerations in great part because of citations to lower court precedents, the substance of which the lower court opinion did not provide. While discrepancies have been resolved, users may wish to further consider cases with LOISSUE=116 and recode them substantively. Those who focus on substantive criminal procedure issues may use the same approach.

D) Although petitioning parties frequently seek a writ of habeas corpus, such cases are not automatically identified as such; i.e., LOISSUE=13. Lower court opinions commonly address the substantive issue on which the habeas petition rests and base their decision thereon. These typically are clearly more salient. Hence, they are coded substantively; e.g., as search and seizure, right to counsel, double jeopardy, etc.

E) Apart from habeas corpus petitions, procedural issues control unless the focus of the lower court opinion is on statutory language or intent. These procedural issues locate in the subset of extra-legal jury influences (100-107) and subconstitutional fair procedure (111-119). Relatedly, note that there frequently is little difference between ISSUE = 116 (presentation, admissibility, or sufficiency of the evidence) and ISSUE = 101 (prejudicial statements or evidence) or 103 (jury instructions).

The upshot of the foregoing decision rules is that users may

achieve greater utility if they focus on the VALUE variable rather than ISSUE. It is troubling to say so, because of the grossness of the VALUE variable with the result that such VALUES as criminal procedure, civil rights, First Amendment, due process, unions, and economic activity produce a clearly mixed bag, to say nothing of federalism and judicial power.

On the other hand, a number of issues are unequivocally manifest; e.g., constitutionally based criminal procedure (Miranda, Fourth Amendment, self-incrimination, double jeopardy, etc.) and the component issues of civil rights and the First Amendment. But because of lack of clarity in lower court opinions, the distinction between the legal provisions on which some issues rest is frequently obfuscated; e.g., 4A and EXCL4, along with such issues as the right to counsel (=30) and indigents' allegations regarding the appointment of counsel (=381) and/or inadequate representation by counsel (=382).

issue areas (LOVALUE)

This variable parallels that of the Supreme Court's decisions. Thus, loissues between 10 and 199 involve criminal procedure, which equals 1; those between 200 and 399 involve civil rights and =2; etc. SPSS lists them all.

amici participation in lower court decision (LCTAMICI)

A'1' in this variable indicates the presence of amici in the report of the lower court's decision. No distinction is made as to the number of amici. Rarely is it more than one. Note, however, that intervenors are not counted as amici.

lower court declarations of unconstitutionality (LOUNCON)

Though cases denied review have a distinctive DEC_TYPE (=8), as mentioned previously, and show no votes other than the one to grant or deny the petition to review the case, the same codes as apply to the Supreme Court's decisions on the merits to indicate a declaration of unconstitutionality (UNCON) are used. Lower court declarations of unconstitutionality are located in this separate field. Because lower courts have no authority to overrule Supreme Court precedent (ALT_PREC), no such field has been created.

Do not assume that all lower court declarations of unconstitutionality are important. Only a portion of a law may be voided, and that portion of minor significance; e.g., 430 U.S. 924.

miscellaneous observations

- 1) The previously existing field that specifies the lower

court's disposition of the case (LODIS) has been enriched by the lower court's specification of its disposition rather than by relying on the Supreme Court's statement.

Note that many cases with a lower court disposition (LODIS) = 5 (affirmed and reversed in part) and =6 (affirmed and reversed in part and remanded) result in a loss to the petitioner (LCTDIR = 0) because the petitioner lost on issues that the lower court affirmed and won on those in the lower court - typically the trial court - that were reversed by the court whose decision the Supreme Court reviewed. Because of the sharper issue focus of the Supreme Court, LODIS = 5 or = 6 almost always results in a win for the petitioner in cases accepted and decided by the Supreme Court.

2) As noted in the introduction, the field indicating the presence of a three-judge district court (J3) has had a second code added to it. A '2' indicates that the lower court (a federal court of appeals) decided the case en banc.

3) The CERT variable (reason for granting cert) has been significantly amended to include statements in lower court opinions that conflict between courts exists. Although these statements do not often occur, when they are coupled with statements in the Supreme Court's opinions that conflict exists below, along with statements from Justice White in cases that the Supreme Court does not review (i.e., DEC_TYPE = 3), all cases in the Burger Court database in which conflict below is mentioned are included in the database. Although the Blackmun papers contain clerks' evaluations of the "cert worthiness" of petitions requesting Supreme Court review of lower court proceedings it is arguably preferable to base such a determination on the views of the justices and lower court judges. The reason being that conflict is very much in the mind of the evaluator. This being so, according preference to those responsible for judicial decisions, rather than their clerks, seems preferable.

voting in cases denied review

The other set of decision rules governing cases denied review pertains to the justices' preliminary voting. This comprises the preliminary vote in the case (PVOTE) along with the votes of the individual justices (___gd).

The decision rules governing this portion of the justices' behavior are the following:

A sitting justice is listed as participating in the case unless either the relevant docket sheet or the Reports specify to the contrary.

Primacy in the determination of the justices' preliminary votes is

accorded the docket books rather than the Reports. This is done because justices may have changed their vote after the conference in which the preliminary vote was cast and the vote as it appears in the Reports. To say nothing of the fact that the *Reports* rarely indicate how any justice voted on cert. Note also that many of the sampled cases appear in no docket book. It is likely that at least some of these non-appearing cases contained one or more votes to grant the petition to review the matter. In a few instances, the docket sheets indicate enough votes for a grant to have occurred, but the Reports show the petition to have been denied. E.g., 398 U.S. 956, docket 90; 405 U.S.1036, docket 70-5706. The database contains the granting votes in such cases.

If a docket book indicates that the case is deadlisted, the PVOTE column has no entry. The participating justices in the case (the gd fields) show a '3' for the justice's vote in the case. Justices who are Court members, but who did not participate in the case for whatever reason, have a '0' in this field. A '0' thus encompasses formal nonparticipation, as well as votes to hold the case for future consideration.

Votes to grant =1; those to deny or its equivalent =2. The occasional vote to "join 3" is treated as =1.

Procedures and Caveats for Comparing Lower Court Decisions with Those of the Supreme Court

This section supplements the section on discrepancies between related lower court and Supreme Court variables (PP.74-75).

Because lower court decisions and those of the Supreme Court differ, it has been necessary to accommodate as best as possible user efforts to analyze different combinations of lower and Supreme Court variables. What follows is provided to facilitate choices for analyzing lower court and Supreme Court records.

Users will generally want to disregard LOANALU = 2, 3, 4, 5, and 6 because the focus will more likely be on the lower court's legal provision(s) and/or issue(s) as such, rather than on their presence in multi-law or multi-issue cases. If instead, a user wishes to ascertain features of multi-legal provision and/or multi-issue lower court decisions, then LOANALU will become relevant.

Because lower court cites commonly have only a single docket number, it is necessary to avoid duplication by omitting multiple records that accrue because ANALU (note, not LOANALU) =2, 3, 4, 5, and 6. These ANALU records will show LOANALU=(i.e., missing data) only if there are no comparable LOANALU records. So, if the Supreme Court citation has, say, four records with some combination of ANALU 2, 3, 4, 5, and 6 and the lower court has three additional records, the LOANALU in one of the Supreme Court

records will =. , with the choice being the Supreme Court record most distinct from those of the lower court.

All relisted cases (ANALU=6) contain the missing data symbol for the comparable lower court record (LOANALU =.).

Because - and this is extremely important - the Supreme Court pays little heed to lower court docket numbers and because the lower court cases contained in this database are those petitioned for Supreme Court review, except for the sample of denied cases, the lower court's dockets are disregarded except where the Supreme Court treats them separately. In other words, **in no instance** will a lower court's record show LOANALU=1 when the Supreme Court portion of the record **does not** show ANALU=1. The reverse, however, is not true. Most commonly, multiple Supreme Court dockets (ANALU=1) will show LOANALU=0, less frequently, LOANALU=1.

If a user's focus is on citation rather than docket number, the appropriate unit of analysis will be LOANALU=0 **and** ANALU=0. But if the focus is on docket number, simply choose ANALU=0 and ANALU=1. But do recognize that with this choice lower court results will be duplicated.

Users who wish to compare similarities and differences in the legal provisions and issues considered by the lower court and Supreme Court in a given set of citations will find that Supreme Court multiple legal provision and/or issue cases that do not have the same number of records as the lower court will show LOANALU to have no entry for the multiples, only the missing data symbol (.).

In other words, if the Supreme Court citation shows a second record with ANALU=3 (a second legal provision) and a third record with ANALU=5 (a third legal provision and an issue different from that in the first record), and the lower court record is singular as to legal provision and issue, the comparable lower court records will have LOANALU=. The commonality between the lower and Supreme Court records will be the record in which ANALU and LOANALU both =0. Do keep in mind, of course, that these 0 records need not show the same legal provision or issue. But where the reverse situation prevails; i.e., the lower court with multiple records and the Supreme Court with fewer; the surplus Supreme Court records will show an asterisk in the column containing the Lawyers' Edition citation of that case (LED=*). Thus, a lower court record with three issues, where the Supreme Court decision addressed only two will have LED=* in either its second or third record. The choice being an issue the Supreme Court did not address.

Note that in citations where one court or the other considers a number of legal provisions and/or issues greater than or less than the other court, where both courts consider a common legal provision or issue no missing data symbol or asterisk will appear.

Such symbols appear only in the record that has no counterpart in the other court. Do recognize that the foregoing applies only to

a difference between the **number** of legal provisions or issues considered, not to a **difference** in their content.

Suggestions and Caveats for Analyzing Various Features of the Expanded Burger Court Database

If the focus is on the sample of denied cases and a probable concern with the number of issues and/or legal provisions that the Court refused to consider, the number of such denials may be divided by .0364 to obtain the number that probably exists in the universe of denied cases rather than in the sample.

The sample may be used to ascertain the frequency with which the Supreme Court refused to review lower court liberal and conservative decisions dealing with various laws and legal provisions. These unreviewed liberal and conservative proportions may be compared with the treatment the Supreme Court gave to the reviewed decisions dealing with the same law or legal provisions. Thus, for example, the Burger Court denied review (DEC_TYPE=8) to some 91 percent of conservatively decided search and seizure decisions (ISSUES =16 and 17) as compared with less than 9 percent of liberally decided search and seizure decisions. But when the Court accepted and decided a search and seizure case (DEC_TYPE=1, 2, 5, 6, 7, with LED=* excluded) approximately 70 percent of such accepted cases were those liberally decided by the lower court, almost 82 percent of which were reversed to produce a conservative outcome.

It will probably be best to exclude ANALU=5 and LOANALU=5 from the frequency of denied legal provisions and issues. Using them will produce an over count, and while their omission will produce an undercount the undercount will be smaller than the over count.

ANALU=6 should be omitted from all analyses except those that focus exclusively on relisted cases.

If consideration is being given to granted cases, be sure to exclude DEC_TYPES=3 and 8 and LED=*

Generally exclude ANALU=1 from analyses of lower court action. These cases typically have 0's in the LOANALU field. One should count as multiple dockets only the lower court cases that are such.

RELIABILITY CHECK

Because all the variables in the expanded Burger Court database that appear in Allcourt have been subject to reliability testing, I subject only the preliminary and conference vote data to checking, along with the associated vote, date, and direction variables. Furthermore, these data involve no exercise of discretion, having been copied and totaled from the docket sheets of Powell, Brennan, and Douglas. Therefore, I deem it not inappropriate for me to have made both the original entry and the recoding. As noted in the introduction to the documentation of the database, I relied primarily on Powell's docket sheets. In the few cases in which his information is incomplete, I used Brennan's or Douglas' sheets.

Of the 2,374 orally argued Burger Court cites that contained at least one preliminary and one merits vote I randomly selected 200 for analysis (8.8 percent). Because the number of votes cast by the justices varies in the 200 selected citations, I report the results discursively rather than in a strictly statistical fashion.

In several cases an incorrect vote was reported that did not accord with the justices' behavior: a 52 certiorari vote should have been 42, a 51 should have been 41, and the first of two certiorari votes was listed as 44 rather than 40. In a number of other cases, the vote was correctly reported based on the incorrect identification of the votes of one or more of the justices. In still other cases, the vote was correctly reported notwithstanding the incorrect identification of the votes of one or more of the justices.

One error occurred in a vote field: no entry was made for a second certiorari vote, both of which were 18. One certiorari vote date was omitted and a second reported 5/19/72 instead of 6/17/72.

Because both the preliminary and merits votes' fields consist admit of two entries, of which the first is the more controlling, I inaccurately reported or inadvertently omitted the second vote. Thus, five justices were reported as without a 'Q' in the second of their certiorari vote fields, indicating that their vote was tentative; that they were "not at rest." The other instances of an error in a justice's second vote field are: the omission of 'M' (remand), and an 'S' (dismiss); the replacement of an 'S' with an 'M,' the appearance of an 'R' (reverse) in a second cell that should have been empty, and an 'R' in place of an 'M' in another justice's field, and two instances in the same case in which justices had an 'R' in the second column that should have been empty. A variation on these patterns occurred when I assigned an 'M' to the wrong justice, both of whose initial fields correctly showed an 'R.' All of these errors — though such — verge on the trivial.

More serious are incorrectly specified primary votes: Rehnquist received an 'R' rather than an 'A' (affirmed) in a merits vote should have been 72 rather than 81. Burger received a 'D' (deny) rather than a 'G' (grant) in ' a 63 vote that should have been 72. Marshall shows a 'G' in a case in which he did not participate; the vote, however., was correct (61). Three justices no longer on the Court (Douglas, Harlan, and Black) received 'G' votes in a certiorari matter in place of Stevens, Rehnquist, and Powell. The votes of Marshall and White were transposed on a nonfinal merits vote. O'Connor was wrongly indicated as voting in an 09 certiorari action. She appeared as the tenth participant. Burger had a 'Q' in place of a 'D' in a case whose vote should have been 63, not 53. Blackmun was given a 'G' rather than a 'D' where the vote should have been 81 and not 90. Rehnquist rather than Stevens showed a 'U' (relist) in a motion vote (votetyp=4). White revealed a typographical error in the first of two certiorari votes; the vote, however, was correct. Powell received a '3' rather than a 'G,' a

distinction without a difference in the case in question. But the assignment of an 'S' rather than a '3' to Burger produced a vote of 63 rather than a 72. O'Connor's merits vote was omitted in a correctly specified 81 vote. Stevens' and Blackmun's certiorari votes were transposed: a 'G' rather than a 'D,' and vice-versa. Although the vote was correct, Blackmun received an 'R' that should have been an 'A.' Finally, if the most concentrated set of errors, Rehnquist, Powell, Blackmun, Stewart, and Burger were entered as noting jurisdiction instead of affirming. Accordingly, the vote was 45 rather than 90.

In sum, the sample found very few errors. None changed the direction of a decision, and in only 27 substantive instances was a justice's vote incorrectly specified: Rehnquist, Burger, and Blackmun four times each; Stevens three; Marshall, Powell, White, and O'Connor two; and Stewart, Douglas, Harlan, and Black one apiece. Assuming that nine justices participated in each preliminary and merits vote — and excluding multiples of such votes — accuracy reaches 98.7 percent (27/1800).

Denied Petitions

An 8.8 percent sample was used for this portion of the database. Most errors were those of omission. The presence of a multiple legal provisions (LAWS) was not entered in four cases (2.4 percent). In one record the unit of analysis appeared as a 3 when it should have been a 5. One party was inaccurately recorded. Two issues were misidentified (1.2 percent): a 0 was omitted in an unidentifiable case, and a tax case had the wrong entry: a 960 rather than a 975. The most frequently occurring error was the failure to indicate the lack of lower court information: 8 such instances (4.7 percent). These are not serious because the direction in each of these omissions was indeterminable (=8). Moreover, the missing output for this variable appears as missing data, which of course, is the situation where these omissions occurred. The disposition of the lower court's action (LODIS) was omitted in one case, as was the direction of the lower court's decision (LCTDIR) and a specification of unconstitutionality (LOUNCON). The date on which the lower court's decision was denied was wrongly recorded in two cases (1.2 percent) and the presence of a dissent in the lower court was overlooked also in two cases (LODISS).

The authority for the lower court's decision (LOAUTHDEC) was impossible to specify reliably for the reasons stated on p. 79 of the documentation.

No voting errors occurred simply because the vast majority of denied cases either contain no votes because they are deadlisted or are unanimously rejected.

Lower Court Behavior in Accepted Cases

Again an 8.8 percent sample was used. Omissions again predominated: two each in lower court declarations of unconstitutionality, disposition, dissent, authority for decision, and the presence of multiple legal provisions (2.4 percent errors). In one case, the relevant record did not specify that the lower court addressed a matter (law or issue) not considered by the Supreme Court (LED=*). The presence of a three-judge district court was omitted in two cases and incorrectly specified in a third (3.6 percent). One case listed the ISSUE as 533 when it should have been 553, and another listed it as 636 instead of 626. The latter two instances were clearly typographical errors, though nonetheless serious ones.