Supreme Court Voting Behavior 2005 Term

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I. Introduction

This Study, the twentieth in a series,[1] tabulates and analyzes the voting behavior of the United States Supreme Court during the 2005 Term.[2] The analysis is designed to measure whether individual

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1. Professor Robert E. Riggs began this Study with *Supreme Court Voting Behavior: 1986 Term*, 2 BYU J. PUB. L. 15 (1988). Professor Richard G. Wilkins continued the Study in *Supreme Court Voting Behavior: 1991 Term*, 7 BYU J. PUB. L. 1 (1992) [hereinafter *1991 Study*]. The last thirteen Studies, analyzing the 1993 to 2005 terms, have been published in the *Hastings Constitutional Law Quarterly*. *See* Richard G. Wilkins et al., *Supreme Court Voting Behavior: 1993 Term*, 22 HASTINGS CONST. L.Q. 269 (1995) [hereinafter *1993 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 1994 Term*, 23 HASTINGS CONST. L.Q. 1 (1995) [hereinafter *1994 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 1995 Term*, 24 HASTINGS CONST. L.Q. 1 (1996) [hereinafter *1995 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 1996 Term*, 25 HASTINGS CONST. L.Q. 35 (1997) [hereinafter *1996 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 1997 Term*, 26 HASTINGS CONST. L.Q. 533 (1999) [hereinafter *1997 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 1998 Term*, 27 HASTINGS CONST. L.Q. 423 (2000) [hereinafter *1998 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 1999 Term*, 28 HASTINGS CONST. L.Q. 543 (2001) [hereinafter *1999 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 2000 Term*, 29 HASTINGS CONST. L.Q. 247 (2002) [hereinafter *2000 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 2001 Term*, 30 HASTINGS CONST. L.Q. 307 (2003) [hereinafter *2001 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 2002 Term*, 31 HASTINGS CONST. L. Q. 497 (2005) [hereinafter *2002 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 2003 Term*, 32 HASTINGS CONST. L. Q. 769 (2005) [hereinafter *2003 Study*]; Richard G. Wilkins et al., *Supreme Court Voting Behavior: 2004 Term*, 32 HASTINGS CONST. L.Q. 909 (2005) [hereinafter *2004 Study*].

2. The 2005 United States Supreme Court Term covers decisions made from October 2005 through July 2006.

Justices and the Court as a whole are voting more "conservatively," more "liberally," or about the same when compared with past Terms. As in politics, whether a judicial trend is "conservative" or "liberal" often lies in the eye of the beholder. On such a point, members of the American Civil Liberties Union and the Federalist Society for Law and Public Policy Studies might well disagree.

This Study attempts to remove this subjectivity by applying the following consistent classification scheme to ten categories of cases across time: "conservative" votes are those that favor an assertion of governmental power, while "liberal" votes are those that favor a claim of individual liberty.[3] By tracking the term-to-term conservative or liberal changes in the voting patterns of individual Justices and the Court as a whole across these ten categories,[4] and by applying standard statistical tests to the resulting data,[5] this Study attempts to provide reliable information regarding the current ideological posture of the Court and its members, as well as conclusions and projections regarding its past and future trends. Whether statistical analysis of a complex and subjective process (such as judicial decision-making) provides useful information may well be debatable.[6] But, within the limitations inherent in an attempt to "number crunch" ideology, this annual survey offers students and practitioners information that is useful for assessing how the Court or

3. There is no single, settled definition of conservatism or liberalism. *See generally* M.A. RIFF, DICTIONARY OF MODERN POLITICAL IDEOLOGIES 67-73, 141-52 (1987) (discussing various possible interpretations of the terms). This Study's definitions, however, are close to the core ideals of each ideology. *See id.* at 67 (noting that conservatism "implies fear of sudden and violent change[s], respect for established institutions and rulers, support for elites and hierarchies and a general mistrust of theory as opposed to empirical deductions"); *see also id.* at 142 (asserting that "twentieth century" liberalism is "compounded of constitutionalism; doubtful [] of pluralism; certain [] of a belief in the virtues of economic freedom, and less certain [] of a desire to restrict government intervention in most other aspects of life").

4. *See infra* Data Tables 1-10.

5. *See infra* Appendix B.

6. The general reliability of statistical inference depends on random sampling. *See generally* ROBERT V. HOGG & ALLEN T. CRAIG, INTRODUCTION TO MATHEMATICAL STATISTICS 157-58 (5th ed. 1994); RAYMOND H. MYERS, CLASSICAL AND MODERN REGRESSION WITH APPLICATIONS 9-11 (2d ed. 1990). The Court's method of selecting cases is far from random. Rather, it is the result of a conscious decisional process. Furthermore, reliable statistics generally require large quantities of information to produce reliable results. As sample sizes become larger, inferences become more accurate. This Study is subject to sampling bias, both because the sample is not random and because it is comparatively small. The statistical inferences below, therefore, may not accurately represent a Justice's (or the Court's) views.

an individual Justice has voted—and may vote in the future—in particular categories of cases.

II. Mode of Analysis

This Study is based on the tabulation and mathematical analysis of each Justice's votes in ten categories of cases. Nine of the categories are based on the nature of the issues addressed (*e.g.*, First Amendment and Equal Protection) or on the character of the parties involved (*i.e.*, state or federal government litigants).[7] The tenth category tabulates the number of times each Justice voted with the majority in cases decided by a single, or swing, vote.

The first nine categories are designed to detect each Justice's attitude toward two broad issues underlying most Supreme Court decisions: the protection of individual rights and judicial restraint. The tabulation of votes in these nine categories reveals, in broad strokes, the frequency with which individual Justices and the Court as a whole vote to protect individual rights[8] or to exercise judicial restraint.[9]

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7. The categories are as follows: (1) civil controversies in which a state or one of its officials or political subdivisions is opposed by a private party; (2) civil controversies in which the federal government or one of its agencies or officials is opposed by a private party; (3) state criminal cases; (4) federal criminal cases; (5) First Amendment issues of freedom of speech, press, religion, and association; (6) Equal Protection claims; (7) statutory civil rights claims; (8) issues of federal court jurisdiction, party standing, justiciability, and related matters; and (9) federalism cases.

8. Votes implicating individual rights are tabulated in tables reporting the outcome of state and federal criminal prosecutions (Tables 3 and 4), as well as those detailing the resolution of claims based on the First Amendment (Table 5), the Equal Protection Clause (Table 6), and civil rights statutes (Table 7). The civil cases examined in Data Tables 1 and 2 also involve individual rights, as these suits pit the government against persons asserting private rights. The federalism decisions tabulated in Table 9 are less obviously relevant to individual rights because such decisions focus on the balance of federal and state authority. Nevertheless, in such cases, the practical effect of voting for the state is to deny federal relief to a party alleging state encroachment upon his or her rights, and thus is counted as a conservative vote.

9. Jurisdictional questions (Table 8), which exhibit the relative propensity of the Justices to avoid judicial decisions, are perhaps the most direct statistical evidence of judicial restraint. Other tables included in the Study, however, also provide some indication of the individual Justices' (and the Court's) positions on the "judicial restraint/judicial activism" axis. Judicial restraint is normally identified with deference to the policy-making branches of government, adherence to precedent, avoidance of constitutional bases of decision when narrower grounds exist, respect for the Framers' intent when construing constitutional text, and avoidance of issues rendered unnecessary by the doctrines of ripeness, mootness, political questions, etc. As a result, a vote in favor of individual rights claims (Tables 1-7) may provide some indication of "judicial activism"

From the voting patterns that emerge, the Study determines whether individual Justices and the Court are taking conservative or liberal positions. The Study classifies outcomes that favor an assertion of government power as "conservative" and outcomes that favor a claim of individual rights as "liberal." Accordingly, the Study classifies as conservative a vote for the government against an individual, a vote against a claim of constitutional or statutory rights, a vote against the exercise of federal jurisdiction, or a vote favoring state (as opposed to federal) authority on federalism questions. The Study classifies all other votes as liberal.

This analytical scheme is not perfect. Unanimous decisions, which constitute a significant portion of all cases decided by the Court, are included in the Study's calculations even though liberal or conservative ideology may not have influenced the outcome of such cases.[10] Unanimous opinions often result when either the law or the facts, or both, point so clearly in one direction that ideology is not a decisional factor.[11] Furthermore, concern for individual rights is not always, or even necessarily, the attitudinal opposite of judicial restraint.[12]

Despite the difficulties with our classification scheme, the basic assumption that supports this Study—that the general orientation of

because judicial recognition of individual rights often requires the Court to overturn precedent or invalidate an existing statute. Federalism issues (Table 9) are also relevant because judicial restraint is traditionally identified with respect for the role of the states within the federal system.

10. Unanimous cases may comprise a significant portion of the cases tabulated on the various tables. This Term, for example, seven of eleven cases were decided unanimously on Table 2, four of eight cases were decided unanimously on Table 4, six of eleven cases were decided unanimously on Table 7; 10 of 16 cases were decided unanimously on Table 8, and 8 of 16 cases were decided unanimously on Table 9.

11. An example of what seems to be a fairly non-controversial case for the court was Gonzales v. Thomas, 126 S. Ct. 1613 (2006) (per curiam) (case was only four pages long and decided by a per curiam—or unsigned—opinion).

12. For example, Justice Scalia voted against the federal government on four of the eight cases tabulated on Table 4 (Federal/Criminal Cases) this Term. These votes result in a voting record that is less "liberal" than anticipated. However, Justice Scalia's "concern for individual rights" on Table 4 this year does necessarily suggest that he has abandoned any commitment to "judicial restraint." Some of Justice Scalia's votes on Table 4 reflect his preference for giving statutory language its "plain" or "ordinary" meaning. *See, e.g.*, United States v. Gonzalez-Lopez, 126 S. Ct. 2557 (2006). While "plain meaning" resulted in a "liberal" voting pattern on Table 4, Justice Scalia's enthusiasm for "plain meaning" may well flow from (rather than run contrary to) his conservative values. *See, e.g.*, authority cited in note 3, above (noting that conservatism "implies fear of sudden and violent change[s], respect for established institutions and rulers, support for elites and hierarchies and a general mistrust of theory as opposed to empirical deductions").

individual Justices and the Court regarding individual rights and judicial restraint is suggestive of conservative or liberal ideology—appears sound.[13] For example, deference to legislatures frequently results in rejection of an individual's claim, especially one predicated upon the impropriety of governmental action.[14] Judicial restraint is associated with a reluctance to read new rights into the Constitution or statutes.[15] Refusal to exercise federal jurisdiction leaves the matter to the state courts with their possible bias in favor of state governmental action and is a clear rebuff to the claimant seeking federal protection of rights.[16] Therefore, to the extent that the Study's basic ideological assumptions regarding liberal and conservative outcomes are sound, it is possible to identify trends by tracking the voting patterns reflected in Data Tables 1 through 10.[17]

To determine current ideological positions within the Court, votes of the individual Justices can be compared with those cast by other Justices this Term, as well as with the outcomes for the 1986–2004 Terms. Likewise, the current ideological position of the Court as a whole can be determined by comparing present outcomes of the Court majority with those of prior Terms. In Data Tables 1–10, this information appears in the form of voting percentages for each Justice and for the Court majority. Charts 1–10, in turn, graphically depict the voting trends revealed over the years in the outcomes of Majority, Split and Unanimous cases on each Table.

Mean Tables 1–10 and Regression Tables 1–10 analyze the voting patterns of the individual Justices. The purpose of these tables is to determine whether a Justice's 2005 Term voting record departs

13. *See supra* note 3 and accompanying text. *See also infra* Part V.

14. *See, e.g.*, Garcetti v. Ceballos, 126 S. Ct. 1951 (2006) (holding that an employee discharged from government employment did not have a First Amendment claim for discipline connected with speech made related to his official duties).

15. *See id.*

16. *See, e.g.*, Kircher v. Putnam Funds Trust, 126 S. Ct. 2145 (2006) (declining to allow appeal of an order remanding a case to state court over argument that allowing the order to stand would render that decision unreviewable).

17. Of course, the data are only as reliable as our assumptions. The Study's general assumption that votes favoring individual rights reflect liberal views is almost certainly not accurate in every case. For example, *see* Randall v. Sorrell, 126 S. Ct. 2479 (2006) (Thomas, J., concurring in the judgment) (voting against the government on the ground that the First Amendment protects political speech, including the right to spend money supporting candidates for office). In this case, Justice Thomas—along with Justice Scalia—racks up a "liberal" vote, even though some might assert that their votes reflect a "conservative" value. *See supra* note 12.

in a statistically significant manner from his or her prior voting pattern and whether any significant correlation exists among the Term-to-Term voting patterns of the Justices.[18]

The Study also calculates an anticipated 2006 Term voting score for each Justice on each Table. This statistic is calculated with an Auto Regressive Integrated Moving Average (ARIMA) forecasting model.[19] The ARIMA model is useful in situations where, as in this Study, a single variable (a Justice's voting score) is forecast based only on its present and prior values with no other explanatory variables.

In order to determine which categories best reveal the conservative and liberal leanings of the Court, we apply factor analysis. This analysis tests the extent to which the Justices' disposition of the cases on each of the first nine Tables may have been influenced by liberal/conservative bias. Factor analysis has been used in various empirical studies of human behavior, including psychological inquiries into such personal traits as personality and intelligence.[20] The results of the factor analysis for the 2005 Term appear in Part V of this article.

Finally, Frontier Analysis Tables 1–4 and Frontier Charts 1–4 compare the Justices' conservative and liberal predilections this Term and over the course of the entire Study. Frontier analysis mitigates some of the analytical difficulties previously discussed by measuring the strength of each Justice's tendencies relative to the rest of the Court with respect to the cases actually decided in a given Term rather than against an absolute scale.[21]

All of the data and statistics reported in this Study must be interpreted with caution. The percentages and statistical results revealed in each table are affected not only by the dispositions of the individual Justices but also by the nature of the cases decided each Term. Furthermore, Supreme Court cases are not the result of random selection and the universe of votes cast by the Justices is relatively small. Since both random sampling and large sample size are crucial elements of any fully reliable statistical analysis, conclusions drawn from this Study are hardly beyond dispute. There

18. *See infra*.

19. *See infra* Appendix B for a more detailed explanation of ARIMA.

20. *See infra* Appendix B for a more detailed analysis of factor analysis.

21. *See infra* Appendix B for a more detailed analysis of frontier analysis.

are obvious limitations to any empirical analysis of a subjective decision-making process.[22]

In light of these caveats, one might ask whether this Study is worth conducting or reading. We believe it is. For years, experienced Supreme Court practitioners have attempted to divine the ideological leanings of individual Justices in framing their arguments to the Court. Moreover, both the media and academicians are fond of attaching ideological labels to the Court and its personnel. Supreme Court practitioners, legal scholars and the public have long assumed that assessments of Court ideology are valuable, even though such assessments may be based upon little more than the gut reactions of the attorneys, scholars and news reporters involved. This Study, based upon a systematic methodology for objectively gathering, quantifying and analyzing data over time, should be substantially more reliable than these ad hoc assessments.

III. Overview of the Ideological Trends of the 2005 Term

Data Table 1: Civil Cases – State Government versus a Private Party

In 2005 the Court demonstrated liberal movement—an outcome reversing the conservative movement on Table 1 in 2004. Two of the past three Terms have evidenced liberal voting patterns and the evidence on Table 1 for 2005 suggests that the liberal movement may be notable. The voting patterns of six Justices were statistically significant, with each voting more liberally than last year. The Court as a whole, moreover, voted more liberally in the outcome of Majority, Split and Unanimous cases than in 2004.

Nevertheless, and despite this statistically liberal movement, the Court still sided with the government more than 50% of the time, as it has for six of the past seven Terms. The Court still decides the great majority of Civil Cases in favor of state governments. With the arrival of Chief Justice Roberts and Associate Justice Alito, Table 1 also demonstrates an increased level of conservative/liberal polarization on the Court. In 2005 there was a 34 point gap between the average scores of conservative Justices Scalia, Thomas, O'Connor/Alito, Kennedy and Chief Justice Roberts and the more liberal Justices Souter, Stevens, Ginsburg, and Breyer. Last year—as can be seen from Data Table 1 (O'Connor; includes only those cases

22. *See supra* note 6.

voted upon by Justice O'Connor)—there was less than a six point gap between Justice O'Connor (the fifth most conservative Member of the Court in 2004) and Justice Souter. This data may suggest that the newly composed Court could become more polarized in the decision of cases tabulated on Data Table 1 than in the recent past.

Data Table 2: Civil Cases – Federal Government versus a Private Party

The Court registered slight liberal movement on Table 2, federal civil cases for the second straight year. In fact, five Justices voted more liberally this Term than in 2004—and all five voting patterns were statistically significant. The import of the liberal movement on Table 2, however, is lessened by the fact that even the most liberal member of the Court (who, somewhat surprisingly, is Chief Justice Roberts) voted with the federal government 50% of the time.

As with last Term, the rank order of the Justices is interesting, with Justice Souter remaining one of the most conservative Members of the Court. Chief Justice Roberts's position as the most liberal Member of the Court in this category distinguishes his voting pattern from that of the late Chief Justice Rehnquist, who held a similar spot on Table 2 only once in the past 10 years.

Data Table 3: Criminal Cases – State Government versus a Private Party

Factor analysis indicates that Table 3 provides the most reliable evidence of conservative or liberal bias on the Court this Term, and the movement (considered as a whole) is conservative. Majority, Split, and Unanimous decisions all showed conservative movement from the prior Term. Last Term's fairly substantial liberal movement (in all but the outcome of Unanimous Decisions) was attributed to Justice O'Connor's individual voting behavior.[23] It appears that Justice Alito's somewhat more conservative voting record on Table 3 (as compared with Justice O'Connor's voting behavior) may account for this conservative movement. In 2004, Justice O'Connor voted for the government about 54% of the time. In 2005, Justice Alito cast his votes on Table 3 in favor of the government in 69.2% of the cases. The impact of Justice Alito's voting behavior, however, is offset by

23. *See* discussion of Table 3, Section IV, infra. *See also* 2004 Study, 32 HASTINGS CONST. L.Q. 909, 940.

the fact that—during her 2005 Term tenure—Justice O'Connor voted with the State 85.7% of the time.

Data Table 4: Criminal Cases – Federal Government versus a Private Party

Table 4 evidenced liberal movement for the Court as a whole, with interesting individual and group voting behaviors. Justices Thomas and Scalia, both of whom were at record liberal voting percentages in the 2004 Term, moved back toward their conservative norms, although not as far as their mean voting percentages across all prior Terms would predict. Justices Stevens and Ginsburg retreated slightly from their liberal positions last Term.

Both of the new Justices (the Chief Justice and Justice Alito) voted somewhat more liberally than the lifetime averages of the Justices they replaced. All seven returning Justices also evidenced statistically significant movements in their voting behavior on Table 4 (as compared with past Terms). Justice Thomas was the most conservative Justice in Federal Criminal Cases, while Justices Souter and Breyer tied for the most liberal Members of the Court, favoring the federal government with only 12.5% of their votes.

While Table 4 demonstrates liberal movement, this movement may not be particularly noteworthy. Voting behaviors on Table 4 have been erratic and unstable over time. Majority, Split and Unanimous issues were all decided slightly more liberally this Term than last, but still did not move the Court substantially away from the Court's 2004 posture. Whether this Term's voting behavior represents greater stability in the outcome of federal criminal cases or is merely a hiatus from the Court's continuing volatility in Federal Criminal Cases is unclear.

Data Table 5: First Amendment Rights of Expression, Association and Religion

This Table showed conservative movement as a whole from the prior Term. The outcomes on Table 5 remain volatile, partly because of the few number of First Amendment questions that have come before the Court: last Term there were only four issues tabulated and this Term there were only six. Only Table 6, Equal Protection, has a smaller data set.

Perhaps the most notable observation on Table 5 involves the voting behavior of Justice Breyer. Despite a lifetime rating of voting in favor of First Amendment claims only about one third of the time,

this Term Justice Breyer voted for First Amendment claims more than any other Justice, in four of six cases.

Data Table 6: Equal Protection Claims

The Court only decided one equal protection claim this Term, but a low number of cases on Table 6 is not unusual.[24] The case rejected the claim.[25] Although this is a rather striking conservative outcome, its significance should not be overstated: because of the small universe of cases Table 6 is (again) the least reliable indicator of ideological bias.[26]

Data Table 7: Statutory Civil Rights Claims

The Court on Table 7 reversed the liberal trend of the last few Terms, with the Court voting in favor of 54.5% of Statutory Civil Rights Claims, down from last year's record high of 83.3%.[27] However, because factor analysis ranks Table 7 as the second least reliable indicator of ideological bias, drawing conclusions about the Court's future behavior may be unwarranted.

Data Table 8: Cases Raising a Challenge to the Exercise of Federal Jurisdiction

The Court largely held its ground on Table 8, with no change in overall outcome (62.5% liberal) for the second year in a row. Justice Kennedy was the only Justice to show a statistically significant change in voting behavior. Justice Kennedy was also (somewhat uncharacteristically) the most liberal Justice on jurisdictional issues in 2005, a position he has not held in the past ten years.

Data Table 9: Federalism Cases

After stalling last Term, the liberal trend that began in federalism cases in 2002 dramatically re-emerged: every Justice for whom we have past measures exhibited a statistically significant change in voting behavior, with all Justices charting liberal voting patterns.[28] Unanimous cases reached the highest liberal level since

24. *See supra* note 1, prior studies.
25. League of United Latin Am. Citizens v. Perry, 126 S. Ct. 2594 (2006).
26. *See infra* Section V.
27. *See infra* Data Table 7.
28. *See* Mean Table 9.

1996, with every vote going against the states.[29] Majority cases likewise reached their most liberal level since 1996, with less than 20% of decisions in favor of states.[30] Split cases only took a slight liberal turn, and remain more conservative than even just two years ago.[31]

According to factor analysis, Table 9 is the fourth most reliable indicator of ideological bias this Term. Given the well-publicized conservatism of Chief Justice Roberts and Justice Alito, one would expect that this chart would reflect their conservative bias; however, just the opposite is the case: they only sided with the states in these cases about once in every five cases (18.2% and 22.2%, respectively). Whether this trend will continue remains to be seen, but whatever tack the trend takes in the future, it is evident that our prediction last year that their views would "significantly alter" the outcomes in this area[32] was justified.

Data Table 10: Swing-Vote Cases

The Court's slight liberal turn in the outcome of Swing Vote Cases last year—with liberal coalitions controlling the outcome of closely divided cases for the first time since 1998—did not last long.[33] With the exception of last Term's liberal dip, the generally conservative tenor of this chart continues as it has to varying degrees since 1999.[34] The result this Term is almost a perfect mirror image of last Term, as conservative outcomes went from 47.6% to 53.3% and liberal outcomes from 52.4% to 46.7%.[35] The only two Justices to evidence a statistically significant change in voting behavior essentially balanced each other out, as Justice Kennedy voted slightly more liberally, and Justice Ginsburg slightly more conservatively, than expected.[36] The anticipated voting behaviors of the individual Justices were again fairly accurate, with seven voting within 10 points of their projected scores.[37]

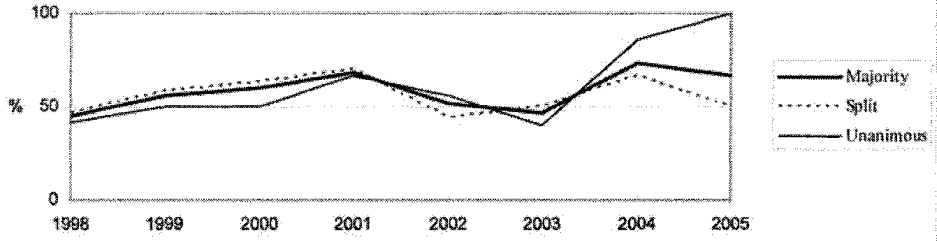
29. *See* Data Table 9.
30. *Id.*
31. *Id.*
32. *See 2004 Study*, *supra* note 1, at 922.
33. *See infra* Data Table 10.
34. *Id.*
35. *Id.*
36. *See infra* Mean Table 10.
37. *See infra* Data Table 10.

Analysis of Court Voting Behavior with Justice O'Connor

Data Table 1
Civil Cases: State Government Versus a Private Party

Justice	% Votes for Government										X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term		For Gov't	Against Gov't	2005 Term	Error	2006 Term
Roberts	84.9	60.0	65.5	66.7	60.0	75.0	40.0	53.3	82.4	100.0		2	0	*	*	*
Scalia	77.4	60.0	55.2	50.0	60.0	62.5	48.0	53.9	78.9	100.0		3	0	56.0	44.0	84.9
Kennedy	71.9	53.3	51.7	44.4	53.3	68.8	36.0	57.1	84.2	100.0		3	0	62.0	38.0	92.2
Thomas	77.4	60.0	65.5	50.0	60.0	75.0	60.0	53.3	89.5	100.0		3	0	59.7	40.3	98.8
Stevens	48.5	37.5	17.2	41.2	40.0	37.5	54.2	28.6	52.6	66.7		2	1	29.4	37.3	44.7
O'Connor	68.8	53.3	55.2	55.6	53.3	53.3	44.0	40.0	68.4	66.7		2	1	53.5	13.2	59.2
Souter	54.6	46.7	37.9	50.0	53.9	43.8	52.0	42.9	63.2	66.7		2	1	45.3	21.4	59.1
Ginsburg	53.1	46.7	31.0	44.4	46.2	50.0	56.0	35.7	57.9	33.3		1	2	42.0	-8.7	57.2
Breyer	54.6	46.7	44.8	52.9	35.7	50.0	48.0	35.7	73.7	33.3		1	2	23.4	9.9	70.8
Majority	72.7	46.7	44.8	55.6	60.0	68.8	52.0	46.7	73.7	66.7		2	1	59.4	7.3	63.6
Split	69.2	33.3	47.1	58.3	63.6	70.0	44.4	50.0	66.7	50.0		1	1			
Unanimous	75.0	55.6	41.7	50.0	50.0	66.7	56.3	40.0	85.7	100.0		1	0			

Chart 1
Civil Cases: State Government Versus a Private Party



Mean Table 1
Civil Cases: State Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	100.00	*
Stevens	37.2	+/- 5.7	9.59	66.67	yes
O'Connor	54.1	+/- 5.7	9.67	66.67	yes
Scalia	58.9	+/- 5.5	9.37	100.00	yes
Kennedy	54.0	+/- 8.4	13.82	100.00	yes
Souter	47.1	+/- 6.6	9.94	66.67	yes
Thomas	62.3	+/- 9.1	13.18	100.00	yes
Ginsburg	45.6	+/- 6.3	8.51	33.33	yes
Breyer	46.7	+/- 9.2	11.86	33.33	yes

Regression Table 1
Civil Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

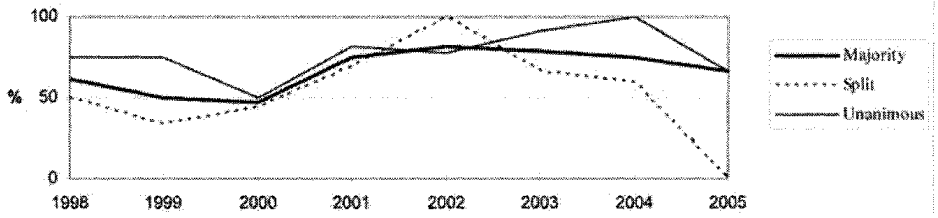
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*							
Scalia	*							
Kennedy	*		0.78/0.59	0.88/0.76				
Souter	*		0.72/0.48		0.72/0.48			
Thomas	*		0.75/0.52	0.91/0.82	0.85/0.69			
Ginsburg	*							
Breyer	*							0.71/0.46

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 2
Civil Cases: Federal Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Roberts	69.6	38.1	50.0	70.0	58.8	70.8	90.9	79.2	71.4	66.7	2	1	*	*	*
Stevens	65.2	55.0	68.4	50.0	64.3	62.5	50.0	69.6	62.5	66.7	2	1	67.5	-0.8	64.0
O'Connor	59.1	61.9	73.3	60.0	50.0	61.9	54.6	83.3	62.5	66.7	2	1	61.5	5.2	63.1
Scalia	45.5	52.4	61.1	60.0	56.3	56.5	63.6	73.9	62.5	66.7	2	1	59.6	7.1	63.4
Kennedy	63.6	45.5	50.0	50.0	47.1	62.5	90.9	75.0	62.5	66.7	2	1	65.0	1.7	62.6
Souter	69.6	47.6	66.7	50.0	52.9	50.0	63.6	75.0	50.0	66.7	2	1	60.0	6.7	48.8
Thomas	40.9	33.3	55.6	40.0	52.9	45.8	63.6	75.0	75.0	66.7	2	1	72.7	-6.0	66.5
Ginsburg	65.2	40.9	68.4	50.0	52.9	66.7	72.7	66.7	75.0	66.7	2	1	71.6	-4.9	71.1
Breyer	73.9	57.1	61.1	70.0	50.0	66.7	72.7	75.0	87.5	66.7	2	1	83.5	-16.8	82.7
Majority	69.6	36.4	61.1	50.0	47.1	75.0	81.8	79.2	75.0	66.7	2	1	72.3	-5.6	71.0
Split	69.2	26.7	50.0	33.3	44.4	69.2	100.0	66.7	60.0	*	0	0			
Unanimous	70.0	57.1	75.0	75.0	50.0	81.8	77.8	91.7	100.0	66.7	2	1			

Chart 2
Civil Cases: Federal Government Versus a Private Party



Mean Table 2
Civil Cases: Federal Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	66.67	*
Stevens	57.2	+/- 6.2	10.47	66.67	yes
O'Connor	61.1	+/- 6.9	11.70	66.67	no
Scalia	60.5	+/- 5.6	9.42	66.67	yes
Kennedy	61.9	+/- 7.7	12.73	66.67	no
Souter	61.1	+/- 7.8	11.73	66.67	no
Thomas	53.9	+/- 9.1	13.19	66.67	yes
Ginsburg	62.9	+/- 9.2	12.31	66.67	no
Breyer	65.6	+/- 9.2	11.86	66.67	no

Regression Table 2
Civil Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

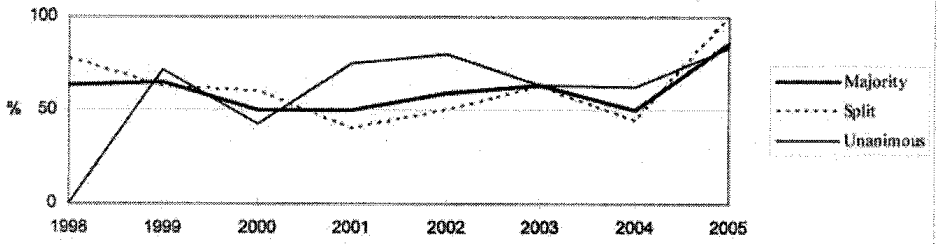
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*							
Scalia	*							
Kennedy	*							
Souter	*							
Thomas	*			0.72/0.49				
Ginsburg	*				0.77/0.55		0.74/0.51	
Breyer	*							

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 3
Criminal Cases: State Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Roberts	63.6	76.9	72.7	87.0	58.3	84.6	82.4	76.9	65.0	85.7	6	1	*	*	*
O'Connor	63.6	71.4	63.6	78.3	50.0	46.2	62.5	69.2	53.8	85.7	6	1	58.2	27.5	55.7
Scalia	63.6	84.6	72.7	82.6	66.7	84.6	82.4	76.9	76.9	85.7	6	1	77.0	8.7	78.9
Kennedy	54.6	76.9	54.6	78.3	50.0	76.9	64.7	64.0	61.5	85.7	6	1	63.9	21.8	63.3
Thomas	63.6	92.3	80.0	82.6	66.7	84.6	94.1	80.0	80.8	85.7	6	1	79.3	6.4	89.9
Stevens	18.2	23.1	9.1	27.3	33.3	15.4	29.4	32.0	23.1	71.4	5	2	25.9	45.5	29.0
Souter	54.6	57.1	36.4	27.3	33.3	23.1	35.3	40.0	23.1	71.4	5	2	25.3	46.1	28.8
Ginsburg	45.5	42.9	27.3	36.4	25.0	23.1	23.5	36.0	34.6	71.4	5	2	27.9	43.5	59.2
Breyer	36.4	50.0	36.4	40.9	25.0	30.8	29.4	44.0	46.2	71.4	5	2	41.1	30.3	63.3
Majority	63.6	71.4	63.6	65.2	50.0	50.0	58.8	63.0	50.0	85.7	6	1	62.3	23.4	67.0
Split	100.0	66.7	77.8	62.5	60.0	40.0	50.0	62.5	44.4	100.0	1	0			
Unanimous	33.3	80.0	0.0	71.4	42.9	75.0	80.0	63.6	62.5	83.3	5	1			

Chart 3
Criminal Cases: State Government Versus a Private Party



Mean Table 3
Criminal Cases: State Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	*	*
Stevens	22.4	+/- 5.5	9.35	71.43	yes
O'Connor	62.5	+/- 7.3	12.37	85.71	yes
Scalia	75.3	+/- 6.1	10.40	85.71	yes
Kennedy	65.1	+/- 6.8	11.19	85.71	yes
Souter	39.8	+/- 9.9	14.92	71.43	yes
Thomas	80.8	+/- 6.7	9.78	85.71	no
Ginsburg	34.4	+/- 6.0	8.13	71.43	yes
Breyer	36.6	+/- 6.9	8.93	71.43	yes

Regression Table 3
Criminal Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

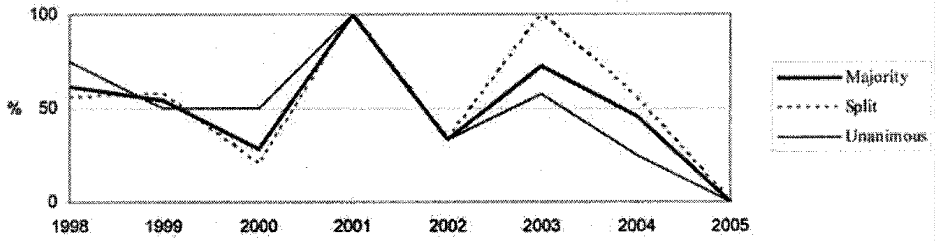
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*							
Scalia	*							
Kennedy	*							
Souter	*							
Thomas	*			0.87/0.75				
Ginsburg	*					0.74/0.51		
Breyer	*		0.79/0.59			0.73/0.48		0.86/0.71

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 4
Criminal Cases: Federal Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Roberts	84.6	70.0	76.9	63.6	57.1	100.0	66.7	80.0	72.7	0.0	0	1	*	*	*
Stevens	53.9	55.6	38.5	36.4	14.3	62.5	0.0	45.5	15.4	0.0	0	1	37.0	-37.0	29.6
O'Connor	92.3	80.0	84.6	54.6	57.1	100.0	40.0	72.7	61.5	0.0	0	1	71.4	-71.4	52.0
Scalia	92.3	70.0	46.2	63.6	85.7	100.0	60.0	70.0	30.8	0.0	0	1	65.7	-65.7	20.8
Kennedy	84.6	90.0	76.9	54.6	28.6	100.0	50.0	72.7	61.5	0.0	0	1	73.1	-73.1	52.5
Souter	84.6	70.0	46.2	36.4	16.7	75.0	33.3	36.4	15.4	0.0	0	1	26.3	-26.3	2.5
Thomas	84.6	90.0	61.5	54.6	85.7	87.5	66.7	80.0	53.8	0.0	0	1	76.9	-76.9	0.0
Ginsburg	76.9	60.0	53.9	36.4	28.6	75.0	33.3	54.6	15.4	0.0	0	1	45.5	-45.5	16.0
Breyer	69.2	70.0	53.9	45.5	28.6	100.0	33.3	54.6	38.5	0.0	0	1	48.4	-48.4	21.0
Majority	84.6	80.0	61.5	54.5	28.6	100.0	33.3	72.7	46.2	0.0	0	1	72	-72.0	51.7
Split	75.0	66.7	55.6	57.1	20.0	100.0	33.3	100.0	55.6	*	0	0			
Unanimous	100.0	100.0	75.0	50.0	50.0	100.0	33.3	57.1	25.0	0.0	0	1			

Chart 4
Criminal Cases: Federal Government Versus a Private Party



Mean Table 4
Criminal Cases: Federal Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	0.00	*
Stevens	41.2	+/- 10.8	18.32	0.00	yes
O'Connor	73.5	+/- 8.2	13.90	0.00	yes
Scalia	66.6	+/- 9.9	16.79	0.00	yes
Kennedy	68.9	+/- 10.6	17.39	0.00	yes
Souter	53.4	+/- 15.0	22.49	0.00	yes
Thomas	73.0	+/- 9.5	13.87	0.00	yes
Ginsburg	52.1	+/- 14.6	19.57	0.00	yes
Breyer	57.6	+/- 16.3	20.93	0.00	yes

Regression Table 4
Criminal Cases: Federal Government Versus a Private Party
Correlation (ρ) / R^2

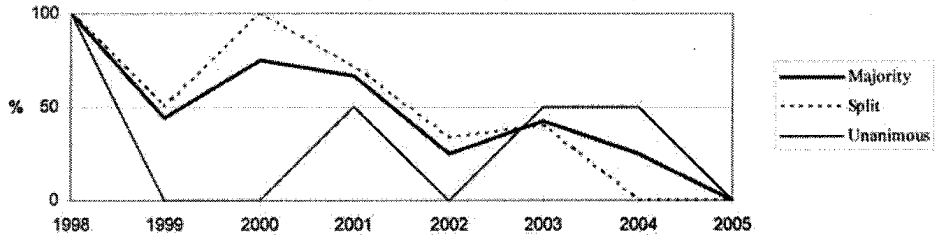
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*	0.73/0.50						
Scalia	*		0.72/0.49					
Kennedy	*	0.74/0.52	0.89/0.79					
Souter	*	0.85/0.70	0.76/0.55		0.76/0.54			
Thomas	*		0.79/0.59	0.83/0.67				
Ginsburg	*	0.88/0.75	0.86/0.72	0.77/0.56	0.85/0.69	0.96/0.91	0.73/0.50	
Breyer	*	0.89/0.77	0.90/0.79	0.73/0.48	0.92/0.83	0.90/0.80	0.71/0.46	0.92/0.84

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 5
First Amendment Rights of Expression, Association, and Religion

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Roberts	28.6	0.0	50.0	44.4	25.0	22.2	0.0	33.3	25.0	*	0	0	*	*	*
Stevens	42.9	0.0	100.0	37.5	50.0	66.7	33.3	33.3	75.0	*	0	0	40.5	*	40.5
O'Connor	28.6	0.0	50.0	33.3	50.0	55.6	0.0	16.7	25.0	*	0	0	25.4	*	25.4
Scalia	85.7	0.0	100.0	56.6	25.0	44.4	25.0	66.7	0.0	*	0	0	63.6	*	63.6
Kennedy	57.1	0.0	100.0	77.8	75.0	66.7	0.0	50.0	50.0	*	0	0	46.6	*	46.6
Souter	57.1	100.0	100.0	28.6	50.0	66.7	25.0	33.3	75.0	*	0	0	55.1	*	55.1
Thomas	85.7	0.0	100.0	66.7	25.0	66.7	25.0	100.0	0.0	*	0	0	100.0	*	100.0
Ginsburg	57.1	0.0	100.0	33.3	50.0	55.6	25.0	33.3	50.0	*	0	0	30.9	*	30.9
Breyer	14.3	0.0	50.0	12.5	75.0	55.6	25.0	16.7	25.0	*	0	0	2.5	*	2.5
Majority	28.6	0.0	100.0	44.4	75.0	66.7	25.0	42.9	25.0	*	0	0	38.5	*	38.5
Split	28.6	0.0	100.0	50.0	100.0	71.4	33.0	40.0	0.0	*	0	0			
Unanimous	0.0	0.0	100.0	0.0	0.0	50.0	0.0	50.0	50.0	*	0	0			

Chart 5
First Amendment Rights of Expression, Association, and Religion



Mean Table 5
First Amendment Rights of Expression, Association, and Religion

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	*	*
Stevens	56.7	+/- 14.4	24.31	*	*
O'Connor	38.7	+/- 12.8	21.64	*	*
Scalia	43.5	+/- 15.8	26.79	*	*
Kennedy	59.2	+/- 16.9	27.89	*	*
Souter	56.5	+/- 17.4	26.09	*	*
Thomas	51.4	+/- 24.0	34.82	*	*
Ginsburg	51.5	+/- 19.5	26.28	*	*
Breyer	37.8	+/- 21.2	27.32	*	*

Regression Table 5
First Amendment Rights of Expression, Association, and Religion
Correlation (ρ) / R^2

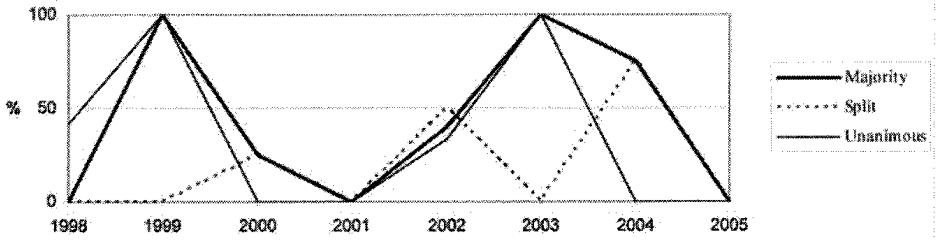
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*							
Scalia	*		0.77/0.57					
Kennedy	*							
Souter	*			0.94/0.87				
Thomas	*							
Ginsburg	*	0.91/0.80	0.80/0.61		0.84/0.68			
Breyer	*		0.86/0.71					

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 6
Equal Protection Claims

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Roberts	0.0	50.0	0.0	100.0	50.0	0.0	60.0	100.0	33.3	*	0	0	*	*	*
Stevens	40.0	50.0	0.0	100.0	25.0	0.0	25.0	100.0	100.0	*	0	0	53.3	*	53.3
O'Connor	50.0	50.0	0.0	100.0	50.0	0.0	40.0	100.0	75.0	*	0	0	65.8	*	65.8
Scalia	25.0	0.0	0.0	100.0	50.0	0.0	60.0	100.0	25.0	*	0	0	59.6	*	59.6
Kennedy	33.3	50.0	0.0	100.0	50.0	0.0	60.0	100.0	75.0	*	0	0	65.5	*	65.5
Souter	20.0	100.0	0.0	100.0	50.0	0.0	20.0	100.0	75.0	*	0	0	50.5	*	50.5
Thomas	25.0	0.0	0.0	100.0	50.0	0.0	60.0	100.0	0.0	*	0	0	67.2	*	67.2
Ginsburg	20.0	100.0	0.0	100.0	50.0	0.0	20.0	100.0	75.0	*	0	0	53.2	*	53.2
Breyer	20.0	100.0	0.0	100.0	50.0	0.0	40.0	100.0	75.0	*	0	0	70.8	*	70.8
Majority	20.0	50.0	0.0	100.0	25.0	0.0	40.0	100.0	75.0	*	0	0	59.4	*	59.4
Split	33.3	50.0	0.0	0.0	25.0	0.0	50.0	0.0	75.0	*	0	0			
Unanimous	0.0	0.0	41.7	100.0	0.0	0.0	33.3	100.0	0.0	*	0	0			

Chart 6
Equal Protection Claims



Mean Table 6
Equal Protection Claims

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	*	*
Stevens	49.0	+/- 20.5	34.73	*	*
O'Connor	50.6	+/- 18.5	31.26	*	*
Scalia	33.9	+/- 18.5	31.25	*	*
Kennedy	52.4	+/- 18.9	31.14	*	*
Souter	51.9	+/- 23.7	35.71	*	*
Thomas	38.0	+/- 25.2	36.67	*	*
Ginsburg	53.2	+/- 29.8	40.09	*	*
Breyer	50.8	+/- 29.6	38.07	*	*

Regression Table 6
Equal Protection Claims
Correlation (ρ) / R^2

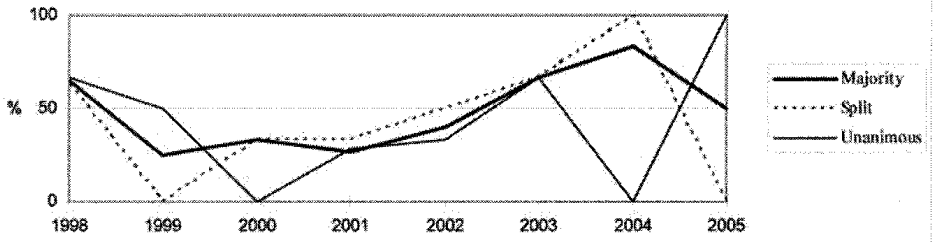
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*	0.77/0.57						
Scalia	*							
Kennedy	*	0.79/0.60	0.94/0.88					
Souter	*	0.85/0.70	0.78/0.59		0.78/0.58			
Thomas	*			0.96/0.91				
Ginsburg	*	0.88/0.75	0.81/0.63		0.80/0.61	1.00/1.00		
Breyer	*	0.85/0.70	0.78/0.57		0.80/0.60	0.99/0.97		0.99/0.97

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 7
Statutory Civil Rights Claims

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Roberts	50.0	30.8	35.3	25.0	33.3	13.3	40.0	50.0	20.0	100.0	1	0	*	*	*
Ginsburg	78.6	76.9	70.6	75.0	100.0	60.0	40.0	66.7	83.3	100.0	2	0	69.9	30.1	89.3
Breyer	85.7	84.6	82.4	75.0	100.0	53.3	40.0	80.0	83.3	100.0	2	0	85	15.0	90.7
Stevens	85.7	84.6	88.2	75.0	100.0	53.3	20.0	66.7	83.3	50.0	1	1	66.5	-16.5	60.3
O'Connor	64.3	41.7	58.8	25.0	33.3	26.7	40.0	66.7	33.3	50.0	1	1	58.9	-8.9	36.6
Scalia	50.0	23.1	41.2	25.0	0.0	13.3	40.0	66.7	33.3	50.0	1	1	30.1	19.9	34.7
Kennedy	50.0	61.5	47.1	25.0	33.3	20.0	40.0	66.7	33.3	50.0	1	1	35.2	14.8	32.9
Souter	92.9	76.9	70.6	75.0	100.0	60.0	20.0	80.0	83.3	50.0	1	1	86.6	-36.6	71.7
Thomas	50.0	23.1	23.5	25.0	0.0	20.0	40.0	50.0	33.3	50.0	1	1	31.5	18.5	37.4
Majority	57.1	61.5	64.7	25.0	33.3	26.7	40.0	66.7	83.3	50.0	1	1	81.5	-31.5	50.2
Split	16.7	62.5	63.6	0.0	33.3	33.3	50.0	66.7	100.0	0.0	0	1			
Unanimous	87.5	60.0	66.7	50.0	0.0	28.6	33.3	66.7	0.0	100.0	1	0			

Chart 7
Statutory Civil Rights Claims



Mean Table 7
Statutory Civil Rights Claims

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	100.00	*
Stevens	74.9	+/- 10.9	17.98	50.00	yes
O'Connor	44.8	+/- 7.7	12.96	50.00	no
Scalia	36.6	+/- 9.8	16.51	50.00	yes
Kennedy	41.7	+/- 9.7	15.98	50.00	yes
Souter	66.1	+/- 14.1	21.14	50.00	yes
Thomas	29.6	+/- 9.5	13.81	50.00	yes
Ginsburg	69.8	+/- 12.1	16.30	100.00	yes
Breyer	76.6	+/- 12.8	16.48	100.00	yes

Regression Table 7
Statutory Civil Rights Claims
Correlation (ρ) / R^2

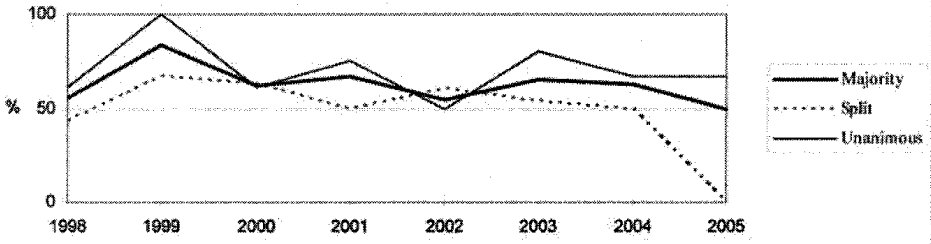
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*							
Scalia	*		0.72/0.48					
Kennedy	*			0.71/0.48				
Souter	*	0.74/0.51						
Thomas	*			0.90/0.80				
Ginsburg	*							
Breyer	*	0.71/0.46						0.91/0.82

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Stevens	69.6	51.7	65.0	100.0	68.4	83.3	47.6	77.3	62.5	75.0	3	1	70.7	4.3	66.2
Kennedy	56.5	58.6	55.0	83.3	61.9	58.3	50.0	54.6	62.5	75.0	3	1	58.7	16.3	65.3
Roberts	56.5	60.0	45.0	66.7	52.4	66.7	54.6	54.6	62.5	50.0	2	2	*	*	*
O'Connor	54.6	43.3	55.0	83.3	47.4	63.6	66.7	66.7	50.0	50.0	2	2	59.7	-9.7	53.9
Scalia	47.8	43.3	40.0	66.7	47.6	50.0	31.8	52.6	57.1	50.0	2	2	49.2	0.8	48.4
Souter	56.5	60.7	60.0	83.3	68.4	83.3	54.6	69.6	75.0	50.0	2	2	73.5	-23.5	45.0
Thomas	47.8	46.7	45.0	83.3	47.6	58.3	38.1	45.5	57.1	50.0	2	2	45.9	4.1	55.2
Ginsburg	56.5	55.2	60.0	83.3	61.9	83.3	54.6	81.8	62.5	50.0	2	2	69.2	-19.2	71.3
Breyer	65.2	51.7	65.0	66.7	60.0	83.3	63.6	77.3	50.0	50.0	2	2	60.9	-10.9	66.5
Majority	52.2	58.6	55.0	83.3	61.9	66.7	54.6	65.2	62.5	50.0	2	2	66.3	-16.3	63.5
Split	28.6	73.3	42.9	66.7	62.5	50.0	60.0	53.9	50.0	0.0	0	1			
Unanimous	62.5	42.9	61.5	100.0	61.5	75.0	50.0	80.0	66.7	66.7	2	1			

Chart 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction



Mean Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	50.00	*
Stevens	68.0	+/- 8.9	15.09	75.00	no
O'Connor	54.6	+/- 7.9	13.35	50.00	no
Scalia	47.4	+/- 6.5	11.01	50.00	no
Kennedy	57.0	+/- 6.7	10.95	75.00	yes
Souter	62.1	+/- 10.3	15.53	50.00	yes
Thomas	49.8	+/- 9.5	13.78	50.00	no
Ginsburg	61.5	+/- 12.1	16.33	50.00	yes
Breyer	61.8	+/- 10.4	13.45	50.00	yes

Regression Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction
Correlation (ρ) / R^2

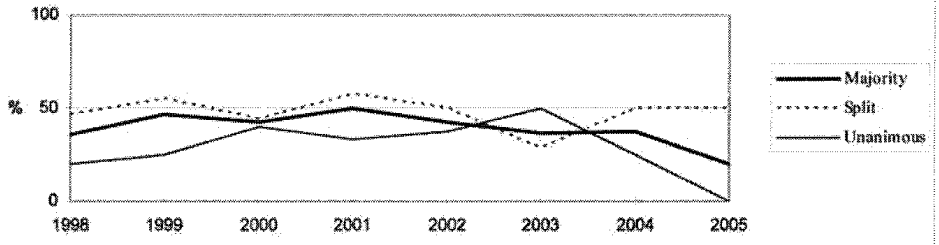
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*							
Scalia	*	0.74/0.52	0.73/0.51					
Kennedy	*			0.80/0.62				
Souter	*	0.70/0.46	0.71/0.47	0.77/0.57	0.70/0.46			
Thomas	*	0.83/0.66	0.71/0.47	0.88/0.75	0.85/0.69	0.79/0.59		
Ginsburg	*	0.85/0.69	0.80/0.61	0.76/0.54		0.93/0.86	0.72/0.48	
Breyer	*					0.72/0.47		0.85/0.69

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 9
Federalism Cases

Justice	% Votes for State									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For State	Against State	2005 Term	Error	2006 Term
Kennedy	68.3	42.1	40.0	53.3	42.9	70.0	50.0	54.6	25.0	40.0	2	3	51.2	-11.2	45.0
Roberts	75.6	36.8	60.0	46.7	50.0	50.0	35.7	54.6	50.0	25.0	1	3	*	*	*
Stevens	45.0	35.0	8.0	26.7	35.7	30.0	35.7	36.4	50.0	20.0	1	4	37.8	-17.8	27.2
O'Connor	70.7	29.4	45.8	46.7	35.7	60.0	35.7	45.5	50.0	20.0	1	4	36.0	-16.0	45.4
Scalia	73.2	31.6	52.0	46.7	57.1	55.6	57.1	60.0	25.0	20.0	1	4	59.9	-39.9	13.0
Souter	43.9	15.8	32.0	20.0	35.7	30.0	28.6	45.5	37.5	20.0	1	4	38.3	-18.3	33.1
Thomas	73.2	36.8	64.0	60.0	57.1	70.0	64.3	50.0	50.0	20.0	1	4	64.5	-44.5	40.8
Ginsburg	51.3	36.8	28.0	33.3	28.6	40.0	42.9	36.4	37.5	20.0	1	4	36.6	-16.6	24.9
Breyer	50.0	15.8	32.0	13.3	35.7	30.0	28.6	36.4	37.5	20.0	1	4	35.8	-15.8	34.2
Majority	68.3	31.6	36.0	46.7	42.9	50.0	42.9	36.4	37.5	20.0	1	4	38.3	-18.3	37.3
Split	63.2	44.4	46.7	54.6	44.4	57.1	50.0	28.6	50.0	50.0	1	1			
Unanimous	72.7	20.0	20.0	25.0	40.0	33.3	37.5	50.0	25.0	0.0	0	3			

Chart 9
Federalism Cases



Mean Table 9
Federalism Cases

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	25.00	*
Stevens	39.6	+/- 8.2	13.47	20.00	yes
O'Connor	51.3	+/- 8.7	14.33	20.00	yes
Scalia	54.1	+/- 10.1	16.69	20.00	yes
Kennedy	50.9	+/- 8.9	14.63	40.00	yes
Souter	40.3	+/- 11.2	16.86	20.00	yes
Thomas	57.0	+/- 8.7	12.58	20.00	yes
Ginsburg	40.0	+/- 6.7	8.95	20.00	yes
Breyer	32.1	+/- 8.0	10.34	20.00	yes

Regression Table 9
Federalism Cases
Correlation (ρ) / R^2

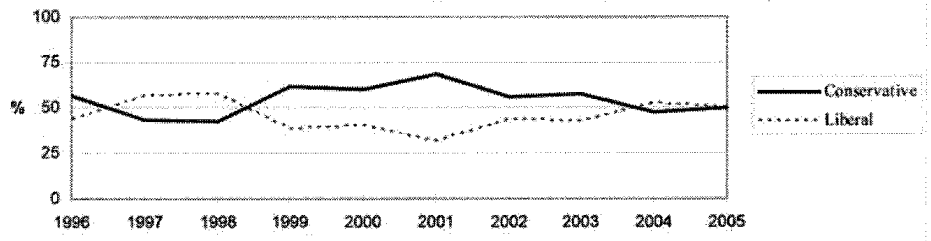
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*							
Scalia	*		0.73/0.51					
Kennedy	*		0.72/0.49	0.81/0.63				
Souter	*		0.76/0.54					
Thomas	*		0.71/0.46	0.81/0.63				
Ginsburg	*	0.80/0.60	0.73/0.49					
Breyer	*					0.92/0.84		

Analysis of Court Voting Behavior with Justice O'Connor, continued

Data Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?

Justice	% Votes for Majority									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Maj	Against Maj	2005 Term	Error	2006 Term
O'Connor	75.0	53.3	75.0	84.6	66.7	84.0	100.0	73.7	61.9	100.0	2	0	72.8	27.2	84.7
Roberts	62.5	56.3	46.4	76.9	63.3	72.0	62.5	47.4	50.0	50.0	1	1	*	*	*
Stevens	50.0	43.8	60.7	26.9	43.3	24.0	37.5	55.6	57.1	50.0	1	1	40.5	9.5	44.8
Scalia	56.3	50.0	50.0	73.1	63.3	80.0	43.8	55.6	52.4	50.0	1	1	53.0	-3.0	49.5
Kennedy	81.3	87.5	67.9	73.1	83.3	80.0	56.3	63.2	61.9	50.0	1	1	64.7	-14.7	56.5
Souter	43.8	43.8	46.4	34.6	43.3	28.0	56.3	55.6	61.9	50.0	1	1	56.5	-6.5	56.3
Thomas	56.3	56.3	50.0	84.6	63.3	80.0	43.8	63.2	52.4	50.0	1	1	66.4	-16.4	65.1
Ginsburg	31.3	56.3	53.6	30.8	36.7	20.0	43.8	55.6	52.4	50.0	1	1	48.8	1.2	50.7
Breyer	43.8	56.3	50.0	19.2	36.7	32.0	56.3	44.4	57.1	50.0	1	1	48.5	1.5	52.3
Conservative	56.3	43.7	42.9	61.5	60.0	68.0	56.3	57.9	47.6	50.0	1	1	56.3	-6.3	49.3
Liberal	43.7	56.3	57.1	38.5	40.0	32.0	43.8	42.1	52.4	50.0	1	1	43.7	6.3	50.7

Chart 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?



Mean Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	50.00	*
Stevens	43.8	+/- 7.6	12.54	50.00	no
O'Connor	70.0	+/- 8.1	13.37	100.00	yes
Scalia	61.3	+/- 7.9	13.05	50.00	yes
Kennedy	73.8	+/- 6.8	11.25	50.00	yes
Souter	46.5	+/- 9.7	14.51	50.00	no
Thomas	59.2	+/- 11.0	15.91	50.00	no
Ginsburg	41.3	+/- 9.0	12.16	50.00	yes
Breyer	42.2	+/- 10.0	12.83	50.00	no

Regression Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases
Correlation (ρ) / R^2

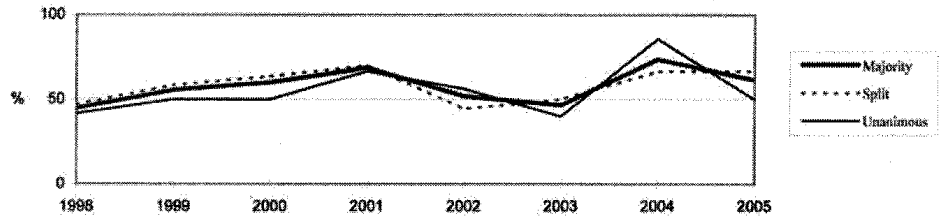
Justice	Roberts	Stevens	O'Connor	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'Connor	*							
Scalia	*							
Kennedy	*							
Souter	*			-0.84/0.69				
Thomas	*	-0.73/0.49		0.89/0.78		-0.84/0.69		
Ginsburg	*	0.80/0.61		-0.82/0.64		0.71/0.46		
Breyer	*	0.72/0.47		-0.91/0.81		0.79/0.58	-0.90/0.79	0.76/0.53

Analysis of Court Voting Behavior with Justice Alito

Data Table 1
Civil Cases: State Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Roberts	84.9	60.0	65.5	66.7	60.0	75.0	40.0	53.3	82.4	69.2	9	4	*	*	*
Scalia	77.4	60.0	55.2	50.0	60.0	62.5	48.0	53.9	78.9	69.2	9	4	56.0	13.2	63.3
Thomas	77.4	60.0	65.5	50.0	60.0	75.0	60.0	53.3	89.5	69.2	9	4	59.7	9.5	73.3
Alito	68.8	53.3	55.2	55.6	53.3	53.3	44.0	40.0	68.4	66.7	8	4	*	*	*
Kennedy	71.9	53.3	51.7	44.4	53.3	68.8	36.0	57.1	84.2	61.5	8	5	62.0	-0.5	60.7
Souter	54.6	46.7	37.9	50.0	53.9	43.8	52.0	42.9	63.2	38.5	5	8	45.3	-6.8	50.6
Ginsburg	53.1	46.7	31.0	44.4	46.2	50.0	56.0	35.7	57.9	38.5	5	8	42.0	-3.5	56.7
Stevens	48.5	37.5	17.2	41.2	40.0	37.5	54.2	28.6	52.6	30.8	4	9	29.4	1.4	43.7
Breyer	54.6	46.7	44.8	52.9	35.7	50.0	48.0	35.7	73.7	30.8	4	9	23.4	7.4	*
Majority	72.7	46.7	44.8	55.6	60.0	68.8	52.0	46.7	73.7	61.5	8	5	59.4	2.1	61.9
Split	69.2	33.3	47.1	58.3	63.6	70.0	44.4	50.0	66.7	66.7	6	3			
Unanimous	75.0	55.6	41.7	50.0	50.0	66.7	56.3	40.0	85.7	50.0	2	2			

Chart 1
Civil Cases: State Government Versus a Private Party



Mean Table 1
Civil Cases: State Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	69.23	*
Stevens	37.2	+/- 5.7	9.59	30.77	yes
Alito	*	*	*	66.67	*
Scalia	58.9	+/- 5.5	9.37	69.23	yes
Kennedy	54.0	+/- 8.4	13.82	61.54	yes
Souter	47.1	+/- 6.6	9.94	38.46	yes
Thomas	62.3	+/- 9.1	13.18	69.23	no
Ginsburg	45.6	+/- 6.3	8.51	38.46	yes
Breyer	46.7	+/- 9.2	11.86	30.77	yes

Regression Table 1
Civil Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

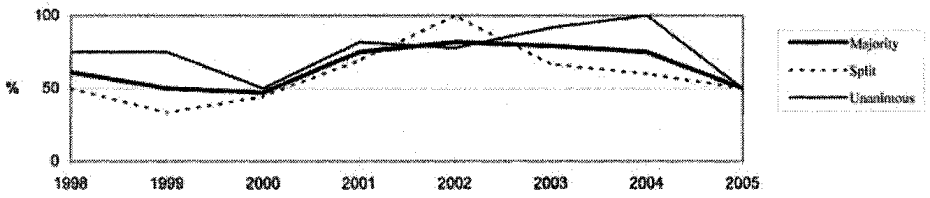
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*		*					
Kennedy	*		*	0.79/0.60				
Souter	*		*					
Thomas	*		*	0.86/0.72	0.75/0.53			
Ginsburg	*	0.96/0.91	*			0.71/0.45		
Breyer	*		*			0.75/0.52		

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 2
Civil Cases: Federal Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Alito	59.1	61.9	73.3	60.0	50.0	61.9	54.6	83.3	62.5	66.7	2	1	*	*	*
Souter	69.6	47.6	66.7	50.0	52.9	50.0	63.6	75.0	50.0	62.5	5	3	60.0	2.5	50.9
Thomas	40.9	33.3	55.6	40.0	52.9	45.8	63.6	75.0	75.0	62.5	5	3	72.7	-10.2	64.7
Stevens	65.2	55.0	68.4	50.0	64.3	62.5	50.0	69.6	62.5	50.0	4	4	67.5	-17.5	62.2
Scalia	45.5	52.4	61.1	60.0	56.3	56.5	63.6	73.9	62.5	50.0	4	4	59.6	-9.6	53.4
Kennedy	63.6	45.5	50.0	50.0	47.1	62.5	90.9	75.0	62.5	50.0	4	4	65.0	-15.0	66.7
Ginsburg	65.2	40.9	68.4	50.0	52.9	66.7	72.7	66.7	75.0	50.0	4	4	71.6	-21.6	77.2
Breyer	73.9	57.1	61.1	70.0	50.0	66.7	72.7	75.0	87.5	50.0	4	4	83.5	-33.5	89.7
Roberts	69.6	38.1	50.0	70.0	58.8	70.8	90.9	79.2	71.4	42.9	3	4	*	*	*
Majority	69.6	36.4	61.1	50.0	47.1	75.0	81.8	79.2	75.0	50.0			72.3	-22.3	65.7
Split	69.2	26.7	50.0	33.3	44.4	69.2	100.0	66.7	60.0	50.0					
Unanimous	70.0	57.1	75.0	75.0	50.0	81.8	77.8	91.7	100.0	50.0					

Chart 2
Civil Cases: Federal Government Versus a Private Party



Mean Table 2
Civil Cases: Federal Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	42.86	*
Stevens	57.2	+/- 6.2	10.47	50.00	yes
Alito	*	*	*	66.67	*
Scalia	60.5	+/- 5.6	9.42	50.00	yes
Kennedy	61.9	+/- 7.7	12.73	50.00	yes
Souter	61.1	+/- 7.8	11.73	62.50	no
Thomas	53.9	+/- 9.1	13.19	62.50	yes
Ginsburg	62.9	+/- 9.2	12.31	50.00	yes
Breyer	65.6	+/- 9.2	11.86	50.00	yes

Regression Table 2
Civil Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

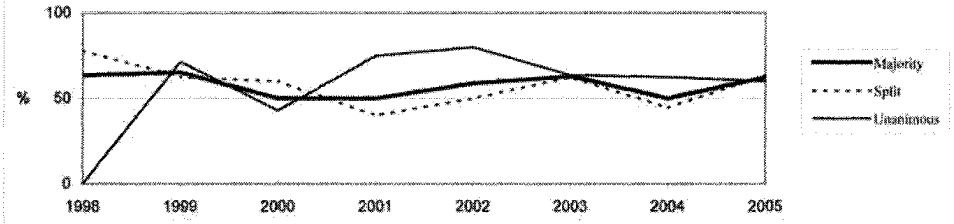
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*							
Kennedy	*							
Souter	*							
Thomas	*							
Ginsburg	*				0.78/0.57			
Breyer	*							

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 3
Criminal Cases: State Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Thomas	63.6	92.3	80.0	82.6	66.7	84.6	94.1	80.0	80.8	81.3	13	3	79.3	2.0	88.7
Roberts	63.6	76.9	72.7	87.0	58.3	84.6	82.4	76.9	65.0	75.0	12	4	*	*	*
Scalia	63.6	84.6	72.7	82.6	66.7	84.6	82.4	76.9	76.9	75.0	12	4	77.0	-2.0	76.7
Alito	63.6	71.4	63.6	78.3	50.0	46.2	62.5	69.2	53.8	69.2	9	4	*	*	*
Kennedy	54.6	76.9	54.6	78.3	50.0	76.9	64.7	64.0	61.5	62.5	10	6	63.9	-1.4	41.2
Souter	54.6	57.1	36.4	27.3	33.3	23.1	35.3	40.0	23.1	37.5	6	10	25.3	12.2	23.6
Ginsburg	45.5	42.9	27.3	36.4	25.0	23.1	23.5	36.0	34.6	37.5	6	10	27.9	9.6	35.8
Breyer	36.4	50.0	36.4	40.9	25.0	30.8	29.4	44.0	46.2	25.0	4	12	41.1	-16.1	38.9
Stevens	18.2	23.1	9.1	27.3	33.3	15.4	29.4	32.0	23.1	18.8	3	13	25.9	-7.2	22.4
Majority	63.6	71.4	63.6	65.2	50.0	50.0	58.8	63.0	50.0	62.5	10	6	62.3	0.2	60.9
Split	100.0	66.7	77.8	62.5	60.0	40.0	50.0	62.5	44.4	63.6	7	4			
Unanimous	33.3	80.0	0.0	71.4	42.9	75.0	80.0	63.6	62.5	60.0	3	2			

Chart 3
Criminal Cases: State Government Versus a Private Party



Mean Table 3
Criminal Cases: State Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	75.00	*
Stevens	22.4	+/- 5.5	9.35	18.75	no
Alito	*	*	*	69.23	*
Scalia	75.3	+/- 6.1	10.40	75.00	no
Kennedy	65.1	+/- 6.8	11.19	62.50	no
Souter	39.8	+/- 9.9	14.92	37.50	no
Thomas	80.8	+/- 6.7	9.78	81.25	no
Ginsburg	34.4	+/- 6.0	8.13	37.50	no
Breyer	36.6	+/- 6.9	8.93	25.00	yes

Regression Table 3
Criminal Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

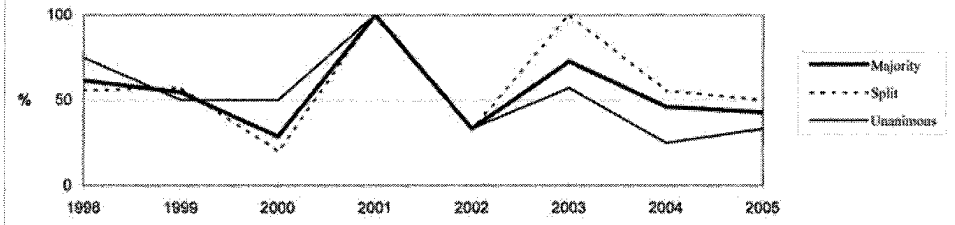
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*							
Kennedy	*							
Souter	*							
Thomas	*			0.87/0.75				
Ginsburg	*							
Breyer	*							

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 4
Criminal Cases: Federal Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Thomas	84.6	90.0	61.5	54.6	85.7	87.5	66.7	80.0	53.8	71.4	5	2	76.9	-5.5	69.4
Alito	92.3	80.0	84.6	54.6	57.1	100.0	40.0	72.7	61.5	66.7	4	2	*	*	*
Roberts	84.6	70.0	76.9	63.6	57.1	100.0	66.7	80.0	72.7	60.0	3	2	*	*	*
Scalia	92.3	70.0	46.2	63.6	85.7	100.0	60.0	70.0	30.8	57.1	4	3	65.7	-8.6	62.4
Kennedy	84.6	90.0	76.9	54.6	28.6	100.0	50.0	72.7	61.5	57.1	4	3	73.1	-16.0	59.3
Stevens	53.9	55.6	38.5	36.4	14.3	62.5	0.0	45.5	15.4	28.6	2	5	37.0	-8.4	21.9
Ginsburg	76.9	60.0	53.9	36.4	28.6	75.0	33.3	54.6	15.4	28.6	2	5	45.5	-16.9	25.4
Souter	84.6	70.0	46.2	36.4	16.7	75.0	33.3	36.4	15.4	14.3	1	6	26.3	-12.0	17.4
Breyer	69.2	70.0	53.9	45.5	28.6	100.0	33.3	54.6	38.5	14.3	1	6	48.4	-34.1	25.1
Majority	84.6	80.0	61.5	54.5	28.6	100.0	33.3	72.7	46.2	42.9	3	4	72	-29.1	58.8
Split	75.0	66.7	55.6	57.1	20.0	100.0	33.3	100.0	55.6	50.0	2	2			
Unanimous	100.0	100.0	75.0	50.0	50.0	100.0	33.3	57.1	25.0	33.3	1	2			

Chart 4
Criminal Cases: Federal Government Versus a Private Party



Mean Table 4
Criminal Cases: Federal Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	60.00	*
Stevens	41.2	+/- 10.8	18.32	28.57	yes
Alito	*	*	*	66.67	*
Scalia	66.6	+/- 9.9	16.79	57.14	yes
Kennedy	68.9	+/- 10.6	17.39	57.14	yes
Souter	53.4	+/- 15.0	22.49	14.29	yes
Thomas	73.0	+/- 9.5	13.87	71.43	no
Ginsburg	52.1	+/- 14.6	19.57	28.57	yes
Breyer	57.6	+/- 16.3	20.93	14.29	yes

Regression Table 4
Criminal Cases: Federal Government Versus a Private Party
Correlation (ρ) / R^2

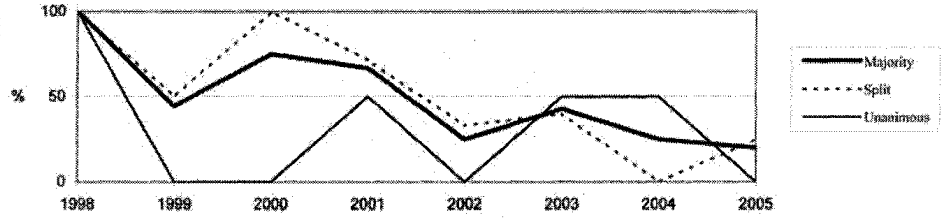
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*							
Kennedy	*		0.79/0.60					
Souter	*	0.78/0.58						
Thomas	*							
Ginsburg	*	0.83/0.66	0.76/0.54		0.74/0.51	0.95/0.90		
Breyer	*	0.79/0.58	0.74/0.51		0.81/0.62	0.89/0.76		0.88/0.74

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 5
First Amendment Rights of Expression, Association, and Religion

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Breyer	14.3	0.0	50.0	12.5	75.0	55.6	25.0	16.7	25.0	66.7	4	2	2.5	64.2	24.2
Ginsburg	57.1	0.0	100.0	33.3	50.0	55.6	25.0	33.3	50.0	60.0	3	2	30.9	29.1	30.9
Stevens	42.9	0.0	100.0	37.5	50.0	66.7	33.3	33.3	75.0	50.0	3	3	40.5	9.5	51.3
Alito	28.6	0.0	50.0	33.3	50.0	55.6	0.0	16.7	25.0	50.0	1	1	*	*	*
Roberts	28.6	0.0	50.0	44.4	25.0	22.2	0.0	33.3	25.0	25.0	1	3	*	*	*
Scalia	85.7	0.0	100.0	56.6	25.0	44.4	25.0	66.7	0.0	20.0	1	4	63.6	-43.6	31.7
Souter	57.1	100.0	100.0	28.6	50.0	66.7	25.0	33.3	75.0	20.0	1	4	55.1	-35.1	49.6
Thomas	85.7	0.0	100.0	66.7	25.0	66.7	25.0	100.0	0.0	20.0	1	4	100.0	-80.0	48.4
Kennedy	57.1	0.0	100.0	77.8	75.0	66.7	0.0	50.0	50.0	16.7	1	5	46.6	-29.9	43.6
Majority	28.6	0.0	100.0	44.4	75.0	66.7	25.0	42.9	25.0	20.0	1	4	38.5	-18.5	38.6
Split	28.6	0.0	100.0	50.0	100.0	71.4	33.0	40.0	0.0	25.0	1	3			
Unanimous	0.0	0.0	100.0	0.0	0.0	50.0	0.0	50.0	50.0	0.0	0	1			

Chart 5
First Amendment Rights of Expression, Association, and Religion



Mean Table 5
First Amendment Rights of Expression, Association, and Religion

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	25.00	*
Stevens	56.7	+/- 14.4	24.31	50.00	no
Alito	*	*	*	50.00	*
Scalia	43.5	+/- 15.8	26.79	20.00	yes
Kennedy	59.2	+/- 16.9	27.89	16.67	yes
Souter	56.5	+/- 17.4	26.09	20.00	yes
Thomas	51.4	+/- 24.0	34.82	20.00	yes
Ginsburg	51.5	+/- 19.5	26.28	60.00	no
Breyer	37.8	+/- 21.2	27.32	66.67	yes

Regression Table 5
First Amendment Rights of Expression, Association, and Religion
Correlation (ρ) / R^2

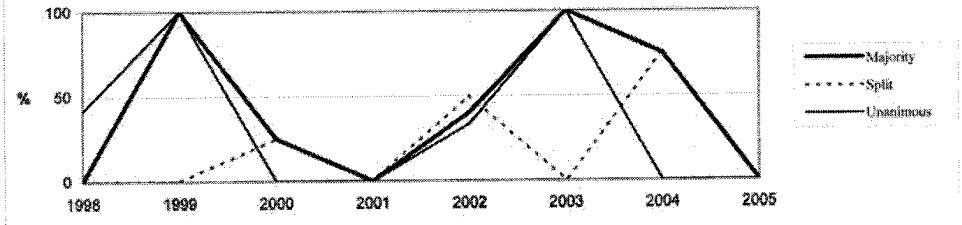
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*							
Kennedy	*							
Souter	*							
Thomas	*			0.94/0.88				
Ginsburg	*	0.90/0.79	0.81/0.62		0.74/0.51			
Breyer	*		0.86/0.71					

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 6
Equal Protection Claims

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Stevens	40.0	50.0	0.0	100.0	25.0	0.0	25.0	100.0	100.0	100.0	1	0	53.3	46.7	69.0
Breyer	20.0	100.0	0.0	100.0	50.0	0.0	40.0	100.0	75.0	100.0	1	0	70.8	29.2	94.4
Roberts	0.0	50.0	0.0	100.0	50.0	0.0	60.0	100.0	33.3	0.0	0	1	*	*	*
Alito	50.0	50.0	0.0	100.0	50.0	0.0	40.0	100.0	75.0	0.0	0	1	*	*	*
Scalia	25.0	0.0	0.0	100.0	50.0	0.0	60.0	100.0	25.0	0.0	0	1	59.6	-59.6	20.6
Kennedy	33.3	50.0	0.0	100.0	50.0	0.0	60.0	100.0	75.0	0.0	0	1	65.5	-65.5	71.0
Souter	20.0	100.0	0.0	100.0	50.0	0.0	20.0	100.0	75.0	0.0	0	1	50.5	-50.5	70.9
Thomas	25.0	0.0	0.0	100.0	50.0	0.0	60.0	100.0	0.0	0.0	0	1	67.2	-67.2	30.1
Ginsburg	20.0	100.0	0.0	100.0	50.0	0.0	20.0	100.0	75.0	0.0	0	1	52.2	-52.2	69.1
Majority	20.0	50.0	0.0	100.0	25.0	0.0	40.0	100.0	75.0	0.0	0	1	59.4	-59.4	75.7
Split	33.3	50.0	0.0	0.0	25.0	0.0	50.0	0.0	75.0	0.0	0	1			
Unanimous	0.0	0.0	41.7	100.0	0.0	0.0	33.3	100.0	0.0	0.0	0	0			

Chart 6
Equal Protection Claims



Mean Table 6
Equal Protection Claims

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (σ)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	0.00	*
Stevens	49.0	+/- 20.5	34.73	100.00	yes
Alito	*	*	*	0.00	*
Scalia	33.9	+/- 18.5	31.25	0.00	yes
Kennedy	52.4	+/- 18.9	31.14	0.00	yes
Souter	51.9	+/- 23.7	35.71	0.00	yes
Thomas	38.0	+/- 25.2	36.67	0.00	yes
Ginsburg	53.2	+/- 29.8	40.09	0.00	yes
Breyer	59.8	+/- 29.6	38.07	100.00	yes

Regression Table 6
Equal Protection Claims
Correlation (ρ) / R^2

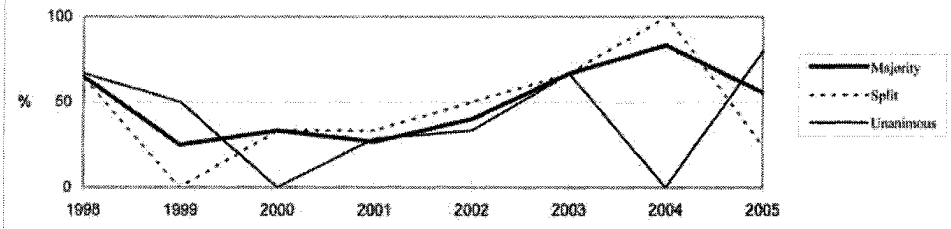
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*							
Kennedy	*		0.95/0.89					
Souter	*		0.81/0.64		0.81/0.63			
Thomas	*			0.96/0.92				
Ginsburg	*		0.84/0.68		0.83/0.66	1.00/1.00		
Breyer	*	0.87/0.74				0.73/0.49		0.73/0.49

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 7
Statutory Civil Rights Claims

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Stevens	85.7	84.6	88.2	75.0	100.0	53.3	20.0	66.7	83.3	88.9	8	1	66.5	22.4	86.3
Souter	92.9	76.9	70.6	75.0	100.0	60.0	20.0	80.0	83.3	88.9	8	1	86.6	2.3	90.0
Ginsburg	78.6	76.9	70.6	75.0	100.0	60.0	40.0	66.7	83.3	77.8	7	2	69.9	7.9	79.1
Breyer	85.7	84.6	82.4	75.0	100.0	53.3	40.0	80.0	83.3	77.8	7	2	85.0	-7.2	73.6
Kennedy	50.0	61.5	47.1	25.0	33.3	20.0	40.0	66.7	33.3	55.6	5	4	35.2	20.4	33.3
Roberts	50.0	30.8	35.3	25.0	33.3	13.3	40.0	50.0	20.0	44.4	4	5	*	*	*
Scalia	50.0	23.1	41.2	25.0	0.0	13.3	40.0	66.7	33.3	44.4	4	5	30.1	14.3	34.2
Thomas	50.0	23.1	23.5	25.0	0.0	20.0	40.0	50.0	33.3	44.4	4	5	31.5	12.9	36.4
Alito	64.3	41.7	58.8	25.0	33.3	26.7	40.0	66.7	33.3	33.3	2	4	*	*	*
Majority	57.1	61.5	64.7	25.0	33.3	26.7	40.0	66.7	83.3	55.6	5	4	81.5	-25.9	53.0
Split	16.7	62.5	63.6	0.0	33.3	33.3	50.0	66.7	100.0	25.0	1	3			
Unanimous	87.5	60.0	66.7	50.0	0.0	28.6	33.3	66.7	0.0	80.0	4	1			

Chart 7
Statutory Civil Rights Claims



Mean Table 7
Statutory Civil Rights Claims

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	44.44	*
Stevens	74.9	+/- 10.9	17.98	88.89	yes
Alito	*	*	*	33.33	*
Scalia	36.6	+/- 9.8	16.51	44.44	no
Kennedy	41.7	+/- 9.7	15.98	55.56	yes
Souter	66.1	+/- 14.1	21.14	88.89	yes
Thomas	29.6	+/- 9.5	13.81	44.44	yes
Ginsburg	69.8	+/- 12.1	16.30	77.78	no
Breyer	76.6	+/- 12.8	16.48	77.78	no

Regression Table 7
Statutory Civil Rights Claims
Correlation (ρ) / R^2

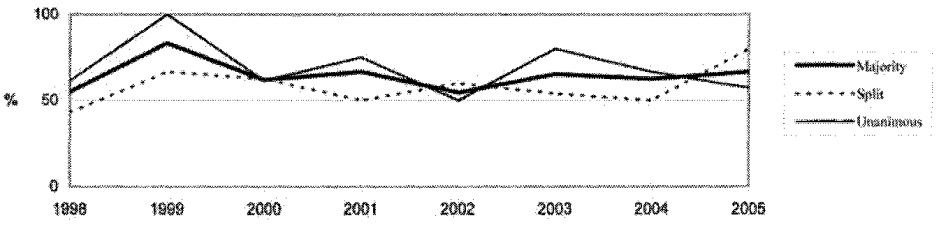
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*							
Kennedy	*			0.71/0.48				
Souter	*	0.74/0.51						
Thomas	*			0.90/0.80				
Ginsburg	*	0.88/0.76				0.93/0.86		
Breyer	*	0.95/0.88				0.89/0.77		0.90/0.78

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Kennedy	56.5	58.6	55.0	83.3	61.9	58.3	50.0	54.6	62.5	75.0	9	5	58.7	16.3	73.5
Stevens	69.6	51.7	65.0	100.0	68.4	83.3	47.6	77.3	62.5	72.7	8	3	70.7	2.0	55.5
Souter	56.5	60.7	60.0	83.3	68.4	83.3	54.6	69.6	75.0	72.7	8	3	73.5	-0.8	70.7
Breyer	65.2	51.7	65.0	66.7	60.0	83.3	63.6	77.3	50.0	72.7	8	3	60.9	11.8	58.7
Ginsburg	56.5	55.2	60.0	83.3	61.9	83.3	54.6	81.8	62.5	63.6	7	4	69.2	-5.6	69.2
Roberts	56.5	60.0	45.0	66.7	52.4	66.7	54.6	54.6	62.5	60.0	6	4	*	*	*
Alito	54.6	43.3	55.0	83.3	47.4	63.6	66.7	66.7	50.0	57.1	4	3	*	*	*
Scalia	47.8	43.3	40.0	66.7	47.6	50.0	31.8	52.6	57.1	50.0	6	6	49.2	0.8	59.7
Thomas	47.8	46.7	45.0	83.3	47.6	58.3	38.1	45.5	57.1	41.7	5	7	45.9	-4.2	60.9
Majority	52.2	58.6	55.0	83.3	61.9	66.7	54.6	65.2	62.5	66.7	8	4	66.3	0.4	66.3
Split	28.6	73.3	42.9	66.7	62.5	50.0	60.0	53.9	50.0	80.0	4	1			
Unanimous	62.5	42.9	61.5	100.0	61.5	75.0	50.0	80.0	66.7	57.1	4	3			

Chart 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction



Mean Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	60.00	*
Stevens	68.0	+/- 8.9	15.09	72.73	no
Alito	*	*	*	57.14	*
Scalia	47.4	+/- 6.5	11.01	50.00	no
Kennedy	57.0	+/- 6.7	10.95	75.00	yes
Souter	62.1	+/- 10.3	15.53	72.73	yes
Thomas	49.8	+/- 9.5	13.78	41.67	yes
Ginsburg	61.5	+/- 12.1	16.33	63.64	no
Breyer	61.8	+/- 10.4	13.45	72.73	yes

Regression Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction
Correlation (ρ) / R^2

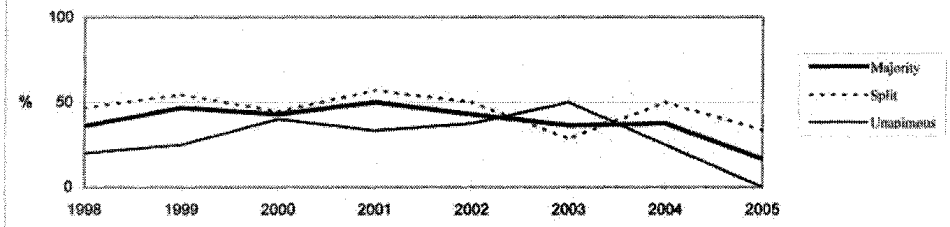
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*	0.74/0.52	0.74/0.53					
Kennedy	*		0.71/0.47	0.80/0.62				
Souter	*	0.74/0.52	0.71/0.47	0.81/0.64	0.84/0.69			
Thomas	*	0.80/0.62		0.85/0.70	0.78/0.57	0.76/0.54		
Ginsburg	*	0.90/0.80	0.81/0.62	0.81/0.62	0.72/0.47	0.92/0.84	0.73/0.50	
Breyer	*					0.71/0.45		0.81/0.62

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 9
Federalism Cases

Justice	% Votes for State									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For State	Against State	2005 Term	Error	2006 Term
Thomas	73.2	36.8	64.0	60.0	57.1	70.0	64.3	50.0	50.0	57.1	4	3	64.5	-7.4	57.8
Scalia	73.2	31.6	52.0	46.7	57.1	55.6	57.1	60.0	25.0	42.9	3	4	59.9	-17.0	24.8
Kennedy	68.3	42.1	40.0	53.3	42.9	70.0	50.0	54.6	25.0	42.9	3	4	51.2	-8.3	44.5
Alito	70.7	29.4	45.8	46.7	35.7	60.0	35.7	45.5	50.0	25.0	1	3	*	*	*
Roberts	75.6	36.8	60.0	46.7	50.0	50.0	35.7	54.6	50.0	14.3	1	6	*	*	*
Breyer	50.0	15.8	32.0	13.3	35.7	30.0	28.6	36.4	37.5	14.3	1	6	35.8	-21.5	34.9
Stevens	45.0	35.0	8.0	26.7	35.7	30.0	35.7	36.4	50.0	0.0	0	7	37.8	-37.8	24.3
Souter	43.9	15.8	32.0	20.0	35.7	30.0	28.6	45.5	37.5	0.0	0	7	38.3	-38.3	26.2
Ginsburg	51.3	36.8	28.0	33.3	28.6	40.0	42.9	36.4	37.5	0.0	0	7	36.6	-36.6	32.8
Majority	68.3	31.6	36.0	46.7	42.9	50.0	42.9	36.4	37.5	14.3	1	6	38.3	-24.0	31.89
Split	63.2	44.4	46.7	54.6	44.4	57.1	50.0	28.6	50.0	25.0	1	3			
Unanimous	72.7	20.0	20.0	25.0	40.0	33.3	37.5	50.0	25.0	0.0	0	3			

Chart 9
Federalism Cases



Mean Table 9
Federalism Cases

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	14.29	*
Stevens	39.6	+/- 8.2	13.47	0.00	yes
Alito	*	*	*	25.00	*
Scalia	54.1	+/- 10.1	16.69	42.86	yes
Kennedy	50.9	+/- 8.9	14.63	42.86	yes
Souter	40.3	+/- 11.2	16.86	0.00	yes
Thomas	57.0	+/- 8.7	12.58	57.14	no
Ginsburg	40.0	+/- 6.7	8.95	0.00	yes
Breyer	32.1	+/- 8.0	10.34	14.29	yes

Regression Table 9
Federalism Cases
Correlation (ρ) / R^2

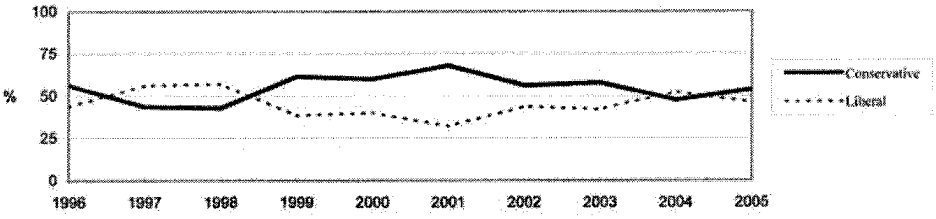
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*							
Kennedy	*		0.72/0.49	0.83/0.67				
Souter	*		0.79/0.60					
Thomas	*			0.74/0.51	0.73/0.49			
Ginsburg	*	0.86/0.72	0.72/0.47			0.81/0.63		
Breyer	*		0.70/0.44			0.89/0.78		

Analysis of Court Voting Behavior with Justice Alito, continued

Data Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?

Justice	% Votes for Majority									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Maj	Against Maj	2005 Term	Error	2006 Term
Roberts	62.5	56.3	46.4	76.9	63.3	72.0	62.5	47.4	50.0	72.7	8	3	*	*	*
Kennedy	81.3	87.5	67.9	73.1	83.3	80.0	56.3	63.2	61.9	69.2	9	4	64.7	4.5	69.0
Alito	75.0	53.3	75.0	84.6	66.7	84.0	100.0	73.7	61.9	63.6	7	4	*	*	*
Scalia	56.3	50.0	50.0	73.1	63.3	80.0	43.8	55.6	52.4	61.5	8	5	53.0	8.5	53.2
Souter	43.8	43.8	46.4	34.6	43.3	28.0	56.3	55.6	61.9	53.8	7	6	56.5	-2.7	58.0
Thomas	56.3	56.3	50.0	84.6	63.3	80.0	43.8	63.2	52.4	53.8	7	6	66.4	-12.6	64.4
Ginsburg	31.3	56.3	53.6	30.8	36.7	20.0	43.8	55.6	52.4	53.8	7	6	48.8	5.0	59.0
Stevens	50.0	43.8	60.7	26.9	43.3	24.0	37.5	55.6	57.1	46.2	6	7	40.5	5.7	44.7
Breyer	43.8	56.3	50.0	19.2	36.7	32.0	56.3	44.4	57.1	38.5	5	8	48.5	-10.0	50.0
Conservative	56.3	43.7	42.9	61.5	60.0	68.0	56.3	57.9	47.6	53.8	7	6	56.3	-2.5	51.0
Liberal	43.7	56.3	57.1	38.5	40.0	32.0	43.8	42.1	52.4	46.2	6	7	43.7	2.5	49.0

Chart 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?



Mean Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	72.73	*
Stevens	43.8	+/- 7.6	12.54	46.15	no
Alito	*	*	*	63.64	*
Scalia	61.3	+/- 7.9	13.05	61.54	no
Kennedy	73.8	+/- 6.8	11.25	69.23	no
Souter	46.5	+/- 9.7	14.51	53.85	no
Thomas	59.2	+/- 11.0	15.91	53.85	no
Ginsburg	41.3	+/- 9.0	12.16	53.85	yes
Breyer	42.2	+/- 10.0	12.83	38.46	no

Regression Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases
Correlation (ρ) / R^2

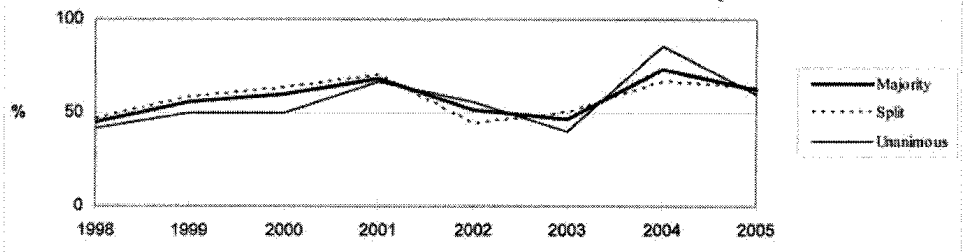
Justice	Roberts	Stevens	Alito	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
Alito	*	*						
Scalia	*							
Kennedy	*							
Souter	*			-0.84/0.68				
Thomas	*	-0.72/0.49		0.89/0.77		-0.84/0.69		
Ginsburg	*	0.78/0.58		-0.77/0.55		0.72/0.48		
Breyer	*			-0.91/0.80		0.72/0.48	-0.86/0.72	

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito Combined

Data Table 1
Civil Cases: State Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Scalia	77.4	60.0	55.2	50.0	60.0	62.5	48.0	53.9	78.9	75.0	12	4	56.0	19.0	66.0
Thomas	77.4	60.0	65.5	50.0	60.0	75.0	60.0	53.3	89.5	75.0	12	4	59.7	15.3	74.1
Roberts	84.9	60.0	65.5	66.7	60.0	75.0	40.0	53.3	82.4	73.3	11	4	*	*	*
Kennedy	71.9	53.3	51.7	44.4	53.3	68.8	36.0	57.1	84.2	68.8	11	5	62.0	6.8	63.5
O'C/Al	68.8	53.3	55.2	55.6	53.3	53.3	44.0	40.0	68.4	66.7	10	5	53.3	13.4	*
Souter	54.6	46.7	37.9	50.0	53.9	43.8	52.0	42.9	63.2	43.8	7	9	45.3	-1.6	50.3
Stevens	48.5	37.5	17.2	41.2	40.0	37.5	54.2	28.6	52.6	37.5	6	10	29.4	8.1	41.9
Ginsburg	53.1	46.7	31.0	44.4	46.2	50.0	56.0	35.7	57.9	37.5	6	10	42.0	-4.5	58.6
Breyer	54.6	46.7	44.8	52.9	35.7	50.0	48.0	35.7	73.7	31.3	5	11	23.4	7.9	75.4
Majority	72.7	46.7	44.8	55.6	60.0	68.8	52.0	46.7	73.7	62.5	10	6	59.4	3.1	62.1
Split	69.2	33.3	47.1	58.3	63.6	70.0	44.4	50.0	66.7	63.6	7	4			
Unanimous	75.0	55.6	41.7	50.0	50.0	66.7	56.3	40.0	85.7	60.0	3	2			

Chart 1
Civil Cases: State Government Versus a Private Party



Mean Table 1
Civil Cases: State Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	73.33	*
Stevens	37.2	+/- 5.7	9.59	37.50	no
O'C/Al	54.1	+/- 5.7	9.67	66.67	yes
Scalia	58.9	+/- 5.5	9.37	75.00	yes
Kennedy	54.0	+/- 8.4	13.82	68.75	yes
Souter	47.1	+/- 6.6	9.94	43.75	no
Thomas	62.3	+/- 9.1	13.18	75.00	yes
Ginsburg	45.6	+/- 6.3	8.51	37.50	yes
Breyer	46.7	+/- 9.2	11.86	31.25	yes

Regression Table 1
Civil Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

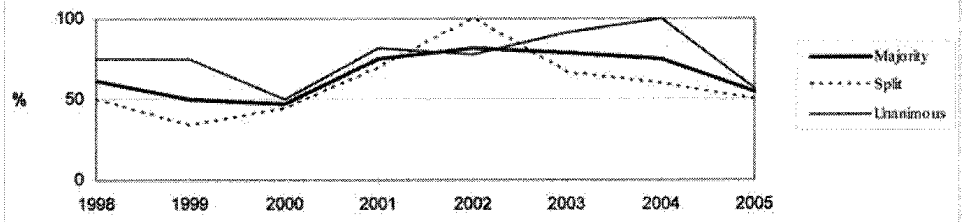
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*		0.73/0.51					
Kennedy	*		0.80/0.63	0.80/0.62				
Souter	*							
Thomas	*		0.71/0.47	0.86/0.73	0.76/0.55			
Ginsburg	*	0.93/0.84						
Breyer	*					0.71/0.46		0.70/0.44

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 2
Civil Cases: Federal Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
O'C/Al	59.1	61.9	73.3	60.0	50.0	61.9	54.6	83.3	62.5	66.7	4	2	61.5	5.2	*
Souter	69.6	47.6	66.7	50.0	52.9	50.0	63.6	75.0	50.0	63.6	7	4	60.0	3.6	48.1
Thomas	40.9	33.3	55.6	40.0	52.9	45.8	63.6	75.0	75.0	63.6	7	4	72.7	-9.1	65.2
Stevens	65.2	55.0	68.4	50.0	64.3	62.5	50.0	69.6	62.5	54.5	6	5	67.5	-13.0	62.7
Scalia	45.5	52.4	61.1	60.0	56.3	56.5	63.6	73.9	62.5	54.5	6	5	59.6	-5.1	55.8
Kennedy	63.6	45.5	50.0	50.0	47.1	62.5	90.9	75.0	62.5	54.5	6	5	65.0	-10.5	61.9
Ginsburg	65.2	40.9	68.4	50.0	52.9	66.7	72.7	66.7	75.0	54.5	6	5	71.6	-17.1	71.0
Breyer	73.9	57.1	61.1	70.0	50.0	66.7	72.7	75.0	87.5	54.5	6	5	83.5	-29.0	89.7
Roberts	69.6	38.1	50.0	70.0	58.8	70.8	90.9	79.2	71.4	50.0	5	5	*	*	*
Majority	69.6	36.4	61.1	50.0	47.1	75.0	81.8	79.2	75.0	54.5	6	5	72.3	-17.8	72.3
Split	69.2	26.7	50.0	33.3	44.4	69.2	100.0	66.7	60.0	50.0	2	2			
Unanimous	70.0	57.1	75.0	75.0	50.0	81.8	77.8	91.7	100.0	57.1	4	3			

Chart 2
Civil Cases: Federal Government Versus a Private Party



Mean Table 2
Civil Cases: Federal Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	50.00	*
Stevens	57.2	+/- 6.2	10.47	54.55	no
O'C/Al	61.1	+/- 6.9	11.70	66.67	no
Scalia	60.5	+/- 5.6	9.42	54.55	yes
Kennedy	61.9	+/- 7.7	12.73	54.55	yes
Souter	61.1	+/- 7.8	11.73	63.64	no
Thomas	53.9	+/- 9.1	13.19	63.64	yes
Ginsburg	62.9	+/- 9.2	12.31	54.55	yes
Breyer	65.6	+/- 9.2	11.86	54.55	yes

Regression Table 2
Civil Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

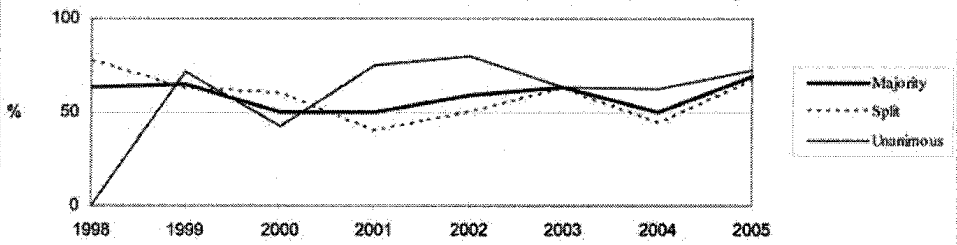
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*							
Kennedy	*							
Souter	*							
Thomas	*							
Ginsburg	*				0.77/0.56			
Breyer	*							

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 3
Criminal Cases: State Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Thomas	63.6	92.3	80.0	82.6	66.7	84.6	94.1	80.0	80.8	82.6	19	4	79.3	3.3	89.1
Roberts	63.6	76.9	72.7	87.0	58.3	84.6	82.4	76.9	65.0	78.3	18	5	*	*	*
Scalia	63.6	84.6	72.7	82.6	66.7	84.6	82.4	76.9	76.9	78.3	18	5	77.0	1.3	58.5
O'C/Al	63.6	71.4	63.6	78.3	50.0	46.2	62.5	69.2	53.8	75.0	15	5	58.2	16.8	*
Kennedy	54.6	76.9	54.6	78.3	50.0	76.9	64.7	64.0	61.5	69.6	16	7	63.9	5.7	65.1
Souter	54.6	57.1	36.4	27.3	33.3	23.1	35.3	40.0	23.1	47.8	11	12	25.3	22.5	22.2
Ginsburg	45.5	42.9	27.3	36.4	25.0	23.1	23.5	36.0	34.6	47.8	11	12	27.9	19.9	42.6
Breyer	36.4	50.0	36.4	40.9	25.0	30.8	29.4	44.0	46.2	39.1	9	14	41.1	-2.0	40.5
Stevens	18.2	23.1	9.1	27.3	33.3	15.4	29.4	32.0	23.1	34.8	8	15	25.9	8.9	24.4
Majority	63.6	71.4	63.6	65.2	50.0	50.0	58.8	63.0	50.0	69.6	16	7	62.3	7.3	63.9
Split	100.0	66.7	77.8	62.5	60.0	40.0	50.0	62.5	44.4	66.7	8	4			
Unanimous	33.3	80.0	0.0	71.4	42.9	75.0	80.0	63.6	62.5	72.7	8	3			

Chart 3
Criminal Cases: State Government Versus a Private Party



Mean Table 3
Criminal Cases: State Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	78.26	*
Stevens	22.4	+/- 5.5	9.35	34.78	yes
O'C/Al	62.5	+/- 7.3	12.37	75.00	yes
Scalia	75.3	+/- 6.1	10.40	78.26	no
Kennedy	65.1	+/- 6.8	11.19	69.57	no
Souter	39.8	+/- 9.9	14.92	47.83	no
Thomas	80.8	+/- 6.7	9.78	82.61	no
Ginsburg	34.4	+/- 6.0	8.13	47.83	yes
Breyer	36.6	+/- 6.9	8.93	39.13	no

Regression Table 3
Criminal Cases: State Government Versus a Private Party
Correlation (ρ) / R^2

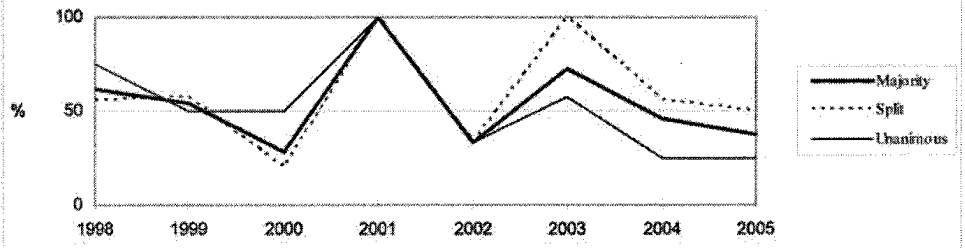
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*							
Kennedy	*							
Souter	*							
Thomas	*			0.88/0.75				
Ginsburg	*							
Breyer	*							

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 4
Criminal Cases: Federal Government Versus a Private Party

Justice	% Votes for Government									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Gov't	Against Gov't	2005 Term	Error	2006 Term
Thomas	84.6	90.0	61.5	54.6	85.7	87.5	66.7	80.0	53.8	62.5	5	3	76.9	-14.4	67.8
O'C/Al	92.3	80.0	84.6	54.6	57.1	100.0	40.0	72.7	61.5	57.1	4	3	71.4	-14.3	*
Roberts	84.6	70.0	76.9	63.6	57.1	100.0	66.7	80.0	72.7	50.0	3	3	*	*	*
Scalia	92.3	70.0	46.2	63.6	85.7	100.0	60.0	70.0	30.8	50.0	4	4	65.7	-15.7	59.4
Kennedy	84.6	90.0	76.9	54.6	28.6	100.0	50.0	72.7	61.5	50.0	4	4	73.1	-23.1	58.4
Stevens	53.9	55.6	38.5	36.4	14.3	62.5	0.0	45.5	15.4	25.0	2	6	37.0	-12.0	23.2
Ginsburg	76.9	60.0	53.9	36.4	28.6	75.0	33.3	54.6	15.4	25.0	2	6	45.5	-20.5	25.2
Souter	84.6	70.0	46.2	36.4	16.7	75.0	33.3	36.4	15.4	12.5	1	7	26.3	-13.8	16.4
Breyer	69.2	70.0	53.9	45.5	28.6	100.0	33.3	54.6	38.5	12.5	1	7	48.4	-35.9	26.4
Majority	84.6	80.0	61.5	54.5	28.6	100.0	33.3	72.7	46.2	37.5	3	5	72	-34.5	59.2
Split	75.0	66.7	55.6	57.1	20.0	100.0	33.3	100.0	55.6	50.0	2	2			
Unanimous	100.0	100.0	75.0	50.0	50.0	100.0	33.3	57.1	25.0	25.0	1	3			

Chart 4
Criminal Cases: Federal Government Versus a Private Party



Mean Table 4
Criminal Cases: Federal Government Versus a Private Party

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	50.00	*
Stevens	41.2	+/- 10.8	18.32	25.00	yes
O'C/Al	73.5	+/- 8.2	13.90	57.14	yes
Scalia	66.6	+/- 9.9	16.79	50.00	yes
Kennedy	68.9	+/- 10.6	17.39	50.00	yes
Souter	53.4	+/- 15.0	22.49	12.50	yes
Thomas	73.0	+/- 9.5	13.87	62.50	yes
Ginsburg	52.1	+/- 14.6	19.57	25.00	yes
Breyer	57.6	+/- 16.3	20.93	12.50	yes

Regression Table 4
Criminal Cases: Federal Government Versus a Private Party
Correlation (ρ) / R^2

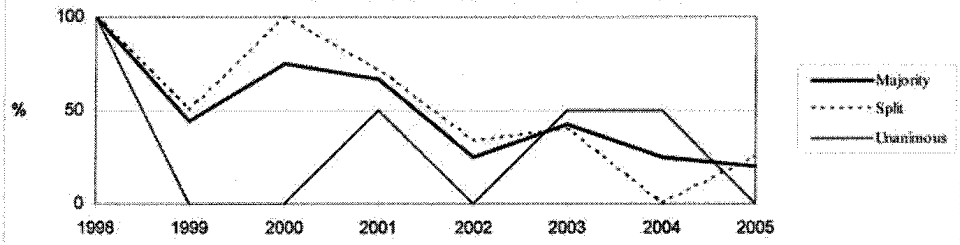
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*							
Kennedy	*		0.80/0.62					
Souter	*	0.79/0.60						
Thomas	*							
Ginsburg	*	0.83/0.67	0.79/0.60		0.76/0.54	0.95/0.90		
Breyer	*	0.81/0.61	0.81/0.61		0.84/0.67	0.89/0.77		0.88/0.76

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 5
First Amendment Rights of Expression, Association, and Religion

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Breyer	14.3	0.0	50.0	12.5	75.0	55.6	25.0	16.7	25.0	66.7	4	2	2.5	64.2	24.2
Ginsburg	57.1	0.0	100.0	33.3	50.0	55.6	25.0	33.3	50.0	60.0	3	2	30.9	29.1	30.9
Stevens	42.9	0.0	100.0	37.5	50.0	66.7	33.3	33.3	75.0	50.0	3	3	40.5	9.5	51.3
O'C/Al	28.6	0.0	50.0	33.3	50.0	55.6	0.0	16.7	25.0	50.0	1	1	25.4	24.6	*
Roberts	28.6	0.0	50.0	44.4	25.0	22.2	0.0	33.3	25.0	25.0	1	3	*	*	*
Scalia	85.7	0.0	100.0	56.6	25.0	44.4	25.0	66.7	0.0	20.0	1	4	63.6	-43.6	31.7
Souter	57.1	100.0	100.0	28.6	50.0	66.7	25.0	33.3	75.0	20.0	1	4	55.1	-35.1	49.6
Thomas	85.7	0.0	100.0	66.7	25.0	66.7	25.0	100.0	0.0	20.0	1	4	100.0	-80.0	48.4
Kennedy	57.1	0.0	100.0	77.8	75.0	66.7	0.0	50.0	50.0	16.7	1	5	45.6	-28.9	43.6
Majority	28.6	0.0	100.0	44.4	75.0	66.7	25.0	42.9	25.0	20.0	1	4	38.5	-18.5	38.6
Split	28.6	0.0	100.0	50.0	100.0	71.4	33.0	40.0	0.0	25.0	1	3			
Unanimous	0.0	0.0	100.0	0.0	0.0	50.0	0.0	50.0	50.0	0.0	0	1			

Chart 5
First Amendment Rights of Expression, Association, and Religion



Mean Table 5
First Amendment Rights of Expression, Association, and Religion

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	25.00	*
Stevens	56.7	+/- 14.4	24.31	50.00	no
O'C/Al	38.7	+/- 12.8	21.64	50.00	yes
Scalia	43.5	+/- 15.8	26.79	20.00	yes
Kennedy	59.2	+/- 16.9	27.89	16.67	yes
Souter	56.5	+/- 17.4	26.09	20.00	yes
Thomas	51.4	+/- 24.0	34.82	20.00	yes
Ginsburg	51.5	+/- 19.5	26.28	60.00	no
Breyer	37.8	+/- 21.2	27.32	66.67	yes

Regression Table 5
First Amendment Rights of Expression, Association, and Religion
Correlation (ρ) / R^2

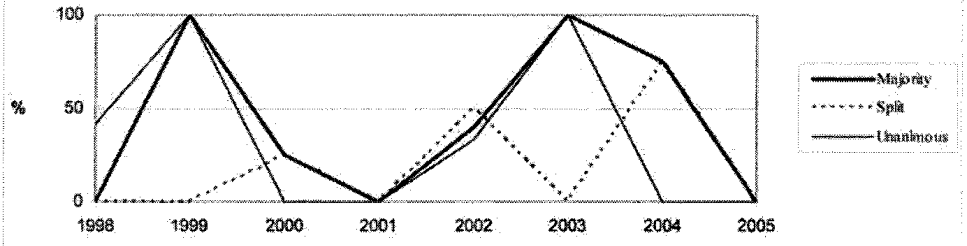
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*							
Kennedy	*							
Souter	*			0.94/0.88				
Thomas	*							
Ginsburg	*	0.90/0.79	0.81/0.62		0.74/0.51			
Breyer	*		0.86/0.71					

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 6
Equal Protection Claims

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Stevens	40.0	50.0	0.0	100.0	25.0	0.0	25.0	100.0	100.0	100.0	1	0	53.3	46.7	69.0
Breyer	20.0	100.0	0.0	100.0	50.0	0.0	40.0	100.0	75.0	100.0	1	0	70.8	29.2	94.4
Roberts	0.0	50.0	0.0	100.0	50.0	0.0	60.0	100.0	33.3	0.0	0	1	*	*	*
O'C/Al	50.0	50.0	0.0	100.0	50.0	0.0	40.0	100.0	75.0	0.0	0	1	65.8	-65.8	*
Scalia	25.0	0.0	0.0	100.0	50.0	0.0	60.0	100.0	25.0	0.0	0	1	59.6	-59.6	20.6
Kennedy	33.3	50.0	0.0	100.0	50.0	0.0	60.0	100.0	75.0	0.0	0	1	65.5	-65.5	71.0
Souter	20.0	100.0	0.0	100.0	50.0	0.0	20.0	100.0	75.0	0.0	0	1	50.5	-50.5	70.9
Thomas	25.0	0.0	0.0	100.0	50.0	0.0	60.0	100.0	0.0	0.0	0	1	67.2	-67.2	30.1
Ginsburg	20.0	100.0	0.0	100.0	50.0	0.0	20.0	100.0	75.0	0.0	0	1	52.2	-52.2	69.1
Majority	20.0	50.0	0.0	100.0	25.0	0.0	40.0	100.0	75.0	0.0	0	1	59.4	-59.4	75.7
Split	33.3	50.0	0.0	0.0	25.0	0.0	50.0	0.0	75.0	0.0	0	1			
Unanimous	0.0	0.0	41.7	100.0	0.0	0.0	33.3	100.0	0.0	0.0	0	0			

Chart 6
Equal Protection Claims



Mean Table 6
Equal Protection Claims

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	0.00	*
Stevens	49.0	+/- 20.5	34.73	100.00	yes
O'C/Al	50.6	+/- 18.5	31.26	0.00	yes
Scalia	33.9	+/- 18.5	31.25	0.00	yes
Kennedy	52.4	+/- 18.9	31.14	0.00	yes
Souter	51.9	+/- 23.7	35.71	0.00	yes
Thomas	38.0	+/- 25.2	36.67	0.00	yes
Ginsburg	53.2	+/- 29.8	40.09	0.00	yes
Breyer	50.8	+/- 29.6	38.07	100.00	yes

Regression Table 6
Equal Protection Claims
Correlation (ρ) / R^2

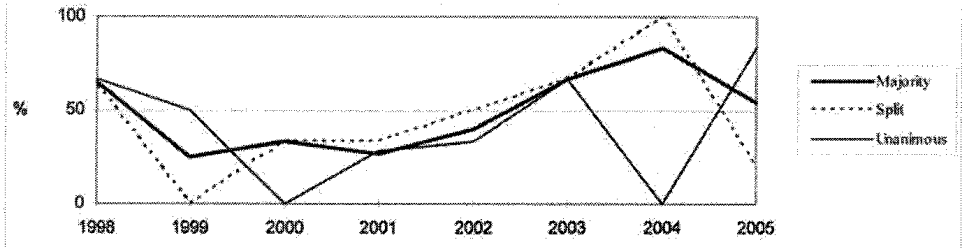
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*							
Kennedy	*		0.95/0.89					
Souter	*		0.81/0.64		0.81/0.63			
Thomas	*			0.96/0.92				
Ginsburg	*		0.84/0.68		0.83/0.66	1.00/1.00		
Breyer	*	0.87/0.74				0.73/0.49		0.73/0.49

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 7
Statutory Civil Rights Claims

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Stevens	85.7	84.6	88.2	75.0	100.0	53.3	20.0	66.7	83.3	81.8	9	2	66.5	15.3	74.7
Souter	92.9	76.9	70.6	75.0	100.0	60.0	20.0	80.0	83.3	81.8	9	2	86.6	-4.8	89.0
Ginsburg	78.6	76.9	70.6	75.0	100.0	60.0	40.0	66.7	83.3	81.8	9	2	69.9	11.9	82.7
Breyer	85.7	84.6	82.4	75.0	100.0	53.3	40.0	80.0	83.3	81.8	9	2	85.0	-3.2	76.4
Kennedy	50.0	61.5	47.1	25.0	33.3	20.0	40.0	66.7	33.3	54.5	6	5	35.2	19.3	33.5
Roberts	50.0	30.8	35.3	25.0	33.3	13.3	40.0	50.0	20.0	50.0	5	5	*	*	*
Scalia	50.0	23.1	41.2	25.0	0.0	13.3	40.0	66.7	33.3	45.5	5	6	30.1	15.4	33.7
Thomas	50.0	23.1	23.5	25.0	0.0	20.0	40.0	50.0	33.3	45.5	5	6	31.5	14.0	36.7
O'C/Al	64.3	41.7	58.8	25.0	33.3	26.7	40.0	66.7	33.3	37.5	3	5	58.9	-21.4	*
Majority	57.1	61.5	64.7	25.0	33.3	26.7	40.0	66.7	83.3	54.5	6	5	81.5	-27.0	
Split	16.7	62.5	63.6	0.0	33.3	33.3	50.0	66.7	100.0	20.0	1	4			
Unanimous	87.5	60.0	66.7	50.0	0.0	28.6	33.3	66.7	0.0	83.3	5	1			

Chart 7
Statutory Civil Rights Claims



Mean Table 7
Statutory Civil Rights Claims

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	50.00	*
Stevens	74.9	+/- 10.9	17.98	81.82	no
O'C/Al	44.8	+/- 7.7	12.96	37.50	yes
Scalia	36.6	+/- 9.8	16.51	45.45	yes
Kennedy	41.7	+/- 9.7	15.98	54.55	yes
Souter	66.1	+/- 14.1	21.14	81.82	yes
Thomas	29.6	+/- 9.5	13.81	45.45	yes
Ginsburg	69.8	+/- 12.1	16.30	81.82	yes
Breyer	76.6	+/- 12.8	16.48	81.82	no

Regression Table 7
Statutory Civil Rights Claims
Correlation (ρ) / R^2

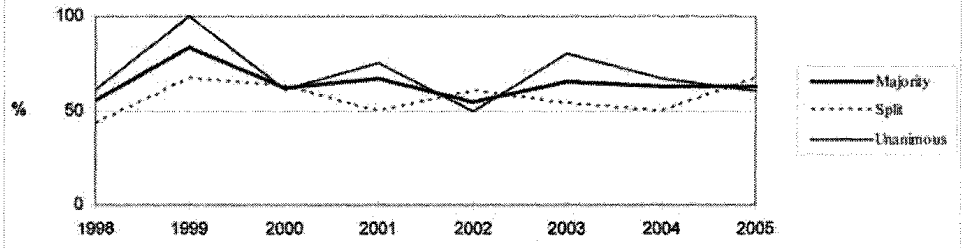
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*							
Kennedy	*			0.71/0.48				
Souter	*	0.73/0.49						
Thomas	*			0.90/0.80				
Ginsburg	*	0.88/0.76				0.94/0.87		
Breyer	*	0.96/0.92				0.91/0.81		0.90/0.78

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction

Justice	% Votes for Claim									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Claim	Against Claim	2005 Term	Error	2006 Term
Kennedy	56.5	58.6	55.0	83.3	61.9	58.3	50.0	54.6	62.5	75.0	12	4	58.7	16.3	44.3
Stevens	69.6	51.7	65.0	100.0	68.4	83.3	47.6	77.3	62.5	73.3	11	4	70.7	2.6	65.9
Souter	56.5	60.7	60.0	83.3	68.4	83.3	54.6	69.6	75.0	66.7	10	5	73.5	-6.8	76.7
Breyer	65.2	51.7	65.0	66.7	60.0	83.3	63.6	77.3	50.0	66.7	10	5	60.9	5.8	71.0
Ginsburg	56.5	55.2	60.0	83.3	61.9	83.3	54.6	81.8	62.5	60.0	9	6	69.2	-9.2	80.6
Roberts	56.5	60.0	45.0	66.7	52.4	66.7	54.6	54.6	62.5	57.1	8	6	*	*	*
O'C/Al	54.6	43.3	55.0	83.3	47.4	63.6	66.7	66.7	50.0	54.5	6	5	59.7	-5.2	*
Scalia	47.8	43.3	40.0	66.7	47.6	50.0	31.8	52.6	57.1	50.0	8	8	49.2	0.8	48.4
Thomas	47.8	46.7	45.0	83.3	47.6	58.3	38.1	45.5	57.1	43.8	7	9	45.9	-2.2	52.8
Majority	52.2	58.6	55.0	83.3	61.9	66.7	54.6	65.2	62.5	62.5	10	6	66.3	-3.8	63.6
Split	28.6	73.3	42.9	66.7	62.5	50.0	60.0	53.9	50.0	66.7	4	2			
Unanimous	62.5	42.9	61.5	100.0	61.5	75.0	50.0	80.0	66.7	60.0	6	4			

Chart 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction



Mean Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	57.14	*
Stevens	68.0	+/- 8.9	15.09	73.33	no
O'C/Al	54.6	+/- 7.9	13.35	54.55	no
Scalia	47.4	+/- 6.5	11.01	50.00	no
Kennedy	57.0	+/- 6.7	10.95	75.00	yes
Souter	62.1	+/- 10.3	15.53	66.67	no
Thomas	49.8	+/- 9.5	13.78	43.75	no
Ginsburg	61.5	+/- 12.1	16.33	60.00	no
Breyer	61.8	+/- 10.4	13.45	66.67	no

Regression Table 8
Cases Raising a Challenge to the Exercise of Federal Jurisdiction
Correlation (ρ) / R^2

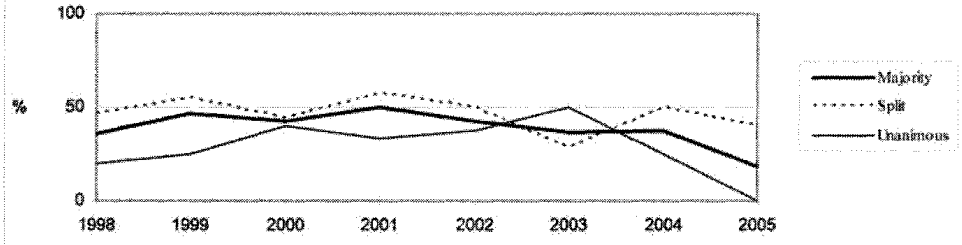
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*	0.74/0.52	0.74/0.52					
Kennedy	*			0.80/0.62				
Souter	*	0.74/0.52	0.71/0.47	0.81/0.64	0.82/0.65			
Thomas	*	0.81/0.63	0.71/0.46	0.86/0.72	0.80/0.61	0.79/0.59		
Ginsburg	*	0.90/0.78	0.81/0.62	0.80/0.61		0.93/0.84	0.74/0.51	
Breyer	*							0.82/0.64

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 9
Federalism Cases

Justice	% Votes for State									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For State	Against State	2005 Term	Error	2006 Term
Kennedy	68.3	42.1	40.0	53.3	42.9	70.0	50.0	54.6	25.0	41.7	5	7	51.2	-9.5	44.7
Thomas	73.2	36.8	64.0	60.0	57.1	70.0	64.3	50.0	50.0	41.7	5	7	64.5	-22.8	48.3
Scalia	73.2	31.6	52.0	46.7	57.1	55.6	57.1	60.0	25.0	33.3	4	8	59.9	-26.6	20.3
O'C/Al	70.7	29.4	45.8	46.7	35.7	60.0	35.7	45.5	50.0	22.2	2	7	36.0	-13.8	*
Roberts	75.6	36.8	60.0	46.7	50.0	50.0	35.7	54.6	50.0	18.2	2	9	*	*	*
Breyer	50.0	15.8	32.0	13.3	35.7	30.0	28.6	36.4	37.5	16.7	2	10	35.8	-19.1	37.3
Stevens	45.0	35.0	8.0	26.7	35.7	30.0	35.7	36.4	50.0	8.3	1	11	37.8	-29.5	24.8
Souter	43.9	15.8	32.0	20.0	35.7	30.0	28.6	45.5	37.5	8.3	1	11	38.3	-30.0	31.2
Ginsburg	51.3	36.8	28.0	33.3	28.6	40.0	42.9	36.4	37.5	8.3	1	11	36.6	-28.3	22.9
Majority	68.3	31.6	36.0	46.7	42.9	50.0	42.9	36.4	37.5	16.7	2	10	38.3	-21.6	36.7
Split	63.2	44.4	46.7	54.6	44.4	57.1	50.0	28.6	50.0	33.3	2	4			
Unanimous	72.7	20.0	20.0	25.0	40.0	33.3	37.5	50.0	25.0	0.0	0	6			

Chart 9
Federalism Cases



Mean Table 9
Federalism Cases

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	18.18	*
Stevens	39.6	+/- 8.2	13.47	8.33	yes
O'C/Al	51.3	+/- 8.7	14.33	22.22	yes
Scalia	54.1	+/- 10.1	16.69	33.33	yes
Kennedy	50.9	+/- 8.9	14.63	41.67	yes
Souter	40.3	+/- 11.2	16.86	8.33	yes
Thomas	57.0	+/- 8.7	12.58	41.67	yes
Ginsburg	40.0	+/- 6.7	8.95	8.33	yes
Breyer	32.1	+/- 8.0	10.34	16.67	yes

Regression Table 9
Federalism Cases
Correlation (ρ) / R^2

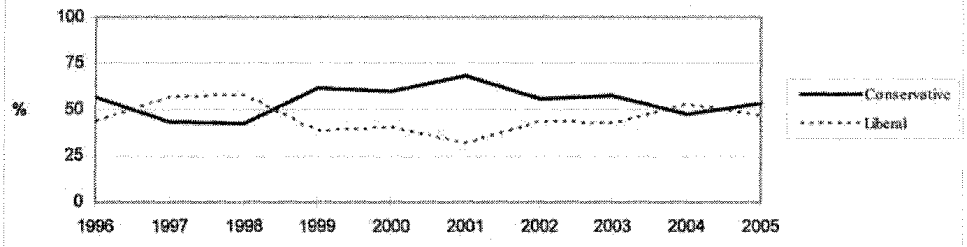
Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*							
Kennedy	*		0.72/0.48	0.82/0.66				
Souter	*		0.79/0.60					
Thomas	*			0.77/0.57	0.73/0.50			
Ginsburg	*	0.83/0.67	0.75/0.52			0.76/0.54		
Breyer	*					0.91/0.81		

Analysis of Court Voting Behavior with Justice O'Connor and Justice Alito, continued

Data Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?

Justice	% Votes for Majority									X2	2005 Term Votes		Anticipated Scores		
	1996 Term	1997 Term	1998 Term	1999 Term	2000 Term	2001 Term	2002 Term	2003 Term	2004 Term	2005 Term	For Maj	Against Maj	2005 Term	Error	2006 Term
Roberts	62.5	56.3	46.4	76.9	63.3	72.0	62.5	47.4	50.0	69.2	9	4	*	*	*
O'C/Al	75.0	53.3	75.0	84.6	66.7	84.0	100.0	73.7	61.9	69.2	9	4	72.8	-3.6	*
Kennedy	81.3	87.5	67.9	73.1	83.3	80.0	56.3	63.2	61.9	66.7	10	5	64.7	2.0	67.4
Scalia	56.3	50.0	50.0	73.1	63.3	80.0	43.8	55.6	52.4	60.0	9	6	53.0	7.0	53.2
Souter	43.8	43.8	46.4	34.6	43.3	28.0	56.3	55.6	61.9	53.3	8	7	56.5	-3.2	57.7
Thomas	56.3	56.3	50.0	84.6	63.3	80.0	43.8	63.2	52.4	53.3	8	7	66.4	-13.1	64.5
Ginsburg	31.3	56.3	53.6	30.8	36.7	20.0	43.8	55.6	52.4	53.3	8	7	48.8	4.5	54.4
Stevens	50.0	43.8	60.7	26.9	43.3	24.0	37.5	55.6	57.1	46.7	7	8	40.5	6.2	44.7
Breyer	43.8	56.3	50.0	19.2	36.7	32.0	56.3	44.4	57.1	40.0	6	9	48.5	-8.5	50.1
Conservative	56.3	43.7	42.9	61.5	60.0	68.0	56.3	57.9	47.6	53.3	8	7	56.3	-3.0	50.9
Liberal	43.7	56.3	57.1	38.5	40.0	32.0	43.8	42.1	52.4	46.7	7	8	43.7	3.0	49.1

Chart 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?



Mean Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases?

Justice	Mean Voting Percentage All Prior Terms (μ)	99% Confidence Interval for True Mean	Standard Deviation of μ (s)	Actual Voting Percentage This Term (X2)	Did This Term Show a Statistically Significant Change in Voting Behavior?
Roberts	*	*	*	69.23	*
Stevens	43.8	+/- 7.6	12.54	46.67	no
O'C/Al	70.0	+/- 8.1	13.37	69.23	no
Scalia	61.3	+/- 7.9	13.05	60.00	no
Kennedy	73.8	+/- 6.8	11.25	66.67	yes
Souter	46.5	+/- 9.7	14.51	53.33	no
Thomas	59.2	+/- 11.0	15.91	53.33	no
Ginsburg	41.3	+/- 9.0	12.16	53.33	yes
Breyer	42.2	+/- 10.0	12.83	40.00	no

Regression Table 10
Swing-Vote Analysis: Who Votes Most Often with the Majority in Close Cases
Correlation (ρ) / R^2

Justice	Roberts	Stevens	O'C/Al	Scalia	Kennedy	Souter	Thomas	Ginsburg
Stevens	*							
O'C/Al	*							
Scalia	*							
Kennedy	*							
Souter	*			-0.84/0.69				
Thomas	*	-0.72/0.49		0.89/0.77		-0.84/0.69		
Ginsburg	*	0.79/0.58		-0.78/0.58		0.72/0.47		
Breyer	*	0.70/0.44		-0.90/0.80		0.74/0.50	-0.87/0.73	0.71/0.45

IV. Analysis[38]

Data Table 1: Civil-State Party[39]

For the fourth year running, Data Table 1 provides the second most reliable evidence of ideological bias on the Court[40]—and the evidence all points in a liberal direction, albeit to a modest degree. The Court (without statistical exception) reversed course from the 2004 Term, voting 11.2 points more liberally in the outcome of

38. Throughout Section IV, a footnote will list the cases tabulated on Tables 1-10. An asterisk ("*") preceding a case citation indicates that it appears more than once on Tables 1 through 9. All cases on Table 10 appeared at least once on Tables 1 through 9. A "slashed Y" (" ¥ ") preceding a case citation indicates that more than one voting pattern was tabulated for the case. *See* Appendix A ("A case is included more than once on the same table if it raises two or more distinct issues affecting the outcome of the case and the issues are resolved by different voting alignments"). When more than one voting pattern is tabulated for a case, a number—followed by an "x"—will follow the case citation. For example, "(2x)" means that two voting patterns were tabulated for the case. Because more than one voting pattern may be tabulated, some cases reflect both "liberal" and "conservative" outcomes on different issues. Not every case decided by the Court is included on Tables 1-10. If a case does not involve the federal or state government, or has governmental entities on both sides, it may not be included on Tables 1-4. See Appendix A (definitions). Cases are included on Tables 5-9 only when they involve questions involving the subject matter of those Tables (First Amendment, Equal Protection, Statutory Civil Rights, Jurisdiction and Federalism questions). *Id.* Table 10 tabulates the outcome of all cases decided by a single vote. *Id.*

As a result of this classification scheme, not every Supreme Court opinion is included in this Study. For 2005, the following cases did not fall within the Study's established parameters: IBP, Inc. v. Alvarez, 126 S. Ct. 514 (2005); Wagnon v. Prairie Band Potawatomi Nation, 126 S. Ct. 676 (2005); Martin v. Franklin Capital Co., 126 S. Ct. 704 (2005); Volvo Trucks N. Am., Inc. v. Reeder-Simco GMC, Inc., 126 S. Ct. 860 (2006); Texaco Inc. v. Dagher, 126 S. Ct. 1276 (2006); Ill. Tool Works Inc. v. Indep. Ink, Inc., 126 S. Ct. 1281 (2006); Arizona v. California, 126 S. Ct. 1543 (2006); Sereboff v. Mid Atl. Med. Servs., 126 S. Ct. 1869 (2006); Ebay Inc. v. Mercexchange, L.L.C., 126 S. Ct. 1837 (2006); Anza v. Ideal Steel Supply Corp., 126 S. Ct. 1991 (2006); Scheidler v. Nat'l Org. for Women, 126 S. Ct. 1264 (2006); Mohawk Indus., Inc. v. Williams, 126 S. Ct. 2016 (2006) (per curiam); Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co., 126 S. Ct. 2105 (2006); Lab. Corp. of Am. Holdings v. Metabolite Labs., Inc., 126 S. Ct. 2921 (2006) (per curiam).

39. *Schaffer ex rel. Schaffer v. Weast, 126 S. Ct. 529 (2005); *Cent. Va. Cmty. Coll. v. Katz, 126 S. Ct. 990 (2006); Ayotte v. Planned Parenthood of N. New Eng., 126 S. Ct. 961 (2006); *Lance v. Dennis, 126 S. Ct. 1198 (2006) (per curiam); Day v. McDonough, 126 S. Ct. 1675 (2006); *N. Ins. Co. of N.Y. v. Chatham County, Ga., 126 S. Ct. 1689 (2006); DaimerChrysler Corp. v. Cuno, 126 S. Ct. 1854 (2006); *Ark. Dep't of Heath & Human Servs. v. Ahlborn, 126 S. Ct. 1752 (2006); S.D. Warren Co. v. Me. Bd. of Envtl. Prot., 126 S. Ct. 1843 (2006); *Randall v. Sorrell, 126 S. Ct. 2479 (2006); *Garcetti v. Ceballos, 126 S. Ct. 1951 (2006); *Woodford v. Ngo, 126 S. Ct. 2378 (2006); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 126 S. Ct. 2455 (2006); *¥ League of United Latin Am. Citizens v. Perry, 126 S. Ct. 2594 (2006) (3x); *Beard v. Banks, 126 S. Ct. 2572 (2006).

40. *See 2004 Study*, *supra* note 1, at 933 (indicating that year was the third in a row).

Majority Cases, 3.1 points more liberally in Split Cases and 25.7 points more liberally in Unanimous Cases. The voting behavior of six of the nine Members of the Court on Table 1 departed in a statistically significant manner from past behavior.[41] Moreover, the behavior of all nine Members was more liberal in 2005 than in 2004.[42]

But, despite this uniform liberal movement, the outcome on Table 1 for 2005 may not be terribly noteworthy. Indeed, the unremarkable nature of the outcomes on Table 1 is evidenced in the fairly close correlation between anticipated and actual voting behaviors for the 2005 Term.[43] The voting behaviors of five Justices (Breyer, Ginsburg, Souter, Stevens, and Kennedy) were within 10 points of their anticipated scores, while the remaining three (Thomas, O'Connor/Alito, and Scalia) voted within 20 points of their anticipated scores. Given the statistical limitations of this Study, these voting behaviors were remarkably stable.

Moderate individual liberal movement by most of the Justices naturally resulted in moderate liberal outcomes with regard to other statistical measures. The outcome of Majority Cases was 3.1 points more liberal than anticipated.[44] As for positioning, Justice Breyer is the most liberal Justice on Table 1 for the first time since 2000.[45] Justice Thomas maintained his position as the most conservative Justice on the Court in State Civil Cases, a position he has held or shared for eight of the last eleven Terms.[46] Chief Justice Roberts's score, which places him in second place among conservatives, seems

41. *See supra* Mean Table 1.

42. *See supra* Data Table 1.

43. *See id.* For two of the last three Terms, ARIMA forecasting has produced reasonably accurate anticipated voting behaviors on Table 1 for the individual Justices and the Court as a whole. In 2002, the Study anticipated the actual voting behavior of five Justices within 10 points and the remaining four Justices within 21 points. *See 2002 Study*, *supra* note 1, at 523 (Data Table 1). In 2003, the actual behavior of four Members was within 10 points of their anticipated scores, with the remaining five Members voting within 20 points of their anticipated scores. *See 2003 Study*, *supra* note 1, at 782 (Data Table 1). In 2004, by contrast, only one Member of the Court (Justice Ginsburg) voted within 10 points of her anticipated score, with two others (Justices Stevens and Souter) voting within 20 points of their anticipated scores. *See* 2004 Study, *supra* note 1, at Data Table 1.

44. *See id.*

45. *See id.* (In 2002 there was "pole-switching" that resulted in a much more "conservative" vote from Justice Stevens. In the 2000 Term Justice Breyer took the most liberal position and Justice Stevens was in the second most liberal position.)

46. *See id.* (Justice Thomas shared the most conservative position on the court in the 2001, 2000, 1998, and 1997 Terms. He held the position by himself in the 1995, 2002, and 2004 Terms).

to be in line with the voting patterns of his predecessor, Chief Justice Rehnquist, who was the first or second most conservative Member of the Court on Table 1 for seven of the last nine Terms.[47]

In last Term's Study we opined that the rather significant conservative movement in 2004 (among other things) possibly resulted from an improvement in state advocacy before the High Court.[48] This year's data suggest that last year's conservative high watermark may have been more anomalous than we thought (and perhaps more a result of the facts of the cases selected by the Court) because, in 2005, the outcomes on Table 1 returned to the voting behavior evidenced (across time) on Chart 2.

Tables 1 (O'Connor) and 1 (Alito)—tabulating, respectively, the voting behaviors of Justices O'Connor and Alito—may be notable. A comparison of Table 1 (O'Connor) with 1 (Alito) suggests that Justice Alito may pull the Court in a more conservative direction on Table 1 over time. This is possible because Justice O'Connor is the fifth most conservative Justice on Table 1 (O'Connor), while Justice Alito is the fourth most conservative Member of the Court on Table 1 (Alito).

Data Table 2: Civil Cases – Federal Government versus a Private Party[49]

Data Table 2 also evidences liberal movement on the Court—movement that may be more noteworthy than that on Table 1. Majority, Split, and Unanimous cases in Federal Civil Litigation reached liberal highs not seen since the 2000 Term.[50] Six of the nine Justices voted more liberally in 2005 than in 2004 (Justices Stevens, Ginsburg, Scalia, Kennedy, Thomas, and Breyer). Notably, Chief Justice Roberts voted more liberally than Chief Justice Rehnquist had for seven years.[51]

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47. *See id.*

48. *See 2004 Study*, *supra* note 1, at 936.

49. United States v. Olson, 126 S. Ct. 510 (2005); Wi. Right to Life v. FEC, 126 S. Ct. 1016 (2006) (per curiam); Lockhart v. United States, 126 S. Ct. 699 (2005); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 126 S. Ct. 1211 (2006); *Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 126 S. Ct. 1297 (2006); *Dolan v. U.S. Postal Serv., 126 S. Ct. 1252 (2006); Gonzales v. Thomas, 126 S. Ct. 1613 (2006) (per curiam); *Whitman v. Dep't of Transp., 126 S. Ct. 2014 (2006) (per curiam); Hartman v. Moore, 126 S. Ct. 1695 (2006); Rapanos v. United States, 126 S. Ct. 2208 (2006); Fernandez-Vargas v. Gonzales, 126 S. Ct. 2422 (2006).

50. *See supra* Data Table 2.

51. Factor analysis does not suggest that Table 2 provides highly reliable evidence of ideological bias this Term. *See infra* Factor Analysis (Data Table 2—Civil cases

The importance of this movement is underscored by the fact that five of the Justices exhibited statistically significant voting behaviors this Term on Table 2, with all of them voting in a more liberal direction.[52] Four of these five (Justices Scalia, Kennedy, Ginsburg, and Breyer) exhibited an identical voting pattern.[53] Justice Thomas, the fifth Justice with a statistically significant movement in his voting behavior, also voted more liberally than in the past. However, Justice Souter, as predicted, voted quite conservatively, siding with the government in seven of eleven cases.[54]

Not surprisingly, Unanimous Decisions this Term dropped from their ten-year high mark in 2004. Though there are only 11 cases on Table 2, a comparison of Table 2 (O'Connor) with Table 2 (Alito) suggests that Justice Alito, as in Table 1, may be pulling the Court in a slightly more conservative direction. Chief Justice Roberts, however, demonstrated surprisingly liberal voting behavior, siding with the government only half the time. Chief Justice Rehnquist exhibited a similar voting pattern (i.e., holding the "most liberal position" on Table 2) only once during the last ten years.

The voting blocs this Term, as last year, are an interesting feature of Table 2. The three most conservative Justices are O'Connor/Alito, Souter, and Thomas.[55] After these "liberal" three, Justices Stevens, Scalia, Ginsburg, Breyer, and Kennedy cast 54.5% of their votes for the government, with Justice Roberts—hardly the most "liberal overall" Member of the Court—voting for the federal government only half the time.[56]

The last two Studies emphasized the rather consistent conservative nature of the Court in federal civil cases.[57] Those observations still hold true to some extent: since 1995 there have only been 10 instances where any Justice has voted less than 50% of the time for the federal government (half of those coming in 1997

involving the Federal Government as party—ranked in sixth place this year for reliability with a score of -0.228).

52. *See supra* Mean Table 2 (Justices Breyer, Thomas, Ginsburg, Stevens and Souter).

53. *See supra* Data Table 2.

54. *See id.*

55. *See id.*

56. *See id.*

57. *See 2003 Study*, *supra* note 1, at 794–95 (discussing the conservative strength of the court for this category); *2004 Study*, *supra* note 1, at 937 (same).

alone).[58] The Majority has voted for the government at least 50% of the time in eight of the last ten Terms.[59] There have only been three instances since 1995 that the Court has decided Split cases less than 50% of the time for the government.[60] However, in 2005, the results overall are more liberal than they have been since 2000.[61] If our ARIMA analysis is correct, this trend will not continue next Term.

Data Table 3: Criminal Cases – State Government versus a Private Party[62]

This Table, according to factor analysis, provides the most reliable evidence of conservative or liberal bias on the Court again this Term.[63] This Table shows clear conservative movement, counteracting last year's liberal shift and reinstating a trend that has dominated Table 3 since the 2001 Term.[64] Only three Justices (Stevens, O'Connor/Alito, Ginsburg) had statistically significant shifts, but all were in a conservative direction.

As it is the most reliable predictor of ideological bias, it is not surprising that the standard voting blocs emerge overall, with the conservatives (Chief Justice Roberts and Justices Thomas, Scalia, O'Connor/Alito, and Kennedy) siding with the government a majority of the time and the liberals (Justices Stevens, Souter,

58. *See 2003 Study*, *supra* note 1, at n. 57.

59. *See supra* Data Table 2 (the 1997, and 2000 Terms are the only two Terms below 50%).

60. *See id.* (the 1997, 1999, and 2000 Terms).

61. *See id.*

62. Schriro v. Smith, 126 S. Ct. 7 (2005) (per curiam); Dye v. Hofbauer, 126 S. Ct. 5 (2005) (per curiam); Kane v. Garcia Espitia, 126 S. Ct. 407 (2005) (per curiam); Georgia v. Randolph, 126 S. Ct. 1515 (2006); Bradshaw v. Richey, 126 S. Ct. 602 (2005) (per curiam); Evans v. Chavis, 126 S. Ct. 846 (2006); Brown v. Sanders, 126 S. Ct. 884 (2006); Rice v. Collins, 126 S. Ct. 969 (2006); *Oregon v. Guzek, 126 S. Ct. 1226 (2006); Brigham City, Utah v. Stuart, 126 S. Ct. 1943 (2006); House v. Bell, 126 S. Ct. 2064 (2006); Hudson v. Michigan, 126 S. Ct. 2159 (2006); ¥Davis v. Washington, 126 S. Ct. 2266 (2006) (2x); Samson v. California, 126 S. Ct. 2193 (2006); *Kansas v. Marsh, 126 S. Ct. 2516 (2006); Washington v. Recuenco, 126 S. Ct. 2546 (2006); Sanchez-Llamas v. Oregon, 126 S. Ct. 2669 (2006); Clark v. Arizona, 126 S. Ct. 2709 (2006); Holmes v. South Carolina, 126 S. Ct. 1727 (2006); Hill v. McDonough, 126 S. Ct. 2097 (2006); Youngblood v. West Virginia, 126 S. Ct. 2188 (2006) (per curiam).

63. *See infra* Factor Analysis (Criminal State Cases rank highest on the chart with a score of -0.852).

64. *See 2003 Study*, *supra* note 1, at 796 (Data Table 3 analysis in the 2003 Study spoke of the "continuing and significant conservative trend on the Court.").

Ginsburg, and Stevens) voting against government a majority of the time.[65]

Some individual scores worth noting are Justices Scalia and Breyer, whose voting behaviors were anticipated within two points of their actual behavior.[66] Justice Thomas led the conservative bloc again—a position he has held or shared for nine of the last ten terms—with a slightly more conservative voting pattern than last Term.[67] On the other side, Justice Stevens has been in the most liberal position nine of the last ten years in this category.[68]

The new Justices do not seem to have affected the Court's overall voting behavior in State Criminal Cases, as Chief Justice Roberts basically held suit for the late Chief Justice Rehnquist. Roberts is tied for second most conservative voter on Table 3 this year, and the late Chief Justice Rehnquist was ranked in the top three conservative voters every year for the past ten Terms. Justice Alito likewise scored a voting pattern rather close to that of Justice O'Connor.

Table 3 suggests some notable voting patterns by the Court and individual Justices. For the Court as a whole, Table 3 suggests conservative movement in Majority, Split, and Unanimous Cases.[69] In Majority Cases, the Court voted 19.6 points more conservatively than last Term,[70] while Split Cases made a 22.3 point conservative jump, effectively returning to 2003 levels.[71] The conservative movement in 2004 appears to result from the increase in conservative voting patterns of all but Justice Breyer. The Court overall maintained its long tradition of voting at least 50% of the time for the government.[72] The last time the Court voted less than 50% of the time for the government in the outcome of Majority Cases on Table 2 was in the 1991 Term, when it voted for the state only 44.4% of the time.[73]

65. *See supra* Data Table 3.

66. *See id.*

67. *See id.* (Justice Thomas voted 80.0 last Term and 80.8 this Term).

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.*

72. *See id.*

73. *See id. See also 1995 Study*, *supra* note 1, at 15 (Data Table 3 continues this Term's Table from 1995 back to 1988).

State Criminal Cases, like Federal Civil Cases, tends to be a category where the Court heavily favors the government.[74] But, unlike the voting patterns displayed on Table 2's tabulation of Federal Civil Cases, Table 3's tabulations show a somewhat wider range among the voting behaviors tallied by the individual Justices over time.[75] This may be one reason that Table 3 tends to provide rather reliable evidence of bias. For the last 10 years, moreover, Table 3 has evidenced clearly identifiable bloc voting, with the most conservative Justices retaining Justice Kennedy's vote most of the time.[76]

Data Table 4: Criminal Cases – Federal Government versus a Private Party[77]

Federal Criminal Cases rose from providing the fourth most reliable evidence of ideological bias in 2004 to third this Term.[78] The movement indicated on the Table from the previous Term is modestly liberal.

On the individual level, all seven returning Justices demonstrated statistically significant changes in their voting behavior this Term.[79] All seven were more than 10 points away from their anticipated outcomes.[80]

Perhaps the most interesting voting behavior of any Justice on Table 4 this Term was that of Justice Breyer—who made a somewhat dramatic liberal jump.[81] Not only was his movement from the previous Term significant in terms of raw points (26), but his voting pattern was far and away the most unanticipated (35.9 points more

74. *See supra* discussion of the Civil Federal cases and the amount of votes for the government.

75. Compare Data Tables 2 and 3. As stated in the discussion regarding Data Table 2, Justices rarely vote less than 50% of the time for the government on Table 3.

76. *See supra* Data Table 3.

77. United States v. Grubbs, 126 S. Ct. 1494 (2006); Dixon v. United States, 126 S. Ct. 2437 (2006); *¥Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006) (2x); Eberhart v. United States, 126 S. Ct. 403 (2005) (per curiam); Salinas v. United States, 126 S. Ct. 1675 (2006) (per curiam); Zedner v. United States, 126 S. Ct. 1976 (2006); United States v. Gonzalez-Lopez, 126 S. Ct. 2557 (2006).

78. *See 2004 Study*, *supra* note 1, at Section V; *see also* Section V below showing this year's ranking.

79. *See supra* Mean Table 4.

80. *See supra* Data Table 4.

81. *See id.*

liberal than expected).[82] Justice Breyer also showed a high degree of correlation with Justice Souter. Chief Justice Roberts, in his first term as Chief Justice Rehnquist's replacement, voted more conservatively than the former Chief Justice had voted for the last several years, voting in favor of the government only 50% of the time. Justice Alito, who voted for the government 66.7% of the time, was within Justice O'Connor's historical range of variation.

Other individual scores of interest include those of the Justice Thomas, who replaced Chief Justice Rehnquist in the most conservative position on the Court on Table 4—voting for the Federal government in 72.7% of Federal Criminal Cases.[83] Chief Justice Rehnquist held this position from 2001 until his final Term.[84] In 2003, the Chief Justice shared the position with Justice Thomas. Justice Thomas, however, demonstrated a remarkably liberal voting pattern this Term, voting against the federal government 10.5 points more often than his lifetime average would predict.[85] The most liberal position this Term was shared by Justices Souter and Breyer, who each voted for the federal government in only 12.5% of the cases.[86]

As a whole, the Court evidenced modest liberal movement away from last Term's marks.[87] The outcome of Majority Cases moved 8.7 points in a liberal direction, while the outcome of Split Cases dropped from a 55.6% conservative result to a 50% win rate for the government. The outcome in Unanimous Cases stayed unchanged at 25% between 2004 and 2005.[88]

The outcome on Table 4 is the most stable in several years, as the 1999 through 2004 Terms saw erratic behavior persisting on the Court in Federal Criminal Cases.[89] Over that period, the average difference between Terms was 45.99 points.[90] Compare this rather sizeable variation with the average difference during the 1995-1999

82. *See id.*

83. *See id.*

84. *See id.*

85. *See id.*

86. *See id.*

87. *See id.*

88. *See id.*

89. *See supra* Chart 4; *see also supra* Data Table 4.

90. This was calculated by taking the average of the absolute value of the differences between Terms beginning with the difference between the 1999 and 2000 Terms (25.90) and including the difference between the 2003 and 2004 Terms (26.58). *See supra* Data Table 4 for the numbers used to calculate.

Terms, which was only 9.03 points, and with the rather tame 8.7% variation between 2004 and 2005.[91]

Data Table 5: First Amendment Cases – Rights of Expression, Association, and Religion[92]

This Table shows largely conservative movement from the previous Term.[93] This movement continues the brief conservative movement noted last Term.[94] But, as was stated the last two Terms: "Any forecast of the future course of First Amendment law . . . seems problematic."[95] Last Term there were only four issues counted on this table,[96] and this Term there were only six.[97] Nevertheless, Table 5 presents some information of possible note.

Justice Breyer was the most liberal Justice on First Amendment issues in 2005, a position he also achieved in the 2000 Term.[98] Justice Kennedy was the most conservative Justice, a position he also occupied in 2002.

ARIMA analysis did not anticipate voting behaviors on Table 5 with great accuracy.[99] This result is unexceptionable, in light of the few First Amendment issues addressed by the Court over time. In fact, the only category of cases in this Study with a larger "99% Confidence Interval for True Mean" is Table 6, Equal Protection Cases.[100]

Five of the seven returning Justices' scores were statistically significant this Term.[101] As for correlations, last Term's study noted that the First Amendment voting behaviors of Justices Scalia and

91. Calculated the same was as described in the previous footnote.

92. *Randall v. Sorrell, 126 S. Ct. 2479 (2006); *Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 126 S. Ct. 1297 (2006); Hartman v. Moore, 126 S. Ct. 1695 (2006); *Garcetti v. Ceballos, 126 S. Ct. 1951 (2006); *Beard v. Banks, 126 S. Ct. 2572 (2006); *League of United Latin Am. Citizens v. Perry, 126 S. Ct. 2594 (2006).

93. *See supra* Data Table 5.

94. *See 2004 Study, supra* note 1, at 945 (Data Table 5 analysis).

95. *Id.*

96. *See 2003 Study, supra* note 1, at Data Table 5.

97. *See supra* Data Table 5.

98. *See id.*

99. *See id.* (only one score within 10 points of anticipations).

100. *See supra* Mean Tables 1-10 (this assertion is based on the average of the absolute values of the "99% Confidence Interval for True Mean" columns for each Mean Table).

101. *See supra* Mean Table 5 (Justices Scalia, Kennedy, Souter, Thomas, and Breyer).

Thomas were closely correlated.[102] That ranking has remained this Term, with Justices Scalia and Thomas sharing an R^2 statistic of 0.88 (the next highest correlation, between Justices Stevens and Ginsburg, was .79).[103]

Data Table 6: Equal Protection Cases[104]

The Court generally decides few, if any,[105] equal protection cases each Term, so it is not surprising that Table 6 has been, and remains, the least reliable indicator of ideological bias on the Court,[106] as well as one of the most volatile categories of cases analyzed by the Study. This Term, as with the 2003 Term, the Court ruled on only one equal protection claim. As the Court decided four such cases last Term, ruling in favor of the claim 75% of the time, the Court's rejection of the only Equal Protection claim this Term drops its percentage 75 points, to 0% liberal. The wide range in outcomes demonstrated on Table 6 over time, as well as Table 6's relatively small statistical sample, precludes firm assertions regarding *any* "ideological direction" of the Court on equal protection issues.

Several pairs of Justices demonstrate rather strongly correlated voting behaviors on equal protection questions, particularly among the most conservative (Justices Thomas and Scalia, R^2=0.92) and most liberal (Justices Ginsburg and Souter, R^2=1.00—or perfect correlation).

With nowhere to go but up, the Study anticipates that the Court will move in a liberal direction during the 2006 Term, with the Majority voting for 75.7% (rather than this Term's 0%) of the claims. However, due to the volatility of Table 6 over time, as well as the fact that Chief Justice Roberts' and Justice Alito's Supreme Court have only one vote factored into the predictions, voting behaviors on Equal Protection Claims are exceptionally difficult to anticipate with any accuracy.

102. *See 2004 Study, supra* note 1, at 946.

103. *See supra* Regression Table 5.

104. *League of United Latin Am. Citizens v. Perry, 126 S. Ct. 2594 (2006).

105. *See, e.g., 2001 Study, supra* note 1, at 316; see also *2003 Study, supra* note 1, at 28.

106. See *infra* Part V.

Data Table 7: Statutory Civil Rights Claims[107]

The Court reversed the liberal trend regarding Statutory Civil Claims that occurred the last two Terms, with the outcome in Majority and Split Cases dropping to ruling in favor of the claim only 54.5% of the time, down from last Term's 83.3%.[108] Table 7 demonstrates that the "classic" conservative/liberal bloc voting seen on the Rehnquist Court continues on the Roberts Court. However, Justice Kennedy now seems to control the outcome of these cases.

In 2004, the Court's most liberal Members (Justices Stevens, Souter, Ginsburg, and Breyer) all voted in favor of five Statutory Civil Rights Claims, rejecting only one such claim (a claim unanimously rejected by the Court).[109] These four Justices each voted for nine of the eleven claims presented in 2005; Chief Justice Roberts and Justices Alito, Scalia, and Thomas favored these claims more rarely. Justice Kennedy, with a slightly more liberal voting pattern, appears to have a significant influence on the outcome of Statutory Civil Rights claims, as his percentage of liberal decisions (54.5) exactly matches the majority percentage.

Table 7 demonstrates rather closely correlated voting behaviors by two pairs of traditionally liberal Justices (Justices Breyer and Stevens R^2=0.92; Justices Ginsburg and Souter R^2=0.87). As the 2004 Study anticipated, all four of these Justices voted for Statutory Civil Rights Claims more than 65% of the time.[110]

Table 7 shows significant change from prior Terms. Split decisions, which had steadily increased to 100% liberal last Term, dropped dramatically, to 20% liberal this Term. Meanwhile, majority decisions became significantly more conservative, dropping from 83.3% liberal to 54.5% liberal. Only cases decided by a unanimous vote,[111] with 83.3% of such cases decided in favor of the claim,

107. *United States v. Georgia, 126 S. Ct. 877 (2006); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 126 S. Ct. 1211 (2006); Ash v. Tyson Foods, Inc., 126 S. Ct. 1195 (2006) (per curiam); Arbaugh v. Y&H Corp., 126 S. Ct. 1235 (2006); Burlington N. & Santa Fe Ry. Co. v. White, 126 S. Ct. 2405 (2006); *¥League of United Latin Am. Citizens v. Perry, 126 S. Ct. 2594 (2006) (2x); *Schaffer ex rel. Schaffer v. Weast, 126 S. Ct. 529 (2005); Domino's Pizza, Inc. v. McDonald, 126 S. Ct. 1246 (2006); *Woodford v. Ngo, 126 S. Ct. 2378 (2006); Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 126 S. Ct. 2455 (2006).

108. See *supra* Data Table 7, Chart 7.

109. Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005).

110. *See 2004 Study*, *supra* note 1, at Data Table 7.

111. Note that some unanimous cases were decided with a Justice sitting out.

continued the liberal trend shown since 2001 (interrupted only by 2004, which had no unanimous statutory civil rights cases). The overall conclusion seems to be that Statutory Civil Rights Claims fare poorly if decided by less than a unanimous vote. However, the low reliability of Table 7 as an indicator of ideological bias (higher only than Equal Protection cases on Table 6) cautions against relying too much on inferences from the Table.

Data Table 8: Cases Raising a Challenge to the Exercise of Federal Jurisdiction[112]

Table 8—considered as a whole—demonstrates continuation of the Court's long-term liberal tendency to reject challenges to federal jurisdiction. Table 8, particularly when examined over time, suggests that the Court favors federal jurisdiction more often than not and that the Court's liberal stance is fairly stable. With the exception of 1999, when an unusually high number of jurisdictional challenges were rejected, the outcomes of Majority Cases on Table 8 have fluctuated within a relatively narrow range of 52.2% to 66.7%.[113]

For 2005, the outcome in Majority Cases was identical to the 2003 and 2004 Terms, with the Court accepting 62.5% of all claims favoring federal jurisdiction.[114]

For the third year in a row,[115] the voting behaviors anticipated by the Study were fairly accurate, both for the individual Justices and the Court as a whole (an outcome that may reinforce our observations regarding the Court's established liberal stance on jurisdictional issues). The actual voting behavior of six of the seven returning Justices (Justices Souter, Ginsburg, Scalia, Thomas, Stevens, and Breyer) fell within ten points of their anticipated scores.

112. Lincoln Prop. Co. v. Roche, 126 S. Ct. 606 (2005); Wachovia Bank v. Schmidt, 126 S. Ct. 941 (2006); Will v. Hallock, 126 S. Ct. 952 (2006); *Lance v. Dennis, 126 S. Ct. 1198 (2006) (per curiam); Dolan v. U.S. Postal Serv., 126 S. Ct. 1252 (2006); Oregon v. Guzek, 126 S. Ct. 1226 (2006); Marshall v. Marshall, 126 S. Ct. 1735 (2006); *Kansas v. Marsh, 126 S. Ct. 2516 (2006); *Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006); Unitherm Food Sys. v. Swift-Eckrich, Inc., 126 S. Ct. 980 (2006); Ministry of Def. & Support for the Forces of Iran v. Elahi, 126 S. Ct. 1193 (2006) (per curiam); DaimerChrysler Corp. v. Cuno, 126 S. Ct. 1854 (2006); Kircher v. Putnam Funds Trust, 126 S. Ct. 2145 (2006); Empire HealthChoice Assurance, Inc. v. McVeigh, 126 S. Ct. 2121 (2006).

113. *See supra* Data Table 8.

114. *See infra* Chart 8.

115. *See 2004 Study*, *supra* note 1, at 950.

The outcome in Majority Cases in 2005, furthermore, was only 3.8 points *less* liberal than anticipated by the Study in 2004.[116]

The voting pattern of Justice Kennedy this Term is rather interesting, seeming to run counter to his supposed ideological leanings. He was the most liberal Member of the Court this Term with regard to expanding federal jurisdiction.[117] His was also the only statistically significant change in voting behavior.

Data Table 9: Federalism Cases[118]

Tables 9 and 4 (Federal Criminal Cases) again switched places this Term as the fourth and third most reliable indicator of ideological bias as measured by factor analysis.[119] The Court moved liberally in deciding the outcome of all categories of cases, with Majority, Split, and Unanimous cases dropping 19.3, 10, and 25 points, respectively. Because of our assumption that ideology plays a more significant role in the outcome of Split Cases than Unanimous Cases,[120] Table 9 suggests liberal movement (with the Court favoring the federal rather than state government) in the decision of federalism issues in 2005. This runs contrary to the common assumption that Chief Justice Roberts and Justice Alito would tend to drive the Court in a generally, if not uniformly, conservative direction.

Interestingly, Justice Kennedy went from last to first in this category compared to last year: after voting for the state in the fewest percentage of cases last term (25%), he now is tied for first in siding with the states (41.7).[121]

ARIMA forecasting did not anticipate the voting behavior of individual Justices very accurately, as none of the Justices' actual behaviors fell within 10 points of their anticipated scores.[122] None of

116. *See supra* Data Table 8.

117. *Id.*

118. Lincoln Prop. Co. v. Roche, 126 S. Ct. 606 (2005); *United States v. Georgia, 126 S. Ct. 877 (2006); *Cent. Va. Cmty. Coll. v. Katz, 126 S. Ct. 990 (2006); Alaska v. United States, 126 S. Ct. 1014 (2006); Buckeye Check Cashing, Inc. v. Cardegna, 126 S. Ct. 1204 (2006); N. Ins. Co. of N.Y. v. Chatham County, Ga., 126 S. Ct. 1689 (2006); Jones v. Flowers, 126 S. Ct. 1708 (2006); *Ark. Dep't of Heath & Human Servs. v. Ahlborn, 126 S. Ct. 1752 (2006); *Woodford v. Ngo, 126 S. Ct. 2378 (2006); Gonzales v. Oregon, 126 S. Ct. 904 (2006); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit, 126 S. Ct. 1503 (2006); *Youngblood v. West Virginia, 126 S. Ct. 2188 (2006) (per curiam).

119. *See* Section V, below.

120. *See supra* note 11 and accompanying text.

121. *See infra* Data Table 9.

122. *Id.*

the actual scores for this Term or the predicted scores for next Term rise to the level of even half of cases being decided in favor of states.[123] That being the case, it could mean that the newly emerging Roberts court could effectively end any progress the Rehnquist court made in shifting power to the states.

There are two areas, however, where state governments appear to have continuing regulatory leeway: recognition of individual autonomy and imposition of the death penalty. Regarding autonomy, the Court held that the United States Attorney General could not prosecute Oregon doctors who performed assisted suicide that was authorized under state law, leaving such a choice to the states rather than the federal government.[124] The Court also seems willing to tolerate greater diversity in state criminal law, as it upheld Kansas' capital sentencing scheme, allowing for a sentence of death when aggravating and mitigating factors were in equipoise.[125] Outside of these areas, however, it does not appear that the states will find much favor in the future, particularly given the historically liberal nature of these cases and the departure of Chief Justice Rehnquist and Justice O'Connor, who have tended to protect state sovereignty.[126]

Analysis of recent years provides evidence of the Court's emerging liberal inclinations on federalism issues. The Court rejected claims of state authority in ten instances, and ruled in favor of the state twice—suggesting liberal movement in the overall outcome of the twelve cases. But numbers alone do not indicate the development of the federalism case law. Six of the ten federalism issues (compared with three of six last Term[127]) decided against state power involved unanimous decisions,[128] while no federalism issues were decided unanimously in favor of the state. Under the presumptions of this Study, these six unanimous outcomes are less likely to be motivated

123. *Id.*

124. Gonzales v. Oregon 126 S. Ct. 904 (2006).

125. Kansas v. Marsh, 126 S. Ct. 2516 (2006).

126. *See, e.g., 2003 Study, supra* note 1, at 807.

127. *See 2004 Study, supra* note 1 at Data Table 9.

128. *See supra* Data Table 9; The six cases with unanimous decisions against state power were: Lincoln Prop. Co. v. Roche, 126 S. Ct. 606 (2005); United States v. Georgia, 126 S. Ct. 877 (2006); Alaska v. United States, 126 S. Ct. 1014 (2006); N. Ins. Co. of N.Y. v. Chatham County, Ga., 126 S. Ct. 1689 (2006); Ark. Dep't of Heath & Human Servs. v. Ahlborn, 126 S. Ct. 1752 (2006); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit, 126 S. Ct. 1503 (2006).

by the ideological leanings of individual Justices.[129] As a result, the primary indications of bias on Table 9 this Term should be derived from an examination of the outcome of Split Cases—where six federalism issues each were decided almost evenly between the conflicting assertions of state and federal power: two cases for[130] and four cases against[131] state power.

As noted above, this outcome in Split Cases results in a 16.7-point liberal movement from last Term. This quantitative decrease in the Court's conservative support of the states signals decreased receptivity to assertions of state regulatory power, particularly when one considers the nature of the issues decided in favor of the states in split decisions during 2004, and compares those cases with the nature of the issued involved in the split decisions against the state.

The two split decisions favoring the state involved questions of autonomy and criminal procedure, where the Court was hesitant to displace state authority on the basis somewhat ambiguous federal statutes.[132] But, once beyond its hesitancy to displace state authority without a clear congressional mandate, the Court seemed quite willing to limit state power in favor of federal regulatory authority. The four split decisions decided against the state restricted state authority to regulate arbitration provisions in contracts,[133] state notice for tax sales,[134] to determine if evidence is exculpatory or merely impeaching,[135] and to assert sovereign immunity through a state

129. *See supra* note 11 and accompanying text.

130. Gonzales v. Oregon, 126 S. Ct. 904 (2006); *Woodford v. Ngo, 126 S. Ct. 2378 (2006).

131. *Cent. Va. Cmty. Coll. v. Katz, 126 S. Ct. 990 (2006); Buckeye Check Cashing, Inc. v. Cardegna, 126 S. Ct. 1204 (2006); Jones v. Flowers, 126 S. Ct. 1708 (2006); *Youngblood v. West Virginia, 126 S. Ct. 2188 (2006) (per curiam).

132. *Gonzales* involved a state law permitted assisted suicide; *Woodford* involved state prison conditions.

133. In Buckeye Check Cashing, Inc. v. Cardegna, 126 S. Ct. 1204 (2006), the Court held that whether a contract containing an arbitration provision was illegal was for an arbitrator, rather than state courts, to decide.

134. In Jones v. Flowers, 126 S. Ct. 1708 (2006), the Court held that, as a matter of due process, states had to take "additional reasonable steps" beyond mailing notice to ensure that homeowners know of an impending tax sale of their home.

135. In Youngblood v. West Virginia, 126 S. Ct. 2188 (2006), the Court held that defendant had made a valid *Brady* claim by putting forth an explicit note from one of his alleged victims regarding his alleged abuse, overruling the state court determination that the evidence was useful for impeachment purposes, but not exclupatory.

agency.[136] These cases arguably indicate a stall—if they do not spell the end entirely—to what some scholars had identified as the Rehnquist Court's federalism-based "revival" of state regulatory authority.[137]

Data Table 10: Swing-Vote Analysis: Who Votes Most Often With the Majority in Close Cases?[138]

Cases decided by a single vote (which most often involve 5-4 decisions, but also include other circumstances where a change in a single vote would alter the outcome, such as a 5-3 vote to reverse) fall into the "swing vote" category and generally provide reliable evidence of ideological trends on the Court.[139] Many previous editions of this Study demonstrate that Justices O'Connor and Kennedy have tended to be the "leaders" in casting the decisive vote in closely divided cases,[140] and they continued to be so this term.

In 2005, Justice O'Connor was the only Justice who voted with the majority both times in the two cases she heard in this category.[141] Justice Kennedy, although ranked below Chief Justice Roberts and Justices O'Connor and Alito on Table 10, voted 10 times with the

136. In Cent. Va. Cmty. Coll. v. Katz, 126 S. Ct. 990 (2006), the Court held that bankruptcy proceedings involving transfers to state agencies did not bar suit against the state agencies under sovereign immunity.

137. The court's decisions in United States v. Lopez, 514 U.S. 549 (1995), and United States v. Morrison, 529 U.S. 598 (2000), were implicated in Gonzales v. Raich, 545 U.S. 1 (2005). The majority narrowed the scope of *Lopez* and *Morrison* largely by focusing upon and reviving a post-Depression Era decision, Wickard v. Filburn, 317 U.S. 111 (1942)—a case whose reasoning had been undercut by the analysis of the two more recent opinions. *Gonzales* seems to signal that a new voting coalition on the Court is rethinking the "revival" of state regulatory authority within the federal system. *Compare*, Jesse H. Choper, "Taming Congress' Power Under the Commerce Clause: What Does the Near Future Portend?" 55 ARK. L. REV. 731 (2003); Steven G. Calabresi, "Federalism and the Rehnquist Court: A Normative Defense," 574 Annals 24 (2001).

138. Cent. Va. Cmty. Coll. v. Katz, 126 S. Ct. 990 (2006); Jones v. Flowers, 126 S. Ct. 1708 (2006); Kansas v. Marsh, 126 S. Ct. 2516 (2006); ¥League of United Latin Am. Citizens v. Perry, 126 S. Ct. 2594 (2006) (2x); ¥Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006) (2x); Clark v. Arizona, 126 S. Ct. 2709 (2006); Brown v. Sanders, 126 S. Ct. 884 (2006); Day v. McDonough, 126 S. Ct. 1675 (2006); Garcetti v. Ceballos, 126 S. Ct. 1951 (2006); Rapanos v. United States, 126 S. Ct. 2208 (2006); United States v. Gonzalez-Lopez, 126 S. Ct. 2557 (2006); Hudson v. Michigan, 126 S. Ct. 2159 (2006).

139. *See 2003 Study, supra* note 1, at 36, *2002 Study, supra* note 1, at 521.

140. *See 2001 Study, supra* note 1, at 318, 326, 331; *2000 Study, supra* note 1, at 259; *1999 Study, supra* note 1, at 605; *1998 Study, supra* note 1, at 434, 489; *1997 Study, supra* note 1, at 597.

141. *See supra* Data Table 10A.

majority. Justice Kennedy's 66.7% score (below the 69.2% voting pattern earned by Chief Justice Roberts and the combined decisions of Associate Justices O'Connor and Alito), results from the fact that he cast 15 total votes on Table 10 (10 with the majority and 5 with the dissent) while Chief Justice Roberts and Justices O'Connor and Alito cast only 13 such votes (nine with the majority and four with the dissent). Justice Kennedy would likely have held the top spot on Table 10 had Chief Justice Roberts and Justice Alito not had to recuse themselves in one case each.[142]

Nevertheless, and despite the obvious continuing influence of Justice Kennedy in the outcome of closely divided cases, Chief Justice Roberts (along with Justices O'Connor and Alito) voted (as a statistical matter) most often with the majority.[143] Justice Alito's influence in this category will likely be felt more fully next Term because he will participate in (presumably) most or all of the cases.

All this runs counter to our prediction last term[144] that Justice Thomas would take the lead in this category; in fact, he tied for fourth.[145] Overall, however, our predictions were fairly accurate, as seven justices (Justices O'Connor and Alito, Kennedy, Scalia, Souter, Ginsburg, Stevens, Breyer) voted within 10 points of their predicted scores.[146]

For the sixth time in seven Terms, the outcome of Swing-Vote Cases was determined by a conservative voting bloc,[147] returning to the conservative trend which began in 1999. Only Justices Ginsburg and Kennedy demonstrated statistically significant movement this Term, and appear to have balanced each other out, as Kennedy moved slightly liberal and Ginsburg slightly conservative.[148] The Study correctly anticipated a return to conservative control, aided, no doubt, by the strong positions on this chart held by the relatively conservative Chief Justice Roberts and Justices O'Connor and Alito.[149]

142. For Chief Justice Roberts, Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006); for Justice Alito, Jones v. Flowers, 126 S. Ct. 1708 (2006).

143. *See supra* Data Table 10.

144. *See 2004 Study*, *supra* note 1, at 954.

145. *See supra* Data Table 10.

146. *Id.*

147. *See supra* Chart 10.

148. *See supra* Mean Table 10.

149. *Id.*

V. Category Analysis

Beginning in the 1996 Term, we began to analyze the effectiveness of this Study's categories in measuring liberal and conservative tendencies and trends. As might be expected, some categories turn out to be more reliable indicators of ideological tendencies than others.

The reliability of the various tables in this study can be influenced by many factors, including the particular makeup of the Court's caseload and small sample size. Equal protection cases in Data Table 6, for example, tend to make up a small portion of the court's workload each term[150] and are consistently the least reliable indicator of ideological bias.

In order to determine which categories best differentiate between the voting patterns of more liberal and more conservative Justices, we have applied a statistical tool known as factor analysis.[151] In applying this tool, we have determined that a primary factor may be extracted from the Study's categories over the entire life of the Study that accounts for more of the variance revealed by the data on Tables 1 through 9 than any other factor.[152] We interpret this "Factor 1" as liberal/conservative bias simply because that is what this Study purports to measure. The categories currently load onto Factor 1 as follows:

150. *See 2003 Study*, *supra* note 1, at 37; *see also supra* note 105 and accompanying text.

151. *2002 Study, supra* note 1, at 564.

152. For more information regarding factor analysis, see Appendix B.

Category	Factor 1
Criminal/State Party	-0.852
Civil/State Party	-0.775
Criminal/Federal Party	-0.659
Federalism	-0.619
First Amendment	-0.314
Civil/Federal Party	-0.228
Jurisdiction	-0.226
Statutory Civil Rights	-0.136
Equal Protection	-0.110
Variance	2.4604
% Variance	0.273

According to this ranking, Table 3 (Criminal/State Party) cases are again the most reliable indicator of liberal/conservative leanings over time; in fact, the ranking established by Factor Analysis is identical to that from last Term's analysis, except that Table 9 (Federalism) has moved back behind Table 4 (Criminal/Federal Party) and Table 2 (Civil/Federal Party) has passed up Table 8 (Jurisdiction).[153] Tables 1, 3, 4, and 9, as expected, remain relatively reliable indicators of ideological bias, while the remaining five continue to be of questionable value in that regard.

As we noted in the 2004 Study,[154] these results may seem counter-intuitive to those holding a stereotypical understanding of the Court—that issues relating to the First Amendment, Statutory Civil Rights, and Equal Protection would (seemingly) provide nearly perfect opportunities for the Justices to show their ideological leanings. However, as we have discussed in three prior studies,[155] such cases often involve "pole-switching," where Justices vote "conservatively" (under the definitions of this Study) in order to further a "liberal" policy preference, or vice versa.[156]

153. *2004 Study*, *supra* note 1, at 961.

154. *Id.* at 961.

155. *Id.*

156. *Id.*

Frontier Analysis with Justice O'Connor

Frontier Analysis Table 1
"Conservative Frontier"–Constrained

Justice	Percent of Frontier	Percent Super Eff.	Category Weights							
			Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed ism
Kennedy	100%	106%	30		30	3			3	3	30
Roberts	100%	102%	21		21	21				17	21
Thomas	100%		14	14	14	14			14	14	14
Scalia	100%		14	14	14	14			14	14	14
O'Connor	100%				100						
Souter	87%		14	14	14	14			14	14	14
Breyer	83%				100						
Ginsburg	83%				100						
Stevens	83%				100						

Frontier Analysis Table 2
"Liberal Frontier"–Constrained

Justice	Percent of Frontier	Percent Super Eff.	Category Weights							
			Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed ism
Stevens	100%				100						
Souter	100%				100						
Ginsburg	100%		14	14	14	14			14	14	14
Breyer	100%		20		20	20				20	20
O'Connor	85%		20		20	20				20	20
Roberts	81%		14	14	14	14			14	14	14
Kennedy	77%		20		20	20				20	20
Scalia	75%		20		20	20				20	20
Thomas	75%		20		20	20				20	20

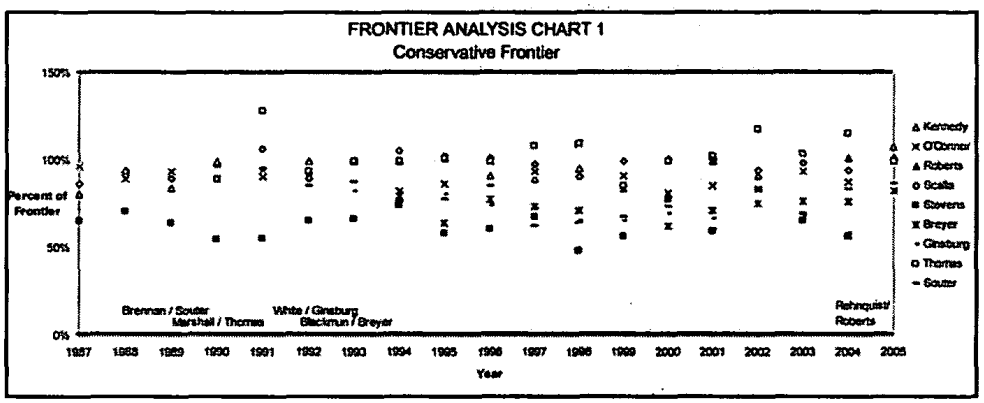
Frontier Analysis Table 3
"Conservative Frontier"–Unconstrained

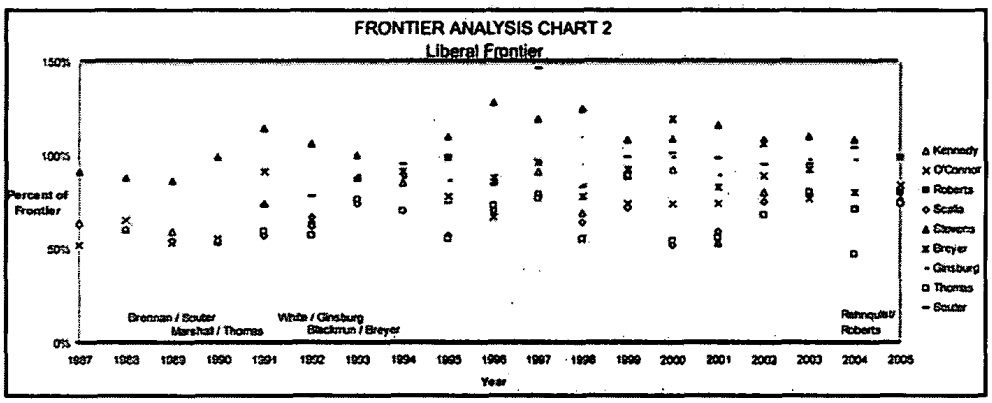
Justice	Percent of Frontier	Percent Super Eff.	Category Weights							
			Civil / State	Civil / Fed	Crim. / State	Crim / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed ism
Kennedy	100%	180%							9		91
Roberts	100%	106%								44	56
Breyer	100%	100%		100							
O'Connor	100%	100%			100						
Scalia	100%	100%	100								
Stevens	100%	100%		100							
Ginsburg	100%	100%		100							
Thomas	100%	100%	100								
Souter	100%	100%		100							

Frontier Analysis Table 4
"Liberal Frontier"–Unconstrained

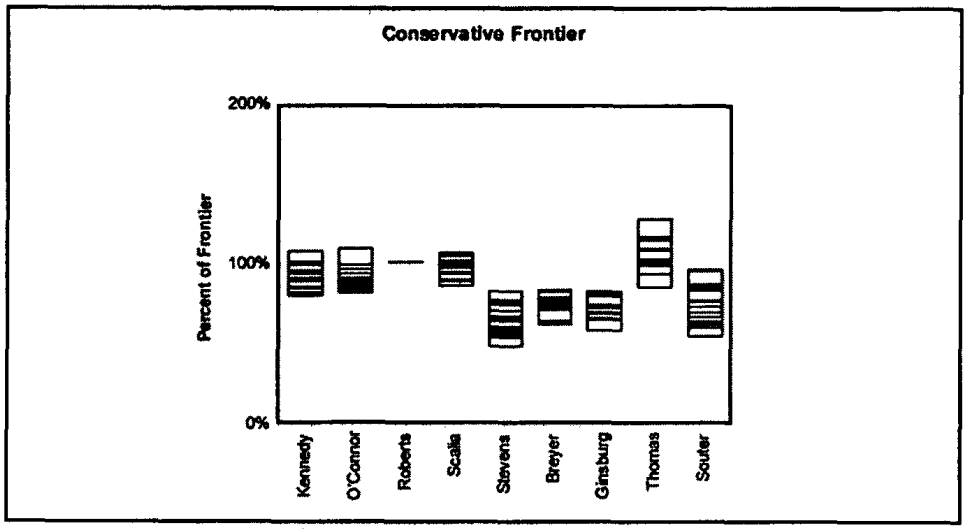
Justice	Percent of Frontier	Percent Super Eff.	Category Weights							
			Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed ism
Stevens	100%	125%			64					36	
Souter	100%				100						
Kennedy	100%				100						
Scalia	100%				100						
Ginsburg	100%				100						
Breyer	100%				100						
O'Connor	100%				100						
Roberts	100%				100						
Thomas	100%				100						

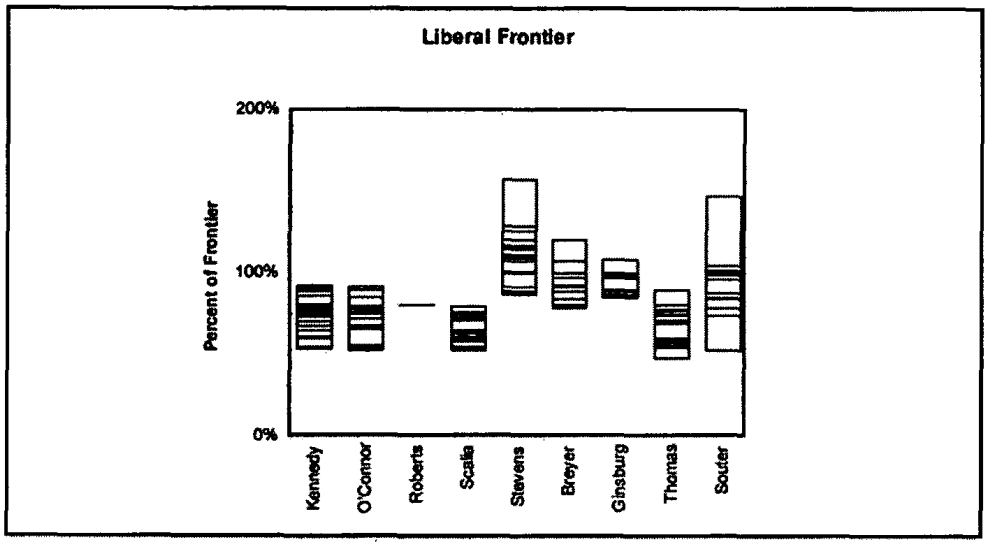
Frontier Analysis with Justice O'Connor, continued





Frontier Analysis with Justice O'Connor, continued





Frontier Analysis with Justice Alito

Frontier Analysis Table 1
"Conservative Frontier"–Constrained

Justice	Percent of Frontier	Percent Super Eff.	Category Weights: Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed'ism
Thomas	100%	114%	25		25	25					25
Roberts	96%		50		50						
Scalia	96%		50		50						
Alito	90%		50		50						
Kennedy	86%		20		20	20	20				20
Souter	62%		12	13	12	12	13	13		13	12
Ginsburg	57%		13	13	13	13	13	13		13	13
Stevens	43%		14	14	14	14	14			14	14
Breyer	41%		14	14	14	14	14			14	14

Frontier Analysis Table 2
"Liberal Frontier"–Constrained

Justice	Percent of Frontier	Percent Super Eff.	Category Weights: Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed'ism
Stevens	100%	109%	33		33						33
Breyer	100%	103%	20		20	20	20				20
Souter	96%		25		25	25					25
Ginsburg	95%		20	13	20	13	13				20
Roberts	64%		14	14	14	14	14			14	14
Kennedy	63%		14	14	14	14	14			14	14
Alito	62%		14	14	14	14	14			14	14
Scalia	55%		14	14	14	14	14			14	14
Thomas	44%		14	14	14	14	14			14	14

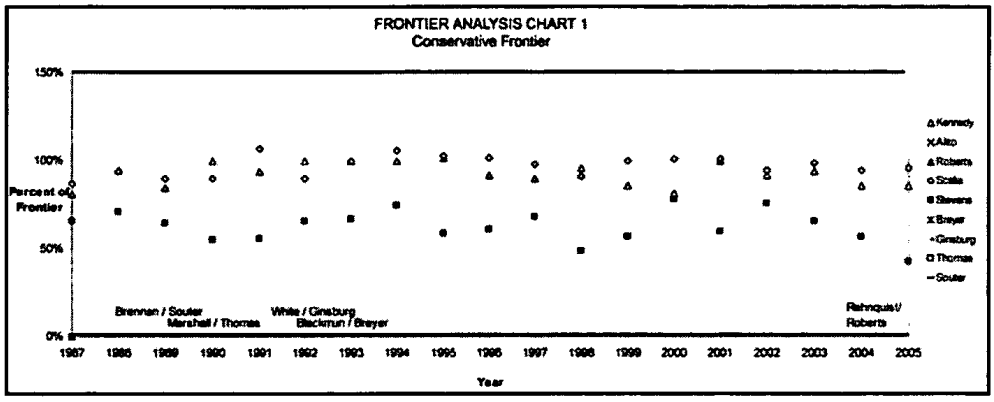
Frontier Analysis Table 3
"Conservative Frontier"–Unconstrained

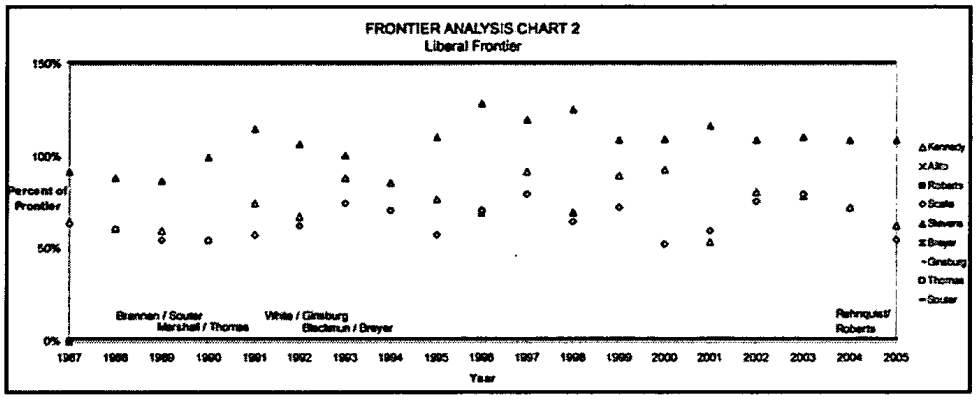
Justice	Percent of Frontier	Percent Super Eff.	Category Weights: Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed'ism
Thomas	100%	133%									100
Alito	100%	120%							100		
Kennedy	100%	104%					100				
Roberts	100%							100			
Souter	100%							100			
Scalia	100%							100			
Ginsburg	100%							100			
Stevens	77%			88			12				
Breyer	75%			100							

Frontier Analysis Table 4
"Liberal Frontier"–Unconstrained

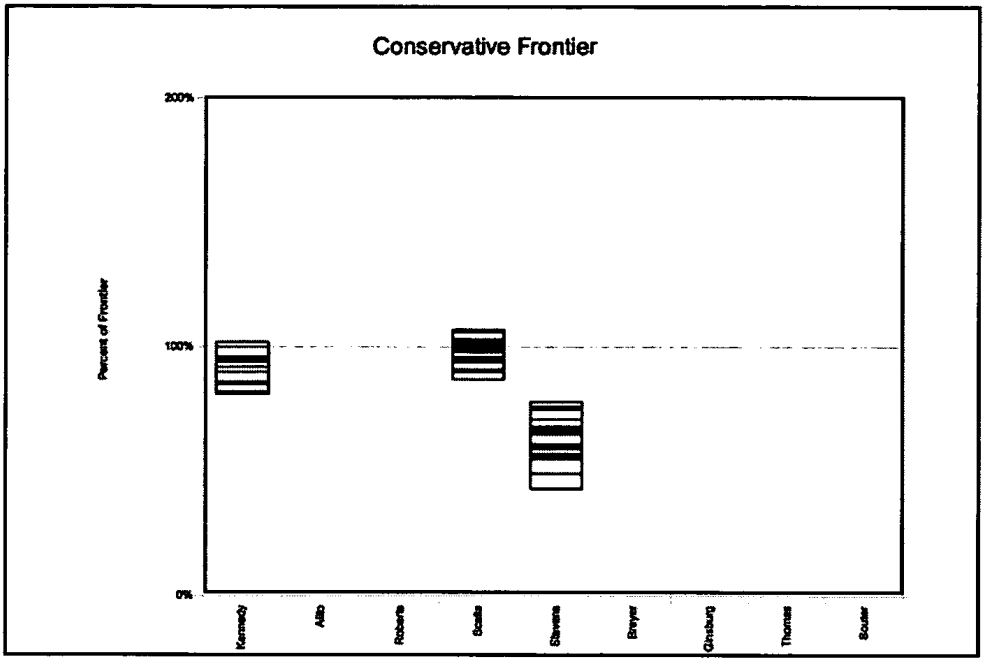
Justice	Percent of Frontier	Percent Super Eff.	Category Weights: Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed'ism
Breyer	100%	128%					91	9			
Stevens	100%	114%						12			88
Roberts	100%	114%		100							
Souter	100%	108%				50					50
Ginsburg	100%	106%					46				54
Kennedy	100%	103%								100	
Scalia	69%			86		14					
Alito	81%						31			34	36
Thomas	69%			86					14		

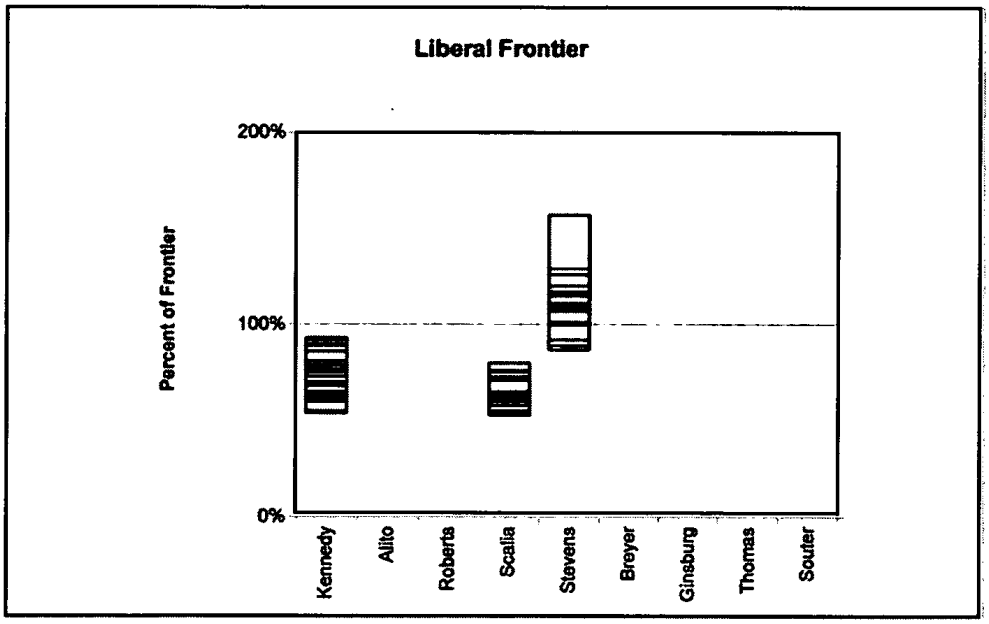
Frontier Analysis with Justice Alito, continued





Frontier Analysis with Justice Alito, continued





Frontier Analysis Combined with Justice O'Connor and Justice Alito

Frontier Analysis Table 1
"Conservative Frontier"–Constrained

Justice	Percent of Frontier	Percent Super Eff.	Category Weights								
			Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed'ism
Thomas	100%	111%	25		25	25					25
Scalia	97%		50		50						
Roberts	96%		50		50						
Kennedy	92%		20		20	20	20				20
O'C/Al	91%				100						
Souter	66%		11	11	11	11	11	11	11	11	11
Ginsburg	60%		11	11	11	11	11	11	11	11	11
Stevens	51%		14	14	14	14	14			14	14
Breyer	48%		14	14	14	14	14			14	14

Frontier Analysis Table 2
"Liberal Frontier"–Constrained

Justice	Percent of Frontier	Percent Super Eff.	Category Weights								
			Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed'ism
Stevens	100%	107%			100						
Breyer	100%	107%	33		33	33					
Souter	96%		25		25	25					25
Ginsburg	94%		12	13	12	12	13		13	13	13
O'C/Al	86%		14	14	14	14	14			14	14
Roberts	65%		14	14	14	14	14			14	14
Kennedy	64%		13	13	13	13	13		13	13	13
Scalia	58%		14	14	14	14	14			14	14
Thomas	51%		13	13	13	13	13		13	13	13

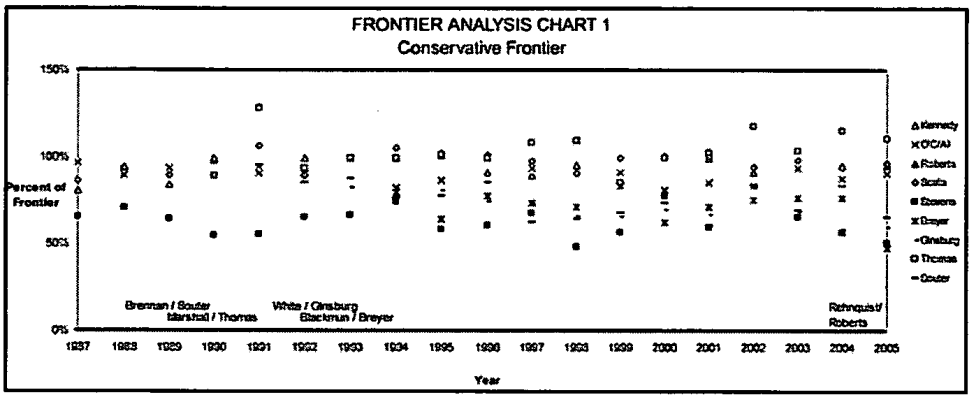
Frontier Analysis Table 3
"Conservative Frontier"–Unconstrained

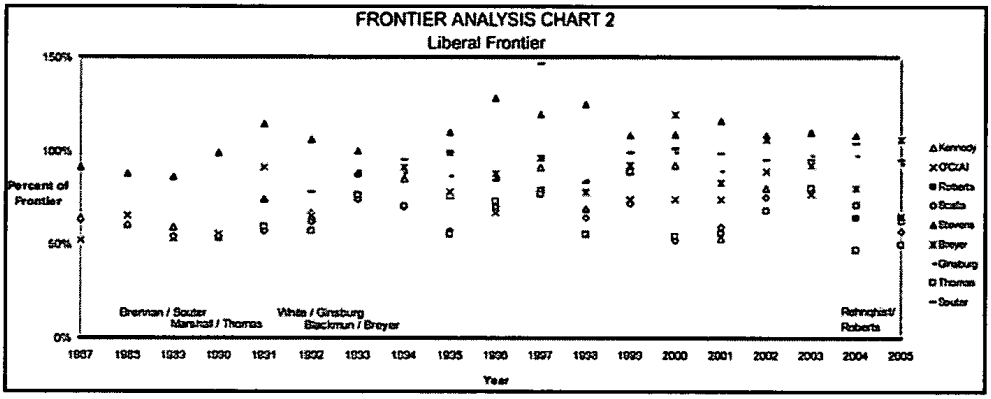
Justice	Percent of Frontier	Percent Super Eff.	Category Weights								
			Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed'ism
Thomas	100%	123%				57				11	32
O'C/Al	100%	115%							100		
Kennedy	100%	104%					100				
Roberts	100%							100			
Scalia	100%							100			
Ginsburg	100%							100			
Souter	100%							100			
Stevens	83%			91			9				
Breyer	82%			100							

Frontier Analysis Table 4
"Liberal Frontier"–Unconstrained

Justice	Percent of Frontier	Percent Super Eff.	Category Weights								
			Civil / State	Civil / Fed.	Crim. / State	Crim. / Fed	1st Am.	Equal Protect.	Stat. Civ. Rt.	Juris.	Fed'ism
Breyer	100%	126%					91	9			
Stevens	100%	110%						2		79	20
Roberts	100%	110%		100							
Souter	100%	106%				40					60
Ginsburg	100%	104%					33				67
Kennedy	100%	102%								100	
Scalia	92%			89		11					
O'C/Al	86%						32			24	44
Thomas	75%			87					13		

Frontier Analysis Combined with Justice O'Connor and Justice Alito, continued





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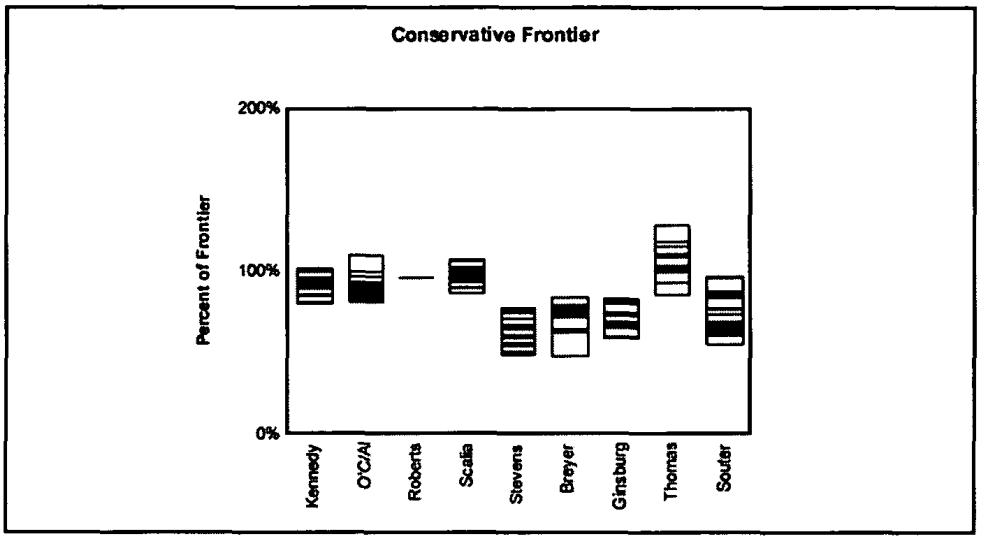

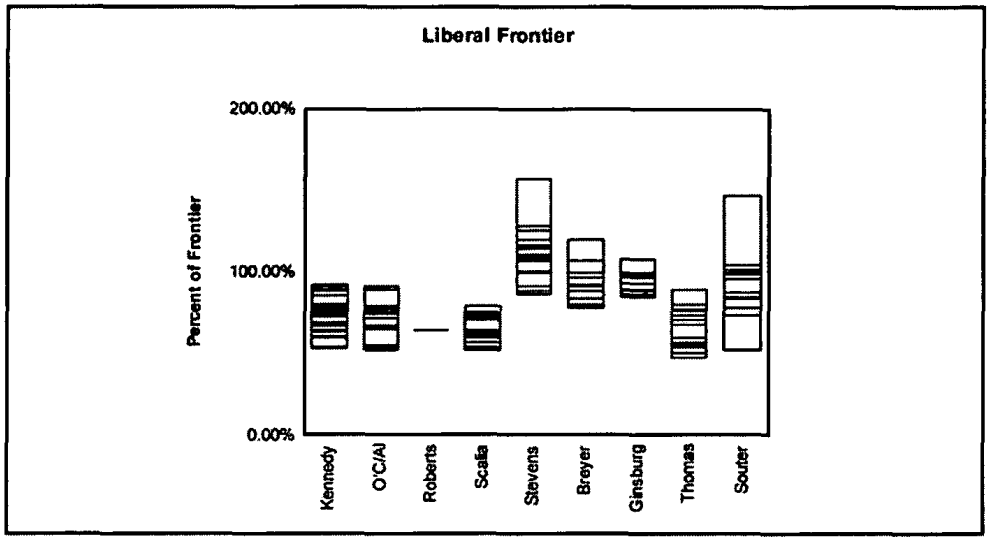

VI. Frontier Analysis

Attempting to quantify the magnitude of a Justice's liberal or conservative tendencies and to identify trends in such tendencies over time is challenging for a variety of reasons. One challenge already discussed is that of choosing appropriate tests and assessing their validity. Another is dealing with inconsistency in the nature of cases appealed to the Court from one Term to the next and the Court's selection of which cases it will decide. With varying parameters such as these, is there any meaningful way to quantify, analyze and compare the Justices' inclinations? One potentially useful method is frontier analysis.[157]

Frontier analysis focuses on the Justices' relative scores rather than their absolute scores. Boundaries or "frontiers" are defined by the highest and lowest scores in each category and each combination of categories. Each Justice is then evaluated relative to the established frontier. By adjusting the relative weights allocated to each category, the frontier can be adjusted to reflect each category's reliability—as determined by the factor analysis described in Section V.

We present liberal and conservative frontier data for the Court in Frontier Analysis Tables 1-4 and Frontier Analysis Charts 1-4. Two versions of each frontier are presented.

In Frontier Analysis Tables 1 and 2, we constrain the weights applied to each category according to the factor analysis hierarchy in Part V. On these Tables, weights are chosen for each Justice that produce the highest frontier score for him or her, subject to the limitation that Equal Protection (the least reliable category) cannot receive more weight than Civil/Federal Party (the next least reliable category), Civil/Federal Party cannot receive more weight than Statutory Civil Rights, and so forth, moving upward from the least reliable category set out in Part V.

157. For more information regarding frontier analysis, *see infra* Appendix B.

Frontier Analysis Tables 3 and 4 apply no weighting constraints at all; instead, these tables choose, for each Justice, those weights that present him or her in the most conservative or liberal light possible.

Each Table lists a "% of Frontier" score for each Justice. Those with a score of 100% reach the frontier by employing the category weight distribution shown in the category columns. Scores less than 100% indicate that the most conservative/liberal score the Justice could obtain with optimal weighting places him or her at the indicated percentage of the way toward the frontier. In some cases, an optimal combination of weights may place a Justice beyond the frontier. This condition is known as "superefficiency" and is noted in the charts when present.

Frontier Analysis Charts 1 and 2 show the constrained scores for each Justice over the course of this Study in graphical form. Near the bottom of each chart is an indication of new Justices as they replace outgoing Justices on the Court. Although former Justices' scores are not indicated, they contributed to the determination of the liberal and conservative frontiers during Terms in which they sat on the Court.

Frontier Analysis Charts 3 and 4 show each Justice's range of constrained frontier scores during the course of this Study. They are easier to read than the line graphs and give a clearer picture of the Justice's relative positions and score ranges overall. They do not, however, show any trend information.

According to the Frontier Analysis Table 1, "Conservative Frontier—Constrained," Justice Thomas retained his position as the most conservative Justice for the second consecutive term.[158] Justice Thomas was also again the only Justice this Term to reach the conservative frontier on the constrained Frontier Analysis Table,[159] with a superefficient score of 111%. This is an interesting score because it is calculated by weighting the tables according to factor analysis.[160] Justice Scalia came in second on this table, with a score of 97%, but Chief Justice Roberts was a very close third at 96%.[161] Justices Stevens (51%) and Breyer (48%) were the least conservative

158. *See supra* Frontier Analysis Table 1.

159. *See id.*

160. *See* Factor Analysis section for rankings. *See also supra* Frontier Analysis Table 1 (Justice Thomas is only measured on Civil/State, Criminal/State, and Federalism).

161. *See supra* Frontier Analysis Table 1.

Justices on the constrained Frontier Analysis Table.[162] The rankings on this Table shifted substantially this year, after two years of relatively little change.[163]

Frontier Analysis Table 2, which shows the results from of a constrained calculation of the liberal frontier, shows two Justices with superefficient scores: Justices Stevens (107%) and Breyer (107%).[164] Justice Thomas, as with Frontier Analysis Table 1, remained the least liberal Justice (51%).[165]

Like last Term, the 2005 Term lines up "the usual suspects" in terms of ideology, though the rankings are not mirror images of each other. As we noted last term, arguably more "consistent" results on Frontier Analysis Tables 1 and 2 may be the result of fewer cases involving "pole-switching" behavior and, accordingly, the Justices showed their "true" biases more accurately this Term. Though only Justices Scalia and Thomas had identical rankings on Frontier Tables 1 and 2, the slight change of positions for the other Justices on the two Tables may well be of minimal importance.[166]

In 2003, the unexpected switch in rankings across Frontier Tables 1 and 2 was attributed to the theory "that Justices Scalia and Thomas are not as bound to conservative or liberal ideologies as other Members of the Court" and therefore their voting patterns "demonstrated conservative *and* liberal patterns, as the constrained Frontier Analysis Tables demonstrate."[167] While this may still be true, another theory explored last Term was that the switch in expected ranking was due to "pole-switching," voting behavior that was in substantial evidence in the 2003 Term.[168]

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162. *Id.*

163. Justice Breyer, the least conservative Justice this year, scored a 77% in 2003 and 2004. *See 2003* and *2004 Studies*, *supra* note 1, at Frontier Analysis Table 1. It is important to note that these numbers are not comparable year to year, however. The frontier is different every year. Therefore, the "quantity" that 77% represents may be more or less than the previous Term. What is comparable however is how close the Justices come to the frontier in a given year. An analogy would be comparing LSAT scores of students who took different tests (*e.g.*, one takes the October test and another takes the February test).

164. *See supra* Frontier Analysis Table 2.

165. *See id.* Frontier Analysis Table 2; *compare 2003 Study*, *supra* note 1, at Frontier Analysis Table 2.

166. *See supra* Frontier Analysis Tables 1 and 2. Justice Souter is the "least conservative" Justice but is only second place on the liberal table.

167. *See 2003 Study*, *supra* note 1, at 817.

168. *See 2004 Study*, *supra* note 1, at 964.

The unconstrained Frontier Analysis Tables maximize the effects of pole-switching and other potentially "distorting" voting behaviors and, therefore, do not provide very reliable evidence of conservative or liberal bias. The real importance of the unconstrained Tables is that they illustrate the value of the constrained analysis and the importance of factor analysis.[169]

It is interesting to note that some Justices are unable to reach either the unconstrained conservative or liberal frontiers—regardless of the combination of weights used to enhance their conservative and liberal voting tendencies. On Frontier Analysis Table 3, the unconstrained conservative table, two Justices fell short of the frontier, Justice Stevens by seventeen points, and Justice Breyer by eighteen points. Every other Member of the Court reached the conservative frontier, with three (Justices Thomas, Kennedy, and O'Connor/Alito) marking superefficient scores.[170] On Unconstrained Frontier Analysis Table 4, six Justices (the Chief Justice and Justices Breyer, Souter, Stevens, Ginsburg, and Kennedy) had superefficient scores.[171] This outcome may evidence that the data for 2005 is somewhat less reliable than in 2004 and more akin to 2003, when, as a result of significant pole-switching behavior, all of the Justices reached the liberal frontier on the unconstrained analysis.[172]

VII. Conclusion

The voting patterns tabulated by the 2005 Study reveal (as should be expected) a Court in transition. The generally consistent conservative voting patterns of Chief Justice Rehnquist have been replaced with several surprisingly liberal voting patterns tallied by Chief Justice John Roberts (who was the most liberal Member of the Court on Table 2, and who voted more liberally on Tables 4 and 9 than the historical practice of the past Chief Justice). Associate Justice Alito voted rather more conservatively on Table 3 than the historic patterns of Associate Justice O'Connor (whom he replaced on the Court), As a result, Table 3—this Term's most reliable indicator of ideological bias—demonstrates a significantly wider

169. *See 2003 Study*, *supra* note 1, at 818 ("The unconstrained Frontier Tables amplify the effects of pole-switching. Accordingly, the most reliable evidence of ideology on these Tables comes from the constrained analysis.").

170. *See supra* Frontier Analysis Table 3.

171. *See supra* Frontier Analysis Table 4.

172. *See 2003 Study*, *supra* note 1, at 818.

"gap" between the conservative and liberal wings of the Court than in the recent past. The overall-all conservative impact of Justice Alito, however, is tempered by the fact that (as with the new Chief Justice) he demonstrated fairly consistent liberal voting behavior on Tables 4 and 9.

The ideological posture of the Court—considered as a whole—is difficult to reckon. Five Tables demonstrate conservative movement (Tables 3, 5, 6, 7 and 10), while five Tables demonstrate liberal movement (Tables 1, 2, 4, 8 and 9). In some sense, therefore, the Court could be described as "in equipoise" between classically liberal and conservative outcomes. A closer look at the data, however, suggest that liberal outcomes are gaining momentum on the Court, although an increasingly polarized conservative wing may (for the foreseeable future) control the outcome of closely divided five-to-four decisions.

Factor Analysis demonstrates that the liberal movement on Tables 1, 4 and 9 may be significant. Table 1, tabulating the outcome of state civil cases, is the second most reliable indicator of ideological bias this Term. Table 1, furthermore, has shown liberal movement for two of the past three Terms. Accordingly, the Court may well be more inclined to cast liberal votes in civil cases involving state governments.

Table 4, collecting votes in federal criminal cases, is the third most reliable indicator of ideological bias this Term, while Table 9 (involving the division of power between state and federal authority) is the fourth most reliable indication of bias. These Tables (perhaps most surprisingly Table 9) demonstrate liberal movement. Indeed, the results tabulated on Table 9 suggest that the purported "revival of federalism" championed by the late Chief Justice Rehnquist may have come to an end.

Taken together, the liberal voting patterns on these Tables suggest that the Court is rather liberally inclined to the exercise of federal judicial power, somewhat unreceptive to claims of state (rather than federal) regulatory authority, and quite likely to vote against the federal government in criminal matters. This is not the voting behavior one might expect from a classically conservative Court.

Balanced against this relatively impressive liberal movement are the outcomes on Tables 3, 5, 6, 7 and 10. As a statistical matter, however, much of this conservative movement is hardly noteworthy. The results tabulated on Tables 5 (First Amendment), 6 (Equal

Protection) and 7 (Statutory Civil Rights) are particularly unreliable—involving few cases and historically volatile voting patterns.

The conservative outcomes on two Tables, however, *are* notable. Table 3, which summarizes the outcomes of state criminal cases, is the most reliable indicator of ideological bias in the 2005 Term—and the conservative movement charted on the Table is significant. Table 3, furthermore, demonstrates a wide ideological gap between the five most conservative Members of the Court and the four most liberal. This ideological gap—coupled with the statistical reliability of Table 3 as an indicator of ideological bias—may well explain the outcome on Table 10 for 2005.

In the 2004 Term, a liberal coalition of Justices controlled the outcome of just over 54% of all issues divided by a five-to-four vote. This Term, a conservative coalition controlled the outcome of 53.3% of all closely divided cases. Considered together, Tables 3 and 10 suggest that—although the Court as a whole is casting liberal votes in a rather broad range of cases (particularly those involving federal jurisdiction and the division of power between the states and the federal government)—the newly composed Court is highly polarized in the decision of cases involving ideological issues (Table 3). In 2005, this conservative wing controlled the outcome of more than half of such cases. The question for the future is whether the conservative coalition on Table 10 will retain the upper hand, or whether the overall (and rather general) liberal voting behavior on the Court will overtake (and eventually control) the outcome of the Nation's most contentious cases.

APPENDIX A

1. The Universe of Cases

The only cases included in the database are those cases decided by full opinion. Decisions on motions have been excluded even if accompanied by an opinion. Cases handled by summary disposition are included only if they are accompanied by a full opinion of the Court and not if the only opinion is a dissent. Cases decided by a four-four vote resulting in affirmance without written opinion have been excluded. Both signed and unsigned per curium opinions are considered full opinions if they set forth reasons in a more than perfunctory manner. Cases not fitting within any of these categories are not included in the database for any of the tables.

2. Cases Classified as Civil or Criminal

The classification of cases as civil or criminal follows commonly understood definitions. Generally, the nature of the case is clearly identified in the opinion. Only occasionally does a case pose a problem of classification. No cases in 2005 raised such a question.

3. Cases Classified by Nature of the Parties – Data Tables 1 through 4

Cases are included on Data Tables 1 through 4 only if governmental and private entities appear as opposing parties. This is necessarily true of criminal cases. Civil cases are excluded from these tables if they do not satisfy this criterion. The governmental entity might be the United States government or one of its agencies or officials or, with respect to a state government, one of its political subdivisions. A suit against a government official in a personal capacity is included if that official is represented by government attorneys, or if the interests of the government are otherwise clearly implicated. In instances of multiple parties, a civil case is excluded if governmental entities appear on both sides of the controversy.[173] If both a state and a federal entity are parties to the same suit on the same side with only private parties on the other, the case is included on Data Tables 1 and 2. A case is included more than once on the

173. *See, e.g.*, Wagnon v. Prairie Band Potawatomi Nation, 126 S. Ct. 676 (2005) (excluded because a sovereign Indian tribe was on one side of case and a sovereign state government was on the other).

same table if it raises two or more distinct issues affecting the outcome of the case and the issues are resolved by different voting alignments.

4. Classification by Nature of the Issue – Data Tables 5 through 9

A case is included in each category of Data Tables 5 through 9 for which it raises a relevant issue that is addressed by written opinion. One case may thus be included on two or more tables. A case is also included more than once on the same table if it raises two or more distinct issues in the category affecting the disposition of the case and the issues are resolved by different voting alignments. A case is not included on a table if an issue raised by one of the litigants is not addressed in any opinion.

Identification of First Amendment and Equal Protection issues poses no special problem since the nature of each claim is expressly identified in the opinion. Issues of freedom of speech, press, association, and free exercise of religion are included. However, Establishment Clause cases are excluded since one party's claim of religious establishment is often made against another party's claim of free exercise or some other individual right, thus blurring the issue of individual rights.

Statutory civil rights included on Data Table 7 are limited to those invoking the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Religious Freedom Restoration Act and other civil rights statutes expressly barring discrimination on the basis of race, color, national origin, sex, religion, age or physical handicap. Actions brought under 42 U.S.C. § 1983 are included if the substantive right asserted is based on a federal statute, or if the issue involves the application of 42 U.S.C. § 1983 to the case at hand. However, 42 U.S.C. § 1983 actions are excluded if the substantive right asserted is based on the United States Constitution and the issue relates to that constitutional right.[174] The purpose of this exclusion is to preserve the distinction between constitutional and non-constitutional claims.

For Data Table 8, jurisdictional questions are defined to include not only jurisdiction *per se*, but also standing, mootness, ripeness, abstention, equitable discretion and justiciability. Jurisdictional questions are excluded if neither party challenges jurisdiction and no

174. *See, e.g.*, Ayotte v. Planned Parenthood of N. New Eng., 126 S. Ct. 961 (2006) (right to abortion based on Supreme Court's interpretation of Constitution, not federal statute).

member of the Court dissents on the question, even though the Court may comment on its jurisdiction.

Federalism cases on Data Table 9 are limited to those cases in which there were issues raised by the conflicting actions of federal and state or local governments. Common examples of these issues are preemption, intergovernmental immunities, application of the Tenth and Eleventh Amendments as a limit on federal government action and federal court interference with state court activities (other than review of state court decisions). Issues of "horizontal" federalism or interstate relationships, such as those raised by the dormant Commerce Clause or the Privileges and Immunities Clause, are excluded from the table.

5. The Swing-Vote Cases

Data Table 10 includes all cases where the outcome turns on a single vote. This category includes five-four decisions and four-three decisions, if any, as well as five-three and four-two decisions that reverse a lower court decision. Affirmances by a vote of five-three or four-two are not included because a shift of one vote from the majority to the minority position would still result in affirmance by a tie vote. Reversals by a vote of five-two are also not included, as four-three reversals, though disfavored, are valid.[175] A case is included more than once in the table if it raises two or more distinct issues affecting the disposition of the case and the issues are resolved by different voting alignments.

175. For an example of such a case, see Hartman v. Moore, 126 S. Ct. 1695 (2006).

APPENDIX B

Study Methodology

This Study seeks to quantify three characteristics of Supreme Court voting behavior: voting trends, mean voting percentages and relationships among the Justices' voting patterns. The following sections explain the statistical methods employed in this Study and how test results should be interpreted.

A. Scores

Each score in this Study is simply the percentage of times a Justice voted in favor of the party or claim specified by the category. Some categories contain fewer samples than others, resulting in coarser score increments. For example, a category including ten cases during the term will have the potential for eleven different scores (0% through 100%, in 10% increments), while a category with only one case during the Term will provide only two score possibilities (0% and 100%).

B. Predictive Modeling

Data in this project were fitted to an Auto Regressive Integrated Moving Average (ARIMA) forecasting model.[176] This model is useful in circumstances where, as in this Study, a single variable (a Justice's score) is to be forecast based only on its present and prior values with no other explanatory variables. ARIMA is an acronym for Auto Regressive Integrated Moving Average. The model is most easily explained by starting in the middle of the acronym:

Integrated: This term refers to a differencing process which operates in a manner similar to differentiation of a continuous function in calculus. The goal is simply to remove trend from the time series data by subtracting each score in the time series from the next score in the series. The resulting differences form a new time

176. ARIMA computer modeling was accomplished using MINITAB® statistical software with p = 1, d = 1, and q = 1. For more information regarding the ARIMA (p,d,q) model, *see* Peter Kennedy, A GUIDE TO ECONOMETRICS 248-49 (1992).

series. This operation may be repeated successively until a trendless or "stationary" series results. Our model employs only one differencing operation.

Auto-Regression:

Once the series has been made stationary, an autoregressive parameter may be determined.[177] This parameter seeks to relate each data point in the stationary series to the data point immediately preceding it through multiplication. That is:

$$X_t = AX_{t-1}$$

where X_t is the value of the data series at point t, A is the autoregressive parameter, and X_{t-1} is the value of the data series point immediately preceding X_t.

Because we are dealing with a *series* of data points, however, a single parameter will almost never precisely produce the relationship just described for all data point pairs. Some error is inevitable. We therefore seek to determine that parameter which produces the least total error when applied to the entire series.[178]

Moving Average:

A second parameter is determined that relates the value of each series element X_t to the *error* between the estimated value and the actual value of the previous element X_{t-1}. That is:

$$X_t = -Bx_{t-1}$$

177. Many statistical models employ more than one autoregressive parameter due to various properties of the data series. Our data uses single-parameter (first order) AR and MA models.

178. This is accomplished by applying least squares estimation, i.e., the parameter is chosen such that the sum of the squared errors is minimized.

where -B is the Moving Average parameter. The value of this parameter is also optimized to minimize its total error when applied to the series.

Synthesis: The previous operations are combined into the equation:

$$X_t = Ax_{t-1} - Bx_{t-1} + E_t$$

where E_t represents the residual error remaining between the calculated and actual values of X_t. This final equation is used to predict the series score for the upcoming Term.

C. Mean Testing

We use a "student's t test"[179] to determine whether this Term's score (X_2), departs in a statistically significant manner from the mean of all previous Terms' scores (X_1). Essentially, we treat these two numbers as the means of two independent samples drawn from the universe of all scores in the category.[180] We hypothesize that X_1 is also the true mean of the population μ, and we set up this hypothesis (the "null" hypothesis) and its corresponding alternative hypothesis as follows:

H_o: $\mu = X_1$ The "null" hypothesis, i.e., X_2 does not significantly shift μ from its previous value on the real number line. Therefore, the two samples are statistically equivalent.

H_a: $\mu \bullet X_1$ The alternative hypothesis, i.e., X_2 significantly shifts μ from its previous value on the real number line. Therefore, the two samples are not statistically equivalent.

179. For a practical perspective on this procedure, *see* DAVID S. MOORE & GEORGE P. MCCABE, INTRODUCTION TO THE PRACTICE OF STATISTICS 500-18 (1993). *See also* CRAIG AND HOGG, *supra* note 33.

180. This approach introduces potential bias problems due to non-random sampling, small samples, and dissimilar sample standard deviations. Nevertheless, we use the test to impose some measure of discipline in analyzing the available data.

We then set out to prove the alternative hypothesis, within a certain confidence interval,[181] by rejecting the null hypothesis.[182] This is accomplished by calculating the following statistic:

$$t = \frac{\overline{X}_2 - \mu}{s/\sqrt{n}}$$

The result of this equation (t) is compared to the entry on a t-distribution table corresponding to the confidence interval desired (•) and the appropriate number of degrees of freedom (n-k).[183] If the absolute value of t is greater than the table entry, H_o is rejected and we say that the Justice has shown a statistically significant change in voting behavior this Term.

D. Correlation

Relationships between two Justices' voting records may be mapped over a two-dimensional Cartesian plane as in Figures 1 and 2. Figure 1 shows a high degree of positive correlation (R^2=0.7921) between the voting percentages of the Chief Justice and Justice Scalia for the Equal Protection category. The points all fall close to an upward sloping line. On the other hand, Figure 2 shows that the voting percentages of the Justice Scalia and Justice Stevens show only a very weak, negative correlation (R^2=0.0473). The points are widely scattered about a downward sloping line. Statistically significant correlations between and among Justices' Term-to Term voting percentages are shown in Regression Tables 1-10. The first number in each pair is the Pearson correlation coefficient. The second number is an r^2 statistic, which is a more reliable measure of the actual level of correlation.[184]

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181. We have selected a confidence interval of 95%. Because this is a two-tailed test ($\overline{X}_2$ may shift μ in either a positive or negative direction), • = .025.

182. A full description of the logic behind this seemingly convoluted procedure is beyond the scope of this article. However, its purpose is to control Type I (or alpha) error. For a complete explanation, *see* MOORE AND MCCABE, *supra* note 131.

183. k = the number of parameters being tested; here, μ is the only hypothesized parameter, so k = 1.

184. The r^2 statistic is an estimate of $•^2$, the true measure of correlation between the dependant variable and its independent counterpart(s). The "adjusted" r^2 value in the tables is a result of the computer's attempts to filter out any bias in the original r^2 result.

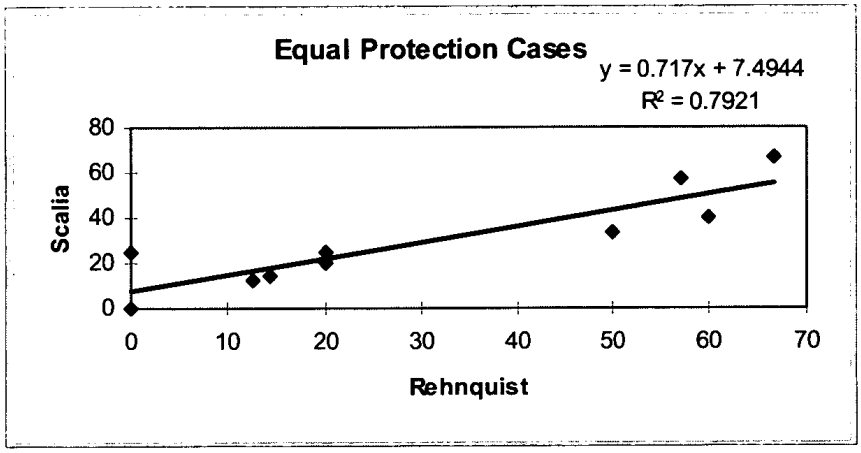


Figure 1

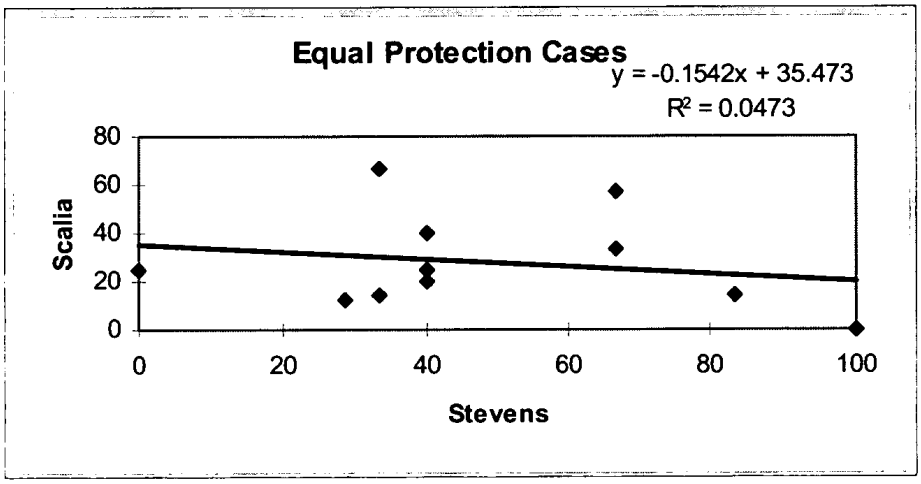


Figure 2

The correlation measured in this case is in the Term-to-Term movement of Justices' scores. A high correlation between two Justices does not mean that they necessarily vote together often. It simply means that their scores tend to move up and down together from one Term to another. Also note that correlation in no way implies causation.

E. Factor Analysis

Factor analysis has long been used by psychologists who attempt to identify characteristics of personality or intelligence by using batteries of tests. Their challenge has been to develop tests that validly measure the characteristics of interest. This Study similarly attempts to measure the Justices' liberal and conservative leanings by "testing" their disposition of certain types of cases.

We performed a factor analysis of the Study categories using Minitab software. The factor loadings presented were obtained by extracting a single factor, using principal components analysis and applying a QMAX rotation to the data. A full description of the theory and mathematics underlying factor analysis is beyond the scope of this appendix, but several books on the subject are available that provide reasonably simple explanations of this complex process.[185]

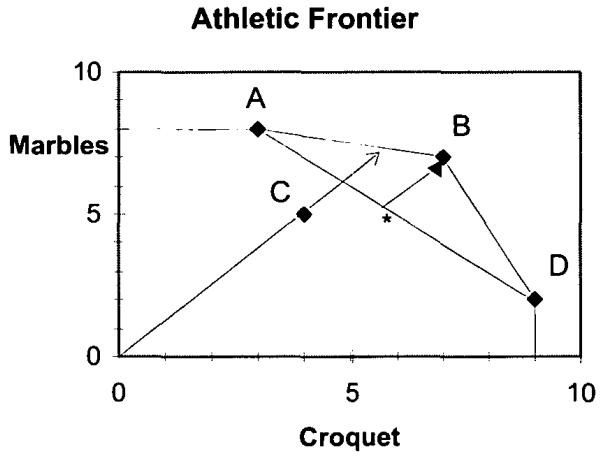
F. Frontier Analysis

Frontier analysis can probably best be described with an example. Suppose four individuals are competing for the title of "world's greatest athlete." Their scores in two events are listed in the following table:

	Croquet	Marbles
Alan	9	2
Betty	7	7
Chuck	4	5
Debbie	3	8

Alan would argue that the title should go to the best croquet player because he has scored highest in the croquet category, while Debbie would argue that the best marbles player should win because each has scored highest in that category. On the other hand, Betty would argue that each sport should receive equal weight, because her combined score with equal weightings would be higher than either Alan's or Debbie's, i.e., Betty would score (7 x 0.5) + (7 x 0.5) = 7, while Alan would score (9 x 0.5) + (2 x 0.5) = 5.5, Chuck would score 4.5, and Debbie would score 5.5. The following figure plots the athlete's scores graphically:

185. *See generally* DENNIS CHILD, THE ESSENTIALS OF FACTOR ANALYSIS (2d ed. 1990).



A, B, C, and D represent the athletes. The solid line connecting points A, B, and D represents the athletic frontier, i.e., the boundary beyond which no athlete has performed regardless of the relative weights assigned to marbles and croquet. A, B, and D are located at 100% of the frontier. Moreover, B can be said to be super-efficient to the extent her point lies beyond the line AD connecting the two points adjacent to it on the frontier. A and D are also super-efficient to the extent they lie beyond lines (not shown) connecting B with the points at which the frontier meets each axis. C falls short of the frontier regardless of the weights assigned to marbles and croquet. However, an optimal set of weights may be selected such that C "looks his best," i.e., he comes closest to reaching the frontier.

The same concept can be applied to the Court to determine which Justice is "most conservative" or "most liberal." However, instead of two dimensions (croquet and marbles), the Court analysis includes nine dimensions (all Study categories except Swing Votes). Although human minds have difficulty envisioning nine dimensions, computers can handle the required calculations with ease. We performed our analysis using Microsoft Excel's solver feature. Although the formulas and procedures involved are straightforward, a complete description of them is beyond the scope of this appendix.

* * *