

POLICY GOALS AND MAJORITY OPINION ASSIGNMENT ON THE BURGER AND
REHNQUIST COURTS

by

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(Under the Direction of Susan B. Haire)

ABSTRACT

The pattern of Supreme Court majority opinion assignments manifests a mixture of attitudinal, strategic, and organizational models. There is evidence that Chief Justice Warren Burger's assignment patterns defy the attitudinal model when the cases at hand are important. Specifically, chief justices would be expected to self-assign important cases if they are interested in achieving goals consistent with their policy views. Instead, Burger rarely self-assigned opinions in important cases. Does Burger's reluctance to self-assign indicate that the attitudinal model has less explanatory use for Burger's Court than for other Courts? This paper subjects Burger and Rehnquist's assignments to a battery of tests to determine if Burger was less policy oriented in his assignments than was Rehnquist. The results are inconclusive, both because the models did not perform as expected and because an entirely convincing definition of Burger's policy interests is unavailable.

INDEX WORDS: Opinion assignment, Supreme Court, Warren Burger, Case importance, Attitudinal model

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CHAPTER 1

Introduction

Chief Justice Warren Burger's reluctance to self-assign majority opinions when important cases are at hand presents us with a puzzle. Self-assignment on the Court is an established standard and the linchpin of the attitudinal model, which posits that chiefs use assignments to pursue policy goals. Does Burger's reluctance to self-assign indicate that he is pursuing some other agenda through his assignments?

To answer this question, this paper subjects Burger's assignments to several tests to assess the extent to which his assignments indicate pursuit of policy goals. Rehnquist's assignments, representing the dominant, policy-based, assignment model, are subjected to identical tests to facilitate comparisons. In sum, this paper tests one thing: whether assignors self-assign or tap ideological allies in spite of strategic restraints. When they do, it is assumed that policy-based assigning is afoot.

This paper is constructed as follows. Chapter 2 assesses the status of the United States Supreme Court majority opinion assignment literature, narrowing the focus to the competing claims upon the assignment milieu by different assignment models. At the end of Chapter 2 hypotheses are presented. Chapter Three presents the data and methods, while Chapter Four provides tests of the hypotheses and analysis. Chapter Five concludes.

CHAPTER 2

Competing Models of Opinion Assignment

This chapter will explore the literature addressing the three dominant theoretical models of the Supreme Court majority opinion assignment literature. The goal is to lay the groundwork for an analysis of Burger's assignments—specifically, to lead this paper to a series of hypotheses that can be tested to determine if Burger did indeed forego policy goals in favor of some other objective when he assigned.

The attitudinal model is based on the idea that justices decide cases in accordance with their political beliefs (Brenner and Spaeth 1986; Segal and Spaeth 1990). Individual justices are viewed as each having a set of political “attitudes,” which can be ranked along dimensional scales, usually denoted “liberal” to one side and “conservative” to the other. Cases present facts which implicate attitudes, and the outcomes are determined in accordance with the preferences of the majority of the voting justices (Kearney and Merrill 2000). For instance, if an issue involves a conflict between a liberal and conservative stance, the party representing the liberal outcome wins if a majority of judges fall on the liberal end of the dimensional scale. While many lawyers and law professors are hostile to the attitudinal model, its proponents argue that while the attitudinal framework is reductionistic, any model of judicial behavior must be simple and parsimonious if it is to be useful (Segal and Spaeth 1990). Proponents maintain that the attitudinal model does a better job of predicting case outcomes on the Court than any other model, and in fact it has become the dominant approach to study of the Court among political scientists (Kearney and Merrill 2000).

The attitudinal model is reflected in the lion's share of empirical studies of majority opinion assignments (Rohde 1973; Rathgen 1974; Slotnick 1979; Spaeth 1984; Maltzman and Wahlbeck 1996; Segal and Spaeth 2002). According to these studies, justices' primary motivation in making decisions, whether they are assigners or not, is to have the policy output of the Court approximate as closely as possible their own preferences. So assigners will maximize their policy goals either by writing opinions themselves or assigning them to their closest ideological ally in the existing majority.

The majority opinion literature demonstrates that chief justices tend to self-assign in important cases. Taft (Danelski 1989), Hughes (Danelski 1989), Stone (Danelski 1989), Warren (Ulmer 1970; Slotnick 1978), Burger (Spaeth 1984), and Rehnquist (Epstein and Segal 2000) tended to select themselves to write majority opinions when cases were important. This seems intuitive, as chiefs have rational reasons to self-assign. The majority opinion writer has substantial control over the opinion's content, which determines the future development of the law on the subject. As Supreme Court scholar Sidney Ulmer stated, "[w]ho writes may affect a court decision's acceptability, its value as precedent or future guideline, and the support of other judges." (Ulmer 1970) In short, the literature indicates that self-assignment is a norm as far as "big" or "important" cases are concerned.

An important statistic, the opinion assignment ratio (OAR), appears repeatedly in the opinion-assignment literature. The OAR measures the number of majority opinions written by a chief over the number of times that the chief was the assigner. Slotnick (1987) found that the chief justices as a group had an OAR of 14.8, which means that Chiefs Marshall through Burger self-assigned 14.8% of the cases they allocated, a percentage that suggests evenhanded distributions of majority opinions across the case universe. Important cases present a very

different picture. Brenner (1993) demonstrated that the chief justices as a group had an OAR of 35.5 when only important cases were considered. Marshall, for instance, wrote 89% of the important opinions that were his to assign. At the other end of the spectrum, Fuller wrote 15% of the important cases when he was in the majority. This percentage suggests that Fuller, ostensibly the meekest of self-assigners in high-profile cases, nevertheless took almost precisely his fair share, assuming an average winning coalition of just over six justices (Brenner 1993). Brenner reports that Burger self-assigned 23 of 81 important cases (28%), Warren 17 of 71 (26%), and Rehnquist 3 of 22 (20%). Opinion assignment articles by Slotnick (1987) and Spaeth (1984) delivered similar results, with Burger self-assigning 25.3% of the important cases available to him.

While it is apparent that chief justices do not care to burden themselves and their clerks with extra majority opinions unless important cases are at question, studies of majority opinion assignments in important cases nevertheless contain competing results. These discrepancies rest in different measurements of case importance, a matter that will be addressed in Chapter 3. For now, I simply will note that Burger declined to self-assign important cases, defying the basic precept of the attitudinal model by neglecting to pursue policy goals through assignment. This leads to a hypothesis that supports the main precept of the attitudinal model:

H1: The chief is more likely to self-assign an important case.

Clearly it would be optimal for the assigner to write the opinions himself, but intra-court and external constraints force the assigner to allocate some opinions to other judges (Slotnick 1979; Maltzman and Wahlbeck 1996). If they must assign, the attitudinal model assumes that the

assigner knows that the justice to whom he assigns the opinion will use that opinion to achieve his (the writer's) policy goals. Rohde (1973) hypothesizes that the justice who assigns the majority opinion will either write the opinion himself or assign it to the justice whose position is closest to her own on the issue in question. This is the decision rule, and it echoes similar ideas proposed and supported empirically by Ulmer (1970) earlier and Segal and Spaeth (2002) much later. Maltzman and Wahlbeck (1996), and Maltzman, Spriggs, and Wahlbeck (2000) demonstrate that even when the decision rule fails, assignors will tap associates whose ideological views are closer to their own instead of ideologically distant justices. This preference on the part of assignors for ideologically proximate justices is intensified when cases are politically important (Maltzman and Wahlbeck 1996; Maltzman, Spriggs, and Wahlbeck 2000)

The preceding discussion leads us to this second hypothesis motivating the attitudinal model:

H2: The chief is more likely to assign an important case to an associate who is ideologically proximate.

A few aspects of Court assignment scenarios in attitudinal-model-based studies are worth highlighting here, some related to strategic models in assignments and some related to case importance. First, studies of strategic behavior and its effects on assignments reveal some common themes. Rohde (1973) finds that the assigner should follow the decision rule to a greater degree as the size of the majority increases. The larger the coalition, the less likely that the assigner's preferences will be taken into account in the final outcome should he not assign to his closest ally. On this point Rathgen (1974) and Maltzman and Wahlbeck (1996) come to similar conclusions, although the latter study's results for the coalition hypothesis were statistically

insignificant. In general, the strategic and attitudinal models suggest competing assignment behavior, and the assignment tableau illustrates a fusion of the two theories; chiefs assign to maximize policy goals, but they are constrained by strategic imperatives. This phenomenon is clearest when small coalitions are in the works, and it is to minimum winning coalition (MWC) cases that this review now turns.

It is the dynamics of small coalitions that often drive strategic opinion assignments. In particular, Rohde (1973), Rathgen (1974), Segal and Spaeth (2002), and Maltzman and Wahlbeck (1996) consider how the importance of the pivot affects opinion assignments. The pivotal position is occupied by the coalition justice whose policy preference is fourth farthest from the assigner's on a given case. Clearly, given a minimum winning coalition, the assigner may attempt to preserve a fragile majority, and his preferred outcome, by assigning his opinion to a pivot, especially if the pivot occupies the position that is closest to the dissenters. Further, if he so chooses, the pivotal justice is in a strong position to maneuver for an opinion. Rohde (1973) and Maltzman and Wahlbeck (1996) both obtain statistically significant evidence that the assigner passes over his closest ideological ally when a pivot is closest to the dissenters in a minimum winning coalition.

The persuasion factor viewpoint implicitly sees the majority opinion as both a reward to a justice to induce him to join in, or remain in, a majority opinion, and as an influence toward moderation of views within the Court—an effort to increase group cohesion on policy (Daneleski 1960; McLachlan 1972; Rohde 1973; Rohde and Spaeth 1976; Slotnick 1979; Spaeth 1984; Segal and Spaeth 2002). McLachlan's explanation of this dynamic is worth quoting at length here.

First, the internal tension which results from the conflicts of ideological positions of the majority and the minority in divided cases may be reduced or exacerbated by

the choice of the opinion writer. The choice of a writer ideologically close to the minority might be more successful in reducing the majority/minority tension than a choice of one who is in the opposite extreme from a minority. Second, the majority might be solidified or held together by assignment to a writer is ideologically in the center of the majority (pp. 16-17).

It seems that the persuasion factor would always attract opinions to moderate, rather than exterior, justices, whose middle approach would be acceptable to both majority and dissenting blocs. In fact, Rohde's (1973) and Maltzman and Wahlbeck's (1996) results show that the positive influence of the pivot—or the fourth spot away from the assignor—disappears if the position is not marginal (closest to the dissenters). It is also important to note that variables representing minimum winning coalitions, when interacted with importance variables, demonstrate patterns that indicate distinctly strategic assignments (Maltzman and Wahlbeck 1996). Given the attractiveness of the pivot and the policy goals achieved by assigning close to home ideologically, a set of competing interests emerges whose balance can be measured. If a chief is indeed attitudinal in his assignments, H3 should be supported.

H3: As case importance increases, the likelihood that distant pivots will be assigned majority opinions decreases.

This brings us to the organizational model of Supreme Court majority opinion assignments. Chiefs cite concern for the equality of the Court's workload as the most important influence on their majority opinion assignment patterns, inadvertently claiming they follow the organizational model (Slotnick 1979; Maltzman and Wahlbeck 1996). Chiefs and scholars alike point out that assignors cannot always pursue policy goals, and the influences of non-ideological factors on

assignments have led to the primacy of “organizational needs” in assignment decision-making (Baum 1985, 150; Segal and Spaeth 2002). Chiefs assign with an eye toward Court harmony, efficiency, specialization and general equity (Maltzman and Wahlbeck 1996). Building on the earlier work of Slotnick (1979) in particular, Maltzman and Wahlbeck (1996) use a discrete choice model to test for the influence of ideology as well as seven organizational factors impacting assignments on the 1987-89 terms of the Rehnquist Court. The authors obtain statistically significant results demonstrating that expertise, equity, and efficiency near the end of the term drive opinion assignments. According to Maltzman and Wahlbeck (2000), Rehnquist’s egalitarian impulses, along with organizational influences, caused him to subsume policy goals to the organizational interests of the Court.* Maltzman, Spriggs, and Wahlbeck (2000), in their analysis of Burger’s assignment patterns, obtain statistically significant results for the same batch of organizational variables.

This paper does not test for organizational effects, but they must be taken into account when interpreting the models. Assuming the effects of organizational imperatives on the majority opinion assignment universe are orthogonal to the effects of attitudinal and strategic imperatives, we can interpret the results of our tests without complications. Any bias created by the omission of an expertise variable, for instance, is unlikely to be a) very severe or b) in the same direction as another omitted organizational variable, such as equity. A tolerable bias aside, undoubtedly the balance between policy objectives and the imperatives obliged by minimum coalitions are the

* * Maltzman and Wahlbeck, working with an “N” of 398, consider any case that has more than 1.65 standard deviations above the average number of briefs to be “important” in their first model, which yielded a miniscule 12 important cases. They ran another model with their criterion adjusted and yielded 43 important cases. While there were no significant differences between the models, it is unlikely that in either instance the subtle dynamics that signal importance to justices in relation to amicus briefs were captured by the dichotomous variables.

major factors driving opinion assignment patterns. After an explanation of data and methods is presented in Chapter 3, a series of tests of the hypotheses presented above are performed.

CHAPTER 3

Data and Methods

Before describing the data and presenting the variables and their operationalizations, a few of this paper's assumptions should be explained. First, it is assumed that assignment was made by either the chief (or the most senior associate justice) who eventually voted with the majority. Second, it is assumed that the person who wrote the final majority opinion received the initial assignment. Both assumptions result in some degree of measurement error. According to Maltzman and Wahlbeck (1996) the first assumption leads to a misidentified assignor just over 5% of the time. The second assumption also results in some degree of measurement error, although it is very unlikely to exceed 5%. Maltzman and Wahlbeck (1996) show that of the 398 majority opinions released during the period included in their study, 386 (97%) were written by the justice who received the initial assignment.

To test the assignment hypotheses, I use data drawn from the Burger and Rehnquist Courts. The data used for this study are best understood as three distinct data sets. The first, the Burger data, is comprised of all orally argued cases decided by the Court by full opinion during the 1975-80 terms. The second and third data sets represent Rehnquist's assignments. The second of the three data sets is made up of the 1985-90 terms, parsed in precisely the same manner as the Burger Court data. The third data set is the same as the first two except that it covers the 1991-94 terms. In most of the tests, the two data sets of the Rehnquist Court are combined. But for some tests the Rehnquist Court is broken into two data sets because Rehnquist occupies the right bookend in the 1986-90 set, while Scalia and Thomas close the chief into the Court's ideological

interior from 1991-94. This distinction between the two Rehnquist “eras” becomes important when this paper assesses strategic assignments. Finally, this analysis is restricted to the cases the chief assigns, ignoring the associate justice assignments.

The main tests use logistic regression to estimate the likelihood that the chief assigns the opinion to each justice in the majority. To explore the relationships between case importance, small coalitions, and each majority coalition justice’s chances of receiving an assignment from the chief, 20 logistic regressions, one for each justice, were run using the “logit” command in STATA. In each regression, the dependent variable is coded “1” if the justice received the assignment, and “0” if she did not. The independent variables are case importance, and a dummy variable coded “1” if the case was decided by a minimum winning coalition and “0” if it was decided by any other margin. Formally:

$$\Pr(\text{jus}_a=1) = F(B_0 + B_{\text{sal}} + B_{\text{mwc}} + B_e)$$

This reads: the probability that justice A receives the assignment is a function of the constant plus the coefficient of importance plus the coefficient of the minimum winning coalition dummy variable plus the error term.

Variables

Ideology. The justices’ ideological scores, or ideal points, are based on their voting records for the term before the term that is being tested (to avoid endogeneity). For the rankings presented in the “logit” tables and dimensional models shown in Figures 3.1, 3.2, and 3.3, these Martin-Quinn ideal points are scores are averaged over the terms in question (Martin and Quinn 2000). In the OLS regressions, the previous term’s Martin-Quinn scores are used to determine ideological distances, capturing the term-to-term ideological shifts within the Court (see Figures 3.4, 3.5). It is important to remember that these are distances between the chiefs and the

associates, and Figures 3.4 and 3.5 indirectly measure the chiefs' movement on the ideological continuum. Blackmun's steady move to the left, for instance, is absorbed by Chief Rehnquist's shift in the same direction.

Importance. The measurement of case importance has been problematic, which is readily apparent when one considers various studies of self-assignment among the chiefs (see Chapter 2, pages 3 and 4). For instance, Epstein and Segal (2000), using one measure of case importance, concluded that Rehnquist is inclined to self-assign important cases. Maltzman and Wahlbeck (1996), using a different indicator of importance, produced an insignificant coefficient for case importance in a model attempting to explain Rehnquist's assignments. Similarly, Brenner (1993), Slotnick (1979), and Spaeth (1984) all indicate that Burger earned an OAR of at least 25% in the important case universe, while this paper demonstrates Burger's reluctance (OAR = 13.2) to write high-profile opinions. What follows is an argument in favor of contemporaneous (rather than retrospective) measures of case importance as explicators of opinion assignment behavior.

An ideal measure of case importance would include access to the minds of the chief justices during opinion assignment. Short of this, most scholars have used post-hoc, subjective evaluations. The most popular proxy for case importance is the list of "landmark" cases published in *Congressional Quarterly's Guide to the U.S. Supreme Court* (1990). This "CQ" list is based on the evaluations of Supreme Court scholar Elder Witt, who designates especially significant cases as landmarks. Notable studies using the CQ list include Epstein and Knight (1998) and Segal and Spaeth (1996). In his study of opinion assignment, Brenner (1993) uses two post-hoc sources to determine which cases are important. One is the list of "Major Decisions of the Court," included in *The Supreme Court at Work*, a list compiled mainly from the nine-volume *History of the Supreme Court* of the United States, edited by Freund and Katz, and the

second is Warren's two-volume *The Supreme Court in United States History*. Slotnick (1979), on the other hand, examined five constitutional law texts and considered a case important if two of these texts reprinted the case. There are drawbacks in each of these three approaches. All of these methods draw on *retrospective* importance—analysts now view a particular case as important, regardless of whether the chief thought it was important when he was assigning it. Moreover, it is possible that this measure of importance taps importance associated with the opinion that was authored, rather than measuring importance prior to the opinion assignment. Studies of opinion assigners require measures of contemporaneous importance—the goal is to plumb the intentions of the assigner, to see the cases as she sees them (Epstein 2000). Further, Slotnick's constitutional law texts method contains content bias, excluding cases involving the construction of either statutes or administrative regulations. To tap contemporaneous importance while including enough statutory cases, Spaeth (1984) considered a case important if it was headlined on the advance sheets of the Lawyer's Edition the *United States Reports*. Unfortunately this dichotomous measure codes as many as 70 percent of a given term's cases as important, which is far too many for opinion assignment studies.

To solve the contemporaneous importance and content bias problems, this study relies on two different surrogates for issue importance. The first proxy uses coverage the media affords to a given case to determine whether or not it is important. Specifically, if the *New York Times* carried a front page story about the case, it is coded as important. As Epstein and Segal (2000) argue, the *NYT* measure provides a reproducible and valid method of assessing whether the actors on the Court view an issue as important or not. Of course, this assumes that newspaper editors and Supreme Court justices have the same criteria for assessing importance, but Epstein and Segal point out that newspapermen and judges make these calculations at roughly the same

time and in the same political context.[†] The second measure of case importance is amicus curiae participation (See Table 3.1). Both scholars (e.g., Caldeira and Wright 1988; Perry 1991) and justices (e.g., Stevens 1990) have suggested that amicus curiae participation may signal case importance. The best thing about this measure is that it taps contemporaneous importance nicely. Also, it is measured at the interval level; a two-brief case is less important than a 6-brief case which is less important than a 14-brief case. This variance makes amicus curiae participation both a telling and versatile independent variable (Gibson 1993; U.S. Reports). On the downside, there is some overselection of civil liberties cases with amicus curiae participation, and it is a time-bound measure--*en masse* interest group participation began in the civil rights era. Therefore, previous to the early Warren Court this operationalization of case importance is ineffective. This measure must be used with some caution within this paper, as the average number of briefs increases over time. Notice that over one third of the cases in the Burger Court had the lowest profiles, while only about seventeen percent of the cases on the Rehnquist Court attracted zero briefs. This should not present any difficulties to this analysis, as the tests here are concerned with case importance relative to the other cases in the same term.

Minimum Winning Coalition (MWC). If a case is decided by a 5 to 4 margin, it is coded as 1, and 0 otherwise.

[†] Epstein and Segal (2000) conducted a cross-tabulation of the NYT measure and the popular Congressional Quarterly measure, analyzing the 1946-1995 terms. Of the 291 cases making it onto CQ's list, 246 (85%) also appeared on the front page of the *Times*.

Table 3.1
Frequency Table: Number of Briefs
Burger Court 1975-1980/Rehnquist Court 1986-1994

	Burger Court			Rehnquist Court		
<i># Briefs</i>	<i># of Cases</i>	<i>Percent</i>	<i>Cum</i>	<i># of Cases</i>	<i>Percent</i>	<i>Cum</i>
0	264	36.26	36.26	173	17.21	17.21
1	149	20.47	56.71	153	14.50	31.71
2	113	15.52	72.16	163	17.02	48.73
3	52	7.14	79.30	115	11.81	60.54
4	38	5.22	84.52	85	9.82	70.36
5	21	4.12	88.64	71	7.21	77.57
6	30	2.88	91.44	54	5.52	82.12
7	12	1.24	92.68	41	4.08	86.20
8	11	1.65	94.33	40	3.99	90.19
9	5	1.51	95.84	15	1.55	91.74
10	4	.69	96.53	15	1.55	93.29
11	5	.55	97.07	19	2.06	95.35
12	3	.41	97.48	8	.84	96.19
13	4	.55	98.03	9	.92	96.87
14	1	.14	98.17	5	.55	97.02
15	3	.14	98.31	5	.55	97.22
16	1	.41	98.72	2	.22	97.40
17	1	.14	99.72	7	.75	97.62
18				1	.11	98.33
19				1	.11	98.44
20				1	.11	98.55
21				2	.22	98.66
22				1	.11	98.78
23	1	.14	99.86	2	.22	98.89
24		.14	100.00	1	.11	99.11
26	1			2	.22	99.22
29				1	.11	99.44
31				2	.22	99.45
32				1	.11	99.67
35				1	.11	99.78
73				1	.11	100.00
<i>Total</i>	705	100.00		1012	100.00	

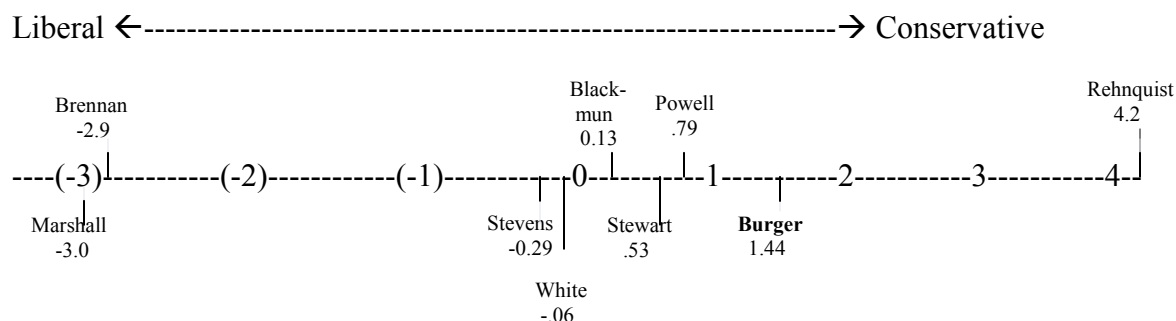


Figure 3.1 Ideological arrangement of Burger Court, 1974-1979. Based on Martin-Quinn ideal points averaged over five terms. William O. Douglas, who is not included in the figure, had an ideal point of -4.04 for 1974, his last term on the Court.

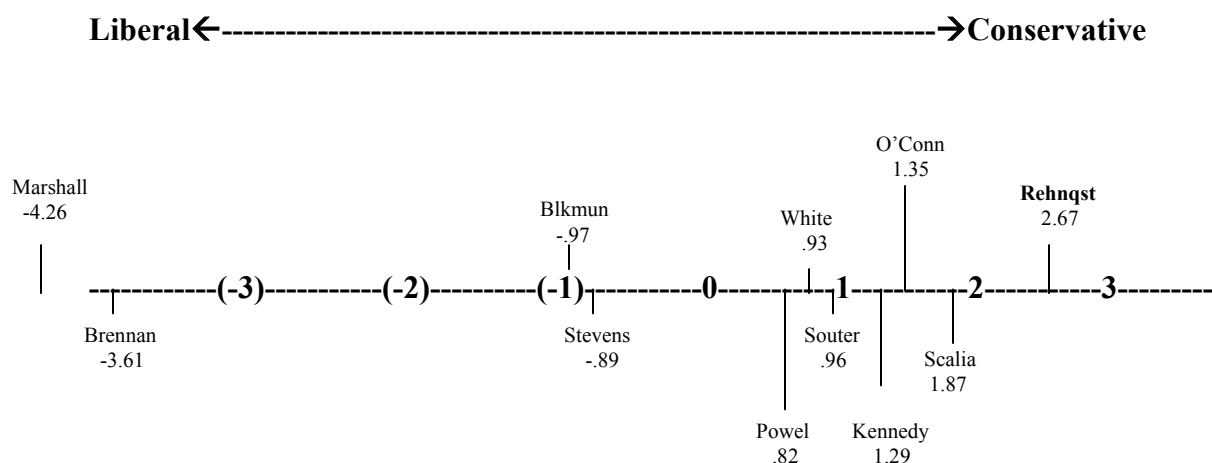


Figure 3.2 Ideological arrangement of Rehnquist Court, 1985-89. Based on Martin-Quinn ideal points averaged over five terms. Burger, not shown, scored a 2.01 for the 1985 term, his last on the Court.

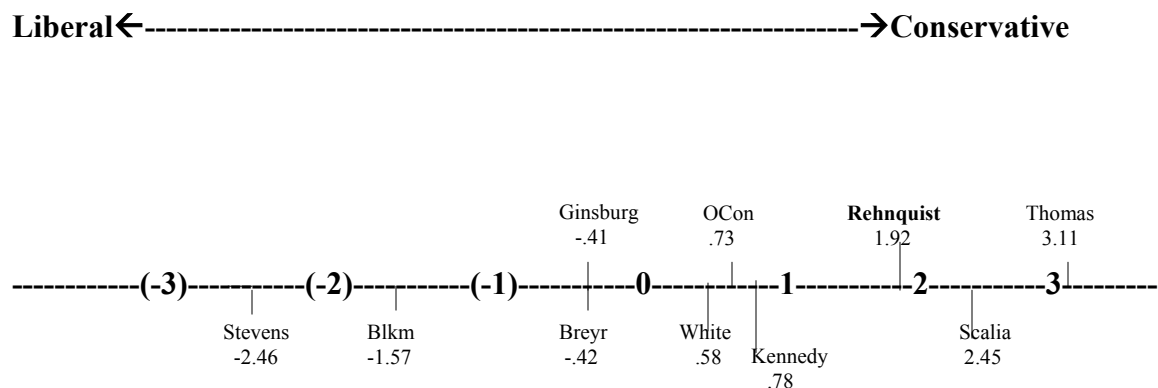


Figure 4.2 Ideological arrangement of Rehnquist Court, 1990-93. Based on Martin-Quinn ideal points averaged over four terms

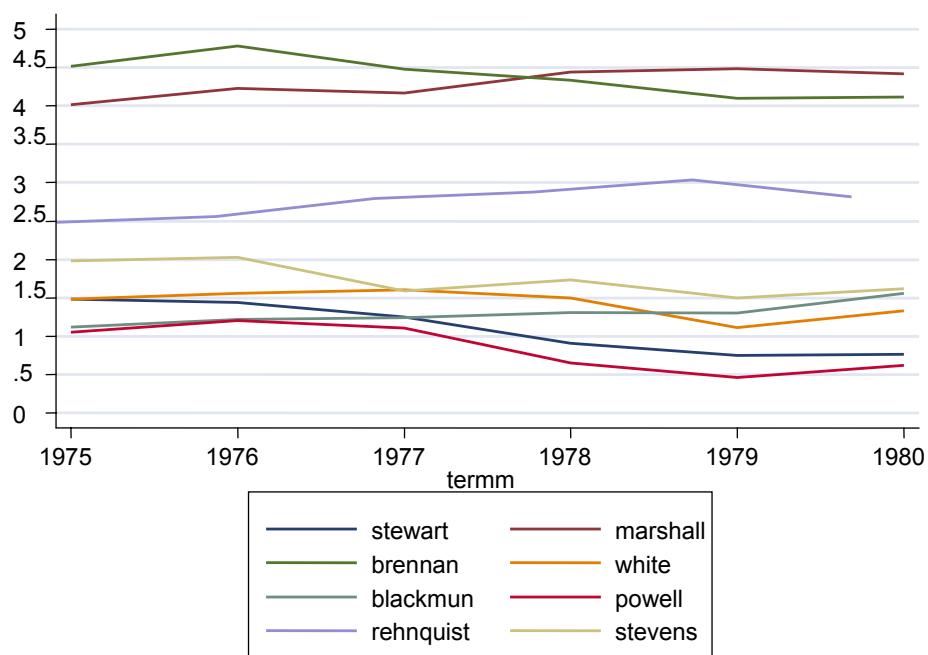


Figure 3.4 Absolute ideological distance between associate justices and Chief Justice Burger

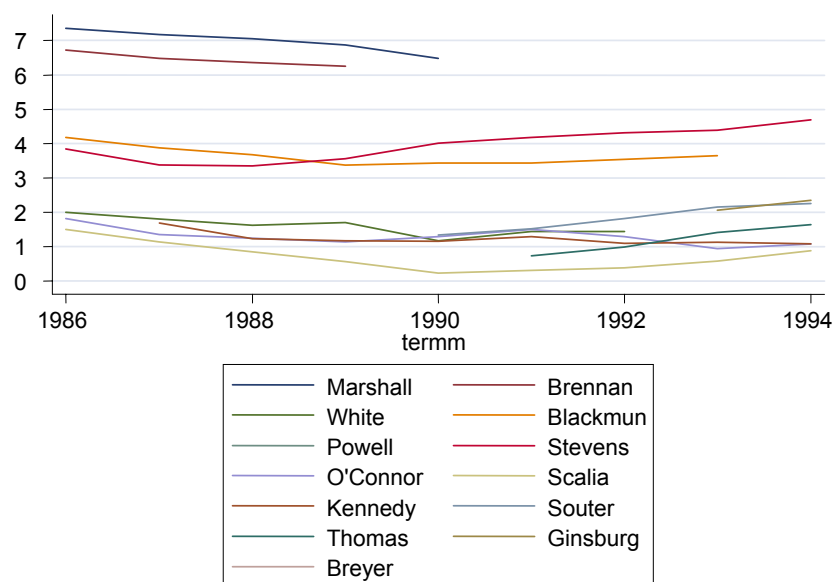


Figure 3.5 Absolute value of ideological distance between associate justices and Rehnquist

CHAPTER 4

Analysis

Burger declined to self-assign majority opinions when important cases were at hand. Was Burger actually as uninterested in achieving his policy goals as his lack of self-assignment suggests? According to the attitudinal model, a chief's primary motivation when assigning is to realize his policy objectives, leading me to test two hypotheses for both the Burger and Rehnquist Courts. First, I test the self-assignment hypothesis, with the expectation that I will reject H1 for Burger and accept it for Rehnquist.

H1: The chief is more likely to self-assign important cases.

I test H1 using two different operationalizations for case importance, the New York *Times* measure and the amicus briefs measure. The results of the NYT test are shown in Table 4.1. Burger self-assigned NYT cases just over 13% of the time, while Rehnquist took 25% of the NYT opinions for himself. Tests using amicus briefs as the case importance measure show similar results. Logit analyses are used to predict the likelihood that Burger and Rehnquist will self assign using number of amicus briefs per case as the main independent variable. The strategic effects caused by small coalitions are controlled for with the addition of a dummy variable coded "1" if the case was decided by a minimum winning coalition and "0" if the winning coalition was larger than minimum. This is necessary to account for cases wherein the chief is likely to face the prospect of losing a dominant coalition if he does not reward a "pivotal" associate with a majority opinion. The results of the self-assignment tests using

importance and MWC as predictors are presented in Tables 4.2 and 4.3. It appears that Burger does not self-assign important cases, while Rehnquist, representing the norm for the chiefs over the centuries, does self-assign important cases. This is where this thesis began. The remainder of this analysis will explore Burger's assignment pattern--along with Rehnquist's so the two can be compared--and how it relates to the attitudinal and strategic models of opinion assignment.

Of course, Burger's reluctance to self-assign important cases only hints that he eschewed policy goals in favor of something else. A test of the other hypothesis that underlies the attitudinal model is appropriate here. It is expected that I will reject H2 for Burger and accept H2 for Rehnquist.

H2: Chiefs are more likely to assign important cases to ideologically proximate justices.

A glance at Tables 4.2 and 4.3 leads to a few qualified conclusions. One, if Burger does in fact assign majority opinions with an eye toward achieving policy goals, he does not do it by tapping his ideological allies when cases are important. Powell and Stewart, for example, are not more likely to receive assignments when cases are important. Two, Rehnquist appears to achieve policy goals by self-assigning important cases rather than by tapping ideological allies. Scalia and Thomas are not favored when Rehnquist is assigning important cases, even after controlling for the effects of MWC.

No chief can achieve policy goals through majority opinion assignments if he cannot hold a majority together after conference, and the attractiveness of the pivot to an assignor is assumed. The strategic imperative must be considered in any model of opinion assignment: there is always the possibility that a chief values strategic assignments above all else in any given case. If Burger

does indeed subsume policy goals when assigning cases, it is most likely that strategic goals are overwhelming political goals. To explore this possibility, I test another hypothesis. If a chief adheres more to attitudinal imperatives than to strategic imperatives, the draw of the pivotal justice should decrease as case importance increases. Therefore I should expect to reject H3 for Burger and confirm H3 for Rehnquist.

H3: As case importance increases, the likelihood that ideologically distant pivots will be tapped decreases.

Here a glimpse of the behavior related to H3 is in order. Since I am interested in changes in the odds of receiving an assignment when the status of a given case changes from non-minimum winning coalitions to minimum winning coalitions, determining the factor changes in odds is an appropriate approach, though these tests provide more of a foretaste of these assignments than a specific test. To do this I ran logistic regressions using only MWC to predict the likelihood that a given justice will receive a majority opinion assignment when she is in a majority with the chief, and the factor changes in odds were produced from the coefficients. The results of the tests are shown in Figures 4.1 through 4.6. As is expected, Justices White, Blackmun and Stewart, the Court's likely pivots, all have better chances of receiving assignments from Burger when coalitions are minimum. For instance, the odds that White, the Court's most frequent pivot, will receive a majority opinion assignment increase by factor of .09 when a given case is MWC rather than non-MWC. Turning to Figures 4.3 and 4.5 we can see snapshots of how Rehnquist's assignment behavior changes when the Chief confronts MWC cases. Associates O'Connor through Powell all exhibit some increases in the likelihood that they will receive an assignment

in response to a MWC. The later terms of the Rehnquist Court, on the other hand, show no discernible pattern among the odds of moderate justices receiving assignments, which is something I will examine below.

To get a glimpse of behavior directly related to H3, observe figures 4.2, 4.4, and 4.6. These show the patterns of assignments when importance is high, measuring cases with more than five briefs in the Burger Court and more than seven in the Rehnquist Court. Notice how the increases in factor changes in odds “crowd in” around the chiefs when case importance is up. This suggests that we can accept H3 for both Burger and Rehnquist, but more direct tests of the likelihood of the pivot receiving an assignment are needed. To this end, ideological distance between the assignor and the assignee was used to predict the likelihood that the pivot received an assignment. Support for H3 will be evident if shorter distances between chiefs and assignees increase the probability that the assignee receives the assignment when case importance is up. In other words, H3 will be supported if the coefficients for distance are negative when more important cases are considered. The results of these regressions are presented in Table 4.4. The very weak t-statistics lead us to reject H3 for each chief. There is no evidence that either Burger or Rehnquist is reluctant to tap a distant pivot when case importance is high.

Table 4.1

Self-assignment when cases are featured on the front page of the New York *Times*

Burger	<i>NYT</i>	<i>Not NYT</i>	Rehnquist	<i>NYT</i>	<i>Not NYT</i>
<i>% Self-Assigned</i>	12.7	13.79	<i>% Self-Assigned</i>	25	12.1
<i>% Did not Self-Assign</i>	87.3	86.2	<i>% Did not Self-Assign</i>	75	86.2
<i>Total N Cases Assigned</i>	79	551	<i>Total N Cases Assigned</i>	128	710

Table 4.2

Results of eight “logit” regressions predicting the probability that each associate justice will receive the majority opinion when they cast a majority vote with Burger
 Terms 1975-1980
 719 Total Cases

Justice (Obs)	Distance/ Burger (Rank)	Case Importance		Minimum Winning Coalition		Prob> chi2
		<i>Coefficient</i>	<i>z-score</i>	<i>Coefficient</i>	<i>z-score</i>	
Burger (630)	00 (0)	-.03	-.76	-.75	-1.70	.12
Powell (550)	.84 (1)	.013	.36	.28	.78	.70
Stewrt (528)	1.09 (2)	-.02	-.63	1.09	2.95	.02
Blakmn(546)	1.29 (3)	-.04	-.82	.66	1.81	.16
White (556)	1.43 (4)	.04	1.05	1.12	3.77	.00
Steves (439)	1.74 (5)	-.06	-1.21	.66	1.27	.23
Rehn (529)	2.59 (6)	.06	1.90	.35	1.11	.09
Brenan (389)	4.39 (7)	-.04	-.75	1.55	2.07	.11
Marshl(401)	4.42 (8)	.03	.83	1.20	1.55	.25

Table 4.3
Results of 12 “logit” regressions predicting the probability that each associate justice will receive
the opinion assignment when casting a majority vote with Chief Justice Rehnquist[‡]
1986-1994 Terms
840 total cases

Justice (obs)	Distance/ Rehnquist (Rank)	Case Importance		Minimum Winning Coalition		Prob >chi2
		<i>Coefficient</i>	<i>z-score</i>	<i>Coefficient</i>	<i>z-score</i>	
Rehn (841)	00 (0)	.04	2.19	.55	2.37	.00
Scalia (767)	.70 (1)	-.01	-.64	.52	1.94	.15
Thoma (263)	1.18 (2)	-.04	-.88	-1.16	-1.11	.19
Kenndy(634)	1.22 (3)	-.03	-1.03	1.17	4.00	.00
O’Conn(748)	1.29 (4)	.03	1.61	.07	.25	.24
White (653)	1.59 (5)	.00	-.41	.47	1.75	.22
Souter (348)	1.81 (6)	-.06	-1.27	.57	.87	.27
Blakmn(546)	3.64 (7)	.03	1.11	.77	1.72	.15
Steves (576)	3.91 (8)	-.74	-.45	.74	1.92	.16
Powell (104)	4.01 (9)	.04	.47	.89	1.55	.13
Brenan (260)	6.44 (10)	.01	.25	1.12	1.50	.38
Marshl (311)	6.98 (11)	-.12	-2.37	.19	.24	.03

[‡] Ginsburg and Breyer are not shown, having only participated in 94 and 36 cases respectively.

Table 4.4

Logit Models Using Pivot's Ideological Distance from the Chief to Predict the Likelihood that the Pivot Will Receive Assignment
Tested For two Different Levels of Case Importance

	Burger Court				Rehnquist Court			
	Amicus<6		Amicus>5		Amicus <7		Amicus>6	
	N=44		N=19		N=67		N=21	
	Coef	t-stat	Coef	t-stat	Coef	t-stat	Coef	t-stat
<i>Pivot's Ideological Distance from Chief</i>	.15	.52	.51	.29	.04	.26	-.24	-.76

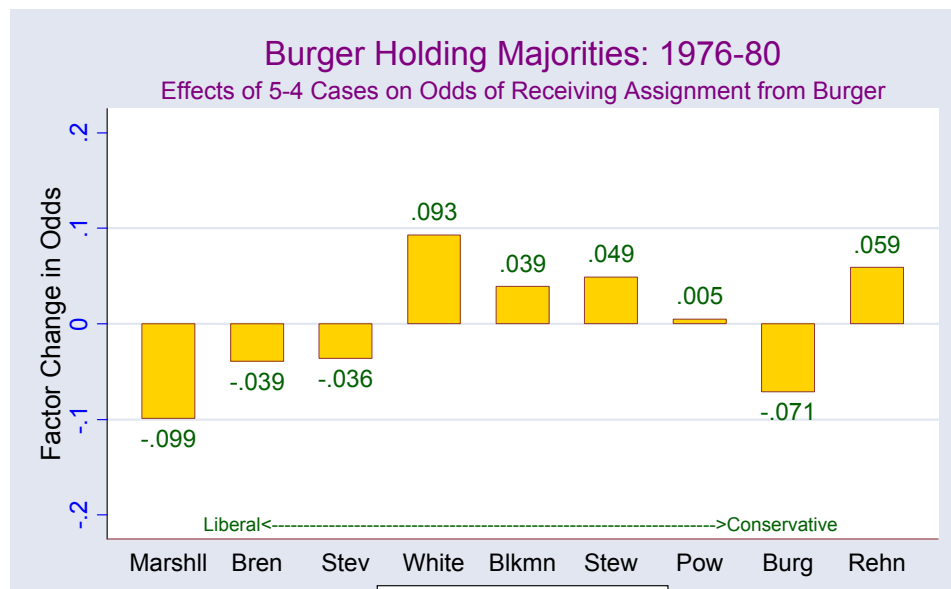


Figure 4.1 Factor changes in odds produced from logits using MWC to predict likelihood that a given justice will receive an assignment

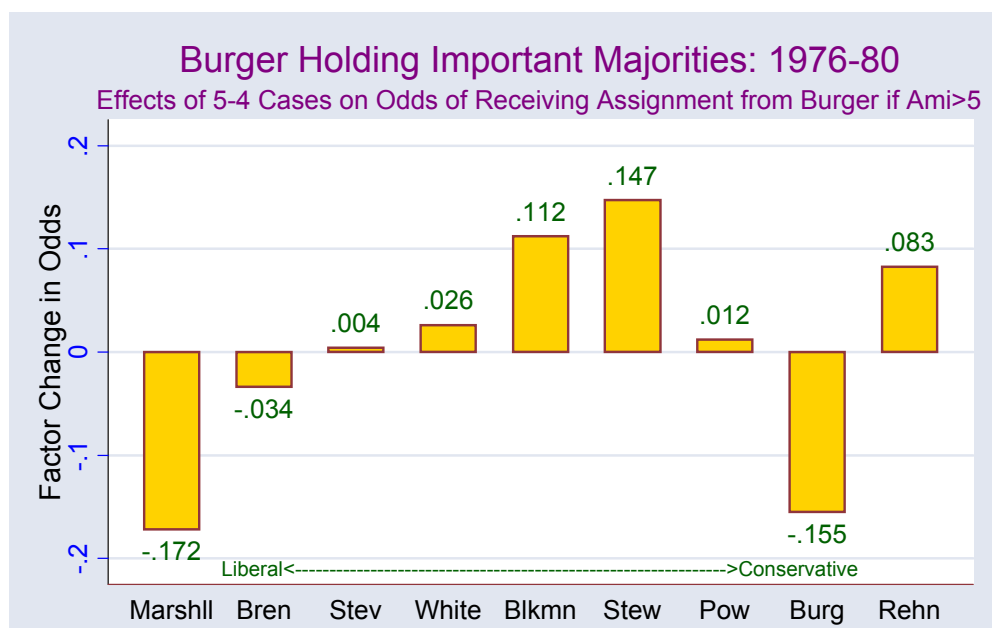


Figure 4.2

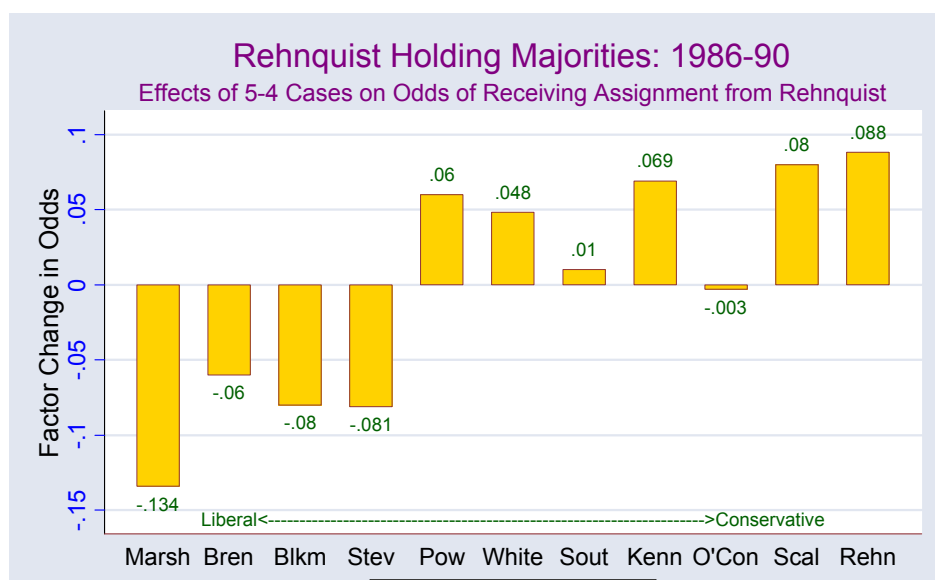


Figure 4.3

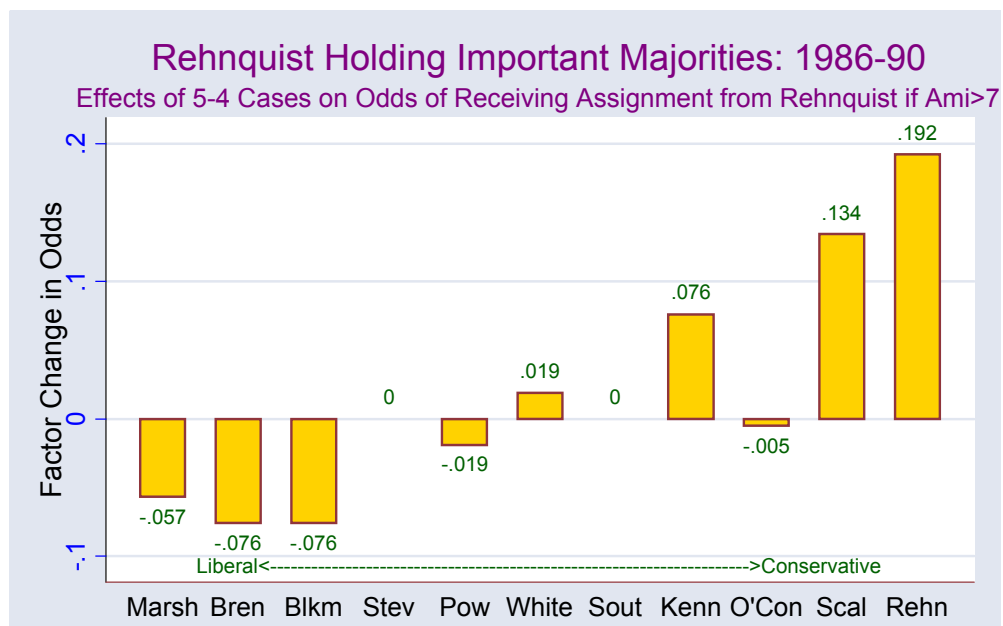


Figure 4.4

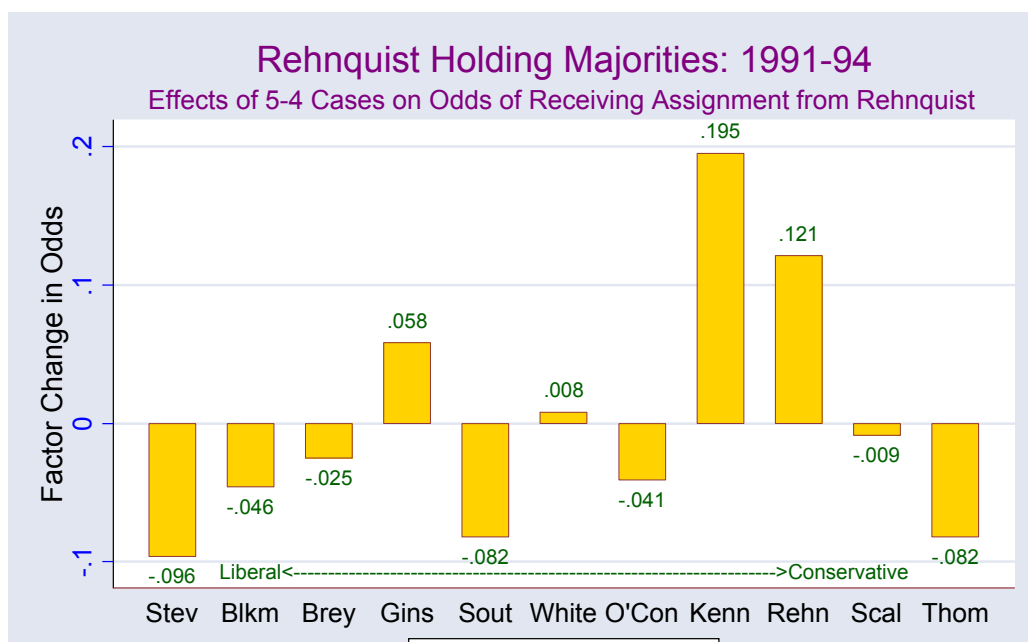


Figure 4.5

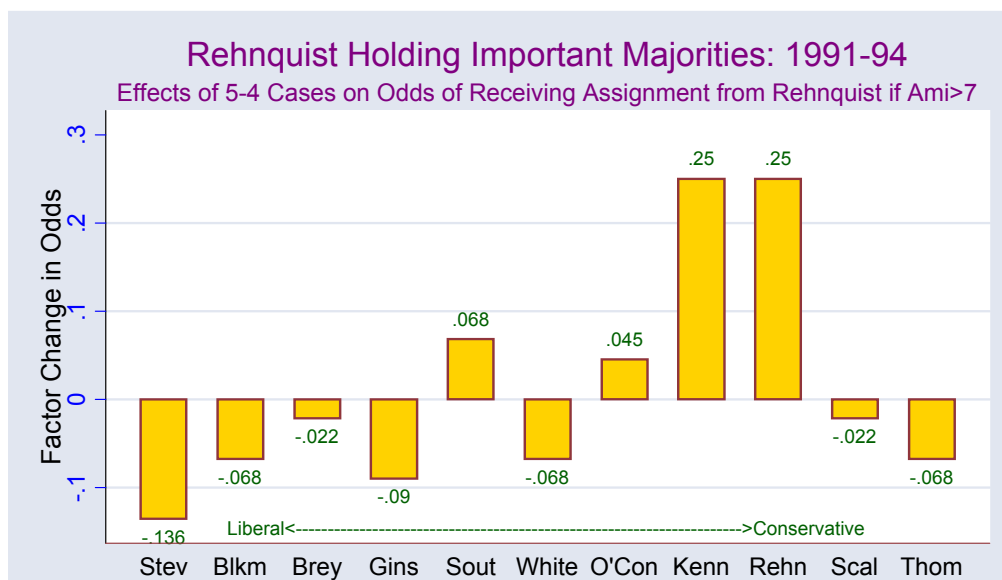


Figure 4.6

CHAPTER 5

Conclusion

Burger declines to self-assign majority opinions when the cases at hand are important, thereby defying the main precept of the attitudinal model. This paper explores the possibility that Burger, when assigning, was less concerned with maximizing his policy goals than was Rehnquist. The results are unpersuasive. While Rehnquist clearly favors the attitudinal model, as is evidenced by his self-assignments in important cases, Burger's pattern solicits as many questions as it answers. The problem is that while Burger neither self-assigns nor appears to favor ideological allies when important cases are at hand, his ideological position relative to Associate Justice Rehnquist could be clouding the picture. Rehnquist's voting behavior places him at a considerable ideological distance from Burger, but this may not mean that Burger fails to achieve policy goals when he assigns to Rehnquist. Indeed, it may be the case that Burger's voting score does not reflect his ideology, if one is to believe charges that the Chief sometimes joined liberal majorities solely to gain control of the opinion assignment (Douglas 1972; Woodward and Armstrong 1979). Tests of the two chiefs' behavior in response to the strategies involved when MWCs are afoot did little to clarify the issues. While the attractiveness of the pivot is assumed, there is no evidence that either chief was less likely to forego attitudinal goals in lieu of strategic goals when cases were important.

Organizational effects on assignment patterns received short shrift here. Assuming that the constraints of the organizational model take a back seat to strategic and policy demands weakens these models considerably; multivariate analyses that include independent variables that test

assignments as administrative phenomena certainly do the best job of explaining the assignment milieu. But these underspecified models are not the roots of the inconclusive results presented here. To understand Burger's assignment patterns, someone must find a way to assess the sort of policy that Burger actually preferred. Perhaps an examination of the policy produced by Burger's own opinions could shed more light on Burger's policy preferences than the Chief's voting record. Or, considering the overselection of civil liberties cases involved with this study's operationalization of importance, maybe it is this sort of high-profile case in particular that checks Burger's tendency to assign close to home. At any rate, Burger's reluctance to self-assign important cases is an anomaly that deserves much more analysis.

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