Data Sources for Researching the United States Supreme Court

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Timothy R. Johnson (Ph.D. Washington University in St. Louis, 1998) teaches constitutional law, civil liberties, criminal rights, judicial process, and legal process. His research interests include Supreme Court oral arguments, judicial decision making, strategic interaction within the judiciary, and the role of third parties in American politics. Previous work has appeared in the American Political Science Review, the Journal for Scientific Study of Religion, and an edited volume about Ross Perot.
In her 1993 article about the Supreme Court's decision in *Planned Parenthood v. Casey*, Kassop argues that "A case is more than its outcome, and the parts that came before deserve some attention for the role they played in contributing to the final result." Despite her admonition, since the behavioral revolution began in the study of law and courts, scholars have focused most of their attention on the final votes of Supreme Court justices rather than on the process by which they reach their ultimate goal. One reason for this focus is that the published votes and opinions of the Court are the easiest data to collect. Indeed, despite the fact that the judiciary is the smallest and most territorially confined of the federal branches, it is also the most secretive, and data about its deliberations and decision making process have been either unattainable, or too difficult to gather, beyond the public record. But, other data do exist. For example, with the opening of Thurgood Marshall's Supreme Court papers in 1992, a new avenue for researching the Court opened, and scholars now have a renewed interest in explaining the internal workings of the nation's ultimate arbiter of the law. As a result, the past decade has seen an explosion of research about the Supreme Court that combines voting data with analyses of litigant briefs, oral arguments, and archival data gathered from the papers of justices who sat on the Court mainly during the Burger Court era (1969-1986).

Using Kassop's analysis as a starting point, this paper explicates where scholars can obtain data about the Supreme Court's entire decision making process in order to conduct interesting and rigorous research. Specifically, for each stage of the process I explain what data are available, and where they can be located. These stages are explicated in Table 1, which indicates that there are six distinct phases in the Court's decision making process.

[Table 1 about here]
Initially, one party, the petitioner, must petition (or ask) the justices to hear her case. To do so, she submits a brief on *certiorari*, which provides reasons why the case should be taken by the nation's highest court. If *certiorari* (*cert.*) is granted, then both sides in the dispute (the other side is labeled the respondent) submit briefs on the merits. These briefs explain the reasons why the justices should rule one way or the other. Once briefs have been submitted, the justices hear both sides present their cases at oral arguments. From there, the process is secretive until the final decision is rendered publicly. During this time the justices meet in conference and cast preliminary votes in the case. After conference one justice drafts the majority opinion, and all justices discuss and bargain about the results of the case. Finally, often several months after oral arguments, the justices appear on the bench and announce their decision.

**Supreme Court Briefs**

During the first two stages of the Court's decision making process the litigants only correspond with the justices through written arguments. First, they submit *cert.* briefs that explicate the reasons why the justices should, or should not, take a case. If the Court grants *cert.* (it does so in only about 5% of the cases seeking review) then the attorneys submit a second set of briefs to explain why the justices should support their client's position in the case. At both stages, *amici curiae* (friends of the Court) can also submit briefs in support of one of the parties. While they have to obtain permission from both parties, or from the Court, there are few instances when *amici* are denied the ability to submit such briefs. Both the litigant and *amici* briefs play a key role in the process, and scholars have demonstrated that they provide the legal parameters of a case for the Court.
Both litigant and *amicus* briefs can be found at select depositories throughout the country. Most commonly researchers can find them on microfiche in major law school libraries. Additionally, briefs for all cases decided by the Court since the early 1950s can be found at the National Archives. For those who do not want to read microfiche, the briefs are also available through electronic sources such as Westlaw and Lexis/Nexis.

**Oral Arguments**

Little research has been done concerning the oral arguments phase of the Court's decision making process. This is undoubtedly due to the fact that collecting data on these proceedings is an arduous task. Indeed, to assess the impact that these proceedings may have on the Court, one must read the written transcripts that often reach 50 pages in length. Additionally, the transcripts are found only on microfiche, which makes reading them all the more difficult. However, the work that has been done in this area suggests that the oral arguments have a direct impact on how the Court decides cases.\(^9\)

Oral argument transcripts can also be found at select law school libraries, as well as at the National Archives. Further, the taped transcripts, beginning with the Warren Court, are available directly from the Archives in Washington D.C. These tapes are an invaluable resource, as the written transcripts do not identify which justices ask which questions of the litigants.\(^10\) Thus, scholars can use the written arguments in conjunction with the taped transcripts to identify which justices raise which issues. Note that in recent years these taped transcripts have become more accessible to scholars. The Oyez! Website (http://www.oyez.nwu.edu) has the taped transcripts of over 350 cases in digitized format. Thus, anyone with access to the World Wide Web can listen to the oral arguments in some of the Court's most important cases.
Conference and Intra-Court Memoranda

After the oral arguments, the justices meet on Wednesday and Friday afternoons to discuss the cases that they hear. Until Marshall's papers were opened at the Library of Congress in 1992 little was known about what transpired during conference, except that the justices took a tentative vote on each case. Now, a plethora of research exists that makes use of the conference notes and docket books of justices from the Burger Court era. This research provides several key findings. First, justices do debate the cases during conference, and only vote after each justice states his or her view of the case. Second, bargaining and accommodation do take place during the opinion writing phase of the decision making process. Finally, and most generally, the justices act strategically when making decisions.

The case files and papers of justices can be found at various locations throughout the country. Generally, they are found at the Library of Congress (LOC), or at the law school attended by the particular justice. For instance, while Thurgood Marshall's papers are found at the LOC, Lewis F. Powell's are located at Washington and Lee School of Law in Lexington, VA. Scholars can call the respective libraries for assistance in determining what each collection contains, as well as for how to access the papers. For a list of papers available from justices who sat on the Burger Court, and where they can be found, see Table 2.

[Table 2 about here]

The justices' case files contain several types of documents that can be used to analyze the Court's decision making process. First, the justices kept docket sheets, which list the name of the case, the justices' votes on certiorari, and preliminary conference votes. While not every justice recorded every vote on the docket sheets, Maltzman and Wahlbeck demonstrate that on the whole these notes are highly reliable. Additionally, many of the justices took notes about what
their colleagues said during the conference discussion. Epstein and Knight demonstrate the usefulness of these notes, and they indicate that Brennan took the most copious notes of those who sat on the Burger Court.\footnote{15} Finally, these files contain memoranda that are sent between justice's chambers after conference, during the opinion writing phase. These memos often contain bargaining statements from one justice to another, such as "If you are able to change paragraph 2, then I will vote with the majority." Again, Maltzman, Spriggs, and Wahlbeck,\footnote{16} and Epstein and Knight\footnote{17} use these memoranda to provide insight into how final decisions are crafted by the Court.

Decisions

The final stage in the Court's decision making process is for the justices to publicly announce their decision. They do so throughout the term, when an opinion is completed, and when a majority of the justices agree with the ruling in the opinion. Note that decisions are not final, nor are they official, until the public statement is made.

With current technology, opinions can now be accessed simultaneously with the Court's public announcement. Several sites on the World Wide Web provide this access. For instance, the Legal Information Institute at Cornell University publishes opinions at, http://supct.law.cornell.edu/supct/. This site provides opinions from the current term, and as far back as 1990. Additionally, FindLaw provides a similar service for decisions back to 1893. The address for this site is http://www.findlaw.com/casecode/supreme.html. These sites are the fastest and most efficient way to access Supreme Court opinions.

Beyond electronic sources, the Court still has opinions printed in legal reporters. These include the U.S. Reports (the official reporter for the Court), the Lawyer's Edition, and The
Supreme Court Reporter. Each set of reporters publishes every opinion handed down by the Court, and they are available in any law school library in the country. The citation method for the reporters is similar, but each uses its own specific method. In general, citations follow the U.S. Reports' method. For instance, *Goss v. Lopez* has a citation of 419 U.S. 565.\(^{18}\) To find it, one would go to the U.S. Reports, find volume 419, and turn to page 565. Thus, the first number is the volume, which is followed by U.S. to signify the specific reporter (for the Lawyer's Edition it would say L.Ed., and for the Supreme Court Reporter it would say S.Ct.). Finally, the second number is the page in the volume. In this way any researcher can go to the stacks in a library, find the reporter she is interested in, and access the Court's opinion.

**Other Data Sources**

Several scholars have also collected data on the decisions made by the Supreme Court. These can be accessed at various archival data sites (such as the Inter University Consortium on Social and Political Research – ICPSR). For instance, Spaeth has created the *United States Supreme Court Database*, which contains voting data, and many other important variables pertaining to cases decided between 1946 and 1995.\(^{19}\) Gibson adds to Spaeth's efforts, with *The Supreme Court Database Phase II*. This database contains the same data as Spaeth's version, but also includes information about *amicus curiae* participation before the Court.\(^{20}\) Combined, these two data sources provide invaluable information about the Supreme Court's decision making process, and have made it much easier for analysts to study the Court, make predictions about its behavior, and understand the process through which cases travel before being decided.
Conclusion

This paper began with the argument that for scholars to fully understand how the Supreme Court makes decisions they must understand the entire decision making process. I have demonstrated where scholars can find specific information about the Court, from the decision on certiorari, to the final decision on the merits. With the opening of justice's private papers, it is much easier for scholars to understand how internal deliberations affect the policy choices of the Court. Additionally, as scholars continue to study the oral arguments, we will continue to have a better understanding of how the interaction between Court and counsel affects the justices' decisions. In the end, data about the entire decision making process do exist, and are becoming easier to access. It is simply a matter of mining the data sources, and using them in a proper manner, to paint a complete picture of how the nation's highest Court decides the cases that it hears.
Notes and References

1 505 U.S. 833 (1992)


3 See e.g. C. Herman Pritchett, *The Roosevelt Court* (New York: Macmillan, 1948).


10 Johnson, *Oral Advocacy*, 81.

11 Epstein et al., *Supreme Court Compendium*, 47.


15 Epstein, *Choices*. 
16 Maltzman, *The Collegial Game*.

17 Epstein, *Choices*.

18 419 U.S. 565 (1975)


20 James L. Gibson, *United States Supreme Court Judicial DataBase: Phase II*. Computer File, ICPSR version (Houston, TX: University of Houston [producer], ICPSR, Ann Arbor, MI [distributor], 1997).