

THE DIMENSIONALITY OF DECISION MAKING OF THE
1941-1945 STONE COURT; A COMPUTER DEPENDENT
ANALYSIS OF SUPREME COURT BEHAVIOR

THESIS FOR THE DEGREE OF PH. D.
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PETER GEORGE RENSTROM

1972



This is to certify that the
thesis entitled
THE DIMENSIONALITY OF DECISION MAKING OF THE
1941-1945 STONE COURT: A COMPUTER DEPENDENT
ANALYSIS OF SUPREME COURT BEHAVIOR
presented by

PETER G. RENSTROM

has been accepted towards fulfillment
of the requirements for

PH.D. degree in POLITICAL SCIENCE

A handwritten signature in cursive script, appearing to read "Harold G. Smith".

Date February 1, 1972

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ABSTRACT

THE DIMENSIONALITY OF DECISION MAKING IN THE
1941-1945 STONE COURT: A COGNITIVE-BEHAVIORAL
ANALYSIS OF SUPREME COURT DECISIONS

by

Peter D. Jacobson

This research is an examination of the process of Supreme Court decision making. The historical period covered by this research are the 1941-1945 Terms during which Justice Robert H. Jackson served as Chief Justice. The primary focus of this research is the identification of the psychological determinants of the Stone Court's decisional behavior, and a consideration of the relationships between values, attitudes, and ideologies in the process of judicial decision making. This research also undertakes an examination of the variable coding assignments relative to small group and social hierarchy analysis concepts.

The research builds upon the work of S. Ernest Rusbult, Gordon Allport, and Harold J. Speth. The theoretical foundation of this research is the stimulus-response model. The fundamental constructs of the model are value, attitude, and ideology. These constructs are operationalized by concentrating on the behavioral component of attitude response. Milton Rokeach's conceptual definition of attitude is used for operational purposes because of its behavioral focus and because the overt behavior of the justices from which attitudes are inferred are actually assessable.

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ABSTRACT

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ANALYSIS OF SUPREME COURT BEHAVIOR

By

Peter George Renstrom

This research is an examination of the dimensionality of Supreme Court decision making. The historical period chosen for this research are the 1941-1946 Terms during which Harlan Fiske Stone served as Chief Justice. The primary focus of this research is the determination of the psychological determinants of the Stone Court's decisional behavior, and a consideration of the relationship between values, attitudes, and ideologies in the process of judicial decision making. This research also undertakes an examination of the various voting alignments relative to small group and social background analysis concepts.

The research builds upon the work of C. Herman Pritchett, Glendon Schubert, and Harold J. Spaeth. The theoretical foundation of this research is the stimulus-response model. The fundamental constructs of the model are value, attitude, and ideology. These constructs are operationalized by concentrating on the behavioral component of attitude response. Milton Rokeach's conceptual definition of attitude is used for operational purposes because of its behavioral focus and because the overt behavior of the justices from which attitudes are inferred are mutually amenable.

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The computer-dependent data analyses required separation of the non-unanimous cases into distinct categories. Guttman scale techniques were used to generate the necessary order relations. The scales were defined with emphasis on maximum specificity and substantive refinement by employing the notions of attitude object (AO) and attitude situation (AS) derived from the Rokeach formulation. Four hundred ninety-eight non-unanimous decisions were rendered by the Stone Court in the five terms under examination. 97.4% of these cases (485) were fitted into sixty Guttman scales to provide the basic universe of data.

The scale ranks developed from the Guttman scales were used as the raw data for the computation of Kendall tau rank order correlations. The resultant inter-correlation matrix was used as the input for the factor analysis and cluster analysis computer routines. The empirically defined decisional dimensions subsequently became the basis for the social background and bloc analyses.

The factor analysis revealed the existence of three dimensions. A multi-dimensional finding clearly sets the Stone Court apart from its immediate predecessor in that a single dimension no longer is sufficient to summarily describe the collective and individual behavior of the Supreme Court. The Stone Court, thus, is found to be a transition court in terms of movement from a uni-dimensional to a multi-dimensional decisional character.

The three empirically-defined dimensions were labelled Judicial Power, Governmental Regulation, and Administrative Oversight. These three dimensions contained some substantive overlap although some independent characteristics could readily be seen. The Judicial Power dimension

encompasses the proper role of the judiciary in terms of institutional linkages between the Court and other decision-making authorities as well as the policy orientations of the members of the Court itself. The dimension reflects the traditional (but especially relevant to the Stone Court) power-role consideration, and the appropriateness of judicial initiative and assertiveness in policy determination.

The Governmental Regulation dimension is relatively straight-forward in comparison. The dimension represents the fundamental attitude of the Court to governmental regulation in the most general sense. It entails regulation of the economy, but also the notion of nationalizing regulation and regulation precipitated by World War II. The Administrative Oversight dimension is an interaction of the other two dimensions. The cases of this dimension focused upon legitimacy of regulation and the role of the Court in reviewing administrative decisions. Also present, however, was an equity consideration. The Court seemed concerned with how it could foster efficient and just administrative operations.

The social background analysis of the decisional propensities of the Stone Court members revealed that only political party affiliation is marginally predictive. The bloc analyses by dimension conformed very closely to the blocs initially described by Pritchett on the basis of his categoric definition of the Stone Court cases.

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Department of Political Science

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It is possible to acknowledge the help of many people who have made this dissertation possible. I would like to mention special recognition and a special thank you to the section Professors Duncan H. Nelson, Department of Chemistry, MIT of Macalester College, and Dr. R. H. ...
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 and Charles Frenn of Michigan State University ...
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 criticisms have facilitated completion of this dissertation.

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 the countless enjoyable hours spent in the ...
 conversation as well as the frequent ...

And to Sarah, my thanks for being there in just the ...
 way. I must also thank my three "kids" for ...
 constantly sought "R & R."

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of Schubert have been codified and defined methodologically and methodologically. This initial chapter will examine the work of Fritchett and Schubert as well as other relevant political scientists and synthesize the relevant concepts into a new conceptualization of the current research effort.

A. Fritchett and the Roosevelt Court

1. C. Herman Fritchett undertook a political scientific analysis of the patterns of voting intergovernment of Supreme Court justices during a quarter of a century ago. The project was motivated by Fritchett's desire to examine the "politics and the values" relevant to the behavior of that judicial body.¹ Several insightful observers of the Court had recognized the political bases and policy-making capabilities of the Supreme Court prior to Fritchett's analysis,² but the work of Fritchett stands out as the point at which the traditional tool of academic inquiry began to be subverted in favor of a different research orientation.³

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Pritchett's work stimulated CHAPTER ONE - efforts in several diverse research areas. The re-orientation of the research problem focusing upon the social psychology of judicial attitudes is of central significance at this time. Controversial and comprehensive changes have taken place in the research orientation of students of public law over the last fifteen years. My own research spans this transition and is a product of this reorientation. The acknowledged impetus for much of this refocused research is the work of C. Herman Pritchett. His original thinking has been subsequently broadened, extended and formalized by numerous scholars, particularly Glendon Schubert. In turn, the contributions of Schubert have been modified and refined both theoretically and methodologically. This initial chapter will draw from the work of Pritchett and Schubert as well as other contemporary judicial analysts and synthesize the relevant concepts into an overview description of the current research effort.

A. Pritchett and the Roosevelt Court

C. Herman Pritchett undertook a relatively systematic analysis of the patterns of voting interagreement of Supreme Court justices roughly a quarter of a century ago. The project was motivated by Pritchett's desire to examine the "politics and the values" relevant to the behavior of that judicial body.¹ Several insightful observers of the Court had recognized the political bases and policy-making capabilities of the Supreme Court prior to Pritchett's analysis,² but the work of Pritchett stands out as the point at which the traditional foci of academic inquiry began to be subsumed in favor of a different research orientation.³

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Pritchett's work stimulated subsequent efforts in several diverse research areas. The research employing an approach focusing upon the social psychology of judicial attitudes is of central significance at this juncture. From a theoretical standpoint, Pritchett's Roosevelt Court is neither well developed nor precisely defined. Pritchett was not particularly concerned with elaborate research design, the need for subsequent replication, or the need for concise and precise operationalization of the concepts with which he was dealing. He confined himself, rather, to an examination of the member interagreements as measured by manifest voting alignments or blocs.

The foremost contribution of the Roosevelt Court rests with the assertion that something of a political ideology-psychological character determines and/or motivates the responses made by the members of the Supreme Court to the issues contained in the cases before the Court. Pritchett characterized these motivating influences in rather simplistic liberal-conservative terms, and he described the manifest voting alignments and differential individual responses with this context.

Pritchett was intrigued by the increased rate of disagreement within the Roosevelt Court, and he sought to determine the cause and significance of "this unusual amount of disagreement and division."⁴ He found "cause and significance" reflected in the interagreement-disagreement patterns. Clear and relatively permanent blocs were shown to exist within the membership of the Supreme Court; the pattern of alignment was definite and very non-random in character. With respect to these blocs Pritchett said,

The groups on each side of the Court were almost watertight. In only a very few instances did a justice in

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It is this notion which makes the Roosevelt Court the genesis (implicitly or explicitly) of most modern judicial behavior research. It clearly serves as the point of departure for Glendon Schubert.

B. Schubert and the Stimulus-Response Model

The most appropriate place to initiate a discussion of the work of Glendon Schubert is with one of his later volumes, The Judicial Mind.⁶ Schubert suggested in his introductory chapter that two basic objectives guided his research effort. The first was the explanation of a theoretical model focusing upon the political ideologies and attitudes of Supreme Court justices. Schubert pursued this objective by concentrating on the decisional propensities of the members of that judicial body. Second, Schubert sought to examine the patterns in the Court's policy-making endeavors over an extended period of time.⁷ The latter objective relates most directly to Pritchett's work with the Roosevelt Court.

The primary significance of Glendon Schubert's research cannot be considered in exclusively theoretical or methodological terms, however. Its significance rests more with the total orientation and direction of the research. Schubert clearly departed from the perspective of the traditionalist as Pritchett did before him; Schubert did not direct concentration on individual cases. Instead, Schubert attempted to examine the Court "on the basis of measurements of aggregate data relating

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Primarily to the manifest voting behavior and inferred political attitudes of the justices."⁸ The crux of Schubert's perspective can be summarized thusly, "My view of the decisions is that these are the products of sets of judicial attitudes that have been activated by particular stimuli; and from this perspective, the attitudes of the justices are of a much more fundamental importance than the decisions."⁹ This is a much more comprehensive statement than that suggested by Pritchett.

The basic operating assumptions underlying Schubert's conceptual position are related directly to the writings of Harold Lasswell, in particular, Power and Personality.¹⁰ Lasswell's notion of the "political type" is of central importance. Schubert assimilated the Supreme Court justice within the "political roles that will permit him to enjoy the power he craves."¹¹ He is the person who "displaces his private motives on public objects, for which he then provides a rationalization in terms of the public interest."¹²

Moving from Lasswell's "political type," Schubert concentrated on the matter of the rationality of human thinking and choice-making. He felt he could justify making the rationality assumption because "the roles of Supreme Court justices are defined in such a way as to give maximal emphasis to the importance of rational factors."¹³ These influences include such things as the character of legal training (professional socialization), the traditions of the Court from an institutional standpoint, and the other general influences imposed from within the context of the highly ordered legal tradition, e.g., the tradition of deference to established order.¹⁴ Schubert suggested that this notion of rationality also offered the "advantage of providing a basis for considerably more precise and systematic measurements than would be

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possible for a researcher attempting to use the projective approach."¹⁵ It was the projective approach from which Schubert wished to detach himself in favor of an approach that was "associated with the use of psychometrics in relations to stimulus-response, cognitive and learning theory."¹⁶

The final element derived from Lasswell was the notion of "rationalization." Schubert considered here such aspects of the judicial process as conference exchanges by the justices, the drafting of the written opinions which accompany the Court's decisions, etc., as manifestations of this rationalization phenomenon. He noted, however, that opinion behavior as such should not be the central focus of analysis. Opinion de-emphasis was justified by the assumption that there is a "very close correspondence between the private beliefs and the public voting and opinion behavior of the Supreme Court justices...."¹⁷

The remainder of Schubert's introductory chapter extends the focus of his decision making model. He asserted that the question to which he was addressing himself is, "...when men play political roles, to what extent are their public acts influenced by their personal beliefs?"¹⁸ In this context, a methodological question is raised, "how can a social scientist study the relationship between political belief and political action, in such a way as to maximize the probability that his findings can be replicated by others."¹⁹ This question of rigorous methodology and predictive theory, replication, and other associated matters were concerns which dominated Schubert's work.²⁰

Schubert then moved to the related question of trying to "minimize the probability that he (the researcher) was projecting his own predictions onto the political actors whose behavior he seeks to understand."²¹ Schubert felt that this and the previous question "presume

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a socio-psychological approach to political behavior, in which the purpose of inquiry is to explore motivational elements of choice in political decision making."²² The model directly addressed itself to this question. Schubert chose the Supreme Court as a research object because it is a small and stable group as well as a group to which access to data is readily achieved through the U.S. Reports.

Schubert cited three primary sources for the theoretical framework of his model. The first was the work of Louis L. Thurstone in the field of factor psychology.²³ Thurstone assumed that if the behavior of collections of individuals (like a judicial body) were correlated, the correlations must "reflect the extent to which the members of the group were individually correlated with the sets of the dimensions relevant to their behavior."²⁴ This approach allows the researcher to sub-divide a particular correlation matrix into component parts or factors. According to Thurstone, such factors were "bi-polar, so that a person might be correlated in either of two directions with a dimension..."²⁵

Considered spatially, configurations of points, each representing the individuals within the particular group, could be located in a factor space and these points "would remain invariant under any rotation of the factor reference axes."²⁶ The configuration of points might alternately be conceived of as "a set of vectors which are imbedded in the space, and whose interrelationships may be measured by an infinite number of frames of reference."²⁷ Schubert was thinking in essentially three-dimensional terms with orthogonal reference axes - axes located at ninety-degree angles to one another.

The second source of influence on the Schubert formulation came from the theory of data developed by Clyde Coombs. From the criteria Coombs used for the classification of psychological data, Schubert

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pulled the stimulus-response notion which is fundamental to his model. The stimulus-response concept revolves around two basic components, the "ideal-point," and the "stimulus-point." An individual's "ideal-point" is that "particular combination of the relevant dimensions which best approximates the person's own syndrome of attitudes."²⁸ The heart of Coombsian theory is that basic components of the human personality can be conceptually represented by a particular point in a proposed factor space - a space of any dimensionality. In addition, the questions to which a person in a decision-making position reacts may be considered as stimuli. More important, these stimuli may be measured along the same dimensional lines as the individual attitudes; these stimuli may also be represented by points in the postulated factor space.²⁹

Coombs hypothesized that "when an individual responds to a stimulus, his mental process may be conceptualized as that of making a comparison between his ideal-point (i-point) and the stimulus-point (j-point) in the factor space."³⁰ Under this hypothesized condition, Coombs suggests that two kinds of i-point and j-point relationships can exist. The first is where the individual supports or responds positively to all stimuli whose j-point is perceived by the individual as locating "within a critical distance from his own i-point (the position with which he identified himself - where he perceives himself to be located in factor space)."³¹ The other is where the individual rejects all stimuli which is perceived as being located elsewhere in the space or beyond his own i-point.³²

Schubert added the measurement technique of cumulative scale analysis to the stimulus-response notion of Coombs and the factor measurement theory of Louis Thurstone. In Coombsian terminology, a cumulative scale may be classified as a one-dimensional space or a

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line on which both the i-point and the j-point are contained. While the cumulative scale is one-dimensional by itself, the scale can become a part of a multidimensional construct if one considers the scale as an axis located in space. The exact spatial location of these scales is determined by means of the association of these scales to the underlying reference axes in the space.³³ It is from these three basic sources that Schubert generates his psychometric model.

Schubert begins the description of the assembled model on the assumption that,

...each justice either come to the Court with, or soon acquires as the result of the kind of task with which he is charged, relatively well-structured attitudes toward the recurrent major issues of public policy that confront the Court for decision.³⁴

Schubert felt that an analysis of the content of these decisions will produce a classification of the issues common to them. From these issues one can identify the relevant dimensions of attitudes which respond to these issues.

The cases comprising the Court's docket are conceptualized as stimuli. The attitudes of the individual members of the Court are represented as "a unique point in space varying from one to three dimensions."³⁵ These are the i-points. The contents of the case, the facts and the issues produced from these facts, specified for each justice which attitude or basic psychological dimension (one or more) is relevant for the particular case. In short, the decisional response of each member of the Court will depend upon whether the stimulus of the case is short or beyond the i-point of each justice.

Considering the Court collectively, the Court's decision will be a function of how many i-points are dominated by (or dominate) the stimulus point of the particular case.³⁶ The justices are divided by

the position of the j-point in the one-dimensional situation. There will be only one group if all i-points exceed or are exceeded by the stimulus-point. The multi-dimensional situation will have the attitudinal variable in the space as an axis, and the ideal and stimulus-points will be at right angles to the axis. The justice will find his particular referent axis on the basis of the perception of the individual justice as to the issue. This axis will serve as the fundamental criterion on which he makes his decisional choice. The dominance relationship again determines behavior.³⁷

Schubert's application of the factor analytic techniques involved consideration of matrices of phi correlations among each possible pair of justices. The purpose was to measure "the extent to which each element, of whatever has been associated in the correlation matrix, is related to the reference dimensions into which the original correlation matrix has been partitioned."³⁸ The elements in The Judicial Mind were, of course, the justices, and the factor loadings expressed the degree of association of each justice to the structural dimensions of the correlation matrix.

Schubert undertook his scale analysis by employing two basic variables, political liberalism and economic liberalism, drawing upon the liberal-conservative bases first used in this context by Pritchett. He constructed term-by-term scales on each of these two variables reasserting the primacy of the two attitudinal bases for the decisional behavior (while achieving at least the minimum in terms of the various scale evaluative criteria). Schubert acknowledged other relevant attitudes such as attitudes toward governmental taxing authority, federalism, judicial activism and judicial centralization, but he found that none of these variables consistently produced more than quasi-scales.

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The critical thrust of Schubert's work theoretically (as well as the work of those operating from a comparable research orientation) is that judicial decision making behavior, if not decision making behavior taken generally, can be explained in terms of several basic psychological factors - in Schubert's case, the two factors of political and economic liberalism. Schubert did not go beyond a three-dimensional factor space conceptually - a throwback to Thurstone's initial orthogonal factor analysis notions. The criticism of this particular research approach, a criticism coming from behavioral as well as traditional researchers, is that the design of Schubert (and those who followed) tends to grossly oversimplify the descriptions of the Court, its decision making processes, and the explanations of its behavior.³⁹

Criticisms, from whatever source, focus upon two related aspects. First, it is asserted that Schubert's approach tends to underestimate the complexity or dimensionality of the structure of the Court's behavioral patterns. Secondly, the interpretations of the dimensions were assailed as similarly oversimplified.⁴⁰

Spaeth and Peterson discuss these distortions at some length and suggest some of the research implications.⁴¹ The problem of underestimation seems to be the product of wholesale issue merging that occurs in the construction of the massive scales characteristic of much early scalogram efforts. The "C" or civil liberties scale and "E" economic liberalism scale are illustrative. As Spaeth and Peterson point out, such a merging of issues and issue categories introduces two kinds of bias. First, the "practice of minimizing nonscale responses by the re-ordering of cases results in an ordering that makes possibly diverse cases seem as similar as possible."⁴² It is in this context that Spaeth suggests that other modifications of scaling techniques and evaluative

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criteria be employed when examining judicial decisions.⁴³ Spaeath and Peterson pursue as well the second type of bias produced through oversimplification, ...categories, such as race, or religion may be represented by so few cases in a single term that the highly structured response pattern on the numerically predominant cases may easily compensate for non-scale responses introduced by a minority of misclassified cases belonging to a distinct dimension.⁴⁴

The underestimation that occurs, of course, distorts interpretation and tends to lead to oversimplified conclusions about the structure of the decisional patterns generally.

C. Toward Operational Refinement of the Model

Schubert was looking at the question of dimensionality by using scale analysis. He assumed from the outset the existence of more than a single dimension, but expected that almost everything could be explained in terms of the political and economic liberalism variables. Schubert represented each of these variables by means of gigantic unidimensional scumulative scales.

Schubert's massive scales met the unidimensionality criteria established by the developers of cumulative scaling techniques. It is here that the oversimplification issue becomes central. One of the ways to counteract the oversimplification danger is to work from the most specific toward the more general. Simply, this involves constructing as many separate and highly refined categories (scales) as possible and determine empirically the character of the decisional behavior. Rather than categorically defining the inverse of items (as Schubert did through the construction of the political and economic liberalism scales), the emphasis is directed toward maximum scale refinement. This does not

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preclude merging the numerous refined scales into several larger scales, but such mergers occur only when empirically justified.

This departure from Schubert's design is intended to allow the researcher to examine the structure of the Court's decisional behavior much more objectively. The approach does not inhibit the finding of a structure which is highly simplistic - a structure with minimal dimensionality. At the same time, it does allow a much more complex structure to reveal itself if it, in fact, exists. The latter was a condition prohibited by the Schubert methodology. The departure from Schubert compels one to go beyond psychometrics and general measurement considerations at the theoretical level. It requires that one also deal conceptually with such constructs as attitudes and cognitive theory encompass. Certain aspects of a conceptual consideration of attitude will be summarized below although the discussion will be limited to that which is directly related to the current research.

Harold J. Spaeth has attempted to operationalize the constructs of attitude, value and ideology for the purpose of examining judicial decisional behavior.⁴⁵ Most of the remaining discussed will be based upon these attempts. Traditionally, attitude response has been seen to have three basic components - cognitive, affective and behavioral. The behavioral component is that upon which this research focuses as it is the overt behavior of the members of the Court from which the researcher infers the basic attitudinal bases of the decisional behavior of the Court's members.

The focus on the behavioral component requires a conceptual definition of attitude which also focuses upon this component for the purpose of operationalizing attitude and related constructs. The conceptual definition offered by Milton Rokeach has such a focus and is highly

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useful with the kind of data being used in the current research. Rokeach summarizes his definition,

An attitude is a 1) relatively enduring 2) organization of interrelated beliefs which describe, evaluate, and advocate action with respect to an object or situation, 3) each with belief having cognitive, affective, and behavioral components. 4) Each one of these beliefs is a predisposition which, when suitably activated, results in some preferential response toward the attitude object or situation, or towards others who take a position with respect to the attitude object or situation, or toward the maintenance or preservation of the attitude itself. 5) Since an attitude object must always be encountered within some situation about which we also have an attitude, a minimum condition for social behavior is the activation of at least two interacting attitudes, one concerning the attitude object and the other concerning the situation.⁴⁶

The notion that attitudes are relatively enduring is generally accepted as noted by Shaw and Wright among others.⁴⁷ The research done upon judicial bodies reflect this same phenomenon. Schubert, for example, found very little evidence to suggest that any shifts in the attitudes of Supreme Court justices changed over time.⁴⁸ This has also been reflected by the fact that numerous highly refined Guttman scales have been constructed across terms which empirically demonstrates the soundness of this proposition. Consideration along this line will be given to the measurements of the relative positions of Justices Stone and Roberts. Prior to 1941, Stone was acknowledged as a member of the liberal wing or bloc of the Hughes Court while Roberts located among the moderates or within the mediate bloc. Their scale positions relative to the Court's general issue responses post-1941 will be examined to determine if the personnel changes brought about by Roosevelt's appointments created movements by Stone and Roberts.

It is also a consensus view that attitudes are not the basic element within the personality with respect to the organization or

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relationship of the constructs. The element considered to be the basic or irreducible element is the value.⁴⁹ The essence of the distinction between value and attitude in the sense they are employed in this research is their level of generality. An attitude represents "the sum total of interrelated beliefs about an object or a situation."⁵⁰ The hierarchical organization of these elements will be briefly summarized below.

Beliefs and attitudes are considered structurally analogous on the basis of the Rokeach formulation.⁵¹ A hierarchical element is then added. Beliefs, as noted, are the basic element. Attitudes, or systems of interrelated beliefs, are at the next level. Values are conceptualized as occupying a third level and also seen as being structurally analogous to beliefs and attitudes. Values are conceived to be interrelated belief systems which include attitudes. Ideologies, finally, are at the highest level of generality. Ideologies are composed of interrelated belief systems including attitudes and values. Figure 1 provides a representation of structural hierarchy of the various components of this conceptualization.⁵² All four levels have cognitive, affective, and behavioral components as portrayed.⁵³ Similarly, social psychological theory suggests that beliefs are functional to attitudes, attitudes to values, and so on. A more thorough discussion of the notion of function and functional connections can be found in any of a number of excellent treatments.⁵⁴

Exclusive focus will be upon the actual votes cast by members of the Court rather than the written opinions for the purposes of this research. Particular emphasis will be given the relationship between attitudes and decisional behavior. Defining attitude as an organization

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FIGURE 1 The Simplified Representation of the Psychological Determinants of Decision Making*

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Finally, Rotter's conception of attitude involves two focal which interest - the attitude toward object and the attitude toward situation.

Rotter sees behavior as the product of each of the interaction of these focal (A3 and A5)...

The primary A3, which is the legal entity involved in the lawsuit. This legal entity can be...

defendant, a civil litigant, a business, a union, a racial or ethnic group, a business, a...

The primary A5, which is the substantive content of the lawsuit, represents...

Spaeth and Farber use the term "attitude systems" to refer to the A3 vis-a-vis A5...

used in the current research. The term "attitudes" is used to refer to the A3...

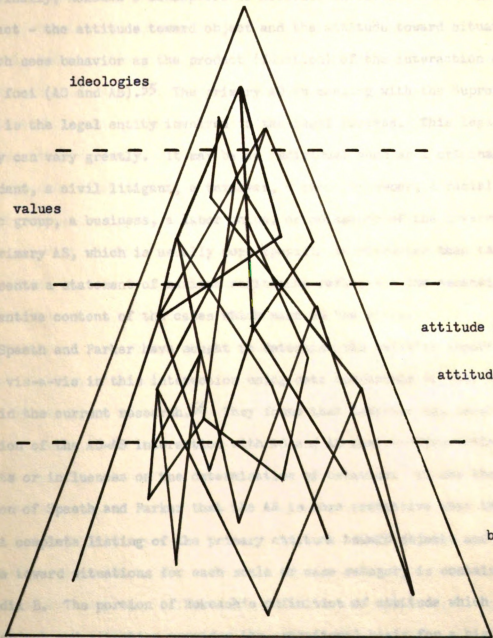
effects or influences of the attitude system on the decision of Spaeth and Farber...

A complete listing of the primary attitude systems is contained in appendix B. The portion of Rotter's...

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* Reproduced from Harold J. Spaeth, "The Operationalization of Attitude, Value and Ideology," Public Health Service Research Grant Project, MH 15365-01, from the National Institute of Mental Health, 1968, p. 4.



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of beliefs, more than a single tendency to respond is required for activation. The necessity, therefore, for a definite action tendency component is requisite for this research. This closely follows the formulation of Rokeach.

Finally, Rokeach's conception of attitude involves two foci which interact - the attitude toward object and the attitude toward situation. Rokeach sees behavior as the product (function) of the interaction of these foci (AO and AS).⁵⁵ The primary AO in dealing with the Supreme Court is the legal entity involved in the legal process. This legal entity can vary greatly. It may be an individual such as a criminal defendant, a civil litigant, a taxpayer, a property owner, a racial or ethnic group, a business, a labor union, or an agency of the government. The primary AS, which is usually more specific in character than the AO, represents a statement of maximum refinement reflection the semantic, substantive content of the cases which make up the scale.

Spaeth and Parker have sought to determine the relative importance of AS vis-a-vis in this interaction using data comparable to that being used in the current research.⁵⁶ They found that behavior is, indeed, a function of the AO-AS interaction with AO and AS having differential effects or influences on the determination of behavior. It was the conclusion of Spaeth and Parker that the AS is more predictive than the AO.

A complete listing of the primary attitude toward objects and attitude toward situations for each scale or case category is contained in Appendix B. The portion of Rokeach's definition of attitude which deals with object and situation provides the operational basis for a highly refined classification of the cases, and it allows the empirical (as opposed to categorical) definition of the basic or underlying structure of the decisional behavior of the Court's members. The techniques used

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to make these empirical determinations are discussed at length in Chapter Two. *generality.*

To the degree to which the classifications of cases into Guttman scales are valid measures, "...we are able to tap the primary psychological determinants of Supreme Court decision making."⁵⁷ Attitude will, thus, be operationally defined as "a set of cumulatively scalable items as finely drawn as the parameters of the data permit."⁵⁸ This will be done despite the fact that there are a great variety of attitude objects and attitude situations (60 pairs) which makes the scales more closely akin to attitude systems since within each can be hypothetically found an independent psychological determinant of behavior.

The operationalization of value follows from attitude. A value is viewed as a set of interrelated attitudes. The values are measured by means of the various measures of association utilized. Assuming each scale represents an attitude, a high correlation between the ranks of scale scores of two or more scales will represent a value - an attitude system. Values, then, are seen as dependent upon the attitude which is similarly dependent upon beliefs.

In summary, the theoretical and conceptual model differs in part from the operational model. The conceptual base for the current effort is the premise that a psychological structure determines behavioral response and that this structure is composed of beliefs, attitudes, values and ideologies, in that order of generality. Moreover, each one of these component parts may vary substantially in terms of specificity. Operationally, however, there seems to be no way in which individual beliefs or even attitudes can be measured with precision, thus, behavior is viewed as a function of something more general. That which is termed attitude in operational term is, conceptually speaking, an attitude system.

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D. The Period

The period chosen from the history of the United States Supreme Court for analysis using the described model is the five-term period beginning in October 1941 and running to June 1946 (or through the 1945 Term). These are the five terms during which Harlan Fiske Stone served as Chief Justice. This time period will hereafter be termed the Stone Court, and it is from the Stone Court that the decisional data are secured for this research.

The five terms under the Chief Justiceship of Stone were chosen for numerous and varied reasons. First, these five terms are extremely significant in terms of the policy output of the Supreme Court. From both a political and a constitutional standpoint, these five terms are distinctively rich with respect to the substantive policy output and policy priorities expressed by the Court collectively. This was a five-year period in which the Court refined and expanded the policy direction begun in the spring of 1937 in such decisions as *West Coast Hotel Company v. Parrish*,⁵⁹ and *National Labor Relations Board v. Jones & Laughlin Steel Corporation*.⁶⁰ At the same time, it was a Supreme Court which did not fully achieve the status of "judicially activist" as functionally defined by Schubert⁶¹ given the concomitant policy predispositions of President Roosevelt and the Congress.

The Stone Court provided policy reinforcement by means of supplementing outputs from other decision (policy)-making sources with its own sanction and seal of legitimacy. The Stone Court never aggressively sought to assert a policy-making lead relative to other policy-making

authorities. Nevertheless, the Stone Court did give its approval to the attempts to broadly expand the powers of the federal government, particularly in the area of regulation by Congress under the provisions of the commerce clause.

Second, the Stone Court was almost totally the product of Franklin D. Roosevelt's appointments. After withstanding more than four years of obstructionist response to the New Deal legislation by the pre-1937 Court, Roosevelt had the opportunity to appoint (or elevate in the case of Chief Justice Stone) nine of the eleven members of the Stone Court. Justice Roberts, a hold-over from the Hoover Administration, and Justice Burton, who was appointed by Harry Truman, were the only justices not directly appointed by Roosevelt. Thus, the period allows one to examine the effects of re-shaping the Supreme Court through the appointment process. It provides, in particular, an excellent occasion for the consideration of Dahl's suggestions relative to the role and capabilities of the Court in the policy-making process.⁶² Stated differently, one is able to examine the relevance of life tenure on the policy independence of Supreme Court members and the Court collectively.

Third, the membership of the Stone Court is relatively stable. Eleven justices sat on the Court between 1941 and 1945 with seven spanning the entire five years.⁶³ This stability of membership minimizes the problems of missing data which increase in proportion to membership turnover. Likewise, it maximizes the utility of longitudinal or cross-term analysis of the Court by reducing the number of ranking judgments that have to be made by the researcher. This increases the precision of all subsequent operations which are based upon the contents of the Guttman scales.

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Fourth, this period had been previously studied in substantial depth. The current research allows for replication of Pritchett's analysis in a substantive sense, but also provides an opportunity to consider the divergent methodological techniques used and assess their respective utility. There is also opportunity for cross-Court evaluations. The periods immediately before and after the five terms under consideration here have been subjected to comparable analytic procedures at Michigan State University. All of these projects relate directly to the exhaustive primary research project currently being conducted at Michigan State under the direction of Professor Harold J. Spaeth. The specific areas of comparative consideration include the evaluation of the applicability and utility of the model used across historical periods, an examination of the continuity of specific psychological dimensions of the Court's decision-making, and a weighing of the differences within the Court itself in this psychological sense.

Fifth, the politics of the period are subjected, to varying degrees, to the environmental influences of the national emergency created by the Second World War. The United States had just emerged from another national emergency - the Depression - in which the Court played an active and most determining policy role. The war is an added variable in the sense that it is not common to many other time periods. Some highly significant public policy questions came before the Supreme Court during these five terms relating to the powers of the federal government during the emergency. It provided a clear test of whether a constitutional government can operate without substantial change during a period of emergency. It also cast many other questions in a different context on occasion, e.g., freedom of speech, subversive political activities and associations, etc. In short, the period allows for the consideration of

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Finally, this period is noted for the absence of unanimity among members of the Supreme Court. The high rate of dissension maximizes the utility of the methodological techniques employed. The data from the Roosevelt Court, which is reproduced in Table 1, reflect this extremely high rate of dissent during the Stone Court period as contrasted with the period immediately preceding. Thus, this period, with its extensive lack of consensus on policy issues, offers extremely "rich" data for the type of analysis being conducted in this research effort.

A brief recapitulation shows that the bases of the current research stem primarily from the work of Pritchett, Schubert, Rokeach, and Spaeth. The fundamental objective of the research is the determination of the decision making structure of the Stone Court. A closely related purpose of the research is to examine the theoretical utility and adequacy of the stimulus-response model as it is applied in the area of judicial behavior. The research also allows comparison of the decision making structure of the Stone Court to adjacent courts as well as methodological and substantive comparisons of Pritchett's seminal work on the Roosevelt Court.

The general hypotheses under test might be stated as follows:

- A. It is empirically possible to reduce the numerous issues that appear in the cases before the Supreme Court to one, or two, or three in number by focusing on the values, attitudes, and ideologies present individually and/or collectively on the Stone Court.
- B. The decision making structure of the Stone Court is multi-dimensional in character unlike its immediate predecessor. Thus, it is hypothesized that the Stone Court is a transition

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RATES OF DISSENSION: 1930-1945 Terms⁶⁴

TERM	TOTAL OPINIONS	NONUNANIMOUS OPINIONS		DISSENTING VOTES	
		No.	%age	No.	PerOp
1930	168	18	10.7	46	.27
1931	151	26	17.2	55	.36
1932	169	27	16.0	61	.36
1933	166	27	16.2	66	.40
1934	172	22	12.8	61	.35
1935	160	26	16.2	80	.50
1936	162	31	19.1	82	.51
1937	170	46	27.1	88	.52
1938	149	50	33.6	116	.78
1939	141	42	29.8	85	.60
1940	169	47	27.9	117	.69
1930-1940	1777	362	20.4	857	.49
1941	162	59	36.4	160	.99
1942*	171	75	43.9	176	1.03
1943	137	80	58.4	194	1.42
1944	163	94	57.7	245	1.50
1945**	137	77	56.2	156	1.14
1941-1945	770	385	50.0	931	1.21

* Vacancy for a portion of the term between the resignation of Byrnes and the commissioning of Rutledge

**Jackson absent for the entire term, and the Chief Justice's seat vacant from April through June

court in terms of the relatively complexity of its decision making dimensionality or structure.

C. Superficially compatible ideologies when placed on the Supreme Court are as likely to fragment as ideologically incompatible justices.

D. Highly refined techniques of measuring decisional behavior ought to allow socio-political correlates of behavior to appear despite the gross character of socio-political variables used.

E. Greater refinement ought to be achieved when empirically-defined decisional dimensions are used in place of categorically-defined data thus enhancing the utility of bloc analytic techniques.

1. Fritschel, op. cit., p. 10.
2. Fritschel, op. cit., p. 10.
3. Fritschel, op. cit., p. 10.
4. Fritschel, op. cit., p. 10.
5. Fritschel, op. cit., p. 10.
6. Schubert, op. cit., p. 10.
7. Ibid.
8. Schubert, op. cit., p. 10.
9. Ibid.
10. Maxwell, Harold, Power and Paradox, New York: Basic Books, 1968.
11. Schubert, op. cit., p. 10.
12. Ibid.
13. Schubert, op. cit., p. 10.
14. Ibid.
15. Schubert, op. cit., pp. 10-11.
16. Ibid.
17. Schubert, op. cit., pp. 10-11.
18. Ibid.
19. Schubert, op. cit., p. 10.
20. One of the bases of Schubert's arguments is cited in a footnote in a collection of essays entitled, "Judicial Activism and the Supreme Court," by Thomas P. Scharif and Sheldon Shuman, eds., The Federal Judicial System, New York: Holt, Rinehart & Winston, 1968, pp. 10-11. This collection draws upon articles such as "Judicial Activism and the Supreme Court," Law and Contemporary Problems, 33, 1968, pp. 10-11, in which Schubert analyzes the ideological behavior of the Court during the 1961 Term using conceptually the same model.
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2. Pritchett notes these observers in an essay entitled, "Toward a Renaissance of Public Law," in Joel B. Grossman and Joseph Tanenhaus, eds., Frontiers of Judicial Research, New York: John Wiley and Sons, 1969, pp. 3-26.
3. Discussion of this research orientation transition can be found in numerous essays, e.g., Schubert, Glendon, "Bibliographical Essay: Behavioral Research in Public Law," American Political Science Review, June 1963, pp. 433-45; Joseph Tanenhaus, "Social Science Methods in the Study of the Judicial Process," in Thomas P. Jahnige and Sheldon Goldman, eds., The Federal Judicial System: Readings in Process and Behavior, New York: Holt, Rinehart and Winston, 1968, pp. 123-27; and Pritchett's essay in Grossman and Tanenhaus, *supra*.
4. Pritchett, op. cit., p. 26.
5. Pritchett, op. cit., p. 33.
6. Schubert, Glendon, The Judicial Mind: Attitudes and Ideologies of Supreme Court Justices, 1946-1963, Evanston, Illinois: Northwestern University Press, 1965, pp. 5-6.
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8. Schubert, op. cit., p. 10.
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10. Lasswell, Harold, Power and Personality, New York: Norton, 1948.
11. Schubert, op. cit., p. 12.
12. Ibid.
13. Schubert, op. cit., p. 13.
14. Ibid.
15. Schubert, op. cit., pp. 13-14.
16. Ibid.
17. Schubert, op. cit., pp. 14-15.
18. Ibid.
19. Schubert, op. cit., p. 15.
20. One of the best of Schubert's discussions of this aspect is contained in a selection entitled, "Judicial Attitudes and Voting Behavior," in Thomas P. Jahnige and Sheldon Goldman, eds., The Federal Judicial System, New York: Holt, Rinehart & Winston, 1968, pp. 254-60. This selection draws upon articles such as "Judicial Attitudes and Voting Behavior," Law and Cotemporary Problems, 28, 1963, pp. 100-42, in which Schubert examines the decisional behavior of the Court during the 1961 Term using essentially the same model.
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22. Ibid.
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27. Schubert, op. cit., p. 25.
28. Coombs, Clyde H., A Theory of Data, New York: Wiley, 1964.

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30. Ibid.
31. Ibid.
32. Ibid.
33. Schubert, op. cit., pp. 29-37.
34. Schubert, op. cit., pp. 37.
35. Ibid.
36. Schubert, op. cit., p. 38. Comparable discussions of the model used by Schubert in earlier studies can be found in, "Judicial Attitudes and Voting Behavior: The 1961 Term of the United States Supreme Court," Law and Contemporary Problems, 28, 1963, pp. 100-42; "A Psychometric Model of the Supreme Court," American Behavioral Scientist, 5, 1961, pp. 14-18; and "The 1960 Term of the Supreme Court," American Political Science Review, 56, 1962, pp. 90-107. Most empirical research utilizing cumulative scaling use variants of this model as well.
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48. Schubert, The Judicial Mind, pp. 228-33.
49. Shaw and Wright, op. cit., p. 4. Other very helpful discussions can be found in Rokeach, Milton, The Open and Closed Mind, New York: Basic Books, 1960, Chapter 2; and Milton Rokeach, Beliefs, Attitudes, and Values: A Theory of Organization and Change, San Francisco: Jossey-Bass, 1968, pp. 112-18.
50. Spaeth, op. cit., p. 2.
51. Rokeach, Beliefs, Attitudes and Values, op. cit., pp. 115-16.
52. Spaeth, op. cit., p. 4.
53. Spaeth, op. cit., p. 3.
54. Rokeach, Beliefs, Attitudes and Values; Daniel Katz, "The Functional Approach to the Study of Attitudes," Public Opinion Quarterly, 24, 1960, pp. 163-204; and M. Smith, J. Bruner, and R. White, Opinions and Personality, New York: Wiley, 1964.

55. Spaeth, loc. cit.
56. Spaeth, Harold J., and Douglas R. Parker, "Effects of Attitude Toward Situation upon Attitude Toward Object," The Journal of Psychology, 73, 1969, pp. 173-82.
57. Spaeth, op. cit., p. 6.
58. Ibid.
59. 300 US 379. In West Coast Hotel, the Court, in a 5-4 decision, upheld against due process claims a Washington statute providing for minimum ages for women and minors overruling Adkins v. Children's Hospital (261 US 525) and Morehead v. New York ex. rel. Tipaldo (298 US 587).
60. 301 US 1. The Jones & Laughlin decision, again findings the Court split 5-4, sustained the provisions of the Wagner Act establishing the National Labor Relations Board and, thus, the exercise of commerce clause power by Congress in the field of labor relations and the economy generally.
61. Schubert, Glendon, Judicial Policy-Making, Glenview, Illinois: Scott, Foresman, and Company, 1965, pp. 153-57. Schubert here proposes to define activism and restraint in terms of policy relationships between and among the Court and those with whom the Court shares decisional authority, e.g., the President, Congress, administrative agencies, etc. An activist Court is, thus, a Court out-of-phase or in disharmony with other decision-makers; restraint finds the Court in policy harmony.
62. Dahl, Robert A., "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker," Journal of Public Law, VI, no. 2, 1957, pp. 279-95.
63. Chief Justice Stone actually died late in the 1945 Term (April 1946), thus, he did not sit through the entire five-year period. His successor as Chief Justice, Fred M. Vinson, did not assume the post until the beginning of the 1946 Term. In addition to the qualification of Stone's membership, Associate Justice Jackson was absent from the Court for all of the 1945 Term serving as the presiding judge at the war trials at Nuremberg. Hence, for the 1945-46 Term, the Supreme Court was composed of eight justices, and functioned with only seven justices from the time of Stone's death in April until the end of the term two months later in June of 1946. This qualification does not, however, detract from the statement regarding membership stability asserted above as a significant asset of this research project's decisional data.
64. This table has been produced in large part from Table I, p. 25, of the Roosevelt Court, with the two aggregate rows (1930-1940 and 1941-1945) added by the author.

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CHAPTER TWO -

THE RESEARCH METHODOLOGY

The stimulus-response model upon which this research is based requires operationally data consisting of, at minimum, order relations drawn from distinct sub-sets of a defined universe of items. The item universe is the non-unanimous decisions of the United States Supreme Court rendered with full opinion during the 1941 through 1945 Terms. Information on the specific cases as well as the aggregate sets of cases are provided in Chapters Three and Four. The dominant-subordinate relationship of the model used in the current research lends itself to the application of both unidimensional as well as multidimensional techniques of analysis. Accordingly, such techniques of data processing as cumulative scale analysis, correlational analysis and factor analysis were used. This chapter will summarize the methodological considerations generally, but also examine specifically the chosen techniques and their respective function in this research. Most of the analyses will be computer-dependent, thus this chapter will also provide descriptions of the computer routines employed. Particular attention will be directed toward summarizing the inputs required, and the character of the computer output.

The fundamental constructs from the model for this research are beliefs, attitudes, values, and ideologies. The operationalization of the constructs begins within the stimulus-response relationship, and the notion of dominance. Focus is, thus, placed upon the behavioral component of attitude response. Rokeach's conceptual definition of attitude, discussed in some detail in the preceding chapter, has been adapted for this research because of its focus upon this behavioral component. Furthermore,

the overt behavior of the subjects (the Supreme Court justices) from which the attitudes are inferred are data readily applicable to this theoretical definition.

It is recalled that Rokeach describes attitudes as being relatively enduring in character, the composite of interrelated beliefs, structurally analogous to the psychological constructs of beliefs, values, and ideology, and motivating a predisposition toward some preferential response. In addition, Rokeach suggests that an attitude contains an object which must be considered within a situational context.¹ In other words, an attitude is an interaction of a focus upon attitude object (AO), and a focus upon attitude situation (AS). The operationalization of the concept of attitude for purposes of this research begins with these notions of AO and AS.

A. Cumulative Scale Analysis

The first step in transforming the voting alignments of the non-unanimous Stone Court decisions into data which are amenable to the techniques chosen is a preliminary classification of the cases. This preliminary classification undertakes to categorize the cases on the basis of the semantic or substantive legal content of the specific cases. Throughout the preliminary classification, the primary objective is to minimize category breadth in order to produce as much substantive refinement and specificity as possible. The categories of cases produced by the preliminary classification are subjected to Guttman cumulative scaling techniques upon completion of this preliminary and somewhat impressionistic consideration.

Guttman scale analysis is a means by which it is possible to determine whether a series of responses, usually to questionnaire items or

interview schedules, measure a single underlying attitude.² The cumulative character of the method comes from the manner in which patterns are formed by the responses to the series of stimuli. If each of the items varies in the degree to which the subject must respond, then you would suspect that the subject responding in a positive fashion to the most extreme statement (or other stimulus) would also respond positively to those stimuli which are less extreme. The best example is the often-used measurement of height. The Guttman technique operates on the basis that if a number of questions were asked about a person's height, e.g., are you five feet tall, are you six feet tall?, etc., a person five foot-six would respond positively to the first question but negatively to the second. These situations are defined as specifically as possible. For

Each case decided by the Court represents a separate stimulus to which the members of the Court respond either positively or negatively. In the development of the Guttman scales, the group of cases in the scale is viewed as a series of questions similar to those of an interview or questionnaire item. The attitude objects and attitude situations are utilized by making them the substantive bases of the Guttman scale-sets. Each scale is, thus, constructed by taking cases which reflect the attitudes of the members of the Court toward certain objects and situations which are presented in the individual and subsequently collective cases in the category-scale. Plus and minus signs are used in the building of the scales to note the vote of the respective justices. While some effort is made to link these signs across the scales, usually on the basis of traditional liberal-conservative positions, the assignment of a sign is not ultimately a biasing process. If a relatively arbitrary decision is made as to direction or sign assignment and it turns out to be inconsistent, this will appear in the correlation coefficients. The

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scale will either be found unrelated or highly related with a negative coefficient. In the latter case, the signs may simply be reversed after appropriate reconsideration.

The operationalization of attitude is based largely on the AO and AS notion as mentioned. The primary attitude object in this research is the legal entity involved in the legal process. This legal entity may be an individual, e.g., a taxpayer, a criminal defendant, a property owner, a Negro, etc., or a business (or businesses generally), an organization such as a labor union, or the government at either the federal, state, or local level. The primary attitude situation represents the substantive legal, political, social or economic issue involved in the aggregated cases. These situations are defined as specifically as possible. For example, the AS for the set entitled Fair Labor Standards Act: Contracts is the applicability of wage and hour provisions of the Fair Labor Standards Act to employees governed by negotiated work contract or compensated on an other-than-hourly basis.

It is also possible to have subordinate or secondary AO's and AS's. These secondary objects or situations, where they may exist, represent additional specificity on the primary AO's and AS's. They may represent some type of qualifying condition which operates in some manner on either the primary AO or AS. The primary AO of criminal defendant might be further refined with such secondary notations as to race, gravity of offense, or the number of times the person has been convicted. The addition of a supplemental AS further refines the situational aspect. The AS for the Radio Regulation set is regulation or attempts to regulate the operation of radio networks and/or local licensees by the federal government. The secondary AS's are freedom of speech and freedom of the press. Additional refinement for this set might take the form of judicial deference toward

the substantive decisions of the federal regulatory agency, or judicial supervision of federal agency decision-making.

In summary, the AO and AS for each category-scale are derived from the content of the cases in that set, and they become the descriptive as well as the operational foundation of the set. The content dependence of the attitude object and attitude situation produces tremendous variation in the specificity of each category-scale. Sixty scales were generated from the Stone Court non-unanimous decisions.

The attainment of maximum category refinement through the AO and AS while including as many of the formal non-unanimous decisions as possible was the primary objective of this phase of the analysis. The approximation of perfect reproducibility, however, was also a top priority concern. Reproducibility is a matter of extreme importance in the utilization of the Guttman technique. The responses of a subject to all items (cases) are theoretically determinable by the subject's position in a given scale. A non-scale response or scale "error" is, thus, a response made by one of the subjects which could not have been predicted from the subject's position in the scale. Using the Court as a concrete example, a justice would commit an "error" if he supported a position after having failed to support less demanding or extreme positions or failed to support a position after supporting more extreme positions. Scale errors, of course, are entities which should be held to absolute minimum in the construction of scales.

Scale errors can be measured in several ways. The most common scale error measure is the coefficient of reproducibility (CR). The CR provides the proportion of item responses that can be correctly predicted from the scale positions of the subjects.³ It is suggested in Guttman's original work that any scale from which a minimum of ninety percent of the responses

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could be accurately predicted was satisfactory and met the criterion of unidimensionality.⁴ A more stringent minimum was set for this research; the minimum coefficient satisfying the unidimensionality concern was a CR of .95 or ninety-five percent predictability from scale positions. This more rigorous criterion was established because of the small and stable character of the Court's membership, the high frequency of personal interactions among the members of the Supreme Court, and the generally superior capabilities of members of the Court to both communicate and generalize. Because of these features of the Supreme Court, Spaeth has persuasively argued for the more stringent minimum CR to satisfy the unidimensionality criterion.⁵

Spaeth also added to the rigor of another aspect of the Guttman scale technique as it relates specifically to its application in the area of judicial research.⁶ It is possible through the ordering and re-ordering of cases (items within the scale) to reduce the number of non-scale responses which inflates the CR. This re-ordering was common practice among those who early utilized the Guttman methods, especially where more than nine justices were considered.⁷ Spaeth proposes that cases be ordered such that marginal lines are not crossed. All the decisions with 7-2 marginals, for example, would be placed together rather than intertwined with 8-1 and/or 6-3 decisions with such a procedure. It is impossible to reduce inconsistencies or non-scale responses merely by shuffling the items around within the scale until the fewest number of errors (the highest CR) was achieved.

Two other criteria for the evaluation of each scale were also used. The first is the coefficient of minimal marginal reproducibility (MMR) which is used in conjunction with CR. The MMR represents the empirical lower limit of the CR.⁸ Stated another way, the MMR represents the "mean

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of the ratios of the modal frequency to the sum of the marginals for each respondent (or case)⁹. The MMR, thus, indicates whether the CR is an artifact of the modal category frequencies. The difference between CR and MMR should be maximized ideally. The CR has a numerical maximum of 1.00 while no MMR can have a value of less than .50, therefore, computational constraints do exist with respect to the size of the CR and MMR difference.

The other criterion used for each of the scales is Menzel's coefficient of scalability.¹⁰ This coefficient (CS) can be somewhat more rigorous than the CR where 8-1 and/or 7-2 decisions predominate in a scale because the computational method of the coefficient does not become distorted (as the CR may be) by the "inclusion in a scale of decisions or respondents with extreme marginal distributions."¹¹ All responses including single dissents are incorporated into the computation of CS unlike the calculation of CR. The minimum level of acceptability suggested by Menzel for the CS is .600. Only one of the sixty scale-sets in this project (Religion) produced a SC of less than .750.

The scales generated in this research achieved remarkably high coefficients on all criteria. The mean CR was .9878; the median CR is .987; the mean MMR .8249; the median MMR .820; the mean CR-MMR .1628; median CR-MMR .1675; mean CS .9402; and the median CS .941. It is evident that all applicable scale-evaluative criteria were more than adequately met in the construction of these Guttman scales. Appendix D provides the various criterion measures for each of the individual scales.

Two points ought to be made at this time concerning the cases which are included in the scales. The non-unanimous cases of the Stone Court were included in a particular scale on the basis of substantive content and "goodness of fit" with respect to the scaling criteria. There were

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occasionally cases which substantively could have been placed in more than one of the scales. The decision as to which one or more of the scales should receive the case depended generally upon whether scaling criteria were fulfilled. If a case produced a non-scale response when placed in one scale but did not when placed in another, it would finally be located where no inconsistency or non-scale response resulted. If, on the other hand, no non-scale response was found in either scale, the case was left in both scales.

The danger in unrestrained multiple placements is that the correlations between the scales containing the multi-located cases are artificially increased. While a substantial number of multiple placement cases (178) are found in this study, most of them are clustered in a relatively few scales. This occurred because several scales were generated later than most of the other scales. These later scales were suggested by the content of the cases which remained unclassified after the initial group of scales were prepared.

The later scales¹² were characteristically lacking in AO and AS specificity; they were essentially residual scales. Careful watch was kept on the correlations between these scales and the originals to note artificially inflated correlations. The high number of duplications in a particular scale was in several instances produced by the inclusion of a multi-number citation. The Judicial Review of Regulatory Commission Decisions set contains fourteen duplicate or multi-located cases. Ten of these duplications come from the Bankruptcy set. All ten of these cases, however, have the same citation - 318 US 523. This is a case in which ten individual appeals were aggregated for the purpose of oral argument and disposed of by a single opinion because of the high similarity of legal issues involved in all these cases. The danger of

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spurious correlation with other scales is just as real in this situation and great care was likewise exercised here.

An example of this dual placing can be shown with the case of *Magnolia Petroleum Company v. Sullivan H. Hunt*.¹³ The case involved a consideration of a personal injury compensation award granted to a Louisiana resident under Texas law for an injury sustained while working in Texas. The injured employee then attempted to collect damages under Louisiana's workmen's compensation provisions. This case raises the issue of liability for personal injury as well as the issue of full faith and credit. The case was included in both of these sets as no scale errors were produced in either set, and because the inclusion could be substantively justified. This procedure did enlarge the number of cases somewhat, but resolved an arbitrary decision situation that would have existed otherwise.

There were also cases in which some ties in ranks for a particular scale could be resolved because the tied respondents both submitted individual opinions. Justices Murphy and Rutledge, for example, were tied in rank in the Right to Counsel scale-set on the basis of the six cases in the scale. In the case of *Canizio v. New York*,¹⁴ however, both Rutledge and Murphy wrote separate dissenting opinions. The rank ties was broken in favor of Murphy on the basis of the content of the two dissents because of the intense character of Murphy's dissent relative to that offered by Rutledge. Murphy's argument, in other words, was discerned as being supportive of the more extreme position. These expansions were made only if one opinion was perceived as more supportive of a position beyond that of others represented in separate opinions. This kind of content analysis is subject to criticism, but where differences were not clear, ties were retained and the effect of possible observer bias substantially muted.

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B. Correlational Analysis

The basic data for the remainder of the analysis are the ranks achieved by each justice in each of the scales. The computer-dependent analytic techniques use intercorrelations of these ranks as the routine input. The intercorrelations are the associations between the respondents' manifest voting behavior in the cases included within the sixty Guttman scales.

Two coefficients were initially used for these ordinal level data. The first is the Kendall rank correlation coefficient, sometimes referred to as the tau coefficient.¹⁵ Ranks were assigned to as many of the justices as possible (always a minimum of nine) based upon scale position. The Kendall coefficient provides a measure of association between two sets of ranks, in this case, the assigned scale ranks. There are no assumptions with which to be concerned with non-parametric statistics, hence, the tau is a highly useful coefficient for these data. The coefficients between each pair of variables (justices' scale ranks) become the cells of a sixty-by-sixty matrix.

The Spearman rank correlation coefficient (rho) was used in addition to the Kendall tau at the outset. The rho coefficient was subsequently dropped because of the similarity of results. The rho, like the tau, is a measure of rank association, but in a computational sense is not equivalent nor are the coefficient values comparable. When the correlation is near zero, the two coefficients are relatively close in value, but as the relationship becomes greater, the tau tends to be lower in value than the rho. In any event, there is no way to precisely estimate one from the other.¹⁶

The correlation matrices were produced by computer.¹⁷ The program

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used was a non-parametric package with options for the tau and rho coefficients among a number of others. The raw data for the routine were the scale ranks assigned to each respondent from each of the sixty scale-sets. The program has the capacity of assigning cells for which there is not a data value of zero and excluding those cells from the calculation of the particular coefficient. Since there were a number of occasions in which one or more justice had not participated in enough decisions to allow the assignment of a rank, the missing data feature of this program was extremely desirable. It was always possible to input nine ranks from any scale, but in some scales the assignment of a rank of ten or eleven was precluded because of insufficient participations. The computer program would simply reduce the N for such a variable (scale). The computer output included the coefficient for each variable pair as well as the number of subjects correlated and the level of statistical significance achieved by the coefficient.¹⁸

C. Factor Analysis

The correlation matrix of the Kendall tau coefficients became the basic input for the factor analysis routine. Factor analysis was used because it facilitates determination of whether a smaller number of variables can adequately represent all of the variables in the original matrix. It is possible through the use of factor analysis to determine the number of factors underlying a more numerous group of measures. Looking at factor analysis from another perspective, it is a method for identifying common variance from a number of separate measures.¹⁹

The specific uses to which factor analysis was put in this research were several in number. First, it was used to separate patterns of judicial behavior as manifest in the voting alignments interrelated within

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the tau matrix. Second, the universe of data was reduced to manageable portions with a minimum of information loss. Third, factor analysis was crucial in the determination of the underlying structure of the universe of decisions input into the research. Finally, the results of the factor analysis allowed more comprehensive description and interpretation of the data.²⁰

The product of a factor analysis is a matrix of factor loadings. A factor loading ranges from +1.00 to -1.00 and in almost every respect can be considered similarly to correlation coefficients in a conceptual sense. The actual loading values represent the association between the particular variable and the specific dimensions or factors. A value known as communality is provided for each variable in addition to the factor loading value. The communality represents the sums of squares of the factor loadings or the common factor variance.²¹

Speaking in spatial terms, there are several concepts which are essential to an understanding of the factor analytic technique. First, the measures can be conceptualized as points distributed through a space. The factor analyst attempts to determine the relationship of these points by sending vectors or axes through the points. The manner in which these points relate to these axes determines how the constructs are interrelated (or independent as the case may be). These axes are called reference axes, and the factors loadings are determined by the spatial relationship of their respective point to the reference axes.²²

The determination of the basic factors from a body of data can be made in several ways. The most common method is the principal axes method. This method has the advantage of maximizing the amount of variance for each factor it extracts and reduces the original matrix to the fewest number of independent dimensions.

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The reference axes are located in relatively arbitrary positions in the conceptual space though the interrelationships among the variables, either spatially or otherwise, do not change. It is possible, thus, to account for a good deal of the common variance without revealing the basic structure of the variables, which to most factor analysts is the primary objective. Louis L. Thurstone suggested that this problem could be overcome by rotating the reference axes through the space and provided some criteria whereby meaningful solutions could be obtained.²³

The criteria provided by Thurstone come from the notion of simple structure. The purpose of these guidelines is to establish a relatively standard location for the reference axes after rotation such that the dimensions produced are as simple as possible; the factorial complexity of the measures is minimized. Thurstone's five rules of simple structure are as follows,

1. Each row of the factor matrix should have at least one loading which is close to zero.
2. For each column of the factor matrix there should be at least as many variables with zero or near-zero loadings as there are factors.
3. For every pair of factors there should be several variables with loadings on one factor but not on the other.
4. When there are four or more factors, a large proportion of the variables should have close to zero loadings on any pair of factors.
5. For every pair of factors of the factor matrix there should be only a small number of variables with appreciable loadings in both columns.

These criteria were utilized in this research in order to determine the simplest configuration of the variables.²⁴

Orthogonal rotations were made in the placement of the reference axes in addition to utilizing Thurstone's simple structure guidelines. Orthogonal rotations keep the factors independent of one another. When the reference axes are placed in factor space, they are located at ninety-degree angles to the other axes; the dimensions have zero correlations.

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The oblique rotation is an alternative to the orthogonal rotation and allows the placement of reference axes at more than or less than right angles. The factors in this case are not independent, but rather are related or correlated in one direction of the other; the angles between the reference axes are acute or obtuse.²⁵

The relative merits of these two rotational methods is a highly debated point in the field of factor analysis. There is general agreement, however, that regardless of the rotational method employed, there seldom are significant differences between the interpretations of the results of each. Those preferring the orthogonal rotation argue that independent factors are much easier to deal with in an interpretive and theoretical sense as well as being more manageable in a conceptual sense. The orthogonal axes are also seen as more stable than are the oblique axes. The proponents of the oblique rotation generally argue that simple structure is much more easily and satisfactorily achieved using the oblique rotation and that such variables as are found in psychological research are usually related, hence, obliqueness more closely conforms to the "realities" of the situation. Because dimensional interpretation is a crucial aspect of this research, primary dependence was placed upon the orthogonal rotation analyses.

Quartimax and varimax criteria will be applied to the principal axes method in the use of the orthogonal rotation. These are criteria which have been designed to standardize rotations such that results obtained at different times and by different observers using the same input would be independently identical. The quartimax criterion is a method for maximizing the values of the loadings in order to allow the clearest discrimination between or among the factors. One of the methods, for example, involves the raising the values of each loading by the power of four.

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This, of course, disproportionately increases the values of the larger loadings. In other words, the objective is to secure matrices (of factor loadings) with "maximal tendency to have both large and small loadings."²⁶

The varimax criterion is essentially similar. In fact, it is a modification of the quartimax method which "more nearly approximates simple structure."²⁷ The quartimax method focuses on the simplification of the description of the rows in a loading matrix. Often the results of such simplification is the development of a general or single factor. The varimax method focuses upon the simplification of the columns of the loading matrix. Varimax was developed to facilitate the achievement of factorial invariance as well as satisfy the simple structure criterion, hence, it is frequently considered as having greater utility in the kind of research undertaken here.²⁸

The computer routine used for the orthogonal factor analysis was called Factor A: Principal Components and Orthogonal Rotations.²⁹ The print-out from the routine includes the original correlation matrix, the principal axes, varimax, and quartimax factor loadings, the communalities for each variable, and the proportions of common factor variance accounted for by each factor.

This routine provides several control options which might be mentioned. The most important one not previously discussed is the Kiel-Wrigley criterion. This is a function which controls the continuation of rotation. It is a criterion value selected by the observer, and the rotations continue until a factor is encountered which contains fewer than the set number of variables with their highest factor loading. The Kiel-Wrigley criterion was used throughout the research although it is possible to utilize the program without the Kiel-Wrigley control. This

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was done on several occasions when rotational cut-off occurred at two factors. There is also an Eigenvalue threshold which allows termination of the extraction of factors when an Eigenvalue of less than a specified value is encountered.³⁰

The FASCALE routine was developed prior to the completion of the data analysis, and it greatly facilitated the factor analysis. The routine consists of the SSA-1, MDSCAL, and TSCALE multidimensional scaling methods in addition to principal axes factor analysis. The program allows the option of one or more of the component subroutines and accepts as the input any matrix of similarity or dissimilarity and "configurations of points whose distances matrices are computed and analyzed as dissimilarity matrices."³¹ The program handles as many as fifty variables and solves through ten dimensions. The output provides a listing of the input matrix, factor loadings, communalities, Eigenvalues, a Shepard diagram of the solution, and plots of the solution points.³²

The computer phase of the analysis had initially included two multidimensional nonmetric scaling routines - the Guttman-Lingoes smallest space analysis (known as SSA-1), and J.B. Kruskal's MDSCAL.³³ Guthery and Spaeth, however, have found both techniques to be empirically and theoretically deficient.³⁴

The FASCALE program was developed by Guthery and Spaeth in order to simultaneously and systematically examine the monotone criterion on which both techniques were based. The data which were subjected to the analysis with FASCALE were nineteen geometric shapes whose dissimilarity and scaling solution is established. The data used as input for the evaluation of the monotone criterion, and the methods developed for achieving this criterion were, in other words, samples free from error. Using the various options in FASCALE for SSA-1 and MDSCAL, seventy-six separate

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runs with errorless sets of data were made, and the findings checked for solution congruence.

Guthery and Spaeth found that the analyses did not produce congruent results. They concluded that unless one had some relatively clear notion as to the character of the solution prior to the use of either SSA-1 or MDSCAL which employ the monotone criterion, the results cannot be readily adopted as the solution. They suggested that this problem was a product of the limitations of the recovery capabilities of the two routines which resulted in substantial information loss, the inability of the loss functions of the routines to measure the "non-monotonicity of a particular set of points," and the difficulty in determining whether the structure or errors in measurement produced the discrepancies in cases where approximation is the best possible solution.³⁵

One other computer-dependent method was used in the analysis of the Stone Court data. This method was a clustering routine which, when used in conjunction with the factor analysis, proved valuable in a supplemental sense. The method was developed as a modification of the work done by Louis L. McQuitty,³⁶ and is called Hierarchical Clustering Based on a Criterion of Largest Average Within-Cluster Similarity. The routine is more commonly termed LAWS.³⁷

The primary objectives of the hierarchical clustering method are to construct sets of successively more inclusive clusters, and to form these clusters in which intra-cluster similarity and extra-cluster dissimilarity are maximized. These objectives, of course, are components of the more general objective of identifying types and sub-types. The LAWS method treats the most similar pairs of elements in a set of variable intercorrelations as the basis from which the clusters are enlarged. The LAWS routine also bases the decisions regarding acceptance or rejection of

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This clustering technique was used primarily to determine if the clusters produced by the largest within-cluster similarity criterion would resemble the factors produced by the factor analysis. This technique also provided a systematic record of the sequence in which each variable joined (was absorbed or included) a particular cluster. This perspective is lacking in the factor analysis and was occasionally of aid in the interpretive phase.

This has been a resume of the computer-dependent routines used in this research. Description of these computer methods have been brief and often lacking in great detail. An effort has been made, however, to point out a number of useful sources of additional discussion in order to minimize the liabilities of brevity.

D. Socio-Political Analysis

The empirically defined dimensions produced by the various computer operations provided an extremely rare opportunity to examine the relationships between the justices' decisional behavior and their social background (socio-political) characteristics. The literature indicates that minimal payoffs are likely from this kind of endeavor, but the great strength of the empirical analysis of behavior made even a low-probability-of success effort worth undertaking.

A major handicap in any attempt to undertake an examination of the relationships of background and behavior is the insufficiency of background data. Even an extremely rigorous behavioral analysis cannot compensate entirely for this deficiency. The research essentially finds himself limited to a very small number of gross variables for which data

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are available. The problem becomes more crucial when dealing with the Supreme Court because of its small size. Compounding this situation is the tendency characteristic of previous social background efforts to deal with decisional behavior in a correspondingly unrefined and gross fashion. This latter shortcoming, of course, has been overcome here.

The socio-political data was obtained primarily from the body of data collected by John R. Schmidhauser.³⁹ In addition, an effort was made to obtain information from such sources as the Who's Who in America, the Directory of American Judges, and the New York Times. The limited number of biographies written about several of the Stone Court justices were also consulted. The Schmidhauser data, however, were usually the most satisfactory in terms of covering all eleven of the Stone Court members.

The socio-political variables used in this research were determined by availability of data across the Court. Nine such variables were ultimately used - political party affiliation, reputation as a frequent dissenter (Zobell and Evans index), previous active political experience or party offices held, size of town or city of birth, region in which the justice was raised, academic standing of the institution from which the justices' legal training was received (Schmidhauser classification included apprenticeship, average standing, or high academic standing), religious affiliation (again using the Schmidhauser typology of high, intermediate or low social status), ethnic background (nationality), and type of lawyers primarily associated with prior to appointment. All of these data were divided into two or three classificatory groups for the analysis and are presented in summary form at the end of Chapter Three.

Each of the respective categories was compared using the scale ranks and scale scores as the measures used in the application of various

statistical tests of significance. A scale score is a numerical value which has a range of zero to one.⁴⁰ Each justice's votes from each of the scales was translated into a scale score by determining each respondent's scale position (on which rank assignments were also based) and computing the proportion of total responses to those positive responses up to the break-point of the respondent. Justices who did not vote in a sufficient number of cases to provide a clear break-point were given positive votes through half of the non-participations although no more than three positive votes were ever placed. No scale score was used for those justice's whose participations were so infrequently as to produce gaps of greater than six cases.

Both parametric and nonparametric tests of significance were employed during the analysis. First, the differences between and among the variable cells were tested for the significance of differences by means of the non-parametric chi-square test.⁴¹ The scale scores were dichotomized into "high" and "low" categories by using the mean dimension scale scores as the break-point. Contingency tables were constructed, and the chi-square computed. The chi-square is a test which determines the significance of differences between two or more variables (or groups) when the data consist of frequencies in discrete categories.⁴² A contingency coefficient was calculated for each of the tables subsequent to the computation of the chi-square. A contingency coefficient is a measure of association which is stated in terms of the chi-square quantity.⁴³ One of the limitations of the contingency coefficient is that it cannot be interpreted as having the same numerical value as other coefficients of correlation. Rather, the contingency coefficient is unique; it has an upper limit which is a function of the number of categories in the particular table.⁴⁴

A parametric test of significance was employed upon completion of

the nonparametric tests. A mean of the scale scores for each category of a particular variable was obtained for each of the dimensions using each scale as a separate measure. The t-technique for comparing the difference between two independent means of small samples was used.⁴⁵ There clearly is doubt concerning the meeting of the assumptions of the t-technique, particularly the assumptions of distribution normality and homogeneity of variance. The effects of assumption violations with the t-technique, however, are minimal because of the "robustness" of the t-test. The robustness claim is based upon empirical examinations of the effects of the t-test assumption violations conducted by C.A. Bonneau and others who found that even extensive or extreme violations, e.g., variance differences of three and four times or highly skewed distributions, do not produce unreliable test results.⁴⁶

The findings of the t-test on differences of scale score means were checked by re-calculating the t-test after substituting mean scale ranks for scale score means. This was done not only to check the substantive findings of the initial t-tests, but also to examine any differences which might result from changing the base data. Finally, sums of squares were computed for the larger distributions and used in the calculation of F-tests.⁴⁷ An equivalence of the F-value and the square of the value produced by the t-test was the hoped for result. The two values should be identical because when testing the between groups variance for the two groups in the analysis of variance or F-test, the sampling distribution of F becomes the same as that for t^2 given the use of the between groups variance in the numerator of the computational formula. In other words, the t-test is a special case of the F-test when $N_1 = 1$.⁴⁸ The primary purpose for computing this test was to check the t-tests as several of the distributions to which the t-test was applied were

substantially larger than distributions upon which the t-test is most commonly used.

E. Cluster-Bloc Analysis

The empirically defined dimensions also have potential value with respect to bloc analysis. The bloc analytic effort was also suggested because of the opportunity for direct comparison with the findings of Pritchett's bloc analysis covering these same five terms.⁴⁹ The work of Pritchett, however, focused upon the Court's voting patterns on a term-by-term basis, and when consideration was given to specific portions of the universe of cases, the definition of groups of cases was determined on the basis of substantive content of the cases categorically. The entire basis of substantive focus of Pritchett's bloc analysis was issue-oriented as opposed to decision or vote-oriented.

Blocs were constructed in the current research for each of the two empirically defined dimensions. This is a substantial departure from the method used by Pritchett. There are several other methodological differences in the bloc analysis technique used in this research and that used by Pritchett. The main differences are outlined below.

First, all the cases on which the Court divided for which a formal opinion was written were included in the matrix in the construction of each interagreement matrix. The practice excluded from consideration the per curiam decisions and memorandum decisions. Second, each decision was considered to be the basic unit rather than the formal opinion. Frequently the Court includes or disposes of several cases with a single opinion. Nevertheless, the members of Court vote separately on each component case. Hence, each vote cast requires its designation as a separate unit or case in the construction of the bloc matrices.

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Pritchett, given his issue orientation, counted each opinion only by reasoning that consideration of multiple cases as separate entities would distort the bloc interagreement frequencies and ratios. Similarly, single dissents in such multiple cases were considered in the current research as separate dissenting votes. The main rationale for these decisions being considered separately is the same as that used in choosing to consider them separately in the construction of the Guttman scales. Since each case represents a separate vote, and since each justice can theoretically vote differently on each of these component cases, attitude influences are reflected in each action.

The actual matrices of the blocs of the respective dimensions are composed of both frequencies and ratios of interagreement. For each dyad or pair of justices, frequencies were determined and ratios computed by dividing the frequency of identical voting by the total number of shared participations. This particular technique allows comparability of pairs to be achieved despite partial or incomplete service for some justices across the entire five-year period. It also minimizes any effect of missing data from the construction of the blocs. Frequencies of interagreement were retained to reflect variance in ratio bases. The actual bloc construction was done by selecting pairs with the highest ratios of interagreement and considering all other justices as paired with those selected initially. The blocs are ultimately defined by means of the average of interagreement ratios of those justices included. Schubert suggests a bloc whose average interagreement is above .700 is high. This average of interagreement ratios is termed the Index of Interagreement.⁵⁰

FOOTNOTES

1. Rokeach, Milton, "The Nature of Attitudes," in International Encyclopedia of the Social Sciences, New York: Macmillan, 1968.
2. Louis Guttman describes his own method in Samuel A. Stouffer, et. al., Measurement and Prediction, New York: John Wiley & Sons, 1950, chap 3. Cumulative scaling, Guttman scaling, scalogram analysis, etc., all refer to the same process although sometimes the generic term attitude scaling is also substituted. The latter is inappropriate as cumulative scaling is but one of a wide variety of scaling methods used in various attitude measurement endeavors. Discussion of these methods as well as the Guttman technique specifically can be found in a wide number of works, but some of the most commonly cited titles are: Warren S. Torgerson, Theory and Methods of Scaling, New York: John Wiley & Sons, 1958, discussion of the Guttman cumulative technique on pp. 307-36; Allen L. Edwards, Techniques of Attitude Scale Construction, New York: Appleton-Century-Crofts, Inc., 1957, Chapter 7; Lee F. Anderson, Meredith W. Watts, and Allen R. Wilcox, Legislative Roll-Call Analysis, Evanston, Illinois: Northwestern University Press, 1966, Chapter 6; and M. Shaw and J. Wright, Scales for the Measurement of Attitudes, New York: McGraw-Hill, 1967.
3. The titles listed in footnote 2 all discuss reproducibility.
4. Guttman, op. cit., p. 77.
5. Spaeth, Harold J., and David J. Peterson, "The Analysis and Interpretation of Dimensionality: The Case of Civil Liberties Decision Making," Midwest Journal of Political Science, XV, August 1971.
6. Spaeth, Harold J., "Unidimensionality and Item Invariance in Judicial Scaling," Behavioral Science, X, July 1965, pp. 290-304.
7. Glendon Schubert, for example, was guilty of this practice in all of his early work and continued to do so through completion of The Judicial Mind.
8. Edwards, op. cit., pp. 191-93.
9. Schubert, Judicial Mind, pp. 79-80.
10. Menzel, Herbert, "A New Coefficient for Scalogram Analysis," Public Opinion Quarterly, XVII, 1953, pp. 268-80.
11. Schubert, op. cit., p. 81.
12. The scales constructed later were Administrative Deference, Appeals: State to Federal, Appeals: Substantive Review, Supremacy, War Powers, Delegation of Legislative Power, Statutory Construction: Criminal, Statutory Construction: Remedies, and Collaboration. Fifty-one sets had been created initially.
13. 320 US 430.
14. 327 US 82.
15. Kendall, Maurice, Rank Correlation Methods, New York: Hafner, 1955, and Siegel, op. cit., pp. 213-22.
16. A complete discussion of the Spearman rho coefficient and correlations generally can be found in Siegel, op. cit., pp. 195-240; Andrew Baggaley, Intermediate Correlational Methods, New York: John Wiley & Sons, 1964; and Quinn McNemar, Psychological Statistics, third edition, New York: John Wiley & Sons, 1962, see especially chapters seven and eight on parametric correlations and chapter twelve on the non-parametrics.

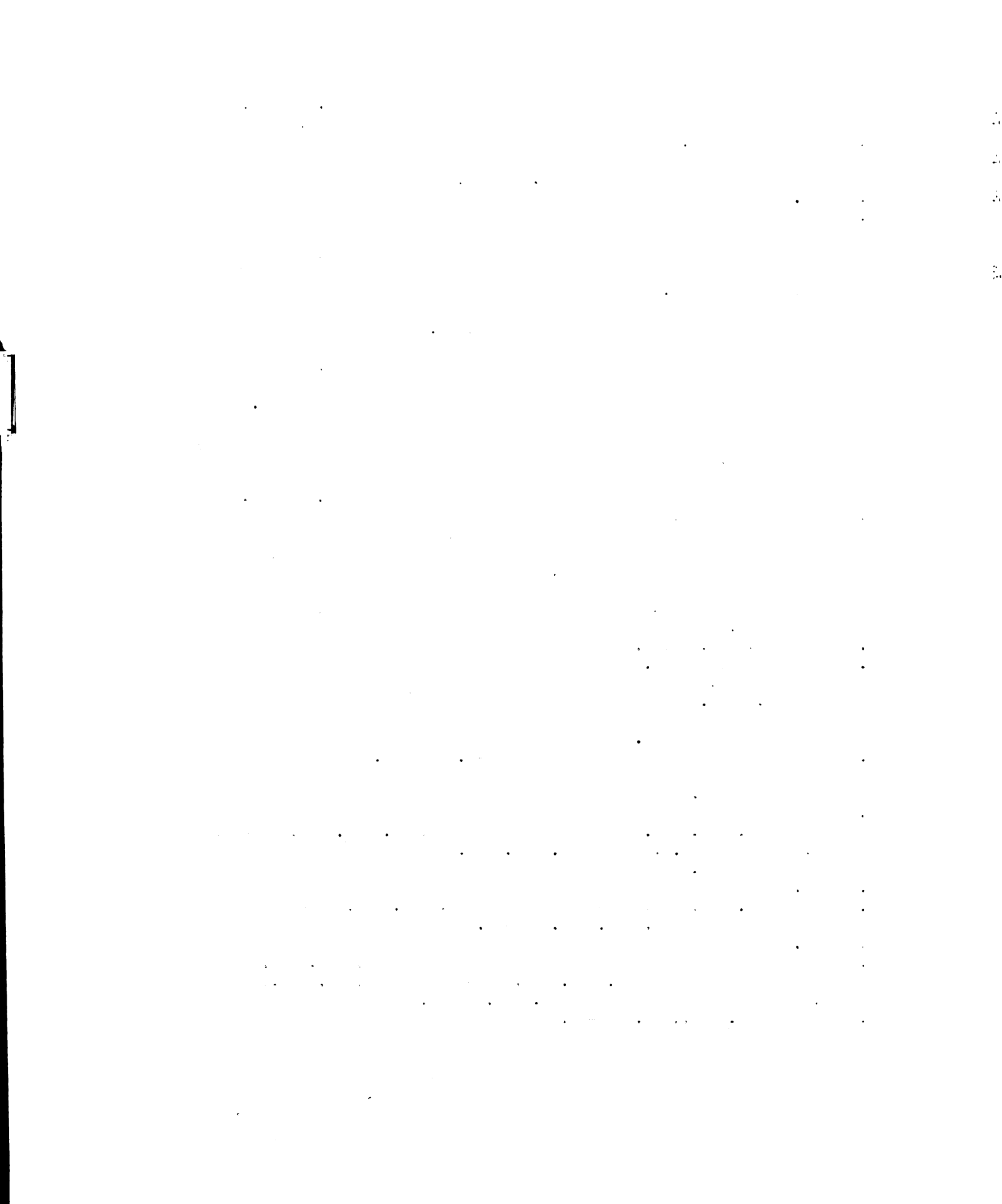
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17. All computer analyses were conducted at the Michigan State University facility on a CDC 3600. All routines used were developed specifically for that facility and were made available through the Computer Institute for Social Science Research at Michigan State University.
18. Morris, John, Nonparametric Statistics, and Rank Correlation Coefficients, Technical Reports #40 and #47, respectively, East Lansing, Michigan: Computer Institute for Social Science Research, Michigan State University.
19. General discussions of factor analysis can be found in numerous titles such as Kerlinger, Fred N., Foundations of Behavioral Research, New York: Holt, Rinehart & Winston, 1965, Chapter 36; R.J. Rummel, "Understanding Factor Analysis," Journal of Conflict Resolution, XI, no. 4, pp. 444-80; Andrew Baggaley, op. cit.; and J.P. Guilford, Psychometric Methods, New York: McGraw-Hill, 1954, Chapter 16.
20. Rummel, op. cit., pp. 448-51.
21. Kerlinger, op. cit., pp. 652-54.
22. Kerlinger, op. cit., p. 657.
23. Kerlinger, op. cit., pp. 661-65.
24. Kerlinger, op. cit., pp. 667-70.
25. Kerlinger, op. cit., pp. 669-70; Rummel, op. cit., pp. 475-77. More information on this point can be found in Raymond Cattell, "Factor Analysis," Biometrics, 21, 1965; and J.P. Guilford, op. cit., pp. 500-22.
26. Baggaley, op. cit., p. 162.
27. Harman, Harry, Modern Factor Analysis, second edition, Chicago: University of Chicago Press, 1968, p. 301.
28. Ibid.
29. Williams, A., Factor A: Principal Components and Orthogonal Rotations, Technical Report #40, East Lansing, Michigan: Computer Institute for Social Science Research, Michigan State University.
30. Ibid.
31. Guthery, Scott B., Harold J. Spaeth, and Stuart Thomas, FASCALE, Technical Report #29, East Lansing, Michigan: Computer Institute for Social Science Research, Michigan State University.
32. Guthery, Scott B., and Harold Spaeth, "FASCALE: A Fortran IV Multidimensional Scaling and Factor Analysis Program," Behavioral Science, 13, 1968, p. 426.
33. Any of the following titles will provide satisfactory discussion of multidimensional scaling. Guttman, Louis, "A General Nonmetric Technique for Finding the Smallest Coordinate Space for Configuration of Points," Psychometrika, 33, 1968, pp. 469-506; Lingo and Guttman, "Nonmetric Factor Analysis: A Rank Reducing Alternative to Linear Factor Analysis," Multivariate Behavioral Research, 2, 1967, pp. 485-505; J.B. Kruskal, "Nonmetric Unidimensional Scaling: A Numerical Method," Psychometrika, 29, 1964, pp. 115-29, and "Multidimensional Scaling by Optimizing Goodness of Fit to a Nonmetric Hypothesis," Psychometrika, 29, 1964, pp. 1-27; and Roger N. Shepard, "The Analysis of Proximities: Multidimensional Scaling with an Unknown Distance Function," Psychometrika, 27, 1962, pp. 125-39 and 219-46. More general discussions can be found in such titles as Warren S. Torgerson, Theory and Methods of Scaling, New York: John Wiley & Sons, 1958), pp. 247-97; J.P. Guilford, op. cit., pp. 246-51; James S. Coleman, "Multidimensional Scale Analysis," American Journal of Sociology, 63, 1957, pp. 253-63; James C. Lingo, "Multiple Scalogram Analysis: A Set-Theoretic Model for Analyzing Dichotomous Items,"

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- Educational and Psychological Measurement, 23, 1963, pp. 501-23. Several other sources are available, but are less helpful.
34. Spaeth, Harold J., and Scott B. Guthery, "The Use and Utility of the Monotone Criterion in Multidimensional Scaling," Multivariate Behavioral Research, 4, 1969, pp. 501-15.
 35. Ibid.
 36. Some of the clustering or interagreement methods developed by McQuitty can be found in the following selections, "Typal Analysis," Educational and Psychological Measurement, 21, 1961, pp. 677-96; "Rank Order Typal Analysis," Educational and Psychological Measurement, 23, 1963, pp. 55-61; "Single and Multiple Hierarchical Classification by Reciprocal Pairs and Rank Order Types," Educational and Psychological Measurement, 26, 1966, pp. 253-65; "Improved Hierarchical Syndrome Analysis of Discrete and Continuous Data," Educational and Psychological Measurement, 26, 1966, pp. 577-82; "Similarity Analysis by Reciprocal Pairs for Discrete and Continuous Data," Educational and Psychological Measurement, 26, 1966, pp. 825-31; "A Mutual Development of Some Typological Theories and Some Pattern Analytic Methods," Educational and Psychological Measurement, 27, 1967, pp. 21-46; and "A Novel Application of the Coefficient of Correlation in the Isolation of both Typal and Dimensional Constructs," Educational and Psychological Measurement, 27, 1967, pp. 591-99.
 37. Price, Leighton A., "Hierarchical Clustering Based on a Criterion of Largest Average Within-Cluster Similarity," Research Report of the Computer Institute for Social Science Research, East Lansing, Michigan: Michigan State University. The report is a revised version of a paper presented at the Annual Meetings of the Midwestern Society of Multivariate Experimental Psychology held in Chicago, Illinois in May 1968.
 38. Price, op. cit., p. 2.
 39. Schmidhauser, John R., "The Justices of the Supreme Court: A Collective Portrait," Midwest Journal of Political Science, III, February 1959, pp. 1-57. The data were made available through the Inter-University Consortium for Political Research at the University of Michigan in Ann Arbor.
 40. Normally scale scores have a range of -1.00 to +1.00, but the range was modified for the purposes of this research in order to eliminate negative values.
 41. A systematic discussion of the chi-square technique can be found in Siegel, op. cit., pp. 104-11; Hubert Blalock, op. cit., pp. 212-20; N.M. Downie and R.W. Heath, op. cit., pp. 160-75; or any standard statistics text.
 42. Ibid.
 43. Siegel, op. cit., pp. 196-202; McNemar, op. cit., pp. 196-202; and Downie and Heath, op. cit., pp. 210-12.
 44. Ibid.
 45. T-technique discussions can be found in McNemar, op. cit., pp. 102-08; Downie and Heath, op. cit., pp. 138-41; Blalock, op. cit., pp. 144-49; or Guenther, op. cit., pp. 22-25.
 46. McNemar, op. cit., pp. 106-07. Regardless of the seeming conclusiveness of Boneau's findings (as they apply to the two-tailed t-test as used in this research), McNemar suggests the incorporation of a more rigorous or stringent level of significance where there is any uncertainty about meeting all of the test assumptions when the samples are as small as they normally are when the t-test is appropriate. See McNemar generally on assumptions connected to parametric tests



characteristically.

47. See McNemar, op. cit., pp. 252-69; Downie and Heath, op. cit., pp. 176-82; relatively standard statistics text.
48. McNemar, op. cit., pp. 267-69; Downie and Heath, op. cit., pp. 180-81; or Guenther, op. cit., pp. 46-47.
49. Pritchett, The Roosevelt Court and Civil Liberties and the Vinson Court, loc. cit. The Roosevelt Court treats the 1931-1946 Terms, but focuses on the 1941-46 Terms which constitute the period of the Roosevelt-appointed Court.
50. Schubert, Quantitative Analysis of Judicial Behavior, p. 91.

CHAPTER THREE -

THE STONE COURT AND ITS DECISIONAL OUTPUT

It is now appropriate - having framed the research problem and objectives, discussed the theoretical foundations, and described the methodological considerations - that attention be turned to the data, and the members of the Stone Court. This chapter will summarize the historical context from which the cases were drawn, outline briefly the categories of cases, generally characterize the substantive content of the scale-sets, and briefly introduce the eleven justices who sat on the Supreme Court during the 1941-1945 Terms.

A. The Historical Context and the Cases

The classification of the cases decided by the Stone Court was aimed at maximum refinement of the categories. Nevertheless, several broad areas of policy making were suggested by various historical treatments of this period. Pritchett, for example, separates his discussion of voting alignments into five substantive areas while Kelly and Harbison and Carl Brent Swisher seem to focus upon three fundamental policy areas. These treatments were generally suggestive of specific categories which were subsequently developed from the many individual cases.

Most observers agree that a relatively discrete group of cases involving individual liberties seemed to emerge from the decisions of the Stone Court. Discussion of the civil liberties area was generally separated into groups of cases dealing with the First Amendment and those



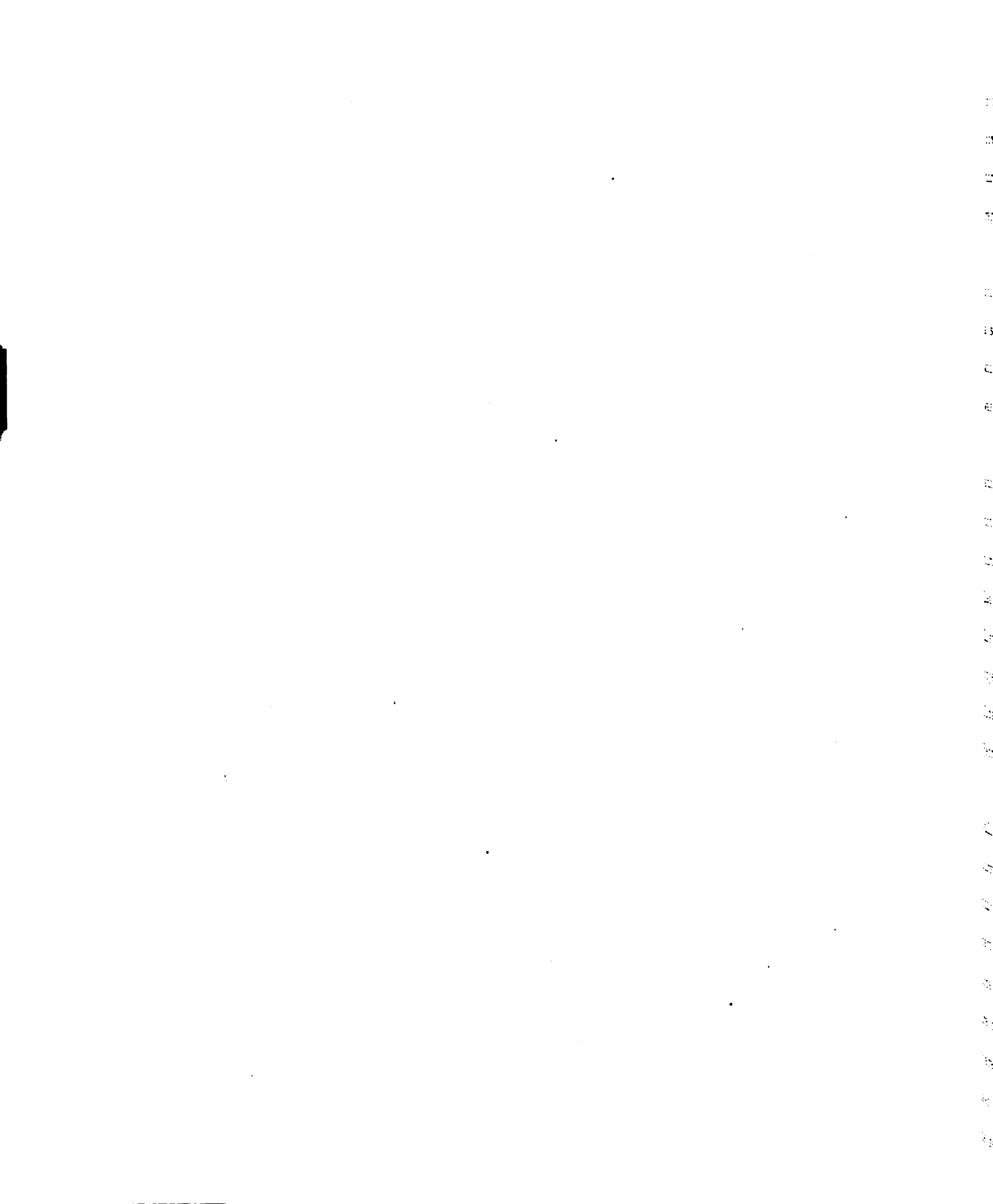
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cases involving with the procedural rights of the accused.¹ Pritchett, however, framed his discussion of the civil liberties decisions in the context of judicial supremacy.² This notion of judicial power is used in a much broader manner in the classification of cases in the current research.

The second area in which there was consensus in the characterization of the policy output of the Stone Court involved decisions which examined generally the nature of governmental power with specific focus on the powers of Congress to regulate the economy. The component parts of this policy area are virtually unlimited. Swisher, for example, considered the question simply as a matter of expanding governmental control as such. He directed his description toward the specific commodities or other subjects brought under governmental control through the Court's support of a broadened view of Congress to regulate by means of the commerce clause.³

Kelly and Harbison considered the expansion of federal regulation primarily in terms of the federal-state relationship.⁴ Pritchett, meanwhile, examined economic regulation from two perspectives - the supremacy of Congress and their general powers to regulate in the economic field, and the creation and eventual sanction of the administrative machinery used in the implementation of this control. Pritchett also looked at the Court's response to issues dealing with the status and growth of organized labor.⁵

Finally, there were those policy areas which related directly to the Second World War. Independent of the question of whether psychologically distinct attitudes were involved, there was a group of cases at a policy level dealing with governmental powers in an emergency situation, e.g., the powers of the President, and the powers to create quasi-legislative



bodies to administer particular functions such as price controls and commodity rationing.⁶ Regardless of which interpretation one opts, three main areas seem constant: civil liberties, the war, and economic regulation.

The Stone Court rendered 498 non-unanimous decisions with a full opinion during the 1941-1945 Terms. This total number of cases includes a separate count for all multiple citation situations - each case in which a vote was taken independent of whether collective consideration was given and only a single opinion written.

The 498 cases were classified in the manner described in Chapter Two and were based upon the attitude object (AO) and attitude situation (AS) notion discussed in Chapter One. Sixty sets were produced from the total number of cases, and 485 cases (97.4%) were ultimately placed into at least one of the Guttman scales. Appendices A-D contain a chronological listing of the non-unanimous decisions of the Stone Court, the attitude object and attitude situation, the Guttman scales, and the scale specifications (set size, Coefficient of Reproducibility, Minimal Marginal Reproducibility, and Coefficient of Scalability), respectively.

The sixty scale-sets which were generated from the universe of cases will be described within three very general substantive headings. The first is civil liberties, the second is economic regulation, and the third judicial power. Each of these broad headings has numerous component parts. The individual scale-sets will be identified by set title. Some of the sets will be discussed more fully as the titles of these sets are not as precisely reflective of the content of the cases included therein. Some sets, such as Coerced Confession or Patents and Copyrights, need no additional elaboration. Others, like the distinctions between the several federal taxation or federal-state relations sets, however, do

need additional comment.

The civil liberties sets have a procedural component as well as a First Amendment basis. The procedural sets deal with rights of the accused and stem generally from the Fourth through Eighth Amendments of the Bill of Rights. The procedural sets include Coerced Confession, Collaboration, Right to Counsel, Criminal Liability, Double Jeopardy, Due Process, Sufficiency of Evidence, Search and Seizure, Statutory Construction: Criminal, and Trials: Prejudicial Errors.

The Collaboration, Criminal Liability and Statutory Construction: Criminal sets are similar in case content. All involve criminal defendants as the AO. The Statutory Construction set contains cases which focus specifically upon criminal acts which have been proscribed by legislation. The cases involve a general construction of legislation dealing with criminal activity. The Criminal Liability set includes cases in which individual actions are reviewed to determine if criminal liability does exist and whether a defendant was justifiably indicted. This set contains cases dealing with a particular kind of statutory construction. The Collaboration set is even more specific. It contains cases in which the issue is the legal requisites of criminal prosecution and conviction for conspiracy (or collaboration) to commit a particular criminal act. In this set, the nature of the criminal act itself is not at issue. Rather, the main focus is upon the question of construction and/or determination of criminal conspiracy.

The Sufficiency of Evidence set has a due process character, but differs from the Due Process set in its level of refinement. The central consideration in the Sufficiency cases is judicial review of the adequacy of evidence used in securing a criminal conviction or liability judgment. The Due Process set cases are much more general as an aggregate. These

cases involve both civil and criminal litigants and are not defined in terms of a specific procedural point such as sufficiency of evidence, but covers proper legal procedures totally - due process in the broadest terms.

The remainder of the civil liberties sets are varied in content. There are several which have their genesis in the First Amendment guarantees such as Religion, Freedom of Speech and Press. Others relate to these guarantees in a somewhat narrower fashion. Among such sets are Radio Regulation (a corollary of free speech and press), Selective Service, and Naturalization-Denaturalization. Finally, there are two sets, Indian Property and Indian Treaties, which deal with treatment of the Indians by the federal government. These cases have an equal protection character. There is also an Equal Protection set as such, but it does not have an exclusively racial orientation.

The second general category of sets comes under the gross rubric of economic regulation. There are four basic groupings under this main heading. The first is general business regulation. It includes such sets as Antitrust, Bankruptcy, Commission Regulation of Rates (and/or standards of competition), Contracts, Delegation of Legislative Power, Eminent Domain, Fiscal Liability, Interstate Commerce Commission: Public Necessity and Convenience Certificate Applications, Patents and Copyrights, State Commission Regulation, Statutory Construction: Remedies, and Utility Regulation.

The Delegation of Legislative Power set is related to two of the other economic regulation sub-headings. It contains cases in which power was delegated to agencies to regulate business or economic enterprises. It also has a war emergency character. Much of the power delegated to particular agencies in the cases contained in this set are a direct

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result of the national emergency. There is also an element of judicial power involved - the degree to which the Supreme Court is willing to defer to such agencies and their substantive decisions. Two other sets have direct and specific connection to the war emergency. The first is the set involving litigation under the Emergency Price Control Act. The second is a set entitled War Powers which contains cases of a similar content, but arising from legislation other than the EPCA. These sets specifically deal with deference to the emergency, and the policy choices of Congress.

The second economic regulation group involves organized labor. Among the labor sets are Fair Labor Standards Act: Contracts, Fair Labor Standards Act: Coverage, Federal Employers' Liability Act, National Labor Relations Act, Personal Injury Liability, Railway Labor Act, Closed Shop, Bargaining Agents, and Solicitation. The two sets of cases arising under the Fair Labor Standards Act have been distinguished previously. The Personal Injury Liability set contains cases which are similar to claims made in the cases of the Fiscal Liability set. The cases in the former set, however, involve fiscal liability for personal injuries as opposed to property damages or contract defaults which is the general focus of the latter set.

The third economic regulation sub-heading involves federal-state relations. The sets in this group include Commerce Regulation, Policy Conflicts, Taxation Conflicts, National Supremacy, Full Faith and Credit, State Commission Regulation, and State Taxation. The Federal-State: Commerce set's cases encompass state regulation of foreign (out-of-state) businesses giving the regulation the interstate character. The Policy Conflict set does not incorporate the national supremacy question, but rather deals with dual regulation by states and the federal government

in which the field of regulation is not necessarily pre-empted by one or the other level of government. The Taxation Conflict set is similar, but is confined to taxation of businesses. The Supremacy set contains the pre-emption questions as such in which dual regulation or action is viewed as incompatible and irreconcilable.

The final group is federal taxation. While Schubert and others have suggested the possible existence of an independent taxation dimension, it will merely be introduced here with the economic regulation sets. These sets include Claims against the Federal Government, Construction of (federal taxation) Provisions, Income Tax Exemptions, Federal Tax Liability, and Succession and Estate Taxation. The Provision Construction set includes cases dealing exclusively with construction of federal tax provisions for the taxation of personal and/or corporate income. The Exemptions sets has cases litigating claims for exemptions from personal and/or corporate income taxation. These cases require construction of the appropriate provisions of the federal statutes governing taxation. The Liability set is broader in character and includes all remaining federal fiscal claims upon either individuals or businesses. It also includes challenges on constitutional grounds of particular federal taxation liability.

The final category of sets are those involving some aspect of judicial power. The sets in this group include Administrative Deference, Appeals: State to Federal, Appeals: Substantive Review, Federal Judicial Intervention (Comity), Judicial Review of Regulatory Commissions, Supreme Court Jurisdiction, and Military-Civil. Each of these sets involves the question of the degree to which the Court is willing to defer to the institutional autonomy and substantive decisions of administrative agencies, lower courts, state courts, or military tribunals. Shifting

perspective, these sets involve the degree to which the Court desires to assert review or supervision over the decision making action of other agencies. The Supreme Court Jurisdiction set contains highly technical questions of procedure and jurisdiction. It is not a residual set by any means. Nevertheless, the judicial power consideration can be seen in terms of the degree to which the Court defers on these technical or obscure points in lieu of making substantive responses on the merits to decisions on appeal from other decision-making bodies.

This has been a brief summary of the sixty sets that were constructed from the non-unanimous decisions of the Stone Court. Each set will be described more fully in Chapter Four as part of the description of the empirical dimensions found through the various analyses employed in this research.

Only thirteen cases could not be fitted into any one of the sixty scale-sets. Since there are only a relatively few not included, each of the thirteen cases will be summarized below. The summaries will indicate the content of the case as well as the unusual voting configurations. The content of each of these cases suggested at least one scale-set into which the case might be placed, but the voting pattern was too deviant in terms of scaling criteria to allow inclusion. The cases are listed chronologically.

1. *Viereck v. United States*, 318 US 236. This case involved review of a conviction for failure to disclose certain facts by political agents of foreign principals under the Propoganda Agency Act. The registered foreign agent failed to disclose political activities conducted on his own behalf. Justices Black and Douglas voted to affirm the conviction sustaining the provisions for disclosure while Justices Frankfurter, Jackson, Reed, Roberts, and Stone voted to reverse. Justices Murphy and Rutledge did not participate in the decision. The absence of Murphy and Rutledge was significant in the inability to classify this case as they might have allowed some insights to be seen explaining the responses of Black and Douglas.

2. *L.T. Barringer & Company v. United States*, 319 US 1. The Court reviewed the dismissal of the suit to set aside an Interstate Commerce Commission order in which the Commission refused to set aside tariffs on cotton which appellee railroads contended were discriminatory. The majority of Frankfurter, Murphy, Jackson Rutledge and Stone voted to uphold the ICC with Black, Douglas, Roberts and Reed voting to reverse.
3. *Bowles v. United States*, 319 US 33. Review of a conviction for the violation of the Selective Training and Service Act. A local board did not recognize the draftee's claims as a conscientious objector when he appealed to the President. The actual legal question revolved around the erroneous construction of the statute by the local board concerning the process for appeal and its effects on the draftee. Justices Black, Douglas, Murphy, Frankfurter, Stone, Robert and Rutledge voted against the draftee while Jackson and Reed voted to support his contention.
4. *Thomas v. United States*, 321 US 19. Review of a petition to set aside an Interstate Commerce Commission order denying a Certificate of Public Necessity and Convenience as a common carrier by a truck line contracted to complete local transportation by a railroad. The question involved in the case focused on the independence of the contracts and contractors from the railroad, and the extent of control exercised over the truck line by the contracting railroad. Justices Frankfurter, Murphy, Reed, Rutledge, and Stone voted to reverse the ICC order with Justices Black, Douglas, and Jackson voting to sustain the ICC denial of the certificate.
5. *Prince v. Massachusetts*, 321 US 158. Appeal of a conviction for the violation of a state statute prohibiting minors from selling or exercising any type of trade in a street or public place. The violation occurred when a woman willfully allowed a minor to sell religious publications with the defendant basing claims for reversal on grounds of religious freedom and denial of equal protection. A five-judge majority of Black, Douglas, Reed, Rutledge and Stone voted to reverse the conviction while Justices Frankfurter, Murphy, Jackson and Roberts voting to affirm.
6. *Stark v. Wickard*, 321 US 288. A suit to enjoin the enforcement of an order of the Secretary of Agriculture as authorized under the Agricultural Marketing Agreement Act. The specific legal question involved the standing of the plaintiff to initiate a suit against the Cabinet Secretary. Justices Douglas, Murphy, Rutledge, Reed, Roberts, and Stone voted to reverse the dismissal. Justices Black and Frankfurter voted to affirm while Justice Jackson did not participate in the decision.
7. *United States v. Ballard*, 322 US 78. A case involving a mail fraud conviction for obtaining money through false representation when the representation was of a religious character. The question of fundamental importance was whether the freedom of religion clause precluded consideration of the truth and/or reasonableness of religious beliefs or doctrines. Justices Stone, Jackson, Frankfurter, and Roberts voted to sustain the conviction while a five-man majority of Black, Douglas, Murphy, Rutledge, and Reed voting to reverse.

8. *Northwest Airlines v. Minnesota*, 322 US 292. The case reviewed a judgment in favor of the State of Minnesota in an action brought to collect personal property taxes assessed on aircraft operated in interstate commerce and not exclusively located within the State. Justices Black, Douglas, Frankfurter, Jackson and Murphy voted to sustain the State of Minnesota while Justices Reed, Roberts, Rutledge, and Stone voted to reverse the lower court judgment.
9. *United States v. Johnson*, 323 US 273. An appeal from a judgment quashing an indictment for want of jurisdiction charging violations of the Federal Denture Act which prohibits the transportation of dentures, casts, etc., interstate. The specific legal question was one of venue for the prosecution of criminal violations and considerations of the power of Congress to make any Federal court an appropriate court to try such cases. Justices Black, Jackson, Frankfurter, Murphy and Roberts voted to affirm quashing the indictment while Douglas, Reed, Rutledge, and Stone voted to sustain the original indictment.
10. *United States v. Townsley*, 323 US 557. Case in which a judgment awarding overtime pay to Canal Zone employees whose salaries were fixed on a monthly basis was reviewed. The Independent Offices Appropriation Act re-established the salary level and the legal issue involved in the case focused on its applicability to the Canal Zone dredge operators. A majority of Black, Douglas, Murphy, Frankfurter, Reed, and Roberts voted in favor of the overtime award while Jackson, Rutledge and Stone voted against the award.
- 11 & 12. *United States v. Joseph A. Holpuch*, 328 US 234 (Nos. 197 and 696). These cases involved the review of a government construction contract and a judgment in favor of the plaintiff. The central issue was whether a contractor's failure to exhaust administrative appeal provisions of the government construction contract precludes the contractee from bringing suit in the Court of Claims to recover damages. Justices Black, Burton, Murphy, Reed, and Stone voted to reverse the lower court and sustain the position of the government while Justices Douglas, Frankfurter, and Rutledge voted to sustain the judgment on behalf of the plaintiff. Justice Jackson did not participate in the decision.
13. *Bihn v. United States*, 328 US 633. Review of a conviction for conspiracy to violate the statutory provisions governing gasoline rationing. The legal question revolved around the admissibility of declarations made by co-conspirators as well as prejudicial instructions by the trial judge to the jury. Justices Douglas, Frankfurter, Murphy, Rutledge, and Stone voted to reverse the conviction. Justices Black, Burton and Reed voted to affirm while Justice Jackson did not participate.

The sixty scale-sets, and the cases from which they were generated, represent the heart of the research. The Guttman scales were constructed from the categories of cases described above. The scale ranks and scale scores from the Guttman scales, in turn, constitute the raw input for the various computer-dependent analyses.

B. The Stone Court

Eleven justices sat on the Supreme Court during the five terms examined in this research. The Chief Justice throughout the period was Harlan Fiske Stone. The ten Associate Justices sitting during these terms were Hugo L. Black, William O. Douglas, Felix Frankfurter, Robert H. Jackson, Stanley Reed, Frank Murphy, Owen J. Roberts, Harold Burton, James F. Byrnes, and Wiley B. Rutledge. The following paragraphs will briefly introduce each of these Stone Court members. An overall historical perspective of the Court's membership can be seen in Table 2. This table contains a listing of the occupants of each of the nine Supreme Court seats, and provides graphically the sequence of personnel changes on the Supreme Court during the last fifty years. Table 3 summarizes the ages of the eleven Stone Court members at the time of their appointment to the Supreme Court and their ages during the five terms in which Stone was Chief Justice.

Chief Justice Stone was the only carry-over member from the pre-1937 Court with the exception of Associate Justice Roberts. Stone, a Republican, was first appointed to the Supreme Court in 1925 by President Coolidge. Stone was a New Englander by birth, and he remained in that region through his college years at Amherst. He secured his law degree from Columbia where he remained as a professor and later Dean of the School of Law. Stone maintained a private practice in New York City while at Columbia, but at the time of his appointment, Stone has no public office or judicial experience.⁷

Stone, at the time of his appointment, was United States Attorney General. He had been selected for that position in 1924 by President Coolidge. Stone frequently aligned himself with Justices Holmes and

TABLE 2

SUPREME COURT PERSONNEL: 1921-1970 Terms

	CHIEF JUSTICE		ASSOCIATE JUSTICES						
	Taft	Van Devanter	Holmes	McReynolds	Brandeis	Day	Clarke	Pitney	McKenna
1921						Butler	Sutherland		
1922								Sanford	
1923-24									STONE
1925-29	Hughes							ROBERTS	
1930-31									
1932-36			Cardozo						
1937		BLACK							
1938							REED		
1939			FRANKFURTER		DOUGLAS				
1940						MURPHY			
1941-42									JACKSON
1943-44	STONE			BYRNES					
1945				RUTLEDGE				BURTON	
1946-48	Vinson								
1949-52						Clark			
1953-54	Warren			Minton					
1955									Harlan
1956				Brennan					
1957							Whittaker		
1958-61								Stewart	
1962-64			Goldberg				White		
1965-66			Fortas						
1967-68						Marshall			
1969-70	Burger		Blackmun						

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for ensuring transparency and accountability in financial operations. This section also highlights the role of internal controls in preventing errors and fraud.

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3. The third part of the document addresses the importance of effective communication and reporting. It discusses the need for clear and concise communication channels and the role of regular reporting in keeping stakeholders informed. This section also touches upon the importance of data security and the need for strong cybersecurity measures.

4. The fourth part of the document discusses the importance of continuous improvement and innovation. It encourages organizations to regularly review their processes and procedures to identify areas for improvement and to embrace new technologies and practices. This section also highlights the importance of fostering a culture of innovation and learning within the organization.

5. The fifth part of the document discusses the importance of ethical conduct and compliance. It emphasizes the need for organizations to adhere to relevant laws and regulations and to maintain high standards of ethical behavior. This section also touches upon the importance of transparency and the need for organizations to be open and honest in their dealings with stakeholders.

6. The sixth part of the document discusses the importance of stakeholder engagement and relationship management. It outlines various strategies for identifying and engaging with key stakeholders and for building strong, long-term relationships. This section also highlights the importance of listening to feedback and the need for organizations to be responsive to the needs and concerns of their stakeholders.

7. The seventh part of the document discusses the importance of financial management and budgeting. It outlines various techniques for managing financial resources effectively and for creating and maintaining a realistic budget. This section also touches upon the importance of monitoring financial performance and the need for organizations to be financially sound and sustainable.

8. The eighth part of the document discusses the importance of human resources management and talent development. It outlines various strategies for attracting, retaining, and developing top talent and for creating a positive work environment. This section also highlights the importance of providing ongoing training and development opportunities for employees and the need for organizations to invest in their human capital.

9. The ninth part of the document discusses the importance of environmental, social, and governance (ESG) factors. It outlines various strategies for managing ESG risks and for promoting sustainable business practices. This section also touches upon the importance of transparency and the need for organizations to be open and honest about their ESG performance.

10. The tenth part of the document discusses the importance of crisis management and business continuity planning. It outlines various strategies for identifying and mitigating potential crises and for ensuring that the organization can continue to operate in the event of a disaster. This section also highlights the importance of having a clear and concise crisis management plan and the need for organizations to be prepared for any eventuality.

TABLE 3 SUPREME COURT PERSONNEL - STONE COURT
 Birthdates, Year of Appoint to Court,
 Age at Appointment, and Spans of Age.

	<u>Birthdate</u>	<u>Year of Appointment</u>	<u>Age at Appointment</u>	<u>Stone Court Age Span</u>
BLACK	1886	1937	51	55-59
BURTON	1888	1945	57	57-58
BYRNES	1879	1941	62	62-64
DOUGLAS	1898	1939	40	43-47
FRANKFURTER	1882	1939	56	59-64
JACKSON	1892	1941	49	49-54
MURPHY	1890	1940	49	51-56
REED	1884	1938	53	57-62
ROBERTS	1875	1930	55	66-69
RUTLEDGE	1894	1943	48	48-50
STONE	1872	1925	52	69-74

Brandeis despite his Republican Party affiliations and the relatively conservative character of the President appointing him. Stone continued to be regarded generally as a liberal in later years, and he was most generally found to be supportive of New Deal legislation.⁸ Stone's general orientation toward the Constitution was adaptive in character. He looked upon the Constitution as a "broad charter of government 'intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.'"⁹

President Roosevelt elevated Stone despite his party affiliation when Chief Justice Hughes resigned at the end of the 1940 Term.¹⁰ While generally regarded as one of the most eminent justices ever to sit on the Supreme Court, Stone's tenure as Chief Justice was seemingly less

distinguished. Danelski's evaluation of Stone in terms of the dual leadership concept developed by Robert Bales indicates that Stone himself was not able to perform either as the social or task leader for the Court. Furthermore, Danelski concludes that Stone was not able to rely on a colleague to perform these functions on his behalf as Van Devanter had for Chief Justice Taft.¹¹

Associate Justice Owen J. Roberts, like Stone, was an appointee of the pre-Roosevelt years and a Republican. Roberts, who received his law degree from the University of Pennsylvania, was a successful corporate lawyer in Philadelphia prior to his appointment to the Court by President Hoover in 1930. Roberts served as a Special Deputy Attorney General during the First World War and was charged with prosecuting violations of the Espionage Act in Pennsylvania. He was later appointed by President Coolidge to handle the prosecutions in the Teapot Dome oil lease scandals.¹²

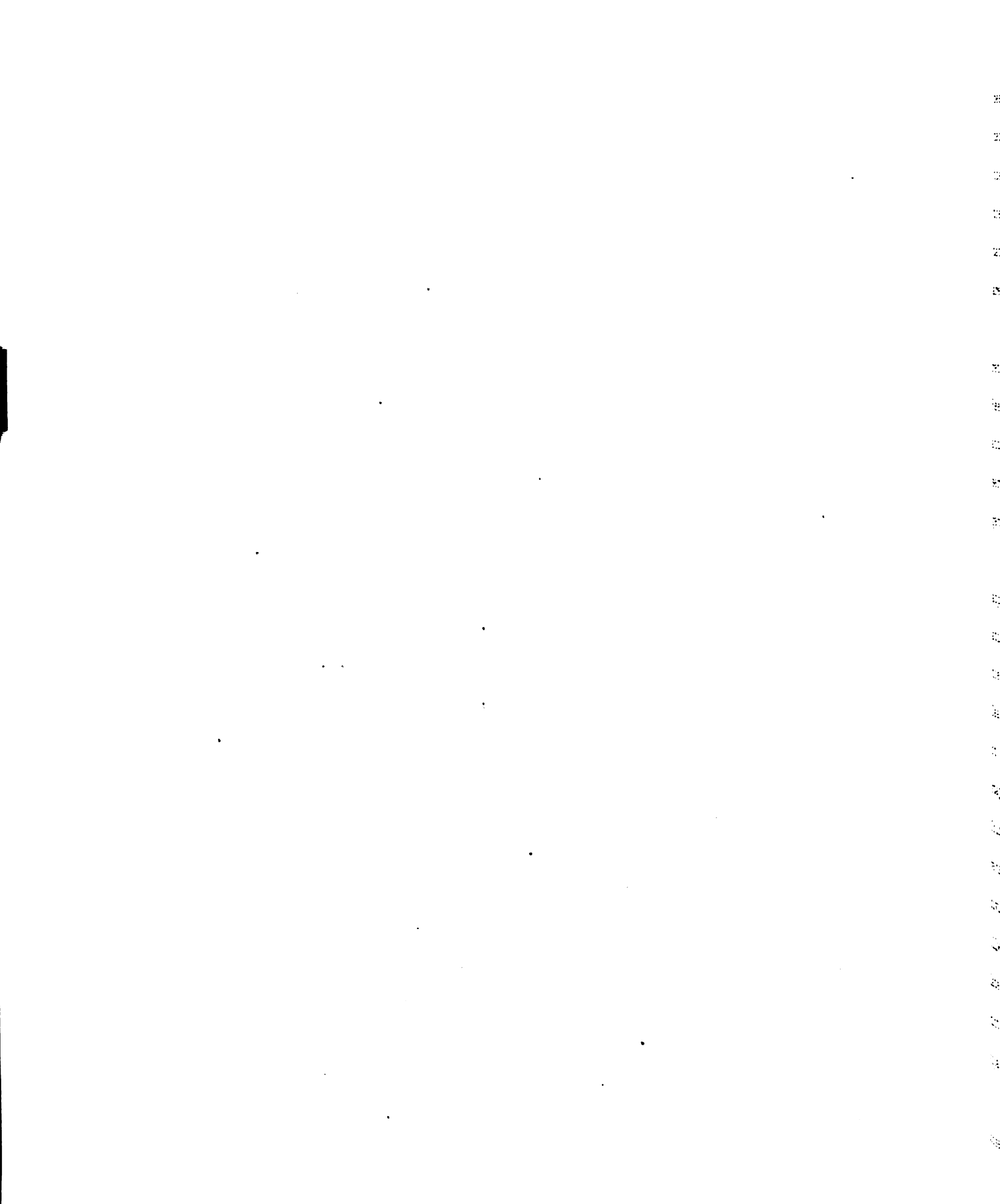
Roberts never clearly aligned with either the liberal or the conservative blocs of the Court during the battle over New Deal legislation in the thirties. Rather, he and Chief Justice Hughes tended to shift from one side to the other and were usually the pivotal votes in every case before the Court. When Hughes and Roberts joined the Stone-Cardozo-Brandeis bloc with some permanence following the "Court-packing" effort, the conservative position was diminished in policy-directing effectiveness.¹³ Roberts remained on the Supreme Court through the 1944 Term.

The first of the Roosevelt appointees was Hugo L. Black who replaced the retired Justice Van Devanter before the beginning of the 1937 Term. Black was chosen from the United States Senate where he had served since 1927. His appointment to the Court was one of the more controversial in the Court's history. Substantial dissatisfaction resulted from his

enthusiastic support of New Deal measures, on the one hand, and the assertion that Black had once been a member of the Ku Klux Klan on the other. It was only after the Court nominee explained his position relative to the Klan on nation-wide radio along with the passage of time that the furor subsided. There was also a legal challenge to Black's seating which required a Supreme Court decision to resolve.¹⁴ Article I, section 6 provides that no Congressman shall be appointed to any civil office which was created or compensations (or other emoluments) increased while that Congressman was a member of the legislative branch. The Senate had made certain attractive retirement benefits for Supreme Court justices while Black was a member of the Senate, hence the possible conflict of interest. In addition, there was a technical question concerning the operational equivalence of retirement and resignation from the Court. This point questioned the status of Van Devanter's retirement and whether a vacancy actually existed for Black to fill.¹⁵

Black's only public office experience other than the U.S. Senate was that of Police Court judge in Birmingham, a post he assumed shortly after the completion of his legal education at the University of Alabama. He subsequently served as a county prosecutor for two years, but the twenty years between his completion of law school and his Senate tenure was primarily spent in private practice.¹⁶

Black has achieved a reputation over his years on the Court as one of the most consistent defenders of civil liberties. Throughout his tenure, Black has perceived the role of the Court as one of legitimately restraining either the legislative or executive branches against actions abridging individual rights.¹⁷ Black subscribes to the position that the Bill of Rights contains "absolute" prohibitions against governmental acts, particularly with respect to the First Amendment. Black has also



been the leading advocate of the "total incorporation" approach in connection with making the provisions of the Bill of Rights applicable to the States.¹⁸ Recent cases as well as several systematic analyses of the Supreme Court decisional behavior have tended to qualify Black's reputation in regard to some aspects of the very broad civil liberties policy area.

The second Roosevelt appointment came in 1938 when Justice Sutherland retired from the Court. Roosevelt's choice was Stanley Reed of Kentucky. Reed received his under-graduate education at Kentucky Wesleyan and Yale and completed his legal training at Columbia. His first governmental service came during the Hoover Administration when he was appointed as general counsel to the Federal Farm Board.¹⁹

Roosevelt had retained the services of Reed during his first term appointing him as general counsel for the Reconstruction Finance Corporation, and then to the position of Solicitor General. Although he had the reputation as a conservative Democrat, Reed argued many of the New Deal cases before the Supreme Court for the government. While working on the "Court-packing" scheme with Roosevelt's Attorney General, Reed stayed out of the spotlight thereby protecting his position before the Court as well as his general reputation as a competent, but noncontroversial figure.²⁰ Reed was not a strong supporter of the expansion of civil liberties though he did write the majority opinion in *Smith v. Allwright*²¹ which ended the legal existence of "white primaries." His later years on the Court found him aligning with Justices Burton, Clark, Minton and Vinson taking generally negative positions relative to the expansion of civil liberties claims.²²

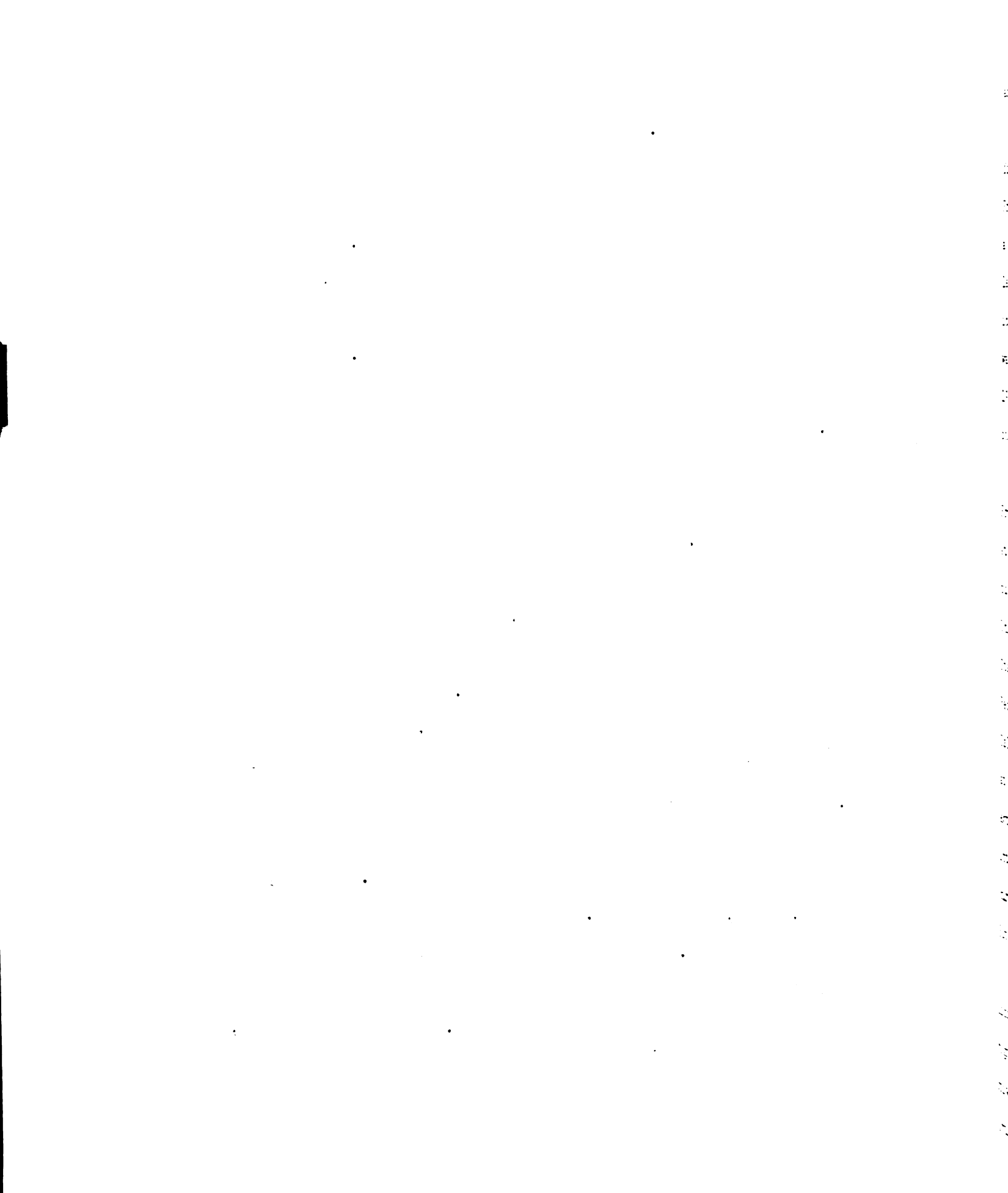
The death of Justice Benjamin Cardozo in 1938 provided President Roosevelt with his third Supreme Court vacancy. The following January

the vacancy was filled with the appointment of Felix Frankfurter of the Harvard Law School faculty. Frankfurter was reputed to have been one of the most influential individuals in the Roosevelt Administration prior to his appointment to the Court with substantial leverage in the formulation of New Deal policies and federal administrative appointees.²³

Frankfurter also had a reputation as a political radical. This reputation came essentially from his defense of civil liberties claims generally and through his identification with labor unions. He also expended efforts on behalf of unpopular individuals such as Sacco and Vanzetti.²⁴ Frankfurter felt it necessary to explain these actions during the hearings before the Senate Judiciary Committee regarding his nomination as well as make certain disclaimers about his past and current political affiliations.²⁵

Frankfurter was the only non-native American in the eleven judge group examined having been born in Vienna. He came to the United States at the age of twelve and was raised in New York City. He attended City College of New York before moving on to Harvard. Frankfurter assumed what had become known as the "Jewish Chair" on the Court.²⁶

Frankfurter's voting orientation has been difficult to assess precisely. Traditional observers of the Court have characterized Frankfurter's behavior essentially in terms of judicial self-restraint citing such opinions as *West Virginia State Board of Education v. Barnette*,²⁷ *Colegrove v. Green*,²⁸ and *Baker v. Carr*²⁹ as the best reflections of the self-restraint position. Spaeth, on the other hand, concludes that Frankfurter's restraint preference was in reality, "an effective means of rationalizing response to policy-oriented values."³⁰ Spaeth's analysis, however, focused on the first seven terms of the Warren Court (1953-60) and concerned on the substantive areas of state and administrative agency

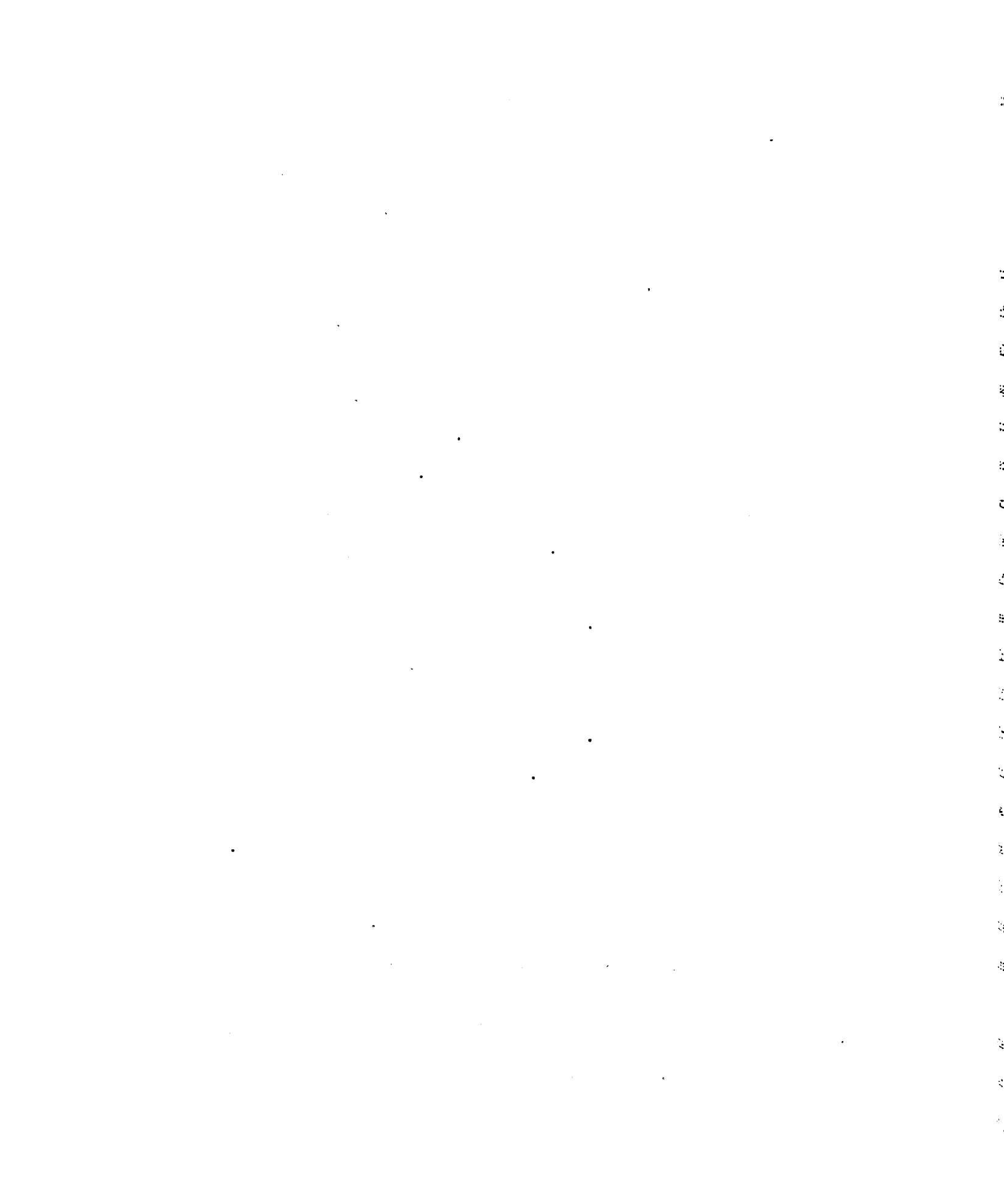


action regulating business or labor unions.

William O. Douglas became the fourth appointee of Roosevelt in 1939 filling the vacancy created by the resignation of Justice Brandeis. Like Frankfurter, Douglas has been a former professor of law. Douglas combined a private practice in New York City with teaching after completing his legal education at Columbia. He joined the Yale School of Law faculty in 1928 and was promoted to full professor three years later. Douglas was appointed to the Securities and Exchange Commission by Roosevelt in 1934 and became Chairman of the Commission two years later. He held the chairmanship until his appointment to the Court.³¹

Justice Pierce Butler died in November of 1939. He was succeeded by Frank Murphy who, at the time of his appointment to the Court, was the Attorney General of the United States. Murphy had a fairly extensive public service career which had begun soon after his graduation from the University of Michigan Law School. He served as Chief Assistant United States Attorney for the Eastern District of Michigan, judge in Detroit Recorder's Court, Mayor of Detroit, Governor General of the Philippine Islands, and Governor of Michigan.³² He was also a member of the faculty at the University of Detroit Law School. He came to the Court with an extreme pro-labor reputation primarily because of his failure to forcefully intervene in the sit-down strikes while serving as Governor of Michigan. Murphy took the "Catholic Seat" on the Court and was, as his predecessor Butler, the only Catholic on the Court during his tenure.³³

Like his colleagues, Black, Douglas, and Rutledge, Murphy established a reputation as a defender of civil liberties and individual rights. His opinions in the *Korematsu*³⁴ and *Yamashita*³⁵ cases are indicative of this orientation. Tresolini and Shapiro suggest that Murphy's civil liberties position is best represented in his dissenting opinion



in *Falbo v. United States*³⁶ where he said,

The law knows no finer hour than when it cuts through formal concepts and transitory emotions to protect unpopular citizens against discrimination and persecution.³⁷

Justice McReynolds ended his Supreme Court service in the middle of the 1941 Term creating the sixth Court vacancy for Roosevelt. The choice of Roosevelt was Senator James F. Byrnes of South Carolina. Byrnes has always been interested in the law, and he dropped out of school at the age of fourteen to become a court reporter. He serves as an apprentice to a South Carolina attorney learning the profession without formal legal education. Byrnes was one of Roosevelt's strongest legislative advocates while a member of the Senate. Byrnes was an invaluable spokesman for New Deal proposals during the thirties both inside and outside the Senate. After serving on the Court but one full term and a small portion of a second, Byrnes resigned in 1942 to assume the position of Director of Economic Stabilization.³⁸ He subsequently became the Director of the Office of War Mobilization. Byrnes served as Secretary of State under Truman following the war, and he was elected Governor of South Carolina thereafter.³⁹ Despite his highly supportive New Deal position, Byrnes was not inclined to respond positively to claims of civil liberties expansion. This attitude was manifest long after his departure from the Court when he became a vocal critic of the Warren Court's decisions in the civil liberties area generally and the segregation-desegregation issue specifically.⁴⁰

The retirement of Chief Justice Hughes left Stone's seat vacant when Stone was elevated. Roosevelt filled the vacancy with Robert H. Jackson. Jackson did not attend either college or law school. Rather, he prepared himself for the legal profession through apprenticeship in

a law office as did his colleague, Justice Byrnes. Jackson had established himself as a very successful corporate lawyer in New York before joining the Roosevelt Administration in 1934 as General Counsel for the Bureau of Internal Revenue. Jackson served as Assistant Attorney General, Solicitor General, and finally Attorney General of the United States in the seven-year interim prior to his appointment to the Supreme Court.⁴¹ Jackson had a great deal more success arguing cases before the Court as Solicitor General than his predecessor, Stanley Reed, because of the personnel changes that created a more receptive Court. Jackson established a reputation as a firm supporter of the New Deal and had also worked actively in the "Court-packing" effort in 1937.⁴² Jackson was absent from the Court for the entire 1945 Term serving as the Chief United States Prosecutor of the International Military Tribunal at Nuremburg.⁴³

The final Roosevelt appointee was Wiley B. Rutledge who was chosen to replace Justice Byrnes. Justice Rutledge was the only one of the Roosevelt appointees to have had substantial judicial experience prior to appointment; he served four years on the Court of Appeals for the District of Columbia before his promotion to the Supreme Court. Rutledge had taught law at several institutions prior to his Court of Appeals appointment in 1939, and he had been Dean of the Law School at Washington University in St. Louis and the State University of Iowa. Rutledge was a staunch New Dealer and highly critical of the pre-1937 Court. He was extremely active in support of Roosevelt's "Court-packing" plan, support Swisher suggests was responsible for his initial Court of Appeals appointment and his subsequent promotion to the Supreme Court.⁴⁴ Characterized by Pritchett as one of the "left-bloc," Justice Rutledge was a strong defender of civil liberties and the conception of "preferred

position" for individual liberty guarantees.⁴⁵ His dissent in the Yamashita case⁴⁶ is characteristic of his civil liberties orientation.

The last member of the Stone Court was Harold H. Burton. Burton was appointed by President Truman just before the start of the 1945 Term filling the vacancy created by the retirement of Justice Roberts. Burton moved to Ohio from Boston after completing his education at Bowdoin and Harvard Law School. From a base established during several years of experience of private practice in Cleveland, Burton entered electoral politics and was successful in a bid for mayor of Cleveland. Burton was subsequently elected United States Senator from Ohio, a post he held at the time of his appointment. Burton was a Republican, but was felt to moderate on most issues and was clearly not representative of the conservatism of Midwest Republicanism.⁴⁷

The data of John R. Schmidhauser⁴⁸ and other biographical sources such as those cited above provided rather gross categories of background characteristics of the members of the Stone Court. Table 4 contains a summary of some of these collective characteristics while Table 5 provides several selected cross-tabulations of these characteristics. Excessively small cell size precluded further cross-tabulation in almost every instance. These variables will be considered somewhat more fully in the succeeding chapter as they are linked to the manifest behavior patterns of the judges.

TABLE 4 SUMMARY OF BACKGROUND CHARACTERISTICS

A. Political Party Affiliation		
Democrat	7	
Republican	3	
Independent	1	
B. Dissenting - Zobel & Evans Reputation for Frequency of Dissent		
Frequently	7	
Not Frequently	4	
C. Previous Political Experience		
Legislative	3	
Executive (Federal-Appointive)		7
Judicial	1	
D. Birthplace - Size		
Small Town	7	
Urban Center	4	
E. Region (North-South on basis of Mason-Dixon Line)		
North	8	
South	3	
F. Status of Legal Training		
Apprenticeship	2	
Law School of Average Standing		2
Law School of High Standing		7
G. Religious Affiliation		
Jewish	1	
Roman Catholic	1	
Baptist	1	
Episcopalian	4	
Unitarian	2	
Presbyterian	2	
H. Ethnic Background - National Origin		
Scotch-Irish	5	
English-Welsh	5	
Austrian	1	
I. Prior Legal Associations		
Political Attorneys		4
Academicians	4	
Business-Corporate Lawyers		3

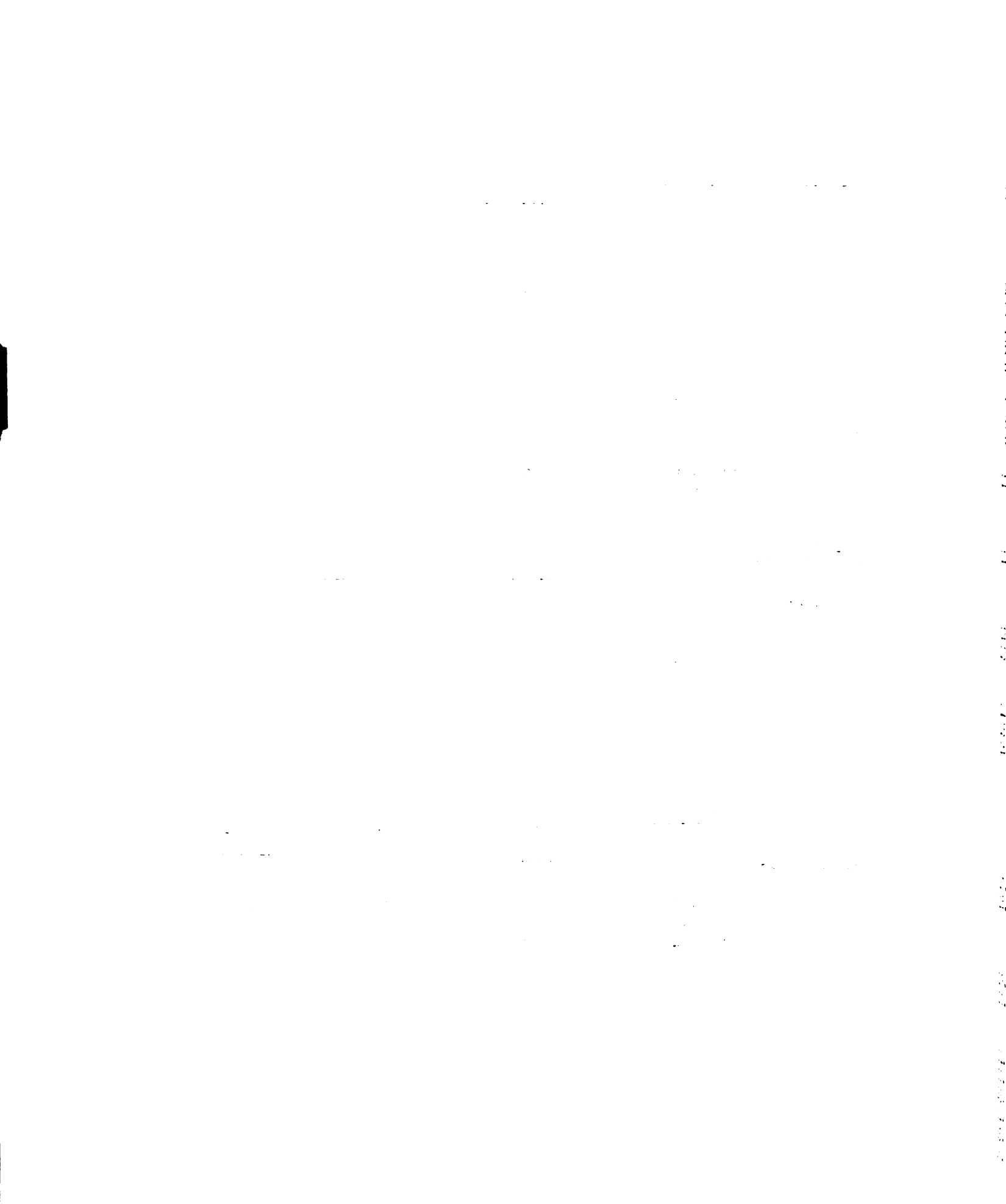
TABLE 5 BACKGROUND CHARACTERISTIC CROSS-TABULATIONS

<u>Political Party Affiliation</u>	<u>DEMOCRAT</u>	<u>REPUBLICAN</u>
Reputation as a Dissenter		
Frequent	5	2
Infrequent	2	2*
Region- Birthplace		
North	4	4
South	3	0
Prior Public Occupation		
Executive	4	3
Other	3	1
Size of Birthplace		
Small Town	6	1
Urban Center	1	3
Status of Legal Education		
High Status	3	4
Average Status	2	0
Apprenticeship	2	0
Status of Religious Affiliation		
High Status	4	3
Intermediate	1	1
Low Status	2	0
Ethnic Origin		
Scotch-Irish	5	0
English-Welsh	2	3
Other	0	1
Primary Legal Associations		
Political	3	1
Academic	2	2
Business	2	1

* Frankfurter was alternately classified as an Independent and a Republican. The Schmidhauser data considers him Republican, and he was placed within that category because cell size precluded maintaining the third category.

TABLE 5

<u>Reputation as a Dissenter</u>	<u>FREQUENT DISSENTER</u>	<u>INFREQUENT DISSENTER</u>		
Region-				
Birthplace				
North	6	6		
South	1	2		
Status of Legal				
Education				
High Status	4	3		
Average Status	2	0		
Apprenticeship	1	1		
Primary Legal				
Associations				
Political	2	2		
Academic	4	0		
Business-Corporate	1	2		
<u>Region-Birthplace</u>				
	<u>NORTH</u>	<u>SOUTH</u>		
Status of Legal				
Education				
High Status	6	1		
Average Status	1	1		
Apprenticeship	1	1		
Primary Legal				
Associations				
Political	2	2		
Academic	4	0		
Business-Corporate	2	1		
<u>Status of Legal Education</u>				
	<u>High Status</u>	<u>Average Status</u>	<u>Appren- ticeship</u>	
Primary Legal				
Associations				
Political	2	1	1	
Academic	3	1	0	
Business-Corporate	2	0	1	



FOOTNOTES

1. Pritchett, C. Herman, The Roosevelt Court, op. cit., Chapters 5 and 6; Carl Brent Swisher, American Constitutional Development, Second Edition, Boston: Houghton-Mifflin, 1954, Chapter 39; and Alfred H. Kelly, and Winfred A. Harbison, The American Constitution, New York: Norton, 1955, Chapter 29.
2. Pritchett, op. cit., Chapter 5.
3. Swisher, op. cit., Chapter 37.
4. Kelly and Harbison, op. cit., Chapter 28.
5. Pritchett, op. cit., Chapters 4, 7, and 8.
6. Swisher, op. cit., Chapter 38; Kelly and Harbison, op. cit., Chapter 30.
7. Swisher, op. cit., pp. 774, 1063.
8. Pritchett, op. cit., p. 3.
9. Tresolini, Rocco J., and Martin Shapiro, American Constitutional Law, third edition, New York; Macmillan, pp. 803.
10. Among the biographical sources on Stone are Samuel Joseph Konefsky, Chief Justice Stone and the Supreme Court, New York Macmillan, 1945, and the excellent biography, Alpeus Thomas Mason, Harlan Fiske Stone: Pillar of the Law, New York: Viking Press, 1956.
11. Danelski, David J., "The Influence of the Chief Justice in the Decisional Process," in Walter F. Murphy, and C. Herman Pritchett, eds., Courts, Judges and Politics, New York: Random House, 1961, pp. 497-508.
12. Swisher, op. cit., p. 779.
13. Pritchett, op. cit., p. 3. The Hughes-Roberts behavior is also considered, in game theoretic terms, in Glendon Schubert, Quantitative Analysis of Judicial Behavior, pp. 192-210.
14. Ex Parte Levitt, 302 US 633.
15. Pritchett, op. cit., pp. 9-10.
16. Among the biographical works on Justice Black, three acknowledged as the best are John Paul Frank, Mr. Justice Black: The Man and His Opinions, New York: Knopf, 1949; Wallace Mendelson, Justices Black and Frankfurter: Conflict in the Court, Chicago: University of Chicago Press, 1961; and Charlotte Williams, Hugo L. Black: A Study in the Judicial Process, Baltimore: Johns Hopkins University Press, 1950.
17. Tresolini and Shapiro, op. cit., p. 785.
18. Dillard, Irving, One Man's Stand for Freedom: Mr. Justice Black and the Bill of Rights, New York: A.A. Knopf, 1963, pp. 31-48. One of the best examples of Black's incorporation position can be found in Adamson v. California, 332 US 46.
19. Swisher, op. cit., p. 1066.
20. Pritchett, op. cit., p. 10. An additional source on Justice Reed is F. William O'Brien, Justice Reed and the First Amendment: The Religion Clauses, Washington: Georgetown University Press, 1958.
21. 321 US 649 (1944).
22. Schubert, The Judicial Mind, Chapters 5-7.
23. Swisher, loc. cit.
24. Pritchett, loc. cit.
25. Ibid.
26. Among the sources of further information on Justice Frankfurter are

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- Samuel Joseph Konefsky, The Constitutional World of Mr. Justice Frankfurter: Some Representative Opinions, New York: Macmillan, 1961; Clyde Edward Jacobs, Justice Frankfurter and Civil Liberties, Berkeley: University of California Press, 1961; Wallace Mendelson, Felix Frankfurter, New York: Reynal Press, 1964; Wallace Mendelson, Justices Black and Frankfurter: Conflict in the Court, Chicago: University of Chicago Press, 1961; Helen Shirley Thomas, Felix Frankfurter: Scholar on the Bench, Baltimore: Johns Hopkins University Press, 1960; and Liva Baker, Felix Frankfurter, New York: Coward-McCann, Inc., 1969.
27. 319 US 624 (1943).
 28. 328 US 549 (1946).
 29. 369 US 186 (1962).
 30. Spaeth, Harold J., "The Judicial Restraint of Mr. Justice Frankfurter - Myth or Reality," Midwest Journal of Political Science, VIII, February 1964, pp. 22-38.
 31. Swisher, loc. cit. Two other sources on Douglas include Vern Countryman, Douglas of the Supreme Court: A Selection of His Opinions, Garden City: New York: Doubleday, 1959; and Gilbert Lawrence Oddo, Mr. Justice Douglas and the Roosevelt Court, Unpublished Ph.D. Dissertation, Georgetown University, 1952.
 32. Swisher, op. cit., pp. 1070-71.
 33. Several sources on Justice Murphy's background included Richard D. Lunt, The High Ministry of Government: The Political Career of Frank Murphy, Detroit: Wayne State University Press, 1965; Harold Norris, Mr. Justice Murphy and the Bill of Rights, Dobbs Ferry: Oceana Publications, 1965; and an outstanding work by J. Woodford Howard, Mr. Justice Murphy: A Political Biography, Princeton, New Jersey: Princeton University Press, 1968.
 34. Korematsu v. United States, 323 US 214 (1945).
 35. In Re Yamashita, 327 US 1 (1946).
 36. 320 US 549 (1944).
 37. Tresolini and Shapiro, op. cit., p. 800.
 38. Pritchett, op. cit., pp. 10-11.
 39. Swisher, loc. cit.
 40. Tresolini and Shapiro, op. cit., p. 788.
 41. Swisher, op. cit., p. 1072.
 42. Pritchett, loc. cit.
 43. There are several useful sources containing information on Justice Jackson. Among them are Eugene C. Gerhart, America's Advocate: Robert H. Jackson, Indianapolis: Bobbs-Merrill, 1958; Eugene C. Gerhart, Supreme Court Justice Jackson, Albany: Q Corporation, 1961; Glendon Schubert, "Jackson's Judicial Philosophy: An Exploration in Value Analysis," American Political Science Review, 1965, pp. 940-63; and Glendon Schubert, Dispassionate Justice, Indianapolis: Bobbs-Merrill, 1969.
 44. Swisher, op. cit., pp. 1074-75. There is one additional source in which some biographical information on Justice Rutledge may be found, Fowler Vincent Harper, Justice Rutledge and the Bright Constellation, Indianapolis: Bobbs-Merrill, 1965.
 45. Tresolini and Shapiro, op. cit., p. 802.
 46. In Re Yamashita, 327 US 1 (1947).
 47. Swisher, op. cit., p. 1076.
 48. Schmidhauser, John R., loc. cit.

The following table shows the results of the experiment. The first column is the number of trials, the second column is the number of correct responses, and the third column is the percentage of correct responses. The data shows that the percentage of correct responses increases as the number of trials increases, indicating that the subject is learning the task.

Trial	Correct	Percentage
1	0	0%
2	0	0%
3	0	0%
4	0	0%
5	0	0%
6	0	0%
7	0	0%
8	0	0%
9	0	0%
10	0	0%
11	0	0%
12	0	0%
13	0	0%
14	0	0%
15	0	0%
16	0	0%
17	0	0%
18	0	0%
19	0	0%
20	0	0%
21	0	0%
22	0	0%
23	0	0%
24	0	0%
25	0	0%
26	0	0%
27	0	0%
28	0	0%
29	0	0%
30	0	0%
31	0	0%
32	0	0%
33	0	0%
34	0	0%
35	0	0%
36	0	0%
37	0	0%
38	0	0%
39	0	0%
40	0	0%
41	0	0%
42	0	0%
43	0	0%
44	0	0%
45	0	0%
46	0	0%
47	0	0%
48	0	0%
49	0	0%
50	0	0%
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69	0	0%
70	0	0%
71	0	0%
72	0	0%
73	0	0%
74	0	0%
75	0	0%
76	0	0%
77	0	0%
78	0	0%
79	0	0%
80	0	0%
81	0	0%
82	0	0%
83	0	0%
84	0	0%
85	0	0%
86	0	0%
87	0	0%
88	0	0%
89	0	0%
90	0	0%
91	0	0%
92	0	0%
93	0	0%
94	0	0%
95	0	0%
96	0	0%
97	0	0%
98	0	0%
99	0	0%
100	0	0%

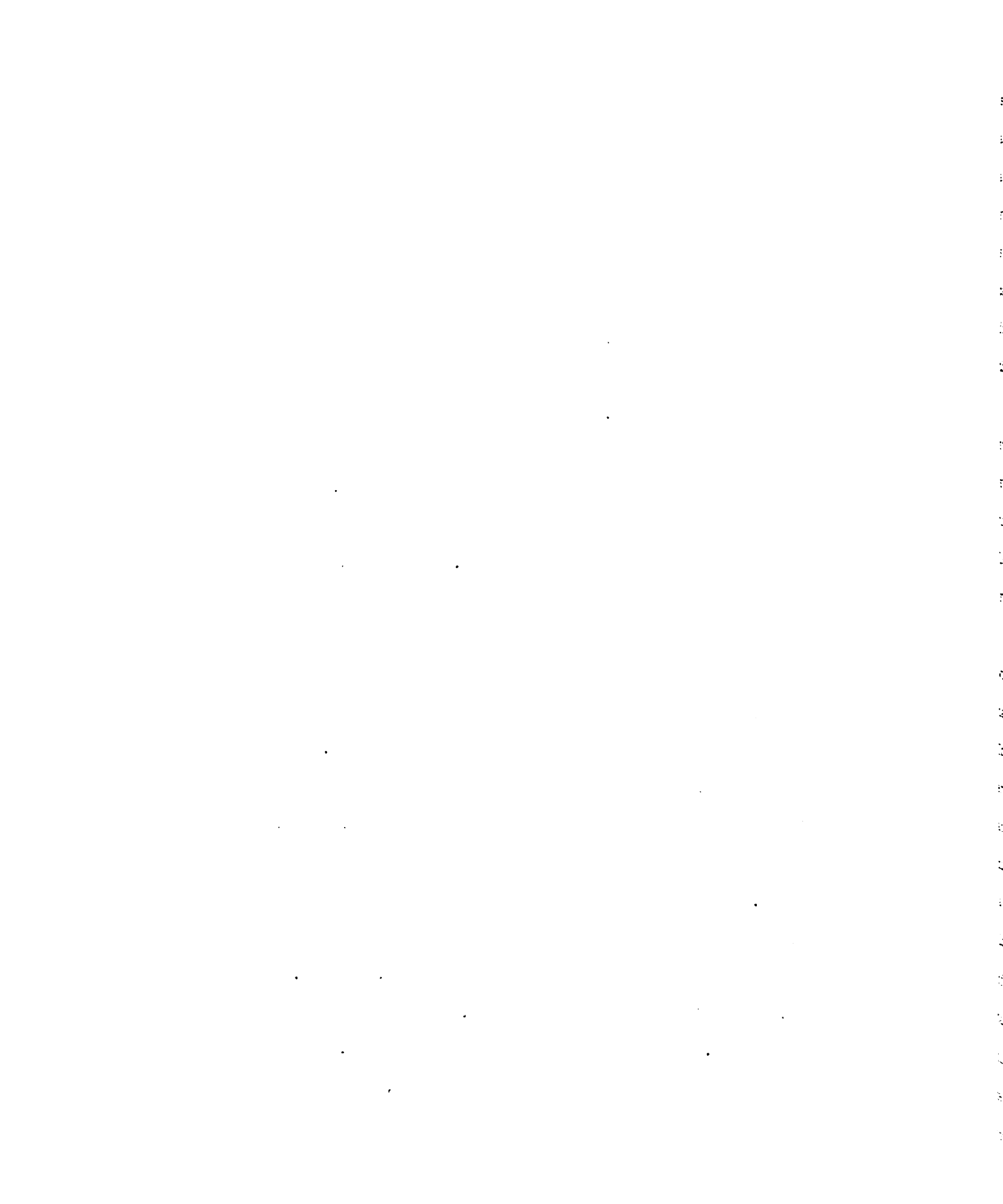
CHAPTER FOUR -

THE FINDINGS

The primary objective of this research is the empirical determination and interpretation of the dimensionality of Supreme Court decision-making during the 1941-45 Terms. The methodological techniques which have been utilized provide a research strategy which allows for a sound determination of dimensionality. This chapter will describe the results of the various analyses upon the non-unanimous decisions of the Stone Court and offer substantive interpretations of these results.

Chapter Three sufficiently describes the data upon which the several computer-dependent analyses have been conducted. Two points, however, are worthy of review before embarking on a discussion of the empirical findings and substantive interpretations. First, sixty scale-sets of cases were generated from the universe of non-unanimous decisions rendered by the Stone Court. Four hundred ninety-eight separate citations provide the data universe from which a remarkably high proportion (97.39%) of the cases were classified. A total of 716 cases are incorporated into the analysis with the addition of the duplicates and expansions. Thus, a relatively solid base for the research can be seen immediately in terms of the raw data.

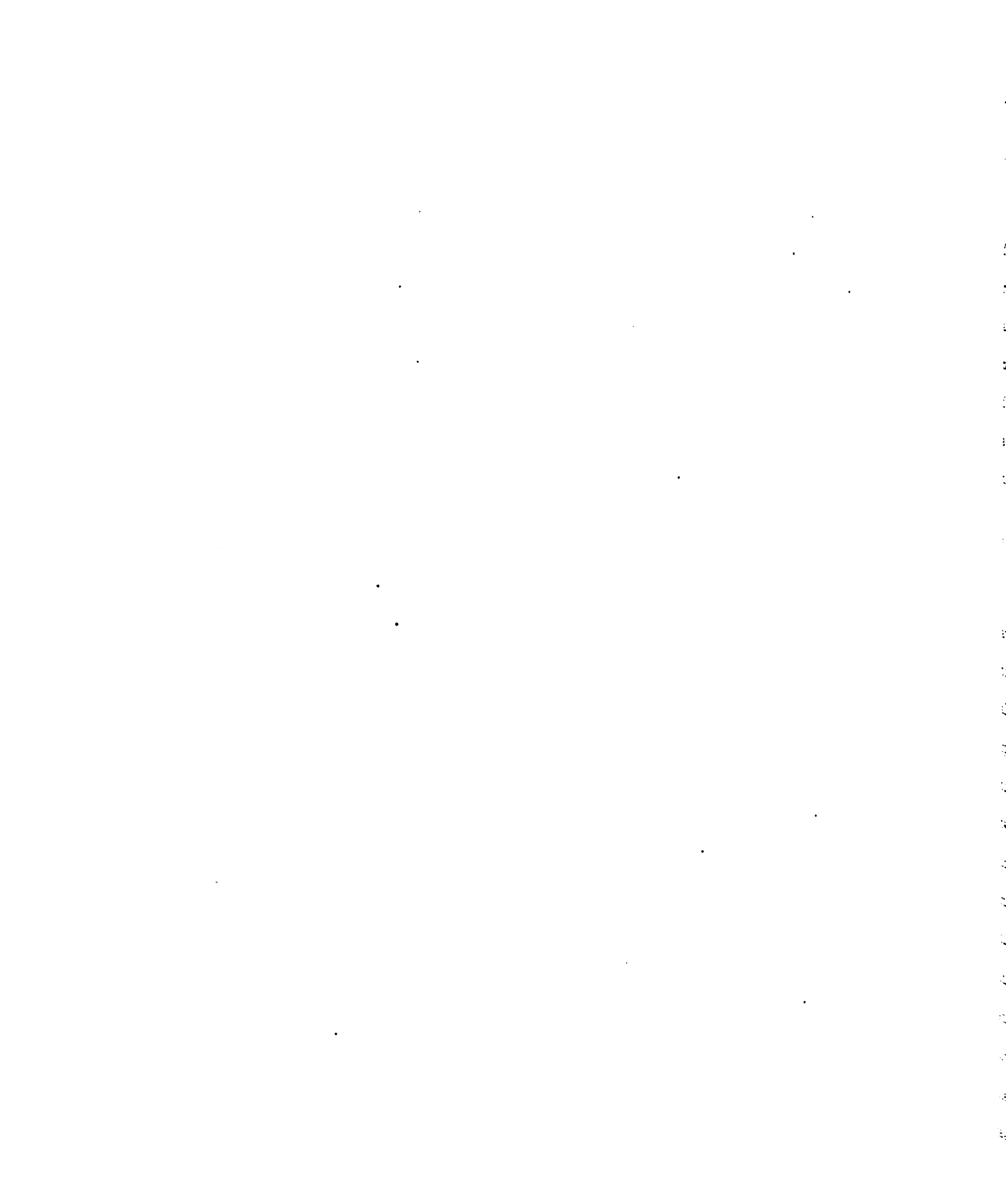
Second, the coefficients of reproducibility (CR) and scalability (CS) are considerably above the traditional minimum of .900 and .600, respectively. The CR's range from a perfect 1.000 (in 24 of the 60 scales) to a low of .955 in the Full Faith and Credit scale. Those scales producing the lower CR's are, for the most part, scales which are either quite small - as in the case of the Full Faith and Credit



set - or from the least specifically defined AO and/or AS scales such as the Criminal Liability or War Powers sets. The mean CR is a remarkably high .988. Similarly, the CS's are extremely high by conventional standards. Only two of the sets fail to achieve a .833 coefficient of scalability. One of those scales, Unions: Closed Shop, contains only five cases. The other low CS is found in the Religion set. This set will be fully discussed subsequently, but let it momentarily suffice to say that this is probably the most unusual of the sixty sets.

These high scale criteria measures reflect the tightness of the scales and the primary virtue of pursuing maximum refinement in the construction of the scales. As well, these high CR's and CS's substantiate the already asserted notion that more rigorous (higher) minimum criterion levels are appropriate when dealing with a decision-making body as small, stable, and frequently interacting as the Supreme Court.¹

Chapter Four will be divided into three sections. The first section will describe the products of the computer-dependent analyses providing tabular summaries of the computer-dependent output where appropriate. The dimensionality of the decisional behavior of the Stone Court will be empirically represented by proceeding through each phase of the computer analysis. Each of the sixty scale-sets will be described in terms of dimensional location. The second portion of the chapter will move into a substantive interpretation of the dimensions as well as the scale-sets. Enumeration of the dimensions and component items and the interpretation of the dimensions will, thus, be handled consecutively rather than simultaneously. This has been done to emphasize that the determination of the dimensions is empirically as opposed to substantively based. The final section of the chapter will summarize the socio-political and bloc analysis aspects of the research and provides appropriate commentary and



interpretations.

A. The Empirical Dimensionality - The Computer Analyses

The primary input for the computer analyses were the scale ranks for each of the Stone Court members. A complete listing of these scale ranks for all sixty variables can be found in Appendix E. The first aspect of the computer analysis was the generation of intercorrelation matrices. Kendall tau and Spearman rho rank order correlation coefficients were computed. The tau inter-correlation matrix was then used as the input data for both the factor analysis and the clustering routine (LAWS).

A.1. Correlational Analyses

The correlational analysis began with the production of the tau and rho inter-correlation matrices. The entire tau rank order correlation matrix is reproduced in Table 6. The mean tau correlation across all sixty variables was .408. The mean rho coefficient was .506. Despite the seemingly significant difference between these mean correlations, it is impossible to precisely evaluate the difference because the two correlations operate from different underlying scales. It is known, however, that at mid-range, the tau is smaller numerically than the rho although they approach one another for zero and near-zero correlations.² Both the tau and rho coefficients utilize the "same amount of information in the data, and thus both have the same power to detect existence of association."³ In other words, for the same set of data, both tau and rho have significance tests which reject H_0 at "essentially the same level of significance."⁴ Given the similarity of the two measures of association from a power standpoint, only one intercorrelation

TABLE 6 KENDALL (TAU) INTER-CORRELATION MATRIX - 60 Variables
(Negative Coefficients Underlined)

Bankruptcy	559	Antitrust	559	Bankruptcy	029	377	Claims	324	Coerced Confession	523	ICC - PN&C	448	Comm Reg-Rates	530	Jud Rev-Comms	635	Contracts	765	Counsel	324	Double Jeopardy	302	Eminent Domain	460	EPCA	460	Equal Protection	764	Evidence-Sufficiency	114	Federal Taxation-Definition	163	Federal Taxation-Exemptions	045	Federal Taxation-Liability	355												
Claims	029	377	324	Bankruptcy	523	523	324	Coerced Confession	523	523	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114													
Coerced Confess	418	806	141	286	589	589	141	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114													
ICC-PN&C	551	667	286	209	758	758	286	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114												
Comm Reg-Rates	537	806	209	276	627	627	209	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114											
Jud Rev-Comms	647	765	276	174	448	448	276	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114										
Contracts	677	588	174	145	418	418	174	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114									
Counsel	500	529	145	261	627	627	145	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114								
Double Jeopardy	706	824	261	057	471	471	261	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114								
Eminent Domain	493	551	057	180	725	725	057	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114							
EPCA	572	800	180	377	328	328	377	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114							
Equal Protection	235	412	377	225	493	493	225	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114						
Evidence-Suffic	457	457	225	000	471	471	000	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114						
Fed-St(Commerce)	725	551	000	171	530	530	171	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114					
Fed-St(Policy)	493	667	171	177	424	424	177	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114					
Fed-St(Taxation)	627	448	177	286	294	294	286	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114					
Fed Tax-Definition	087	203	286	592	725	725	592	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114					
Fed Tax-Exemptions	229	686	592	061	250	250	061	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114				
Fed Tax-Liability	286	450	061	250	344	344	250	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114				
Fed Tax-Succession	717	866	209	636	697	697	636	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114				
FELA	697	910	329	677	594	594	677	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114			
FLSA-Contracts	567	627	147	515	769	769	515	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114			
FLSA-Coverage	508	776	383	697	708	708	697	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114		
Full Faith & Credit	500	471	087	239	546	546	239	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114		
Indian Property	261	203	144	353	090	090	353	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114		
Indian Treaties	493	435	400	176	329	329	176	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	
Comity	400	743	315	551	442	442	551	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	
Due Process	841	725	159	471	565	565	471	523	589	589	448	448	530	530	635	635	765	765	324	324	302	460	460	460	764	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114	114
Jury Trial																																																

TABLE 6

	Antitrust	Bankruptcy	Claims	Coerced Conf	ICC-FN&C	Comn Reg-Rates	Jud Rev-Comms	Contracts	Counsel	Doub Jeop	Emtn Domain	EFCA	Equal Protect	Evid-Suffic	Fed-St(Comm)	Fed-St(Policy)	Fed-St(Tax)	Fed Tax-Defin	Fed Tax-Exempt	Fed Tax-Liab
Criminal Liability	057	057	254	145	177	028	203	114	000	477	028	315	200	068	167	028	180	092	494	067
Fiscal Liability	717	627	177	515	646	765	576	896	717	478	657	795	783	269	319	853	706	636	118	377
Injury Liability	783	783	205	530	659	629	558	805	667	551	754	571	674	377	315	714	686	530	057	479
Military-Civil	418	328	235	091	215	471	273	448	657	024	612	349	376	282	145	471	349	024	093	184
Nat-Denat	758	485	209	246	563	431	515	758	212	667	388	413	424	236	236	687	388	339	090	295
NIRA	788	819	209	616	688	747	739	879	819	515	879	717	825	303	354	777	747	554	089	471
Patents	522	667	229	500	508	800	500	841	580	348	667	857	761	319	197	629	686	471	114	479
Radio Regulation	029	377	057	471	239	229	412	087	029	203	319	000	254	203	141	057	286	118	457	479
RIA	235	412	261	388	364	580	358	441	588	059	441	435	515	177	000	522	377	209	319	343
Religion	532	501	216	509	613	586	381	594	532	223	470	342	484	445	365	617	563	551	073	339
Search & Seizure	145	029	205	000	283	229	023	046	145	435	145	057	045	087	180	057	229	177	571	085
Selective Service	319	319	286	177	090	171	177	087	319	116	395	138	068	302	085	114	138	047	092	205
Speech & Press	647	588	092	388	405	696	659	605	647	353	824	667	523	177	205	609	435	328	203	343
St Comn Reg	609	899	229	765	747	657	824	783	667	609	841	686	930	261	535	686	686	589	229	535
St Tax (Commerce)	647	941	319	746	667	580	836	853	706	588	794	609	858	294	457	638	743	508	145	572
Sup Court Juris	522	319	023	147	330	572	372	598	464	464	493	686	450	029	270	571	343	530	114	141
Trial Errors	261	435	086	265	448	286	412	551	348	551	319	571	479	145	197	343	743	294	343	197
Unions: Coll Barg	541	828	251	614	525	565	873	637	573	573	828	471	712	159	464	534	534	357	283	464
Unions: Clos Shop	706	605	166	410	693	365	546	370	437	445	549	207	460	314	523	464	362	371	207	358
Unions: Solicit	618	706	391	567	357	899	588	675	647	206	824	609	523	412	114	609	493	328	029	572
Utility Reg	717	746	294	515	523	765	636	717	597	299	836	618	609	508	377	559	530	394	177	551
War Powers	725	319	057	294	598	457	353	551	783	319	493	457	535	145	366	800	400	677	171	028
Stat Con - Remedies	588	765	368	627	524	783	659	651	647	294	894	482	693	259	294	605	309	377	328	572
Appeal - Sub Rev	580	811	286	677	807	571	736	783	638	580	725	629	873	319	423	629	800	530	114	592
Collaboration	515	424	094	185	512	329	410	453	273	381	405	330	359	357	210	388	471	241	306	163
Appeal - St to Fed	319	638	386	412	377	571	256	460	319	145	551	514	315	609	045	286	514	118	114	592
Stat Con - Criminal	597	508	294	273	339	589	455	508	717	060	687	412	377	418	145	530	294	182	059	319
Admin Deference	629	800	310	551	589	761	609	858	629	457	743	704	722	457	278	592	704	435	085	611
Fed-St(Supremacy)	725	667	171	471	687	800	559	725	609	493	783	714	704	377	366	743	571	559	057	479
Legis Power Deleg	493	554	405	344	348	668	390	531	739	062	708	425	377	431	094	547	364	125	182	449

matrix - the tau matrix - was subsequently used as factor analysis and LAWS input.

The initial sixty-variable matrices allowed a test for consistency of direction assignment by inspection. Possible errors in assignment were found in three scales - Federal Taxation: Definition, Federal Taxation: Exemptions, and Criminal Liability. Direction was changed in the Federal Taxation: Definition scale-set after reconsidering the cases contained in the set as well as the factor analysis output. The two remaining scales were left with their initial directional assignments intact. These two scales were among the five sets which did not locate on at least one of the empirically defined dimensions. The directionality of Criminal Liability and Federal Taxation: Exemptions could not be evaluated solely on the basis of the positive-negative directions of the correlations. Directionality was reversed in the Federal Taxation: Definition set, and the fit improvement was substantial. Several selected examples should provide adequate demonstration of the effect of dimension reversal. The tau correlation of the Federal Taxation: Definition set and Antitrust prior to the reversal was $-.627$. The coefficient is $.667$ (significant at $.009$) after direction reversal. Likewise, the correlation of the Federal Taxation and Equal Protection sets changed from $-.598$ to $.686$ ($.006$), and the correlation with Contracts moved from $-.567$ to $.647$ ($.012$) following reversal.

The correlation matrix and component coefficients were also used following the completion of the factor analysis to determine if dimensional fit could be improved or more adequately interpreted by locating individual coefficient behavior - if such behavior existed. For example, if a set did not locate on any dimension or located on the periphery of one of the dimensions, the individual coefficients for each scale-set

were checked to determine if the deviation of one justice's scale rank was contributing excessively to the lower coefficient and poor fit. The correlations were also used to describe the dimensions themselves through the computation of within-dimension mean coefficients. These two uses of the correlations are discussed in the following section.

A.2. Factor Analyses

The basic assumption of factor analysis is that from a large correlation matrix, it is possible to identify a smaller number of underlying factors which can be usefully represented by the reference axes. One of the more difficult aspects of using the factor analytic technique is the determination of how few referent factors can best represent the entire universe of data. Three factors emerge from the factor analysis conducted. Only five of the sixty variables could not be located on at least one of these three factors.

The setting of criteria for determining factor location varies significantly throughout the literature as it relates to political analyses. Grumm reports extremely low mean factor loadings in his roll-call study of the Kansas legislature without dealing with the issue of acceptable minimum loadings.⁵ MacRae and Schwarz, on the other hand, set minimum loadings at .700 though they report lower loadings where the minimum was not achieved for a particular variable on any factor.⁶ Alker's study of the voting patterns in the General Assembly of the United Nations utilizes a .600 minimum⁷ while Russett's research on the United Nations sets a .500 loading minimum.⁸ Rummel's examination of international conflict behavior similarly employs the .500 minimum.⁹ These are just several examples of social science factor analysis applications, and it seems clear from these studies

that there exists no operational consensus on this issue.

An approach closely resembling the MacRae and Schwarz method was employed in the current research. A minimum loading of .700 was the initial criterion established. Those variables producing loadings in excess of this minimum were immediately located on a particular dimension. A substantial number of variables failed to meet this minimum on any of the factors through a ten-factor solution. Thus, some modification became necessary to handle the lesser loading variable.

The highest loading not achieving .700 was then incorporated as a supplementary criterion. Rummel's meaningfulness, loading distribution, and interpretability criteria were also utilized.¹⁰ These criteria, selected from a number of criteria discussed by Rummel, are clearly enough represented by the terms themselves. Finally, the correlation matrix and component coefficients were used when a variable remained unlocated. The method used for this phase of the analysis is discussed above in section A.1.

Table 7 provides the four-factor solution of the varimax rotation analysis derived from the tau inter-correlation matrix. The four-factor solution reveals the three primary dimensions - Judicial Power, Governmental Regulation, and Administrative Oversight. The four-factor solution is presented because it reflects a relatively stabilized output, represents the unique character of the Criminal Liability, Search and Seizure, and Selective Service scale-sets, and because most of the variables have achieved fairly satisfactory communalities. The presentation of the four-factor solution is not intended to suggest that the various other solutions did not contribute to the ultimate empirical definition of the dimensions. The other solutions are provided in Appendix G, and one is urged to refer to these solutions to fully appreciate the results

TABLE 7 Tau Correlation Matrix Factor Loadings -
 4 Factor Solution/Varimax Rotation Analysis

	I	II	III	IV	h ²
Antitrust	.687	.062	-.486	-.079	.721
Bankruptcy	.468	-.010	-.417	-.740	.943
Claims on Government	-.161	.344	-.266	-.463	.430
Coerced Confession	.477	.004	-.113	-.741	.790
ICC: FN & C	.683	-.161	-.309	-.260	.657
Comn Regulation: Rates	.417	.116	-.643	-.320	.705
Judicial Review: Comns	.545	-.057	-.258	-.604	.732
Contracts	.632	-.072	-.561	-.270	.793
Right to Counsel	.604	.239	-.591	-.086	.780
Double Jeopardy	.664	-.451	-.017	-.211	.690
Eminent Domain	.446	.136	-.617	-.498	.848
Emer Price Con Act	.578	-.235	-.514	-.068	.659
Equal Protection	.730	-.066	-.313	-.389	.787
Evidence: Sufficiency	-.104	.046	-.471	-.389	.387
Fed-State: Commerce	.649	-.177	.169	-.286	.562
Fed-State: Policy	.765	.084	-.502	.015	.846
Fed-State: Tax	.490	-.190	-.427	-.337	.574
Fed Tax: Definition	-.852	.098	.085	-.021	.743
Fed Tax: Exemptions	.038	-.532	.080	-.336	.404
Fed Tax: Liability	.075	.048	-.307	-.786	.660
Fed Tax: Succession	.090	-.347	-.752	-.168	.733
Fed Emp Liab Act	.403	.031	-.690	-.467	.859
FLSA: Contracts	.467	.038	-.611	-.577	.927
FLSA: Coverage	.599	-.005	-.536	-.218	.693
Full Faith & Credit	.544	.056	-.246	-.556	.669
Indian Property	.216	-.213	-.551	-.220	.445
Indian Treaties	.470	.300	-.286	-.201	.434
Comity	.074	.294	-.627	-.202	.526
Due Process	.147	-.231	-.597	-.437	.623
Jury Trial	.468	-.039	-.625	-.267	.683
Criminal Liability	-.061	.816	.004	.113	.683
Fiscal Liability	.689	-.029	-.591	-.078	.841
Injury Liability	.547	-.135	-.625	-.274	.784
Military-Civilian	.063	.224	-.805	.044	.704
Nat-Denaturalization	.386	.276	-.722	-.049	.750
Nat'l Labor Rel Act	.605	-.070	-.646	-.351	.931
Patents & Copyrights	.416	-.192	-.704	-.216	.756
Radio Regulation	-.046	-.285	-.040	-.605	.452
Railway Labor Act	.342	.424	-.305	-.228	.442
Religion	.608	.300	-.249	-.187	.557
Search & Seizure	-.070	.788	-.047	-.018	.629
Selective Service	.133	.636	-.086	-.281	.509
Speech and Press	.374	-.103	-.699	-.202	.680
State Comn Regulation	.653	-.094	-.374	-.574	.906
State Tax: Commerce	.603	-.037	-.410	-.593	.886

TABLE 7

	I	II	III	IV	h^2
Supreme Court Juris	.465	-.191	-.531	.139	.554
Trials: Errors	.309	-.650	-.316	-.195	.657
Unions: Coll Barg	.460	-.099	-.388	-.596	.728
Unions: Closed Shop	.447	.068	-.323	-.367	.443
Unions: Solicitation	.326	.245	-.671	-.381	.763
Utility Regulation	.338	.054	-.735	-.406	.822
War Powers	.759	.312	-.330	.182	.816
Stat Con: Remedies	.395	.284	-.531	-.505	.774
Appeal: Sub Review	.597	-.158	-.383	-.547	.829
Collaboration	.236	-.480	-.510	-.141	.567
Appeal: State to Fed	-.042	-.217	-.685	-.435	.709
Stat Con: Criminal	.183	.381	-.784	-.150	.817
Admin Deference	.393	-.137	-.726	-.389	.853
Fed-State: Supremacy	.517	-.107	-.708	-.197	.819
Legis Power Deleg	.152	.406	-.761	-.222	.817
Proportions of Variance	22.0%	8.2%	25.8%	13.6%	69.8%

of the factor analyses.

The four-factor solution accounts for 69.8% of the variance in the decisional behavior of the Stone Court justices. 61.4% of this variance is contained in the three primary dimensions. The remaining 8.2% is produced by factor II with a substantial proportion of that amount coming from the three scale-sets named above. Factor I corresponds to the Judicial Power dimension, III the Governmental Regulation dimension, and IV the Administrative Oversight dimension. Accounting for better than 60% of the variance on the three primary factors is highly satisfactory given the extremely high dissent ratios found during the Stone Court terms.

The factor analysis was continued through ten factors with no significant variable location changes taking place. The proportion of

of variance on each factor, of course, did decrease as it became spread over a greater number of factors, but the basic dimensions retained their initial definition in general. It should be noted that no loading of greater than .384 was achieved on any factor added following the seven-factor solution. Thus, the termination of factoring at ten factors is sufficiently justified.

The component scale-sets of the three primary dimensions as determined by the factor analysis are listed in the following paragraphs. No differentiation is made at this point between the nuclear and marginally locating component sets. Except for the Indian Treaties, Federal Taxation: Exemptions, Criminal Liability, Search and Seizure, and Selective Service sets, all of the sixty scale were located on at least one of the primary factors.

The first of the three factors is descriptively entitled Judicial Power. The sets which are contained on this dimension are Antitrust, Interstate Commerce Commission: Public Necessity and Convenience Certificate Applications, Contracts, Right to Counsel, Double Jeopardy, Emergency Price Control Act, Equal Protection, Federal-State: Policy Conflicts, Federal-State: Taxation Conflicts, Federal Taxation: Definition, Fair Labor Standards Act: Coverage Construction, Full Faith and Credit, Due Process, Fiscal Liability, National Labor Relations Act. Railway Labor Act, Religion, State Commission Regulation, State Taxation: Interstate Commerce, War Powers, Appeals: Substantive Review, Patents and Copyrights, and Trials: Prejudicial Errors.

The second dimension - Governmental Regulation - encompasses twenty-six variables. These variables include Commission Regulation: Rate Determinations, Eminent Domain, Emergency Price Control Act, Federal Taxation: Succession & Estate, Federal Employers' Liability Act, Fair

Labor Standards Act: Contracts, Comity, Due Process, Jury Trial, Personal Injury Liability, Military-Civilian, Naturalization-Denaturalization, National Labor Relations Act, Speech and Press, Supreme Court Jurisdiction, Unions: Collective Bargaining Agents, Unions: Closed Shop Agreements, Unions: Solicitation, Utility Regulation, Statutory Construction: Remedies, Appeals: State to Federal Courts, Statutory Construction: Criminal Liability, Administrative Deference, Federal-State:National Supremacy, Delegation of Legislative Power, and Patents and Copyrights.

The Administrative Oversight dimension contains eleven scales. These scale-sets are Federal-State: Commerce, Judicial Review: Regulatory Commissions, Radio Regulation, Unions: Collective Bargaining Agents, Appeals: Substantive Review, Coerced Confession, Full Faith and Credit, Bankruptcy, Statutory Construction: Remedies, Federal Taxation: Liability, and Fiscal Claims upon the Federal Government.

Six of the Judicial Power dimension variables produced consistent loadings in excess of .700 - Interstate Commerce Commission: Public Necessity and Convenience Certificate Applications, Contracts, Equal Protection, Federal-State: Policy Conflicts, Fiscal Liability, and Federal Taxation: Definition. The Double Jeopardy, Railway Labor Act, Due Process, and Trials: Prejudicial Errors produced loadings low enough to require additional consideration. The remaining thirteen variables failed to produce loadings higher than .700, but had their highest loadings on the Judicial Power factor. These loadings were all in the .600-.699 range and were judge high enough to justify inclusion or location on the Judicial Power dimension.

The four variables with initially unsatisfactory loadings were examined to determine if markedly deviant behavior on the part of a single justice or possible two justices produced depressed inter-correlations

and subsequent loadings. The starting point for this examination began with the scale ranks of each justice in the Judicial Power dimension scales. Table 8 provides these scale ranks. A mean dimension scale rank was identified for each justice and these mean ranks compared with the rank of each justice on these marginally loading variables. In each instance, one or two justices were found to have substantially deviant ranks on these four variables. Rutledge's mean Judicial Power dimension rank is 3.89. His Double Jeopardy rank, however, is 8, or a deviation or greater than four ranks. Tau correlations were re-computed between the Double Jeopardy set and the remaining Judicial Power factor scales excluding Rutledge from consideration. The inter-correlations were greatly increased as a result. The correlation between Double Jeopardy and ICC: PN & C applications, for example, increased from .667 to .836 (significant to .001), for example. Similarly, the Double Jeopardy-Contracts correlation is raised from .471 to .588 (.022). While it is clear that Rutledge is responding in a unique fashion to the cases in the Double Jeopardy set, there is reason to conclude that the association between the Double Jeopardy set and the remainder of the Judicial Power dimension variables is moderately high. The unnatural depression of the correlations because of Rutledge's behavior conceals this association in the initial correlation and factor analyses.

Comparable improvements are found when Black is excluded from the computation of rank order correlations involving the Railway Labor Act set, when Murphy and Reed are dropped from the Trial: Prejudicial Errors scale, and when Stone and Burton are excluded from the Due Process set. Burton's exclusion in the last instance is the most justifiable in that his participations are far from complete generally. To be sure, excluding participants does not provide the strongest ground on which to make

TABLE 8

JUDICIAL POWER DIMENSION RANKS

	Blk	Bur	Byr	Dou	Frk	Jac	Mur	Ree	Rob	Rut	Sto
Antitrust	2	x	x	3	9	7 $\frac{1}{2}$	1	5	6	4	7 $\frac{1}{2}$
ICC: PN & C	2 $\frac{1}{2}$	x	4	1	9 $\frac{1}{2}$	9 $\frac{1}{2}$	5 $\frac{1}{2}$	5 $\frac{1}{2}$	7 $\frac{1}{2}$	2 $\frac{1}{2}$	7 $\frac{1}{2}$
Contracts	1	x	5	2	9	7 $\frac{1}{2}$	2 $\frac{1}{2}$	7 $\frac{1}{2}$	10	4	6
Counsel	3 $\frac{1}{2}$	x	x	3 $\frac{1}{2}$	8	7	1	5 $\frac{1}{2}$	9	2	5 $\frac{1}{2}$
EPCA	2 $\frac{1}{2}$	4	x	1	9	6	2 $\frac{1}{2}$	8	10	7	5
Equal Prot	2	5	7	1	9	10	3	8	11	4	6
Fed-St: Policy	4	x	x	1 $\frac{1}{2}$	9	7	1 $\frac{1}{2}$	6	8	3	5
Fed-St: Tax	1	10	x	2	8	7	5 $\frac{1}{2}$	5 $\frac{1}{2}$	9	3	4
FLSA: Coverage	3 $\frac{1}{2}$	x	x	1 $\frac{1}{2}$	8	7	3 $\frac{1}{2}$	5 $\frac{1}{2}$	9	1 $\frac{1}{2}$	5 $\frac{1}{2}$
Fiscal Liab	3	x	x	1 $\frac{1}{2}$	9	6	1 $\frac{1}{2}$	7	8	4	5
NLRA	2	x	x	2	8	6 $\frac{1}{2}$	2	5	9	4	6 $\frac{1}{2}$
Religion	2 $\frac{1}{2}$	9 $\frac{1}{2}$	x	2 $\frac{1}{2}$	7	8	2 $\frac{1}{2}$	9 $\frac{1}{2}$	6	2 $\frac{1}{2}$	5
St Comn Reg	2	x	x	1	6 $\frac{1}{2}$	8	3	5	9	4	6 $\frac{1}{2}$
St Tax: Comm	1	x	x	2 $\frac{1}{2}$	6 $\frac{1}{2}$	8	2 $\frac{1}{2}$	5	9	4	6 $\frac{1}{2}$
App: Sub Rev	1 $\frac{1}{2}$	x	x	1 $\frac{1}{2}$	7	8	4	6	9	3	5
Patents	1 $\frac{1}{2}$	x	x	1 $\frac{1}{2}$	8	4	3	7	9	5	6
Double Jeop	1 $\frac{1}{2}$	x	4	1 $\frac{1}{2}$	9	10	5	3	7	8	6
Fed Tax: Def	2 $\frac{1}{2}$	x	x	1	9	8	2 $\frac{1}{2}$	7	4 $\frac{1}{2}$	6	4 $\frac{1}{2}$
Full Faith	1	x	x	3	6	9	4	6	8	2	6
Due Process	1	3	4	2	8	5	6	9	11	7	10
RIA	6	x	x	2 $\frac{1}{2}$	4 $\frac{1}{2}$	7	2 $\frac{1}{2}$	8	9	1	4 $\frac{1}{2}$
War Powers	4	x	x	3	9	8	1	7	5 $\frac{1}{2}$	2	5 $\frac{1}{2}$
Trial Errors	1	x	x	2	8	5	7	3 $\frac{1}{2}$	9	6	3 $\frac{1}{2}$
MEAN RANKS	2.1	7.1	5.0	1.9	8.0	7.4	2.9	6.4	8.4	3.7	5.5

inclusion judgments, but seems a legitimate practice in rare and extreme circumstances. The substance of the deviant behavior of the justices in the sets above will be pursued in section B. The four sets were, thus, located within the Judicial Power dimension although their association was noted as marginal.

Table 9 presents the tau inter-correlation matrix of the Judicial Power dimension component sets. The within-dimension matrix is provided in order to better describe the levels of association among the empirically defined factor components. Table 10 provides the average within-dimension correlations. Even the inclusion of the non-revised correlations of the four marginally locating sets, the mean within-dimension

TABLE 10 Judicial Power Mean Within-Dimension Correlations

	<u>23 Variables</u>	<u>19 Variables*</u>
Antitrust	.571	.620
ICC: PM & C	.626	.658
Contracts	.706	.748
Right to Counsel	.624	.670
Emer Price Control Act	.599	.615
Equal Protection	.684	.724
Federal-State: Policy	.651	.703
Federal-State: Taxation	.597	.635
Federal Taxation: Definition	.516	.558
Fair Labor Stan Act: Coverage	.670	.710
Full Faith and Credit	.601	.625
Fiscal Liability	.678	.722
Nat'l Labor Relations Act	.705	.747
Religion	.509	.558
State Commission Regulation	.686	.720
State Tax: Commerce	.675	.707
War Powers	.512	.570
Appeals: Substantive Review	.684	.714
Patents & Copyrights	.614	.639
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Double Jeopardy	.444	
Due Process	.451	
Railway Labor Act	.406	
Trial: Prejudicial Errors	.424	
MEAN CORRELATION	.593	.666

* Excluding Double Jeopardy, Due Process, Railway Labor Act, and Trial: Prejudicial Errors

coefficient is .593 (as compared with .408 for the entire 60 variable inter-correlation matrix. The above table shows the mean within-dimension correlations both including and excluding the four marginal sets. It allows an understanding of the clustering character of the Judicial Power dimension sets by inspection. The tau correlation means remain somewhat depressed even excluding the marginal sets because of the highly dissensual five-term period, but are quite high nevertheless. The within-dimension mean coefficient, however, is roughly the same distance from the mean correlation of the total matrix as those studies which have

examined more consensual periods and have an average inter-correlation for all variables which is higher than .408.

The Governmental Regulation dimension has eight variables which load with relative consistency above the .700 minimum. The sets in this group are Federal Taxation: Succession and Estate, Federal Employers' Liability Act, Military-Civilian, Speech and Press, Naturalization-Denaturalization, Unions: Solicitation, Utility Regulation, and Statutory Construction: Criminal Liability. Ten other variables produce loadings which most consistently are found in the .600-.699 range. Four of these sets, however, have loadings above the .700 level in the four-factor solution. These sets are Statutory Construction: Remedies, Administrative Deference, Federal-State: National Supremacy, and Legislative Power Delegation. Six sets load marginally on the Government Regulation dimension - Supreme Court Jurisdiction, Comity, Unions: Closed Shop, Indian Property, Evidence: Sufficiency, and Collaboration.

The six variables with low loadings also have correspondingly low inter-correlations with the Governmental Regulation components. A scanning of the ranks for possible deviations accounting for the depressed loadings and correlations was undertaken. Table 11 provides the Governmental Regulation ranks upon which this examination was based. Substantial improvements in the correlation were found for each of the variables when a deviant respondent was excluded, and with the improvements, justification for retention of each of the variables upon the Governmental Regulation dimension.

The first of the marginal sets to be considered was Comity. The mean dimension rank of Justice Douglas is 2.5 while his Comity scale rank is 6. Omitting Douglas from the computation of Comity correlations improves the .343 coefficient with Commission Regulation: Rates to .556

TABLE 11 GOVERNMENTAL REGULATION DIMENSION RANKS

	Elk	Bur	Byr	Dou	Frk	Jac	Mur	Ree	Rob	Rut	Sto
Comm Reg: Rates	3	x	x	1	7	5	2	8	9	4	6
Eminent Domain	3	9	x	1½	6½	6½	1½	5	10	4	8
EPCA	2½	4	x	1	9	6	2½	8	10	7	5
Fed Tax: Succ	4	x	6	1½	7½	1½	4	4	9	x	7½
FELA	2	10	7	2	8	6	2	5	11	4	9
FLSA: Contracts	3½	x	x	1½	8	7	3½	5½	9	1½	5½
Comity	3½	x	x	6	7	5	2	3½	8	1	9
Due Process	1	3	4	2	8	5	6	9	11	7	10
Jury Trial	1	x	7	3	10	6	2	5	8	4	9
Injury Liab	1	x	4	2½	10	7	2½	6	9	5	8
Military-Civil	5	9	x	5	8	2	1	5	10	3	7
Nat-Debat	3½	x	x	3½	8½	5	1½	6	7	1½	8½
NLRA	2	x	x	2	8	6½	2	5	9	4	6½
Speech	3	x	7	2	8½	4½	1	4½	10	6	8½
Un: Coll Barg	2½	x	x	2½	6	7	2½	2½	9	5	7½
Un: Solicit	2½	x	7	2½	6	5	1	8½	10	4	8½
Utility Reg	2	x	x	2	7	5	2	6	8	4	9
Stat Con: Rem	3½	x	5	2	6	7½	1	7½	10	3½	9
App: St to Fed	1	x	3	4	8	6	2	7	10	5	9
Stat Con: Crim	4	x	x	4	7	4	1	6	8	2	9
Admin Defer	1	x	x	2	8	5	3	6	9	4	7
Fed-St: Suprem	2½	x	x	1	9	5	2½	6	8	4	7
Legis Deleg	5	x	3	5	7½	5	2	7½	10	1	9
Patents	1½	x	x	1½	8	4	3	7	9	5	6
Sup Ct Juris	2½	x	4	2½	10	5	1	7	8	9	6
Un: Clos Shop	3	7½	x	3	7½	9	3	3	6	3	10
Indian Prop	1½	x	x	1½	8½	4	6	7	5	3	8½
Evid: Suff	1	10	x	3½	5½	3½	7	8	5½	2	9
Collaboration	2	9	7	2	11	4	5½	2	8	5½	10
MEAN RANKS	2.5	7.7	5.3	2.4	7.9	5.1	2.2	6.0	9.0	3.8	8.0

which is significant to .044. Likewise, the correlation with National Labor Relations Act increases from .508 to .717 (.011). The omission of Rutledge from the calculation of the Supreme Court Jurisdiction correlations tightens that scale's association with the other Governmental Regulation sets. The Personal Injury Liability coefficient, for example, increases from .659 to .778 (.005) and the association of Supreme Court Jurisdiction and the Military-Civilian set from .441 to .731 (.011). The exclusion of Justice Jackson from the Union: Closed Shop set and the remaining Governmental Regulation dimension sets moves that set closer to

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the nuclear components of the dimension.

The remaining three sets are found substantially closer with the dropping of two justices from the coefficient computation. Justices Murphy and Roberts deviate greatly from their respective mean dimension ranks in the Indian Property set. Excluding Murphy and Roberts, the .657 correlation with Utility Regulation jumps to .974 (.001). The same pair of justices responded unusually relative to their mean ranks in the Evidence: Sufficiency scale-set. The correlation of this set with Unions: Colicitation is representative of the improvement achieved. The tau coefficient prior to exclusion was .412. The coefficient following re-calculation without Murphy and Roberts is .872 (.005). The exclusion of Murphy and Reed similarly improve the associations between the Collaboration set and the remaining dimension sets. The revised associations place the marginal sets' correlations above those of the nuclear sets.

Tables 12 and 13 present the within-dimension inter-correlation matrix and mean within-dimension correlations respectively. These tables correspond to Tables 9 and 10 provided in connection with the Judicial Power dimension. The mean within-dimension tau coefficient including the marginal sets is comparable to that found for the Judicial Power dimension. The 23 more tightly clustered variables produce an average correlation of .622. The marginal sets, without the exclusion of the highly deviant justices, produce average correlations with the other sets which are only slightly higher than the mean coefficient for the entire universe of sets. None of these six sets locate on any other dimension, and thus, relying upon this method of considering individual behavior was essential in the placing of these sets on one of the three dimensions.

Three of the Administrative Oversight variables - Bankruptcy, Coerced

TABLE 13 Governmental Regulation Mean Within-Dimension Correlations

	<u>29 Variables</u>	<u>23 Variables*</u>
Commission Regulation: Rates	.629	.690
Eminent Domain	.681	.736
Emergency Price Control Act	.510	.567
Federal Taxation: Succession	.560	.595
Federal Employers' Liab Act	.698	.745
Fair Labor Stan Act: Contract	.709	.764
Due Process	.543	.587
Jury Trial	.635	.649
Injury Liability	.645	.673
Military-Civilian	.492	.532
Natural-Denaturalization	.598	.610
Nat'l Labor Relations Act	.693	.749
Speech and Press	.636	.685
Unions: Bargaining Agents	.570	.609
Unions: Solicitation	.640	.695
Utility Regulation	.709	.750
Statutory Const: Remedies	.613	.665
Appeals: State to Federal	.525	.544
Statutory Const: Criminal	.599	.637
Administrative Deference	.688	.737
Federal-State: Supremacy	.676	.719
Legislative Power Delegation	.571	.614
Patents and Copyrights	.623	.681
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Comity	.466	
Supreme Court Jurisdiction	.462	
Unions: Closed Shop	.472	
Indian Property	.488	
Evidence: Sufficiency	.362	
Collaboration	.441	
MEAN CORRELATION	.584	.662

* Excluding Comity, Supreme Court Jurisdiction, Unions: Closed Shop, Indian Property, Evidence: Sufficiency, and Collaboration

TABLE 14 ADMINISTRATIVE OVERSIGHT DIMENSION RANKS

	Blk	Bur	Byr	Dou	Frk	Jac	Mur	Ree	Rob	Rut	Sto
Bankruptcy	1	x	x	2	5½	7½	3	5½	9	4	7½
Coer Confess	1½	x	x	1½	3	8½	4	6½	8½	5	6½
Jud Rev: Comms	1½	x	7	3	5	9	1½	4	10	6	8
Fed Tax: Liab	1	6	x	3	2	7	5	8	10	4	9
Radio Reg	4½	x	x	1	2	6	8	3	9	4½	7
Un: Coll Barg	2½	x	x	2½	6	7½	2½	2½	9	5	7½
Stat Con: Rem	3½	x	5	2	6	7½	1	7½	10	3½	9
App: Sub Rev	1½	x	x	1½	7	8	4	6	9	3	6
Claims	1	x	4	10	3	6	5	8	9	2	7
Fed-St: Comm	2	x	8	1	6	10	3	5	4	9	7
Full Faith	1	x	x	3	6	9	4	6	8	2	6
MEAN RANK	1.9	6.0	6.0	2.1	4.7	7.8	3.3	5.6	9.2	3.9	7.3

Confession, and Federal Taxation: Liability - load above the .700 minimum through most of the solutions. Judicial Review: Commissions loads in the .600-.699 range. These four sets are Unions: Bargaining Agents, Statutory Construction: Remedies (both sets are also located on the Governmental Regulation dimension), Appeals: Substantive Review, and Full Faith and Credit (these latter two sets are found on the Judicial Power dimension as well). The three marginally linked sets are Fiscal Claims upon the Federal Government, Radio Regulation and Federal-State: Commerce.

Again, sufficiently deviant behavior on the part of a Stone Court justice or pair of justices provided the rationale for retaining the marginal relationship of these sets to the remaining Administrative Oversight sets. The scale ranks of the dimension components are presented in Table 14. The most excessive deviation found from an inspection of the mean dimension ranks and the individual scale ranks Justice Douglas and the Fiscal Claims set. Douglas's average within-dimension rank is 2.8. He ranks 10th, however, in the Claims scale. By excluding Douglas, the correlation between Claims and Federal Taxation: Liability balloons to .929 (significant to .0002) from an original coefficient of .592. The

TABLE 15 Administrative Oversight Within-Dimension
Tau Inter-Correlation Matrix (11 Variables)

	Bankruptcy	Claims on Gov't	Coerced Confession	Jud Review: Comms	Fed-State: Commerce	Fed Tax: Liability	Full Faith & Credit	Radio Regulation	Unions: Bargaining Agents	Statutory Construction: Remedies
Claims on Government	377									
Coerced Confession	806	324								
Judicial Review: Comms	806	209	758							
Federal-State: Commerce	457	225	493	552						
Fed Taxation: Liability	686	592	725	551	222					
Full Faith & Credit	776	383	697	606	377	551				
Radio Regulation	377	057	471	412	141	479	235			
Unions: Bargaining Agents	828	251	614	873	464	464	582	439		
Stat Const: Remedies	765	368	627	659	205	572	508	348	733	
Appeals: Substantive Rev	841	286	677	736	423	592	824	343	722	609

improvement with each of the other sets is almost as great. Dropping Murphy from consideration of the Radio Regulation scale and the exclusion of the Roberts-Rutledge tandem from the calculation of correlations between the Federal-State: Commerce set and the other Administrative Oversight scales also produced higher associations.

The matrix of tau correlation coefficients between each of the eleven Administrative Oversight variables is provided in Table 15. The relative tightness of the nuclear components can be readily seen from the inter-correlation matrix. The un-revised coefficients of the three marginal sets are extremely low. The effects of these low coefficients upon the average within-dimension correlation can be most graphically seen when one compares the average within-dimension correlations including and then excluding these marginal un-changed set rank correlations. Table 16 provides this information. The within-

TABLE 16 Administrative Oversight Mean Within-Dimension Correlations

	<u>11 Variables</u>	<u>8 Variables*</u>
Bankruptcy	.672	.787
Coerced Confession	.619	.798
Judicial Reviews: Comms	.616	.713
Federal Taxation: Liability	.543	.592
Full Faith and Credit	.554	.649
Unions: Bargaining Agents	.597	.688
Statutory Const: Remedies	.539	.639
Appeals: Substantive Review	.605	.714
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Claims on Government	.307	
Federal-State: Commerce	.356	
Radio Regulation	.330	
MEAN CORRELATION	.522	.698

* Excluding Claims on Government, Federal-State: Commerce, and Radio Regulation

dimension mean correlation is .522 for all eleven variables, but increases to .698 when the three marginal sets are excluded. This difference is the most extreme of the three dimensions. Nevertheless, the highly deviant behavior detected within these sets on the part of one of the justices (Roberts and Rutledge in the case of the Federal-State: Commerce set) sufficiently elevates the association of these marginal sets with the nuclear sets to allow concluding that these three variables ought be considered as meaningful components of the Administrative Oversight dimension.

The three dimensions have only been substantively labelled to this point. The main purpose of section A has been to empirically define and describe the results of the computer-dependent analyses upon the decisional behavior of the Stone Court. Each of the dimensions will be substantively described and interpreted in the following section, and, among other items of concern, the deviations in ranks mentioned above in terms of individual behavior will be considered. Numerous cases found within

the component scales will also be identified and used as descriptively representative of each scale.

B. The Substantive Interpretations

The composition of the three dimensions has been empirically determined and generally described. This portion of Chapter Four will address the question of the substantive meaning of these empirically defined dimensions. The interpretations were developed by returning to the cases of the component scales of each dimension and extracting the common and relevant content. The substantive relationship of the cases of these scale-sets provide the basis for the aggregate characterisations of the dimensions.

The three dimensions are described in broad and general terms as well as through the use of specific illustrative cases. Seeming departures from expectations in variable locations are discussed in addition to individual responses of Stone Court members. Finally, the five sets which were not dimensionally located are considered with some explanations offered regarding their respective unique character. The controlling objective of this section, however, is the substantive description and interpretation of the three empirically produced dimensions. These three dimensions, heretofore only labelled as Judicial Power, Governmental Regulation, and Administrative Oversight, are presented in some detail in an effort to provide an evaluative framework and substantive meaning for the three dimensions.

Two general comments are appropriate at the outset. First, the Stone Court differs markedly from its predecessor, the Hughes Court, both ideologically, and in the sense that a single dimension no longer suffices in describing the collective and individual behavior of the

Supreme Court. Second, the three dimensions which have been identified are related as opposed to being discrete or independent.

The Hughes Court period, at least prior to 1937, was clearly unidimensional. The question of the government's role relative to the nation's economy dominated that Court's behavior. The well-noted policy turnaround which began after the abortive "court-packing" attempt also marks the beginning of a flow of more diverse issues through the judiciary. The advent of greater issue variety was bound to produce severe strain with respect to the unidimensional decisional behavior of the Court. This strain is evident in the years of the Stone Court, and it accounts in large part for the non-independence of the three primary dimensions. The Stone Court is, thus, clearly a transition Court, and interpretations of decisional behavior are inherently fuzzy as a result.

The dimensional interrelationships were initially suggested by the results of the factor analyses. Though the analyses were orthogonal, numerous variables loaded on more than one factor. Even where one loading was appreciably higher than the others, far from insignificant loadings were often found on at least one of the other two primary factors. The following interpretations will highlight the areas of substantive overlap as well as point out those areas in which the decisional distinctions are more obvious. It may be quite helpful in considering the following discussion to develop a perspective based upon the character of behavior of the Hughes Court and the Vinson Court with particular attention directed toward the transition from a clearly unidimensional situation to a situation which is just as clearly multidimensional.¹¹

B.1. Judicial Power Dimension

The most obvious thrust of Stone Court policy-making is found in

the area of expanded economic regulation at the national level. The additional national regulation stemming from the demands of the war emergency supplemented the unusually high visibility of this policy area. Concern, however, about the proper role of the judiciary with respect to the institutional linkages between the Court and other decision-making authority plus the policy priorities themselves seems to provide one of the primary bases of Stone Court behavior.

Two sources were highly suggestive in the ultimate interpretation of this dimension. The first was the discussion contained in the concluding chapter of the Roosevelt Court in which Pritchett examined the "plight of a liberal Court."¹² The focus of the chapter is upon the lack of cohesion on the Stone Court generally, but specifically explores power-role considerations of the Court; e.g., activism, self-restraint, Court assertiveness, the legacy of Homes and Brandeis, and the general policy capabilities of the Supreme Court.

The second highly suggestive source was Alpheus T. Mason's chapter in The Supreme Court: From Taft to Warren, in which he characterized the Stone Court as a Court "in search of its role."¹³ Mason poses the question of how a judicial body retains its identity in a situation where its own policy priorities coincide with those of other policy-making authorities. The consideration of judicial power as a useful explanatory direction became more plausible as the dimension's sets and their respective component cases were reviewed from this perspective.

The cases contained in the scales of the Judicial Power dimension do not specifically focus on the matter of Supreme Court jurisdiction in a formal legal sense nor do the cases reflect any exercise of judicial review as such. Rather, the underlying feature of the variables aligning on this dimension relates to the degree of discretion the Court possesses

and chooses to exercise in the performance of its judicial function in the broadest sense. The question dominating the responses of the Court in the cases of this dimension was essentially viewed in power-role definition terms.

The decision to develop an interpretation of this dimension along judicial power lines entertained certain elements of risk. Considerations of judicial power in the context of other value premises makes it most difficult to separate behavioral influences. It is certainly appropriate to suggest that power considerations are used in judicial opinions in a strategic manner, and it is always the possibility that particular judicial power postures will ensure compatibility with substantive policy priorities of individual justices. Nevertheless, the Stone Court seemed confronted with unusual contextual circumstances, and that their concern with judicial power was a priority of more than casual or strategic concern.

The cases of the sets of this dimension reveal different perceptions of the Court's appropriate role in terms of both remedies available through judicial action as well as the matter of Supreme Court jurisdiction per se. The general legislative deference of the Stone Court is clear and well-documented, and the discussion of the Governmental Regulation dimension dove-tails entirely with this proposition. Through the sheer force of policy priority coincidence the Stone Court was not destined to assume the functionally activist position of the pre-1937 Hughes Court. Retention of as much judicial discretion and independence as possible, however, did produce responses coded in judicial power terms. In short, the primary thrust of the judicial power interpretation might best be cast in terms of how a liberal Court strikes a mediate position somewhere between that of an obstructionist and a "rubber stamp." That the

Stone Court wished intensely to be neither fostered an interpretation of this dimension along judicial power lines.

The judicial power value can be seen in several different kinds of cases within the dimension. The first area in which the power consideration is visible involves deference to judicial precedent. The Court's special role in civil liberties cases provides a second reflection of the role consideration. The third type of case in which the judicial power consideration is relevant relates to remedial discretion derived directly from legislative enactments. A fourth and related aspect relates to the extent to which the Court can (or should) expand legislative policies through statutory construction. The extent to which the Court deferred to decisional bases of administrative decisions and orders constitutes a fifth category of judicial power cases. The federal-state relationship provides a final kind of issue in which the salience of the power question is significant.

Deference to judicial precedent provides a useful reflection of the role definition-judicial power issue. During the five-term period of the Stone Court, nine prior decisions of the Supreme Court were overruled directly. Eight of these cases are contained in the scale-sets of the Judicial Power dimension.¹⁴ The pervasiveness of the deference to precedent norm, however, cannot be adequately represented from these nine cases. Frankfurter's opinions in two of the Religion set cases clearly indicates that his support of Jehovah's Witness positions was based upon his perceived obligation to adhere to previous Court rulings in this area.¹⁵ The data do not allow an interpretation that deference to precedent is a dominant influence in itself, but it is clear that within the context of the broader judicial power rubric, maintenance of precedent or the choice not to defer is a power component. This comports closely

with the findings of Schubert in his analysis of civilian control and precedent in terms of differential impact across the Warren Court.¹⁶ Justices Stone, Roberts, Reed, and Frankfurter reacted more positively to the precedent norm than did their colleagues during the five-term period under analysis in this research.

Civil liberties issues also raised important questions relative to the exercise of judicial power. The support of individual rights in the context of general judicial liberalism represents one of the great operational paradoxes. The judicial liberal, one who usually can be expected to endorse governmental regulation in matters economic, seeks stringent limitations upon governmental intervention with respect to the exercise of individual rights. The relevance of the judicial power-civil liberties relationship can be reflected in several cases drawn from the component scales. The Right to Counsel set cases, for example, are useful in differentiating individual responses. Four non-unanimous counsel cases were decided during the 1944 Term.¹⁷ The fundamental issue was the legitimacy of the Supreme Court's nationalization of policy in this area - the incorporation question. The majority in each of these cases argued the necessity of establishing uniformity as well as the more traditional civil liberties position relative to counsel. Frankfurter, on the other hand, spoke exclusively in federal-state terms, and the impropriety of Supreme Court intervention in these matters. He said,

... to assume disobedience instead of obedience to the Law of the Land by the highest courts of the States is to engender friction between the federal and state judicial systems, to weaken the authority of the state courts, and the administration of state laws by encouraging unmeritorious resorts to this Court....¹⁸

Comparable considerations of power are replete in the cases of the Religion set. The federal-state issue is involved in many of these cases,



but essentially in the context of deference to local legislative bodies. The deference aspect supercedes considerations of federalism in all of these cases. The character of the litigants in most of the Religion set cases may have also prompted individual responses of a unique sort as only one Religion set case (In re Summers) did not involve Jehovah's Witnesses. Nevertheless, the central feature of the Court's opinions revolves around the question of the Court's role in protecting First Amendment free exercise rights for religious minorities as opposed to enacted policies of state legislatures (or school boards). Excerpts from the Jackson majority opinion, and the Frankfurter dissent in the second flag-salute case¹⁹ are illustrative. Jackson, on behalf of the six-justice Barnette majority said,

... We cannot, because of modest estimates of our competence in such specialities as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed...²⁰

Frankfurter echoed his majority opinion from the first flag-salute case²¹ in which he supported state interests at the expense of minority religious rights. Apropos to the deference aspect,

The Constitution does not give us greater veto power when dealing with one phase of 'liberty' than with another.... In neither situation is our function comparable to that of a legislature or are we free to act as though we were a super-legislature.... In no instance is this Court the primary protector of the particular liberty that is invoked.²²

A case which even more directly represents the centrality of the power question is the Yamashita decision.²³ The Yamashita case involved the appeal of a Japanese general from his conviction before a military tribunal for war crimes. The majority of the Court through Chief Justice Stone suggested that Yamashita had no constitutional rights relative to an appeal saying, "the commission's rulings on evidence and on the mode of conducting these proceedings against petitioners are not reviewable

by the courts, but only by the reviewing military authorities."²⁴ This position was vigorously challenged by Justices Rutledge and Murphy.

Murphy's perception of the Court's role in this case can be seen quite readily as he said,

The determination of the extent of review of war trials calls for judicial statesmanship of the highest order. The ultimate nature and scope of the writ of habeas corpus are within the discretion of the judiciary unless validly circumscribed by Congress. Here we are confronted with a use of the writ under circumstances novel in the history of the Court. For my own part, I do not feel that we should be confined by the traditional lines of review drawn in connection with the use of the writ by ordinal criminals who have direct access to the judiciary in the first instance. Those held by the military lack any such access; consequently the judicial review available by habeas corpus must be wider than usual in order that proper standards of justice may be enforceable...²⁵

A final illustration comes from the *Colegrove v. Green* case²⁶ of the Equal Protection set. The disposition of the plea for judicial intervention into the area of legislative malapportionment prompted Frankfurter's famous "courts ought not enter this political thicket" rejoinder. Clearly the considerations of the appropriateness of judicial involvement in "political questions" was the determining issue.

Numerous cases from the scales of the Judicial Power dimension can be used to demonstrate judicial expansion of legislative regulation through construction and/or the operationalization of judicial discretion in terms of remedy alternatives legislatively mandated. The criterion used in the selection of illustrative cases in the remaining discussion of the Judicial Power dimension is the representation of the content of as many of the dimensions scales as possible. Maximizing the number of scales represented most efficiently reveals the underlying judicial power issue across seemingly unrelated substantive scale-set content.

Three cases are chosen to demonstrate the expansion through construction of federal legislative power. The first is *United States v.*

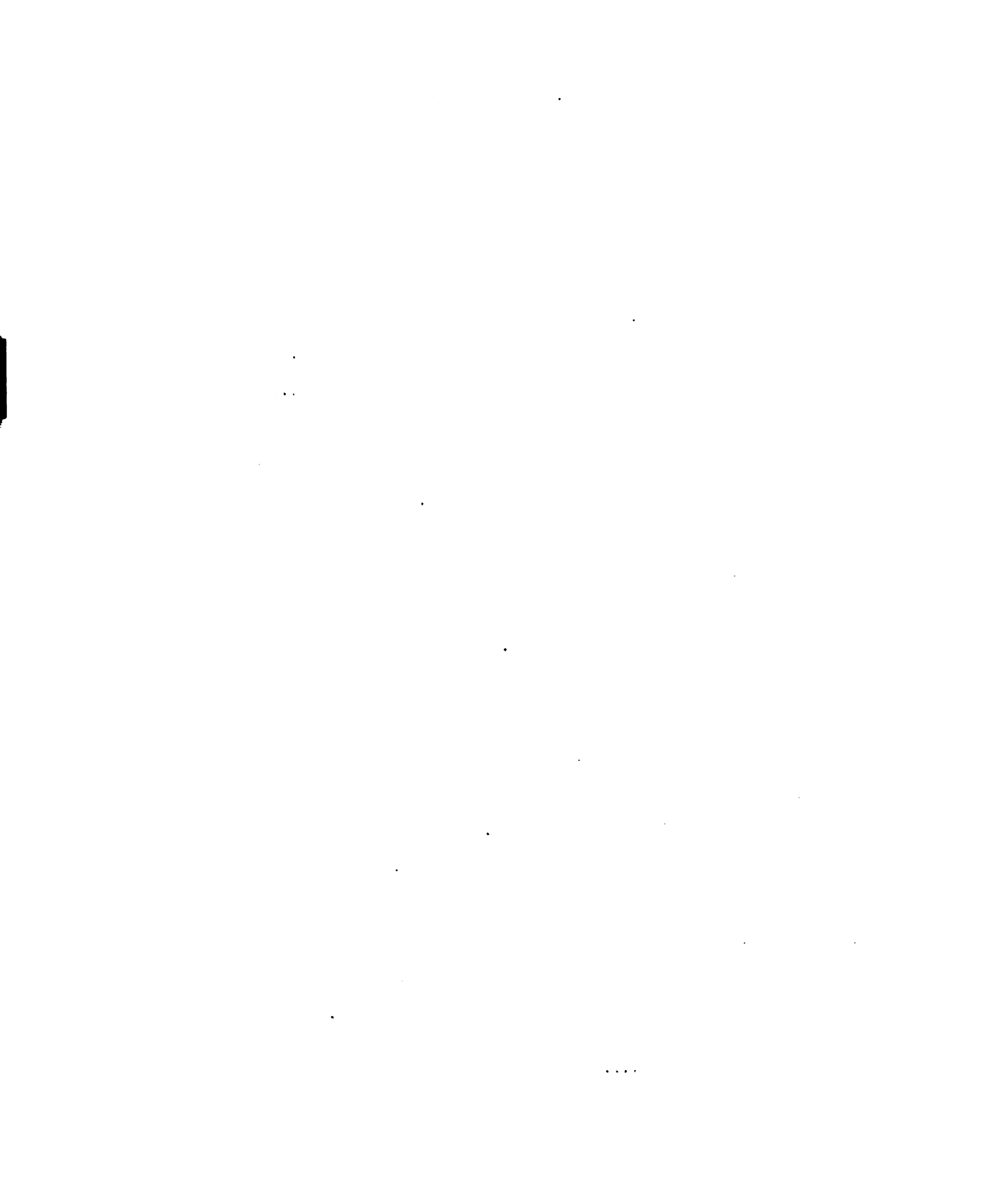
South-Eastern Underwriters Association.²⁷ The South-Eastern majority held that insurance was sufficiently interstate in character to allow federal regulation under the Sherman Act. The decision, which also overturned a long series of contrary Supreme Court decisions, distinguished previous litigation from the present case on the basis that prior judicial attention had focused exclusively "on the validity of state statutes," rather than federal regulation. The Court's majority obviously did not feel any constraint from prior decisions examining state regulation. Precedent itself was used to drive home this point as Black said, "... past decisions of this Court emphasize that legal formulae devised to uphold state power cannot uncritically be accepted as trustworthy guides to determine Congressional power under the Commerce Clause."²⁸

The central legal issue for determination was whether insurance was interstate commerce. The rationalization of expansion of federal control of insurance was cast in terms of what the Court could appropriately use as bases for determination of this issue. Black addressed this point by saying,

We may grant that a contract of insurance, considered as a thing apart from negotiation and execution, does not itself constitute interstate commerce. But it does not follow from this that the Court is powerless to examine the entire transaction, of which that contract is but a part, in order to determine whether there may (emphasis added) be a chain of events which becomes interstate commerce.²⁹

Justices Stone and Jackson contested these two positions. Regarding the matter of Court reversal of precedent as well as expansion of regulation itself, Stone said,

To give blind adherence to a rule or policy that no decision of this Court is to be overruled would itself be to overrule many decisions of the Court which do not accept that view. But the rule of stare decisis embodies a wise policy because it is often more important that a rule of law be settled than it be settled right.... Before overruling a precedent in any case it is the duty of the Court to make certain



that more harm will not be done in rejecting than in retaining a rule even of dubious validity....³⁰

Jackson considered the power of the Court to involve itself in a policy expansion not first asserted by Congress itself.

So long as Congress acquiesces, this Court should adhere to this carefully considered and frequently reiterated rule which sustains the traditional regulation and taxation of insurance companies by the states.... The orderly way to nationalize insurance supervision, if it be desirable, is not be court decision but through legislation.³¹

The influence of considerations of precedent in the decisional behavior of Jackson are also clearly revealed as he suggested, "Were we considering the question for the first time and writing upon a clean slate, I would have no misgivings about holding that insurance business is commerce."³²

The South-Eastern Underwriters case was drawn from the Antitrust scale. Antitrust is conventionally placed in some kind of economic regulation category in most classificatory schemes, but the judicial power consideration was evident as well. Schubert's discussion of economic policy since 1937 further reflects this assertion. Schubert begins with Arthur S. Miller's view that the post-1937 Court has used constitutional interpretation "only in the supportive sense of expanding the recognized scope and legitimacy of congressional authority....,"³³ and proceeds to assert that the Court "continues to, however, participate in the development (emphasis added) of many sectors of national economic policy: Antitrust is a conspicuous example...."³⁴ So, too, in the areas of patents and bankruptcy. Martin Shapiro's comments on the former are useful.

... in the patent field the Supreme Court's announcement in 1966 that the standard of invention is a constitutional rather than purely a statutory one has some tactical significance in strengthening the Court's hand, But by that time the judiciary had been intervening in Patent Office decisions for over a hundred years without having decided whether their review was constitutional or statutory.³⁵

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Several other sets contain a plethora of cases similarly reflecting this point. The National Labor Relations Act, Fair Labor Standards Act: Coverage, Railway Labor Act, and Due Process sets are the best examples. The expansion of employer regulation under the Wagner Act is illustrated in *Wallace Corporation v. NLRB*,³⁶ which sustained a Board findings of unfair labor practices against a company whose own influence dominated an independent union which won a shop election. The central issue was the authority of the Board to supervise union membership or other union practices. The Court majority found this power granted to the Board. The definition of authority was usually supportive or additive, but not entirely.

The Due process set case of *Cudahy Packing Company v. Holland*³⁷ indicates that the Court did make restrictive interpretations of authority of particular agencies. The Cudahy decision held that the Administrator of the Wage and Hour Division did not have the statutory power to delegate the power to issue subpoenas to subordinates. These latter two cases provide a useful transitional perspective for the consideration of judicial remedies available to the Court as well as the linkage with administrative agencies and agency decisional bases.

An example of the remedy discretion aspect of the judicial power interpretation can be seen in *United States v. Wayne Pump Company*.³⁸ The case arose out of price-fixing prosecutions under the Sherman Act. A lower court ordered demurrer of the indictment, and the question before the Supreme Court was the reviewability of the lower court demurrer order. Determination by the Court as to remedial alternatives seemed a compelling force even in the context of legislative deference. *Hecht Company v. Bowles*,³⁹ taken from the Emergency Price Control set, satisfactorily conveys this point. The Court was asked in *Hecht v. Bowles* to support

the assertion that Congress had made it mandatory for federal courts to enjoin EPCA violators. The Court, however, was not inclined to accede to this rigid construction. Rather, the Court preferred to interpret the statute in order to provide a "full opportunity for equity courts to treat enforcement proceedings under this emergency legislation in accordance with their traditional practices."⁴⁰ In short, the Court obviously wished to retain for the judiciary as much of its own discretionary authority as possible.

The return of a case for retrial to a state court on the grounds that certain economic groups were excluded from jury selection processes was seen by the Court's minority as too great an intervention by the Supreme Court, a point previously raised in the discussion of civil liberties issues, also reflects the judicial power question.⁴¹ The federal-state matter is also seen in exclusively judicial power terms in the case of *Toucey v. New York Life Insurance Company*.⁴² The Court was asked in the *Toucey* case to enjoin the relitigation in a state court of a case previously decided in a federal court. The Court did enjoin the relitigation as well as overrule a twenty-year old precedent.⁴³

The judicial power question is also visible in a number of cases appealing decisions of administrative agencies. The point at issue in all of these cases was not only policy content of decisions of commissions and agencies or the jurisdiction as such of these agencies. The focus was upon the decisional standards and non-technical bases of the decisions of these agencies. The Court appeared very willing to take an assertive position relative to the standards used by administrative agencies. Implicit in these cases was the notion that deference to technical expertise of administrative agencies must only be accorded when, in fact, this

technical expertise is involved.

The Gregg Cartage v. United States case⁴⁴ from the Interstate Commerce Commission: Public Necessity and Convenience Applications set seroes in on this matter well. A majority of the Court reversed an ICC order with Douglas saying,

Great deference is owed a commission's interpretation of the law which it enforces, especially where the meaning of the statutory language, generally or in specific application, gains body and flavor from the content of the highly specialized field in which the expert body works.... But that it quite different from acceding to the suggestion that the non-technical word 'control' may be interpreted in a way which goes against all human experience and which does violence to its ordinary and accepted meaning.... We should not permit ... statutory grants to be whittled away on the basis of technical and legalistic grounds which find no expression in the statute however much the administrative chore may be alleviated.⁴⁵

The intensity of the division within the Court on this issue can be seen in a dissent in another ICC case reversing a Commission order. Frankfurter said of the reversal,

It overturns the exercise of a discretion which Congress has delegated to the Interstate Commerce Commission upon grounds which seem to us so unsubstantial as really to be a reversal on suspicion.... What this amounts to is that the Court refuses to tell the Commission what it thinks about the evidence until the Commission tells what it thinks about the law. We cannot regard this as the most helpful use of the power of judicial review.⁴⁶

Review of decisional bases was not confined to the ICC, and the Court's willingness to consider agency decisions on appeal supports the judicial power interpretation. Two Wage and Hour rulings,⁴⁷ for example, clearly convey the Court's asserted role in setting standards, drawing operational guidelines, and oversight of administrative guidelines. The Court's involvement was rationalized in this way, "On the terms in which Congress drew the legislation we cannot escape the duty of drawing lines. And where lines have to be drawn they are bound to appear arbitrary when

judged solely by bordering cases."⁴⁸

Standards used by the Federal Power Commission were not exempt from review either. The opinions in *Federal Power Commission v. Natural Gas Pipeline Company*,⁴⁹ and *FPC v. Hope Natural Gas Company*,⁵⁰ the latter from the *Fiscal Liability* set, produced pointed Court response. The *War Power* set case allowing wartime transportation increases in rates also generated vigorous Court reaction.⁵¹

The final facet of the judicial power question can be seen across cases taken from the *Federal-States: Policy Conflicts*, *Federal-State: Tax Conflicts*, and *State Taxation: Commerce* sets. The cases which emerge from the federal-state context with respect to the judicial power issue relate to the Court's role as arbiter of the federal-state relationship. The inclinations of a majority of the Stone Court were pro-federal, but each of these cases contained significant references to the propriety of Court involvement in this issue area.

*Hill v. Florida*⁵² characterizes the Court's obligation to decide conflicting federal and state regulations. A Florida statute required all union business agents to register with the state. The Court held that this requirement was at odds with the intent of the Wagner Act and inhibited workers in their selection of bargaining representatives. The dissent urged that the Wagner Act did not specifically deal with the matter of union business agents or their qualifications, thus, the Court not legitimately intervene to void the Florida statute. The dissent highlighted the judicial power issue through the charge that the majority was seeking avenues by which to assert itself into this substantive policy area.

Similarly, Frankfurter took the majority to task in *Pacific Coast Dairy, Incorporated v. Department of Agriculture of California*⁵³ in a

case where the Court's majority exempted a federal enclave located in California from a state milk regulation without specific congressional authorization. Frankfurter asserted that Congress may have the power to authorize the Court to grant such exemptions, but in the absence of specific instruction, the Court cannot allow such an exemption. Rather, the Court must confine itself to parameters of rules and remedies previously established. The Court's involvement in the intergovernmental tax immunity⁵⁴ area further evidences the judicial power consideration intertwined within the federal-state context. Such decisions as *McLeod v. Dilworth*,⁵⁵ *Nippert v. City of Richmond*,⁵⁶ and *Hoven and Allison Company v. Evert*⁵⁷ - all found in the *State Taxation: Commerce set* - demonstrate the Court's willingness to retain some degree of control over state taxation policies.

The individual behaviors of the Stone Court's members can be sufficiently characterized in the traditional activism-restraint rubric. The poles of such a continuum, however, do not accurately reflect end-points of absolutes in any comparative sense. The end-points of a continuum used to describe the Stone Court would not be applicable in the consideration of the Hughes Court, for example. The considerations of judicial power found in Stone Court cases did not approach the kinds of absolute functional activism demonstrated prior to 1937. Similarly, no member of the Stone Court seemed to seriously entertain the possibility of absolute self-restraint or total policy deference. Thus, the individual responses of the Stone Court justices must be viewed from a Stone Court perspective.

Differentiation of individual responses of Stone Court justices was accomplished by means of examining average dimension scale scores. Those

justices with mean scale scores between 1.000 and .800 were categorized as strongly activist. Moderate activists had mean scale scores in the .799-.600 range. The .599-.400 range contained those justices whose judicial power response was essentially neutral. Moderately and strongly restraint-oriented responses fell into the .399-.200 and .199-.000 ranges, respectively. The classification of the eleven Stone Court justices are provided in Figure 2 below. The mean scale scores were derived from

FIGURE 2 Individual Judicial Power Dimension Descriptions

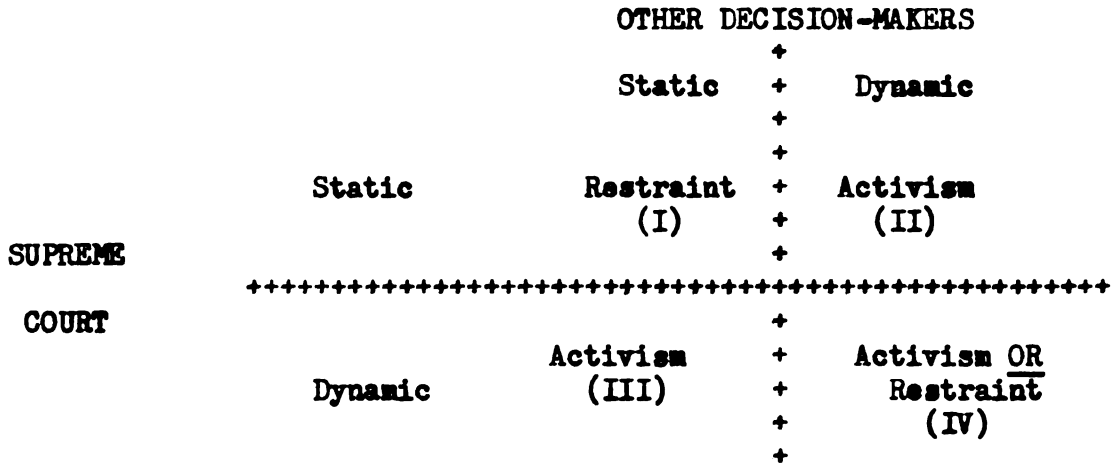
<u>Justice</u>	<u>Mean Score</u>	<u>Description</u>
Black	.895	Strong Activist
Douglas	.869	Strong Activist
Murphy	.782	Moderate Activist
Rutledge	.769	Moderate Activist
Byrnes	.719	Moderate Activist
Burton	.580	Neutralist
Stone	.504	Neutralist
Reed	.449	Neutralist
Jackson	.350	Moderate Restraint
Frankfurter	.289	Moderate Restraint
Roberts	.139	Strong Restraint

twenty-three scales for each justice except Burton and Byrnes whose lack of participations in dimension cases precluded calculation of scale scores in all but six and three sets, respectively.

The fullest appreciation of the judicial power interpretation and the individual descriptions above can be achieved through reference to Schubert's functional theory of judicial activism and restraint. Schubert defines judicial activism and restraint in terms of policy harmony of the Court with other institutions of policy-making authority. Policy harmony, regardless of the substantive of that policy, reflects judicial self-restraint. Activism exists whenever policy positions are not coincident.⁵⁸ Figure 3 demonstrates diagrammatically the kinds of institutional and

policy relationships which are possible. The judicial power character

FIGURE 3 Functional Scheme of Activism and Restraint



of the Stone Court can best be elaborated in terms of cell IV. All of the policy-making authorities at the national level were "in motion" during the Stone Court period; policy changes are occurring at all points. The judicial liberals on the Stone Court were generally inclined to give full support to policy decisions of Congress and Roosevelt. In other words, they generally assumed a restraint position. The cases contained in the Judicial Power dimension, however, represented areas in which policy movement by the other decision makers was the least developed. Thus, the deferential judicial liberals who score most highly in terms of the governmental regulation value are also found with high activism scores. It is for this reason that the cell IV relationship, the cell which considers policy and institutional relationships in terms of rate of change, most aptly reflects the Stone Court and the thrust of the judicial power interpretation.

Four of the Judicial Power dimension sets contained individual behaviors described as dimensionally "deviant." These deviant scale

ranks were scrutinized in terms of the judicial power interpretation. Two of the rank deviations were in large part, produced by conservative break-point judgments by the author. Murphy and Black's ranks in the Trial: Prejudicial Errors and Railway Labor Act sets, respectively, were effected by non-participation in a case important to the determination of scale ranks. The break-points for each justice was placed before each of these cases rather than following them. Were Murphy to have participated in *Marconi Wireless Telegraph v. United States*⁵⁹ and voted positively, his rank would have been a tie for fifth rather than seventh. Similarly, a positive response from Black in *Switchmen's Union v. National Mediation Board*⁶⁰ would have changed his set rank of sixth to a tie for fourth.⁶¹

The deviation in rank of Justice Rutledge in the Double Jeopardy set as well as Stone's Due Process set rank were the result of "atypical" dimensional responses. Rutledge's unwillingness to view the joining of commission and conspiracy to commit a criminal offense as double jeopardy in *Pinkerton v. United States*⁶² means the difference between his set rank of eighth and a possible tie for fourth with three other justices, a more "typical" dimensional rank.

Stone's behavior in the cases of the Due Process set stemmed from a highly rigid definition of what constitutes denial of due process. Stone, very simply, was not receptive to claims of capricious treatment. Though the cases in this set more directly related to judicial power considerations than many of the others, Stone's manifest behavior was substantially different in the Due Process set than the remainder in terms of supporting requests for judicial intervention and relief.

B.2. The Governmental Regulation Dimension

The Governmental Regulation dimension is far less complex in terms of case diversity than the Judicial Power dimension. At the same time, the Governmental Regulation dimension is somewhat more complex in terms of breadth than rough counterpart dimensions found in studies of the Vinson and Warren Courts.⁶³

Spaeth's analysis of the Warren Court suggests the primacy of a value he labels "New Dealism" in the behavioral motivations of the Warren Court justices. The New Dealism value pertains to "economic issues, to governmental regulation of business and labor."⁶⁴ The salience of the New Dealism value to justices of the Stone Court is just as significant, but the breadth of subjects regulated reaches beyond business and labor. To be sure, the regulation of business and labor is central, but the regulation of other subjects is involved as well. The interpretation of this dimension is also broad enough to encompass state regulation, for example. With respect to the latter, the Stone Court period saw an end to the use of the due process clause as a means of voiding state business regulation and taxation. Not a single state regulative statute was invalidated on due process grounds.⁶⁵

The Stone Court period marked the ascendancy of what Kelly and Harbison call "national liberalism."⁶⁶ The focal point of the nationalization of regulation came through the expansion of congressional power under the Commerce Clause. The specific subjects reached under the commerce power were many, but one of the most visible was organized labor. Nine of the Governmental Regulation dimension sets relate in some degree to organized labor.⁶⁷

The Court's involvement with labor regulation (more precisely, federal legislation dealing with labor) stemmed basically from two particular enactments, the National Labor Relations (Wagner) Act, and the Fair Labor Standards Act. Consequent to these acts were activities of the administrative agencies created by Congress to effectuate the legislative policy - the National Labor Relations Board and the Administrator of the Wage and Hour Division. The cases in the NLRA and FLSA sets are all illustrative of the Court's response to the policy directions of Congress, and these cases readily reflect the governmental regulation interpretation.

The cases in the Unions: Closed Shop, Unions: Colicitation, and Unions: Bargaining Agents sets encompass a more specific policy focus than the NLRA or FLSA sets although some overlap does exist. One of the most extreme tests of the NLRA came in a Closed Shop case, for example, in *Wallace Corporation v. NLRB*.⁶⁸ The Court in *Wallace* upheld a Board ruling that any employer, regardless of whether duplicity exists or not, is responsible for the conduct of a union which has been given a closed shop contract. A number of other Closed Shop set cases with a NLRA basis could be listed⁶⁹ though their detailed mention is not particularly additive.

A markedly pro-labor position can also be seen in several of the Closed Shop set cases. The Court's refusal to apply the Sherman Act against a labor union in a closed shop situation is reflective.⁷⁰ State inhibition of union activities, solicitation in particular, were also prohibited by the Court in several of the Solicitation set cases⁷¹ which emphasizes the federal-state component of this dimension.

A special area of regulatory involvement relative to organized labor

involved employer liability for work-related injuries. Two sets, Federal Employers' Liability Act and Personal Injury Liability, contained most of the litigation of this particular type. Few cases in these sets are especially noteworthy, but the governmental regulation linkage is nonetheless quite obvious.

The linkages of several other sets are relatively self-evident and will not be discussed in any detail. Reference to specific cases or the AO-AS descriptions in the appendices should suffice in making the governmental regulation connection. Among these sets are Utility Regulation, Federal Taxation: Succession, Emergency Price Control Act, Commission Regulation: Rates, Federal-State: National Supremacy, Eminent Domain, Patents and Copyrights, Administrative Deference, and Delegation of Legislative Power.

The cases in these sets all consider, at least to some degree, the scope and legitimacy of federal regulation generally. These same questions are also contained in the remaining dozen dimension sets, but the linkage is not quite so self-evident. The remaining portion of substantive discussion of this dimension will rationalize the governmental regulation interpretation across these seemingly unrelated sets. It was the presence of these sets which led to an expansion of the interpretation from economic regulation to governmental regulation more generally although such an expanded scope had been suggested by the other sets as well.

Several of the sets seem, on their face, to be more directly linked to the Judicial Power dimension. An inspection of the Comity set provides an excellent illustration of the regulatory linkage. Comity involves the exercise of federal court jurisdiction prior to the completion

of litigation in state courts. The Comity set cases, however, contain comity considerations within the regulatory context. For example, in *Davis v. Department of Labor of Washington*,⁷² the Court refused to enjoin a state proceeding under state legislation despite possible overlap with the Federal Longshoreman and Harbor Workers' Act. The endorsement of the state regulation in this, although not neatly consistent with an expanding federal regulatory position, does reflect a support of the pro-regulation value by the Court majority.

Even the cases in the Supreme Court Jurisdiction set reflect the general regulation value. For instance, in a case raising the issue of the court vis-a-vis the Federal Communications Commission, the Court acknowledged congressional power to authorize the FCC to make various determinations regarding their own decision making procedures while sustaining the Commission's decision to grant broadcasting privileges to competing applicants without a hearing.⁷³ Other cases in this set similarly focus on the technical question of the scope of judicial reviewability within the regulatory context, e.g., the reopening of patent infringement issues in a case previously litigated,⁷⁴ the clarification of procedural pre-requisites for writ of prohibition motions,⁷⁵ and the judicial enforceability of executive agreements as internal law.⁷⁶ The less than independent relationship of the Judicial Power and Governmental Regulation dimensions is very clearly reflected in the cases of the Jurisdiction set.

The Statutory Construction sets have a more direct linkage to the general regulation interpretation though the judicial power component of regulatory expansion judicial interpretation is seen. One of the Remedy set cases, *Gemsco, Incorporated v. Walling*,⁷⁷ found the Court ruling that

the Wage and Hour Administrator, "when he found that a minimum wage order covering the embroideries industry could not be made effective because 40 per cent of the work in that industry was done at home, had authority under the FLSA to prohibit industrial homework in that industry."⁷⁸ The response in the dissent of Justice Roberts emphasizes the Court's division on the question of regulatory powers and administrative authority pursuant to federal legislation. Roberts said, "...the philosophy of the Court's opinion can be nothing less than that the Administrator may, if he finds necessary, rewrite a statute."⁷⁹ The extension of FLSA provisions through construction to cover employees of a daily newspaper sending less than one per cent of its papers out of state⁸⁰ is similarly reflective of the regulatory content of cases contained in this set.

The other statutory construction set contains cases in which the Court considered the criminal liability of certain actions relative to various legislatively proscribed areas. The decisions of the Stone Court here again focused on the scope of legislative authority to regulate. *Allen Bradley Company v. Local Union No. 3*,⁸¹ for example, considered the anti-competition effects of a closed shop agreement relative to Sherman Act prohibitions. Another union practice, that of demanding that out-of-state trucks replace the drivers with local union drivers upon entry into New York or pay the union for comparable time, was found by the Stone Court to be outside the scope of a 1934 anti-racketeering statute in terms of the criminal liability of the union.⁸² In short, the cases of the two statutory construction sets consider the limits of legislative proscriptions and the definition of criminal liability for alleged violations of those proscriptions.

The Indian Property set contains a limited number of cases as well

as a special attitude object. Three cases, disposed of through a single opinion, dominate the set because of the necessity to break tied ranks through expansions. The case, *Oklahoma Tax Commission v. United States*,⁸³ allowed the State of Oklahoma to subject inherited properties of the litigants to state estate taxation notwithstanding their federal ward status. The legal question facing the Court was whether Congress had exempted Indians from such taxation. The Court's decision supported an extension of regulation through taxation - albeit regulation exercised at the state level - rather than adopting the arguments proposing limitations on the regulatory powers of the government. The Court's reactions to the issues contained in the Indian Property set differ substantially from those of the Indian Treaties set cases. The opinion emphasis in many of the cases in the latter set made specific reference to the exploitation of Indians, and the need to offer retribution - symbolic and real. The cases of the former set merely considered the extent to which existing federal legislation allowed the basis for entertaining exemptions for Indians from state regulation.

The Appeals: State to Federal set provides a useful transition into the remaining Governmental Regulation sets. Its cases raise the emerging civil liberties component which is found throughout the remaining sets. The Court in *Thomas v. Collins*⁸⁴ invalidated a Texas statute under which the president of the UAW had been convicted for failure to secure an organizers' card from the state prior to making an address at a union meeting. The statute was voided on First Amendment grounds by a five-man majority though the state court's application of the state statute was a significant consideration. The presumption of regulation validity was shown to have limits, but the regulatory value remains significantly intertwined with the civil liberties value.

Apropos to the standards which must be applied to an appraisal of legislative regulation, state or federal, is found in Rutledge's majority opinion,

Any attempt to restrict those liberties (First Amendment) must be justified by a clear public interest, threatened not doubtfully or remotely, but by a clear and present danger. The rational connection between the remedy provided and the veil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundations. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.⁸⁵

There are clear language similarities between this opinion and others from the Judicial Power set cases, and, in fact, the dissent focused on the Court's role in reviewing legislation. The dissent suggested that the appropriate criterion to be applied was reasonableness of legislative intent and legislative judgment generally.

The remaining six sets, Evidence: Sufficiency, Jury Trials, Military-Civilian, Naturalization-Denaturalization, Speech and Press, and Collaboration all raise issues in which there seems to be a convergence of the governmental regulation, civil liberties, and judicial power values. Several of the jury trial cases, as an illustration, involve jury determinations of claims against corporations,⁸⁶ usually in an injury liability context. Others, however, dealt more directly with the trial by jury guarantees per se,⁸⁷ and the representativeness of juries in terms of selection practices.⁸⁸ For the most part, though, the cases involve the extent to which regulatory proscriptions are maintained within the context of jury determinations.

The Military-Civilian and Naturalization-Denaturalization set cases have a rather narrowly defined war emergency orientation. Among the cases

of the former set are *Korematsu v. United States*⁸⁹ in which the Court sanctioned the relocation of Japanese-Americans, *In re Yamashita*⁹⁰ in which the Court deferred to military tribunal decision and procedures, and *Duncan v. Kahanamoku*,⁹¹ a case which reviewed the legitimacy of military court trials of civilians under declared martial law. The latter set involved federal regulation of naturalization, and the standards that are appropriate in determining validity of naturalized citizenship, especially the conditions under which citizenship achieved through naturalization may be removed.

The litigants in the Naturalization-Denaturalization set cases were all political extremists of either the right⁹² or the left⁹³ which posed the question of possible political prosecution in the context of the exercise of federal authority over denaturalization. The primary contention of the Stone Court civil libertarians was that the federal government could not exercise any denaturalization power without making all naturalized citizens "second class" in character. This represents the very heart of the power to regulate issue intermeshed with the issue of individual liberties vis-a-vis governmental regulatory powers.

The final set to be highlighted, *Speech and Press*, focuses on the kinds of regulations which can be applied essentially to printed matter. In what might otherwise be considered to be strictly a question of civil liberties nature, a linking component was identified. Most of the cases raised the question of whether regulation not specifically intended to curb the content of publications could be constitutionally sustained. For example, the question was raised as to whether provisions of such legislation as the Fair Labor Standards Act and the Fair Labor Standards Act could be applied to newspaper publishers. Or whether the regulation

of labor generally in these industries conflicted with First Amendment prohibitions. The Court's response was generally supportive of such congressional regulatory policies, but with clear indications that such regulation was limited, e.g., labor relations.

The dominant value of this dimension is regulation. This interpretation corresponds closely with numerous previous characterizations of the Stone Court period. Most of regulation reviewed by the Court during the 1941-1945 Terms was federal government regulation, though state regulation is encompassed in addition. Generally, the objects of regulation relate to the economy, e.g., business and labor, but additional objects are also regulated. The description of the individual responses to the regulation value are shown in Figure 4 below. The descriptive categories developed for this dimension establish strongly pro-regulation and strongly anti-regulation as the polar positions. The general stance of the Stone

FIGURE 4 Individual Governmental Regulation Dimension Descriptions

<u>Justice</u>	<u>Mean Score</u>	<u>Description</u>
Murphy	.928	Strongly Pro-Regulation
Black	.887	Strongly Pro-Regulation
Douglas	.868	Strongly Pro-Regulation
Rutledge	.742	Moderately Pro-Regulation
Byrnes	.667	Moderately Pro-Regulation
Jackson	.609	Moderately Pro-Regulation
Reed	.519	Neutralist
Burton	.326	Moderately Anti-Regulation
Frankfurter	.300	Moderately Anti-Regulation
Stone	.233	Moderately Anti-Regulation
Roberts	.061	Strongly Anti-Regulation

Court as a whole can be seen in the skewed distribution of mean scale scores in the pro-regulation direction. The descriptive category cut-off points are based upon the same ranges as were used in the classification of individual behaviors with the Judicial Power Dimension.

The deviant behavior in certain Governmental Regulation sets are not random. Only Jackson's behavior in the Unions: Closed Shop set is actually reflective of an anti-regulation position, a deviation from the dimensional behavior generally. As can be seen, Jackson was moderately supportive of governmental regulation. He could not, however, support certain applications of regulatory controls in the Unions: Closed Shop set.⁹⁴

Murphy appears as dimensionally deviant in three sets. His mean scale score is higher than any other justice along the Governmental Regulation dimension, but Murphy assumed an aggressive anti-regulation position in several cases where civil liberties considerations were perceived as more salient. This behavior was most obvious in the Collaboration and Naturalization-Denaturalization sets. Under these unusual circumstances, Murphy found regulation by government indefensible. The behavior of Justice Douglas in the Comity set and Rutledge in the Supreme Court Jurisdiction set are products unusual federal-state and judicial power considerations, respectively.⁹⁵

B.3. The Administrative Oversight Dimension

It could be reasonably asserted that the Administrative Oversight dimension is not a separate dimension at all. Rather, it might better be characterized as a special sub-dimension of both the previously described dimensions. The sets locating on the Oversight dimension load highly on a separate factor from Judicial Power and Governmental Regulation. Many of the Oversight sets, however, loaded moderately well - at times approaching equivalent loadings - on one of the other dimensions. It, thus, seemed highly plausible to interpret the Oversight dimension as a product of an interaction of the basic values of the Judicial Power and Governmental Regulation dimensions. The eleven-set Administrative Oversight

dimension has been developed within this framework.

The oversight interpretation was initially suggested through an effort to understand why several sets did not locate on either of the other two dimensions, e.g., Bankruptcy on the Governmental Regulation dimension, and the Judicial Review of Regulatory Commissions set on the Judicial Power dimension. The cases of these sets reflected quite unmistakably the linkage of the governmental regulation and judicial power values. At issue in these cases was the legitimacy of governmental regulation, the scope and limits of administrative machinery through which regulation became operative, and a consideration of the Court's role and discretion with respect to legislative and administrative decisions and decision-making bases. And yet, these cases did not contain the kinds of language and specific focus on these issues found in the cases of the two primary dimensions.

A consideration of the Bankruptcy set may provide useful descriptive referents by which to examine the nature of the Oversight dimension and its relationship to judicial power and governmental regulation values. The Bankruptcy set contained cases in which the federal government, through the Federal Bankruptcy Act, regulates bankrupts and the condition of bankruptcy. The Court questioned the government's power to regulate bankruptcy in none of the cases though the Court did review criteria used by administrative machinery. The priorities of the Court seemed focused, however, on the achievement of equity rather than direct expansion of governmental regulatory authority or maintenance of judicial discretion. The cases also had a single case emphasis similar to workmen's compensation litigation rather than being cast in broad, general policy terms.

A specific illustration can be derived from *State Bank of Hardinsburg v. Brown*⁹⁶ where the Court considered the question of what constitutes assets under the Federal Bankruptcy Act. Construction of the act relative to the definition of relevant assets was pre-requisite to subsequent asset distribution and bank reorganization. In response to the question of who is to determine what assets are distributable, the Court was perfectly willing to acknowledge administrative rulings as legitimate in this area. Because the appropriate administrative agency had not made such a determination, the Court reviewed the matter and suggested guidelines. The emphasis throughout the disposition of the case was upon returning the case for final resolution, and the Court's involvement was intended to expedite such resolution.

Two other cases extend the Court's emphasis on expediency. In one, the Court talked about the need for the ICC to be flexible in the determination of asset valuation standards of a prior liquidation pursuant to reorganization.⁹⁷ In the other, the Court suggested that in the reorganization of a bankrupt enterprise, the paramount priority is minimizing delays. As a result, the Court de-emphasized precise guidelines since unfounded and highly technical contentions are generally counter-productive in terms of achievement of rapid disposition of these matters.⁹⁸ The guidelines offered by the Court in these cases were extremely broad and flexible. Throughout the opinions were words of encouragement to administrative agencies to proceed and resolve. The compelling value became one of operational expediency and smoothness. The Court's involvement in these cases was directed at this end and limited to this consideration.

Even in the federal-state context, the Court seemed pre-occupied with administrative resolution wherever it could be achieved. McKenzie

v. Irving Trust Company⁹⁹ raised the question of whether receipts received four months after institution of bankruptcy proceedings were transferable to the liquidated assets. The Court decided that one successful way of handling the question was embodied in state law. Notwithstanding the Federal Bankruptcy Act, the Court was apparently convinced that the state proscriptions were workable and equitable. The dominance of the equity-pragmatic orientation is quite clearly manifest in a number of these cases.

Emphasis on equity, the operational smoothness interpretation, is not offered at the expense or in lieu of suggesting that the cases of the Oversight dimension do not have substantial policy implications nor to indicate that considerations of legislative regulatory power or judicial power are insignificant. The differentiating element is the absence of visibility and intensity in the pursuit of sheer power objectives, legislative or judicial. Even the sets with civil liberties linkages are not able to generate enthusiastic response. The Coerced Confession set and its cases are illustrative.

The Coerced Confession set is small, four cases and one expansion, but it portrays a couple of relevant distinctions from other civil liberties-oriented sets, and the other dimensions more generally. Unlike several of the other criminal procedure related sets, the specific substantive question was central. In contrast, the Right to Counsel cases focused mainly on the incorporation issue without much attention directed at the character of counsel per se. The Coerced Confession set cases did emphasize the substantive basis, e.g., what constitutes coercion, standards for the determination of voluntariness, and self-incrimination linkages. Once the standards were addressed, then and only then did incorporation assume relevance.

The case of *Ashcraft v. Tennessee*¹⁰⁰ focused on this definitional matter. The majority in *Ashcraft* felt that continuous questioning of a criminal suspect and subsequently exacting a confession from him was "inherently coercive." The majority equated extensive and intensive questioning with overt violence and physical abuse. The minority applied a different criterion - whether the confessor was in control of himself at the time of confession. In *Malinski v. New York*,¹⁰¹ the Court reversed a conviction on coercion grounds rejecting the notion that juries were competent to determine whether coercion has been used or not.

Another aspect of the oversight interpretation is found in *United States v. American Union Transport*,¹⁰² also a Coerced Confession set case. This case involved a United States Maritime Commission investigation in which certain persons were compelled to disclose business-related information. The information secured was not directly related to criminal prosecution, but rather to subsequent legislative regulation. The standards by which information could be exacted was at issue and comparable in several respects to coerced confession. In terms of standard-setting, the smoothing of operational guidelines, and the efficiency of regulatory mechanisms, the oversight connection is established rather well.

The operational guidelines value can also be seen in several cases from the Judicial Review of Regulatory Commissions set, especially in *SEC v. Chenery Corporation*¹⁰³ and *Scripps-Howard v. FCC*.¹⁰⁴ In both of these cases, the question before the Court involved the extent to which the judiciary ought to review policy priorities of Congress as made manifest in legislation creating these commissions. The Court attempted to find some mediate position between aggressive review and complete deference. Frankfurter's majority opinion made it clear that while the Court could

not uphold the SEC's order in the Chenery case, the Commission's power per se was not at issue. The operational emphasis of the discussion, however, can best be seen in Black's dissent which addresses itself to the importance of pragmatism within the regulatory context. Black said,

A judicial requirement of circumstantially detailed findings as the price of court approval can beg the administrative power in a quagmire of minutiae. Hypercritical exactions as to findings can provide a handy but almost invisible glideway enabling the courts to pass 'from the narrow confines of law into the more spacious domain of policy.'¹⁰⁵

Black's willingness to defer to legislative intent is clear in this particular case, but note the pragmatic emphasis.

The effort to strike a working middle ground may also be seen in an excerpt from the Scripps-Howard case. Pritchett notes in relation to his discussion of this and other cases that the Roosevelt Court "has been responsible for a markedly different attitude toward administrative agencies, which are no longer treated as 'alien intruders' in the courts."¹⁰⁶ At the same time, the Court in Scripps said, "Courts no less than administrative bodies are agencies of government. Both are instruments for realizing public purposes."¹⁰⁷ Few single passages from any case within this dimension could better portray the complex bases of the Oversight dimension.

One fundamental task of the Roosevelt Court during the terms under consideration with respect to federal regulatory power developed in terms of considering limits of administrative authority under governmental (congressional) grants. Generally, the Roosevelt Court supported Congress's policy priorities and sanctioned administrative exercise of authority. Three of the Radio Regulation set cases develop the operation oversight connection. First, the Court found the authority vested in the FCC to

regulate radio station licensing also allowed them to develop standards which related to the much wider subject of regulation, national broadcast networks.¹⁰⁸ Because the Court was interested in facilitating regulation without defaulting from its oversight discretion, the Court required in *FCC v. National Broadcasting Company*¹⁰⁹ that in the making of frequency assignments, the FCC must allow all parties involved to participate in administrative hearings. Similarly, in *Columbia Broadcasting System v. United States*,¹¹⁰ the Court departed from the doctrine of administrative finality indicating that FCC regulations could be reviewed in advance of their application.

Oversight of the policy regulations of states provides additional evidence of the operational orientation of the Stone Court. The cases of the state regulation type draw the judicial power question into the interpretation quite obviously, but not sufficiently to allow abandonment of the operational guideline interpretation. Pritchett probes the state regulation area in some detail and characterizes individual responses to various kinds of state regulation,¹¹¹ but Pritchett's focus is superfluous in regard to the general dimensional interpretation. A cursory reading of any of the cases from the *Federal-State: Commerce* set provides an ample highlighting of the federal-state component.

The description of the interpretation of this dimension has been far more difficult than for either the Judicial Power or Governmental Regulation dimensions. This is true because the Oversight dimension is the least distinctive of the dimensions in nature. Mention was made earlier that the three dimensions were not independent. The degree to which interpretive fussiness exists between the dimensions is most evident with respect to Oversight dimension. The distinctions between the three dimensions are based upon differences of degree rather than kind. In the Oversight

dimension sets, considerations of judicial power are down-played substantially while the powers of the government are seemingly perceived as givens. The resultant focus is, thus, switched to considerations of functional efficiency pursuant to legislative mandate; making policies work.

The primary argument relative to the Oversight dimension, then, is that it is a special product of the other two dominant dimension values. The relative distinctiveness empirically of the dimension necessitated an attempt to rationalize its separate existence. The need to resolve whether this aggregation of sets is a separate dimension or a sub-dimension of the other dimensions is not of high priority in regard to the broader objective of explaining decisional behavior.

The consideration of individual behavior for the Oversight dimension was comparably difficult in terms of developing a descriptive continuum. Given the relatively imprecise character of the dimension, no single descriptive label fully suffices. Nevertheless, on the basis of the same mean scale score ranges as were previously used, a summary of individual responses has been developed and is provided in Figure 5. A justice's behavior which is labelled as strongly oversight oriented represents, over and above considerations of judicial power and governmental regulatory prerogatives, the support of a position of judicial operational oversight for the purpose of enhancing policy effect, regardless of the substance or the source of the regulation. Operational pragmatism is an apt alternative to the pro-oversight value orientation. Several parallels in mean scale scores between those achieved on the next page and those found for the other two dimensions reflects the close linkages of the dimensions. The deviations in mean scale score mirror the rank differences

FIGURE 5 Individual Administrative Oversight Dimension Descriptions

<u>Justice</u>	<u>Mean Score</u>	<u>Description</u>
Black	.962	Strongly Pro-Oversight
Douglas	.845	Strongly Pro-Oversight
Byrnes	.789	Moderately Pro-Oversight
Rutledge	.720	Moderately Pro-Oversight
Murphy	.718	Moderately Pro-Oversight
Frankfurter	.651	Moderately Pro-Oversight
Burton	.545	Neutralist
Reed	.542	Neutralist
Stone	.384	Moderately Anti-Oversight
Jackson	.343	Moderately Anti-Oversight
Roberts	.090	Strongly Anti-Oversight

between dimensions which account for the quasi-separate character of the Oversight dimension.

The deviant behavior of individual justices in particular sets is a result of the failure of that justice to subordinate other values to the pragmatism value. Douglas, for example, is strongly pragmatic generally as his mean scale score demonstrates. His responses in the Fiscal Claims set, however, reflects an unwillingness to review claim determinations at almost any cost. He argues in *Angelus Milling Company v. Commissioner of Internal Revenue*¹¹² that the Court ought to confine itself only to the point of law raised in these cases rather than attempting to resolve administrative tangles. This marks an atypical anti-pragmatic position for Douglas.

The deviant responses of Justices Roberts and Rutledge in the Federal-State: Commerce set are similar in substance though opposite in terms of deviation direction. Several of the set's cases¹¹³ find both Roberts and Rutledge holding against challenged state regulation on the ground that federal legislation in a specific policy area has (or should) preclude state regulation in the name of uniformity of regulation.

Murphy's behavior in the Radio Regulation set reflects his usually

rigorous defense of civil liberties arguments vis-a-vis governmental regulatory powers. Murphy reacted very strongly to the regulatory efforts of the FCC to regulate the broadcast media, generally on First Amendment grounds. In the presence of what Murphy perceived as essentially First Amendment considerations, Murphy was unable to defer to such values as pragmatism. Thus, Murphy's general willingness to enhance operational efficiency pursuant to certain policy priorities was not found to carry over into First Amendment-related issue areas.

B.4. The Un-Located Sets

Five sets did not align on any one of the three dimensions. These five sets were Federal Taxation: Exemptions, Indian Treaties, Criminal Liability, Search and Seizure, and Selective Service. These sets did not correlate highly with many of the other sets. A quick reference to the inter-correlation matrix in Table 6 will provide ample evidence of general non-association. Federal Taxation: Exemptions correlates above .500 with only one other set. The same single coefficient in excess of .500 exists for the Indian Treaties and Selective Service Sets. Search and Seizure and Criminal Liability associate with three sets at the .500 level.

Roughly half the ranked justices in each of these sets had ranks several levels higher or lower than "typical" rank positions in either the Judicial Power or Governmental Regulation dimensions. Roberts rank in the Criminal Liability set is roughly $5\frac{1}{2}$ ranks higher than his mean Judicial Power and Governmental Regulation dimension ranks. Douglas's Criminal Liability rank is $6\frac{1}{2}$ ranks lower, Frankfurter $3\frac{1}{2}$ ranks higher, Black $5\frac{1}{2}$ ranks lower, and Reed 4 ranks lower than mean rank positions

for each on the two primary dimensions. These substantial and numerous deviations, of course, are responsible for the lack of association of these sets with the other variable-sets.

The five unlocated sets will be briefly described in terms of their respective content and unique character. An attempt will be made to indicate the unusual alignments of the justices in these sets as well. Given the transitional character of Stone Court decision making generally, that only five of the sixty scale-sets could not be located on at least one dimension is not surprising.

Initial expectations would have placed the Federal Taxation: Exemptions set would align on the Governmental Regulation dimension. This expectation stems from the fact that exemption claims all came from businesses or individuals claiming business exemptions. A consistent pro-regulation position would have been upholding federal taxation against exemption claims. Reed, Roberts, and Frankfurter, however, were found aligned with Douglas and Black in most of these cases notwithstanding their neutralist to negative regulation behavior generally. A rather complete deference was given by these five justices to specific legislative language and the determinations of the Commissioner of Internal Revenue.

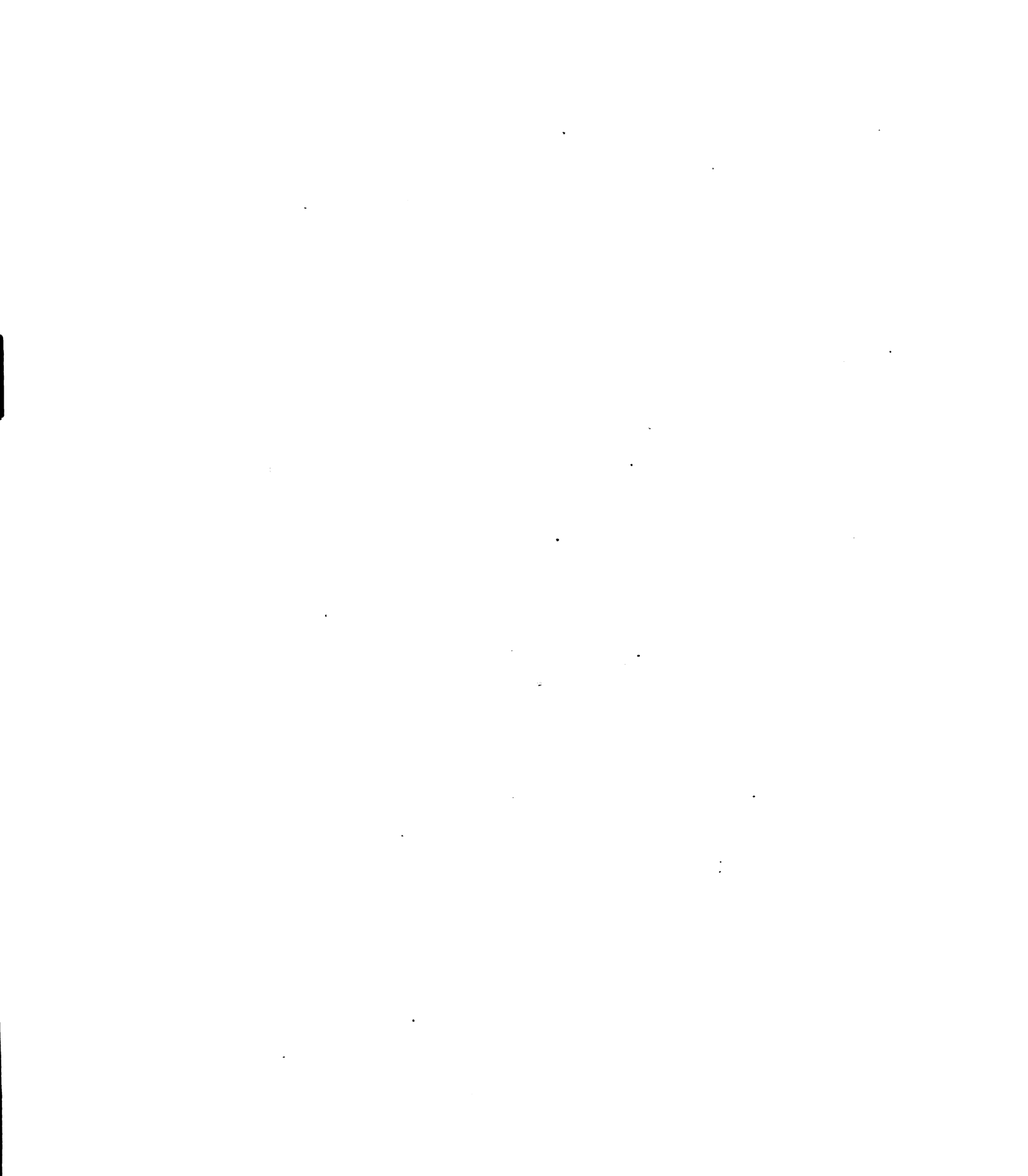
The strongest statement of polar positions on this issue is found in *Interstate Transit Lines v. Commissioner of Internal Revenue*.¹¹⁴ In this case, the majority suggested that exemptions from taxation are a matter of legislative grace, and that the burden of proof in exemptions cases rests upon the taxpayer. The minority, especially Rutledge and Murphy, asserted the Court ought to retain equity discretion in these cases. More explicitly, this minority suggested that the Court should assume a protective stance toward taxpayers making exemption claims with

construction doubts directed in favor of the taxpayer in *John Kelley Company v. Commissioner of Internal Revenue*.¹¹⁵ The scope of division can also be seen in *Wilson v. Cook*¹¹⁶ where Murphy said of the opinion of Chief Justice Stone, "I am unable to comprehend the Court's decision."¹¹⁸

In the Federal Taxation: Exemption set, then, the deviant justices whose ranks are abnormally high accepted the legitimacy of governmental regulation via taxation because they perceived the taxation statutes clear. The unusually lower ranks were created where certain members of the Court sought to exercise independent discretion over standards used in determining exemption claims. The general linkages with the two basic dimension's values are incomplete. The problem for Justices Frankfurter, Reed, and Roberts is the need to support one of two relatively unacceptable positions, pre-regulation or pro-activism.

The special status of the Indian Treaties set is a product of the special status of the AO and AS, Indians and treaties with Indians. The cases in this set bare some truly basic values. Murphy, for example, went so far as to say that the Court's basis for determining claims of Indians relative to treaty obligations ought be the rectification of past injustices imposed on Indians regardless of how this cuts across other considerations.¹¹⁸ Justices Reed, Black, and Rutledge, though not generally indisposed toward civil liberties arguments, failed to regard the Indian Claims as reflective of injustice or arbitrary governmental action.

Altering the directionality of the set fails to improve the non-correlating character of the set. Frankfurter and Roberts have higher ranks than usual because they support the claims of the Indians. If the basis for direction is reversed, Murphy and Douglas have highly deviant ranks.



The consideration of treaties - as opposed to construction of statutes - and the special status of Indians as parties to these cases result in the unlinkable character of the Indian Treaties set.

The unique character of the Criminal Liability set is, like the Exemption set, a result of the legislative deference-judicial power incompatibility. The cases in the set required the Court to define the criminal liability of persons or organizations for acts related to various legislative regulations. The kinds of cases contained in this set provoked great confusion among the justices as well as deep division. *Screws v. United States*¹¹⁹ provides an apt illustration.

At issue in *Screws* was the prosecution of a Georgia law enforcement officer for his participation in the "brutal and shocking" killing of an arrested Negro. The basis for prosecution was a piece of Reconstruction legislation originating in the Civil Rights Act of 1866. Whatever the motives of Congress for the original passage of the act, the legislation provided insufficient guidelines for application, especially in regard to determination of guilt. The specific facts of the case provided no member of the Court with clear direction. The majority upheld the statute, but granted the defendant a new trial.

The cases of this set all required judicial clarification of statutory prohibitions relative to criminal liability. This reflects on its face the fuzziness of some of the fact situations out of which litigation arose. In its simplest form, the difficulty confronting the Court in these cases was whether to clarify legislative prohibitions and coincidentally criminal liability, thus subjecting persons to possible prosecution on judicially clarified grounds. This option was not readily accepted by a substantial number of Stone Court justices.

The Search and Seizure set also produced very unusual divisions with the Court. The principal deviations were in the behavior of Black, Douglas, and Frankfurter, the former two assuming abnormal anti-civil liberties positions. Two pairs of cases are descriptively useful.

In 1942, the Court refused to sustain 4th Amendment objections¹²⁰ to a wire-tapping variant of securing information. A companion case sanctioned inducing a witness to give information on the basis of evidence obtained through a wire-tap.¹²¹ Again in 1946, the same divisions were produced in *Davis v. United States*¹²² and *Zap v. United States*.¹²³ *Davis* was arrested for selling federal agents gasoline without ration coupons, a violation of the EPCA. The seizure of ration coupons was upheld by the Court majority with Douglas pointing out that the coupons were "public documents" and always subject to recall - seizure. The dissent featured a vigorous 4th Amendment argument urging conviction reversal. The *Zap* case involved the seizure of a cancelled check during an audit of a government contractor. The majority upheld the seizure on identical grounds to *Davis*.

The combination of the governmental regulation issue, the extent to which certain practices were prohibited by congressional statutes, and the specific civil liberties issue of search and seizure produced the cleavage. The special conditions stemming from the war emergency were also crucial in terms of the development of the "public need" foundation used by the majority in each of these appeals.

The final unlocated set is Selective Service. The set contains only four separate opinions which in itself may account for the lack of association with other sets. The central conflict in the cases related to the government's role in operating the draft within a wartime emergency and generally religious challenges to the conscription of specific individuals.

Two cases¹²⁴ requested the Court to review draft board classifications on religious grounds. The central problem became one of establishing the extent to which such classifications are reviewable by the courts. In these cases, Frankfurter felt that even in silence Congress had placed exclusive determination of these issues in the hands of the Selective Service System. This represents a total reversal of his Search and Seizure position, at least in terms of deference to legislative directives. Other members of the Court were comparably "at-odds" with behavior exhibited in these unlocated sets.

The two other cases in the set, *Singer v. United States*¹²⁵ and *Keegan v. United States*,¹²⁶ address similar though not identical questions. The *Singer* case focuses on the construction issue with the dissent taking the position that the Court should give criminal statutes the narrowest possible construction. The *Keegan* case found a five-justice majority reversing conviction of a number of German-American Bund leaders for counseling draft evasion or resistance over the objections of the improbably aligned group of Douglas, Jackson, Reed, and Stone.

C. Socio-Political Background Analysis

The United States Supreme Court presents critical research problems to the socio-political background analyst of judicial behavior. Its limited membership, the historical instability of the socio-political background variables themselves as well as the substantive issue content of the cases reviewed, and the "mystique" surrounding the Supreme Court are some of the factors which have either discouraged inquiries altogether or inhibited the generalizability and validity of attempted research. As a result, most of the studies which deal with social background variables have tended to be 1) exclusively descriptive with no real attempt to deal

with manifest behavior of the justices,¹²⁷ focused upon judicial bodies other than the Supreme Court (primarily state supreme courts and lower federal courts),¹²⁸ examination of processes and criteria of methods of judicial selection,¹²⁹ or descriptions of judicial attitudes reflective of values for use in inter-system comparative studies.¹³⁰ The few studies which have attempted to relate social background variables to decisional behavior of the United States Supreme Court have failed to produce positive results.¹³¹

A major handicap to any researcher attempting to examine socio-political correlates, as mentioned in Chapter Two, is insufficiency and scarcity of refined background data. The researcher is limited to essentially the microscopic entries on the conventional biographical reference volumes. Aside from general absence of data, the resultant problems cannot be overcome when dealing with the Supreme Court as they often can when considering lower courts. The practice with the latter is merely to expand the number of subjects. This, however, is a long-standing problem¹³² though future efforts ought not be abandoned because no improvements have emerged in the intervening years.

The socio-political background analysis was undertaken here primarily because of the recent developments in the study of judicial behavior. As a result of more rigorous and refined analytic techniques developed in the past decade, the possible payoffs of reconsidering the relationship(s) between socio-political background characteristics and empirically defined decisional behavior was indicated. In a preliminary study, the author was able to find significant relationships between such variables as political party affiliation and geographic region and decisional propensities.¹³³

The socio-political background analysis was conducted upon the two primary dimensions - Judicial Power and Governmental Regulation. Because of the special character of the third dimension (described on the previous page), it was excluded from both the background and the cluster-bloc analyses.

The socio-political background variables used in this analysis were selected in terms of data availability for all eleven justices of the Stone Court. Nine variables were ultimately chosen for analysis. The nine variables are party affiliation, reputation as a dissenter (Zobell and Evans Index as reported in Schmidhauser), previous active political experience or public office(s) held, size of town or city of birth, geographic region in which the justice was raised, academic standing of the institution from which a justice received his legal training (using the Schmidhauser typology of apprenticeship, average standing, or high academic standing), religious affiliation (using the high, intermediate and low social status categories from Schmidhauser), ethnic background, and type of lawyers primarily associated with prior to Supreme Court appointment.¹³⁴

Each variable was subjected to both parametric and nonparametric tests of statistical significance by using scale scores and scale ranks, respectively. Both ranks and scale scores were dichotomized into "high" and "low" categories using the mean dimension scale ranks and scale scores as break-points.¹³⁵

Four-fold tables (2x3 tables for the trichotomized variables) were constructed for each variable, and a chi-square and contingency coefficients were computed for each. Individual mean ranks and scale scores were then used in the computation of the parametric t-test with comparisons being made between the two measurement levels. Each rank and

scale score from each justice on every dimension-component scale was considered as a separate observation.

The central difference in the voting behavior of the Stone Court members was found along the political party affiliation dichotomy. Table 17 indicates the scale rank and scale score cell frequencies for the party affiliation dichotomy. The Democrats showed a strikingly greater propensity to support extensive exercise of judicial power (a pro-judicial activism position), and broad regulatory powers of both

TABLE 17 Cell Frequencies for the Party Affiliation Dichotomy

RANKS

	Democrats	Republicans	Totals
Judicial Power			
High	91	13	104
Low	46	60	106
Totals	137	73	210
Governmental Regulation			
High	128	3	131
Low	40	81	121
Totals	168	84	252

SCALE SCORES

	Democrats	Republicans	Totals
Judicial Power			
High	92	17	109
Low	43	54	97
Totals	135	71	206
Governmental Regulation			
High	129	10	139
Low	35	74	109
Totals	164	84	248

state and federal levels of government. Both the parametric and non-parametric significance tests reflect these differences. Table 18 provides the chi-square, contingency coefficients, and t-values for the party affiliation variable. Even the exclusion of Frankfurter from consideration because of the lack of certainty of his party affiliation found the remaining manifest behavior significantly different when cut across the

partisan lines.

TABLE 18 Party Dichotomy Significance Test Results

Chi-Squares and Contingency Coefficients

RANKS	χ^2	P	df	C	Up Limit
Judicial Power	43.102	.001	1	.413	.707
Governmental Regulation	115.420	.001	1	.564	.707

SCALES SCORES

Judicial Power	34.739	.001	1	.380	.707
Governmental Regulation	97.780	.001	1	.533	.707

T-Test Values

RANKS	Mean	T	df	P	df
Judicial Power		13.31	206	.001	**
Democrats	4.23				
Republicans	7.30				
Governmental Regulation		29.34	248	.001	**
Democrats	3.89				
Republicans	8.17				

SCALE SCORES

Judicial Power		12.73	204	.001	**
Democrats	.686				
Republicans	.330				
Governmental Regulation		30.08	246	.001	**
Democrats	.754				
Republicans	.207				

Despite the conclusive results of the examination of the political party affiliation variable as related to the manifest decisional propensities, the actual behavioral impact of party affiliation remains unclear. While Ulmer and Schubert have demonstrated that Republicans and Democrats acted as separate blocs on the Michigan Supreme Court,¹³⁶ the tightness of the partisan blocs from the Supreme Court are somewhat less evident. Rather, the ideological positions seem more determinative of behavior with party associating highly though not completely. David W. Adamany develops this distinction quite fully and appropriately in terms of the

Stone Court case.¹³⁷

Statistically significant differences were also found when the political/public office experience, geographic region, academic standing of legal institution, and legal associations variables. These differences were found for both the Judicial Power as well as Governmental Regulation dimensions. The religious affiliation variable produced a significant difference for the Governmental Regulation dimension only. There was substantial category overlap, however, among these variables and the political party affiliation dichotomy. No significant differences were found for any of these variables when party affiliation was controlled.

The inferential limitations of this type of analysis upon the Supreme Court are revealed at many points. Aside from the data inadequacies previously discussed, another serious difficulty in this analysis results from the inability to treat interactions among or between these variables. Each of the variables was treated independently with the exception of the attempt to control for party affiliation. The extremely small cell size precluded otherwise examining these data. Clearly, then, there is no legitimate way in which any kind of casual inference can be drawn from these findings despite the statistically significant differences produced.

That several variables did reflect potentially useful explanatory relationships suggests that renewed efforts be directed toward socio-political background analyses. At the same time, nothing of value will be forthcoming until a systematic and refined body of background data is developed. The relationships which were found in the current effort stem from the improved techniques used in defining decisional behavior. The findings produced by such efforts will continue to only limited utility if the highly gross data currently available is not supplemented

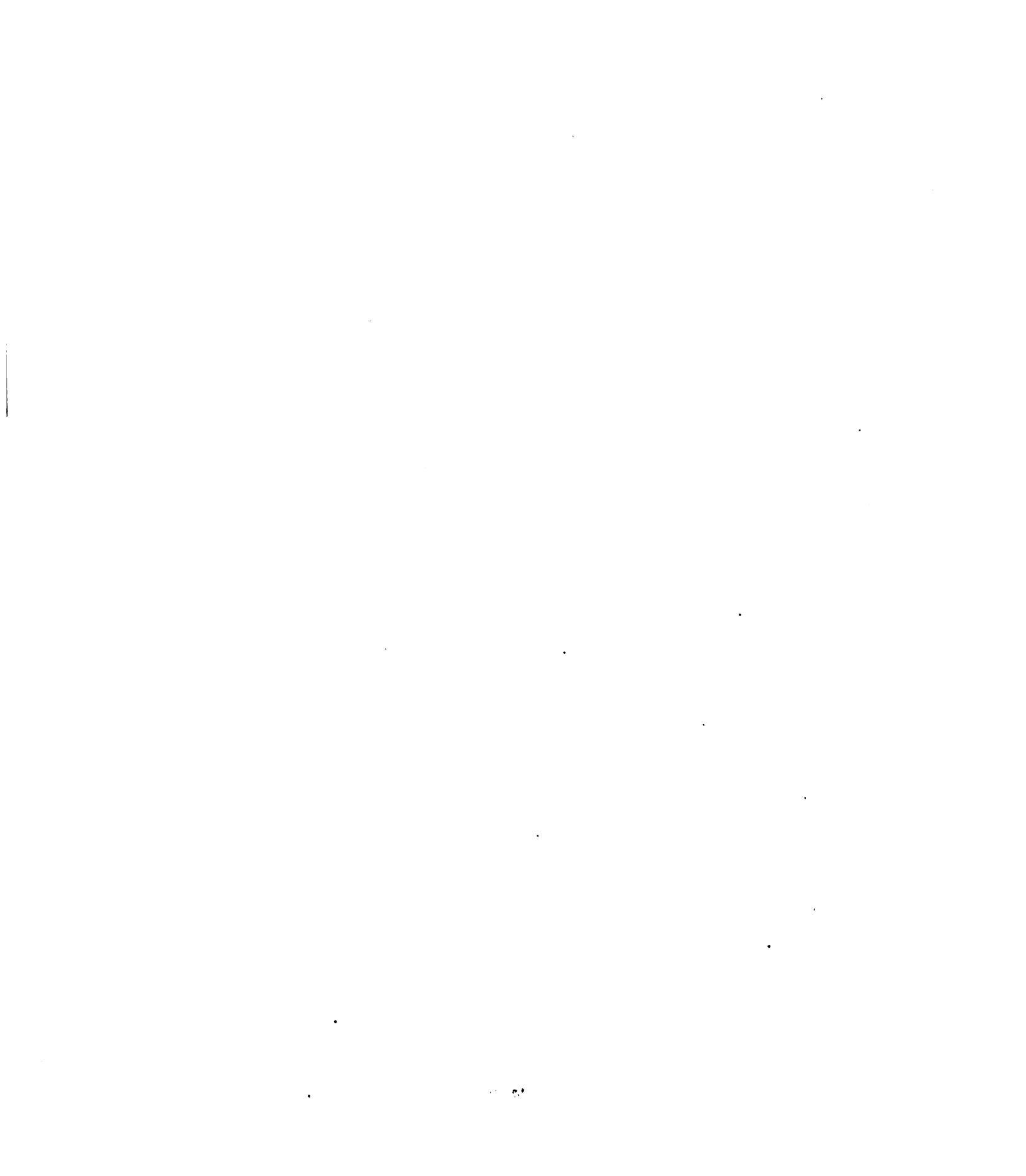
substantially. Several additional comments concerning socio-political analyses will be offered in Chapter Five.

D. Cluster-Bloc Analysis

The two primary dimensions were also utilized in an examination of the cluster-bloc alignments of the Stone Court members. A bloc analysis of the 1941-45 Terms had been undertaken by Pritchett.¹³⁸ The analysis of Pritchett was replicated here because Pritchett focused on the Court's voting patterns on a term-by-term basis rather than longitudinally. More important, however, was Pritchett's categoric rather than empirical definition of the components of the blocs. Pritchett's analysis, in other words, was issue rather than behavior oriented. The objective of the current cluster-bloc analysis is a comparison of the blocs between the two primary dimension, and a comparison with the blocs suggested by Pritchett.

Three cluster-blocs were constructed. First, a five-term bloc was generated using the Index of Interagreement between each pair of justices using all sixty scale-sets. Second, a bloc was prepared using only the Index of Interagreement from those cases which located on the Judicial Power dimension. Finally, a similar bloc was constructed from the cases within the Governmental Regulation dimension. Each vote which was cast, even in multiple decisions, was used in the building of the Indices of Interagreement. This represents a substantial departure from the methodology of Pritchett.¹³⁹

The bloc matrices for the entire five-term period as well as the two dimension-based blocs are composed of ratios of interagreement. A matrix of interagreement frequencies was completed for each of the three blocs with the frequencies subsequently being transformed into ratios.



The ratios were computed for each dyad by dividing the frequency of identical voting by the total number of shared participations. This method allows for the comparison of all pairs despite missing data resulting from less than five-term service of Justices Byrnes, Roberts, Rutledge and Burton.

Table 19 contains the interagreement frequencies for all non-unanimous cases decided by the Stone Court during the 1941-45 Terms. Table 20 transforms these frequencies into ratios or percentages. These alignments correspond closely to Pritchett's results though computed by an alternate method. Two distinct blocs emerge using Schubert's .700 criterion for high interagreement.¹⁴⁰ The first is the four-justice liberal bloc (Pritchett's "left bloc") composed of Justices Black, Douglas, Murphy, and Rutledge. The conservative (or "right bloc") includes Justices Jackson, Frankfurter, Reed and Stone. Byrnes occupies a middle position between the two blocs with moderately high interagreement with members of both blocs. Burton is a marginal member of the right bloc while Roberts is not highly identified with either though he clearly agrees very little with members of the left bloc. While Roberts does have interagreement ratios of greater than .500 with all members of the conservative bloc, only his interagreement ratio with Frankfurter (.623) falls within the moderately high category. The lower ratios for Roberts are a product of his numerous single dissents. Roberts dissented in 30% and 36% of the cases decided by the Court during his last two terms. No other single member of the Court dissented in more than 19% of the Court's cases in any single term. Roberts was found in single dissent in 95 cases over the four terms he sat. The next highest number of single dissents was 19 by Justice Murphy, a figure which encompasses five rather than four terms. A resume of the percentage of times in

TABLE 19 INTERAGREEMENT FREQUENCIES (All Cases)

	BLK	DOU	MUR	RUT	BYR	JAC	REE	FRK	STO	BUR	ROB
BLACK	16										
DOUGLAS	$\frac{597}{671}$	17									
MURPHY	$\frac{502}{649}$	$\frac{504}{666}$	19								
RUTLEDGE	$\frac{398}{517}$	$\frac{371}{523}$	$\frac{395}{489}$	7							
BYRNES	$\frac{58}{87}$	$\frac{56}{95}$	$\frac{56}{96}$	***	0						
JACKSON	$\frac{277}{516}$	$\frac{275}{518}$	$\frac{262}{513}$	$\frac{249}{391}$	$\frac{46}{69}$	11					
REED	$\frac{407}{686}$	$\frac{390}{659}$	$\frac{367}{666}$	$\frac{311}{503}$	$\frac{59}{92}$	$\frac{373}{524}$	2				
FRANKFURTER	$\frac{286}{688}$	$\frac{287}{681}$	$\frac{313}{671}$	$\frac{261}{521}$	$\frac{62}{96}$	$\frac{363}{529}$	$\frac{494}{702}$	16			
STONE	$\frac{326}{686}$	$\frac{338}{679}$	$\frac{339}{664}$	$\frac{268}{522}$	$\frac{49}{90}$	$\frac{354}{524}$	$\frac{500}{695}$	$\frac{484}{700}$	15		
BURTON	$\frac{57}{102}$	$\frac{49}{99}$	$\frac{52}{98}$	$\frac{48}{97}$	***	$\frac{5}{8}$	$\frac{62}{93}$	$\frac{65}{97}$	$\frac{78}{97}$	1	
ROBERTS	$\frac{103}{550}$	$\frac{112}{544}$	$\frac{138}{535}$	$\frac{108}{401}$	$\frac{40}{74}$	$\frac{263}{497}$	$\frac{293}{562}$	$\frac{348}{559}$	$\frac{329}{559}$	***	95

TABLE 20 INTERAGREEMENT RATIOS (All Cases)

	BLK	DOU	MUR	RUT	BYR	JAC	REE	BUR	STO	FRK
DOUGLAS	890									
MURPHY	773	757								
RUTLEDGE	770	709	808							
BYRNES	667	589	583	***						
JACKSON	537	531	511	637	667					
REED	593	592	551	618	641	712				
BURTON	559	445	531	445	***	625	667			
STONE	475	448	511	513	544	676	719	804		
FRANKFURTER	416	421	466	501	639	686	704	670	691	
ROBERTS	187	206	258	269	541	529	521	***	589	623

which a justice was found in dissent generally is provided in Appendix H. The frequencies of single dissents are found in the principle diagonal of the interagreement frequency tables.

Tables 21 and 22 provide the interagreement frequencies and ratios for the Judicial Power dimension blocs. The bloc memberships remained as they were in the five-term bloc although there were some changes in terms of the interagreement ratios themselves. The left bloc justices are more tightly clustered in the Judicial Power bloc with most of the ratios varied little with any of the left bloc justices. The conservative bloc is less tightly clustered and Roberts is found somewhat closer than his position in the overall bloc. It seems clear that there was extremely great consensus among the four liberal justices in terms of the policy capabilities and assertiveness propensities of the Supreme Court, and the justices' willingness to participate consciously in substantive policy

TABLE 21 INTERAGREEMENT FREQUENCIES - JUDICIAL POWER

	BLK	DOU	MUR	RUT	BYR	JAC	REE	FRK	STO	BUR	ROB
BLACK	6										
DOUGLAS	$\frac{228}{255}$	8									
MURPHY	$\frac{207}{257}$	$\frac{205}{257}$	4								
RUTLEDGE	$\frac{176}{213}$	$\frac{157}{197}$	$\frac{172}{198}$	1							
BYRNES	$\frac{22}{33}$	$\frac{21}{36}$	$\frac{22}{38}$	***	0						
JACKSON	$\frac{83}{206}$	$\frac{80}{204}$	$\frac{98}{208}$	$\frac{78}{155}$	$\frac{21}{27}$	7					
REED	$\frac{130}{272}$	$\frac{108}{242}$	$\frac{140}{258}$	$\frac{125}{200}$	$\frac{27}{37}$	$\frac{155}{208}$	0				
FRANKFURTER	$\frac{84}{275}$	$\frac{80}{259}$	$\frac{108}{261}$	$\frac{91}{213}$	$\frac{24}{38}$	$\frac{149}{209}$	$\frac{208}{276}$	14			
STONE	$\frac{148}{268}$	$\frac{152}{252}$	$\frac{165}{254}$	$\frac{140}{214}$	$\frac{19}{32}$	$\frac{124}{206}$	$\frac{209}{269}$	$\frac{177}{270}$	6		
BURTON	$\frac{19}{37}$	$\frac{15}{32}$	$\frac{19}{32}$	$\frac{17}{32}$	***	$\frac{1}{2}$	$\frac{24}{32}$	$\frac{17}{32}$	$\frac{25}{32}$	1	
ROBERTS	$\frac{30}{204}$	$\frac{28}{190}$	$\frac{49}{192}$	$\frac{33}{159}$	$\frac{8}{24}$	$\frac{110}{186}$	$\frac{132}{208}$	$\frac{148}{208}$	$\frac{113}{209}$	***	29

TABLE 22

INTERAGREEMENT RATIOS - JUDICIAL POWER

	BLK	DOU	MUR	RUT	BYR	STO	BUR	REE	JAC	FRK
DOUGLAS	894									
MURPHY	805	798								
RUTLEDGE	826	797	869							
BYRNES	667	583	579	***						
STONE	552	603	650	654	594					
BURTON	514	531	594	531	***	781				
REED	478	446	543	625	730	777	750			
JACKSON	403	392	471	503	778	602	500	745		
FRANKFURTER	305	309	414	427	632	656	531	754	713	
ROBERTS	147	147	255	208	333	541	***	635	591	725

formulation. The combined left cluster interagreement is .832 while the four-justice conservative cluster is only .711 in comparison. It should be noted, however, that both mean interagreement ratios are in excess of Schubert's minimum. The three marginal conservative members are excluded from the computation of the right bloc mean ratios.

Comparable findings were secured from the consideration of the Governmental Regulation dimension. Tables 23 and 24 present the inter-agreement frequencies and ratios of interagreement found for the Governmental Regulation cases. Again, the left bloc is tightly clustered as the within-cluster interagreement is a very high .853. Jackson is found, however, to agree with both Rutledge, a left bloc member, and Byrnes at a much higher level than in the other matrices. The within-right bloc mean ratio is close to that found in the Judicial Power cases (.712). Rutledge has a .730 agreement ratio with Stone in addition to his .763

TABLE 23 INTERAGREEMENT FREQUENCIES - GOVERNMENTAL REGULATION

	BLK	DOU	MUR	RUT	BYR	FRK	JAC	STO	REE	BUR	ROB
BLACK	5										
DOUGLAS	$\frac{254}{276}$	5									
MURPHY	$\frac{233}{276}$	$\frac{233}{277}$	10								
RUTLEDGE	$\frac{174}{209}$	$\frac{172}{212}$	$\frac{171}{201}$	1							
BYRNES	$\frac{29}{45}$	$\frac{27}{49}$	$\frac{26}{50}$	***	0						
FRANKFURTER	$\frac{112}{275}$	$\frac{110}{276}$	$\frac{107}{277}$	$\frac{111}{214}$	$\frac{36}{51}$	0					
JACKSON	$\frac{156}{236}$	$\frac{151}{233}$	$\frac{141}{235}$	$\frac{135}{177}$	$\frac{28}{37}$	$\frac{164}{238}$	0				
STONE	$\frac{91}{277}$	$\frac{92}{278}$	$\frac{94}{278}$	$\frac{86}{212}$	$\frac{25}{50}$	$\frac{211}{283}$	$\frac{168}{236}$	6			
REED	$\frac{159}{276}$	$\frac{155}{277}$	$\frac{151}{278}$	$\frac{143}{213}$	$\frac{24}{49}$	$\frac{199}{282}$	$\frac{169}{236}$	$\frac{195}{279}$	0		
BURTON	$\frac{21}{36}$	$\frac{19}{33}$	$\frac{10}{33}$	$\frac{13}{33}$	***	$\frac{27}{33}$	$\frac{3}{3}$	$\frac{21}{31}$	$\frac{15}{32}$	0	
ROBERTS	$\frac{21}{231}$	$\frac{25}{230}$	$\frac{32}{236}$	$\frac{34}{174}$	$\frac{18}{39}$	$\frac{148}{234}$	$\frac{89}{223}$	$\frac{170}{233}$	$\frac{120}{232}$	***	35

TABLE 24 INTERAGREEMENT RATIOS - GOVERNMENTAL REGULATION

	BLK	DOU	MUR	RUT	BYR	JAC	REE	BUR	FRK	STO
DOUGLAS	920									
MURPHY	844	841								
RUTLEDGE	833	811	851							
BYRNES	644	551	520	***						
JACKSON	661	648	600	763	757					
REED	576	560	543	671	490	716				
BURTON	583	576	303	394	***	1000				
FRANKFURTER	407	399	386	519	706	689	706	818		
STONE	329	331	338	730	500	712	699	677	746	
ROBERTS	091	109	136	195	462	399	517	***	632	739

ratio with Jackson and his continued his agreement with the remaining members of the left bloc. There is no other traversing of bloc lines of any consequence.

The remaining aspect of the Pritchett bloc analysis is a comparison of blocs on a term-by-term basis. Separation by terms runs counter to a basic strength of the dimensionality analysis developed longitudinally; thus, it is not reconsidered in the present examination. Nevertheless, the term-by-term work of Pritchett did reflect some individual pair variance in terms of interagreement ratios. For example, across the five terms, the interagreement between Justices Black and Douglas decreased a little each year - the percentage interagreements went from 95% in 1941, to 93% in 1942, to 86% in 1943, to 79% in 1944, to 71% in 1945. The longitudinal perspective is clearly insensitive to these kinds of variance. A term-by-term comparison using the empirically defined dimensions might indicate the substantive location of the increasing or decreasing

interagreement between particular pairs. Pritchett's term-by-term interagreement ratios for each of the five terms are reproduced in Appendix I.

No significant differences were noted between the clusters found by Pritchett using his substantive issue orientation and the present analysis utilizing the two empirically determined dimensions. The cluster-bloc analysis, nevertheless, does provide a useful description of the voting alignments of the Stone Court members. Cluster-bloc analysis, like other small group techniques, cannot provide pattern explanation in the absence of other data. The bloc analysis undertaken here, given the character of the techniques used throughout the research, can be viewed with substantial confidence in that the voting alignments reflected herein are clearly not the products of random associations. Thus, this bloc analysis provides a helpful descriptive addition to this research generally. Further comment on bloc analysis outside the context of the consideration of the Stone Court is provided in Chapter 5.

FOOTNOTES

1. Spaeth, Harold J., "Unidimensionality and Item Invariance in Judicial Scaling," Behavioral Science, X, 1965, pp. 290-304.
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11. Schubert, Glendon, The Constitutional Polity, Boston: Boston University Press, 1970.
12. Pritchett, Roosevelt Court, Chapter 10.
13. Mason, Alpheus T., The Supreme Court: From Taft to Warren, revised edition, Baton Rouge: Louisiana State University Press, 1968.
14. Toucey v. New Life Insurance Company, Tax Commission of Utah v. Aldrich, Williams v. North Carolina, Murdock v. Pennsylvania, West Virginia State Board of Education v. Barnette, Smith v. Allwright, United States v. South-Eastern Underwriters, and Girouard v. U.S.
15. Marsh v. Alabama, 326 US 501 (1946); Tucker v. Texas, 326 US 517 (1946).
16. Schubert, Glendon, "Civilian Control and Stare Decisis in the Warren Court," in Glendon Schubert, ed., Judicial Decision-Making, loc. cit.
17. Williams v. Kaiser, 323 US 471 (1945), Tompkins v. Missouri, 323 US 485 (1945), House v. Mayo, 324 US 42 (1945), and Rice v. Olson, 324 US 786 (1945).
18. Williams v. Kaiser, 323 US 471 (1945), dissenting opinion.
19. West Virginia State Board of Education v. Barnette, 319 US 624 (1943).
20. Ibid.
21. Minersville School District v. Gobitis, 310 US 586 (1940).
22. Barnette, 319 US 624, loc. cit.
23. In re Yamashita, 327 US 1 (1946).
24. Ibid.
25. Ibid.
26. 328 US 549 (1946).
27. 322 US 533 (1944).
28. Ibid.
29. Ibid.
30. Ibid.
31. Ibid.
32. Ibid.
33. Schubert, The Constitutional Polity, pp. 34-35.
34. Ibid.

35. Schubert, loc. cit.
36. 323 US 248 (1944).
37. 315 US 357 (1942).
38. 317 US 200 (1942).
39. 321 US 321 (1944).
40. Pritchett, The Roosevelt Court, p. 182.
41. Thiel v. Southern Pacific Company, 328 US 217 (1946).
42. 314 US 118 (1941).
43. Supreme Tribe of Ben Hur v. Cauble (1921).
44. 316 US 74 (1942).
45. Ibid.
46. United States v. Carolina Freight Carriers Corp., 315 US 475 (1942).
47. Borden v. Bordella, 325 US 679 (1945), and 10 East 40th Street Building v. Callus, 325 US 578 (1945).
48. Pritchett, The Roosevelt Court, p. 205.
49. 315 US 575 (1942).
50. 320 US 591 (1944).
51. ICC v. Jersey City, 322 US 503 (1944).
52. 325 US 538 (1945).
53. 318 US 285 (1942).
54. New York v. United States, 326 US 572 (1946).
55. 322 US 327 (1944).
56. 327 US 416 (1946).
57. 324 US 652 (1945).
58. Schubert, Glendon, Judicial Policy-Making, pp. 153-57.
59. 320 US 1 (1943).
60. 320 US 297 (1943).
61. Black's rank could have possibly been as high as a tie for second in this set if warranted by opinion behavior as this case was expanded on the basis of separately offered opinions for the purposes of breaking rank ties involving Justices Murphy, Douglas, Stone, and Frankfurter.
62. 328 US 640 (1946).
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65. Pritchett, The Roosevelt Court, pp. 77-78.
66. Kelly, Alfred H., and Winfred A. Harbison, op. cit., p. 769.
67. Unions: Closed Shop, Unions: Solicitation, Unions: Bargaining Agents, Personal Injury Liability, Fair Labor Standards Act: Contracts, Federal Employer Liability Act, National Labor Relations Act, Administrative Deference, and Delegation of Legislative Power.
68. 323 US 248 (1944).
69. Virginia Electric Power Company v. NLRB, 319 US 533, (1942), Medo Photo Supply v. NLRB, 321 US 678 (1944), and J.I. Case Company v. NLRB, 321 US 332 (1944).
70. Hunt v. Crumboch, 325 US 821 (1945).
71. Hotel & Restaurant Employees' Union v. Wisconsin Employment Relations Board, 315 US 437 (1941), and Thomas v. Collins, 323 US 516 (1945).
72. 317 US 249 (1942).
73. 326 US 327 (1946).
74. Marconi Wireless Telegraph Company of America v. United States, 320 US 1 (1943).

75. *Ex Parte Peru*, 318 US 578 (1943).
76. *United States v. Pink*, 315 US 203 (1942).
77. 324 US 244 (1945).
78. Pritchett, The Roosevelt Court, p. 170.
79. *Ibid.*
80. *Mabee v. White Plains Publishing Company*, 327 US 178 (1946).
81. 325 US 797 (1945).
82. *United States v. Local No. 807*, 315 US 521 (1941).
83. 319 US 598 (1943).
84. 323 US 516 (1945).
85. *Ibid.*
86. *Stewart v. Southern Railway Company*, 315 US 283 (1942), *National Labor Relations Board v. Indiana & Michigan Electric Company*, 318 US 9 (1943), *DeZon v. American President Lines*, 318 US 660 (1943), *Bailey v. Central Vermont Railway*, 319 US 350 (1943), *Brady v. Southern Railway Company*, 320 US 476 (1943), and *Asbury Hospital v. Cass County*, 326 US 207 (1946).
87. *Pence v. United States*, 316 US 332 (1942 raised the issue of whether a directed verdict in a case in which the question of fraud was submitted to a jury actually denies jury determination of the issue.
88. *Akins v. Texas*, 325 US 398 (1945) examined the issue of racial composition of juries, and the legal equivalence of racial limitations and racial exclusion relative to the equal protection clause.
89. 323 US 214 (1943).
90. 327 US 1 (1946).
91. 327 US 204 (1946).
92. *Knauer v. United States*, 328 US 654 (1946), and *Baumgartner v. United States*, 322 US 665 (1943), for instance, both involved allegiances to Germany, and the possibility of having fraudulently obtained citizenship initially given these allegiances.
93. *Bridges v. Wixon*, 326 US 135 (1944), and *Schneiderman v. United States*, 320 US 118 (1943) were cases which involved considerations of naturalized citizenship of Communists and their ability to fulfill the statutory requirements for naturalization.
94. See, for example, Jackson's dissent in *Wallace Corporation v. NLRB*, 323 US 248 (1944).
95. Douglas's dissent in *Kennecott Copper Corporation v. State Tax Commission*, 327 US 573 (1946) is illustrative. Rutledge's Supreme Court Jurisdiction behavior can be readily identified in *Ashbacker Radio Corporation v. FCC*, 326 US 327 (1946), and *Marconi Wireless Telegraph Company of America v. United States*, 320 US 1 (1943). Other cases provide comparable demonstration of set behavior.
96. 317 US 135 (1942).
97. *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul and Pacific Railroad*, 318 US 415 (1943).
98. *Kelley v. Everglades Drainage District*, 319 US 415 (1943).
99. 323 US 365 (1945).
100. 322 US 143 (1944).
101. 324 US 401 (1945).
102. 327 US 437 (1946).
103. 318 US 80 (1943).
104. 316 US 4 (1942).
105. *SEC v. Chenery Corporation*, 318 US 80 (1943).
106. Pritchett, *op. cit.*, p. 196.
107. *Scripps-Howard Radio v. FCC*, 316 US 4 (1942).

108. National Broadcasting Company v. United States, 319 US 190 (1943).
109. 319 US 190 (1943).
110. 316 US 407 (1942).
111. Pritchett, op. cit., pp. 79-90.
112. 325 US 293 (1945).
113. See such cases as California v. United States, 320 US 577 (1943), and Southern Pacific v. Arizona, 325 US 761 (1945).
114. 319 US 590 (1943).
115. 326 US 521 (1946).
116. 327 US 474 (1946).
117. Ibid.
118. Mahnomen County v. United States, 319 US 474 (1943).
119. 325 US 91 (1945).
120. Goldman v. United States, 316 US 129 (1942).
121. Goldstein v. United States, 316 US 114 (1942).
122. 328 US 582 (1946).
123. 328 US 624 (1946).
124. Falbo v. United States, 320 US 549 (1944), and Estep v. United States, 327 US 114 (1946).
125. 323 US 338 (1944).
126. 325 US 478 (1945).
127. Among these works are Ewing A.M. Cortez, The Judges of the Supreme Court, 1789-1937, Minneapolis: University of Minnesota Press, 1938; Rodney L. Mott, et. al., "Judicial Personnel," Annals, 1933; John R. Schmidhauser, "The Justices of the Supreme Court," Midwest Journal of Political Science, 1959; and S. Sidney Ulmer, "Public Office in the Social Background of Supreme Court Justices," The American Journal of Economics and Sociology, 1962.
128. Such works includes Stuart S. Nagel, "Testing Relations Between Judicial Characteristics and Judicial Decision-Making," Western Political Quarterly, 1962; Nagel, "Ethnic Affiliations and Judicial Propensities," Journal of Politics, 1962; "The 'Packing' of the Michigan Supreme Court," in Glendon Schubert, ed, Judicial Behavior; and S. Sidney Ulmer, "The Political Party Variable in the Michigan Supreme Court," Journal of Public Law, 1962.
129. See such works as Kenneth N. Vines and Herbert Jacob, Studies in Judicial Politics, New Orleans: Tulane University Press, 1963; Herbert Jacob, "The Effect of Institutional Differences in the Recruitment Process," Journal of Public Law, XIII, 1964, pp. 104-19; and Herbert Jacob and Kenneth N. Vines, eds., Politics in the American States, Boston: Little, Brown, 1965, pp. 257-67.
130. Dator, James A., "The Life History and Attitudes of Japanese High Court Judges," Western Political Quarterly, 1967; Donald Matthews, The Social Backgrounds of Political Decision Makers, New York: Random House, 1954; Stuart S. Nagel, "Off-the-Bench Judicial Attitudes," in Glendon Schubert, ed., Judicial Decision-Making; and Ulf Torgerson, "The Role of the Supreme Court in the Norwegian Political System," in Glendon Schubert, ed., Judicial Decision-Making.
131. Pritchett, C. Herman, The Roosevelt Court; and S. Sidney Ulmer, "The Analysis of Behavior Patterns of the United States Supreme Court," Journal of Politics, 1960.
132. Mott, et. al., lament this state of affairs as long ago as 1933, but even recent attempts to collect social background materials such as the effort of John R. Schmidhauser have provided only organizational aid rather than additions to or enrichment of this data. Schmidhauser's

data is essentially a compilation of materials from the conventional sources. There are several excellent biographies available on individual Supreme Court justices, but it is difficult to integrate much of the materials therein contained because of varying descriptive criteria of each author.

133. A pre-analysis trial was given to the same socio-political variables using decisional behavior findings determined by the same methodological techniques with a ten-year sample of decisional behavior of the Warren Court, and the findings were encouraging enough to suggest a similar effort in the current research.
134. Schmidhauser, "The Justices of the Supreme Court," *op. cit.* The data were made available through the Inter-University Consortium for Political Research at the University of Michigan in Ann Arbor.
135. Mean scale ranks and scale scores used as break-points:
- | | Mean Rank | Mean Scale Score |
|-----------------------------------|-----------|------------------|
| Judicial Power Dimension | 5.279 | .563 |
| Governmental Regulation Dimension | 5.328 | .569 |
136. Schubert, Glendon, Quantitative Analysis of Judicial Behavior, Glencoe, Illinois: The Free Press, 1959, pp. 129-42; and S. Sidney Ulmer, "The Political Party Variable in the Michigan Supreme Court," Journal of Public Law, II, 1961, pp. 352-62.
137. Adamany, David W., "The Party Variable in Judges' Voting: Conceptual Notes and a Case Study," American Political Science Review, 63, no. 1, March 1969, pp. 57-73.
138. Pritchett, The Roosevelt Court, loc. cit.
139. The Pritchett technique and current modifications are discussed in Schubert, Quantitative Analysis, Chapter 3.
140. Schubert, Glendon, Quantitative Analysis of Judicial Behavior, p. 91. He considers ratios of .60-.69 to moderately high and ratios of less than .60 to be low.

CHAPTER FIVE -
CONCLUSIONS AND REFLECTIONS

The controlling purpose of this research has been the empirical determination and substantive interpretation of the decision making of the Stone Court. Three areas of interest have been maintained throughout the conduct of this research. The first area has been the Stone Court itself. What is the character of Supreme Court decision making for these five term, and how does it relate to adjacent historical periods? The second area of concern has been the adequacy of the stimulus-response model. What can be determined about judicial behavior from its application, what are the limitations of the model, and how does it compare to Pritchett's initial inquiries relative to the Stone Court? Finally, there has been a strong interest in the utility of the methodological techniques employed. These are clearly related areas of academic concern and assume equivalent importance in terms of this research. The final chapter reflects upon each of these three areas of emphasis.

A brief recapitulation of the hypotheses and findings may be in order before proceeding to the concluding remarks. The basic hypotheses were stated very generally in Chapter One. First, it was hypothesized that it is empirically possible to reduce the numerous issues that appear in the cases on the Supreme Court's docket to a relatively small number by focusing on the psychological bases of judicial behavior. Sixty Guttman scales were produced from the universe of four

hundred eighty-five cases classified. The computer analyses conducted on the data revealed three underlying dimensions - Judicial Power, Governmental Regulation, and Administrative Oversight. Only five of the scale-sets could not be located on at least one of these three underlying dimensions.

Second, a multi-dimensional solution was hypothesized in terms of the general decision making structure. A complex (non-unidimensional) structure was found for the Stone Court although the dimensions were not seen as discrete as those found in studies of subsequent terms. The Stone Court was concluded to occupy the transitional ground between the unidimensional Hughes Court, and the multi-dimensional Vinson and Warren Courts. The complex decision making structure of succeeding courts, but absent prior to the Stone Court, clearly indicates the genesis of multi-dimensionality during the 1941-1945 terms.

It was also hypothesized that attitude differences could be found to exist among justices thought to be ideologically compatible at the time of their respective appointment to the Court. The results of the scale, factor, and cluster-bloc analyses reveal that the appointees of Franklin D. Roosevelt did not vote as a cohesive unit. Rather, they fragmented markedly on each of the three dimensions despite the assumed comparable commitment to Roosevelt, the New Deal, and liberalism in general.

Finally, it was hypothesized that the results of the social background and bloc analyses would produce more predictive results than had been found heretofore because of the highly refined techniques of analysis used in this research to measure the decisional behavior. Neither the social background analysis nor the cluster-bloc analysis provided significant payoffs. The only correlate of decisional behavior having predictive

capability is political party affiliation. The other variables used reflected no significant behavioral differences when party affiliation was controlled. It was concluded that conventional social background variables are still too gross to allow productive analyses of this type regardless of the precision of measures of behavioral propensities. The bloc analysis was similarly disappointing. No striking difference was seen when the empirically defined dimensions were substituted for the categorically defined data used by Pritchett in his seminal work on the Roosevelt Court.

It was stated at the outset that substantial changes have taken place in judicial behavior research in the past decade and a half. The literature is replete with characterizations of these changes. More often than not, these discussions have taken the form of attacks upon or defenses of these changes. It is not the intention of this concluding chapter to address the question in this manner or engage in such polemics. Nevertheless, several observations have been noted during the course of this research which require at least brief additional attention.

The attitudinal approach to what in systems analytic terms is called "conversion" has developed remarkably since Pritchett first considered the problem. The primary thrust of the attitudinal approach, as can be seen in this research, is the identification of judicial attitudes for the purpose of discovering behavioral patterns. The general efficacy of the approach (and the stimulus-response model specifically) can be seen in several recent analyses in which multi-dimensional solutions that account for extremely high proportions of variance are reported.¹

The general emphasis on the relationship of attitudes and decision making is in itself striking witness to the theoretical directions that currently exist within the sub-discipline. The identification and analysis

of judicial attitudes has been a primary research focus since the work of Pritchett. The current status of the attitudinal approach is well conveyed in the following, "It is beyond serious question today that the judges of the Supreme Court have their own conceptions of public policy and that their attitudes and values affect the thrust of their decision making."² Strengths as well as limitations of the approach are reflected in the statement. The limitations will be discussed shortly.

The numerous methodological refinements which have been made over the past fifteen years also warrant positive mention. Characteristic of the advances are the modifications in regard to the use of Guttman scale analysis. The basic feature of scale analysis is that it allows attitude differentiation and the measurement of issue complexity. It provides the researcher with a standardized mode of classification of cases and issues which reflect the component stimuli to which the judges are subjected. The work of Harold J. Spaeth is illustrative of the upgrading of rigor with regard to scale analysis.³ Comparable methodological developments can be found relative to each of the specific techniques utilized in this research.

The substantive findings produced by the various analyses of this research also demonstrate the utility of the attitudinal approach. The interpretations of the empirical findings allow for consideration of numerous propositions found in the literature. The notions suggested by Dahl⁴ and Schubert⁵ regarding the policy relationship of the Supreme Court to other policy-making institutions provide an apt example.

Dahl and Schubert both argue that the policy priorities of the Court and other policy-making authorities with whom the Court shares policy-making power usually coincide. It is rare to find the dominant policy view of the Court "out-of-phase" with those views of the Congress

and/or the President, at least for extended periods of time. The regularity of appointment opportunities normally ensures a President being able to "shape" a particular Court. The circumstances surrounding the appointment "drought" suffered by Roosevelt during his first term are clearly viewed as atypical.

Despite the visibility of Roosevelt's difficulties with the pre-1937 Hughes Court, Dahl's formulation concludes that where the Court does inhibit national majorities from passing legislation, the Court is exercising judicial review in an undemocratic fashion. Dahl further suggests that when the Court tries to exercise inhibiting (or Prohibiting) controls over national policy-making majorities, the Court cannot withstand persistent challenges from a concerted coalition of the legislative-executive branches.⁶

The basic thrust of Dahl's discussion is that the Court "is inevitably part of the dominant national alliance."⁷ Exceptions are rare and usually brief. The Court is viewed as being in a unique position. It is able to add a special kind of legitimacy to those policies which emerge from the dominant national majority. The ongoing ability to provide this stamp of legitimacy stems from a perception of the legitimacy of the Court itself. Thus, if the Court is to exercise its policy influence through the exercise of judicial review, it cannot ignore dominant priorities or contest for a protracted period of time.⁸ Accordingly, the Court's policy preferences are usually quite compatible with those of other policy makers. Schubert's description of the policy relationship is cast in terms of harmony-disharmony, but the argument is that coinciding policies reflect normalcy.⁹

The decisions of the Stone Court is a clear manifestation of a desire to return to normalcy. Roosevelt had withstood four and a half

terms during which the Court essentially exercised veto power over his New Deal programs though some losses were marginal.¹⁰ The Hughes Court made its celebrated policy switch without personnel change. Roosevelt guaranteed the permanence of this policy change by making seven appointments between 1937 and 1941 which left Justices Stone and Roberts as the only holdovers. If Dahl's proposition is accurate, the position of the Court subsequent to 1937 should have been complementary to the policy orientations of the other institutions.

The findings of this study indicate that this is essentially what took place. The Stone Court assumed a fairly deferential stance toward most of the significant policy areas of the period. The concern with maintenance of independent judicial power was generally not found to be inhibitive of dominant policy options. The Stone Court did clearly function as a provider of legitimacy to much of what the Roosevelt Administration wished to do. The behavior of the Court in cases having their genesis in war policy is directly indicative. The data do reveal that absolute deference was never achieved, but policy harmony was exhibited to a sufficient degree to support the Dahl-Schubert thesis.

The findings of this research also suggest that the actual values of individual members of the Court do not change over time to any significant extent. At the same time, the positions of Justices Roberts and Stone relative to other justices with whom they sat changed appreciably. Stone was found among the liberal bloc in the 1930's usually aligning with Justices Brandeis and Cardozo. Roberts was an occupant of the middle-ground along with Chief Justice Stone. The positions of Roberts and Stone in the 1940's were at the conservative pole. The locations to their left were assumed by several of the new Roosevelt appointees - Murphy, Douglas, Black - and reflects the substantive

differences achieved in terms of policy positions of the Roosevelt appointees. This proposition is well developed by Schubert.¹¹

Another significant finding of a substantive type relates to the absence of an independent war-war emergency dimension. Clearly, a large number of the sets and their component cases involved the war and the kinds of powers the federal government could exercise thereunder. Nevertheless, the general regulatory stance exhibited in non-war related cases convincingly shows that the war was not a unique governmental power consideration for the Court. The specific fears which prompted the relocation of the Japanese, scrutinization of naturalized citizenship, and the like were clearly war-related, but they correlate very strongly with the general regulation sets and mute the single significance of the war sets-cases. The other war-related sets; e.g., War Powers, Emergency Price Control Act, and Delegation of Legislative Power, fit more self-evidently into the general regulatory scheme. The same kinds of values which allow rents to be controlled¹² are also seen in such cases as *Wickard v. Filburn*¹³ which is clearly not a war-related case.

The utility of the model can also be seen from a comparative standpoint. The findings of this study comport closely to studies conducted on Courts adjoining the Stone Court. The interpretation developed above fits very well into a broader conception of Supreme Court decisional characteristics. The period immediately preceding the Stone Court was dominated by a single value, economic regulation (liberalism).¹⁴ The periods which immediately followed the Stone Court can be adequately characterized only in terms of a multi-dimensional type.¹⁵ The Stone Court, thus, empirically and historically occupies a transitional place. The sensitivities of the methods utilized in this research are revealed in the failure to achieve precise definition of Stone Court decision making. This is to be expected

given the flux in dimensionality and has to be considered as a positive finding relative to the adequacy of the various methods used.

No model, however, can be viewed in static terms no matter how strong the conceptual underpinnings seem to be. All conceptual formulations must continually undergo reappraisal in light of current research and adapted accordingly. The Stone Court research has revealed several areas which assume a potentially "dead-end" direction relative to future utility of the model. A couple of brief comments should suffice in making the point.

The stimulus-response model clearly reflects the attitudinal emphasis and behavior pattern identification objective which have been shown to be centrally relevant. The specific methods which normally accompany the kind of dimensionality analysis herein undertaken, however, preclude certain applications as well as the incorporation of certain perspectives which can no longer be de-emphasized. A focus exclusive of socialization, group interaction, social background, and opinion behavior may have been necessary in establishing a viable general approach, but substantial rethinking must take place to integrate these and other perspectives in order to develop a more comprehensive theoretical formulation.

The first specific point of difficulty within the model which needs (and is currently receiving) attention is the exclusive focus on voting behavior of judges as the basis of inferring attitudes. Joseph Tanenhaus suggested several years ago that exclusive focus on votes raises some very serious measurement as well as oversimplification problems.¹⁶ Some recent attempts have been made to respond to this criticism. The integration of opinion behavior with voting behavior adds significantly to the adequacy of the model.¹⁷

Another shortcoming of the model as used in this research has been

pointed out by J. Woodford Howard.¹⁸ Howard suggests that something he terms "fluidity" exists relative to the decisions (votes) cast by certain members of the Court in some cases. The impact of this assertion on this research was direct and immediate because his evidence of the existence of fluidity came through an examination of the private papers of Justice Frank Murphy, one of the members of the Stone Court.

The primary thrust of Howard's argument is that the internal dynamics of the Court, as previously suggested by Walter F. Murphy,¹⁹ are responsible for certain voting behaviors. That this internal dynamic actually produces votes which are different from expectation (expectations of decisions-votes cast in the absence of this internal pressure) reflects a focus limitation of the model utilized in this research. Efforts to alleviate the current insensitivity of the model to group interaction considerations are surely necessary.

Speaking to the issue of judicial behavior research more generally, the kinds of analyses undertaken in the current study have restricted usefulness because of methodological as well as conceptual limitations. Guttman scaling, for example, has obvious value as an attitude measuring and issue classificatory device. A necessary condition for its use, however, is en banc participation - aggregates are required. This requisite prevents application to the trial courts which is a severe constraint given the developing concern with other portions of the judiciary than the Supreme Court.

The lack of payoffs from the social background and bloc analyses attempted in this research are also products of conceptual and methodological narrowness. The attempt to draw any kind of valid conclusions from a social background study of a body as small as the Supreme Court is well known. Yet only recently have attempts been made to link social

background studies more directly to the kinds of research herein tried. The recent effort by Howard to search judicial biographies for testable propositions is a much needed integrative undertaking.²⁰ So is the kind of dialogue between Professors Goldman and Grossman.²¹ It marks a much needed departure from the narrowly-focused and defensive exchanges which have inhibited theoretical development in the past.

The customary call for continued research along the lines traveled in this effort cannot be made here without reservation. The need to continue to identify patterns of behavior per se and assign appropriate labels is no longer additive. The need is for synthesis and integration. The increased concern over the matter of causality; this author's perceived frustrations with the inadequacy of the development of the role concept relative to the behavior of metropolitan trial court judges; these and many other areas have to be included within the reappraisal of the model employed in this research. The future of the sub-discipline rests with a tactical and theoretical regrouping of forces. The basic function served by this research for the author rests almost exclusively within this context.

FOOTNOTES

1. See especially, Spaeth, Harold J., Introduction to Supreme Court Decision Making, Second Edition, San Francisco: Chandler, 1971, where 87% of the variance is located on three dimensions.
2. Goldman, Sheldon, and Thomas P. Jahnige, The Federal Courts as a Political System, New York: Harper & Row, 1971, p. 157. The entire chapter (Five) highlights developments within the behavioral approach.
3. Spaeth, Harold J., "Unidimensionality and Item Invariance in Judicial Scaling," Behavioral Science, X, 1965, pp. 290-304.
4. Dahl, Robert A., Pluralist Democracy in the United States, Chicago: Rand McNally, 1967, pp. 154-70.
5. Schubert, Glendon, Judicial Policy-Making, Chicago: Scott, Foresman, 1965, Chapter 6.
6. Dahl, op. cit., pp. 162-63.
7. Dahl, op. cit., p. 167.
8. Ibid.
9. Schubert, loc. cit.
10. Dahl, op. cit., pp. 157-60.
11. Schubert, Glendon, The Constitutional Polity, Boston: Boston University Press, 1970, pp. 98-104.
12. Bowles v. Willingham, 321 US 503 (1944).
13. 317 US 471 (1942).
14. Schubert, The Constitutional Polity, pp. 92-97.
15. Schubert, op. cit., pp. 105-29.
16. Tanenhaus, Joseph, "Supreme Court Attitudes Toward Federal Administrative Agencies, 1947-56," Vanderbilt Law Review, 14, 1961, pp. 480-82.
17. See Schubert, Glendon, "Jackson's Judicial Philosophy: An Exploration in Value Analysis," American Political Science Review, 59, 1965, pp. 940-63, and Schubert, "The Dimensions of Decisional Response: Opinion and Voting Behavior of the Australian High Court," in Joel B. Grossman and Joseph Tanenhaus, Frontiers of Judicial Research, New York: Wiley, 1969, pp. 163-95.
18. Howard, J. Woodford, "On the Fluidity of Judicial Choice," American Political Science Review, LXII, March 1968, pp. 43-56.
19. Murphy, Walter F., Elements of Judicial Strategy, Chicago: University of Chicago Press, 1964.
20. Howard, J. Woodford, "Judicial Biography and the Behavioral Persuasion," American Political Science Review, LXV, September 1971, pp. 704-15.
21. The dialogue began with an article by Professor Joel B. Grossman, "Social Backgrounds and Judicial Decisions: Notes for a Theory," Journal of Politics, 29, 1967, pp. 334-51. Sheldon Goldman responded in an article, "Backgrounds, Attitudes and the Voting Behavior of Judges: A Comment on Joel Grossman's 'Social Background and Judicial Decisions,'" Journal of Politics, 31, 1969, pp. 214-22. Grossman responded in "Further Thoughts on Consensus and Conversion: A Reply to Professor Goldman," Journal of Politics, 31, 1969, pp. 223-29.

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The second part of the document provides a detailed breakdown of the company's revenue. It shows the total revenue for each quarter and year, along with a comparison to the budgeted amounts. This analysis helps identify any variances and the reasons behind them, such as changes in sales volume or pricing.

The third part of the document details the company's expenses. It lists all major expense categories, such as salaries, rent, utilities, and marketing, and provides a comparison to the budgeted amounts. This analysis helps identify areas where the company is overspending and where cost-saving opportunities may exist.

The fourth part of the document discusses the company's profit and loss. It shows the total profit for each quarter and year, along with a comparison to the budgeted amounts. This analysis helps identify the company's overall financial performance and its ability to generate profit.

The fifth part of the document provides a summary of the company's financial position. It includes a balance sheet showing the company's assets, liabilities, and equity, as well as a cash flow statement showing the company's cash inflows and outflows. This information provides a comprehensive overview of the company's financial health.

The sixth part of the document discusses the company's future financial outlook. It includes a forecast of revenue, expenses, and profit for the next year, based on current trends and market conditions. This forecast helps the company plan for the future and make informed decisions about its financial strategy.

The seventh part of the document provides a conclusion and recommendations. It summarizes the key findings of the financial analysis and provides recommendations for improving the company's financial performance. These recommendations may include increasing sales, reducing expenses, and improving cash flow management.

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2. The second part of the document outlines the various methods and tools used to collect and analyze data. This includes the use of surveys, interviews, and focus groups to gather qualitative information, as well as the application of statistical techniques to quantify and interpret the results.

3. The third part of the document addresses the challenges and limitations of data collection and analysis. It highlights the potential for bias, incomplete data, and the difficulty of interpreting complex or ambiguous results. It also discusses the importance of validating the data and ensuring the reliability of the findings.

4. The fourth part of the document provides a detailed overview of the research methodology used in the study. This includes a description of the study design, the selection of participants, the data collection procedures, and the analytical framework used to process the data.

5. The fifth part of the document presents the results of the study, organized into several key findings. These findings are supported by the data collected and analyzed, and they provide insights into the phenomena being studied.

6. The sixth part of the document discusses the implications of the study's findings for practice and policy. It explores how the results can be used to inform decision-making, improve processes, and address the issues identified in the study.

7. The seventh part of the document concludes the study by summarizing the main points and providing a final perspective on the research. It also suggests areas for future research and acknowledges the limitations of the current study.

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2. The second part outlines the specific procedures for handling sensitive information and data. It stresses the need for strict confidentiality protocols and secure storage methods to prevent unauthorized access or disclosure.

3. The third section addresses the requirements for reporting and documentation. It details the frequency and format of reports, ensuring that all relevant information is captured and presented in a clear and concise manner.

4. The fourth part focuses on the role of internal controls and audits. It explains how these mechanisms are designed to detect and prevent errors, fraud, and other irregularities, thereby safeguarding the organization's assets and integrity.

5. The final section discusses the importance of ongoing training and education for all staff members. It highlights that a well-informed workforce is crucial for the effective implementation of all policies and procedures, ensuring a high standard of performance and compliance.

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The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In addition, the document outlines the procedures for handling discrepancies. If there is a difference between the recorded amount and the actual amount received or paid, it is crucial to investigate the cause immediately. This could be due to a clerical error, a missing receipt, or a change in the terms of the agreement.

The document also provides guidelines for the frequency of reconciling accounts. It is recommended to perform a reconciliation at least once a month. This helps in identifying any errors or irregularities early on, preventing them from becoming more significant over time.

Furthermore, the document stresses the need for secure storage of all financial records. These records should be kept in a fireproof safe or a secure digital storage system. It is also important to have a backup of the data to prevent loss in case of a system failure or disaster.

Finally, the document concludes by stating that maintaining accurate financial records is essential for the long-term success of any business. It provides a clear and concise summary of the key points discussed throughout the document.

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2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent and reliable data sources to ensure the validity of the findings.

3. The third part of the document describes the process of identifying and measuring the variables of interest. It notes that careful selection and measurement of variables are crucial for drawing meaningful conclusions from the data.

4. The fourth part of the document details the statistical techniques employed to analyze the data. It includes a discussion of descriptive statistics, inferential statistics, and regression analysis, among others.

5. The fifth part of the document presents the results of the analysis and discusses their implications. It notes that the findings suggest a strong correlation between the variables studied, which has significant implications for the field.

6. The sixth part of the document concludes the study and offers recommendations for future research. It suggests that further exploration of the relationship between the variables is warranted, particularly in different contexts and populations.

7. Finally, the document includes a list of references and a list of figures and tables. The references cite the key works that informed the study, while the figures and tables provide visual representations of the data and results.

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The third section provides a detailed overview of the results obtained from the study. It includes several tables and graphs that illustrate the key findings. The data shows a clear trend towards digital adoption among the target demographic.

Finally, the document concludes with a series of recommendations for future research and implementation. It suggests that further exploration into user behavior and preferences is necessary to optimize the digital experience.

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10. The tenth part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for ensuring transparency and accountability in financial operations. This section also highlights the role of internal controls in preventing fraud and errors.

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APPENDICES

APPENDIX A - NON-UNANIMOUS CASES, 1941-1945 TERMS (Listed Chronologically)

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698 Miles v. Illinois Central Railroad
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- 316 US 4 Scripps-Howard Radio v. FCC
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114 Goldstein v. United States
129 Goldman v. United States (Nos. 962-963 & 980)
159 Georgia v. Evans
174 State Tax Commission of Utah v. Aldrich
203 Mishawaka Rubber & Woolen Co. v. S.S. Kresge Co.
216 Swift & Co. v. United States
258 United States v. Nunnally Investment Co.
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 624 Walling v. A.H. Belo Corp.
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	261	Penn Dairies v. Milk Control Commission of Pennsylvania
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- 319 US 1 L.T. Barringer & Co. v. United States
33 Bowles v. United States
61 Jersey Central Power & Light Co. v. FPC
103 Jones v. Opelika (Nos. 280, 314 & 966)
105 Murdock v. Pennsylvania (Nos. 480-487)
141 Martin v. Struthers
157 Douglas v. City of Jeannette
190 National Broadcasting Co. v. United States (Nos. 554-555)
239 FCC v. National Broadcasting Co.
266 United States ex. rel. Tennessee Valley Authority v. Powelson
315 Burford v. Sun Oil Co. (Nos. 495-496)
348 Hastings v. Selby Oil & Gas Co.
350 Bailey v. Central Vermont Railway
359 Altvater v. Freeman
372 Galloway v. United States
415 Kelley v. Everglades Drainage District
448 Freeman v. Bee Machine Co.
474 Mahnomon County v. United States
484 Bartchy v. United States
491 McLeod v. Threlkeld
503 United States v. Johnson

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- 523 **Virginian Hotel Corp. v. Helvering**
- 533 **Virginia Electric & Power Co. v. NLRB**
- 561 **Boone v. Lightner**
- 590 **Interstate Transit Lines v. Commissioner of Internal Revenue**
- 598 **Oklahoma Tax Commission v. United States (Nos. 623-625)**
- 624 **West Virginia State Board of Education v. Barnette**
- 671 **ICC v. Inland Waterways Corp.**
- 715 **Owens v. Pacific Railroad Co.**
- 320 US 1 **Marconi Wireless Telegraph Co. of America v. United States (Nos. 369 & 373)**
- 118 **Schneiderman v. United States**
- 228 **Meredith v. City of Winter Haven**
- 256 **Merchants National Bank of Boston v. Commissioner of Internal Revenue**
- 264 **Roberts v. United States**
- 277 **United States v. Dotterweich**
- 297 **Switchmen's Union of North America v. National Mediation Board**
- 323 **General Committee of the Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas Railroad Co.**
- 338 **General Committee of the Brotherhood of Locomotive Engineers v. Southern Pacific Co. (Nos. 27 & 41)**
- 344 **SEC v. Joiner Leasing Corp.**
- 410 **Estate of Henry H. Rogers v. Helvering**
- 430 **Magnolia Petroleum Co. v. Hunt**
- 476 **Brady v. Southern Railway Co.**
- 520 **Hill v. Hawes**

APPENDIX A

- 320 US 527 United States v. Gaskin
531 United States v. Hark
549 Falbo v. United States
561 United States v. Myers (Nos. 142-146)
577 California v. United States (Nos. 20 & 22)
591 FPC v. Hope Natural Gas Co. (Nos. 34-35)
661 Mercoid Corp. v. Mid-Continent Investment Co.
685 City of Yonkers v. United States
- 321 US 1 Snowden v. Hughes
19 Thomson v. United States
29 Tennant v. Peoria & Pekin Union Railway Co.
36 Demorest v. City Bank & Farmers Trust Co. (Nos. 52 & 227)
67 McLean Trucking Co. v. United States
96 Magnich v. Southern Steamship Co.
144 Davies Warehouse Co. v. Bowles
158 Prince v. Massachusetts
194 Eastern-Central Motor Carriers Assn. v. United States
225 Simpson & Co. v. Commissioner of Internal Revenue
231 Dobson v. Commissioner of Internal Revenue
253 Flourney v. Wiener
275 Goodyear Tire & Rubber Co. v. Ray-O-Vac Co.
281 Security Flour Mills Co. v. Commissioner of Internal Revenue
288 Stark v. Wickard
321 Hecht Co. v. Bowles
332 J.I. Case Co. v. NLRB

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- 321 US 342 Order of Railroad Telegraphers v. Railway Express Co.
 349 Anderson v. Abbott
 383 Johnson v. Yellow Cab Transit Co.
 414 Yakus v. United States (Nos. 374-375)
 489 Vinson v. Washington Gas Light Co.
 503 Bowles v. Willingham
 542 Billings v. Truesdell
 573 Follett v. Town of McCormick
 590 Tennessee Coal, Iron & Railroad Co. v. Muscoda Local #123
 620 Sartor v. Arkansas Natural Gas Corp.
 634 Cornell Steamboat Co. v. United States
 649 Smith v. Allwright
 678 Medo Photo Supply Corp. v. NLRB
 730 United States v. Blair
- 322 US 4 Pollock v. Williams
 31 United States v. Marshall Transport Co.
 47 Great Northern Life Insurance Co. v. Read
 65 United States v. Mitchell
 78 United States v. Ballard
 111 NLRB v. Hearst Publications (Nos. 336-339)
 137 Allen Calculators v. National Cash Register Co.
 143 Ashcraft v. Tennessee
 174 United States v. Allegheny County
 202 Union Brokerage Co. v. Jensen
 238 Hazel-Atlas Glass Co. v. Hartford-Empire Co.

APPENDIX A

- 322 US 271 Shawkee Manufacturing Co. v. Hartford-Empire Co.
- 275 Douglas v. Commissioner of Internal Revenue (Nos. 130-133)
- 292 Northwest Airlines v. Minnesota
- 327 McLeod v. J.E. Dilworth Co.
- 335 General Trading Co. v. Iowa State Tax Commission
- 340 International Harvester Co. v. Indiana Dept. of Treasury
- 369 Mortensen v. United States
- 385 United States v. Saylor (Nos. 716-717)
- 398 L.P. Steuart & Brothers v. Bowles
- 408 Crites, Inc. v. Prudential Insurance Co. of America
- 435 International Harvester Co. v. Wisconsin Dept. of Taxation
- 487 Feldman v. United States
- 503 ICC v. City of Jersey City
- 526 Wisconsin Gas & Electric Co. v. United States
- 533 United States v. South-Eastern Underwriters Assn.
- 596 Lyons v. State of Oklahoma
- 607 Addison v. Holly Hill Fruit Products
- 665 Baumgartner v. United States
- 680 Hartzel v. United States
- 323 US 44 Commissioner of Internal Revenue v. Harmon
- 57 McDonald v. Commissioner of Internal Revenue
- 88 Kann v. United States
- 101 Spector Motor Service v. McLaughlin
- 106 United States v. Standard Rice Co.
- 173 United States v. Crescent Amusement Co. (Nos. 17-19)

APPENDIX A

- 323 US 214 Korematsu v. United States
- 248 Wallace Corp. v. NLRB (Nos. 66-67)
- 273 United States v. Johnson
- 338 Singer v. United States
- 353 United States v. Waddill, Holland & Flinn
- 360 United States v. Rosenwasser
- 365 McKenzie v. Irving Trust Co.
- 373 United States v. General Motors Corp.
- 386 Hartford-Empire Co. v. United States (Nos. 2-11)
- 471 Williams v. Kaiser
- 485 Tomkins v. Missouri
- 490 Western Union Telegraph Co. v. Lenroot
- 516 Thomas v. Collins
- 557 United States v. Townsley
- 574 Tiller v. Atlantic Coast Line Railroad Co.
- 600 Blair v. Baltimore & Ohio Railroad Co.
- 612 United States v. Pennsylvania Railroad Co. (Nos. 47-48)
- 624 Otis & Co. v. SEC
- 324 US 9 Regal Knitwear Co. v. NLRB
- 42 House v. Mayo
- 49 Muschany v. United States (Nos. 31-32)
- 83 Barr v. United States
- 117 Herb v. Pitcairn (Nos. 24-25)
- 138 Central States Electric Co. v. City of Muscatine, Iowa
- 154 State Farm Mutual Automobile Insurance Co. v. Duel

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in the context of financial reporting and auditing. The text highlights that without reliable records, it becomes difficult to verify the accuracy of financial statements and to identify any potential discrepancies or irregularities.

2. The second part of the document focuses on the role of internal controls in ensuring the integrity of financial information. It explains that internal controls are designed to prevent and detect errors and fraud, thereby safeguarding the organization's assets and ensuring the reliability of its financial data. The text notes that a robust system of internal controls is a key component of a strong corporate governance framework and is critical for maintaining the trust of investors and other stakeholders.

3. The third part of the document addresses the challenges associated with implementing and maintaining effective internal controls. It identifies common obstacles such as limited resources, lack of staff training, and resistance to change. The text suggests that organizations should adopt a risk-based approach to internal control design, focusing on the most significant areas of risk and ensuring that controls are tailored to the specific needs and circumstances of the organization. Additionally, it stresses the importance of regular monitoring and evaluation of internal controls to ensure they remain effective over time.

4. The fourth part of the document discusses the impact of external factors on internal control systems. It notes that changes in the regulatory environment, technological advancements, and market conditions can all influence the effectiveness of internal controls. Organizations must therefore stay up-to-date on these external developments and be prepared to adapt their internal control systems accordingly. The text also highlights the importance of communication and collaboration between different departments and levels of the organization to ensure that internal controls are effectively implemented and maintained.

5. The fifth and final part of the document provides a summary of the key points discussed and offers some concluding thoughts. It reiterates that maintaining accurate records and implementing effective internal controls are fundamental to the success of any organization. The text concludes by encouraging organizations to take a proactive and systematic approach to internal control design and implementation, and to regularly review and update their systems to ensure they remain effective in the face of changing circumstances.

APPENDIX A

- 324 US 164 Webre Steib Co. v. Commissioner of Internal Revenue
177 Commissioner of Internal Revenue v. Smith
182 Charleston Federal Savings & Loan Assn. v. Alderson
193 United States v. Beach
204 Young v. Higbee
244 Gemsco, Inc. v. Walling (Nos. 368-370)
282 Robinson v. United States
303 Commissioner of Internal Revenue v. Wemyss
308 Merrill v. Fahs
316 Drummond v. United States
335 Northwestern Banks of Shoshone Indians v. United States
370 Special Equipment Co. v. Coe
386 United States v. Commodore Park
401 Malinski v. New York
439 Georgia v. Pennsylvania Railroad Co.
490 Phillips v. Walling
499 United States v. Willow River Power Co.
515 Connecticut Light & Power Co. v. FPC
542 Commissioner of Internal Revenue v. Wheeler
570 Hartford-Empire Co. v. United States (Nos. 2-7)
581 Colorado Interstate Gas Co. v. FPC
652 Hooven & Allison Co. v. Evatt
695 Commissioner of Internal Revenue v. Smith
697 Brooklyn Savings Bank v. O'Neil (Nos. 445, 554 & 421)
786 Rice v. Olson

APPENDIX A

- 324 US 793 Republic Aviation Corp. v. NLRB (Nos. 226 & 452)
- 806 Precision Instrument Manufacturing Co. v. Automotive
Maintenance Machinery Co.
- 325 US 1 Cramer v. United States
- 91 Screws v. United States
- 161 Jewell Ridge Coal Corp. v. United Mine Workers Local #6167
- 196 United States Alkali Export Assn. v. United States
(Nos. 1016-17)
- 212 DeBeers Consolidated Mines v. United States (Nos. 1189-1190)
- 226 Williams v. North Carolina
- 293 Angelus Milling Co. v. Commissioner of Internal Revenue
- 335 International Union of Mine, Mill and Smelter Workers,
Local #1 v. Eagle-Pitcher Mining and Smelting Co.
- 357 United States v. Capital Transit Co.
- 385 American Power & Light Co. v. SEC (Nos. 470 & 815)
- 398 Akins v. Texas
- 410 Bowles v. Seminole Rock and Sand Co.
- 427 Walling v. Harnischfeger Corp.
- 478 Keegan v. United States (Nos. 39 & 44)
- 507 North Carolina v. United States (Nos. 560-561)
- 535 Alabama v. United States (Nos. 574 & 592)
- 538 Hill v. Florida
- 561 In re Summers
- 578 10 East 40th Street Building v. Callus
- 589 Nebraska v. Wyoming
- 673 Lincoln National Life Insurance Co. v. Read
- 679 Borden Co. v. Borella

APPENDIX A

- 325 US 687 Goldstone v. United States
- 697 Inland Empire District Council v. Millis
- 711 Elgin, Joliet & Eastern Railway Co. v. Burley
- 761 Southern Pacific Co. v. Arizona
- 797 Allen Bradley Co. v. Local #3
- 821 Hunt v. Crumboch
- 326 US 1 Associated Press v. United States (Nos. 57-59)
- 60 ICC v. Parker (Nos. 507-508)
- 99 Guaranty Trust Co. of New York v. York
- 120 Radio Station WOW, Inc. v. Johnson
- 135 Bridges v. Wixon
- 179 Barrett Line, Inc. v. United States
- 207 Asbury Hospital v. Cass County
- 249 Scott Paper Co. v. Marcalus Manufacturing Co.
- 265 Glass City Bank v. United States
- 295 Gange Lumber Co. v. Rowley
- 310 International Shoe Co. v. Washington
- 327 Ashbacker Radio Corp. v. FCC
- 425 Hercules Gasoline Co. v. Commissioner of Internal Revenue
- 465 Commissioner of Internal Revenue v. Flowers
- 480 Commissioner of Internal Revenue v. Estate of Harry Holmes
- 490 Markham v. Allen
- 501 Marsh v. Alabama
- 517 Tucker v. Texas
- 521 John Kelley Co. v. Commissioner of Internal Revenue
(Nos. 36 & 47)

APPENDIX A

- 326 US 536 **Mason v. Paradise Irrigation District**
561 **Order of Railway Conductors v. Pitney**
572 **New York v. United States**
599 **Kirby Petroleum Co. v. Commissioner of Internal Revenue**
607 **Bollenbach v. United States**
638 **United States v. New York Telephone Co.**
- 327 US 1 **In re Yamashita**
82 **Canizio v. New York**
92 **Case v. Bowles**
103 **Hulbert v. Twin Falls Co.**
114 **Estep v. United States (Nos. 292 & 66)**
178 **Mabee v. White Plains Publishing Co.**
186 **Oklahoma Press Publishing Co. v. Walling (Nos. 61 & 63)**
220 **Griffin v. Griffin**
251 **Bigelow v. RKO Radio Pictures**
274 **Ashcraft v. Tennessee**
280 **Commissioner of Internal Revenue v. Tower**
293 **Lusthaus v. Commissioner of Internal Revenue**
304 **Duncan v. Kahanamoku**
399 **Poff v. Pennsylvania Railroad Co.**
416 **Nippert v. Richmond**
437 **United States v. American Union Transport**
463 **Boutell v. Walling**
474 **Wilson v. Cook**
515 **United States v. Pierce Auto Freight Lines**

APPENDIX A

- 327 US 573 Kennecott Copper Corp. v. State Tax Commission
(Nos. 424 & 425)
- 582 American Federation of Labor v. Watson
- 614 M. Kraus & Brothers v. United States
- 633 United States v. Carbone
- 645 Lavender v. Kurn
- 655 McAllister Lighterage Line v. United States
- 661 Elgin, Joliet & Eastern Railway Co. v. Burley
- 678 Bell v. Hood
- 726 Heiser v. Woodruff
- 742 United States v. Rice
- 328 US 12 El Dorado Oil Works v. United States
- 25 Burton-Sutton Oil Co. v. Commissioner of Internal Revenue
- 50 Thomas Paper Stock Co. v. Porter
- 61 Girouard v. United States
- 85 Seas Shipping Co. v. Sieracki
- 108 Schulte v. Gangi
- 152 First Iowa Hydro-Electric Cooperative v. FPC
- 217 Thiel v. Southern Pacific Co.
- 234 United States v. Joseph A. Holpuch Co. (Nos. 696-697)
- 256 United States v. Causby
- 275 Fishgold v. Sullivan Drydock & Repair Corp.
- 293 SEC v. W.J. Howey Co.
- 373 Morgan v. Virginia
- 395 Porter v. Warner Holding Co.

APPENDIX A

328 US	440	Robertson v. California
	463	Fisher v. United States
	495	Reconstruction Finance Corp. v. Denver & Rio Grande Western Railroad Co. (Nos. 278-281)
	549	Colegrove v. Green
	582	Davis v. United States
	624	Zap v. United States
	633	Bihn v. United States
	640	Pinkerton v. United States
	654	Knauer v. United States
	680	Anderson v. Mt. Clemens Pottery Co.
	707	Hust v. Moore-McCormack Lines
	750	Kotteakos v. United States (Nos. 457-458)

APPENDIX B - ATTITUDE OBJECTS (AO) AND ATTITUDE SITUATIONS

ADMINISTRATIVE DEFERENCE

- AO - Federal regulatory commissions
- AS - Autonomy of administrative agency regulation
- AS₁ - Judicial supervision of agency decision-making

ANTITRUST

- AO - Businesses/groups restraining free competition
- AS - Federal antitrust regulation

APPEAL - STATE TO FEDERAL COURTS

- AO - Civil or criminal litigants
- AS - Federal court supervision of state court decision-making
- AS₁ - Effect of state statute and/or state court decisions on reviewing federal courts

APPEAL - SUBSTANTIVE JUDGMENT REVIEW

- AO - Civil or criminal litigants
- AS - Autonomy of state court decision-making

BANKRUPTCY

- AO - Bankrupts
- AS - Federal regulation of bankruptcy
- AS₁ - Federal Bankruptcy Act

CLAIMS (FISCAL) AGAINST FEDERAL GOVERNMENT

- AO - Person/businesses paying federal taxes
- AS - Claims against the federal government for full or partial refund of particular previously paid taxes on other than Constitutional grounds

COERCED CONFESSION

- AO - Criminal defendant
- AS - Coercive treatment by state or federal law enforcement agents

COLLABORATION

- AO - Criminal defendants
- AS - Collaboration in conspiracy to commit various criminal acts
- AS₁ - Construction of requisites for criminal conviction for conspiring to commit specific criminal act

COMMISSION REGULATION - RATE SETTING

- AO - Businesses affected with the public interest
- AS - Regulation by federal commissions regarding rates and/or standards of competition
- AS₁ - Judicial deference to commission rate policies

APPENDIX B

CONTRACTS

- AO - Persons/businesses entering into contractual agreements
- AS - Failure to comply with contract obligations

COUNSEL

- AO - Criminal defendant
- AS - Right to legal representation
- AS₁ - Incorporation through the 14th Amendment

CRIMINAL LIABILITY

- AO - Criminal defendants
- AS - Determination of criminal responsibility for particular acts

DELEGATION OF LEGISLATION POWER

- AO - Persons or Businesses
- AS - Procedural due process
- AS₁ - Delegation of legislative powers to specific administrative agencies or commissions
- AS₂ - Limits on delegated powers

DOUBLE JEOPARDY

- AO - Criminal defendant
- AS - Double jeopardy

DUE PROCESS

- AO - Legally sanctioned persons
- AS - Due process

EMINENT DOMAIN

- AO - Property owners
- AS - State condemnation of property for public use

EMERGENCY PRICE CONTROL ACT

- AO - Criminal defendant
- AS - Activity detrimental to the national interest during a declared national emergency
- AS₁ - Emergency Price Control Act

EQUAL PROTECTION

- AO - Persons discriminated against
- AS - Failure to receive equal protection of laws

EVIDENCE - SUFFICIENCY

- AO - Criminal or civil litigants
- AS - Adequacy of evidence used in securing judgment or conviction

FAIR LABOR STANDARDS ACT - CONTRACTS

- AO - Wage earners
- AS - Applicability of wage-hour provisions to employees governed by negotiated contract or paid on other than an hourly basis

APPENDIX B

FAIR LABOR STANDARDS ACT - COVERAGE

- AO - Wage earners
- AS - Occupations within the provisions of the Fair Labor Standards Act

FEDERAL EMPLOYERS LIABILITY ACT

- AO - Injured employee
- AS - Compensation obligations of employer under provisions of Federal Employers Liability Act

FEDERAL-STATE RELATIONS - COMMERCE

- AO - Businesses
- AS - State regulation of foreign (out-of-state) businesses

FEDERAL-STATE RELATIONS - OVERLAPPING POLICY CONFLICTS

- AO - Businesses
- AS - State regulation of businesses in areas also proscribed by federal statutory regulation

FEDERAL-STATE RELATIONS - NATIONAL SUPREMACY

- AO - Businesses
- AS - State and federal regulation of business representing substantially incompatible policies

FEDERAL-STATE RELATIONS - TAXATION CONFLICTS

- AO - Businesses
- AS - State taxation of businesses conflicting with federal taxation provisions

FEDERAL TAXATION - PROVISION CONSTRUCTION

- AO - Persons subject to federal taxation
- AS - Construction of tax statutes defining federal tax liability

FEDERAL TAXATION - EXEMPTIONS

- AO - Persons or businesses subject to federal income taxation
- AS - Exemption claims on personal and corporate income

FEDERAL TAXATION - LIABILITY

- AO - Persons financially sanctioned by the federal government
- AS - Fiscal claims of the federal government

FEDERAL TAXATION - SUCCESSION & ESTATE TAXES

- AO - Persons financially sanctioned by the federal government
- AS - Taxation of estates and inheritances

FISCAL LIABILITY

- AO - Persons or businesses
- AS - Financial responsibility for property damages and/or damages for failure to fulfill general obligations



APPENDIX B

FULL FAITH & CREDIT

- AO - Persons or businesses
- AS - Recognition of legal judgments rendered in jurisdiction of another state

INDIAN PROPERTY

- AO - Indians
- AS - Claims upon Indian properties and assets

INDIAN TREATIES

- AO - Indians
- AS - Substantive review of violations of Indian treaties
- AS₁ - Indian claims for appropriate retribution

INTERSTATE COMMERCE COMMISSION - PUBLIC NECESSITY & CONVENIENCE

- AO - Common carriers
- AS - Applications to the Interstate Commerce Commission for certification of public necessity and convenience
- AS₁ - Autonomy of Interstate Commerce Commission judgments

JUDICIAL INTERVENTION (COMITY)

- AO - State regulation
- AS - Exercise of federal court jurisdiction prior to completion of state court proceedings

JUDICIAL REVIEW OF REGULATORY COMMISSIONS

- AO - Federal regulatory commissions
- AS - Review of powers and the exercise thereof of federal regulatory commissions by the federal judiciary
- AS₁ - Judicial supervision of agency decision-making

JURY TRIAL

- AO - Criminal defendant or civil litigant
- AS - Right to jury judgment

MILITARY-CIVIL

- AO - Criminal defendant
- AS - Military court proceedings
- AS₁ - Civil court review of military court proceedings

NATURALIZATION-DENATURALIZATION

- AO - Aliens, foreigners, or immigrants
- AS - Conduct prohibiting acquisition of national citizenship or the loss of naturalized citizenship



APPENDIX B

NATIONAL LABOR RELATIONS ACT

- AO - Wage earners
- AS - Rights of labor unions and labor union members under federal legislation
- AS₁ - National Labor Relations Act

PATENTS & COPYRIGHTS

- AO - Persons or businesses
- AS - Right to fiscal and all other benefits deriving from one's creative efforts

PERSONAL INJURY LIABILITY

- AO - Injured person
- AS - Responsibility for injury to individual - fiscal

RADIO REGULATION

- AO - Radio station licensees and national radio networks
- AS - Regulation or attempts to regulate the operation of radio networks and/or local licensees by the federal government
- AS₁ - Freedom of the press
- AS₂ - Freedom of speech

RAILWAY LABOR ACT

- AO - Railroad workers and railroad workers' unions
- AS - Certification of bargaining agents and collective bargaining agreements entered into under provisions of the Railway Labor Act

RELIGION

- AO - Persons attempting to exercise freedom of religion
- AS - Restriction(s) of religious freedoms and the exercise thereof

SEARCH & SEIZURE

- AO - Criminal defendants
- AS - Standards of operation for law enforcement agents in the securing of evidence

SELECTIVE SERVICE

- AO - Persons subject to conscription
- AS - Refusal and/or failure to conform to requirements of Selective Training and Service Act

FREEDOM OF SPEECH & PRESS

- AO - Freedom of speech and press
- AS - Deprivation or inhibition of the right to freedom of speech and/or press



APPENDIX B

STATE COMMISSION REGULATION

AO - Businesses

AS - Regulation of businesses by state regulatory commissions or
similarly authorized agencies of state government

STATE TAXATION - COMMERCE

AO - Businesses

AS - State taxation of business and articles in interstate commerce

STATUTORY CONSTRUCTION - CRIMINAL

AO - Criminal defendant

AS - Criminal acts which have been proscribed by legislation

STATUTORY CONSTRUCTION - REMEDIES

AO - Persons or businesses

AS - Acts and/or circumstances covered by legislation

SUPREME COURT JURISDICTION

AO - Persons or businesses

AS - Authority for judicial action by U.S. Supreme Court

TRIAL - PREJUDICIAL ERRORS

AO - Criminal defendant

AS - Prejudicial remarks, atmosphere or jury instruction during
conduct of judicial proceeding

UNIONS - BARGAINING AGENTS

AO - Labor unions

AS - Certification and/or recognition of bargaining representative
or a given labor union

UNIONS - CLOSED SHOP

AO - Labor unions

AS - Compulsory union membership

UNIONS - SOLICITATION

AO - Labor unions

AS - Inhibition of union membership recruitment

AS₁ - Freedom of speech

UTILITY REGULATION

AO - Public utilities

AS - Federal regulation of public utilities

WAR POWERS

AO - Agencies of the federal government

AS - Emergency operational authority of governmental agencies during
the national wartime emergency

APPENDIX C - GUTTMAN SCALOGRAMS

The following pages contain the Guttman scales of the sixty variables. The various notations found among these pages are briefly detailed below.

- A. Each case is listed by U.S. Reports citation. Thus, the first case in the Administrative Deference is Republic Aviation Corp. v. NLRB. Its U.S. Reports citation is 324 US 793. The scale short-hands this citation as 24/793.
- B. A number which appear following a colon or found in parentheses is the case (docket) number. This number(s) appears where more than a single case is decided in a particular opinion. Using, again, the Republic Aviation case, the docket number of the case is 226. In addition to responding to the appeal of Republic Aviation, the Court also decided NLRB v. Le Tourneau Company of Georgia because of fact-situation similarities. The Le Tourneau docket number is 452 though both have the same U.S. Reports citation, 324 US 793.
- C. Each citation followed by the title of a category-set such as the NLRB notation following the Republic Aviation and Le Tourneau cases means that this case is a duplicate; that it is also located in another set. In the example above, these cases also appear in the NLRB scale.
- D. The notation (ex) following a particular citation number indicates that the case has been expanded from the opinion itself. The procedure followed in "creating" an expansion is described in Chapter 2.

ADMINISTRATIVE AGENCY DEFERENCE

Cases	Blk	Dou	Mur	Rut	Jac	Ree	Sto	Frk	Rob	Bur	Byr	Totals
24/793:226 - NLRB	+	+	+	+	+	+	+	+	-	-	-	8-1
24/793:452 - NLRB	+	+	+	+	+	+	+	+	-	-	-	8-1
18/675 - Jud Rev:Comms	+	+	+	N	+	+	+	+	-	-	-	7-1
23/612(47-48) - Conn Reg-Rates	+	+	+	+	+	+	+	+	-	-	-	8-1
26/327 - Sup Ct Juris	N	+	+	-*	N	+	+	+	-	+	-	5-2
19/61:299 - Utility Reg	+	+	+	+	+	+	-	-	-	-	-	6-3
19/61:329 - Utility Reg	+	+	+	+	+	+	-	-	-	-	-	6-3
24/581(379-380) - Conn Reg-Rates	+	+	+	+	+	-	-	-	-	-	-	5-4
24/626 - Conn Reg-Rates	+	+	+	+	+	-	-	-	-	-	-	5-4
18/9 - NLRB	+	+	+	+	-	-	-	-	-	-	-	3-5
19/671 - Conn Reg-Rates	+	+	+	N	-	-	-	-	-	-	-	3-5
21/67 - Conn Reg-Rates	+	+	+	-	-	-	-	-	-	-	-	3-6
14/314 - Bankruptcy	+	+	-	-	-	-	-	-	-	-	-	2-7
28/275	+	-	-	-	-	-	-	-	-	-	-	1-8

CR = .988
MMR = .800
CR-MMR = .188
CS = .968

70-56	15-0	1.000
	15-1	.938
	14-2	.875
	9-4	.654
	10-5	.688
	8-8	.500
	6-10	.375
	5-11	.312
	0-15	.000
	1-0	
	0-0	

Totals

Scale Scores

AO - Federal Regulatory Commissions
AS - Autonomy of administrative agency regulation
AS1 - Judicial supervision of agency decision-making

ANTITRUST

Cases	Mur	Blk	Dou	Rut	Ree	Rob	Sto	Jac	Frk	Bur	Byr	Totals
27/251	+	+	+	+	+			N	-		+	7-1
17/424	+	+	-*	+	+			+	-			6-2
22/533	+	+	+	N	N			-	-			4-3
25/821	+	+	+	+	+			-	-			6-3
24/439	+	+	+	+	+			-	-			5-4
25/212(1189-1190)	+	+	+	+	-			-	-			4-5
17/200(81-82)	+	+	+	+	-			-	-			3-4
22/137	+	+	+	+	-			N	-			3-5
21/67 - Comm Reg:Rates	+	+	+	+	-			-	-			3-6
21/67 (ex)	+	-	-	-	-			-	-			1-8
25/797	+	-	-	-	-			-	-			1-8

214

50-58

50-58	13-0	1.000
	11-2	.846
	10-3	.769
	6-4	.692
	4-8	.385
	2-9	.308
	2-10	.154
	1-9	.069
	0-13	.000
	1-0	
	0-0	

Totals

CR = .986
MMR = .844
CR-MMR = .142
CS = .944

Sclae Scores

AO - Businesses/groups restraining free competition
AS - Federal antitrust regulation

APPEAL - STATE TO FEDERAL COURTS

Cases	Blk	Jac	Byr	Dou	Rut	Mur	Res	Frk	Ste	Rob	Bur	Totals
23/471 - Counsel	+			+	+	+	+	-*	+	-		7-2
19/348 (ex)	+	+	+	+	+	+	+	+	-	-		7-2
19/315(495-496) - Due Process	+	+	+	+	+	+	+	+	-	-		7-2
23/516 - Unions:Solicitation	+	+	+	+	+	+	+	-	-	-		5-4
19/348 - Dur Process	+	+	+	+	+	+	+	-	-	-		5-4
19/315 (ex)	+	+	+	+	+	+	+	-	-	-		5-4
19/315 (ex)	+	+	+	+	+	+	+	-	-	-		5-4
14/33 - Due Process	+	+		+	-	-	-	-	-	-		4-5
20/228	+	+		-	-	-	-	-	-	-		2-7
23/365	+	-		-	-	-	-	-	-	-		1-8

Totals												55-44
Scale Scores												CS = .989
												MMR = .854
												CR-MMR = .135
												CS = .938

AO - Civil or criminal litigants
AS - Federal court supervision of state court decision-making
AS1 - Effect of state statute and/or state court decisions on reviewing federal courts

APPEAL - SUBSTANTIVE JUDGMENT REVIEW

Cases	Dou	Blk	Rut	Mur	Sto	Ree	Frk	Jac	Rob	Byr	Bur	Totals
21/649 - Equal Protection	+	+	+	+	+	+	+	+	-	-	-	8-1
24/182 - Fed-St(Tax)	+	+	+	+	+	+	+	+	-	-	-	8-1
18/675 - Jud Rev-Comms	+	+	N	+	+	+	+	+	-	-	-	7-1
22/340 - State Tax	+	+	+	+	+	+	+	-	N	-	-	7-1
26/120 - Jud Rev-Comms	+	N	+	+	+	+	+	+	-	-	-	6-2
22/335 - State Tax	+	+	+	+	+	+	+	+	-	-	-	7-2
21/253 - Fed-St(Pol)	+	+	+	+	+	+	+	+	-	-	-	6-3
15/2-3 - Sup Ct. Juris	+	+	+	+	+	+	+	+	-	-	+	4-3
24/117:24 - FEIA	+	+	+	+	-	-	-	N	-	-	-	4-5
24/117:25 - FEIA	+	+	+	+	-	-	-	-	-	-	-	4-5
17/154:48 - Fed-St(Tax)	+	+	+	+	-	-	-	-	-	-	-	4-5
17/154:49 - Fed-St(Tax)	+	+	+	+	+	+	+	+	-	-	-	3-5
14/314 - Bankruptcy	+	+	+	+	+	+	+	+	-	-	-	3-5
	+	+	+	+	+	+	+	+	-	-	-	2-7
Totals	69	41										69-41

CR = .974
MMR = .783
CR-MMR = .191
CS = .909

Scale Scores

AO - Civil and criminal litigants
AS - Autonomy of state court decision-making

BANKRUPTCY

Cases	Blk	Dou	Mur	Rut	Roe	Frk	Sto	Jac	Rob	Bur	Byr	Totals
18/523(11-19)	+	+	+	N	+	+	+	N	-	-	-	6-1
18/523:32	+	+	+	N	+	+	+	N	-	-	-	6-1
18/434	+	+	+	N	+	+	+	+	-	-	-	7-1
22/408	+	+	+	+	+	+	+	+	-	-	-	8-1
24/204	+	+	+	+	+	+	+	+	-	-	-	6-3
17/447	+	+	+	+	-	-	-	-	-	-	-	3-5
17/135	+	+	+	+	-	-	-	-	-	-	-	3-5
27/726	+	+	+	-	-	-	-	N	-	-	-	2-6
14/314	+	+	+	-	-	-	-	-	-	-	-	2-7
23/365	+	-	-	-	-	-	-	-	-	-	-	1-8
19/415	+	-	-	-	-	-	-	-	-	-	-	1-8
												93-54
												0-1
												0-1
												0-18
												2-6
												12-7
												13-6
												13-6
												2-3
												15-4
												17-2
												19-0
												93-54

Totals

Scale Scores

CR = 1.000
MMR = .820
CR-MMR = .180
CS = 1.000

.000
.632
.632
.684
.684
.737
.789
.895
1.000

AO - Bankrupts
AS - Federal Regulations of bankruptcy
AS1 - Federal Bankruptcy Act

CLAIMS AGAINST FEDERAL GOVERNMENT

Cases	Blk	Rut	Frk	Byr	Mur	Jac	Sto	Ree	Rob	Dou	Bur	Totals
25/293	+	+	+	+	+	+	+	+	+	-	-	8-1
25/687	+	+	+	+	+	+	+	+	-	-	-	7-2
24/308	+	+	+	+	+	-	-	-	-	-	-	5-4
14/423	+	+	+	+	-	+	-	-	-	-	-	5-4
24/49:31	+	+	+	-	N	-	-	-	-	-	-	3-5
24/49:32	+	+	+	-	N	-	-	-	-	-	-	3-5
24/164	+	+	+	-	-	-	-	-	-	-	-	2-7
23/106 - Contracts	+	+	+	-	-	-	-	-	-	-	-	1-8

34-36

Totals
34-36

8-0
6-1
6-2
4-4
3-3
3-5
2-6
1-7
0-8
0-0

CR = .981
MMR = .787
CR-MMR = .194
CS = .938

Scale Scores

1.000
.875
.750
.500
.375
.375
.375
.250
.125
.000

AO - Persons/businesses paying federal taxes
AS - Claims against the federal government for full or partial refund or particular previously paid taxes on other than Constitutional grounds

COERCED CONFESSION

Cases	Blk	Dou	Frk	Mur	Rut	Ree	Sto	Jac	Rob	Bur	Byr	Totals
22/143	+	+	+	+	+	+	-	-	-	-	-	6-3
24/401	+	+	+	+	-	-	-	-	-	-	-	5-4
24/401 (ex)	+	+	+	-	-	-	-	-	-	-	-	4-5
27/437	+	+	+	-	-	-	N	-	-	-	-	3-5
14/219	+	+	-	-	-	-	-	-	-	-	-	2-7
												<hr/>
												20-24

Totals	Scale Scores
20-24	
5-0	1.000
5-0	1.000
3-2	.600
3-2	.600
2-2	.400
1-4	.200
1-4	.200
0-4	.000
0-4	.000
0-4	.000
0-1	
0-1	

CR = .977
MMR = .830
CR-MMR = .147
CS = .875

AO - Criminal defendant
AS - Coercive treatment by state or federal law enforcement authorities

COLLABORATION

Cases	Blk	Dou	Ree	Jac	Mur	Rut	Byr	Rob	Bar	Sto	Frk	Totals	
28/640 (ex)	+	+	+	N	+	+			+			7-1	
28/640 - Double Jeopardy	+	+	+	N	+	-*			+			6-2	
15/60(30-32) - Jury Trial	+	+	+	N	+		+					6-2	
26/135 - Speech & Press	+	+	+	N	+	+						5-3	
20/118 - Nat/Denat	+	+	+	+	+	+						6-3	
23/338 - Selective Service	+	+	+	+	-	-						4-5	
22/385:716 - Selective Service	+	+	+	-	-	-						3-6	
22/385:717 - Selective Service	+	+	+	-	-	-						3-6	
	<hr/>												
	53-31	10-0	10-0	10-0	2-2	7-3	3-4	3-0	3-5	2-0	3-7	0-10	53-31
		1.000	1.000	1.000	.800	.700	.600	.750	.500		.200	.000	
		<hr/>											
		Scale Scores											

Totals

CR = .974
 MMR = .827
 CR-MMR = .147
 CS = .857

AO - Criminal defendant
 AS - Collaboration in conspiracy to commit various criminal acts
 AS1 - Construction of requisites of criminal conviction for conspiracy to commit specific criminal act

COMMISSION REGULATION - RATES

Cases	Dou	Mur	Blk	Rut	Jac	Frk	Sto	Ree	Rob	Byr	Bur	Totals
-------	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	--------

23/612(47-48)	+	+	+	+	+	+	+	+	-	-	-	8-1
22/31	+	+	+	+	+	+	+	+	-	-	-	8-1
14/534	+	+	+	+	+	+	+	+	-	-	+	8-1
25/357	-*	+	+	+	+	+	+	-	-	-	-	6-3
21/194	+	+	+	+	+	-	-	-	++	-	-	6-3
24/581(379-380)	+	+	+	+	+	-	-	-	-	-	-	5-4
24/626	+	+	+	+	+	-	-	-	-	-	-	5-4
25/535:574	+	+	+	+	+	-	-	-	-	-	-	5-4
25/535:592	+	+	+	+	+	-	-	-	-	-	-	5-4
25/507(560-561)	+	+	+	+	+	-	-	-	-	-	-	5-4
22/503	+	+	N	+	-	-	-	-	-	-	-	4-5
19/671	+	+	N	+	-	-	-	-	-	-	-	3-5
21/67	+	+	+	+	-	-	-	-	-	-	-	3-5
16/216	+	+	+	-	-	-	-	-	-	-	-	3-6
28/12	+	-	-	-	-	-	+	+	-	-	-	3-6
	+	-	-	-	N	-	-	-	-	-	-	1-7

Totals	91-68									91-68													
Scale Scores		17-1	.944	17-1	.944	15-2	.889	13-2	.833	12-5	.667	5-13	.278	6-12	.333	4-14	.222	1-16	.059	1-1		0-1	

CR = .974
 MMR = .8114
 CR-MMR = .160
 CS = .893

AO - Businesses affected with the public interest
 AS - Regulation by federal commissions regarding rates and/or standards of competition
 AS1 - Judicial supervision of commission rate policies

CONTRACTS

Cases	Blk	Dou	Mur	Rut	Byr	Sto	Jac	Ree	Frk	Rob	Bur	Totals
22/408 - Bankruptcy	+	+	+	+	+	+	+	+	+	-	-	8-1
15/289:8	+	+	+	+	+	N	N	-	-	N	N	5-1
15/289:9	+	+	+	+	+	N	N	-	-	N	N	5-1
21/730 - Fiscal Liability	+	+	+	+	+	+	+	-	-	-	-	7-2
19/448 - Fed/State(Policy)	+	+	+	+	+	-	-	-	-	-	-	5-4
15/610	+	+	+	+	+	-	-	-	-	-	-	4-5
15/386:112 - FLSA/Contracts	+	+	+	+	-	-	-	-	-	N	N	3-5
15/386:1023 - FLSA/Contracts	+	+	+	+	-	-	-	-	-	N	N	3-5
26/207 - Jury Trial	+	-	-	-	-	-	-	-	-	-	-	1-7
23/106 - Claims	+	-	-	-	-	-	-	-	-	-	-	1-7
	<hr/>											
Totals	42-38	10-0	8-2	8-2	3-2	3-2	3-2	4-6	1-9	0-4	0-1	42-38
Scale Scores		1.000	.800	.800	.650	.600	.500	.400	.100	.000		

CR = 1.000
MMR = .785
CR-MMR = .215
CS = 1.000

AO - Persons/businesses entering into contractual agreements
AS - Failure to comply with contract obligations



COUNSEL

Cases	Mur	Rut	Blk	Dou	Ree	Sto	Jac	Frk	Rob	Byr	Totals
24/42	+	+	+	+	+	+	+	-	-	-	8-1
23/471	+	+	+	+	+	+	+	-	-	-	7-2
23/485	+	+	+	+	+	+	+	-	-	-	7-2
24/786	+	+	+	+	+	-	-	-	-	-	6-3
16/455	+	+	+	+	-	-	-	-	-	-	3-6
27/82	+	+	-	-	-	N	N	-	-	-	2-6
27/82 (ex)	+	-	-	-	-	N	N	-	-	-	1-7
	<hr/>										34-27
											CR = 1.000
											MNR = .805
											CR-MNR = .195
											CS = 1.000

Totals	Scale Scores
34-27	
7-0	1.000
5-1	.857
5-2	.714
5-2	.714
4-3	.571
4-3	.571
3-2	.429
1-6	.143
0-5	.000
0-2	
0-1	

AO - Criminal defendant
AS - Right to legal representation
AS1 - Incorporation by the 14th Amendment

CRIMINAL LIABILITY

Cases	Mur	Rut	Rob	Frk	Jac	Sto	Bur	Blk	Dou	Ree	Byr	Totals
18/350	+	N	+	+	N	+	+	+	+	-	-	6-1
28/750(457-458)	+	+	+	+	N	+	+	+	-	-	-	6-2
28/750 (ex)	+	+	+	+	N	+	+	-	-	-	-	5-3
28/750 (ex)	+	+	+	+	N	+	+	-	-	-	-	5-3
27/614	+	+	+	+	N	+	-	-	++	-	-	5-3
22/369	+	+	+	+	+	-	-	-	-	-	-	5-4
25/91 (ex)	+	+	+	+	+	-	-	-	-	-	-	5-4
25/91	+	+	+	+	+	-	-	-	-	-	-	5-4
17/412:183	N	+	+	+	+	-	-	-	-	-	-	3-4
17/412(186-187)	N	+	+	+	+	-	-	-	-	-	-	3-4
17/412 (ex)	N	+	+	+	-	-	-	-	-	-	-	2-5
17/412 (ex)	N	+	+	+	-	-	-	-	-	-	-	2-5
17/412 (ex)	N	+	+	+	-	-	-	-	-	-	-	2-5
20/277	+	+	+	+	-	-	-	-	-	+	+	4-5
20/531	+	+	-	-	-	-	-	-	+	-	-	3-6
21/414(374-375)	+	+	-	-	-	-	-	-	-	-	-	2-7
24/193 - Due Process	+	-	-	-	-	-	-	-	-	-	-	1-8
	14-0	11-2	11-4	15-5	6-8	6-14	4-1	3-17	3-17	1-19	0-0	74-87
	1.000	.846	.800	.750	.600	.300	.250	.150	.150	.050		

Totals
74-87

CR = .972
MMR = .805
CR-MMR = .167
CS = .871

Scale Scores

AO - Criminal defendants
AS - Determination of criminal responsibility for particular acts

LEGISLATIVE POWER DELEGATION

Cases	Mur	Rut	Byr	Dou	Blk	Jac	Ree	Frk	Sto	Rob	Bur	Totals
22/398 - EPCA	+	+		+	+	+	+	+	+	-	-	8-1
21/503 - EPCA	+	+		+	+	+	+	+	+	-	-	8-1
17/501	-*			+	+	+	+	+	+	-	-	6-2
19/315 (ex)	+	+		+	+	+	+	+	+	-	-	7-2
19/315 (ex)	+	+		+	+	+	+	+	+	-	-	7-2
19/348 (ex)	+	+		+	+	+	+	+	+	-	-	7-2
19/315:495 - Due Process	+	+		+	+	+	+	+	+	-	-	5-4
19/315:496 - Due Process	+	+		+	+	+	+	+	+	-	-	5-4
19/348 - Due Process	+	+		+	+	+	+	+	+	-	-	5-4
15/357 - Due Process	-*			+	+	+	+	+	+	-	-	4-5
21/414:374 - Criminal Liability	+	+		-	-	-	-	-	-	-	-	2-7
21/414:375 - Criminal Liability	+	+		-	-	-	-	-	-	-	-	2-7
Totals	10-2	10-0	1-0	10-2	10-2	10-2	6-6	6-6	3-9	0-12	0-0	66-41

Scale Scores

CR = .978
 MMR = .807
 CR-MMR = .171
 CS = .913

- AO - Persons or businesses
- AS - Procedural due process
- AS1 - Delegation of legislative powers to specific administrative agencies or commissions
- AS2 - Limits on delegated powers

DOUBLE JEOPARDY

Cases	Dou	Blk	Ree	Bur	Mur	Sto	Rob	Rut	Frk	Jac	Byr	Totals
18/50	+	+	+	+	+	+	+	+	+			7-1
17/537	+	+	+		N	+	+	+				6-1
17/537 (ex)	+	+	+		N	+						6-2
28/640	+	+	+	+	+						N	6-2
22/385:716	+	+	+									3-6
22/385:717	+	+	+									3-6
22/385 (ex)	+	+										2-7
22/385 (ex)	+	+										2-7
	<hr/>											
												35-32

Totals	Scale Scores
35-32	
8-0	1.000
8-0	1.000
6-2	.750
1-0	.750
2-4	.500
3-5	.375
3-4	.438
1-5	.375
2-6	.250
1-6	.125
0-0	

A0 - Criminal defendant
AS - Double jeopardy

CR = 1.000
MMR = .794
CR-MMR = .206
CS = .933

DUE PROCESS

Totals

Blk Dou Bur Byr Jac Mur Rut Frk Ree Sto Rob

Cases

25/697	+	+	+	+	+	+	+	+	+	+	+	+	-
19/484	+	+	+	+	+	+	+	+	+	+	+	+	-
23/624	+	N	+	+	+	+	+	+	+	+	+	+	-
15/752	+	+	+	+	+	+	+	+	+	+	+	+	-
14/118(16 & 19)	+	N	+	+	+	+	+	+	+	+	+	+	-
26/264	+	+	+	+	+	+	+	+	+	+	+	+	+
19/348	+	+	+	+	+	+	+	+	+	+	+	+	+
19/315(495-496)	+	+	+	+	+	+	+	+	+	+	+	+	-
18/442	+	+	+	+	+	+	+	+	+	+	+	+	-
15/357	+	+	+	+	+	+	+	+	+	+	+	+	-
14/33	+	+	+	+	+	+	+	+	+	+	+	+	-
16/258	+	+	+	+	+	+	+	+	+	+	+	+	-
26/295	+	+	+	+	+	+	+	+	+	+	+	+	-
14/219 - Coerced Confession	+	+	+	+	+	+	+	+	+	+	+	+	-
24/193	+	+	+	+	+	+	+	+	+	+	+	+	-
19/561	+	+	+	+	+	+	+	+	+	+	+	+	-
Totals	18-0	13-2	1-0	6-1	13-3	12-6	7-3	6-12	3-15	1-17	1-15	1-8	

Totals

81-74

CR = .985
MMR = .845
CR-MMR = .140
CS = .923

Scale Scores

AO - Legally sanctioned persons
AS - Due process

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent data collection procedures and the use of advanced analytical techniques to derive meaningful insights from the data.

3. The third part of the document focuses on the role of technology in data management and analysis. It discusses how modern software solutions can streamline data collection, storage, and processing, thereby improving efficiency and accuracy.

4. The fourth part of the document addresses the challenges associated with data management, such as data quality, security, and privacy. It provides strategies to mitigate these risks and ensure that the data remains reliable and secure throughout its lifecycle.

5. The fifth part of the document concludes by summarizing the key findings and recommendations. It stresses the importance of ongoing monitoring and evaluation to ensure that the data management processes remain effective and aligned with the organization's goals.

EMINENT DOMAIN

Cases	Dou	Mur	Blk	Rut	Ree	Frk	Jac	Sto	Bur	Rob	Byr	Totals
24/386	+	+	+	+	+	+	+	+	-	-	-	8-1
28/256	+	+	+	+	+	N	+	+	-	-	-	6-2
24/499	+	+	+	+	+	+	-	-	-	-	-	7-2
19/266	+	+	+	+	-	-	-	-	-	-	-	5-4
19/266 (ex)	+	+	+	-	-	-	-	-	-	-	-	4-5
23/373	+	N	+	-	-	N	-	N	-	-	-	2-4
19/521	+	+	-	-	-	-	-	-	-	-	-	2-7
												<hr/>
												34-25

Totals	Scale Scores
34-25	
7-0	1.000
6-0	1.000
5-2	.714
5-2	.714
4-3	.571
3-3	.429
2-4	.429
2-4	.286
0-1	.071
0-6	.000
0-0	

CR = .980
MMR = .783
CR-MMR = .197
CS = .929

AO - Property owners
AS - State condemnation of property for public use

EMERGENCY PRICE CONTROL ACT

Cases	Dou	Blk	Mur	Bur	Sto	Jac	Rut	Roe	Frk	Rob	Byr	Totals
22/398	+	+	+	+	+	+	+	+	+	-	-	8-1
25/410	+	+	+	+	+	+	+	+	+	-	-	8-1
21/503	+	+	+	+	+	+	+	+	+	-	-	8-1
21/321	+	+	+	+	+	+	+	+	+	-	-	7-2
21/321 (ex)	+	+	+	+	+	+	+	+	+	-	-	6-3
28/395	+	+	+	+	+	+	+	+	+	-	-	5-3
21/144	+	+	+	+	+	+	+	+	+	-	-	3-6
28/50:67	+	+	+	+	+	+	+	+	+	-	-	3-5
28/50:578	+	+	+	+	+	+	+	+	+	-	-	3-5
27/103	+	+	+	+	+	+	+	+	+	-	-	1-7
27/92	+	+	+	+	+	+	+	+	+	-	-	1-7
	<hr/>											
	53-41											

CR = 1.000
 MMR = .774
 CR-MMR = .226
 CS = 1.000

Totals	Scale Scores
11-0	1.000
9-2	.818
9-2	.818
1-4	.591
6-5	.545
5-1	.500
5-6	.455
4-7	.364
3-8	.275
0-6	.000
0-0	

AS - Criminal defendant
 AS - Activity detrimental to the national interest during a declared national emergency
 AS1 - Emergency Price Control Act

EQUAL PROTECTION

Cases	Dou	Blk	Mur	Rut	Bur	Sto	Eyr	Roe	Frk	Jac	Rob	Totals	
21/649	+	+	+	+	+	+		+	+	+	-	8-1	
24/154 (ex)	+	+	+	+	+	+		+	+	+	-	8-1	
22/435:620	+	+	+	+	+	+		+	+	-	N	7-1	
22/435:621	+	+	+	+	+	+		+	+	-	N	7-1	
24/154 - Full Faith & Credit	+	+	+	+	+	+		+	+	-	-	7-2	
16/174	+	+	+	+	+	+	+	+	+	-	-	7-2	
16/174 (ex)	+	+	+	+	+	+	+	+	-	-	-	6-3	
28/217	+	+	+	+	+	+		-	-	N	-	6-2	
24/117:24 - FEIA	+	+	+	+	+	+		-	-	-	-	4-5	
24/117:25 - FEIA	+	+	+	+	+	+		-	-	-	-	4-5	
28/549	+	+	+	+	+	+		-	-	N	-	3-5	
21/36:52	+	+	+	+	+	+		-	-	-	-	2-7	
21/36:227	+	+	+	+	+	+		-	-	-	-	2-7	
28/440 - State Comm Reg	+	-	-	-	-	-		-	-	N	-	1-7	
	<hr/>												
Totals	72	-	49										72-49
Scale Scores	14-0	13-1	11-3	8-4	1-2	8-6	2-0	7-7	6-6	2-9	0-9	.000	
		.929	.786	.714	.643	.571		.500	.429	.143			
	1.000												

CR = 1.000
 MMR = .775
 CR-MMR .225
 CS = 1.000

A0 - Persons discriminated against
 AS - Failure to receive equal protection of laws

EVIDENCE - SUFFICIENCY

Cases	Blk	Rut	Dou	Jac	Rob	Frk	Mur	Ree	Byr	Bur	Sto	Totals
15/521:131	+		+	N	N	+	+	+	+		-	6-1
15/521:132	+		+	N	N	+	+	+	+		-	6-1
27/678	+		+	N		+	+	+		-	-	6-2
22/4	+		+	+	+	+	+	-			-	7-2
21/620	+		+	+	+	+	+	-			-	7-2
20/520	+		+	+	+	+	+	**			-	7-2
23/88	+		+	+	+	-	-	-			-	4-5
22/596	+		+	+	+	-	+	-			-	3-6
26/607 - Jury Trial	+		-	N		-	-	-			-	1-7
												<hr/>
												47-28
												Totals
												47-28
												Scale Scores
												9-0
												6-1
												7-2
												4-1
												3-2
												6-3
												6-3
												4-5
												2-0
												0-2
												0-9
												.000

CR = .962
MMR = .810
CR-MMR = .152
CS = .875

AO - Criminal or civil litigants
AS - Adequacy of evidence used in securing judgment or conviction

FAIR LABOR STANDARDS ACT - LABOR CONTRACTS

Cases	Blk	Mur	Dou	Rut	Ree	Frk	Jac	Sto	Rob	Byr	Bur	Totals
24/490	+	+	+	+	+	+	+	+	-			8-1
25/427	+	+	+	+	+	+	+	-	-			7-2
25/679	+	+	+	+	+	+	+	-	-			7-2
21/590(1-3)	+	+	+	+	+	+	+	-	-			7-2
24/244(368-370)	+	+	+	+	+	+	+	-	-			7-2
25/161	+	+	+	+	+	-	-	-	-			5-4
25/578	+	+	+	+	+	-	-	-	-			4-5
16/624	+	+	+	+	+	-	-	-	-	-		4-5
22/607	+	+	+	+	-	-	-	-	-	-		4-5
15/386:112	+	+	+	+	-	-	-	-	N	-		3-5
15/386:1023	+	+	+	+	-	-	-	-	N	-		3-5
	15-0	15-0	14-1	12-0	12-3	9-6	9-6	1-14	0-13	0-3	0-0	77-46
Totals												
	1.000	1.000	.933	.800	.600	.600	.067	.000				
Scale Scores												

CR = .992
MMR = .881
CR-MMR = .111
CS = .941

AO - Wage earners
AS - Applicability of wage-hour provisions to employees governed by negotiated contract
or paid on other than an hourly basis

FAIR LABOR STANDARDS ACT - DEFINITION OF COVERAGE

Cases	Dou	Rut	Mur	Blk	Ree	Sto	Jac	Frk	Rob	Byr	Bur	Totals
16/517:910	+		+	+	+	+	+	+	-	+		8-1
16/517:924	+		+	+	+	+	+	+	-	+		8-1
16/572	+		+	+	+	+	+	+	-	+		8-1
23/360	+		+	+	+	+	+	+	-	+		8-1
17/88	+		+	+	+	+	+	+	-	+		8-1
24/697:445	+		+	+	+	+	+	+	-	+		7-2
24/697:554	+		+	+	+	+	+	+	-	+		7-2
24/697:421	+		+	+	+	+	+	+	-	+		7-2
28/108	+		+	+	+	+	N	+	-	+		6-2
28/680	+		+	+	+	+	N	+	-	+		6-2
23/490	+		+	+	+	+	-	+	-	+		4-5
19/491	+		+	+	+	+	-	+	-	+		4-5
27/463	+		+	+	+	+	N	+	+	+		3-5
	13-0	9-0	12-1	12-1	10-3	10-3	8-2	6-7	0-10	4-0	0-3	97-32
	1.000	1.000	.923	.923	.769	.769	.692	.462	.000			

	97-32											
Totals												
Scale Scores												

CR = .986
 MMR = .884
 CR-MMR = .102
 CS = .938

AO - Wage earners
 AS - Occupations within the provisions of the Fair Labor Standards Act

FEDERAL EMPLOYERS' LIABILITY ACT

Cases	Blk	Mnr	Dou	Rut	Ree	Jac	Byr	Fyk	Sto	Bar	Rob	Totals
27/645	+			+	-*	N		+	+	+		7-1
27/399	+	+	+	+	+	N		+	+	-		6-2
21/29	+	+	+	+	+			+			-	7-2
23/600	+	+	+	+	+			+			-	7-2
23/574	+	+	+	+	+			+			-	7-2
19/715	+	+	+	+	+			+			-	7-2
14/44	+	+	+	+	-*			+			-	6-3
19/350	+	+	+	+	+			+			-	6-3
15/698	+	+	+	+	+			+			-	6-3
15/283	+	+	+	+	+			+			-	5-4
24/117(24-25)	+	+	+	+	+			+			-	4-5
20/476	+	+	+	+	+			+			-	4-5
24/117 (ex)	+	+	+	+	+			+			-	4-5
24/117 (ex)	+	+	+	+	+			+			-	3-6
	+	+	+	+	+			+			-	3-6
	15-0	15-0	15-0	10-2	8-7	7-6	1-2	5-10	2-13	1-1	0-13	79-54
	1.000	1.000	1.000	.867	.533	.600	.500	.333	.133	.067	.000	CR = .984
												MFR = .783
												CR-MFR = .201
												CS = .917

Totals

Scale Scores

AO - Injured employee

AS - Compensation obligations of employers under provisions of Federal Employers' Liability Act

FEDERAL-STATE RELATIONS - COMMERCE

Cases	Dou	Blk	Mur	Rob	Ree	Frk	Sto	Byr	Rut	Jae	Bur	Totals
23/353	+	+	+	+	+	+	+	+	+	-	-	8-1
22/202	+	+	+	+	+	+	+	-	-	-	-	7-2
28/373	+	+	+	+	+	+	-	-	-	N	-	5-3
15/148	+	+	+	+	+	-	-	-	-	-	-	5-4
14/360	+	+	+	+	+	-	-	-	-	+	+	5-4
20/577:20	+	+	+	+	+	-	-	-	-	-	-	4-5
20/577:22	+	+	+	+	+	-	-	-	-	-	-	4-5
21/144 - EPCA	+	+	+	+	+	-	-	-	-	-	-	3-6
25/761	+	+	+	+	+	-	-	-	-	-	-	2-7
28/440	+	-	-	-	-	-	-	-	-	N	-	1-7
	<hr/>											
	10-0	9-1	8-2	6-2	4-6	3-7	2-8	0-2	1-7	1-7	0-2	44-44
	<hr/>											
	1.000	.900	.800	.700	.400	.300	.200		.125	.100		44-44
	<hr/>											
	Scale Scores											
												CR = .986
												MMR = .846
												CR-MMR = .846
												CS = .938

AO - Businesses
AS - State regulation of foreign (out-of-state) businesses

FEDERAL-STATE RELATIONS - POLICY OVERLAP CONFLICTS

Cases	Dou	Mur	Rut	Blk	Sto	Ree	Jac	Rob	Frk	Bur	Byr	Totals
28/152	+	+	+	+	+	+	N	-	-	+		7-1
26/536 - Fiscal Liability	+	+	+	+	+	+	N	-	-	+		7-1
18/285	+	-*	N	+	+	+	+	+	-			6-2
25/538 - NIRA	+	+	+	+	+	+	+	-	-			7-2
21/383	+	+	+	+	+	+	+	-	-			7-2
21/634	+	+	+	+	+	+	+	-	-			7-2
21/253	+	+	+	+	+	+	-	-	-			6-3
20/685	+	+	+	+	+	+	-	++	-			6-3
21/349	+	+	+	+	+	+	-	-	-			5-4
19/448	+	+	+	+	+	+	-	-	-			5-4
22/533 - Antitrust	+	+	+	+	-	N	-	N	-			4-3
17/456 - State Comm Reg	+	+	+	+	-	-	-	-	-			3-5
22/487	+	N	+	+	-	-	N	-	-			3-4
24/138	+	+	+	+	-	-	-	-	-			4-5
26/99	N	+	+	+	-	-	-	N	-			2-5
21/1	+	+	+	+	-	-	-	-	-			2-7
	15-0	14-1	13-1	14-2	10-6	7-8	4-9	2-10	0-16	2-0	0-0	81-53
Totals												

CR = .983
MMR = .842
CR-MMR = .141
CS = .913

Scale Scores

AO - Businesses
AS - State regulation of businesses in areas also proscribed by federal statutory regulation

FEDERAL-STATE RELATIONS - NATIONAL SUPREMACY

Cases	Dou	Blk	Mur	Rut	Jac	Ree	Sto	Rob	Frk	Byr	Bur	Totals
18/285 - Fed-St(Policy)	+	+	-*	N	+	+	+	+	-	-	-	6-2
22/174 - Fed-St(Tax)	+	+	+	+	+	+	-	-	-	-	-	7-2
25/538 - NIRB	+	+	+	+	+	+	-	-	-	-	-	7-2
21/253 - Fed-St(Policy)	+	+	+	+	-*	+	-	-	-	-	-	6-3
15/203 - Sup Ct Juris	+	+	+	+	N	N	-	-	-	+	-	4-3
25/507:560 - Conn Reg-Rates	+	+	+	+	+	-	-	-	-	-	-	5-4
25/507:561 - Conn Reg-Rates	+	+	+	+	+	-	-	-	-	-	-	5-4
25/535:574 - Conn Reg-Rates	+	+	+	+	+	-	-	-	-	-	-	5-4
25/535:592 - Conn Reg-Rates	+	+	+	+	+	-	-	-	-	-	-	5-4
22/533 - Antitrust	+	+	+	+	+	-	-	-	-	-	-	4-3
21/144 - EPCA	+	+	+	+	-	N	-	-	-	-	-	3-6
27/92 - EPCA	+	+	-	-	N	-	-	-	-	-	-	1-7
27/103 - EPCA	+	+	-	-	N	-	-	-	-	-	-	1-7
Totals	13-0	11-2	10-3	8-3	7-3	4-7	4-9	1-9	0-13	1-0	0-2	59-51

Scale Scores

CR = .979
 MMR = .844
 CR-MMR = .135
 CS = .900

AO - Businesses
 AS - State and federal regulation of business representing substantively incompatible policies

FEDERAL-STATE RELATIONS - TAXATION CONFLICTS

Cases	Blk Dou Rut Sto Mur Ree Jac Frk Rob Bur Byr											Totals	
	Blk	Dou	Rut	Sto	Mur	Ree	Jac	Frk	Rob	Bur	Byr		
27/104	+	+	+	+	+	+	N	+	+	-	-	7-1	
24/182	+	+	+	+	+	+	+	+	+	-	-	8-1	
22/174	+	+	+	+	+	+	+	-	-	-	-	7-2	
26/572 (ex)	+	+	+	+	+	+	-	-	-	-	-	6-3	
17/154 (48-49)	+	+	+	+	-	-	-	-	-	-	-	3-5	
26/572 (ex)	+	+	+	-	-	-	-	-	-	-	-	3-6	
23/144	+	+	-	-	-	-	-	-	-	-	-	2-7	
26/572	+	+	-	-	-	-	N	-	-	-	-	2-6	
23/101	+	-	-	-	-	-	-	-	-	-	-	1-8	
												<hr/> 42-44	
Totals													<hr/> 42-44
													CR = 1.000
													MMR = .780
													CR-MMR = .220
													CS = 1.000

AO - Businesses

AS - State taxation of businesses conflicting with federal taxation provisions

Scale Scores

10-0	1.000
9-1	.900
5-3	.700
6-4	.600
4-6	.400
4-6	.400
4-6	.400
2-6	.300
2-8	.200
0-8	.050
0-2	
0-0	

FEDERAL TAXATION - PROVISION CONSTRUCTION

Cases	Dou	Blk	Mur	Rob	Sto	Bur	Rut	Roe	Jac	Frk	Byr	Totals
18/322	+	+	+	+	+	N	+	+	-	-	-	6-2
18/604:22	+	+	+	+	+	N	-	-	-	-	-	5-3
18/604:64	+	+	+	+	+	N	-	-	-	-	-	5-3
18/371	+	+	+	-	-	-	-	-	-	-	-	3-5
21/281	+	-	-	-	-	-	-	+	+	-	-	2-7
21/231:44	+	-	-	-	-	-	-	-	-	-	-	1-8
21/231:47	+	-	-	-	-	-	-	-	-	-	-	1-8
26/480	+	-	-	-	-	-	-	N	-	-	-	1-7
	<hr/>											
Totals	8-0	4-4	4-4	3-4	3-5	0-1	0-4	1-7	1-6	0-8	0-0	24-43
	<hr/>											
	24-43											

CR = .988
 MMR = .794
 CR-MMR = .194
 CS = .938

Scale Scores

- AO - Persons subject to federal taxation
- AS - Construction of tax statutes defining federal tax liability

FEDERAL TAXATION - PROVISION CONSTRUCTION

Cases	Dou	Blk	Mur	Rob	Sto	Bur	Rut	Ree	Jac	Frk	Byr	Totals
18/322	+	+	+	+	+	N	+	-	-	-	-	6-2
18/604:22	+	+	+	+	+	N	-	-	-	-	-	5-3
18/604:64	+	+	+	+	+	N	-	-	-	-	-	5-3
18/371	+	+	+	-	-	-	-	-	-	-	-	3-5
21/281	+	-	-	-	-	-	-	++	-	-	-	2-7
21/231:44	+	-	-	-	-	-	-	-	-	-	-	1-8
21/231:47	+	-	-	-	-	-	-	-	-	-	-	1-8
26/480	+	-	-	-	-	-	-	-	N	-	-	1-7
												<hr/>
Totals	8-0	4-4	4-4	3-4	3-5	0-1	0-4	1-7	1-6	0-8	0-0	24-43
Scale Scores	1.000	.500	.500	.375	.375		.250	.125	.143	.000		

CR = .988
MMR = .794
CR-MMR = .194
CS = .938

AO - Persons subject to federal taxation
AS - Construction of tax statutes defining federal tax liability

FEDERAL TAXATION - EXEMPTIONS

Cases	Dou	Blk	Ree	Frk	Rob	Jac	Sto	Bur	Mur	Rut	Byr	Totals
27/474(328-329)	+					N	+	+	+	-		7-1
26/521:36	+	+	+	+		N	+	+	+	-		7-3
26/521:47	+	+	+	+		N	+	+	+	-		7-1
26/465	+	+	+	+		N	+	+	+	-		7-1
22/273(130-133)	+	+	+	+	+	+	+	-	-	-		7-2
19/523 (ax)	+	+	+	+	+	+	-	-	-	-		6-3
19/590	+	+	+	+	+	-	-	-	++			6-3
19/523	+	+	+	+	-	-	-	-	++			5-4
16/107	+	+	+	-	-	-	N	-	-	-		3-5
26/599(1-2)	+	-	-	-	-	N	-	-	-	-		1-7

241

85-42

Totals	Scale Scores
85-42	
15-0	1.000
13-2	.867
13-2	.867
12-3	.800
6-2	.733
5-3	.667
9-5	.600
5-2	
5-10	.333
2-12	.143
0-1	

CR = .972
 MMR = .800
 CR-MMR = .172
 CS = .923

AO - Persons or businesses subject to federal income taxation
 AS - Exemption claims on personal and corporate income

FEDERAL TAXATION - SUCCESSION & ESTATE TAXES

Cases	Dou	Jac	Blk	Mur	Ree	Byr	Frk	Sto	Rob	Bur	Rut	Totals
18/184:499	+	+	+	+	+	+	+	+	-	-	-	7-1
18/184:500	+	+	+	+	+	+	+	+	-	-	-	7-1
18/176	+	+	+	+	+	+	+	+	-	-	-	7-1
15/543	+	+	+	+	+	-	-	-	-	-	-	6-3
16/56	+	+	+	+	+	-	-	-	-	-	-	5-4
20/256	+	+	-	-	-	-	-	-	-	-	-	2-7
	<hr/>											
Totals	6-0	6-0	5-1	5-1	5-1	1-1	3-3	3-3	0-6	0-0	0-1	34-17
	6-0	6-0	5-1	5-1	5-1	1-1	3-3	3-3	0-6	0-0	0-1	34-17
	1.000	1.000	.833	.833	.833	.667	.500	.500	.000			
	1.000	1.000	.833	.833	.833	.667	.500	.500	.000			
	<hr/>											
	Scale Scores											
	CR = 1.000											
	MMR = .799											
	CR-MMR = .201											
	CS = 1.000											

AO - Persons financially sanctioned by the federal government
AS - Taxation of estates and inheritances

FISCAL LIABILITY

Cases	Mar	Dou	Blk	Rut	Sto	Jac	Ree	Rob	Fpk	Bur	Byr	Totals
20/561(142-146)	+	+	+	+	+	+	+	+	+	+	+	8-1
28/293	+	+	+	+	+	+	+	+	+	+	+	7-1
28/495(278-282)	+	+	+	+	N	+	+	+	+	+	+	6-1
26/536	+	+	+	+	+	+	+	+	+	+	+	6-1
27/251 - Antitrust	+	+	+	+	+	+	+	+	+	+	+	7-1
24/83	+	+	+	+	+	+	+	+	+	+	+	6-2
21/730	+	+	+	+	+	+	+	+	+	+	+	7-2
20/430 (ex)	+	+	+	+	+	+	+	+	+	+	+	5-4
21/349 Fed-St(Policy)	+	+	+	+	+	+	+	N	+	+	+	5-3
20/661	+	+	+	+	+	+	+	N	+	+	+	5-3
20/591(34-35)	+	+	+	+	+	+	+	+	+	+	+	5-4
20/430 - Full Faith & Credit	+	+	+	+	+	+	+	+	+	+	+	4-5
21/225	+	+	+	+	+	+	+	N	+	+	+	3-5
16/203 - Patents & Copyrights	+	+	+	+	N	+	+	+	+	+	+	3-5
23/386(2-11)	N	N	+	+	+	+	+	+	+	+	+	2-4
24/570(2-7)	N	N	+	+	+	+	+	+	+	+	+	2-4
19/372	+	+	+	+	+	+	+	+	+	+	+	3-6
	24-0	24-0	38-2	37-1	14-25	8-8	15-25	6-23	5-35	1-0	0-1	170-120
	1.000	1.000	.950	.975	.359	.400	.375	.350	.125			
Totals												

Scale Scores

CR = .984
 MMR = .851
 CR-MMR = .133
 CS = .922

AO - Persons or businesses
 AS - Financial responsibility for property damages and/or damages for failure to fulfill general obligations

FULL FAITH & CREDIT

Cases	Blk	Rut	Dou	Mur	Frk	Ree	Sto	Rob	Jac	Bur	Byr	Totals
17/287	+		+	-*	+	+	+	+				6-2
24/154	+	+	+	+	+	+	-	-				7-2
20/430	+	+	+	-	-	-	-	-				3-6
27/220	+	+	-	-	+	-	-	N				3-5
25/226 (ex)	+	-	-	-	-	-	-	-				1-8
	<hr/>											
	Totals											
	24-28											
	<hr/>											
	Scale Scores											
	6-0	5-1	4-2	3-3	3-3	2-4	2-4	1-3	0-5	0-2	0-0	
	1.000	.833	.667	.500	.500	.333	.333	.167	.000			

CR = .955
 MFR = .773
 CR-MFR = .182
 CS = .846

AO - Persons or businesses
 AS - Recognition of legal judgments rendered in jurisdiction of another state

INDIAN PROPERTY

Cases	Blk	Dou	Rut	Jac	Rob	Mur	Ree	Sto	Frk	Bur	Byr	Totals
19/598 (ex)	+	+	+	+	+	+	+	-	-	-	-	7-2
19/598 (ex)	+	+	+	+	+	+	+	-	-	-	-	7-2
19/598 (ex)	+	+	+	+	+	+	+	-	-	-	-	7-2
19/598 (ex)	+	+	+	+	+	+	-	-	-	-	-	6-3
19/598 (ex)	+	+	+	+	+	+	-	-	-	-	-	6-3
19/598 (ex)	+	+	+	+	+	+	-	-	-	-	-	6-3
19/598:623	+	+	+	+	+	+	-	-	-	-	-	5-4
19/598:624	+	+	+	+	+	+	-	-	-	-	-	5-4
19/598:625	+	+	+	+	+	+	-	-	-	-	-	5-4
19/598 (ex)	+	+	+	+	+	+	-	-	-	-	-	4-5
19/598 (ex)	+	+	+	+	+	+	-	-	-	-	-	4-5
19/598 (ex)	+	+	+	+	+	+	-	-	-	-	-	4-5
27/742	+	+	+	N	-	-	-	-	-	-	-	3-5
18/206	+	+	+	-	-	-	-	-	-	-	-	2-6

Totals	Scale Scores
71-53	
14-0	1.000
14-0	1.000
13-0	.964
12-1	.893
9-4	.643
6-8	.429
3-11	.214
0-14	.000
0-14	.000
0-14	.000
0-1	
0-0	

CR = 1.000
MMR = .897
CR-MMR = .103
CS = 1.000

AO - Indians
AS - Claims upon Indian properties and assets

INDIAN TREATIES

Cases	Mur	Frk	Dou	Rob	Blk	Sto	Rut	Rae	Jac	Byr	Bur	Totals
24/316	+	+	+	+	+	+	+	+	-			8-1
16/286	+	+	+	+	+			N	-	+		7-1
16/310	+	+	+	+	+			N	-	+		7-1
24/335 (ex)	+	+	+	+	-	-	-	-	-			5-4
24/335	+	+	+	+	-	-	-	-	-			4-5
24/335 (ex)	+	+	+	-	-	-	-	-	-			3-6
18/629:321	+	+	-	-	-	N	-	-	-			2-6
18/629:322	+	+	-	-	-	N	-	-	-			2-6
19/474	+	-	-	-	-	-	-	-	-			1-8
												<hr/>
												39-38

Totals	Scale Scores
39-38	
9-0	1.000
8-1	.889
6-3	.667
5-4	.556
4-5	.444
3-6	.333
1-4	.222
1-6	.222
0-9	.000
2-0	
0-0	

CR = 1.000
 MMR = .801
 CR-MMR = .199
 CS = 1.000

AO - Indians
 AS - Substantive review of violations of Indian treaties
 AS₁ - Indian claims for appropriate retribution

INTERSTATE COMMERCE COMMISSION - PUBLIC NECESSITY & CONVENIENCE APPLICATIONS

Cases	Deu	Blk	Rut	Byr	Mur	Ree	Sto	Rob	Jac	Frk	Bur	Totals
15/495	+	+		+	+	+	+	-	-	-	-	7-2
15/475	+	+		+	+	+	+	-	-	-	-	7-2
26/179	+	+	+		+	-	-	-	-	-	-	5-4
16/74	+	+		+	-	-	-	-	-	-	-	3-6
27/655	+	+	+		-	-	-	N	-	-	-	3-5
26/60:507	+	+	+		-	-	-	-	-	-	-	3-6
26/60:508	+	+	+		-	-	-	-	-	-	-	3-6
27/515	+	-			-	-	-	N	-	-	-	1-7
												32-38

Totals

32-38

8-0
7-1
4-1
3-0
3-5
3-5
2-6
2-4
0-6
0-8
0-2

CR = 1.000
MMR = .851
CR-MMR = .149
CS = 1.000

Scale Scores

1.000
.875
.875
.750
.375
.375
.250
.250
.000
.000

AO - Common carriers
AS - Applications to the Interstate Commerce Commission for certification of public necessity and convenience
AS1 - Autonomy of Interstate Commerce Commission judgments

JUDICIAL INTERVENTION (COMITY)

Cases	Rut	Mur	Blk	Ree	Jac	Dou	Frk	Rob	Sto	Byr	Bur	Totals
18/724:454	+	+	+	+	+	+	+	N	-	-	-	7-1
18/724:582	+	+	+	+	+	+	+	N	-	-	-	7-1
17/249	+	+	+	+	+	+	+	+	-	-	-	8-1
15/637	+	+	+	+	+	+	+	-	-	+	-	7-2
20/410	+	N	+	+	N	+	+	-	-	-	-	5-2
22/47	+	+	+	+	+	+	-	-	-	-	-	6-3
27/573:424	+	+	+	+	N	-	-	-	N	-	-	4-3
27/573:425	+	+	+	+	N	-	-	-	N	-	-	4-3
26/99 - Fed-St(Policy)	+	+	+	+	-	-	-	N	-	-	-	2-5
27/82 - Counsel	+	+	+	+	N	-	-	-	-	-	-	2-6
26/490	+	-	-	-	N	-	-	-	-	-	-	1-7

53-34

Totals	Scale Scores
53-34	
10-0	1.000
9-1	.909
8-3	.727
8-3	.727
8-3	.727
5-6	.455
1-3	.273
0-9	.000
1-0	
0-4	

CR = 1.000
 MMR = .826
 CR-MMR = .174
 CS = 1.000

AO - State regulation
 AS - Exercise of federal court jurisdiction prior to completion of state court proceedings

JUDICIAL REVIEW OF REGULATORY COMMISSIONS

Cases	Mur	Blk	Dou	Ree	Frk	Rut	Byr	Sto	Jac	Rob	Bur	Totals
25/196(1016-1017)	+	+	+	+	+	+	+	+	+	-	-	8-1
18/523(11-19) - Bankruptcy	+	+	+	+	+	N	+	N	-	-	-	6-1
18/523:32 - Bankruptcy	+	+	+	+	+	N	+	N	-	-	-	6-1
23/612(47-48)	+	+	+	+	+	+	+	+	+	+	+	8-1
22/31 - Conn Reg-Rates	+	+	+	+	+	+	+	+	+	+	+	8-1
14/534 - Conn Reg-Rates	+	+	+	+	+	+	+	+	+	+	+	8-1
18/218	N	+	+	+	+	N	+	+	+	+	+	6-1
20/344	+	+	+	+	+	+	+	+	+	+	+	7-1
18/675	+	+	+	+	+	N	+	+	+	+	+	7-1
18/125	+	+	+	+	+	+	+	+	+	+	+	6-2
26/120	+	+	+	+	+	+	+	+	+	+	+	6-2
16/491	+	+	+	+	+	+	+	+	+	+	+	6-3
14/402	+	+	+	+	+	+	+	-	N	-	-	5-3
18/80	+	+	+	+	+	+	+	+	+	+	+	3-4
23/57	+	+	+	+	+	+	+	+	+	+	+	4-5
25/385:470	+	+	+	+	+	+	+	+	+	+	+	3-5
25/385:815	+	+	+	+	+	+	+	+	+	+	+	3-5
24/515	+	+	+	+	+	+	+	+	+	+	+	3-6
16/4	+	N	+	+	+	+	+	+	+	+	+	2-6
18/306	+	+	+	+	+	+	+	+	+	+	+	3-5
Totals	29-0	28-0	25-1	28-2	23-7	6-4	2-2	21-9	9-10	0-30	0-0	171-65

CR = .989
 MMR = .799
 CR-MMR = .190
 CS = .971

Scale Scores

AO - Federal regulatory commissions
 AS - Review of powers and the exercise thereof of federal regulatory commissions by the federal judiciary
 AS1 - Judicial supervision of commission decision-making

JURY TRIAL

Cases	Blk	Mur	Dou	Rut	Ree	Jac	Byr	Rob	Sto	Frk	Bur	Totals
15/60:30	+	+	+	+	N	+	+	+	-	-	-	6-2
15/60:31	+	+	+	+	N	+	+	+	-	-	-	6-2
15/60:32	+	+	+	+	N	+	+	+	-	-	-	6-2
19/350 - FEIA	+	+	+	+	+	-	-	-	-	-	-	6-3
15/283 - FEIA	+	+	+	+	-	-	-	-	-	-	-	4-5
20/476 - FEIA	+	+	+	+	-	-	-	-	-	-	-	4-5
18/660 - Injury Liability	+	+	+	N	-	-	-	-	-	-	-	3-5
19/372 - Fiscal Liability	+	+	+	-	-	-	-	-	-	-	-	3-6
18/9 - NIRB	+	+	+	-	-	-	-	-	-	-	-	3-5
16/332	+	+	+	-	-	-	-	-	-	-	-	3-5
17/269 - Sup Court Juris	+	+	+	-	-	-	-	-	-	-	-	3-5
25/398	+	+	+	-	-	-	-	-	-	-	-	3-6
26/207	+	+	+	-	-	-	-	-	+	*	-	1-8
												51-60
												0-0
												0-13
												1-12
												3-10
												3-1
												1-9
												5-8
												2-3
												11-2
												12-1
												13-0
												51-60
												Totals
												51-60
												0-0
												0.000
												.077
												.231
												.269
												.308
												.385
												.500
												.856
												.923
												1.000
												Scale Scores
												CR = .990
												MMR = .833
												CR-MMR = .157
												CS = .938

AO - Criminal defendant or civil litigant
AS - Right to jury judgment

MILITARY-CIVIL

Cases	Mur	Jac	Rut	Dou	Blk	Ree	Sto	Frk	Bur	Rob	Byr	Totals	
21/542 (ex)	+	+	+	+	+	+	+	+	-	-	-	8-1	
21/542	+	+	+	+	+	+	+	-	-	-	-	7-2	
27/304:14	+	N	+	+	+	+	-	-	-	-	-	6-2	
27/304:15	+	N	+	+	+	+	-	-	-	-	-	6-2	
27/304 (ex)	+	N	+	+	+	+	-	-	-	-	-	5-3	
27/304 (ex)	+	N	+	+	+	+	-	-	-	-	-	5-3	
27/1	+	N	+	-	-	-	-	-	-	-	-	2-6	
23/214	+	+	-	-	-	-	-	-	-	+	+	3-6	
27/1 (ex)	+	N	-	-	-	-	-	-	-	-	-	1-7	
	<hr/>												
Totals	43-32	9-0	3-0	7-2	6-3	6-3	6-3	4-5	1-8	0-6	1-2	0-0	43-32
Scale Scores	1.000	.944	.778	.667	.667	.667	.444	.111	.000	.111			CR = .983 MMR = .791 CR-MMR = .192 CS = .941

AO - Criminal defendant
AS - Military court proceedings
AS₁ - Civil court review of military court proceedings

NATURALIZATION-DENATURALIZATION

Cases	Mur	Rut	Dou	Blk	Jac	Ree	Rob	Frk	Sto	Byr	Totals
28/61	+	+	+	+	N	-*	-	-	-	+	5-3
26/135 - Speech	+	+	+	+	N	+	-	-	-	-	5-3
20/118	+	+	+	+	+	+	-	-	-	-	6-3
22/665	+	+	+	+	-	-	-	-	-	-	4-5
28/654	+	+	-	-	N	-	-	-	-	-	2-6

											22-20

Totals
 22-20

CR = .976
 MMR = .820
 CR-MMR = .156
 CS = .833

Scale Scores
 5-0 1.000
 5-0 1.000
 4-1 .800
 4-1 .800
 4-1 .800
 1-1 .600
 2-3 .400
 0-4 .100
 0-5 .000
 0-5 .000
 1-1 1.000
 1-1 .600
 0-5 .000
 1-1 .600
 1-1 .600
 0-0 0.000

AO - Aliens, foreigners, or immigrants
 AS - Conduct prohibiting acquisition of national citizenship or the loss of naturalized citizenship

NATIONAL LABOR RELATIONS ACT

Cases Blk Dou Mur Rut Res Jac Sto Frk Rob Byr Bur Totals

Table with 10 columns: Cases, Blk, Dou, Mur, Rut, Res, Jac, Sto, Frk, Rob, Byr, Bur, Totals. Rows include case numbers like 15/685, 21/332, 24/793:226, etc., and their corresponding counts in each column.

Totals

Summary row for Totals showing counts: 14-0, 14-0, 14-0, 11-0, 12-2, 9-5, 9-5, 8-6, 0-14, 1-1, 0-0, 92-33.

Scale Scores

Scale Scores table with 2 columns: Scale Scores, Values. Values include 1.000, .821, .179, 1.000.

AO - Wage earners
AS - Rights of labor unions and labor union members under federal legislation
AS1 - National Labor Relations Act

PATENTS & COPYRIGHTS

Cases	Blk	Dou	Mur	Jac	Rut	Sto	Roe	Frk	Rob	Bur	Byr	Totals
24/806	+	+	+	+	+	+	+	+	-	-		7-2
19/359	+	+	+	+	+	+	+	-	-			7-2
26/249	+	+	+	N	+	-	-	-		+		6-2
22/238	+	+	+	+	-	-	-	-	-			5-4
22/271	+	+	+	+	-	-	-	-	-			5-4
21/275	+	+	+	+	-	-	-	-	-			4-5
24/370	+	+	+	-	+	-	-	-	-			4-5
16/203	+	+	+	-	-	-	-	-	N	-		3-4
16/364	+	+	+	-	-	-	-	-	-	-		3-6
18/643	+	+	+	-	-	-	-	-	-	-		3-5
15/126:154	+	+	+	-	-	-	-	-	N	-		2-5
15/126:155	+	+	+	-	-	-	-	-	N	-		2-5
15/126:156	+	+	+	-	-	-	-	-	N	-		2-5
<hr/>												
Totals											53-54	
Scale Scores												
											CR = .982	
											MMR = .893	
											CR-MMR = .089	
											CS = .857	

AO - Persons or businesses
 AS - Right to fiscal and all other benefits deriving from one's creative efforts

PERSONAL INJURY LIABILITY

Cases	Blk	Mur	Dou	Byr	Rut	Ree	Jac	Sto	Rob	Frk	Bur	Totals
27/399 - FEIA	+	+			+	N	+				-	6-2
21/96	+	+			+	+					-	7-2
28/85	+	+			+	N					-	5-3
20/430 - Full Faith & Credit	+	+										4-5
14/104	+	+										4-5
17/383	+	+										3-5
18/660	+	+										3-5
18/133	+											1-7
												<hr/>
												33-34
												<hr/>
												Totals
												33-34
												8-0
												7-1
												7-1
												1-0
												4-0
												3-5
												1-5
												2-6
												0-6
												0-8
												0-2
												Scale Scores
												CR = 1.000
												MWR = .911
												CR-MWR = .089
												CS = 1.000

AO - Injured person
 AS - Responsibility for injury to individual - fiscal

RADIO REGULATION

Cases	Dou	Frk	Ree	Blk	Rut	Jac	Sto	Mur	Rob	Byr	Bur	Totals	
22/111(336-339) - NLRB	+	+	+	+	+	+	+	+	-	-	-	8-1	
19/190:554	+	+	+	N	N	+	+	-	-	-	-	5-2	
19/190:555	+	+	+	N	N	+	-	-	-	-	-	5-2	
26/1:57	+	+	+	+	+	N	-	-	-	-	-	5-3	
26/1:58	+	+	+	+	+	N	-	-	-	-	-	5-3	
26/1:59	+	+	+	+	+	N	-	-	-	-	-	5-3	
16/447	+	+	+	N	-	-	-	-	-	-	-	3-5	
16/407	+	+	+	N	-	-	-	-	-	-	-	3-5	
19/239	+	+	-	N	-	-	-	-	-	-	-	2-4	
19/239 (ex)	+	-	-	N	-	-	-	-	-	-	-	1-5	
	<hr/>												
Totals	66-36	13-0	12-1	11-2	7-0	7-0	6-4	6-7	4-7	0-13	0-2	0-0	66-36
Scale Scores		1.000	.923	.846	.846	.846	.500	.500	.308	.000			
													CR = 1.000
													MMR = .855
													CR-MMR = .145
													CS = 1.000

AO - Radio station licensees and national radio networks
AS - Regulation or attempts to regulate the operation of radio networks and/or local licensees
 by the federal government
AS1 - Freedom of the press
AS2 - Freedom of speech

RAILWAY LABOR ACT

Cases	Rut	Mur	Dou	Sto	Frk	Blk	Jac	Ree	Rob	Bur	Byr	Totals
21/342	+	+	+	+	+	+	+	-	-	-	-	8-1
20/338:27	+	+	+	+	+	+	-	-	-	-	-	7-2
20/338:41	+	+	+	+	+	+	-	-	-	-	-	7-2
20/323	+	+	+	+	+	+	-	-	-	-	-	7-2
20/297	N	+	+	+	N	-	-	-	-	-	-	4-3
20/297 (ex)	N	+	+	-	N	-	-	-	-	-	-	2-5
26/561	+	-	-	-	-	-	N	-	-	-	-	1-7
												<hr/>
												36-22

Totals	Scale Scores
36-22	
5-0	1.000
6-1	.857
6-1	.857
6-1	.857
5-2	.714
5-2	.714
5-2	.714
4-1	.714
4-2	.571
1-6	.143
0-6	.000
0-1	
0-0	

CR = 1.000
 MMR = .847
 CR-MMR = .153
 CS = 1.000

AO - Railroad workers and railroad workers' unions
 AS - Certification of bargaining agents and collective bargaining agreements entered into under provisions of the Railway Labor Act

RELIGION

Cases	Mur	Dou	Blk	Rut	Sto	Rob	Frk	Jac	Ree	Bur	Byr	Totals
26/517	+	+	+	+	-*		+	N	-	-		5-3
26/501	+	+	+	+	-*		+	N	-	-		5-3
19/157	+	+	+	+	+	+	-					6-3
19/624	+	+	+	+	+		-	+				6-3
19/141	+	+	+	+	+		+					6-3
19/105(480-488)	+	+	+	+	+		-					5-4
19/103:280	+	+	+	+	+		-					5-4
19/103:314	+	+	+	+	+		-					5-4
19/103:966	+	+	+	+	+		-					5-4
16/584:280	+	+	+	+	+		-					4-5
16/584:314	+	+	+	+	+		-					4-5
16/584:966	+	+	+	+	+		-					4-5
25/561	+	+	+	+	-		-					4-5
	20-0	20-0	20-0	17-0	17-3	1-17	3-17	1-17	0-20	0-2	0-3	99-79
	1.000	1.000	1.000	1.000	.850	.150	.150	.150	.000	.000		
	Totals											
	Scale Scores											
	CR = .978 MMR = .962 CR-MMR = .016 CS = .600											

AO - Persons attempting to exercise freedom of religion
 AS - Restriction(s) of religious freedom and exercise thereof

SEARCH & SEIZURE

Cases	Mur	Frk	Rut	Jac	Sto	Rob	Dou	Byr	Blk	Ree	Bur	Totals
18/332	+	N	+	+	+	+	+		+	-		7-1
22/65	+	+	+	+	+	+	+		-	-		7-2
22/65 (ex)	+	+		+	+	+			-	-		6-3
16/114	+			N	+	-			-	-		3-5
16/129:962	+	+		+	+	-			-	-		4-5
16/129:963	+	+		+	+	-			-	-		4-5
16/129:980	+	+		+	+	-			-	-		4-5
28/624	+	+	+	N	-	-			-	-		3-5
28/582	+	+	+	N	-	-			-	-		3-5
27/186:61	+	-	-	N	-	-			-	-		1-7
27/186:63	+	-	-	N	-	-			-	-		1-7
	11-0	9-2	4-2	6-0	7-4	3-4	2-9	0-4	1-10	0-11	0-4	43-50

Totals

43-50

Scale Scores

CR = 1.000
 MMR = .857
 CR-MMR = .143
 CS = 1.000

AO - Criminal defendants
 AS - Standards of operation for law enforcement agents in the securing of evidence

SPEECH & PRESS

Cases	Mur	Dou	Blk	Ree	Jac	Rut	Byr	Frk	Sto	Rob	Bur	Totals
15/685 - NLRB	+	+	+	+	+	+	+	+	+	-	-	8-1
26/135	+	+	+	+	N	+	-	-	-	-	-	5-3
14/252:1	+	+	+	+	+	-	-	-	-	-	-	5-4
14/252:3	+	+	+	+	+	-	-	-	-	-	-	5-4
15/722 - Union-Solicitation	+	+	+	-	-	-	-	-	-	-	-	3-6
16/4 - Jud Rev-Comps	+	+	N	-	-	-	-	-	-	-	-	2-6
27/186:61 - Search & Seizure	+	-	-	-	-	-	-	-	-	-	-	1-8
27/186:63 - Search & Seizure	+	-	-	-	-	-	-	-	-	-	-	1-8
27/178	+	-	-	-	-	-	-	-	-	-	-	1-8
	<hr/>											
	31-48											

Totals	9-0	6-3	5-3	4-5	3-5	2-3	1-4	1-8	1-8	0-6	0-3
	1.000	.667	.611	.444	.444	.444	.167	.111	.111	.000	

CR = 1.000
 MMR = .788
 CR-MMR = .212
 CS = 1.000

Scale Scores

AO - Freedom of speech and press
 AS - Deprivation or inhibition of the right of freedom of speech and/or press

STATE COMMISSION REGULATION

Cases	Dou	Blk	Mur	Rut	Ree	Sto	Frk	Jac	Rob	Byr	Bur	Totals
16/159	+	+	+	+	+	+	+	+	-	+		8-1
18/675 - Jud Rev-Comms	+	+	+	+	+	+	+	+	-			7-1
22/340 - State Tax(Comm)	+	+	+	+	+	+	+	-	N			7-1
22/335 - State Tax(Comm)	+	+	+	+	+	+	+	-				7-2
24/439 - Antitrust	+	+	+	+	+	-	-	-				5-4
24/138 - Fed-St(Policy)	+	+	+	+	-	-	-	-				4-5
17/456 - Utility Reg	+	+	+	+	-	-	-	-				3-5
21/144 - EPCA	+	+	+	+	-	-	-	-				3-6
18/261	+	+	-	-	-	-	-	+	*			3-5
25/761 - Fed-St(Comm)	+	+	-	-	-	-	-	-				2-7
28/440 - Fed-St(Comm)	+	-	-	-	-	-	-	N				1-7

Totals	50-44	11-0	10-1	8-3	4-3	5-6	4-7	4-7	3-7	0-9	1-0	0-1
50-44	11-0	10-1	8-3	4-3	5-6	4-7	4-7	3-7	0-9	1-0	0-1	50-44

CR = .984
MNR = .795
CR-MNR = .189
CS = .955

Scale Scores

AO - Businesses
AS - Regulation of businesses by state regulatory commissions or similarly authorized agencies of state government

STATE TAXATION (COMMERCE)

Cases	Blk	Dou	Mur	Rut	Ree	Sto	Frk	Jac	Rob	Bur	Byr	Totals
25/673	+	+	+	+	+	+	+	+	-			8-1
22/526	+	+	+	+	+	+	+	-	N			7-1
22/340	+	+	+	+	+	+	+	-	N			7-1
22/335	+	+	+	+	+	+	+	-				7-2
24/652	+	+	+	+	+	-	-	-				5-4
22/327	+	+	+	+	-	-	-	-				4-5
27/416	+	+	+	-	-	-	-	N				3-5
26/310	+	-	-	-	-	-	-	N				1-7
												<hr/>
												42-26

264

Totals	Scale Scores
42-26	
8-0	1.000
7-1	.875
7-1	.875
6-2	.750
5-3	.625
4-4	.500
4-4	.500
1-5	.125
0-4	.000
0-2	
0-0	

CR = 1.000
 MMR = .797
 CR-MMR = .203
 CS = 1.000

AO - Businesses
 AS - State taxation of businesses and articles in interstate commerce

STATUTORY CONSTRUCTION - CRIMINAL

Cases	Mur	Rut	Dou	Blk	Jac	Ree	Frk	Rob	Sto	Byr	Bur	Totals
15/521:131 - Evidence-Suff	+		+	+	N	+	+	N	-		+	6-1
15/521:132 - Evidence-Suff	+		+	+	N	+	+	N	-		+	6-1
19/484 - Due Process	+		+	+	+	+	+	-	-			7-2
26/135 - Speech & Press	+	+	+	+	N	+	-	-	-			5-3
27/633 - Union-Closed Shop	+	+	+	+	N	+	-	-	-			5-3
23/88 - Evidence-Sufficiency	-*		+	+	+	-	-	-	-			4-5
24/282	+	+	-	-	-	-	-	-	-			2-7
24/193 - Due Process	+	-	-	-	-	-	-	-	-			1-8
25/797 - Antitrust	+	-	-	-	-	-	-	-	-			1-8
20/527	+	-	-	-	-	-	-	-	-			1-8
												<hr/>
												38-46
Totals												38-46
												0-1
												2-0
												0-10
												0-7
												.000
												.050
												.300
												.500
												.600
												.600
												.600
												.700
												.900
												<hr/>
												38-46
												Scale Scores
												CR = .977
												MMR = .773
												CR-MMR = .204
												CS = .955

AO - Criminal defendants
AS - Criminal acts which have been proscribed by legislation

STATUTORY CONSTRUCTION - REMEDIES

Cases	Mur	Dou	Blk	Rut	Byr	Frk	Jac	Ree	Sto	Rob	Bur	Totals
20/344 - Jud Rev-Comms	+	N	+	+		+	+	+	+	-		7-1
24/244:368 - FLSA	+	+	+	+		+	+	+	-	-		7-2
24/244:369 - FLSA	+	+	+	+		+	+	+	-	-		7-2
24/244:370 - FLSA	+	+	+	+		+	+	+	-	-		7-2
14/63:10	+	+	+		+	+	-	-	-	-		5-4
14/63:11	+	+	+		+	+	-	-	-	-		5-4
14/63:12	+	+	+		+	+	-	-	-	-		5-4
14/63:13	+	+	+		+	+	-	-	-	-		5-4
25/212:1189 - Antitrust	+	+	+	+		-	-	-	-	-		4-5
25/212:1190 - Antitrust	+	+	+	+		-	-	-	-	-		4-5
19/521 - Eminent Domain	+	+	-	-		-	-	-	-	-		2-7
27/178 - Speech & Press	+	-	-	-		-	-	-	-	-		1-7
												<hr/>
Totals	12-0	10-1	10-2	6-2	4-0	8-4	4-8	4-8	1-11	0-11	0-1	59-48

CR = 1.000
MMR = .856
CR-MMR = .144
CS = 1.000

Scale Scores

- AO - Persons or businesses
- AS - Acts and/or circumstances covered by legislation
- ASJ - Judicial remedies proscribed by legislation

SUPREME COURT JURISDICTION

Cases	Mur	Dou	Blk	Byr	Jac	Sto	Ree	Rob	Rut	Frk	Bur	Totals
18/578	+	+	+	+	+	+	+	+	+	-	-	7-2
26/327	+	+	N	N	N	+	+	-	-	-	+	5-2
25/589	+	+	+	+	+	+	+	-	-	-	-	5-3
20/1:369	N	+	+	+	+	+	+	-	-	-	-	5-3
20/1:373	N	+	+	+	+	+	+	-	-	-	-	5-3
16/556	N	+	+	+	+	+	-	N	-	-	-	4-2
16/688	+	+	+	+	+	+	-	-	N	-	-	5-3
15/203	+	+	+	+	-	N	-	-	-	-	-	4-3
17/269	+	+	+	-	-	-	-	-	-	-	-	3-5
17/269 (ex)	+	-	-	-	-	-	-	-	-	-	-	1-7

44-33

Totals	Scale Scores
44-33	
7-0	1.000
9-1	.900
8-1	.900
2-0	.900
4-2	.750
7-3	.700
4-5	.444
1-7	.150
1-4	.100
0-10	.000
1-0	

CR = .986
 MMR = .855
 CR-MMR = .131
 CS = .923

AO - Persons or businesses
 AS - Authority for judicial action by United States Supreme Court

TRIAL - PREJUDICIAL ERRORS

Cases	Blk	Dou	Ree	Sto	Jac	Rut	Mur	Frk	Rob	Bur	Byr	Totals
23/173:17	+	+	+	+	N	+	N	N	-	-	-	5-1
23/173:18	+	+	+	+	N	+	N	N	-	-	-	5-1
23/173:19	+	+	+	+	N	+	N	N	-	-	-	5-1
18/702	+	+	+	+	+	+	+	+	-	-	-	7-1
19/503:4	+	+	+	+	N	N	N	+	-	-	-	5-1
19/503:5	+	+	+	+	N	N	N	+	-	-	-	5-1
27/251 - Antitrust	+	+	+	+	N	+	+	+	-	+	+	7-1
28/463	+	+	+	+	N	+	+	+	-	+	+	6-2
20/1:369 - Sup Ct Juris	+	+	+	+	+	-	N	-	-	-	-	5-3
20/1:373 - Sup Ct Juris	+	+	+	+	+	-	N	-	-	-	-	5-3
25/1	+	+	+	+	-	-	-	-	-	-	-	4-5
14/306	N	+	-	-	-	-	-	-	-	-	-	1-6
26/607	+	-	-	-	-	-	-	-	-	-	-	1-7
	<hr/>											
	61-33											
Totals	<hr/>											
	61-33											

CR = 1.000
MMR = .837
CR-MMR = .163
CS = 1.000

Totals	Scale Scores
61-33	
12-1	1.000
12-1	.923
11-2	.846
11-2	.846
3-1	.769
6-3	.615
1-4	.538
3-7	.462
0-10	.000
2-1	.769
0-2	

AO - Criminal defendant
AS - Prejudicial remarks, atmosphere or jury instruction during conduct of judicial proceeding

UNIONS - BARGAINING AGENTS

Cases	Blk	Dou	Mur	Ree	Rut	Frk	Jac	Sto	Rob	Bur	Byr	Totals
25/697 - Due Process	+	+	+	+	+	+	+	+	-	-	-	8-1
21/332 - NLRB	+	+	+	+	+	+	+	+	-	-	-	8-1
21/678	+	+	+	+	+	+	+	+	-	-	-	7-2
19/533	+	+	+	+	+	-	-	-	-	-	-	6-3
27/661	+	+	+	+	+	-	N	-	-	-	-	5-3
25/711	+	+	+	+	+	-	-	-	-	-	-	5-4
16/31 - NLRB	+	+	+	+	+	-	-	-	-	-	-	4-5
	<hr/>											
	43-19											

CR = .977
 MMR = .861
 CR-MMR = .116
 CS = .900

Totals	Scale Scores
43-19	
7-0	1.000
7-0	1.000
7-0	1.000
7-0	1.000
4-3	.571
3-3	.429
3-4	.429
0-6	.000
0-1	
0-1	

AO - Labor unions
 AS - Certification and/or recognition of bargaining representative of a given labor union

UNIONS - SOLICITATION

Cases	Mur	Dou	Blk	Rut	Jac	Frk	Byr	Ree	Sto	Rob	Bur	Totals
24/793:226 - NLRB	+	+	+	+	+	+	+	+	+	-	-	8-1
24/793:452 - NLRB	+	+	+	+	+	+	+	+	+	-	-	8-1
15/100	+	+	+	+	+	+	+	-	-	N	-	6-2
24/9	+	+	+	+	+	+	+	-	-	-	-	6-3
23/516	+	+	+	+	+	+	+	-	-	-	-	5-4
15/722	+	+	+	+	-	-	-	-	-	-	-	3-6
25/797 - Antitrust	+	-	-	-	-	-	-	-	-	-	-	1-8
												<hr/>
												37-25
												<hr/>
												0-0
												0-6
												.000
												2-5
												.286
												2-5
												.286
												1-1
												.714
												4-3
												.571
												5-2
												.714
												4-1
												.786
												6-1
												.857
												6-1
												.857
												7-0
												1.000
												<hr/>
												37-25
												<hr/>
												Totals
												Scale Scores
												CR = 1.000
												MMR = .772
												CR-MMR = .228
												CS = 1.000

AO - Labor unions
AS - Inhibition of union membership recruitment
AS1 - Freedom of speech

UTILITY REGULATION

Cases	Mur	Dou	Blk	Rut	Jac	Ree	Frk	Rob	Sto	Bur	Byr	Totals
26/638	+	+	N	+	N	N	+		-		+	5-1
24/499 - Eminent Domain	+	+	+	+	+	+	+		-			7-2
19/61:299	+	+	+	+	+	+			-			6-3
19/61:329	+	+	+	+	+	+			-			6-3
24/581:379 - Comm Reg-Rates	+	+	+	+	+	+			-			5-4
24/581:380 - Comm Reg-Rates	+	+	+	+	+	+			-			5-4
24/626 - Comm Reg-Rates	+	+	+	+	+	+			-			5-4
24/138 - Fed-St(Policy)	+	+	+	+	+	+			-			4-5
22/503 - Comm Reg-Rates	+	+	N	+	+	+			-			3-5
18/9 - NLRB	+	+	+	+	+	+			-			3-5
17/456	+	+	+	+	+	+			-			3-5
21/489	+	+	+	+	+	+			-			3-6
												55-47
												0-0
												1-0
												0-12
												0-11
												2-10
												3-8
												6-5
												9-1
												10-0
												12-0
												12-0
												55-47
												Totals
												CR = 1.000
												MMR = .901
												CR-MMR = .099
												CS = 1.000

Scale Scores

AO - Public utilities
AS - Federal regulation of public utilities

WAR POWERS

Cases	Mur	Rut	Dou	Blk	Rob	Sto	Ree	Jac	Frk	Byr	Bur	Totals
15/289:8 - Contracts	+		+		N	N	+	N	-		+	5-1
15/289:9 - Contracts	+		+		N	N	+	N	-		+	5-1
27/304:14 - Military-Civil	+		+		+	+	+	N	-		-	6-2
27/304:15 - Military-Civil	+		+		+	+	+	N	-		-	6-2
28/707	+		+		+	+	-	N	-		-	5-3
22/680	+		+		+	+	-	-	-		-	5-4
22/503 - Conn Reg-Rates	+		+		-	-	-	-	-		-	3-5
21/414:374 - Crim Liability	+		+		-	-	-	-	-		-	2-7
21/414:375 - Crim Liability	+		+		-	-	-	-	-		-	2-7
27/1 - Military-Civil	+		+		-	-	-	N	-		-	2-6
27/1 (ex)	+		+		-	-	-	N	-		-	1-7
	<hr/>											
	42-45											
Totals	11-0	8-1	6-5	6-4	1-3	4-5	4-7	0-4	0-11	2-0	0-5	42-45
Scale Scores	1.000	.909	.545	.591	.545	.545	.364	.227	.000		.091	
												CR = .970
												MMR = .817
												CR-MMR = .168
												CS = .895

AO - Agencies of the federal government
AS - Emergency operational authority of governmental agencies during the national
wartime emergency

APPENDIX D - SCALE-SET SPECIFICATIONS

Scale Title	N	Dup	Exp	CR	MMR	CR-MMR	CS
Admin Deference	16	15	0	.988	.800	.188	.968
Antitrust	13	1	1	.986	.844	.142	.944
Appeals-Review	13	13	0	.974	.783	.191	.909
Appeals-St to Fed	11	7	3	.989	.854	.135	.938
Bankruptcy	19	0	0	1.000	.820	.180	1.000
Claims on Gov't	8	1	0	.981	.787	.194	.938
Coerced Confession	5	0	1	.977	.830	.147	.875
Collaboration	10	9	1	.974	.827	.147	.857
Conn Reg-Rates	18	0	0	.974	.814	.160	.893
Contracts	10	7	0	1.000	.785	.215	1.000
Counsel	7	0	1	1.000	.805	.195	1.000
Double Jeopardy	8	0	3	1.000	.794	.206	.933
Due Process	18	1	0	.985	.845	.140	.923
Emer Price Con Act	11	0	1	1.000	.774	.226	1.000
Eminent Domain	7	0	1	.980	.783	.197	.929
Equal Protection	14	4	2	1.000	.775	.225	1.000
Evidence-Suff	9	1	0	.962	.810	.152	.875
FLSA-Contracts	15	2	0	.992	.881	.111	.941
FLSA - Coverage	13	0	0	.986	.884	.102	.938
FELA	15	0	2	.984	.783	.201	.917
Fed-St(Commerce)	10	1	0	.986	.846	.140	.938
Fed-St(Policy)	16	4	0	.983	.842	.141	.913
Fed-St(Supremacy)	13	13	0	.979	.844	.135	.900
Fed-St(Tax)	10	0	2	1.000	.780	.220	1.000
Fed Tax-Construct	8	0	0	.988	.794	.194	.938
Fed Tax-Exemptions	15	0	1	.972	.800	.172	.923
Fed Tax-Liability	11	0	1	.975	.765	.210	.955
Fed Tax-Succession	6	0	0	1.000	.799	.201	1.000
Full Faith & Credit	6	0	1	.955	.773	.182	.846
Indian Property	14	0	9	1.000	.897	.103	1.000
Indian Treaties	9	0	2	1.000	.801	.199	1.000
ICC-PN&C	8	0	0	1.000	.851	.149	1.000
Comity	11	2	0	1.000	.826	.174	1.000
Jud Rev-Comns	30	14	0	.989	.799	.190	.971
Jury Trial	13	7	0	.990	.833	.157	.938
Legis Power Deleg	12	8	3	.978	.807	.171	.913
Crim Liability	20	1	6	.972	.805	.167	.871
Fiscal Liability	40	4	1	.984	.851	.133	.922
Injury Liability	8	2	0	1.000	.911	.089	1.000
Military-Civil	9	0	4	.983	.791	.192	.941
Naturalisation	5	1	0	.976	.820	.156	.833
NLRA	14	0	0	1.000	.821	.179	1.000
Patents & Copyrights	13	0	0	.982	.893	.089	.857
Radio Regulation	13	4	1	1.000	.855	.145	1.000
Railway Labor Act	7	0	1	1.000	.847	.153	1.000

APPENDIX D

Scale Title	N	Dup	Exp	CR	MMR	CR-MMR	CS
Religion	20	0	0	.978	.962	.016	.600
Search & Seizure	11	0	1	1.000	.857	.143	1.000
Selective Service	9	0	3	1.000	.825	.175	1.000
Speech-Press	9	5	0	1.000	.788	.212	1.000
State Conn Reg	11	9	0	.984	.795	.189	.955
State Tax(Commerce)	8	0	0	1.000	.797	.203	1.000
Stat Const(Crim)	10	8	0	.977	.773	.204	.955
Stat Const(Reg)	12	8	0	1.000	.856	.144	1.000
Sup Court Juris	10	0	1	.986	.855	.131	.923
Trial - Errors	13	3	0	1.000	.837	.163	1.000
Unions - Barg Agents	7	3	0	.977	.861	.116	.900
Unions - Closed Shop	5	3	0	.977	.877	.100	.750
Unions - Solicit	7	3	0	1.000	.772	.228	1.000
Utility Regulation	12	7	0	1.000	.901	.099	1.000
War Powers	11	7	2	.970	.817	.153	.895
TOTALS	716	176	55				
MEAN				.9878	.825	.163	.940
MEDIAN				.9870	.820	.167	.941

Separate Citations 498
 Citations Included (Scaled) 485
 Percent of Cases Scaled 97.39%

APPENDIX E - INDIVIDUAL SCALE RANKS

	Blk	Bur	Byr	Dou	Frk	Jac	Mur	Ree	Rob	Rut	Sto
Antitrust	2	x	x	3	9	7½	1	5	6	4	7½
Bankruptcy	1	x	x	2	5½	7½	3	5½	9	4	7½
Claims	1	x	4	10	3	6	5	8	9	2	7
Coerced Confession	1½	x	x	1½	3	8½	4	6½	8½	5	6½
ICC-PN&C	2½	x	4	1	9½	9½	5½	5½	7½	2½	7½
Conn Reg - Rates	3	x	x	1	7	5	2	8	9	4	6
Jud Rev - Comns	1½	x	7	3	5	9	1½	4	10	6	8
Contracts	1	x	5	2½	9	7½	2½	7½	10	4	6
Counsel	3½	x	x	3½	8	7	1	5½	9	2	5½
Double Jeopardy	1½	x	4	1½	9	10	5	3	7	8	6
Eminent Domain	3	9	x	1½	6½	6½	1½	5	10	4	8
Emer Price Act	2½	4	x	1	9	6	2½	8	10	7	5
Equal Protection	2	5	7	1	9	10	3	8	11	4	6
Evidence-Suff	1	10	x	3½	5½	3½	7	8	5½	2	9
Fed-St (Commerce)	2	x	8	1	6	10	3	5	4	9	7
Fed-St (Policy)	4	x	x	1½	9	7	1½	6	8	3	5
Fed-St (Tax)	1	10	x	2	8	7	5½	5½	9	3	4
Fed Tax-Construction	2½	x	x	1	9	8	2½	7	4½	6	4½
Fed Tax-Exemption	2½	8	x	1	4	6	9	2½	5	10	7
Fed Tax-Liability	1	6	x	3	2	7	5	8	10	4	9
Fed Tax-Succession	4	x	6	1½	7½	1½	4	4	9	x	7½
FELA	2	10	7	2	8	6	2	5	11	4	9
FLSA-Contracts	1½	x	x	3	6½	6½	1½	5	9	4	8
FLSA-Coverage	3½	x	x	1½	8	7	3½	5½	9	1½	5½
Full Faith & Credit	1	x	x	3	6	9	4	6	8	2	6
Indian Property	1½	x	x	1½	8½	4	6	7	5	3	8½
Indian Treaties	5	x	x	3	2	9	1	7½	4	7½	6
Comity	3½	x	x	6	7	5	2	3½	8	1	9
Due Process	1	3	4	2	8	5	6	9	11	7	10
Jury Trial	1	x	7	3	10	6	2	5	8	4	9
Crim Liability	8	7	x	9	4	5	1	10	3	2	6
Fiscal Liability	3	x	x	1½	9	6	1½	7	8	4	5
Injury Liability	1	x	4	2½	10	7	2½	6	9	5	8
Military-Civil	5	9	x	5	8	2	1	5	10	3	7
Nat-Donat	3½	x	x	3½	8½	5	1½	6	7	1½	8½
NLRA	2	x	x	2	8	6½	2	5	9	4	6½
Patents & Copy	1½	x	x	1½	8	4	3	7	9	5	6
Radio Regulation	4½	x	x	1	2	6	8	3	9	4½	7
Railway Labor Act	6	x	x	2½	4½	7	2½	8	9	1	4½
Religion	2½	9½	x	2½	7	8	2½	9½	6	2½	5
Search & Seizure	9	x	8	7	2½	4	1	10	6	2½	5
Selective Service	5	9½	x	6½	3	8	1	6½	4	2	9½

APPENDIX E

	Blk	Bur	Byr	Dou	Frk	Jac	Mur	Ree	Rob	Rut	Sto
Speech-Press	3	x	7	2	8½	4½	1	4½	10	6	8½
State Conn Reg	2	x	x	1	6½	8	3	5	9	4	6½
State Tax (Conn)	1	x	x	2½	6½	8	2½	5	9	4	6½
Sup Court Juris	2½	x	4	2½	10	5	1	7	8	9	6
Trial - Errors	1	x	x	2	8	5	7	3½	9	6	3½
Unions - Agents	2½	x	x	2½	6	7½	2½	2½	9	5	7½
Unions - Closed Shop	3	7½	x	3	7½	9	3	3	6	3	10
Unions - Solicit	2½	x	7	2½	6	5	1	8½	10	4	8½
Utility Reg	2	x	x	2	7	5	2	6	8	4	9
War Powers	4	x	x	3	9	8	1	7	5½	2	5½
Stat Con (Rem)	3½	x	5	2	6	7½	1	7½	10	3½	9
Appeals - Review	1½	x	x	1½	7	8	4	6	9	3	5
Collaboration	2	9	7	2	11	4	5½	2	8	5½	10
Appeals - St to Fed	1	x	3	4	8	2	6	7	10	5	9
Stat Con - Crim	4	x	x	4	7	4	1	6	8	2	9
Admin Deference	1	x	x	2	8	5	3	6	9	4	7
Supremacy	2½	x	x	1	9	5	2½	6	8	4	7
Legis Power Deleg	5	x	3	5	7½	5	2	7½	10	1	9

MEAN RANKS

Black	2.658 for 60 sets
Burton	7.594 for 16 sets
Byrnes	5.550 for 20 sets
Douglas	2.650 for 60 sets
Frankfurter	6.983 for 60 sets
Jackson	6.367 for 60 sets
Murphy	3.017 for 60 sets
Reed	6.008 for 60 sets
Roberts	8.142 for 60 sets
Rutledge	4.068 for 59 sets
Stone	7.117 for 60 sets

APPENDIX F - INDIVIDUAL SCALE SCORES

	Black	Burto	Byrne	Dougl	Frank	Jacks
Antitrust	.846	x	x	.769	.000	.069
Bankruptcy	1.000	x	x	.895	.684	.632
Claims on Gov't	1.000	x	.800	.000	.750	.375
Coerced Confession	1.000	x	x	1.000	.600	.000
ICC-PN&C	.875	x	.750	1.000	.000	.000
Conn Reg - Rates	.889	x	x	.944	.278	.667
Jud Rev - Comns	1.000	x	.733	.962	.767	.633
Contracts	1.000	x	.600	.800	.100	.400
Counsel	.714	x	x	.714	.143	.429
Double Jeopardy	1.000	.750	x	1.000	.250	.125
Eminent Domain	.714	.071	x	1.000	.429	.429
Emer Price Act	.818	.591	x	1.000	.273	.500
Equal Protection	.929	.643	x	1.000	.429	.143
Evidence - Suff	1.000	.111	x	.778	.667	.778
Fed-St (Commerce)	.900	x	x	1.000	.300	.125
Fed-St (Policy)	.875	x	x	1.000	.000	.375
Fed-St (Tax)	1.000	x	x	.900	.200	.300
Fed Tax-Construction	.500	x	x	1.000	.000	.143
Fed Tax-Exemptions	.867	x	x	1.000	.800	.667
Fed Tax-Liability	.909	.545	x	.818	.909	.636
Fed Tax-Succession	.833	x	.667	1.000	.500	1.000
FELA	1.000	.067	.500	1.000	.333	.600
FLSA-Contracts	1.000	x	x	.933	.600	.600
FLSA-Coverage	.923	x	x	1.000	.462	.692
Full Faith & Credit	1.000	x	x	.667	.500	.000
Indian Property	1.000	x	x	1.000	.000	.893
Indian Treaties	.444	x	x	.667	.889	.000
Comity	.727	x	x	.545	.455	.636
Due Process	1.000	.917	.806	.889	.333	.778
Jury Trial	1.000	x	.500	.269	.000	.308
Crim Liability	.150	.250	x	.150	.750	.600
Fiscal Liability	.950	x	x	1.000	.125	.400
Injury Liability	1.000	x	x	.875	.000	.500
Military-Civil	.667	.111	x	.667	.111	.944
Nat-Denat	.800	x	x	.800	.000	.600
NLRA	1.000	x	x	1.000	.571	.643
Patents & Copy	1.000	x	x	1.000	.077	.333
Radio Regulation	.846	x	x	1.000	.923	.500
Railway Labor Act	.714	x	x	.857	.714	.571
Religion	1.000	.000	x	1.000	.150	.059
Search & Seizure	.000	x	.136	.182	.818	.818
Selective Service	.444	.000	x	.222	.667	.111
Speech-Press	.611	x	.167	.667	.111	.444
State Conn Reg	.909	x	x	1.000	.364	.300

APPENDIX F

	Black	Burto	Byrne	Dougl	Frank	Jacks
State Tax (Comn)	1.000	x	x	.875	.500	.125
Sup Court Juris	.900	x	.900	.900	.000	.750
Trial - Errors	1.000	.769	x	.923	.462	.769
Unions - Agents	1.000	x	x	1.000	.571	.429
Unions - Closed Shop	1.000	.200	x	1.000	.200	.200
Unions - Solicit	.857	x	.714	.857	.571	.714
Utility Reg	1.000	x	x	1.000	.167	.583
War Powers	.591	x	x	.545	.000	.227
Stat Con (Rem)	.833	x	.833	.917	.667	.333
Appeals - Review	1.000	x	x	1.000	.462	.231
Collaboration	1.000	x	x	1.000	.000	.800
Appeals - St to Fed	1.000	x	x	.818	.273	.909
Stat Con (Crim)	.600	x	x	.600	.300	.600
Admin Deference	1.000	x	x	.938	.312	.688
Supremacy	.846	x	x	1.000	.000	.700
Legis Power Deleg	.833	x	.917	.833	.500	.833

MEAN SCALE SCORES

Black	.8600 for 60 sets
Burton	.3589 for 14 sets
Byrnes	.6445 for 14 sets
Douglas	.8388 for 60 sets
Frankfurter	.3679 for 60 sets
Jackson	.4757 for 60 sets

APPENDIX F

	Murph	Reed	Rober	Rutle	Stons
Antitrust	1.000	.385	.308	.692	.154
Bankruptcy	.789	.684	.000	.737	.632
Claims on Gov't	.500	.250	.125	.875	.250
Coerced Confession	.600	.200	.000	.400	.200
ICC-PN&C	.375	.375	.250	.875	.250
Conn Reg - Rates	.944	.222	.059	.833	.333
Jud Rev - Comns	1.000	.933	.000	.750	.700
Contracts	.800	.400	.000	.650	.500
Counsel	1.000	.571	.000	.857	.571
Double Jeopardy	.500	.750	.438	.375	.375
Eminent Domain	1.000	.571	.000	.714	.286
Emer Price Act	.818	.364	.000	.455	.545
Equal Protection	.786	.500	.000	.714	.571
Evidence - Suff	.667	.444	.667	.889	.222
Fed-St (Comn)	.800	.400	.700	.100	.200
Fed-St (Policy)	.933	.438	.286	.929	.625
Fed-St (Tax)	.400	.400	.050	.700	.600
Fed Tax-Construction	.500	.125	.375	.250	.375
Fed Tax-Exemptions	.333	.867	.733	.143	.600
Fed Tax-Liability	.636	.409	.000	.727	.364
Fed Tax-Succession	.833	.833	.000	x	.500
FELA	1.000	.533	.000	.867	.133
FLSA-Contracts	1.000	.800	.000	.933	.067
FLSA-Coverage	.923	.769	.000	1.000	.769
Full Faith & Credit	.333	.333	.167	.833	.333
Indian Property	.429	.214	.643	.964	.000
Indian Treaties	1.000	.778	.556	.222	.333
Comity	.909	.727	.273	1.000	.000
Due Process	.667	.167	.063	.667	.059
Jury Trial	.923	.385	.231	.500	.077
Crim Liability	1.000	.050	.800	.846	.300
Fiscal Liability	1.000	.375	.350	.975	.359
Injury Liability	.875	.375	.063	.625	.250
Military-Civil	1.000	.667	.000	.778	.444
Nat-Denat	1.000	.400	.100	1.000	.000
NLRA	1.000	.857	.000	.964	.643
Patents & Copy	.769	.154	.000	.545	.231
Radio Regulation	.308	.846	.000	.846	.500
Railway Labor Act	.857	.143	.000	1.000	.714
Religion	1.000	.000	.150	1.000	.850
Search & Seizure	1.000	.000	.273	.818	.636
Selective Service	1.000	.222	.444	.889	.000
Speech-Press	1.000	.444	.000	.444	.111
State Conn Reg	.727	.455	.000	.545	.364

APPENDIX F

	Murph	Reed	Rober	Rutle	Stone
State Tax (Conn)	.875	.625	.000	.750	.500
Sup Court Juris	1.000	.444	.150	.100	.700
Trial - Errors	.538	.846	.308	.615	.846
Unions - Agents	1.000	1.000	.000	.846	.429
Unions - Closed Shop	.800	1.000	.600	1.000	.000
Unions - Solicit	1.000	.286	.000	.786	.286
Utility Reg	1.000	.333	.042	.750	.000
War Powers	1.000	.364	.545	.909	.545
Stat Con (Rem)	1.000	.333	.000	.833	.083
Appeals - Review	.769	.577	.000	.885	.692
Collaboration	.700	.100	.500	.600	.200
Appeals - St to Fed	.727	.364	.000	.773	.091
Stat Con (Crim)	.900	.500	.050	.700	.000
Admin Deference	.875	.500	.000	.654	.375
Supremacy	.769	.346	.077	.769	.308
Legis Power Deleg	.833	.500	.000	1.000	.250

MEAN SCALE SCORES

Murphy	.8222 for 60 sets
Reed	.4694 for 60 sets
Roberts	.1692 for 60 sets
Rutledge	.7286 for 59 sets
Stone	.3536 for 60 sets

APPENDIX G Tau Correlation Matrix Factor Loadings -
 2 Factor Solution/ Varimax Rotation Analysis

	I	II	h ²
Antitrust	.576	.519	.603
Bankruptcy	.741	.487	.785
Claims on Government	.020	.463	.214
Coerced Confession	.639	.295	.495
ICC: PN & C Applications	.724	.273	.599
Commission Regulation: Rates	.531	.648	.701
Judicial Review: Commissions	.707	.339	.614
Contracts	.726	.495	.772
Right to Counsel	.460	.696	.696
Double Jeopardy	.768	-.137	.608
Eminent Domain	.604	.679	.825
Emergency Price Control Act	.688	.306	.567
Equal Protection	.753	.372	.704
Evidence: Sufficiency	.224	.392	.203
Federal-State: Commerce	.568	-.060	.326
Federal-State: Policy	.578	.544	.629
Federal-State: Taxation	.693	.306	.574
Federal Tax: Definition	-.601	-.152	.384
Federal Tax: Exemptions	.450	-.362	.333
Federal Tax: Liability	.431	.377	.327
Federal Tax: Succession	.571	.309	.421
Fed Employers' Liability Act	.649	.641	.832
Fair Labor Stan Act: Contracts	.705	.624	.886
Fair Labor Stan Act: Coverage	.636	.510	.664
Full Faith and Credit	.616	.403	.541
Indian Property	.528	.300	.369
Indian Treaties	.107	.143	.031
Comity	.161	.673	.479
Due Process	.601	.340	.477
Jury Trials	.625	.528	.669
Criminal Liability	-.563	.534	.602
Fiscal Liability	.665	.525	.717
Injury Liability	.733	.478	.765
Military-Civilian	.149	.701	.513
Natural-Denaturalization	.330	.762	.688
Nat'l Labor Relations Act	.770	.561	.908
Patents and Copyrights	.689	.457	.683
Radio Regulation	.406	-.081	.171
Railway Labor Act	.158	.605	.391
Religion	.358	.528	.405
Search & Seizure	-.480	.570	.555
Selective Service	-.143	.573	.348
Speech and Press	.601	.504	.615
State Commission Regulation	.820	.408	.838
State Tax: Commerce	.775	.465	.817

APPENDIX G

	I	II	η^2
Supreme Court Jurisdiction	.510	.292	.345
Trials: Prejudicial Errors	.754	-.147	.590
Unions: Bargaining Agents	.717	.380	.658
Unions: Closed Shop	.494	.413	.414
Unions: Solicitation	.434	.748	.743
Utility Regulation	.584	.664	.782
War Powers	.315	.559	.411
Stat Construction: Remedies	.461	.715	.723
Appeals: Substantive Review	.814	.355	.789
Collaboration	.650	.078	.427
Appeals: State to Federal	.505	.372	.493
Stat Construction: Criminal	.207	.853	.769
Administrative Deference	.720	.534	.802
Federal-State: Supremacy	.692	.535	.764
Legislative Power Delegation	.196	.860	.777
Proportions of Variance	33.2%	24.8%	58.0%

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APPENDIX G

	I	II	III	h^2
Supreme Court Juris	.472	-.117	-.332	.347
Trial: Prej Errors	.370	-.657	-.247	.629
Unions: Coll Bargain	.601	-.219	-.500	.659
Unions: Closed Shop	.538	.000	-.371	.425
Unions: Solicitation	.450	.164	-.728	.759
Utility Regulation	.473	-.026	-.774	.822
War Powers	.732	.395	-.141	.710
Stat Con: Remedies	.530	.172	-.643	.723
Appeal: Sub Review	.726	-.256	-.449	.793
Collaboration	.304	-.481	-.429	.508
Appeal: State to Fed	.104	-.318	-.772	.707
Stat Con: Criminal	.274	.347	-.777	.799
Admin Deference	.523	-.203	-.733	.850
Fed-State: Supremacy	.605	-.112	-.624	.768
Legis Power Delegation	.257	.351	-.791	.814
Proportions of Variance	29.4%	8.5%	26.3%	64.2%

APPENDIX G Tau Correlation Matrix Factor Loadings -
5 Factor Solution/Varimax Rotation Analysis

	I	II	III	IV	V	h^2
Antitrust	.489	-.086	.487	.009	.602	.846
Bankruptcy	.412	-.077	.301	-.731	.376	.943
Claims	-.002	.363	-.171	-.529	.198	.479
Coerced Confess	.439	-.019	.375	-.738	.067	.812
ICC: PN&C	.560	-.222	.418	-.227	.272	.663
Comm Reg: Rates	.653	.143	-.017	-.415	.401	.781
Jud Review: Comms	.363	-.143	.442	-.553	.294	.741
Contracts	.805	-.030	.123	-.354	.288	.872
Counsel	.667	.211	.218	-.119	.484	.784
Double Jeopardy	.452	-.498	.476	-.152	-.005	.702
Eminent Domain	.400	.018	.273	-.465	.652	.876
EPCA	.871	-.127	-.036	-.195	.124	.830
Equal Protection	.761	-.023	.307	-.450	.085	.883
Evid: Sufficiency	-.026	-.044	-.093	-.371	.520	.420
Fed-State: Comm	.179	-.313	.732	-.139	.051	.687
Fed-State: Policy	.791	.075	.307	-.014	.358	.853
Fed-State: Tax	.583	-.183	.135	-.379	.243	.595
Fed Tax: Definition	-.646	.124	-.553	-.054	-.043	.743
Fed Tax: Exemptions	-.175	-.645	.211	-.222	.070	.544
Fed Tax: Liability	.169	.045	-.004	-.790	.208	.698
Fed Tax: Succession	.420	-.357	-.280	-.227	.539	.722
FELA	.405	-.089	.202	-.435	.706	.900
FLSA: Contracts	.446	-.063	.259	-.556	.600	.939
FLSA: Coverage	.713	.006	.162	-.274	.337	.724
Full Faith	.458	.029	.355	-.560	.184	.683
Indian Property	.298	-.290	.118	-.204	.513	.478
Indian Treaties	.082	.233	.597	-.119	-.101	.442
Comity	.093	.157	.041	-.150	.749	.620
Due Process	.457	-.192	-.212	-.530	.328	.679
Jury Trial	.381	-.193	.296	-.194	.711	.812
Crim Liability	-.170	.773	.110	.128	.176	.685
Fisc Liability	.853	.005	.145	-.155	.333	.789
Military-Civil	.366	.198	-.252	-.178	.684	.704
Injury Liability	.599	-.197	.195	-.275	.527	.789
Nat-Denaturalization	.364	.132	.200	.001	.819	.861
NLRA	.676	-.116	.212	-.371	.511	.913
Patents	.752	-.130	-.135	-.337	.363	.846
Radio Regulation	-.081	-.324	.039	-.581	.047	.453
RLA	.466	.489	.067	-.320	.138	.576
Religion	.518	.281	.374	-.194	.210	.568
Search & Seizure	-.014	.827	-.041	-.083	.053	.696
Sel Service	-.175	.477	.398	-.178	.406	.613
Speech & Press	.492	-.172	.055	-.207	.614	.694
State Comm Reg	.587	-.135	.376	-.574	.281	.911
State Tax: Commerce	.539	-.092	.357	-.588	.342	.888

APPENDIX G

	I	II	III	IV	V	h^2
Sup Court Juris	.642	-.175	.012	.090	.327	.558
Trial: Errors	.499	-.600	-.067	-.248	.049	.678
Un: Coll Barg	.332	-.208	.352	-.542	.492	.755
Un: Closed Shop	.113	-.144	.532	-.218	.599	.723
Un: Solicitation	.476	.212	.036	-.429	.561	.771
Utility Reg	.405	-.051	.110	-.394	.718	.849
War Powers	.589	.240	.488	.220	.377	.833
Stat Con: Rem	.379	.205	.231	-.503	.532	.775
App: Sub Review	.589	-.173	.284	-.569	.237	.848
Collaboration	.260	-.588	.062	-.084	.512	.686
App: State to Fed	.327	-.195	-.349	-.526	.440	.737
Stat Con: Crim	.280	.265	.015	-.141	.835	.865
Admin Defer	.619	-.144	-.028	-.452	.508	.868
Fed-St: Supremacy	.671	-.137	.083	-.233	.538	.820
Legis Power Deleg	.358	.369	-.095	-.273	.691	.817
Proportions of Variance	24.1%	8.1%	8.2%	14.1%	19.4%	73.9%

APPENDIX G Tau Correlation Matrix Factor Loadings -
6 Factor Solution/Varimax Rotation Analysis

	I	II	III	IV	V	VI	h ²
Antitrust	.443	-.071	.550	.025	.505	-.301	.850
Bankruptcy	.378	-.066	.421	-.715	.244	-.224	.943
Claims	.083	.374	.020	-.539	.161	.256	.528
Coer Conf	.145	-.018	.406	-.721	.036	-.325	.813
ICC: FN&C	.133	-.222	.728	-.230	.356	-.102	.786
Comm Reg: Rates	.673	.114	.440	-.381	-.010	-.030	.813
Jud Rev: Comms	.404	-.139	.321	-.520	.118	-.498	.816
Contracts	.482	-.043	.729	-.334	.050	.102	.880
Counsel	.566	.210	.592	-.092	.215	-.115	.784
Doub Jeop	.117	-.507	.500	-.134	.006	-.413	.709
Eminent Domain	.675	.038	.283	-.432	.332	-.309	.929
EPCA	.598	-.154	.624	-.158	-.277	-.017	.872
Equal Prot	.340	-.040	.731	-.423	-.081	-.217	.884
Evid: Suff	.118	-.016	.092	-.401	.588	.351	.652
Fed-St: Comm	-.024	-.306	.347	-.123	.191	-.659	.700
Fed-St: Policy	.506	.065	.738	.014	.128	-.178	.853
Fed-St: Tax	.212	-.188	.652	-.383	.222	.125	.716
Fed Tax: Def	-.126	.139	-.752	-.073	-.067	.369	.746
Fed Tax: Exem	.030	-.629	-.176	-.217	.104	-.312	.584
Fed Tax: Liab	.217	.054	.149	-.786	.104	.030	.701
Fed Tax: Succ	.767	-.352	.097	-.201	.069	.138	.786
FELA	.679	-.069	.294	-.410	.401	-.192	.917
FLSA: Contract	.638	-.047	.343	-.526	.305	-.267	.968
FLSA: Coverage	.413	-.001	.697	-.261	.171	.025	.754
Full Faith	.064	.031	.634	-.564	.273	-.074	.804
Indian Prop	.282	-.275	.349	-.219	.485	.225	.610
Indian Treat	-.027	.233	.168	-.090	-.064	-.668	.541
Comity	.453	.188	.088	-.161	.600	.083	.641
Due Process	.533	-.193	.255	-.514	.003	.176	.681
Jury Trial	.527	-.169	.383	-.183	.555	-.151	.817
Crim Liab	-.059	.786	-.055	.125	.237	-.023	.696
Fisc Liab	.526	-.009	.766	-.132	.074	-.002	.887
Inj Liability	.501	-.191	.573	-.263	.347	-.028	.806
Mili-Civil	.741	.209	.122	.002	.253	.211	.715
Nat-Denat	.580	.157	.555	.009	.623	-.029	.876
NLRA	.624	-.113	.573	-.344	.220	-.142	.916
Patents	.653	-.142	.531	-.312	-.026	.148	.849
Radio Reg	.057	-.314	-.100	-.580	.030	-.109	.459
RLA	.270	.474	.434	-.303	-.028	.003	.578
Religion	.099	.278	.684	-.093	.267	-.083	.670
Search & Seiz	.170	.828	-.104	-.060	-.133	-.094	.755
Sel Service	.046	.509	-.003	-.176	.494	-.287	.617
Speech	.829	-.163	.216	-.165	.140	-.207	.849
St Comm Reg	.392	-.135	.577	-.549	.129	-.300	.914
St Tax: Comm	.374	-.087	.559	-.569	.218	-.241	.889

APPENDIX G

	I	II	III	IV	V	VI	h^2
Sup Ct Juris	.641	-.186	.401	.126	-.064	-.093	.634
Trial: Errors	.235	-.614	.415	-.246	-.064	.137	.688
Un: Coll Barg	.493	-.193	.257	-.512	.210	-.408	.820
Un: Clos Shop	.226	-.112	.284	-.218	.668	-.329	.749
Un: Solicit	.705	.221	.284	-.396	.159	-.099	.817
Utility Reg	.696	-.031	.273	-.371	.391	-.098	.860
War Powers	.285	.239	.695	.236	.337	-.248	.852
St Con: Rem	.614	.220	.256	-.468	.210	-.296	.841
App: Sub Rev	.259	-.175	.660	-.562	.187	-.084	.890
Collaboration	.390	-.573	.218	-.086	.401	.040	.696
App: St to Fed	.448	-.188	.192	-.532	.206	.428	.781
St Con: Crim	.735	.291	.129	-.119	.471	-.016	.877
Admin Defer	.612	-.142	.484	-.436	.204	.106	.871
Fed-St: Suprem	.650	-.136	.535	-.211	.222	-.010	.820
Leg Power Deleg	.653	.376	.216	-.256	.348	.131	.817

Proportions of Variance	21.8%	8.2%	20.2%	13.2%	8.5%	5.9%	77.9%
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APPENDIX G Tau Correlation Matrix Factor Loadings -
7 Factor Solution/Varimax Rotation Analysis

	I	II	III	IV	V	VI	VII	h ²
Antitrust	.281	-.070	.433	-.004	.578	.202	-.463	.860
Bankruptcy	.303	-.032	.400	-.707	.305	.250	-.193	.944
Claims	.018	.375	.103	-.413	.105	.327	.298	.529
Coer Conf	.208	.043	.386	-.730	.013	.128	-.270	.817
ICC: PN&C	.120	-.239	.711	-.180	.261	.245	-.241	.794
Comn Reg: Rates	.712	.198	.301	-.345	.287	.154	-.073	.866
Jud Rev: Comns	.239	-.141	.316	-.650	.356	-.118	-.319	.841
Contracts	.542	-.040	.656	-.276	.241	.133	-.054	.880
Counsel	.315	.109	.627	-.133	.601	-.141	.004	.901
Double Jeep	.209	-.476	.410	-.221	.027	-.080	-.464	.709
Emin Domain	.384	.021	.252	-.511	.650	.060	-.196	.934
EPCA	.790	-.114	.461	-.147	.068	-.063	-.078	.885
Equal Prot	.432	-.031	.685	-.430	.113	-.050	-.184	.891
Evid: Suff	.049	.029	.068	-.202	.269	.780	.089	.738
Fed-St: Comm	.055	-.213	.202	-.231	.045	.051	-.787	.765
Fed-St: Policy	.435	.021	.672	-.014	.427	-.095	-.199	.871
Fed-St: Tax	.194	-.230	.691	-.295	.220	.229	.073	.760
Fed Tax: Def	-.342	.066	-.564	-.062	-.024	-.065	.607	.816
Fed Tax: Exem	-.013	-.581	-.224	-.320	.022	.053	-.307	.587
Fed Tax: Liab	.251	.241	.140	-.701	.055	.374	.035	.733
Fed Tax: Succ	.595	-.378	.035	-.222	.455	.059	.185	.792
FELA	.385	-.091	.264	-.455	.668	.160	-.132	.922
FLSA: Contract	.428	-.039	.293	-.573	.553	.150	-.204	.968
FLSA: Coverage	.291	-.083	.744	-.236	.400	.004	.079	.866
Full Faith	.048	.107	.691	-.492	.177	.252	-.091	.823
Indian Prop	.324	-.205	.212	-.058	.258	.691	-.131	.756
Indian Treat	.045	.314	.065	-.223	-.031	-.200	-.631	.594
Comity	-.021	.073	.201	-.156	.778	.180	.182	.740
Due Process	.630	-.118	.135	-.422	.124	.354	.073	.754
Jury Trial	.321	-.160	.285	-.177	.612	.356	-.299	.832
Crim Liab	-.132	.805	-.069	.182	.162	.154	-.091	.761
Fisc Liab	.635	.020	.616	-.066	.255	.172	-.174	.912
Inj Liab	.448	-.175	.471	-.211	.420	.328	-.186	.816
Mil-Civil	.385	.106	.152	.001	.700	.005	.323	.775
Nat-Denat	.231	.096	.327	.023	.796	.254	-.106	.878
NLRA	.495	-.131	.515	-.360	.490	.093	-.135	.923
Patents	.755	-.099	.387	-.235	.217	.223	.028	.881
Radio Reg	-.042	-.316	-.014	-.621	.037	.039	.063	.494
RLA	.215	.430	.488	-.272	.204	-.075	.131	.608
Religion	.182	.310	.617	-.097	.162	.289	-.267	.700
Search & Seiz	.087	.824	-.084	-.084	.120	-.194	.079	.758
Sel Service	-.241	.492	.050	-.204	.442	.151	-.236	.618
Speech	.592	-.183	.125	-.267	.603	-.076	-.116	.853
St Comn Reg	.344	-.127	.552	-.584	.286	.051	-.242	.922
St Tax: Comm	.290	-.087	.551	-.580	.333	.130	-.198	.898

APPENDIX G

	I	II	III	IV	V	VI	VII	h^2
Sup Ct Juris	.708	-.144	.194	.096	.256	-.010	-.221	.683
Trial: Error	.302	-.640	.412	-.220	.091	.118	.046	.735
Un: Coll Barg	.251	-.213	.266	-.632	.472	-.059	-.230	.858
Un: Clos Shop	-.077	-.135	.287	-.260	.595	.272	-.383	.749
Un: Solicit	.590	.256	.180	-.391	.464	.160	-.090	.851
Utility Reg	.528	.009	.150	-.355	.571	.349	-.187	.910
War Powers	.171	.193	.634	.216	.465	-.030	-.353	.856
St Con: Rem	.401	.226	.216	-.529	.520	.041	-.176	.841
Appeal: Sub Rev	.234	-.193	.687	-.524	.228	.170	.072	.923
Collaboration	.235	-.588	.161	-.077	.416	.288	-.092	.697
App: St to Fed	.444	-.159	.157	-.370	.214	.527	.306	.800
St Con: Crim	.343	.235	.111	-.135	.808	.153	.033	.880
Admin Defer	.603	-.108	.379	-.354	.352	.356	-.102	.894
Fed-St: Suprem	.644	-.096	.376	-.164	.404	.284	-.176	.867
Leg Power Deleg	.317	.299	.261	-.226	.683	.129	.234	.847

Proportions of Variance	15.2%	7.7%	16.4%	12.7%	16.6%	5.7%	6.3%	80.6%
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APPENDIX G Tau Correlation Matrix Factor Loadings -
 8 Factor Solution/Varimax Rotation Analysis

	I	II	III	IV	V	VI	VII	VIII	h ²
Antitrust	.310	-.053	.423	-.092	.568	-.376	-.138	-.333	.879
Bankruptcy	.293	-.073	.302	-.783	.328	-.157	-.154	-.114	.965
Claims	.025	.372	.023	-.521	.123	.360	-.183	-.149	.610
Coer Conf	.185	-.024	.319	-.759	.048	-.293	-.113	.099	.823
ICC: PN&C	.143	-.262	.685	-.266	.239	-.191	-.215	-.168	.796
Conn Reg-Rate	.666	.135	.287	-.365	.322	-.115	-.209	.271	.911
Jud Rev: Comms	.205	-.198	.255	-.642	.377	-.347	.134	.057	.841
Contracts	.563	-.066	.581	-.399	.256	.013	-.041	-.141	.905
Counsel	.299	.067	.621	-.188	.602	.009	.151	.049	.901
Doub Jeop	.246	-.479	.346	-.264	.026	-.410	.144	-.253	.732
Emin Domain	.324	-.038	.234	-.496	.671	-.240	-.192	.160	.949
EPCA	.792	-.151	.411	-.205	.100	-.065	.073	.072	.885
Equal Prot	.444	-.080	.611	-.517	.126	-.156	.109	-.030	.897
Evid-Suff	.013	.007	.088	-.228	.262	.082	-.828	.063	.825
Fed-St: Comm	.065	-.227	.208	-.214	.033	-.789	-.092	-.093	.786
Fed-St: Pol	.435	-.016	.679	-.071	.424	-.189	.074	.032	.878
Fed-St: Tax	.191	-.277	.651	-.357	.212	.089	-.213	.005	.769
Fed Tax: Def	-.387	.077	-.569	.012	-.009	.556	.069	.166	.819
Fed Tax: Exem	-.058	-.608	-.228	-.205	.029	-.378	-.143	.130	.647
Fed Tax: Liab	.224	.077	.056	-.751	.085	.036	-.317	.051	.733
Fed Tax: Succ	.517	-.433	.031	-.152	.491	.105	-.159	.331	.865
FELA	.334	-.138	.236	-.460	.689	-.151	-.166	.069	.927
FLSA: Contract	.400	-.076	.224	-.616	.581	-.187	-.089	-.056	.979
FLSA: Coverage	.263	-.152	.739	-.273	.395	.051	-.047	.186	.907
Full Faith	.052	-.030	.634	-.587	.167	-.059	-.194	-.070	.923
Indian Prop	.321	-.206	.212	-.116	.254	-.091	-.705	-.108	.786
Indian Treat	.041	.288	.087	-.197	-.030	-.667	.151	.082	.606
Comity	-.046	.069	.191	-.199	.775	.213	-.120	-.117	.756
Due Process	.636	-.134	.036	-.501	.164	.123	-.261	-.095	.781
Jury Trial	.336	-.144	.242	-.265	.616	-.209	-.260	-.348	.873
Crim Liab	-.114	.833	-.021	.115	.151	-.050	-.119	-.103	.769
Fisc Liab	.658	.001	.582	-.179	.265	-.113	-.129	-.106	.943
Inj Liab	.480	-.166	.396	-.339	.430	-.077	-.199	-.357	.887
Mil-Civil	.355	.080	.166	-.003	.719	.301	-.016	.155	.777
Nat-Denat	.215	.093	.353	-.030	.788	-.071	-.246	-.109	.878
NLRA	.489	-.162	.453	-.434	.508	-.095	-.029	-.100	.936
Patents	.747	-.131	.329	-.310	.250	.057	-.191	.017	.882
Radio Reg	-.114	-.389	-.044	-.528	.053	-.042	-.119	.331	.573
RIA	.169	.350	.510	-.284	.209	.057	-.005	.384	.687
Religion	.185	.268	.650	-.169	.142	-.265	-.341	.078	.770
Search & Seiz	.054	.795	-.047	-.080	.137	.161	.270	.270	.761
Sel Service	-.255	.488	.075	-.229	.429	-.227	-.130	-.072	.618
Speech	.541	-.220	.103	-.242	.637	-.146	.050	.119	.854
St Conn Reg	.328	-.185	.484	-.631	.300	-.240	-.019	.012	.922
St Tax: Comm	.301	-.118	.452	-.680	.347	-.137	-.009	-.204	.951

APPENDIX G

	I	II	III	IV	V	VI	VII	VIII	h ²
Sup Ct Juris	.719	-.139	.173	.053	.281	-.180	.036	-.091	.690
Trial: Error	.298	-.673	.350	-.236	.027	.121	-.036	.010	.737
Un: Coll Barg	.221	-.256	.189	-.639	.496	-.232	.114	-.041	.873
Un: Clos Shop	-.077	-.135	.275	-.299	.578	-.337	-.226	-.253	.752
Un: Solicit	.547	.211	.154	-.420	.500	-.106	-.174	.138	.854
Utility Reg	.501	-.010	.113	-.401	.599	-.161	-.316	-.066	.912
War Powers	.187	.179	.693	.156	.437	-.330	-.022	-.046	.874
Stat Con: Rem	.351	.171	.187	-.537	.549	-.208	-.045	.146	.843
Ap: Sub Rev	.233	-.246	.612	-.603	.231	-.047	-.114	-.048	.934
Collaboration	.224	-.587	.140	-.081	.416	-.066	-.284	-.149	.698
Ap: St to Fed	.416	-.187	.091	-.428	.242	.326	-.486	.022	.801
Stat Con: Crim	.295	.214	.128	-.150	.824	.027	-.161	.064	.880
Admin Defer	.602	-.128	.302	-.452	.379	.048	-.272	-.131	.910
Fed-St: Suprem	.636	-.119	.349	-.227	.423	-.145	-.275	-.040	.868
Leg Power Dele	.264	.256	.264	-.255	.700	.213	-.138	.163	.851
Proportion of Variance	14.4%	8.0%	14.3%	15.2%	17.4%	5.8%	5.0%	2.6%	

APPENDIX H. PERCENTAGE RATES OF DISSENT: 1941-1945 Terms*

	1941	1942	1943	1944	1945
STONE	14%	9%	12%	19%	15%
ROBERTS	16	18	30	36	--
BLACK	13	13	14	19	13
REED	9	10	13	10	11
FRANKFURTER	10	12	16	15	22
DOUGLAS	17	14	16	15	16
MURPHY	11	17	15	15	10
JACKSON	7	11	17	11	--
RUTLEDGE	--	3	12	14	16
BURTON	--	--	--	--	15

*Reproduced from the Roosevelt Court, Table XIV, p. 45; the author the columns for the 1940 and 1946 Terms from the table.

APPENDIX I

INTERAGREEMENT RATIOS - 1941 Term*

	DOUG	BLAC	MURP	REED	BYRN	JACK	FRAN	STON	ROBE
DOUGLAS	--	95	72	54	53	42	34	23	23
BLACK	95	--	78	56	62	45	36	25	24
MURPHY	72	78	--	58	59	48	53	48	34
REED	54	56	58	--	57	65	61	54	54
BYRNES	53	62	59	57	--	68	69	61	57
JACKSON	42	45	48	65	68	--	64	53	60
FRANKFURTER	34	36	53	61	69	64	--	70	53
STONE	23	25	48	54	61	53	70	--	70
ROBERTS	23	24	34	54	57	60	53	70	--

* Reproduced from the Roosevelt Court, Table XXI, p. 245.

APPENDIX I INTERAGREEMENT RATIOS - 1942 Term*

	BLAC	DOUG	MURP	RUTL	STON	REED	JACK	FRAN	ROBE
BLACK	--	93	73	84	50	50	46	41	27
DOUGLAS	93	--	77	87	51	50	47	46	29
MURPHY	73	77	--	76	48	42	47	42	29
RUTLEDGE	84	87	76	--	55	55	63	55	33
STONE	50	51	48	55	--	68	67	68	62
REED	50	50	42	55	68	--	70	76	62
JACKSON	46	47	47	63	67	70	--	64	57
FRANKFURTER	41	46	42	55	68	76	64	--	65
ROBERTS	27	29	29	33	62	62	57	65	--

* Reproduced from the Roosevelt Court, Table XXII, p. 245.

APPENDIX I INTERAGREEMENT RATIOS - 1943 Term*

	DOUG	BLAC	MURP	RUTL	JACK	REED	STON	FRAN	ROBE
DOUGLAS	--	86	79	72	56	56	55	47	24
BLACK	86	--	76	74	57	58	58	50	27
MURPHY	79	76	--	81	49	53	58	49	34
RUTLEDGE	72	74	81	--	59	63	62	52	40
JACKSON	56	57	49	59	--	64	55	71	46
REED	56	58	53	63	64	--	78	73	50
STONE	55	58	58	62	55	78	--	70	49
FRANKFURTER	47	50	49	52	71	73	70	--	62
ROBERTS	24	27	34	40	46	50	49	62	--

* Reproduced from the Roosevelt Court, Table XXII, p. 246.

APPENDIX I INTERAGREEMENT RATIOS - 1944 Term*

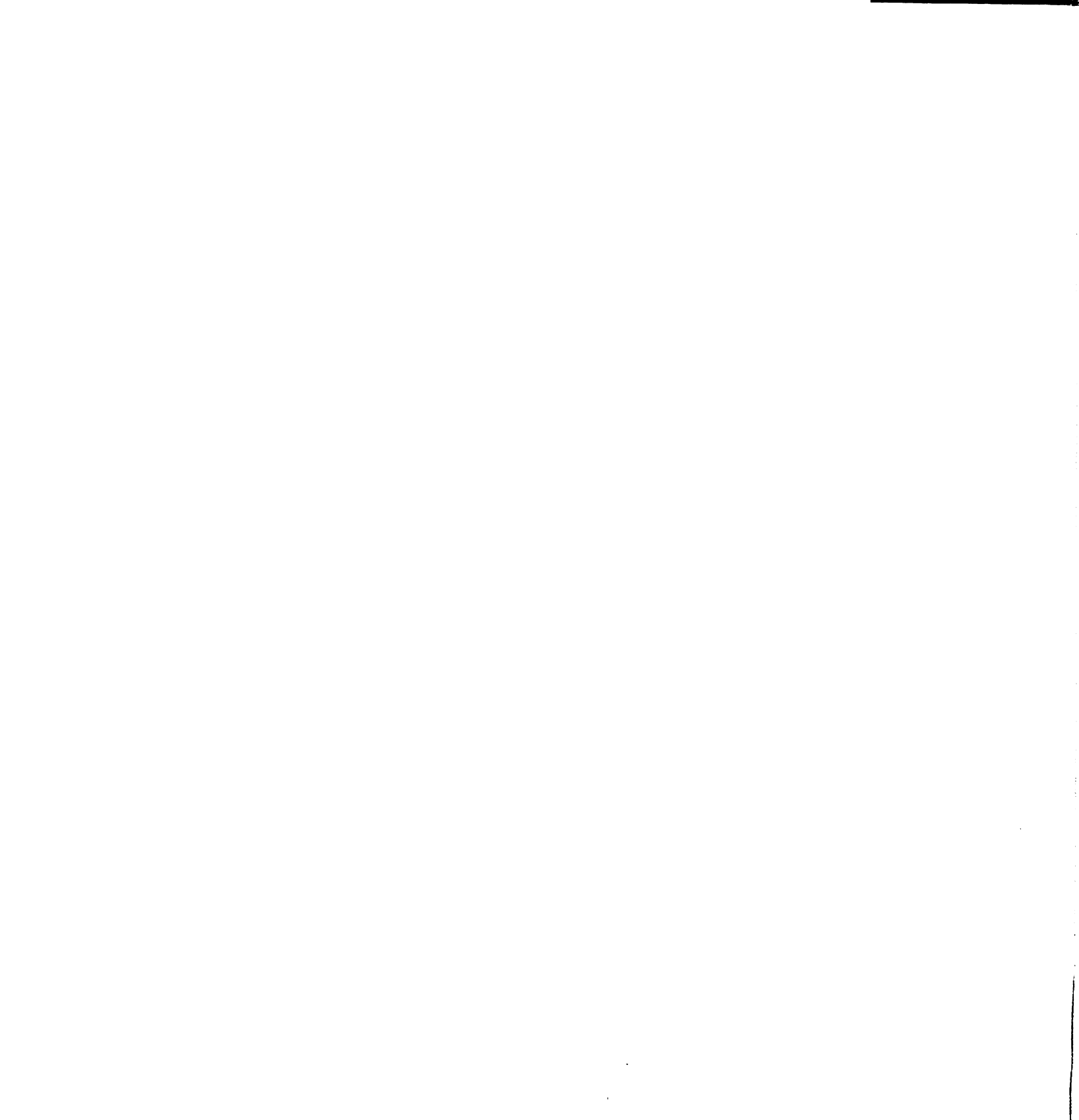
	BLAC	DOUG	RUTL	MURP	REED	JACK	FRAN	STON	ROBE
BLACK	--	79	78	74	62	53	47	41	9
DOUGLAS	79	--	78	74	70	57	52	52	20
RUTLEDGE	78	78	--	79	63	62	56	47	20
MURPHY	74	74	79	--	64	57	54	46	25
REED	62	70	63	64	--	64	67	72	41
JACKSON	53	57	62	57	64	--	75	67	45
FRANKFURTER	47	52	56	54	67	75	--	74	61
STONE	41	52	47	46	72	67	74	--	61
ROBERTS	9	20	20	25	41	45	61	61	--

* Reproduced from the Roosevelt Court, Table XXII, p. 246.

APPENDIX I INTERAGREEMENT RATIOS - 1945 Term*

	DOUG	BLAC	MURP	RUTL	REED	BURT	STON	FRAN
DOUGLAS	--	71	62	56	54	49	42	45
BLACK	71	--	67	59	61	57	47	43
MURPHY	62	67	--	73	63	56	60	52
RUTLEDGE	56	59	73	--	54	45	49	61
REED	54	61	63	54	--	68	80	57
BURTON	49	57	56	45	68	--	78	57
STONE	42	47	60	49	80	78	--	65
FRANKFURTER	45	43	52	61	57	57	65	--

* Reproduced from the Roosevelt Court, Table XXII, p. 247. Justice Jackson was absent from the Court for the entire 1945 Term, thus, the interagreement ratios reflect possible associations among only eight justices.



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