ABSTRACT

Formal theories of majority voting suggest that the organizing rules of the Judicial Conference of the United States (JCUS) present the Chief Justice of the Supreme Court with the opportunity to sway the policy statements of the JCUS in favor of his preferred language. Existing political science literature on the Chief Justice demonstrates that Chiefs use their authority to pursue their policy agendas in a variety of other settings. The membership of the JCUS Executive Committee – a particularly important committee in the Conference – is examined over the 1970–98 period. Both Chiefs during this period consistently stacked the committee with conservative policy outliers, and did so in a sophisticated strategic fashion.

KEY WORDS: Chief Justice, committee assignment, Judicial Conference, strategic

Chief Justice as Policy Activist

The Chief Justice’s role on the Supreme Court has been exhaustively examined in the political science literature and elsewhere. The Chief has been shown to be a policy-motivated Justice, and uses his unusual powers to further his agenda. The Chief sets the court docket in a strategic way (Caldeira and Wright 1990), presides over the conference in a manner which may structure the debate (Epstein and Knight 1998) and assigns opinions when he votes with the majority at the initial merits stage (Danelski 1989). In his opinion assignments, the Chief self-assigns important cases and chooses ideological allies for the remainder (Ulmer 1970; Rohde 1972; Slotnick 1978;
Maltzman and Wahlbeck 1996a), or strategically chooses opinion writers so as to maintain his most preferred majority coalition (Rohde 1972; Brenner and Spaeth 1988; Brenner et al. 1989; Danelski 1989; Maltzman and Wahlbeck 1996b; Epstein and Knight 1998). Chiefs even occasionally misrepresent their views on the merits in order to usurp the majority opinion assignment right and craft a new majority (Epstein and Knight 1998).

While the Chief Justice's policy influence is certainly greatest as the administrator of the Supreme Court, his policy significance is not limited to that role. The federal court system interacts with the legislative branch through a formal voting body, the Judicial Conference of the United States (JCUS), and provides advice to the Congress on certain pending or proposed legislative matters. The Chief serves as chairman of the JCUS, makes all committee assignments and presides over its deliberations. The JCUS is composed of about 20 appeals and district judges, serving as delegates for their brethren on the bench, and may be thought of as the organization which lobbies Congress on behalf of the federal judiciary. As Smith and Jones note: 'Congress often defers to judges or seeks the Judicial Conference’s endorsement when considering court reform legislation' (Smith and Jones 1993: 53).

Lobbying activities of the JCUS are not limited to selective benefits, such as salary and pension adjustments, but extend to a wide array of policies over which judges and elected officials disagree. In the 1990s, for example, the JCUS presented its policy recommendations to Congress on habeas reform, medical privacy, victims rights, property takings, GATT, health care reform, NAFTA, mandatory minimum sentences, animal research and many more items. Its policy recommendations have had significant impact on such legislation as the Violence Against Women Act, the 1993 Criminal Justice Act, the Antiterrorism and Effective Death Penalty Act and others. The recent level of activity is not new. For example, in 1958 the JCUS provided policy recommendations to Congress on no less than 31 bills.

Despite the significance of the JCUS, the politics of interaction among conferees have not been systematically examined. Katzmann (1997) briefly mentions the JCUS in the context of a discussion of formal interactions between the judicial and legislative branches. Others have demonstrated that the JCUS was important in establishing the modern policy on habeas corpus policy (Tabak and
This article examines a particularly important facet of JCUS politics that is unilaterally controlled by the Chief Justice of the United States: committee assignments. The first section describes the role of the JCUS in the larger political environment, the institutional mechanisms of selection for the JCUS and its committees and the role of the Executive Committee of the JCUS – an especially important standing committee of the Conference. The following section adapts Shepsle’s (1978) model of committee assignments to the JCUS setting. That application provides a framework for understanding the Executive Committee assignments of the Chief as strategic efforts to draw the policy recommendations of the JCUS closer to his own preferred policies. The final sections present empirical tests for the proposition that the Chief systematically stacks the deck of the Executive Committee in a strategic fashion to shape the policy recommendations of the JCUS. The results demonstrate that, within the limits presented by the JCUS membership, Chief Justices systematically manipulate JCUS Executive Committee membership in a manner suggestive of strategic pursuit of a policy agenda. The demonstration adds another facet to the scholarly literature on the role of Chief Justices, and is consistent with the overall view that they are uniquely empowered and motivated to pursue a policy agenda determined by their political ideology.

Structure and Process of the JCUS

The Judicial Conference of the United States, established by an act of Congress in 1922, is chaired by the Chief Justice of the United States Supreme Court, and comprises the chief judges of each of the Circuit Courts of Appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. District judges are chosen by election among their circuit peers for terms of three years. In instances where a conferee cannot attend a JCUS meeting, the Chief may choose any other district or appeals judge from the circuit in question to attend as a substitute. The JCUS meets at least once per year at a time and place of the Chief’s choosing. Since the end of World War II, the Conference has
met biannually – usually in March and September. Over the course of a few days, the Conference votes by majority on specific items included in its annual report to Congress, and occasionally votes on specific recommendations forwarded separately to Congress. The Conference is the official voice of the federal judiciary, which makes its recommendations uniquely important in legislative battles.

The Chief Justice presides over the JCUS and possesses some extraordinary powers within that body. One of the primary powers of the Chief in this setting is his unilateral control over committee memberships. Because the JCUS is nearly a perfect reflection of Shepsle’s (1978) unicameral model of a legislature, committee memberships are extremely important in determining the outcome of majority votes. According to the Shepsle model, in a unicameral majority voting body, when committees are composed of biased preference outliers and can control the voting agenda, the outcome of majority voting will systematically differ from the chamber median’s ideal policy in favor of the committee median’s ideal policy. Unicamerality clearly does not apply to the US Congress, and there is conflicting evidence over whether committees in Congress are unrepresentative of their parent chambers (Hall and Grofman 1990; Krehbiel 1991). In addition, there are conflicting views on the degree to which committees can control the voting agenda in Congress (Shepsle and Weingast 1987a, 1987b; Krehbiel 1987; Cox and McCubbins 1993).

However, the rules of the JCUS are such that Shepsle’s original ‘pure’ model of voting applies. The JCUS is a unicameral voting body with membership exogenously determined. Committees in the JCUS set the voting agenda, and there are no formal mechanisms for bypassing their proposal and gate-keeping functions. In addition, committee membership is exogenously determined, based on the unilateral discretion of the Chief Justice. All committee members serve at the Chief’s leisure, and even the size of a committee may be altered at any time by the Chief. All the conditions are present to allow the Chief Justice of the Supreme Court to shape JCUS policy statements in pursuit of his policy objectives. The Chief is free to choose non-JCUS members to serve on committees, and frequently does, with one exception: by convention established in 1970, the most important committee of the Conference, the Executive Committee, is composed entirely of JCUS members. The strategic appointment by the Chief of ideologically similar judges
to the Executive Committee would indicate a deliberate attempt to shape legislative policy by shaping the policy recommendations of the Conference.

The Executive Committee serves two important functions for the Conference. First, the Executive Committee is an agenda committee with attributes similar to those of a rules committee. It provides authoritative rulings on questions of jurisdiction and referral, which arise increasingly often as special committees are empaneled more frequently. It also establishes the voting agenda for the twice-annual Conference meeting. Second, the Executive Committee serves as a proxy for the Conference when legislative schedules demand a more immediate response than the biannual schedule permits. Executive Committee members are dispatched by the Chief Justice to provide policy recommendations to the U.S. House or Senate when a formal statement by the JCUS has not yet been established.

While the JCUS provides advice to Congress about staffing, salary and related budgetary needs, most of which are relatively straightforward appeals for selective benefits (higher salaries, reduced workload, improved benefits), the Conference also provides advice on matters of policy over which both judges and elected politicians disagree. For example, the JCUS wrestled with habeas corpus policy in 1989 and 1990. A special committee, chaired by former Supreme Court Justice Lewis Powell, presented a set of recommendations to the Conference intended to limit the exercise of habeas petitions. In a complicated maneuver in the fall of 1989, the Chief forwarded the Powell report to Congress, despite the fact that it had failed to garner majority support among the JCUS members at their September meeting. Several bills were subsequently introduced in Congress that responded to the Powell recommendations. Congress eventually incorporated some habeas corpus reform provisions into the 1996 Anti-Terrorism and Effective Death Penalty Act.

At about the same time the Chief was leading the Supreme Court to write opinions limiting habeas petitions (Butler v. McKellar 1990, Coleman v. Thompson 1991; McClesky v. Zant 1991) or ratifying Congress’s limitations of the writ (Felker v. Turpin 1996) and was assigning conservative Justice Scalia to oversee the Fifth Circuit, where the majority of habeas writs are filed (Thomas and Sussman 1995).
The Conference conflict over habeas policy specifically involved the actions of the Executive Committee of the JCUS, because it was this committee that ratified creation of the special Powell Committee and transfer of jurisdiction from the standing Committee on Criminal Law and Probation. With members all from the South, the Powell committee was even more politically conservative on habeas policy than the standing committee.

The Executive Committee is increasingly important as a political tool for the Chief. JCUS meetings are now typically conducted in a single day, making control of the voting agenda critical to a determination of the voting outcome. In addition, the Executive Committee performs an increasing number of functions throughout the year, as an agent of the JCUS. These functions include providing statements to congressional committees on the Conference’s view on pressing legislative matters.

The primary limitation for a study of the Executive Committee is that it was created relatively recently, in April 1970. There have been no Democratic Chief Justices in this modern time frame, and not even any liberal Chiefs. The primary strength of a focus on the Executive Committee is that the membership choices of the Chief are specifically constrained to the sitting JCUS members, which strengthens the correspondence to a legislative system. Thus, Shepsle’s classic formal model of committee-floor interactions is most clearly appropriate with respect to the Executive Committee.

**Model of Committee Assignments**

In light of the importance of the Executive Committee, it is natural to suspect that the Chief will attempt to ‘stack the deck’ of the committee roster in favor of his preferred policy outcomes. One way to test such a theory is to observe the constellation of Executive Committee preferences at multiple points in time, and measure the direction and degree of divergence between the Committee and Conference medians. I adopted this time-series approach, and results presented later identify several factors explaining the Chief’s adjustments to the Executive Committee roster.

The most conservative null hypothesis is that the preferences of the Executive Committee will be determined randomly, such that no explanatory factors will be significantly related to the Committee median over time. Alternatively, one might argue that, because the
JCUS membership is limited, changes in the JCUS median should be related to changes in the Executive Committee median simply as a statistical artifact. This would be the case, not because the Chief is explicitly shaping the Executive Committee to represent the chamber, but because he has little other choice. If this were to serve as a null hypothesis, it must be tied to an additional stipulation – that the Committee will not be consistently biased in a political direction favored by the Chief. If the Committee is consistently biased, and the Committee median is significantly related to the JCUS median, then this set of dynamics must be by design, rather than by statistical chance. A rational explanation for such a finding might be rooted in the scenario depicted in Figure 1.

Suppose policies further to the right, in Figure 1, are more conservative, and the identified location of the Chief, JCUS median and Executive Committee median represent their respective ideal policy outcomes. Figure 1 seems a reasonable depiction of the situation faced by both Burger and Rehnquist for most of their tenures as Chief – a relatively more liberal JCUS median, and an even more liberal status quo policy outcome (sq.). By dictating the Executive Committee membership, the Chief implicitly chooses the political balance on that committee (i.e. the median). Because the Executive Committee sets the voting agenda and defines committee jurisdictions, we might think of the Chief’s choice of Executive Committee median, EC, as a policy proposal to be considered by the JCUS voting members. That is, the Executive Committee will vote in favor of the ideal policy of its median member, the committee will then propose the policy to the Conference, and the policy will be voted on by majority rule on the JCUS ‘floor’.
If the Chief were a conservative outlier facing a relatively liberal JCUS median (the original JCUS median in Figure 1) and an even more liberal status quo outcome, he could appoint an Executive Committee median at the location of the original EC labeled in Figure 1, and the JCUS would ratify the proposals of such a committee. If the Chief and status quo remained the same, but the JCUS median moved in the conservative direction (say to the point indicated as new JCUS median in Figure 1), the Chief should reassign some Executive Committee seats to arrive at a new committee median closer to his ideal outcome. The point labeled new EC is the Chief’s ideal choice in this example. In this view of committee assignment, changes in the JCUS median lead to changes in the Executive Committee median because the Chief is systematically manipulating the Conference.

Data

In order to compare the policy preferences of the Executive Committee to the policy preferences of the Conference at multiple points in time, strictly comparable measures of the ideology of each conferee and committee member must be established. A number of ideology measures are separately available for Supreme Court justices, appellate judges and district judges, but only one comparable measure of ideology is available for all such actors: party affiliation. Party has been shown to be the dominant factor in Supreme Court voting behavior (Segal and Spaeth 1993; Tate and Handberg 1991), appeals court voting (Songer et al. 1994) and district court decisions (Carp and Rowland 1983). Poole and Rosenthal (1997) have made the claim that a single liberal-conservative dimension (for which party arguably serves as a very good proxy) explains the vast majority of legislative votes in the modern era. After all, the Conference’s primary outputs are policy recommendations to Congress. A similar claim of unidimensionality has been supported for Supreme Court voting (Scheb and Bowen 1995).

Delineation of the observations could proceed by establishing something akin to ‘natural courts’ – periods of time during which the membership was stable. Time-series analysis of the Supreme Court has proceeded in this fashion (Epstein et al. 1996). Because membership on the JCUS is relatively large and changes continuously as judges retire, die or discontinue JCUS service, it is possible to identify a fairly large number of such ‘natural conferences’.
Approximately 100 such periods are evident since April, 1970. This data design provides a larger number of observations, but may be misleading. Multiple membership changes between Conference meetings may not have much political significance, since members only have an opportunity to express their views at the biannual meetings. In addition, such a scheme weights membership configurations established at the Conference meeting as no more important than membership configurations that are never actually observed. Instead, I chose to limit the analysis to one observation for each JCUS meeting. With meetings twice annually, this still results in 58 observations between September 1970 and October 1998. For each time point, I recorded the proportion of democrats serving on the Executive Committee and on the Judicial Conference.

**Testing for the Chief's Strategic Manipulation of the Executive Committee Roster**

The Executive Committee was established as a standing committee only in 1970. The size of the Committee is determined by the Chief, but tends to range between five and seven members. The membership and size of the Committee are determined by the Chief, but are limited to sitting JCUS members. A mix of circuit and district judges serve on the Committee. As Figure 2 illustrates, throughout the existence of the Executive Committee the membership has been biased in the direction of the Chief Justice's preferences. Of the 58 possible comparisons between the Executive Committee median and the Conference median, the Chief was arguably more conservative than the Conference median each and every time, and the Executive Committee was biased in his direction all but eight times.

**A Combinatorial Test**

The fact that the Executive Committee tends to track the Conference may be rooted in two possible factors. First of all, as previously mentioned, the Chief is not free to appoint non-JCUS members to this particular committee. As a result, the Executive Committee may be broadly representative of the Conference because the range of judges available to serve on the Executive Committee precludes a substantial disparity between the Conference and the Committee. However, a statistical artifact such as this should result in equal
probabilities that the Committee is more conservative or more liberal than the Conference. Figure 2 clearly rules out this explanation. In fact, if one considers the Chief's assignment of JCUS members to the Executive Committee as a purely random non-partisan process of selection from among sitting JCUS members, then it can be shown that the probability Burger and Rehnquist would have systematically biased the committee in a Republican direction as much as they did by chance alone is $1.9 \times 10^{-151}$ – a virtual impossibility. The more likely factor driving this result is that the Chief strategically chooses Executive Committee members in order to guarantee their proposals will be the most conservative policy recommendations the Conference will approve. That is, the Chief Justice is not free to choose just any executive committee members, but must temper the committee so that its actions and proposals will not be rejected by the Conference.

A Time-Series Test

A more detailed examination reinforces the contention that the Chief strategically adjusts his Executive Committee assignments. Table 1 presents two linear time-series regressions, each featuring

![Figure 2 Stacking the Deck](image)
Table 1. Executive Committee Membership Determinants. Dependent: proportion of EC who are Democrats.

<table>
<thead>
<tr>
<th>Independent</th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
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<tbody>
<tr>
<td>Constant</td>
<td>-0.035 (0.050)</td>
<td>-0.113 (0.058)</td>
</tr>
<tr>
<td>EC liberalism&lt;sub&gt;-1&lt;/sub&gt;</td>
<td>0.707 (0.082)**</td>
<td>0.602 (0.090)**</td>
</tr>
<tr>
<td>JCUS liberalism&lt;sub&gt;t&lt;/sub&gt;</td>
<td>0.259 (0.088)**</td>
<td>0.410 (0.104)**</td>
</tr>
<tr>
<td>JCUS liberalism&lt;sub&gt;t&lt;/sub&gt; × Rehnquist Dummy&lt;sub&gt;t&lt;/sub&gt;</td>
<td>0.130 (0.053)**</td>
<td></td>
</tr>
<tr>
<td>T</td>
<td>57</td>
<td>57</td>
</tr>
<tr>
<td>R&lt;sup&gt;2&lt;/sup&gt;</td>
<td>0.721</td>
<td>0.749</td>
</tr>
<tr>
<td>Durbin-Watson statistic</td>
<td>1.83</td>
<td>1.86</td>
</tr>
<tr>
<td>Breusch-Godfrey test (second-order autocorrelation)</td>
<td>4.81</td>
<td>5.25</td>
</tr>
<tr>
<td>ARCH test (second-order autoregressive conditional heteroscedasticity)</td>
<td>2.17</td>
<td>1.45</td>
</tr>
</tbody>
</table>

** p < 0.05, two-tailed; *** p < 0.01, two-tailed.

The Democratic proportion of the Executive Committee as the dependent variable. The independent variables considered are of two sorts: a lagged dependent variable to control for possible error autocorrelation (labeled EC liberalism<sub>-1</sub> in the table), and the Democratic proportion of the JCUS at the time (labeled 'JCUS liberalism<sub>t</sub>', in the table). The democratic proportion of the JCUS is hypothesized to affect the Democratic proportion of the Executive Committee, as the Chief places the committee median at the edge of what the Conference median will accept.

A second model explores whether the estimate of the relationship between JCUS and EC liberalism is time bound, by including an interaction term between Chief Justice (0 for Burger, 1 for Rehnquist) and JCUS liberalism. In this framework, two estimates for the effect are obtained. In such a specification, the coefficient for JCUS liberalism (the 'main effect') represents the effect for Burger, while the effect of JCUS liberalism on EC liberalism under Rehnquist is represented by the sum of the main and interactive effects. The statistical test for the interaction term is a test of whether the effect of JCUS liberalism is statistically different under these two Chiefs.
As each model indicates, variation in the Executive Committee median is significantly related to variation in the proportion of Democrats on the Conference in the expected direction. This association is significant even after controlling for temporal dynamics by including a lagged dependent variable. The time-series diagnostics confirm that the effect is not an artifact of a poorly specified model. 13

The second regression in Table 1 demonstrates that there is some variation in the degree to which Burger and Rehnquist took the JCUS median into account in making EC assignments, but that both Chiefs significantly shifted the ideological center of the EC in response to changes in JCUS membership. The effect for Burger, indicated by the main effect, is 0.41 and significant. The effect under Rehnquist is even stronger (0.54) and more statistically significant. The significant results for each variable demonstrate that both Chiefs strategically shaped their Executive Committee rosters to accommodate the preferences of the Conference. Of the two Chiefs, Rehnquist's committee rosters were significantly more responsive to changes in the Judicial Conference.

Discussion and Conclusion

Overall, there is clear evidence that the two Chief Justices under consideration, Burger and Rehnquist, exploited their role on the Judicial Conference by strategically manipulating the roster of the Executive Committee in pursuit of a conservative policy agenda. Both Chiefs responded strategically to shifts in the Judicial Conference, and Rehnquist was more attentive to this factor than Burger.

These and other facts help illuminate the situation Rehnquist faced at the September 1989 meeting. The Powell Committee, which was made possible by the executive committee Rehnquist had appointed, was a carefully constructed match of Rehnquist's most preferred legislative coalition in Congress. This was no coincidence. Rehnquist was attentive to the legislature's preferences in a way Burger had not been. However, Rehnquist may have been overzealous in this particular case. The Powell Committee's recommendations were put to a vote at the September meeting with little warning to the conferees because the legislative process was heating up in Congress. The Conference, certainly more liberal on criminal matters than the Powell Committee, and perhaps expecting more
deference, voted to postpone the recommendation until the April meeting. Rehnquist forwarded the Powell Committee's recommendation anyway, perhaps sensing that the window of opportunity for statutory changes to habeas policy would be closed by the end of the legislative session. The breach of protocol led over half of the conferees to take the unprecedented step of publicly and formally disavowing the Powell Committee's recommendations as a reflection of the judiciary's views.

The Chief Justice's ability to advocate policy outcomes consistent with his ideological disposition is not limited to his role on the Supreme Court. Acting in his capacity as Justice and leader of the Supreme Court, the Chief has been shown in other portions of the literature to strategically use the powers at his disposal in pursuit of a policy agenda driven by his ideology. He strategically sets the court docket, manipulates conference discussions and assigns opinions. The Chief even votes on the merits in a sophisticated fashion. In addition, as the presiding officer of the Judicial Conference of the United States, with substantial control over the committee system and voting agenda, the Chief is technically able to use the voice of the federal judiciary in a way to support the kinds of legislative outcomes he prefers. This can have a substantial impact on, for example, criminal laws passed by Congress. The evidence presented here confirms that the Chief does indeed use his authority on the Judicial Conference in a manner consistent with a strategic account of policy advocacy. Future research may delve more deeply into the voting dynamics on the JCUS, or into the impact of JCUS recommendations in the legislative arena.

NOTES

Thanks to Paul Foote for assistance with data collection on this project.

1. Prior to creation of the Federal Circuit in 1982, the chief judge of the Court of Customs and Patent Appeals served as a member. The chief judge of the Court of International Trade was given a JCUS seat in 1987, although the chief judge of the Court of Claims had a JCUS seat until the court was eliminated in 1982.

2. Perhaps surprisingly, the election process does not seem to select district judges any more ideologically representative of their peers than the seniority system selects circuit judges ideologically representative of their peers. JCUS delegates are uniformly very senior, if not the most senior judges on their respective circuits, regardless of the selection mechanism.
3. Substitutions are quite common, but a brief investigation of absentee and substitution patterns turns up no indication of politically interesting dynamics. Specifically, the Chief does not favor judges of his own ideological persuasion when making substitutions. Typically, absent members recommend a replacement to the Chief, and such replacements are the next-most senior members on their circuits.

4. In 1961, the Conference began meeting over the course of two days (prior conferences had been conducted over three or even four days). In 1987, the Conference began meeting on a single day.

5. The 1970 Report of the Proceedings of the Judicial Conference describes this fact in a slightly ambiguous manner. It states only that the Conference 'authorized the Chief Justice to appoint a standing committee of the Conference, to be called the Executive Committee, to consist of as many members as he may determine'. However, a statement by the Judicial Conference Executive Secretariat clarifies: 'Executive committee members must be members of the Judicial Conference. Terms are open and members serve at the pleasure of the Chief Justice' (personal correspondence, 8 February 1999).

6. Ad Hoc Committee on Federal Habeas Corpus in Capital Cases.

7. Figure 1 includes a depiction of the indifference curves for two possible JCUS medians, given the location of the status quo policy. Relying on the standard assumption of Euclidean preferences for the JCUS for illustrative purposes only, the status quo policy and the policy equidistant from the JCUS on the opposite side of the status quo are equally attractive to the JCUS. By strategic construction, the Chief chooses an EC that proposes a policy infinitesimally closer to the JCUS than the status quo. The JCUS will therefore vote to approve the EC's proposal. A similar scenario obtains if JCUS members are viewed as a set of voters choosing under uncertainty, willing to approve any proposal within a certain range of policies.

8. Scenarios in which the status quo is more conservative than the JCUS median will not lead to this dynamic, but such a situation is arguably not observed until at least the early 1990s. In addition, strategic voting by conferees under open rules in a single dimension can counteract the Chief's efforts to manipulate the vote outcome. But because they meet only twice-annually, conferee ability to vote in a sophisticated fashion and offer credible alternatives/amendments is relatively limited. In addition, the Executive Committee has the final word on the voting agenda.

9. Parallel comparisons for district and appeals judges are inefficient because of the small number of conferees and even smaller number of committee members. At any one time, only five to seven members serve on the Executive Committee. Of these, only one or two are appeals courts judges.

10. The special conference called in June 1986 is included.

11. This calculation is based on the combinations and permutations of the observed partisan committee assignments from among the sitting JCUS members.

12. One could consider a more complicated dynamic in which the Chief Justice makes committee assignments to strategically respond to other important factors. For example, policy preferences of Congress may be a factor determining Executive Committee liberalism. If the proportion of congressional seats held by Democrats is included as a predictor in the analysis, there is statistically significant evidence that it plays a role, at least under Rehnquist. None of the
primary results reported in this article are in any way sensitive to the choice of whether to include or exclude this factor for the analysis. Because the formal dynamics for the Chief's assignment may be more complicated when multiple institutions are the target of his choice, a more parsimonious specification focused on the JCUS has been presented.

13. The lagged dependent variable controls for first-order autocorrelation of the residuals, so the Durbin-Watson statistic, predictably, does not indicate significant error problems of this type. In these data, where two observations per year are typically collected, a test for second-order autocorrelation of the residuals is appropriate. The Breusch-Godfrey statistic is a test for higher-order autocorrelation, and follows a chi-squared distribution with two degrees of freedom. There is no second-order autocorrelation of the residuals for any model, as evidenced by the fact that the test statistic is always below the critical value of 5.99. Autoregressive conditional heteroscedasticity (ARCH) is a common problem in time-series data, exhibited by clumping of high and low errors. There is no such heteroscedasticity of residuals, up to the second order, as evidenced by the fact that the test statistic is well below the critical value of 5.99 for each model.

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