

LAW, COURTS, AND JUDICIAL PROCESS

SECTION NEWSLETTER

Vol 7. No. 1

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Instructions to Contributors

The Newsletter publishes articles, news items, announcements, commentaries, and features of interest to members of the Law, Courts, and Judicial Process Section. The Newsletter is published three times each year in Fall, Spring, and Summer issues. A fourth, Winter issue, is the Section Directory and is published in February. Deadlines for submission of materials for each issue are as follows: Fall (Oct. 15th), Spring, (Feb. 15th), and Summer (June, 15th). Contributions to the Newsletter should be sent to the appropriate editor listed below.

Articles and Commentary

Brief articles and notes describing matters of interest to the field will be published subject to review by Newsletter editors. Authors are encouraged to share research findings, teaching innovations, or commentary on developments in the field which would interest members of the section. Footnote and reference style should follow that of the American Political Science Review. Please send two copies of prospective articles and commentary to:

Professor Elliot Slotnick, Associate Editor
Law, Courts, and Judicial Process Section Newsletter
Department of Political Science
223 Derby Hall
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Conventions and Bibliographic Information

The Newsletter attempts to inform members of upcoming and past conferences as well as the publication of judicial articles and books. Organizers of judicial panels at national, regional, state, and other professional meetings are encouraged to inform the Newsletter so that papers and participants may be reported. Authors of judicial books are also encouraged to inform the Newsletter of their manuscript's publication. Suggestions and information concerning conventions or publications in the field should be sent to:

Professor Charles Lamb, Associate Editor
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Data and Analysis Information

The Newsletter wishes to keep the Section informed regarding availability of data sets of interest to the field. This includes newly archived data sets held by the Consortium as well as non-archived ones, which individual researchers would like to share with colleagues. Special analysis and data problems or queries of interest to the field will also be published. Suggestions and information should be sent to:

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Announcements and Correspondence

Announcements and section news will be included in the newsletter. Developments in the field such as fellowships, grants, etc., will be announced if there is sufficient time for submission of materials to the granting body. Announcements and correspondence concerning the Newsletter should be sent to:

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Scientific Comparative Judicial Politics: An Assessment and a Call to Action

C. Neal Tate
University of North Texas

Eight years ago I wrote a paper entitled "Judicial Institutions in Cross-National Perspective." Its subtitle revealed its basic intention to move political science scholarship "Toward Integrating Courts into the Comparative Study of Politics."¹ It argued that both comparative and judicial politics scholars would benefit from such an integration, the former because they persistently failed to treat courts as political institutions worthy of the kind of comparative attention paid other institutions, the latter because they too often "failed to put courts into the comparative political context that is essential for developing broad generalizations about courts, their operation, and their political and policy significance in societies." In an effort to assist in this proposed integration, the paper surveyed a number of conceptual frameworks that showed promise with regard to cross national utility and operationalizability, and, lamely, reviewed the sparse existing cross national data directly relevant to the study of courts as institutions.

Through no fault of the editor's, the symposium containing the paper did not appear in print until two years ago (Tate, 1987). In the six year interim between the paper's writing and publication, very little had happened to make its theme obsolete. Comparative politics scholars still largely ignored the political structure and policy making role of courts and judges, and public law and judicial politics scholars still largely continued to ignore what we did know about the roles of courts in other nations, as well as what comparative politics has to teach about the study of political institutions. Scientific comparative judicial research,² especially that based on quantitative data,³ remained limited in its progress.

I do not mean to carp. Outside the context of the United States courts, a number of intrepid scholars⁴ had produced analyses of the backgrounds, recruitment and decision making of judges (see, for example, Danelski, Dator, Fouts, Gadbois, Kawashima, Peck, Samonte, and Schubert, all contained in Schubert and Danelski 1969, the studies by Danelski, Kommers, Morrison, and Schubert, in Grossman and Tanenhaus 1969, Bader and Burstein 1970, Blackshield 1972, Bouthillier 1971, Dator 1967, Gadbois 1969, Hayakawa 1972, Holmes and Rovet 1969, Kommers 1976, Morrison 1976, Paterson 1982, Peck 1967a, 1967b, Pelletier 1971, Robertson 1982, Russell 1970, 1975, Schubert 1968a, 1968b, 1969a, 1969b, 1969c, 1977, Tate 1972, 1975, Torgerson 1963, Wenner et al. 1978) and of the institutional performance and decision making of courts in the legal system (see Blankenburg 1975, Evan 1968, Grossman and Sarat 1975, Toharia 1975).

But much of the extant scientific comparative judicial research was produced in a burst of enthusiasm produced by the efforts of judicial behavior pioneers such as Glendon Schubert and David Danelski to stimulate and encourage the application of research methodologies and data collection methods then gaining widespread acceptance in the study of U.S. courts and judges to the judiciaries of other nations. The modal publication dates (late 1960s, 1970s) in the above mini-bibliography testify to that influence.

Aside from the contributions of Schubert and Danelski themselves, these publications were produced by some non-American scholars who were already interested in the applicability of judicial behavior research methods to the study of their indigenous courts and judges (Peck, Russell, Hayakawa, Blackshield, for example), by other non-American scholars who were persuaded to conduct judicial behavior studies of their own judiciaries (Samonte, Kawashima), and by a few Americans whose training as comparativists was combined with an interest in public law and the expanding field of judicial behavior (Morrison, Gadbois, Kommers). But the burst of enthusiasm for quantitative analyses of comparative judicial studies appeared to die out quickly. A number of scholars who had contributed to it continued to study non-American judiciaries, but with more traditional methods and concerns (compare Kommers 1976 and 1989), and few of the non-Americans who had been recruited by Schubert and Danelski to do quantitative comparative judicial studies continued to do such research. Instead of growth, and despite the continuing efforts of some, the field of comparative judicial politics experienced contraction through the 1970s and early 1980s.⁵

Thus in some ways, things might be argued to have gotten worse between 1981 and 1987. Promising initial efforts to apply judicial politics and behavior approaches to other national courts in a manner that would have allowed the development of cross-national generalizations were not followed up by similar continuing research.

Despite this, several things impress me as boding well for the future of the comparative study of judicial politics. First, the publication of scientifically-oriented comparative judicial studies did continue in the early 1980s (see Paterson 1982, Robertson 1982, Schmidhauser 1982, Schubert 1980, van Koppen and ten Kate, 1984) and, in the last five years, the pace of publication in the area appears to be quickening (see Atkins 1987, Gadbois 1987, Giles and Lancaster 1989, Hayakawa and Schmidhauser 1987, Schubert 1985, 1987, Tate and Sittiwong 1986, 1989).⁶

Second, an increasing amount of effort is now being devoted to the creation of the kinds of databases needed to support genuine comparative analyses of the institutional behavior of courts and the individual behavior of judges. One of the most important of these will be the National Science Foundation-funded public access U.S. Supreme Court data base created by Harold Spaeth and the Board of Overseers for the database. The U.S. Supreme Court database is not itself "comparative," of course. But the U.S. Supreme Court database stimulates scientific comparative judicial research in at least three ways:

1. It allows the U.S. Supreme Court to serve as a baseline institution to which virtually any other national court can be compared. Having the Supreme Court database publicly available makes such comparisons much easier to accomplish with rigor.

2. It will promote much more over-time research on the U.S. Supreme Court. Such research is inherently comparative in method, and will be a fecund source of hypotheses to apply to the cross-time behavior of other national courts.

3. It encourages funding agencies to support analogous data generation activities for other courts, including non-American courts. For example, the National Science Foundation has already funded projects on the English Court of Appeal (see Atkins 1988, 1989) and Philippine Supreme Court (see Tate 1989, Tate and Haynie 1989). Since I am familiar with both these data sets, I will use

them as examples of the kind of data base generation activities that need to proliferate if scientific comparative judicial politics is to progress.

The Philippine Supreme Court Data Base consists of a computerized record (approximately 15,000) for every individually docketed case reported by the Supreme Court of the Philippines in the quasi-official Philippine Supreme Court Reports Annotated from January 1, 1961 through June 1987. In addition to full identifying information, the data base records for each case contains the constitutional/legal type of action represented, the court or agency of immediate and initial origin, the province or city of immediate and initial origin, the principal substantive issue involved, the year in which the case or dispute began, the names of the attorneys for plaintiff and respondent, the outcome of the case with respect to plaintiff's claims, upperdog/underdog claims, and government agency claims, the identity of the majority opinion writer, the vote of every justice participating in the decision, and the degree of unanimity in the case. With such information, it is possible to describe the formal decision making of the Philippine Supreme Court in detail and to compare its decision making, cross-sectionally or diachronically, with that of any other court for which analogous information can be generated, with the U.S. Supreme Court, as an obvious example.

The data base for Burt Atkins' English Court of Appeal project is coded from over 3000 case transcripts for the three year period 1983-1985. It includes 141 variables touching on case identification characteristics, sources of the appeals (forum, type of judge, region), parties and their characteristics, issues raised, rights sought on appeal, party appealing, number and identities of judges deciding and their votes and types of opinions, and such post-decision variables as whether there was a further appeal, whether it was granted, and whether the Court of Appeal decision was upheld or overturned (Atkins 1989:10-11). With these data, Atkins (or presumably other scholars at a later date) can engage in direct comparisons based on data from his own earlier research on the U.S. Courts of Appeal. If the U.S. Courts of Appeal multiuser data base proposed by Donald Songer and funded by NSF on a trial basis is successfully created, the kind of strong U.S. base line available for supreme court comparisons will also be available for Atkins English research. What will be needed then is an expansion of the English data base so that it too will cover the longer time span necessary for dealing with change-oriented hypotheses.

Hopefully, proposals for more work like that represented by the English Court of Appeal and Philippine Supreme Court data bases will be forthcoming from many principal investigators. But in the meantime, it would be an injustice to ignore existing comparative data bases that are or, with luck, could be archived for use by the community of scholars wishing to engage in scientific comparative judicial research. For example, the U.S. Supreme Court data base, though unique in its depth and length of coverage, does not represent the first effort to provide for public use a U.S. Supreme Court data base. That honor goes to Schubert's (1974) *Judicial Mind Revisited* data base, which covers the term years 1946 through 1968, and has been archived at ICPSR for almost two decades. Schubert has also archived the various data sets for the Swiss-South African study that formed the basis of a number of his cross-cultural articles in the past 15 years, as well as for his two volume work *Political Culture and Judicial Behavior* (Schubert 1985). Finally, the biographical and career data which served as the basis of my work on the recruitment of the higher British judiciary (Tate 1975) have for some years been archived for public use at the Social Science Data Archive at the University of Essex.

A 1983 effort by Henry Glick on behalf of ICPSR apparently did not succeed in rounding up any other comparative judicial data sets worthy of archiving,⁷ but I am convinced the effort should be made again. For example, there are data sets on the decision making of the Canadian (see Russell 1975) and Australian (see Blackshield 1972) supreme courts that would support serious comparative analysis if they could be made available for wider use.⁸

The creation and archiving of comparative data sets does not insure their use in scientific analyses. That will require that scientifically-oriented students of comparative politics persuade themselves that they are missing something when they fail to analyze the political roles of their courts and judges, and that American judicial politics and behavior specialists realize that they may be able to learn more about their subject courts and judges when they systematically compare them to their counterparts abroad than when they idiographically explore ever narrower aspects of their behavior. For those who know something of the extraordinarily dramatic role played by the Supreme Courts of India, the Philippines, and West Germany, or who understand the increasing importance of the policy roles taken on by the courts in most of Western Europe and in Canada, it is difficult to imagine that the future of comparative judicial studies could be anything but bright.

Notes

- ¹ The paper was delivered at the 1981 Interim meeting of the Research Committee on Comparative Judicial Studies (RCCJS) of the International Political Science Association (IPSA) organized by John R. Schmidhauser at Mansfield College, Oxford England.
- ² With apologies to non-American members of the Organized Section and to comparatively-oriented students of lower courts in the United States, I use the term in what is, I am sure, its conventional usage: to refer to research dealing with courts, judges, or the judicial or legal process in more than one nation state (perhaps including the U.S.), or with courts, judges, or the judicial or legal process outside the boundaries of the United States.
- ³ I do not mean to imply that comparative research on courts and judges is "scientific" only if it is based on quantitative data. Nevertheless, as the hallmark of scientific measurement is quantification, it is certainly true that scientific progress in comparative judicial research will be limited if the quantification of key concepts for analysis remains limited.
- ⁴ With a few exceptions regarding Quebec, the citations which follow are largely limited to studies that have been published in English. I know that this misrepresents the situation slightly, that there have been some quantitative judicial studies in other languages. I would appreciate colleagues bringing such citations to my attention.
- ⁵ If I am casting stones here, I may as well admit that my own house was (is?) mostly glass, at least as far as published work is concerned. The findings of my dissertation, a behaviorally-oriented study of the political role, recruitment, and decision making of the Philippine Supreme Court (Tate 1971) remained, perhaps deservedly, unpublished, except for an article in a journal that would be obscure to American judicial scholars (Tate 1972). That was followed by a recruitment study of the British Law Lords (Tate 1975) but, until 1985 (Tate 1987, Tate and Sittiwong 1986, 1989), by nothing else that could claim to make a contribution toward integrating courts into the scientific comparative study of politics.

- ⁶ A major reason for this, of course, is the publication of Schmidhauser's *Comparative Judicial Systems*, in which a number of these studies appeared.
- ⁷ I assume because of the torpor of would-be donors like myself who failed to respond to Glick's request for data or because some data generating analysts did not feel the time was yet ripe for contributing their data to the public domain.
- ⁸ I do not imply that the creators of these data sets are unwilling to make them more widely available. I am sure they would be, if anyone had asked.

References

- Atkins, Burton 1989. "Do the 'Haves' Come Out Ahead? A Multivariate Perspective on the Structure of Intervention Behavior by the English Court of Appeal." Paper presented to the Interim Meeting of the Research Committee on Comparative Judicial Studies of the International Political Science Association, University of Lund, Sweden, 20-22 August.
- Atkins, Burton 1988. "Integration and Control Functions in Judicial Hierarchies: The English Court of Appeal and the Context for the Use of Appellate Review Power." Paper presented to the Annual Meeting of the American Political Science Association, Washington, DC.
- Atkins, Burton 1987. "A Cross-National Perspective on the Structuring of Trial Court Outputs: The Case of the English High Court." In Schmidhauser 1987, 143-62.
- Bader, Michael and Edward Burstein 1970. "The Supreme Court of Canada 1892-1902: A Study of the Men and the Times." 8 *Osgoode Hall Law Journal* 503-547.
- Blackshield, A. R. 1972. "Quantitative Analysis: The High Court of Australia, 1964-1969." 3 *Lawasia* (April) 1-66.
- Blankenburg, Erhard 1975. "Studying the Frequency of Civil Litigation in Germany." 9 *Law and Society Review* 307-20.
- Bouthillier, Guy 1971. "Mate'riaux Pour une Analyse Politique des Juges de la Cour D'appel." 6 *Revue Juridique Themis* 563-594. [Quebec]
- Dator, James Allen 1969. "Measuring Attitudes across Cultures: A Factor Analysis of the Replies of Japanese Judges to Eysenck's Inventory of Conservative Progressive Ideology." In Schubert and Danelski 1969, 71-102.
- Evan, William. 1968. "A Data Archive of Legal Systems: A Cross-National Analysis of Sample Data." 9 *Archiv. Europ. Social* 113-125.
- Fouts, Donald R. 1969. "Policy-Making in the Supreme Court of Canada." In Schubert and Danelski 1969, 257-92.
- Gadbois, George H., Jr. 1987. "The Institutionalization of the Supreme Court of India." In Schmidhauser 1987, 111-142.
- Gadbois, George H., Jr. 1969a. "Indian Supreme Court Judges: A Portrait," 3 *Law and Society Review* 317-36.
- Gadbois, George H., Jr. 1969b. "Selection, Background Characteristics, and Voting Behavior of Indian Supreme Court Judges." In Schubert and Danelski 1969, 221-56.

- Giles, Micheal W. and Thomas D. Lancaster 1989. "Social Developments and Demands on the Courts: The Case of Spain Revisited." 83 *American Political Science Review* 817-34.
- Grossman, Joel B. and Austin Sarat 1975. "Litigation in the Federal Courts: A Comparative Perspective." 9 *Law and Society Review* 321-46.
- Grossman, Joel B. and Joseph Tanenhaus, eds. (1969) *Frontiers in Judicial Research*. (New York: Wiley).
- Hayakawa, Takeo 1962. "Legal Science and Judicial Behavior, with Particular Reference to Civil Liberties in the Japanese Supreme Court," 2 *Kobe University Law Review* 1-27.
- Hayakawa, Takeo and John R. Schmidhauser 1987. "A Comparative Analysis of the Internal Procedures and Customs of the Supreme Courts of Japan and the United States." In Schmidhauser 1987, 200-21.
- Holmes, J. T. and E. Rovet 1969. "The Ontario Court of Appeal: Some Observations on Judicial Behavior." 7 *Osgoode Hall Law Journal* 31-60.
- Kawashima, Takeyoshi 1969. "Individualism in Decision-Making in the Supreme Court of Japan." In Schubert and Danelski 1969, 103-21.
- Kommers, Donald P. 1969. "The Federal Constitutional Court in the West German Political System." In Grossman and Tanenhaus 1969, 73-132.
- Kommers, Donald P. 1976. *Judicial Politics in West Germany: A Study of the Federal Constitutional Court*. Beverly Hills, CA: Sage Publications.
- Morrison, Fred L. 1969. "The Swiss Federal Court: Judicial Decision-Making and Recruitment." In Grossman and Tanenhaus 1969, 132-62.
- Morrison, Fred L. 1976. *Courts and the Judicial Process in England*. Beverly Hills: Sage Publications.
- Paterson, Alan 1982. *The Law Lords*. Toronto and Buffalo: University of Toronto Press.
- Peck, Sidney R. 1969. "A Scalogram Analysis of the Supreme Court of Canada, 1958-1967." In Schubert and Danelski 1969, 293-334.
- Peck, Sydney L. 1967a. "A Behavioral Approach to the Judicial Process: Scalogram Analysis." 5 *Osgoode Hall Law Journal* 1-28.
- Peck, Sydney L. 1967b. "The Supreme Court of Canada, 1958-1966: A Search for Policy through Scalogram Analysis." 45 *Canadian Bar Review* 666-726.
- Pelletier, Cline 1971. "Les Jeux de Cour" 6 *Revue Juridique Themis* 157-79.
- Robertson, David 1982. "Judicial Ideology in the House of Lords: A Jurimetric Analysis." 12 *British Journal of Political Science* 1-25.
- Russell, Peter H. 1970. *Supreme Court of Canada as a Bilingual and Bicultural Institution*. Ottawa, Information Canada.
- Samonte, Abelardo G. 1969. "The Philippine Supreme Court: A Study of Judicial Background Characteristics, Attitudes, and Decision-Making." In Schubert and Danelski 1969, 157-96.

- Schmidhauser, John R., ed., 1987. *Comparative Judicial Systems: Challenging Frontiers in Conceptual and Empirical Analysis*. 6 *Advances in Political Science: An International Series* London: Butterworths.
- Schmidhauser, John R. 1982. "The Circulation of Judicial Elites: A Comparative and Longitudinal Perspective." In Moshe M. Czudnowski, ed., *Does Who Governs Really Matter? Elite Circulation in Contemporary Societies*. DeKalb, IL: Northern Illinois University Press.
- Schubert, Glendon A. 1968a. "Opinion Agreement among High Court Justices in Australia," 4 *The Australian and New Zealand Journal of Sociology* 2-17.
- Schubert, Glendon A. 1968b. "Political Ideology on the High Court," 3 *Politics* 25-34.
- Schubert, Glendon A. 1969a. "Two Causal Models of Decision-Making by the High Court of Australia." In Schubert and Danelski eds *Comparative Judicial Behavior* 335-66.
- Schubert, Glendon A. 1969b. "The Dimensions of Decisional Response: Opinion and Voting Behavior of the Australian High Court." In Grossman and Tanenhaus eds. *Frontiers of Judicial Research* 163-95.
- Schubert, Glendon A. 1969c. "Judicial Attitudes and Policy-Making in the Dixon Court," 7 *Osgoode Hall Law Journal* 1-29.
- Schubert, Glendon A. 1977. "Political Culture and Judicial Ideology: Some Cross-Cultural and Subcultural Comparisons," 9 *Comparative Political Studies* 363-408.
- Schubert, Glendon A. 1980. "Subcultural Effects on Judicial Behavior: A Comparative Analysis," 42 *Journal of Politics* 951-92.
- Schubert, Glendon A. 1985. *Political Culture and Judicial Behavior*. Two Volumes. Lanham, Maryland, New York and London: University Press of America.
- Schubert, Glendon A. 1987. "Subcultures and Judicial Background: A Cross-Cultural Analysis." In Schmidhauser 1987, 222-39.
- Schubert, Glendon A. and David J. Danelski, eds. 1969. *Comparative Judicial Behavior: Cross-Cultural Studies in Political Decision-Making in the East and West*. New York: Oxford University Press.
- Spaeth, Harold J. 1988. Documentation for the United States Supreme Court Judicial Data Base, Phase I. Typescript.
- Tate, C. Neal (1971) "The Social Background, Political Recruitment, and Decision-Making of the Philippine Supreme Court Justices, 1901-1968," (Ph.D. Dissertation, Tulane University).
- Tate, C. Neal 1972. "Social Background and Voting Behavior in the Philippine Supreme Court," 3 *Lawasia* 317-38.
- Tate, C. Neal 1975. "Paths to the Bench in Britain: A Quasi-Experimental Study of the Recruitment of a Judicial Elite," 28 *Western Political Quarterly* 108-29.
- Tate, C. Neal 1989. "The Policy Agenda of Supreme Courts: A Comparative and Diachronic Analysis." Paper presented to the Interim Meeting of the Research Committee on Comparative Judicial Studies of the International Political Science Association, University of Lund, Sweden, 20-22 August.
- Tate, C. Neal and Stacia L. Haynie 1989. "Authoritarian and the Functions of Courts: A Time Series Analysis of the Philippine Supreme Court." Paper presented to the Annual Meeting of the Law and Society Association, Madison, Wisconsin.

- Tate, C. Neal and Panu Sittiwong 1989. "Decision Making in the Canadian Supreme Court: Extending the Personal Attributes Model Across Nations." 51 *Journal of Politics* (November) 900-16.
- Tate, C. Neal and Panu Sittiwong 1986. "The Supreme Court and Justice in the Marcos Era." 6 *Pilipinas: A Journal of Philippine Studies*, (Spring), 1-19.
- Torgerson, Ulf. 1963. "The Role of the Supreme Court in the Norwegian Political System." In Schubert, ed. *Judicial Decision Making*. New York: Free Press, 201-20.
- van Koppen, Peter J. and Jan Ten Kate 1984. "Individual Differences in Judicial Behavior: Personal Characteristics and Private Law Decision Making." 18 *Law and Society Review* 275-347.
- Wenner, Manfred, Lettie M. Wenner and V. Eugene Flango 1978. "Austrian and Swiss Judges: A Comparative Study," 10 *Comparative Politics* (July) 499-518.

CORRESPONDENCE

In the last issue of the Newsletter, Professor Robert Bradley outlined a question about Supreme Court decisional procedures. The editor has received two letters, which follow, that shed light upon this issue.

Dear Professor Bradley,

I was most interested in the manuscript about the procedure at our Court Conference which you enclosed with your letter of May 15th. I am quite surprised that this very obvious "question of fact" still remains in dispute, and yet your reference to academic texts in the manuscript shows that it plainly does.

I can testify on the basis of first-hand experience that the discussion and voting at Conference are combined in one presentation by each Justice (unless the Justice chooses to "pass,") and that these presentations proceed in order from the Chief Justice to the Junior Justice. Because the references in your manuscript piqued my curiosity, I talked this over with Justice Brennan, who has the longest service of any present member of the Court. He confirms that since he came to the Court in the fall of 1956, the procedure has been as I describe it to you.

Sincerely,

William Rehnquist/s/
Chief Justice of the
United States

Dear Professor McLauchlan:

The conflicts and confusions outlined in Professor Robert C. Bradley's note in 6 *Law, Courts and Judicial Process Section Newsletter* 4 (Summer, 1989), pp. 1 and 2, constitute accurate accounts of diverse data, either provided by Justices to the various authors cited by him or represent personal judgments based on primary and/or secondary research.

I have in my files several letters from sitting Justices, penned between 1970 and as recently as 1982, attesting to what Professor Bradley terms the "two-stage" process. Hence it is clear that for much, indeed for most, of his Chief Justiceship (1969-1986) Warren Burger's Court still employed that mode. However, the Rehnquist Court has consistently operated on the "single-stage" Process. In Justice O'Connor's words to me on March 21, 1988: "The Chief Justice now speaks and votes first, and the Junior Justice speaks and votes last." Consequently, the forthcoming 8th edition of my *The Judiciary* (Wm. C. Brown, 1990) will embrace that assertion as the status quo.

Sincerely,

Henry J. Abraham/s/
James Hart Professor
Univ. of Virginia

Section News

The Law, Courts and Judicial Process Section
Business Meeting

The Business meeting of the Law, Courts and Judicial Behavior Section was held on September 1, 1989 at the Atlanta Hilton and Towers.

Melinda Gann Hall delivered the report of the Nominating Committee which recommended the election of the following persons:

John Brigham, Univ. of Mass. - Amherst, Chair-elect
Lynn Mather, Dartmouth College, Exec. Committee
Bruce Murphy, Penn State Univ., Exec. Committee
David O'Brien, Univ. of VA., Exec. Committee

All four were elected by acclamation.

Elliot Slotnick delivered the report of the Graduate Student Paper Committee. No award was given and members were urged to submit papers prepared by their graduate students.

The possibility of following the lead of other sections which give numerous awards was discussed. Stuart Scheingold said he would form a committee to study the matter.

Stuart Scheingold and Greg Caldiera then discussed the kinds of paper proposals they were seeking for next year's APSA meeting in San Francisco. Stuart Scheingold also announced a committee to study divisions within the section and our prestige within the profession.

NOTES FROM THE SECTION CHAIR

1. A committee has been appointed to consider the state of the Law, Courts, and Judicial Process organized section. The committee has been charged to examine two kinds of concerns that have been expressed to the chair: divisions within the section and marginalization of the section, particularly in some of the leading departments in the country. Austin Sarat is chairing the committee which also includes Kim Scheppele, Tim O'Neil and Greg Caldeira. If you have any suggestions, please communicate directly with Austin or with one of the other members of the committee. A panel at the 1990 meetings will be devoted to the findings and recommendations of the committee.

2. A committee has also been appointed to look into the possibility of establishing an award for distinguished scholarship by scholars working in the field of Law, Courts, and Judicial Process. The committee is chaired by Malcolm Feeley and includes Marie Provine and Jay Casper. Please feel free to contact Malcolm, Marie or Jay to express your views on whether such an award should be established, and if so, on what basis it should be offered. The awards committee will report its recommendations at the 1990 meetings.

3. There has also been a committee appointed to award a \$100 prize for the best paper submitted by a graduate student during 1989-1990. This award is to encourage the

delivery of papers at professional conventions, and to reward the best of those. Three copies of any paper nominated should be submitted to the chair of the Committee:

Ronald Kahn
Dept of Government
Rice Hall
Oberlin College
Oberlin, OH 44704

Other members of the Committee are: Kristin Bumiller of The Johns Hopkins Univ. and Jeffrey Segal of SUNY - Stony Brook.

The deadline for submissions is June 1, 1990, so that the award can be made at the Fall meeting of the Section in San Francisco.

Announcements of Grants and Awards

AMERICAN BAR ASSOCIATION Commission on College and University Nonprofessional Legal Studies

Mini-Grant Awardees for 1989-90

Sara Benn and Judith Gay, Chestnut Hill College *The Rights of Children: Curricular Development & Outreach*

Ronald Woods, Eastern Michigan Univ. *Enhancing the Study of Law in the Afro-American Studies Curriculum*

Gregory Rabb, Jamestown Community College *Comparative Legal Studies: Canada, the United States, and Individual Rights*

Anne Straus, Native Am. Educational Services College *American Indian Religious Freedom and the Law*

Nancy Fraser, Northwestern Univ. *Curriculum Development on Women, Public Policy and the Law*

Robert Browning, Purdue Univ. *Understanding the Legal Process through the Words of Supreme Court Justices*

Marvin Jay Cummins, Washington Univ. *Frontiers in American Justice and Litigation*

Sally Merry, and Jane Collier, Wellesley College and Stanford Univ. *New Readings in the Anthropology of Law*

The Commission on College and University Nonprofessional Legal Studies and the Law and Society association announces the Fourth Annual Graduate Student Workshop. The Workshop will be held May 29-31, 1990 in Berkeley, California, immediately preceeding the Law and Society Association meetings. This is an invitational workshop, focusing on

interdisciplinary research and teaching. It is open to law students and students pursuing a Ph.D. Modest travel stipends are available.

For more information and application procedures write:

John Paul Ryan
ABA Commission on College and Univ.
Nonprofessional Legal Studies
750 North Lake Shore Dr.
Chicago, IL 60611

Application deadline is March 1, 1990.

The 1990-91 ABA Mini-Grant Program will provide grants of up to \$120 for college and university faculty directly campus projects to enhance undergraduate education about law, the legal process, and the role of law in society.

For more information and application materials, contact:

Jean Pedersen
ABA Commission on College and Univ.
Nonprofessional Legal Studies
750 North Lake Shore Dr.
Chicago, IL 60611

Application deadline for these Mini-Grants is March 15, 1990.

NATIONAL INSTITUTE FOR DISPUTE RESOLUTIONS

Stephen Bundy, School of Law, University of California

Stephen Daniels and Lori Andrews, American Bar Foundation

Marc Galanter, Joel Rogers and Stuart Macaulay, Dispute Processing Research Program,
University of Wisconsin

Patricia Gwartney-Gibbs, Center for the Study of Women in Society, University of Oregon

Herbert Jacob, Center for Urban Affairs and Policy Research, Northwestern University

Joan Kelly, the Northern California Mediation Center - a \$41,054 grant

Elizabeth Loftus, Department of psychology, University of Washington - \$61,258

Emily Mansfield, Karen James and Diane Vendiola, Northwest Intertribal Court System -
\$50,000

Joseph McCartin, Department of History, State University of New York at Binghamton -
\$9,302

Neal Milner, Program on Conflict Resolution, University of Hawaii - \$36,616

Neghin Modavi, Department of Political Science, University of Hawaii - \$36,616

Margaret Neale, Robin Pinkley, Jack Brittain and Gregory Northcraft, J.L. Kellogg Graduate School of Management, Northwestern University - \$73,405

Janet Neelin and Sheena McConnell, Department of Economics, University of California at Los Angeles - \$30,000 grant

Terrell Northrup and Marshall Segall, Program on the Analysis and Resolution of Conflicts, Syracuse University - \$53,375

James Perry, School of Public and Environmental Affairs, Indiana University - \$42,988

Janet Rifkin and Sara Cobb, Department of Legal Studies, University of Massachusetts at Amherst - \$59,997

Nancy Thoennes and Patricia Tjaden, Center for Policy Research, Denver, Colorado \$62,443

Edward Walsh, Center for Research in Conflict and Negotiation, Pennsylvania State University - \$55,000

Carol Watkins, School of Business Administration, Rider College \$33,000

Michelle White, Department of Economics, University of Michigan -\$25,000

Convention Programs

SOUTHERN POLITICAL SCIENCE ASSOCIATION

1989 Program

Roundtable The Trials and Tribulations of Conducting Comparative Judicial Research

CHAIR: C. Neal Tate, University of North Texas

PARTICIPANTS: Burton Atkins, Florida State University
James Gibson, University of Houston
Michael Giles, Emory University
Patricia McRae, University of South Carolina

Roundtable Reflections on the Study of Law, Courts, and the Judicial Process: The Contributions of S. Sidney Ulmer

CHAIR: Harold Spaeth, Michigan State University

PARTICIPANTS: Gregory Caldeira, Ohio State University
Lawrence Baum, Ohio State University
Thomas Walker, Emory University

Approaches to Judicial Decision Making

CHAIR: Jeffrey Segal, State University of New York at Stony Brook

PAPERS: "Analyzing Supreme Court Behavior on Environmental Issues: Conflict and Consensus, 1969-1989"

Anthony L. Dodson, Auburn University

"A Cognitive-Cybernetic Theory of United States Supreme Court Decision Making"
Timothy Hagle, University of Iowa

"Judicial Role, Ideology and Behavior: A Study of
Ohio Appellate Judges"
John M. Scheb, II and Terry Bowen, University of
Tennessee

"Patterns of Interagreement Among the Justices: The Search and Seizure Cases, 1970-1980"

Shannon K. Smithey, Ohio State University

DISCUSSANTS: Craig Emmert, University of Alabama
Sally Jo Vasicko, Ball State University

Justices of the U.S. Supreme Court

CHAIR: Henry J. Abraham, University of Virginia

PAPERS: "Chief Justice Rehnquist: The First Three Terms"
Sue Davis, University of Delaware

"Justice Blackmun and Defendants' Rights"
Joseph Kobylka, Southern Methodist University

"Justice Antonin Scalia and the First Amendment"
Richter H. Moore, Jr and Charles Fields,
Appalachian State University

"Hazards of Predicting Judicial Performance: The Case of Justice Anthony Kennedy"
Barbara A. Perry, Sweet Briar College

DISCUSSANTS: Susan E. Lawrence, Rutgers University
Robert W. Langran, Villanova University

External Pressures on the Development of Law: The Role of Parties and Public Opinion

CHAIR: Charles A. Johnson, Texas A & M University

PAPERS: "Newspaper Attitudes Toward Civil War Censorship"
Daniel N. Hoffman, Johnson C. Smith University

"The Effect of Corporate Litigants on Free Speech Doctrine"

Nancy Maveety, Tulane University

"Deportation of Nazi Criminals as an Act of Justice"
Earlean M. McCarrick, University of Maryland

DISCUSSANTS: Robert C. Bradley, Illinois State University
Timothy J. O'Neill, Southwestern University

**Relations Among Courts, Other Institutions, and
Political Processes**

CHAIR: Bradley C. Canon, University of Kentucky

PAPERS: "The Equal Access to Justice Act and Relations Among the Three Branches
of Government"
Susan Gluck Mezey, Loyola University - Chicago

DISCUSSANTS: Lauren Bowen, John Carroll University
Dennis Simon, Southern Methodist University

**Jurisprudence During the Reagan Administration:
Evolving Issues of Law and Policy**

CHAIR: Judith A. Baer, Texas A & M University

PAPERS: "Undoing Affirmative Action: The Reagan Administration versus the
Supreme Court"
Kathanne Greene, Univ. of Southern Mississippi

"Lobbying the Supreme Court: The Religion Clauses and the Reagan
Administration"
Rodney A. Grunes, Centenary College

"Federalism during the Reagan Years"
William Lasser, Clemson University

"Radical Legal Feminism and the Reagan Administration"
Sarah Slavin, State University College at Buffalo

DISCUSSANTS: Judith A. Baer, Texas A & M University
Bradley Kent Carter, SMU

Issues of Justice, Reform, and Administration

CHAIR: John W. Winkle, III, University of Mississippi

PAPERS: "Court-Based Alternatives to Litigation in North Carolina: Their Impact on the
Court System and Justice"
Sara A. Grove, Frostburg State University

"Counsel for Indigents: What Price Representation?"

Connie Mauney, Emporia State University

DISCUSSANTS: Roy B. Flemming, Texas A & M University
Patricia A. Behlar, Pittsburg State
University

**NORTHEAST POLITICAL SCIENCE ASSOCIATION
PRELIMINARY PROGRAM**

November 9 - 11, 1989
Philadelphia, PA

THE COURTS AND THE POOR

Chair: Gerald Fitzpatrick, Ursinus College

Papers:

"The Poor and the Warren Court: The Failure of Constitutional Welfare Rights
Elizabeth Bussiere, University of Massachusetts-Boston

"Legal Mobilization for Social Change: Power and the Politics of Agenda-Setting"
Mark Kessler, Bates College

Discussant: Robert W. Langran, Villanova University

INTERNATIONAL LAW AND A JUST PEACE

Chair: David Larsen, University of New Hampshire

Papers:

"Is a New United Nations Charter the Key to Peace?"
John Logue, Villanova University

"A Legal Defense of the Sovereignty of Mini-States"
Richard M.J. Thurston, St. Peter's College

"Toward a Modern Theory of Moral and Immoral Wars"
Ilan Peleg, Lafayette College

Discussant: David Larsen, University of New Hampshire
Helen Brudner, Fairleigh Dickinson University

ANNOUNCEMENTS AND CALLS FOR PAPERS

1990-91 MEETINGS OF THE RESEARCH COMMITTEE ON COMPARATIVE JUDICIAL STUDIES

Canada Interim Meeting

An Official Interim Meeting of the Research Committee on Comparative Judicial Studies of the International Political Science Association will be held in Victoria, British Columbia, Canada, May 26-27, 1990. (For those not familiar with Canadian geography, Victoria, the capital of British Columbia province, is located on Vancouver island, a short ferry ride across the water from Vancouver.) Ted Morton of the Research Unit for Socio-Legal Studies and Department of Political Science of the University of Calgary, will serve as host for the meeting. The meeting will be held in conjunction with the Canadian Learned Societies Annual Meetings in Victoria. The Canadian Learned Societies meetings are the occasion for the joint gathering of a wide variety of Canadian scholarly associations, including the Canadian Political Science Association and the Canadian Law and Society Association.

The Research Committee meeting will precede the meeting of the Canadian Political Science Association, May 26-28, and the meeting of the Canadian Law and Society Association, May 29-31, at the same location. This could involve attendance at the Law and Society Association Annual Meeting at Berkeley, California, June 1-3, 1990.

The Canadian Interim Meeting is open to all kinds of proposals for panels, roundtables and papers. However, the Organizers especially wish to encourage proposals dealing with the following themes:

Courts and the Enforcement of Rights in Comparative Perspective

Government Responses to Judicial Policy 'Mistakes': Legislative Overrides and Other Court Curbing Mechanisms

Special Comparative Judicial Politics Conference

Research Committee member, Burt Atkins and Convenor, Neal Tate are organizing a special Research Committee conference on "Comparative Judicial Politics" to be held at the London Study Center of Florida State University (FSU) August 20-22, 1990. The conference will be a forum for the presentation of research which employs the theories, concepts, and methods of the social and behavioral or mathematical sciences to explore or analyze legal institutions, courts or judges from at least an implicitly comparative perspective. The organizers welcome analyses of national or subnational units, especially analyses of the latter which explore theoretical or analytical approaches relevant to cross-national judicial politics.

Within these boundaries, there are no limitations on the topics which might be explored in panels to be organized or research prepared for the conference. However, panel or paper proposals dealing theoretically or empirically with the recruitment or selection, or intergroup behavior of judges, the work patterns, decision-making, or policy impacts of courts, or the determinants, operation or consequences of legal institutions would seem

especially fitting. Assessments of the state or future of comparative judicial politics might also be appropriate.

The FSU London Study Center is located in the Kensington area of London, in the "museum district." With the cooperation of FSU, it should be possible to provide very reasonably-priced housing and good meeting rooms for conference participants. However, participants must expect to fund their own participation. The organizers anticipate that the conference proceedings will be published as a special issue of an appropriate journal or in book form.

XVth WORLD CONGRESS OF IPSA, 1991

The XVth World Congress of the International Political Science Association will be held in Buenos Aires, Argentina, in the summer of 1991. Now is the time to begin making your plans to attend, and to express your ideas concerning the Research Committee's program for the 1991 Congress. The earlier your proposals are received, the stronger will be the Research Committee's case for a larger share of the 1991 IPSA program and the greater the likelihood that your proposal can be accommodated. If you wish to attend the XVth IPSA World Congress, you should join IPSA.

Anyone interested in participating in any of the above meetings should contact the Research Committee's Convenor as soon as possible, giving details of your proposed participation. contact:

C. Neal Tate
 Department of Political Science
 University of North Texas
 Denton, TX 76203-5338
 Phones: off. (817) 565-2337 and hm. (817) 387-7774
 BITNET: TATE @ UNTVM1.)

CALL FOR BIBLIOGRAPHICAL MATERIAL

At the 1989 Interim Meeting in Lund, the Executive Committee decided to institute a bibliographical section in THE DOCKET, the Newsletter of the IPSA Research Committee on Comparative Judicial Studies. The objective is to help our world-wide network of scholars keep abreast of current research in comparative judicial studies. The Executive Committee was concerned that the rich diversity of the research in our area may create an obstacle to the data collection and theoretical model building that is needed for systematic work. This is a call for you to submit notices of your recent work dealing with comparative judicial studies to the editor.

Each issue of THE DOCKET, beginning with #19, will publish a bibliography of recent books. (Please do not submit titles of books published prior to 1989.) If space and finances permit, THE DOCKET will periodically publish a bibliography of recent articles in comparative judicial studies. (Please do not submit notices of articles published prior to 1990.)

Send notices of material you wish to have included in the bibliography to the editor of THE DOCKET:

Professor Martin Edelman
 Department of Political Science
 Rockefeller College of Public Affairs and Policy
 SUNY - Albany
 135 Western Avenue
 Albany, NY 12208

The U.S. Supreme Court and the Great Justices

The eighth annual interdisciplinary Fall Forum was held on November 15-16, 1990 at Louisiana State University in Shreveport. Interested individuals should contact:

Prof. William D. Pederson
 Louisiana State University
 One University Place
 Shreveport, LA 71115-2399
 (318) 797-5337 or 5349

Deadline for proposal and resume is April 16, 1990. Limited travel stipends are available.

1990 Law and Society Association Meeting

The 1990 Annual Meeting of the Law and Society Association will be held in Berkeley, California, May 31 - June 3 at the Claremont Resort.

The Law and Society Association has issued a call for papers and panels for its 1990 Annual Meeting to be held May 31-June 3 at the Claremont Resort in Berkeley, California. The theme of the meeting is "Legal Identities, Scholarly Identities, and Politics." In particular, the program committee welcomes proposals on the themes of language and politics, expansion and contraction of the state, globalization of legal issues, and scholarship and political activism. For copies of the call, write to:

Law and Society Association
 Hampshire House
 University of Massachusetts,
 Amherst, MA 01003;
 phone 413-545-4617; fax 413-545-1640;
 BITNET LSA@UMASS.

BIBLIOGRAPHY

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 Rogers M. Smith

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William P. McLauchlan
Law, Courts, and Judicial Process
Section Newsletter
Department of Political Science
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