Spriggs, James and Paul Wahlbeck. 1997. "*Amicus Curiae* and the Role of Information at the Supreme Court." *Political Research Quarterly* 50: 365–386.
Szmer, John, Martha Ginn, and Richard L. Pacelle, Jr. 2013. "Can We Talk?: The Solicitor General and Oral Argument Amicus." Paper presented at the Southern Political Science Association Meetings, Orlando, FL.
Ubertaccio, Peter N., III. 2005. *Learned in the Law and Politics: The Office of the Solicitor General*. New York: LFB Scholarly.
Vanberg, Georg. 2001. "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review." *American Journal of Political Science* 45: 346–361.
Waxman, Seth 1998. "'Presenting the Case of the United States as It Should Be:' The Solicitor General in Historical Context." *Journal of Supreme Court History* 23: 3–25.
Weingast, Barry. 1984. "The Congressional-Bureaucratic System: A Principal Agent Perspective (with applications to the SEC)." *Public Choice* 44: 147–191.
Whittington, Keith. 2007. *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History*. Princeton: Princeton University Press.
Wilkins, Richard 1988. "An Officer and an Advocate: the Role of the Solicitor General." *Loyola of Los Angeles Law Review* 21: 1167–1186.
Wohlfarth, Patrick C. 2009. "The Tenth Justice? Consequences of Politicization in the Solicitor General's Office." *Journal of Politics* 71: 224–237.
Wohlfarth, Patrick C. and Richard L. Pacelle, Jr. 2009. "Different Spheres of Influence?: The Solicitor General in a Time of Politicization." Southern Political Science Association Meetings, New Orleans, LA.
Wood, B. Dan. 1988. "Bureaucrats, Principals, and Responsiveness in Clean Air Enforcements." *American Political Science Review* 82: 215–234.
Yates, Jeff. 2002. *Popular Justice: Presidential Prestige and Executive Success in the Supreme Court*. Albany: SUNY Press.
Zorn, Christopher. 1997. *U.S. Government Litigation Strategies in the Federal Appellate Courts*. Ph.D. Dissertation. Columbus: The Ohio State University.

13
ORAL ARGUMENTS

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Introduction

In 1816, the state legislature of New Hampshire took control of Dartmouth College and acted as its new board of trustees because the college was in financial disarray.[1] Dartmouth viewed the takeover as a political move by the newly empowered Democratic-Republicans (Smith 1989, 14) and sued the state. At the outset, the case looked dim for the college. However, after losing at trial, Daniel Webster joined Dartmouth's counsel (Jeremiah Mason and Jeremiah Smith) and argued the case on initial appeal. They lost there, too, as the Exeter Court upheld the trial court's decision allowing the state government to continue its oversight of the college (Smith 1989, 14).

Webster (a graduate of Dartmouth) filed an appeal to the Supreme Court, and in 1819 argued *Dartmouth College v. Woodward*. During oral arguments, Webster addressed the justices and argued that New Hampshire's decision to take over the Dartmouth board of trustees was made in error. He explained that a 1769 royal English Charter established Dartmouth as a private educational institution, and he denied the state's argument that the college was a public institution simply because it served the citizens of New Hampshire. Instead, citing common law, natural law, and historical records, Webster argued that state intervention was a violation of the contract clause of the U.S. Constitution.

After exhausting applicable legal reasoning Webster laid out the policy consequences of a decision against Dartmouth College: if the Court ruled for New Hampshire, then all private institutions, not just colleges, would be in danger of losing control to the state. Specifically, Webster insisted, "It will be a dangerous experiment, to hold these institutions subject to the rise and fall of popular parties and the fluctuations of public opinions" (McIntyre 1903, quoted in Peterson 1987, 100).

Finally, after four hours of intricate legal reasoning, Webster paused, and while no exact transcript exists, O'Brien (2000) reports his final impassioned plea for the justices to save the college: "Sir I know not how others feel, but for myself, when I see my Alma Mater surrounded like Caesar in the senate house, by those who are reiterating stab upon stab, I would not for this right hand, have her turn to me, and say *Et tu quoque mi fili!* And thou too, my son!" Several justices, and almost everyone in the gallery, were brought to tears and, as O'Brien notes, "Webster's oratory won the day, as it often did" (257).

This account is indicative of the early era of the Supreme Court—when great orators such as Webster, John Calhoun, and Henry Clay appeared before it. During this period, oral arguments were elaborate oratories, but more importantly, they often provided the justices with their only source of information about a case: briefs were rarely if ever submitted, and outside parties did not submit *amicus curiae* (friend of the court) briefs.

In contrast, the modern Court obtains information from many sources: litigant briefs (Corley 2008; Epstein, Segal and Johnson 1996; Epstein and Kobylka 1992), *amicus curiae* briefs (Collins, Corley, and Hamner 2013; Collins 2007; Collins 2004; Spriggs and Wahlbeck 1997), briefs on *certiorari* (Black and Owens 2009; McGuire and Caldeira 1993; Caldeira and Wright 1988), the media (Epstein and Knight 1998), and lower court opinions (Corley, Collins, and Calvin 2011). One may wonder, then, why the Court continues to hear oral arguments when it can readily obtain an abundance of information about a case from any number of credible sources.

Indeed, conventional wisdom in judicial politics suggests that oral arguments presented to the Supreme Court generally have no impact on how the justices decide. As Segal and Spaeth (2002, 280) argue, there is no indication oral argument "regularly, or even infrequently, determines who wins and who loses." Rohde and Spaeth (1976) assert oral arguments have little influence on the outcome of a case because justices' voting preferences are stable. As evidence that justices do not think about these proceedings as they decide the legal and policy issues of a case, Segal and Spaeth (2002, 280) point out Justice Powell's copious conference notes make almost no references to oral argument. This is important for their contention because conference (where justices cast initial votes in a case) occurs within a day or so of when justices sit for oral arguments. In short, Segal and Spaeth suggest that if none of the justices used the words "oral argument" during private conference discussions, then the proceedings in open court must not affect the outcome of the case. Generally, then, for Rohde and Spaeth and Segal and Spaeth, justices' votes will not change as a result of what transpires during a one-hour exchange between the Court and counsel.

The participants in oral arguments—justices and attorneys—contest this notion. Chief Justice Hughes claimed that oral arguments helped the Court "separate the wheat from the chaff" (Frederick 2003, 3). Writing in 1955, Justice Harlan claimed that the view that oral arguments do not "count" was a "greatly mistaken one" (6). He viewed oral arguments as "perhaps the most effective weapon" that appellate attorneys have (1955, 11). Contemporary justices share that opinion. Chief Justice Roberts (2005, 69) has called them "terribly, terribly important," and Justice Scalia, who once called them a "dog and pony show," tempered his view and later admitted that "things can be put into perspective during oral arguments in a way that they can't in a written brief" (O'Brien 2000, 260).

There is now a substantial body of research to suggest that the justices are correct—oral arguments play a pivotal role in the Supreme Court's decision-making process. This chapter is divided into three sections. In the first section, we discuss scholarly accounts of oral arguments, including early research on the subject as well as more recent analyses. This section outlines the various ways that oral argument can influence the justices' decision-making processes as well as how observing the justices' behavior during these proceedings can help court watchers predict and understand the final results of that decision-making process. The second section provides some descriptive statistics of the justices' behavior during oral argument from 1986 to 2014. These data extend existing accounts, which largely demonstrate how the justices used the proceedings during the last years of the Rehnquist Court and the early years of the Roberts Court. The final section outlines potential avenues for future research on oral arguments.

Early Analyses of Oral Arguments

A great deal of what we know about the Supreme Court comes from written sources—the final written opinions the justices release for each case (e.g., Spaeth et al. 2015); the notes, papers, and personal effects of the justices (e.g., Maltzman and Wahlbeck 1996; Murphy 1964); and, less commonly, interviews with the justices and their clerks (e.g., Perry 1991).

While each of these data sources provides unique insights, there are notable downsides to them as well. Written majority opinions are shared work-products and are less useful for determining the preferences and contributions of individual justices (see, e.g., Segal and Spaeth 2002). Further, written opinions are only released at the final stage of the justices' decision-making process, giving us limited insight into what steps and negotiations led up to the final product. Although the personal papers and individual interviews can help reveal some of the behind-the-scenes interactions that lead up to the final written opinions, such data are increasingly difficult to obtain. Finally, while justices have given public interviews in recent years (e.g., Totenberg 2015; C-SPAN 2015), they are notoriously reticent about giving meaningful insights into how they decide cases, and their papers (if released) are not available to the public until years after they leave the bench. Chief Justice Burger's papers, for example, will not be made available to the public until 2026.

Oral arguments provide a valuable source of information for scholars who are interested in understanding the Court's decision-making process. First, they are the only public portion of the Court's decision-making process.[3] Every other decision—from choosing which cases to hear, to casting votes, to drafting opinions—occurs behind closed doors. In addition to being the only public portion of the decision-making process, it is a rare opportunity to observe the justices engage in relatively unscripted and potentially authentic behavior.

Although difficult to study, oral arguments have been the subject of scholarly inquiry for decades. Early studies, however, used mostly anecdotal accounts of behavior at oral argument to propose or test hypotheses. Miller and Barron (1975, 1210), for example, used anecdotes from notable Supreme Court cases to demonstrate how the justices "can subtly steer counsel beyond the frontiers of traditional doctrine" and subsequently push the law closer to the justices' preferences and beyond the boundaries presented in the litigants' briefs.

Wasby, D'Amato, and Metrailer (1976) used examples from cases dealing with racial equality and desegregation in the mid-twentieth century to suggest that the justices' behavior at oral argument could reveal their strategies and preferences in ways that opaque written opinions could not. An analysis of the non-random sample of cases, for example, indicated that the justices' "questions" were often more appropriately deemed "statements" and that they appeared to be negotiating over the legal and policy ramifications of the case with each other rather than having a back and forth with the lawyers. Because there was a strong parallel between the justices' questions during oral argument and their final decisions on the merits, Wasby, D'Amato, and Metrailer suggested that their behavior during oral argument could be used to better understand the justices' strategies and preferences. Prettyman (1984) conducted a "somewhat at random" (556) analysis of oral arguments to find instances in which the justices posed hypothetical questions to the litigants. He concluded, similar to Wasby and his colleagues, that the justices were using hypotheticals both to test the policy implications of their decision and to engage in a kind of "pre-conference" discussion with their fellow justices.

Schubert et al. (1992) provided the first generalizable account of oral arguments. In their analysis, they studied the transcripts and audio recordings of 300 randomly selected oral arguments and looked at word usage, pitch and other acoustical components of the justices' speech,

and the types of arguments that each justice made. Schubert et al., however, were primarily focused on two related goals: proving that oral arguments matter to the justices and that observational methods can and should be used to rigorously study them.

Recent Oral Argument Research

Much of what we know about oral arguments comes from analyses conducted over the past fifteen years. This work has firmly established that these proceedings are a pivotal stage in the Court's decision-making process for three reasons. First, the justices use oral arguments to gather information relevant to their decision-making task. Second, the justices use these proceedings as a "pre-conference" conversation that aids in coalition formation. Finally, the justices can be directly influenced and persuaded by arguments presented during the proceedings. Given the essential nature that these proceedings play in the Court's decision-making process, a significant body of research has established that the justices' behavior is predictive of how they will ultimately decide cases they hear. In this section we discuss, in depth, the four main bodies of research that focus on this aspect of the Court's decision-making process—oral arguments as an information gathering tool, oral arguments and coalition formation, oral arguments and persuasion, and oral arguments and prediction.

Oral Arguments as an Information Gathering Tool

The justices have access to a substantial amount of information in the form litigant and amicus briefs. These briefs serve to inform the justices about the legal merits of various arguments and the policy and strategic implications of potential outcomes (Collins 2007). As Johnson (2004) notes, however, the justices are passive recipients of this information: they do not directly control what the parties include in their briefs. Oral arguments play an essential role in the justices' decision-making process, then, because they represent the first and best opportunity that the justices have to actively seek out information that they deem relevant to their decision-making task.

Justice Harlan (1955, 7) argued that "oral argument gives an opportunity for interchange between court and counsel" to engage in a joint effort to "search out the truth both as to the facts and the law." Early Court watchers also seized upon the fact that the justices raise novel issues in oral argument in an attempt to use litigants to better understand the legal merits and policy implications of various arguments (Miller and Barron 1975; Prettyman 1984). In fact, studies on attorney quality imply that more-experienced attorneys are more persuasive at least in part because they are better able to reduce the cost justices must pay to obtain information (McGuire 1995; McGuire 1998; see also Johnson, Wahlbeck, and Spriggs 2006). McGuire (1998, 522) argues that "[o]ne constant in all litigation, however, is the justices' need for reliable information-data and clarity about the nature of the legal principles in conflict that will enable them to maximize their policy designs in the most informed manner."

Oral arguments are not just about discussing legal principles. As policy-maximizing actors, the justices require information about the potential policy implications of their decision (McAtee and McGuire 2007; Bailey, Kamoi and Maltzman 2005). Because they require the other government branches to implement their opinions, the justices also need information about the preferences of external actors and how the other branches may respond to their decisions (Johnson 2003; Epstein and Knight 1998). Oral arguments provide an invaluable source of information on both of those fronts. Johnson (2004) explicitly tests whether the justices use oral arguments to seek out information that is not contained in the briefs by content coding

the questions raised during the proceedings and comparing them to the issues included in the litigants' and amicus briefs. Specifically, he finds that the justices use oral arguments to "obtain information beyond that which is provided by the parties" to the case and, more specifically, that they use oral argument to "determine the extent of their policy options [and] to help them form beliefs about the preferences of external actors" and how those actors may respond to the Court's decision (Johnson 2004, 55–56). Philips and Carter (2010) similarly suggest that the justices seek out novel information during oral argument and that this behavior has actually increased over time.

Ringsmuth and Johnson (2013) validate these findings and produce further evidence that the Court behaves strategically during oral argument: the justices are more likely to seek out information about Congress and its preferences when the Court is constrained (i.e., ideologically distant relative to the median members of both chambers of Congress). Black, Sorenson, and Johnson (2013) add evidence that the justices are more actively engaged in seeking out information during oral arguments during those cases that are deemed politically salient by the media (as determined by the *New York Times* salience measure [Epstein and Segal 2000]). In fact, they argue that asking more questions during oral argument—and hence seeking out more information about a case—is a sign that the case is personally salient. In turn, this individual-level measure of salience can help scholars better understand and predict how many separate opinions may be filed, whether a justice will file a concurring opinion, and which justice will be assigned the task of authoring the majority opinion.

Oral arguments are a pivotal step in the Court's decision-making process, then, because they provide the justices with an opportunity to seek out new information that is relevant to their decision-making tasks. The justices use oral arguments to ask the litigants about the legal merits of their arguments and to help them understand the potential policy implications of different case outcomes. Further, these proceedings help the justices better understand how external actors might respond to their decision. Finally, as we discuss further in the next section, oral arguments can help them understand their colleagues' preferences about how to decide specific cases.

Oral Arguments and Coalition Formation

Hoekstra and Johnson (2003) tackle a perennial puzzle of why and when the justices will schedule a case for reargument, given the substantial costs in terms of time and effort that such a decision entails. They find that the justices are substantially more likely to schedule a case for reargument when the policy outcome of the decision is in doubt. The authors suggest that the justices use reargument as a means of garnering more information about the size and shape of the eventual majority coalition and what policy outcome that coalition will settle upon.

For us, the point of Hoekstra and Johnson's conclusion is that the justices do not *just* use oral arguments to gain information about the legal and policy elements of a case. Rather, they *also* use these proceedings to gain information about each other's preferences and to gain a better understanding of who is willing to vote for a particular legal and policy outcome in a case. A substantial amount of research confirms that the justices use oral arguments as a kind of "pre-conference" (Frederick 2003). Indeed, justices use this time to learn about each other's preferences, to try to alter each other's view of a case, and to engage in preliminary negotiations about the final decision (Wasby et al. 1976; Prettyman 1984; Baum 1995).

For example, analyses of the notes Justice Powell (Johnson 2004; Black, Johnson, and Wedeking 2014) and Justice Blackmun (Black, Johnson, and Wedeking 2014) took during oral

arguments indicate that they listen to their colleagues' comments with an ear toward determining how coalitions will form and particularly how their ideological allies and opponents might vote. These records are sometimes so good that a justice can use this information to accurately predict how her colleagues will vote on the case (Black, Johnson, and Wedeking 2014).

Black, Johnson, and Wedeking (2009) further demonstrate that justices interrupt each other in a strategic fashion. A justice is more likely to interrupt a colleague who had previously interrupted her in the past, and the justices generally interrupt colleagues who are ideologically distant from them more frequently than they do their ideological allies. This suggests, to Black and his colleagues, that the justices may strategically interrupt each other so as to "hinder the learning process with an eye toward the coalition formation process" (2009, 350). They replicate and expand this finding in Black, Johnson, and Wedeking (2014). Using multivariate methods, they demonstrate that the justices, as policy-maximizing actors, are more likely to interrupt colleagues who are ideologically distant. Doing so, they argue, impedes the interrupted justices' ability to share information with their ideological wing and hinders the coalition formation process.

In addition, justices are also more likely to interrupt colleagues who earlier interrupted them (Black, Johnson and Wedeking 2014). The justices may be policy-maximizing actors, but they are also human beings who may take umbrage at being interrupted by a colleague, even if that colleague is an ideological ally. Black, Johnson, and Wedeking also determined that a justice is more likely to interrupt her colleagues when she is considered to be an expert in the legal area at issue and that justices in general are less likely to interrupt each other when the case deals with complicated legal questions. The justices' policy-oriented behavior is tempered by a desire to learn about the legal merits of the case. The justices thus use oral arguments to begin the coalition formation process and to strategically interfere with opposing coalitions' ability to do the same within the dual constraints of meeting collegial expectations and learning about the legal merits of the case.

Oral Argument and Persuasion

Certainly the previous sections indicate justices can and do use oral arguments to gain information about the policy outcomes of a case and about each other's preferences, but the key question is whether they are actually persuaded by arguments presented to them during these proceedings. Or are oral arguments simply a "dog and pony show" in which the justices use the attorneys to engage in a "pre-conference" conversation rather than, as is intended, giving litigants an opportunity to inform and persuade the Court about the merits of their cases? As Segal and Spaeth (2002) argue, the justices may engage in strategic interaction, but their final votes on the merits of a case should be a sincere reflection of their (relatively fixed) attitudinal preferences. In this vein, oral arguments may be useful but will have little to no effect on justices' votes because their preferences should be both strong and stable (Rohde and Spaeth 1976).

Although Segal and Spaeth (2002) suggest justices may not be persuaded to vote in a given way based on what transpires during oral arguments, the justices tend to disagree with this assessment. For instance, Justice Ginsburg once cautioned that "not many cases, it is true, are won on the oral argument alone, but a case can be lost [at oral argument]" (Frederick 2003, x). Former Chief Justice Rehnquist has made similarly restrained comments about the probability that a justice changes her vote based on oral argument, when he admitted that "[oral argument] does make a difference: I think that in a significant minority of the cases in which I have heard

oral argument, I have left the bench feeling different about the case than I did when I came on the bench" (quoted in Roberts 2005, 80). Recent research has focused on how and when oral arguments might play a role in altering or even changing the justices' decisions on a case. Scholars demonstrate at least two ways that oral arguments can alter the justices' votes. First, these proceedings might provide unique information that clarifies the legal or policy elements of a case. Second, oral arguments may influence the justices' votes by altering the frame or dominant issue of the case.

The first way that oral arguments may serve to persuade the justices is by providing them with novel information that alters their view of the case. As we discuss above, these proceedings serve the important function of providing the justices with relevant information about the legal and policy elements of a case, as well as about the preferences of actors external to the Court. The justices may have strong and unwavering preferences but, unless one assumes they are perfectly informed, they may need additional information to determine the potential ideological impact of their decision. Oral arguments provide litigants an opportunity to supply the justices with the information they need to translate their preferences into law.

McGuire (1995, 1998), for example, suggests that more-experienced litigants have a greater probability of winning than their similarly situated but less-experienced peers. McGuire argues that this is because repeat players are better able to provide the justices with essential information about the legal and policy merits of the case. Although McGuire does not differentiate between information provided in the litigants' briefs and during their oral arguments, his findings provide preliminary support for the hypothesis that arguments made at oral arguments *can* be persuasive: If the justices had strong and unwavering priors about the case, the quality of information provided by attorneys would have little-to-no effect on the justices' votes.

Beyond the specific quality of attorneys who appear, Johnson (2004) offers evidence that information presented during oral arguments uniquely influences the justices' votes. He hypothesizes that if oral arguments play a significant role in how the justices' make their decisions, then information from these proceedings should feature prominently in the Court's eventual opinions. To test this claim Johnson tabulates the arguments raised in litigant and *amicus* briefs as well as the arguments raised during oral arguments. He then tracks which arguments found their way into the Court's eventual majority opinion. The results demonstrate that the justices make statistically and substantively significant use of information that emanates *only* from oral arguments. Hence, the justices can and do use these proceedings to elicit useful information that informs their beliefs and preferences about the case and, subsequently, alter their legal and policy decisions.

The second way that oral arguments may influence the justices' votes is by altering the frame or dominant issue of the case. Wedeking (2010) finds that external actors' behavior can affect the justices' decisions through an analysis of how litigants and the lower courts frame their arguments. Because petitioners lost at the lower court level, they have a strategic incentive to provide an alternative frame of the case when appearing before the Supreme Court. Indeed, to adopt the same frame as they did in the lower court would be to present a view that has already lost. Wedeking finds that, all else equal, when petitioners use an alternative frame from the lower court decision, they increases their odds of winning the case. This suggests that changing the rhetorical dimension of the case can lead to a more favorable interpretation, "just enough to change the political outcome from an apparent loss to a victory" (Wedeking 2010, 619). Wedeking suggests that this finding is consistent with Kritzer and Richard's (2002) work on the constraining force of the law on judicial decisions. Per Kritzer and Richards, the justices feel constrained to operate within an established jurisprudential regime; if the litigants can shift

the debate to one that is more favorable to them (by, for example, altering the level of scrutiny), they may be able to snatch "victory from the jaws of defeat" (Epstein and Shvetsova 2002, 93).

The justices also use this sort of heresthetical maneuvering during oral arguments to alter case outcomes. Analyzing the justices' behavior during these proceedings between 1998 and 2006, Black, Schutte, and Johnson (2013) demonstrate that the justices were more likely to raise and discuss threshold issues—that is, whether the case was moot—when the most likely result on the merits deviates from their preferred policy outcome. If a justice knows that the case will likely be resolved in a fashion that is inconsistent with her preferences, she is more likely to push her colleagues to dispose of the case on a threshold issue. This finding is consistent with experimental research into motivated reasoning and legal decision making (Braman 2006). The bottom line is that, by reframing the issues during oral arguments, the litigants and justices can alter the debate and, in some instances, alter the outcome of the case as well.

Finally, Johnson, Wahlbeck, and Spriggs (2006) provide compelling evidence that oral arguments matter by piecing together these various threads of research. They systematically coded Justice Blackmun's grades of attorney quality during oral argument and show, first, that he tended to give better grades to lawyers who possessed characteristics that are typically associated with high-quality advocates. Attorneys with more litigating experience or attorneys who attended elite law schools, for example, tended to receive better grades. Second, Blackmun's grades were significant predictors of how the Court would vote, even when controlling for other legally and attitudinally relevant variables *and* even when controlling for those same background characteristics used to determine that Blackmun's grades were not randomly assigned. In confirmation of these findings, Ringsmuth, Bryan, and Johnson (2013) look at the pre- and post-oral argument notes of Powell and Blackmun and find that the justices' altered their disposition about a case due in part to the arguments raised in oral argument. Whether by providing high-quality information or by strategically reframing the case, better performance by attorneys during oral arguments clearly seems to increase the odds that a litigant will win the case.

Using Oral Arguments to Predict Outcomes

Finally, we turn to whether what transpires during oral arguments can help scholars predict which side will actually win a case. Recall that oral arguments provide the justices with important and unique information, that they assist the justices in coalition formation, and that they can even persuade the justices to change their views and ultimate decisions in a case. Given the pivotal role that these proceedings play in the Court's decision-making process, it should not be surprising to find that court watchers can use oral arguments to predict how the Court will rule in a given case.

Very early on in the study of oral arguments, scholars knew or at least suspected that the justices' behavior could signal their eventual votes. Wasby et al. (1976) and Cohen (1978), for example, conducted qualitative assessments of the justices' behavior during these proceedings and noted that the justices' questions and statements closely mirrored the outcome and analysis used to justify that outcome in the Court's written opinions. Greenhouse (2004) noted that she could outperform statistical models of Supreme Court decision making *and* legal experts due, at least in part, from her ability to make inferences about the justices' behavior during oral arguments. The question becomes whether the justices systematically telegraph their intent in such a way that can be captured through methodical data collection.

Early analyses based on small samples of cases determined that the justices speak at different rates from each other and at different rates among cases, providing a useful if simple variable to

determine, from a quantitative level, whether the justices' behavior can be used to predict their votes (Wasby et al. 1976; Schubert et al. 1992). A smattering of studies used this intuition to conduct small-N quantitative analyses of cases to determine whether the rate at which justices speak is predictive of how they will vote. Shullman (2004), for example, watched ten oral arguments and coded each justices' comments based on how "helpful" or "hostile" their comments were to the litigant. She notes that the justices generally ask more hostile questions than friendly questions, that they specifically asked more hostile questions of the litigant who would go on to lose, and that they generally ask more questions (helpful and hostile) of litigants who would go on to lose. Chief Justice Roberts (2005) conducted a similar analysis of fourteen cases from 1980 and fourteen cases from 2003. He found that the litigant who was asked the most questions lost in twenty-four of those twenty-eight cases. Wrightsman (2008) analyzed a non-random sample of twelve "ideological" cases and twelve "non-ideological" cases from the October 2004 term. He defined an ideological case as one that should "trigger a value-laden bias in a justice" (137). His analysis largely confirms what Shullman and Roberts found. That is, the side receiving more questions lost in seven of the twelve ideological cases—those that are probably more controversial for the Court. This number dramatically decreases, however, in the non-ideological cases. In those, he could predict the winner in only three of the twelve cases.

Johnson et al. (2009) conducted perhaps the first rigorous, large-N analysis of whether the justices' behavior during oral arguments is predictive of their final votes by studying all oral argument transcripts from the 1979 to 1995 terms of the Court. They note that the mean number of questions asked per case increased over that time period, from a minimum of slightly above 80 questions per case in 1985 to a maximum of 147 questions per case in 1995. Furthermore, they found that the average number of words uttered by the justices during the proceedings increased from about 2,000 words at the tail end of the Burger Court to over 2,800 words per oral argument in the early 1990s.

Importantly, Johnson et al. (2009) demonstrate that the relative number of questions and words directed at the two sides is a statistically and substantively significant predictor of who will win a case. Indeed, when controlling for the justices' ideological preferences and other relevant variables (such as solicitor general and interest-group participation) multivariate analysis indicates that there is a .64 probability of reversal when the justices ask the same number of questions of each side, but only a .39 probability of reversal when the justices ask the petitioner fifty more questions than the respondent. They find a similar pattern when analyzing the number of words spoken by the justices during each side's argument.

This large-N, quantitative study indicates that the justices' behavior during oral arguments is highly predictive of their final votes. It more generally demonstrates that simple observational data can be used to make such predictions.[3] Subsequent analysis has delved deeper into the theory and data to generate more qualitatively rich accounts of the justices' behavior. Drawing on the fields of social psychology and linguistics, Black et al. (2011) hypothesize that the justices are likely to exhibit their preferences and views through the emotional content of their language during oral argument. If the justices have a preference, especially a strong preference, their "words, and the emotions behind them," can provide observers valuable insights into the justices' "intentions, motives, and desires" (Black et al. 2011, 573).

To test this hypothesis, Black and his colleagues analyzed Court-level behavior during oral arguments from 1979 to 2008 and justice-level behavior from 2004 to 2008.[4] In so doing, they examined whether the justices used more negative words when speaking to the side they intended to vote against. More specifically, they coded all of the words spoken in terms of positive or negative connotation using the *Dictionary of Affect in Language* (Whissell 1989; Whissell

et al. 1986) and found that, when controlling for politically relevant variables, the relative percent of unpleasant words directed at the litigants is a statistically and substantively significant predictor of how the Court and individual justices are likely to vote. As they put it, "[w]hen the Court's unpleasantness is at the sample average of 0 (i.e., balanced treatment for the petitioner and respondent), the petitioner's likelihood of winning is 0.61. . . . However, when the Court directs significantly more unpleasant language towards the . . . petitioner the likelihood of reversal drops to an anemic 0.48" (Black et al. 2011, 578).

Ultimately, the public discussion that transpires at oral arguments can and does help scholars predict case outcomes. Combined with the other advantages of analyzing these proceedings, it is clear that Supreme Court oral arguments are, and should be, an important part of the Court's decision-making process. In the next section, we turn to expanding the knowledge we have about these proceedings.

Supreme Court Oral Arguments: A Snapshot

In this section we provide some descriptive statistics of the justices' behavior during oral arguments from 1986 to 2014. These data extend existing accounts, which largely demonstrate how the justices have used these proceedings during the last years of the Rehnquist Court and the early years of the Roberts Court.

We draw our initial data from the justice-identified transcripts of all oral arguments from 2004 onward. Prior to that, transcripts identified when *a* justice was speaking but not *which* justice was speaking. These data come from the Oyez project, which has undertaken the task of using both machine and hand coding to voice-identify each speaker in all oral arguments for which transcripts and recordings are available. Currently, an incomplete dataset is available for orally argued cases stretching back to 1986. Although cases are missing, these data allow us to draw some preliminary inferences about the justices' behavior over this time period. Thus, our data include all available cases from 1986 to 2004.

We initially present data on the number of times the justices speak during oral arguments. Although previous studies have attempted to develop coding schemes that differentiate between questions and statements (e.g., Wrighstman 2008), we present the data on every time a justice speaks during these proceedings. Tracking each utterance is in line with recent research in the field (Black et al. 2011) and provides a reliable picture of the justices' behavior.

Figure 13.1 presents box-and-whisker plots of the number of utterances that the Court made in aggregate from 1986 through 2014.[5] The black circle represents the mean number of utterances per case. The middle line in the shaded region represents the median number of utterances, while the top and bottom of the shaded region represent the 75th and 25th percentile of utterances, respectively. The upper and lower whisker indicate the highest and lowest value that is within 1.5 times the interquartile range, respectively. Each individual dot represents an outlier case (i.e., cases that fall outside 1.5 times the interquartile range).

The mean number of utterances per oral argument during this time period is about 116. Given that oral arguments are typically scheduled to last for only one hour, this means the justices speak almost once per minute. As Figure 13.1 demonstrates, the Court's overall rate of speaking has been relatively stable over the past two decades. The mean number of utterances ranges from a low of about 96 in 1986 to a high of about 139 in 2000. There are several outliers in the data. One notable case is *McConnell v. FEC*, which produced 348 utterances. The Court scheduled four hours of argument for *McConnell*, a case that dealt with provisions of the controversial Bipartisan Campaign Reform Act and which eventually produced

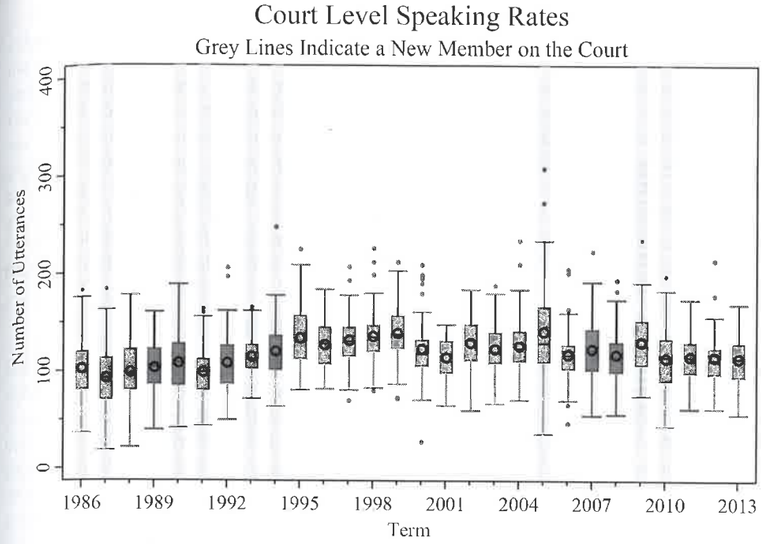

Figure 13.1 Court Speaking-Level Rates

Note: The black circle represents the mean number of utterances per case. The middle line in the shaded region represents the median number of utterances, while the top and bottom of the shaded region represent the 75th and 25th percentile of utterances, respectively. The upper and lower whisker indicate the highest and lowest value that is within 1.5 times the interquartile range, respectively. Each individual dot represents an outlier case (i.e., cases that fall outside 1.5 times the interquartile range).

a 272-page written opinion. The other notable outlier was *Maryland v. Blake*, a case involving a suspect's right to an attorney. The arguments in Blake were of the standard length, but the justices frequently interrupted and spoke over each other and the attorneys (Black, Johnson, and Wedeking 2009, 339), perhaps implying a degree of confusion or agitation over the issues being presented. The Court released a unanimous opinion dismissing the *writ of certiorari* as improvidently granted.[6]

Changes in the Court's composition do not seem to have a noticeable effect on the overall rate at which the justices as a group speak. Of course, aggregate numbers of this sort may be hiding cross-cutting trends. For example, the famously silent Justice Thomas replaced Justice Marshall in 1991. Justice Marshall did not participate much in oral arguments toward the end of his career, but any case in which Thomas speaks is an outlier. As such we might expect an overall drop in the aggregate number of utterances made by the Court when Thomas joined. On the other hand, Thomas was preceded by the addition of Justice Souter in 1990 and followed by the addition Justice Breyer in 1994. Souter contributes at an average rate but replaced a fairly silent Justice Brennan. Justice Breyer is one of the more verbose members of the Court and replaced the relatively quiet Justice Blackmun. This means that any effect Justice Thomas's addition to the Court would have was offset by the addition of Justices Souter and Breyer.

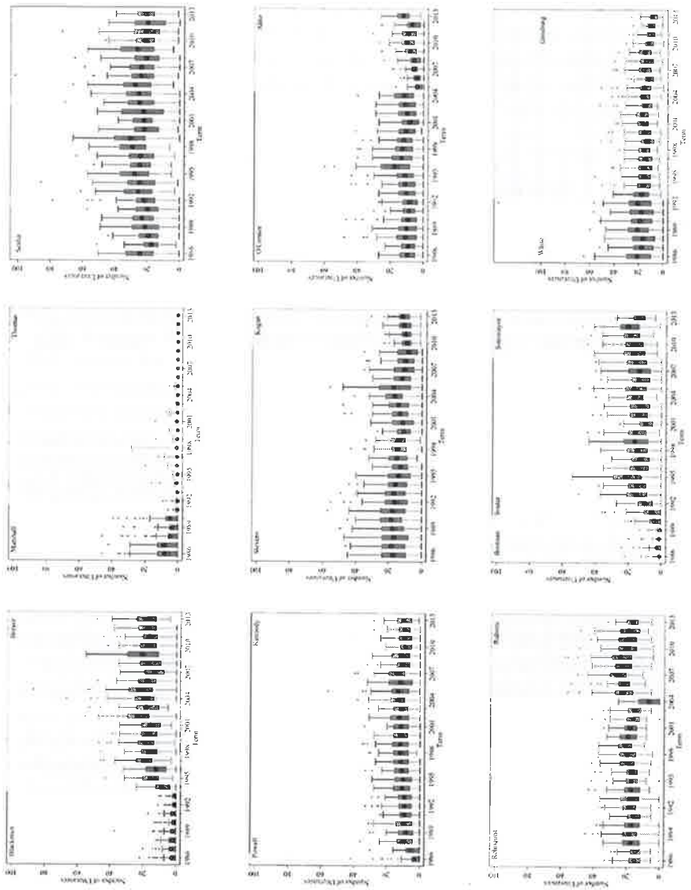

Figure 13.2 Individual Justices' Utterances During Oral Arguments

Note: The black circle represents the mean number of utterances per case. The middle line in the shaded region represents the median number of utterances, while the top and bottom of the shaded region represent the 75th and 25th percentile of utterances, respectively. The upper and lower whisker indicate the highest and lowest value that is within 1.5 times the interquartile range, respectively. Each individual dot represents an outlier case (i.e., cases that fall outside 1.5 times the interquartile range).

Figure 13.2 demonstrates the extreme variability in the number of utterances made by individual justices. Each individual graph tracks one seat on the Court from 1986 through 2014 and the rate at which a justice and his replacement(s) speak. There is significant variation of speaking patterns between justices, but also a great deal of variation over time for each individual justice. Further, the often broad interquartile ranges indicate that the justices do not speak at a fixed rate across all cases. Rather, their behavior appears to be very case-dependent, lending credence to Black, Sorenson, and Johnson's (2013) argument that the justices' behavior during these proceedings is likely indicative of their level of engagement in the case. More than that, it calls attention for the need to study oral argument behavior using justice-centered models that can account for the idiosyncratic behavior of each justice. We expand upon that and other areas of future research in the next section.

Oral Arguments: Future Directions

Although now a much more well-studied phenomenon, oral arguments still represent an undertilled area of inquiry within law and political science. The study of oral arguments is poised to make great strides as technological tools become more sophisticated and new data sources become available. There are at least three areas in which this research can and should be directed: advancing our theoretical understanding of what drives the justices' behavior during oral arguments, developing a more nuanced understanding of justice-specific behavior during these proceedings, and expanding the study of oral arguments beyond the Supreme Court.

Theory and Oral Arguments

A great deal of research to date is implicitly, if not explicitly, agnostic as to what motivates the justices' behavior during oral arguments. In particular, recent research in this area rarely discusses directly whether and when any of the major models of judicial decision making best explains the justices' behavior: the legal model, the attitudinal model, the strategic model, or a behavioral model. Certainly some work addresses this question head-on. Johnson (2004), for example, makes an explicit argument that the justices are not single-minded policy-maximizing actors per a classical attitudinalist conception and that the strategic model can better explain their behavior during oral argument. Other work is at least implicitly grounded in one or more models of decision making. Black et al. (2011), for example, straddle behavioral and attitudinal explanations of the justices' behavior by using theories of linguistics and cognition from social psychology while also controlling for traditional conceptions of the justices' ideological predispositions as explained by attitudinalist accounts.

And yet other work is ambivalent as to what best describes the justices' behavior. Epstein, Landes, and Posner (2010, 436–437), for example, argue that the legal and "realistic" (i.e., a combination of strategic and attitudinal models) models are "compatible." The justices' desire to get the "right" legal answer by acting in "accordance with statutory language and with precedent, for example, both economizes on judicial time and creates the politically valuable impression that judges merely follow or apply law and do not just make it up as they go along to promote their political preferences" (Epstein, Landes, and Posner 2010, 437). There are benefits to be had by exploring the tension between these schools of thought and identifying why and when the justices pursue legal, policy, or strategic goals during oral argument. Doing so would not just provide a better understanding of how the Court operates, but would also enhance our predictive models of the Court's behavior.

Justice-Specific Analysis

Studies have demonstrated that the rate at which justices ask questions during oral argument vary from each other, vary over time, and vary from case to case. Similarly, the types of questions and manner in which they are posed vary from justice to justice. The most extreme example of this variation is Justice Thomas, who is notorious for his silence during oral arguments, but there are more nuanced differences among the justices as well. More research into justice-specific behavior will improve models by accounting for each justices' idiosyncratic approach to oral arguments.

Shullman (2004), for instance, generated qualitative descriptions of the justices' behavior during oral arguments. She found that the professorial Breyer tends to ask more hypothetical questions; Stevens, while polite, tends to ask many hostile questions (and does so at about the same rate regardless of who he ends up voting for); and Kennedy tends to ask neutral questions. This coincides with Epstein, Landes, and Posner's analysis (2010), which determined that the "more question rule" (i.e., when a justice asks more questions of one side, she tends to vote against that side) applies to all of the justices with the exception of Justice Kennedy, whose behavior towards petitioners and respondents is not at all predictive, in statistical terms, of how he will vote. Epstein, Landes, and Posner argue that this is consistent with Justice Kennedy's perceived role as being the swing vote on the bench. As additional justice-identifying data become available, and as linguistic software improves and becomes more accessible, political scientists should continue to study justice-specific behavior during oral arguments. Using data-driven techniques to create profiles of each justices' unique approach to oral arguments would provide more predictive power to our models and deeper explanations of the justices' behavior.

Moving Beyond the Supreme Court

Finally, the study of oral arguments tends to be dominated by the U.S. Supreme Court. The Supreme Court is the most powerful and public organ of the U.S. judiciary and, consequently, produces the most observable data to collect and study. We should increasingly turn our focus to political phenomena occurring in oral arguments in lower level federal courts, state courts, and judiciaries around the world. This is a normatively compelling goal, and a scientifically compelling one as well. Expanding the scope of study provides an opportunity to test theories of judicial behavior on courts that have different institutional rules, that include different types of members, and that operate in distinct political, cultural, and economic contexts. This will increase our understanding not only of oral arguments and the judicial process, but of political phenomena more generally.

Conclusion

Research into oral arguments has demonstrated that these proceedings matter. The justices use oral arguments to gather information important to their decision-making task. They engage in strategic interactions meant to form—or interrupt the formation of—majority coalitions prior to conference. The information and arguments provided during oral arguments, from both the advocates and the justices, can alter and sometimes even change the justices' votes. And observing the justices' behavior during oral arguments can power models that predict the justices' votes.

As research methods improve and become more sophisticated, so too will our understanding of the role that oral arguments play in the decision-making process. Oral arguments present researchers with a unique opportunity to study the justices engaging in public and often

unscripted behavior. As the field capitalizes on that opportunity, we have no doubt that we will produce novel findings that greatly increase our understanding of the Supreme Court and the judiciary as an institution.

Notes

1 This section comes from Johnson (2004) and is used with permission from the author.
2 The justices do release their opinions in open court, but this occurs once they have made their decisions.
3 Similar analyses with similar results have also been featured in various law review publications (e.g., Epstein, Landes, and Posner 2010; Philips and Carter 2010). Even media outlets like FiveThirtyEight (Roeder 2015) have "discovered" that oral argument data can be used to predict case outcomes.
4 At the time at which the Black et al. article was published, oral argument transcripts identified the justices in only those cases argued between 2004 and later. Prior to those years, the transcripts only specify that the "Court" is speaking.
5 These data exclude all reargued cases.
6 The Court held about six hours of oral arguments over the course of three days for *National Federation of Independent Businesses v. Sebelius*, 132 S.Ct. 2566 (2012). This case is almost certainly an outlier, but it is currently missing from our dataset.

References

Bailey, Michael, Brian Kamoic, and Forrest Maltzman. 2005. "Signals From the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision-Making." *American Journal of Political Science* 49 (January): 72–85.

Baum, Lawrence. 1995. "May It Please the Court: Roundtable on Oral Arguments." *Law and Courts Newsletter* 5(1): 4.

Black, Ryan C., Rachel A. Schutte, and Timothy R. Johnson. 2013. "Trying to Get What You Want: Heresthetical Maneuvering and U.S. Supreme Court Decision Making." *Political Research Quarterly* 66(4): 819–830.

Black, Ryan C., Maron W. Sorenson, and Timothy R. Johnson. 2013. "Toward an Actor-Based Measure of Supreme Court Case Salience: Information-Seeking and Engagement During Oral Arguments." *Political Research Quarterly* 66(4): 804–818.

Black, Ryan C. and Ryan J. Owens. 2009. "Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence." *Journal of Politics* 71(3): 1062–1075.

Black, Ryan C., Timothy R. Johnson, and Justin Wedeking. 2009. "Pardon the Interruption: An Empirical Analysis of Supreme Court Justices' Behavior During Oral Argument." *Loyola Law Review* 55: 331–351.

Black, Ryan C., Timothy R. Johnson, and Justin Wedeking. 2014. *Oral Arguments and Coalition Formation on the U.S. Supreme Court: A Deliberate Dialogue*. Ann Arbor: The University of Michigan Press.

Black, Ryan C., Sarah A. Treul, Timothy R. Johnson, and Jerry Goldman. 2011. "Emotions, Oral Arguments, and Supreme Court Decision Making." *Journal of Politics* 73(2): 572–581.

Braman, Eileen. 2006. "Reasoning on the Threshold: Testing the Separability of Preferences in Legal Decision Making." *Journal of Politics* 68(2): 308–321.

Caldeira, Gregory and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82(4): 1109–1127.

Cohen, Donald. 1978. "Judicial Predictability in United States Supreme Court Oral Advocacy: Analysis of the Oral Argument in TVA v. Hill." *University of Puget Sound Law Review* 2: 89–136.

Collins, Paul M. Jr. 2004. "Friends of the Court: Examining the Influence of Amicus Curiae Participation in US Supreme Court Litigation." *Law & Society Review*38(4): 807–832.

Collins, Paul M. Jr. 2007. "Lobbyists before the U.S. Supreme Court: Investigating the Influence of Amicus Curiae Briefs." *Political Research Quarterly* 60(1): 55–70.

Collins, Paul M. Jr., Pamela C. Corley, and Jesse Hamner. 2013. "Me Too? An Investigation of Repetition in U.S. Supreme Court Amicus Curiae Briefs." Paper presented at the Annual Meeting of Midwest Political Science Association, April 2013.

Corley, Pamela C. 2008. "The Supreme Court and Opinion Content." *Political Research Quarterly* 61(3): 468–478.

Corley, Pamela C., Paul M. Collins Jr., and Bryan Calvin. 2011. "Lower Court Influence on U.S. Supreme Court Opinion Content." *Journal of Politics* 73(1): 31–44.
C-SPAN. 2015. *Conversation With Justice Ruth Bader Ginsburg*. www.c-span.org/video/?326578-1/conversation-supreme-court-justice-ruth-bader-ginsburg. [Accessed 31 December 2015].
Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: CQ Press.
Epstein, Lee, William M. Landes, and Richard A. Posner. 2010. "Inferring the Winning Party in the Supreme Court from the Pattern of Questioning at Oral Argument." *Journal of Legal Studies* 39: 433–467.
Epstein, Lee and Jeffrey A. Segal. 2000. "Measuring Issue Salience." *American Journal of Political Science* 44(1): 66–83.
Epstein, Lee, Jeffrey A. Segal, and Timothy Johnson. 1996. "The Claim of Issue Creation on the U.S. Supreme Court." *American Political Science Review* 90(4): 845–852.
Epstein, Lee and Joseph F. Kobylka. 1992. *The Supreme Court and Legal Change: Abortion and the Death Penalty*. Chapel Hill: University of North Carolina Press.
Epstein, Lee and Olga Shvetsova. 2002. "Heresthetical Maneuvering on the U.S. Supreme Court." *Journal of Theoretical Politics* 14(1): 93–122.
Frederick, David C. 2003. *The Art of Oral Advocacy*. St. Paul, MN: Thomson West.
Greenhouse, Linda. 2004. "Press Room Predictions." *Perspectives on Politics* 2: 781–784.
Harlan, John M. 1955. "What Part Does the Oral Argument Play in the Conduct of an Appeal?" *Cornell Law Review* 41(1): 6–11.
Hoekstra, Valerie and Tim Johnson. 2003. "Delaying Justice: The Supreme Court's Decision to Hear Reargument." *Political Research Quarterly* 56(3): 351–360.
Johnson, Timothy. 2004. *Oral Arguments and Decision Making on the United States Supreme Court*. Albany, NY: SUNY Press.
Johnson, Timothy R. 2003. "The Supreme Court, the Solicitor General, and the Separation of Powers." *American Politics Research* 31(4): 426–451.
Johnson, Timothy R., Paul J. Wahlbeck, and James F. Spriggs. 2006. "The Influence of Oral Argument on the U.S. Supreme Court." *American Political Science Review* 100(1): 99–113.
Johnson, Timothy R., Ryan C. Black, Jerry Goldman, and Sarah A. Treul. 2009. "Inquiring Minds Want to Know: Do Justices Tip Their Hands With Questions at Oral Argument in the U.S. Supreme Court?" *Washington Journal of Law & Policy* 29: 241–261.
Maltzman, Forrest and Paul J. Wahlbeck. 1996. "May It Please the Chief? Opinion Assignments in the Rehnquist Court." *American Journal of Political Science* 40: 421–443.
McAtee, Andrea and Kevin T. McGuire. 2007. "Lawyers, Justices, and Issue Salience: When and How do Legal Arguments Affect the U.S. Supreme Court?" *Law & Society Review* 41(2): 259–278.
McGuire, Kevin. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *Journal of Politics* 57: 1987–1996.
McGuire, Kevin and Gregory A. Caldeira. 1993. "Lawyers, Organized Interests, and the Law of Obscenity: Agenda Setting in the Supreme Court." *American Political Science Review*. 87: 717–726.
McGuire, Kevin T. 1998. "Explaining executive success in the US Supreme Court." *Political Research Quarterly* 51(2): 505–526.
Miller, Arthur Selwyn and Jerome A. Barron. 1975. "The Supreme Court, the Adversary System, and the Flow of Information to the Justices: A Preliminary Inquiry." *Virginia Law Review* 61(6): 1187–1245.
Murphy, Walter F. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.
O'Brien, David M. 2000. *Storm Center: The Supreme Court in American Politics*. New York: W.W. Norton.
Perry, H.W. 1991. *Deciding to Decide*. Cambridge: Harvard University Press.
Peterson, Merrill. 1987. *The Great Triumvirate: Webster, Clay and Calhoun*. New York: Oxford University Press.
Phillips, James C. and Edward L. Carter. 2010. "Source of Information or 'Dog and Pony Show'? Judicial Information Seeking During U.S. Supreme Court Oral Argument, 1963–1965 and 2004–2009." *Santa Clara Law Review* 50: 101–203.
Prettyman, E. Barrett Jr. 1984. The Supreme Court's Use of Hypothetical Questions at Oral Argument." *Catholic University Law Review* 33(3): 555–591.
Richards, Mark and Herbert Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96(2): 305–320.
Ringsmuth, Eve M., Amanda C. Bryan, and Timothy R. Johnson. 2013. "Voting Fluidity and Oral Argument on the U.S. Supreme Court." *Political Research Quarterly* 66(2): 429–440.
Ringsmuth, Eve M. and Timothy R. Johnson. 2013. "Supreme Court Oral Arguments and Institutional Maintenance." *American Politics Research* 41(4): 651–673.

Roberts, John G. 2005. "Oral Advocacy and the Re-Emergence of a Supreme Court Bar." *Journal of Supreme Court History* 30(1): 68–81.
Roeder, Oliver. 2015. "How to Read the Minds of a Supreme Court Justice." *FiveThirtyEight*. http://fivethirtyeight.com/features/how-to-read-the-mind-of-a-supreme-court-justice/. [Accessed 31 December 2015].
Rohde, David W. and Harold J. Spaeth. 1976. *Supreme Court Decision Making*. San Francisco: W.H. Freeman.
Schubert, James N., Steven Peterson, Glendon A. Schubert, and Stephen L. Wasby. 1992. "Observing Supreme Court Oral Argument: A Biosocial Approach." *Politics and Life Sciences* 11 (February): 35–51.
Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.
Shullman, Sarah. 2004. "The Illusion of Devil's Advocacy: How the Justices of the Supreme Court Foreshadow Their Decisions During Oral Argument." *The Journal of Appellate Practice and Process* 6 (Fall): 271–293.
Smith, Craig R. 1989. *Defender of the Union: The Oratory of Daniel Webster*. New York: Greenwood Press.
Spaeth, Harold J., Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh. 2015. *Supreme Court Database, Version 2015 Release 01*. http://Supremecourtdatabase.org.
Spriggs, James F., II and Paul J. Wahlbeck. 1997. "Amicus Curiae and the Role of Information at the Supreme Court." *Political Research Quarterly* 50: 365–386.
Totenberg, Nina. 2015. *Law Beyond Our Borders: Justice Breyer Is on a Mission*. NPR. www.npr.org/2015/09/14/439514086/law-beyond-our-borders-justice-breyer-is-on-a-mission. [Accessed 31 December 2015].
Wasby, Stephen L., Anthony A. D'Amato, and Rosemary Metrailer. 1976. "The Functions of Oral Argument in the U.S. Supreme Court." *Quarterly Journal of Speech* 62: 410–422.
Wedeking, Justin. 2010. "Supreme Court Litigants and Strategic Framing." *Political Research Quarterly* 54(3): 617–631.
Whissell, Cynthia. 1989. "The Dictionary of Affect in Language." *Theory, Research, and Experience*, edited by Robert Plutchik and Henry Kellerman. New York: Academic Press, 113–131.
Whissell, Cynthia, M. Fournier, R. Pelland, and K. Makarec. 1986. "The Dictionary of Affect in Language: Reliability, Validity, and Applications." *Perceptual and Motor Skills* 62: 875–888.
Wrightsman, Lawrence. 2008. *Oral Arguments Before the Supreme Court: An Empirical Approach: An Empirical Approach*. Oxford: Oxford University Press.

Cases Cited

Maryland v. Blake, 546 U.S. 72 (2005)
McConnell v. FEC, 540 U.S. 93 (2003)
National Federation of Independent Businesses v. Sebelius, 132 S.Ct. 2566 (2012)