

# Washington University Law Review

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Volume 1971

Issue 2 *Symposium: Courts, Judges, Politics—Some Political Science Perspectives*

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January 1971

## The Impact of Judicial Decisions: New Dimensions in Supreme Court-Congressional Relations, 1945-1968

John R. Schmidhauser  
*University of Iowa*

Larry L. Berg  
*University of Southern California*

Albert Melone  
*North Dakota State University*

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### Recommended Citation

John R. Schmidhauser, Larry L. Berg, and Albert Melone, *The Impact of Judicial Decisions: New Dimensions in Supreme Court-Congressional Relations, 1945-1968*, 1971 WASH. U. L. Q. 209 (1971). Available at: [https://openscholarship.wustl.edu/law\\_lawreview/vol1971/iss2/3](https://openscholarship.wustl.edu/law_lawreview/vol1971/iss2/3)

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# THE IMPACT OF JUDICIAL DECISIONS: NEW DIMENSIONS IN SUPREME COURT-CONGRESSIONAL RELATIONS, 1945-1968

JOHN R. SCHMIDHAUSER, LARRY L. BERG AND ALBERT MELONE\*

Modern academic interpretations of the status of the Supreme Court in the American political system have commonly accepted the notion that the Supreme Court is protected from political attack by an aura of reverence. The Court Packing Fight of 1937 was the seminal controversy which allegedly provided the basis for such an assumption.<sup>1</sup> Thus, this notion was basic to Cortez A. M. Ewing's view, in 1938, that ". . . the public has sacerdotalized the court."<sup>2</sup> Similarly, in 1939, Felix Frankfurter developed another variation, namely that:

. . . multitudes of Americans seriously believe that the nine Justices embody pure reason, that they are set apart from the concerns of the community, regardless of time, place, and circumstances, to become the interpreter of Sacred words with meaning fixed forever and ascertainable by a process of ineluctable reasoning.<sup>3</sup>

By the 1960's, the "reverence" for the Court idea became a basic explanatory concept in assessments of Congress' relationship to the Supreme Court. In 1961, Walter Murphy and Herman Pritchett contended that,

. . . Courts are protected by their magic; only rarely can a hand be laid on a judge without a public outcry of sacrilege.<sup>4</sup>

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\* John R. Schmidhauser is Professor of Political Science, University of Iowa; Larry L. Berg is Assistant Professor of Political Science, University of Southern California; and Albert Melone is Assistant Professor of Political Science, North Dakota State University. Research for the roll call analysis was supported by the National Science Foundation (GS-2862).

1. For a reappraisal of the Court Packing controversy which challenges this assumption see J. SCHMIDHAUSER & L. BERG, *CONGRESS AND THE COURT: THE POST WAR ERA, 1945-1968* (scheduled for publication in 1971 by the Free Press of Macmillan Company) [hereinafter cited as *CONGRESS AND THE COURT*], especially Chapter VII.

2. C. EWING, *THE JUDGES OF THE SUPREME COURT, 1789-1937*, at 63 (1938).

3. F. FRANKFURTER, *LAW AND POLITICS* 108 (1939).

4. W. MURPHY & H. PRITCHETT, *COURTS, JUDGES, AND POLITICS: AN INTRODUCTION TO THE JUDICIAL PROCESS* 554-55 (1961).

This was reemphasized by Pritchett's comment apropos the Congressional attacks of 1957-1961 that,

Basically, the Court was protected by the respect which is so widely felt for the judicial institution in the United States.<sup>5</sup>

In a similar vein, Glendon Schubert stressed legal professionalism as a bulwark of the Court in Congressional reversal of statutory interpretation issues:

Many congressmen are lawyers; and the argument that proponents of an amendatory bill are showing disrespect for the highest court in the land is an effective one.<sup>6</sup>

In 1970, Thomas Halper wrote an article devoted primarily to an assessment of the nature of the policy or institutional responses available to the justices in the face of hostile reactions to Supreme Court decisions. Halper noted "signs of *recent* erosion" of the bases of Supreme Court support. He also conceded that Congressmen may be tempted "to appeal to (and thereby heighten) their constituents' irrationality." Nevertheless, Halper implicitly maintained a commitment to the concept of reverence for the Court—the erosion of support was, in his words, "recent". Like Schubert, Halper assumed that Congressmen who are members of the legal profession behave differently when dealing with the judiciary. He explicitly argued that:

Since 58.9% of the members of Congress have law degrees, and all are involved professionally in the workings of the government, we may assume that they are far better informed and more lawyer-like in their thinking than the general public. . . .<sup>7</sup>

Finally, Stephen Wasby's comprehensive appraisal of the variety of judicial impact studies concluded with a series of generalizations and hypotheses which in most respects perpetuated the theme of reverence for the Court. Wasby did, however, draw upon the preliminary findings of Murphy and Tanenhaus to qualify some of the basic assumptions of the "reverence for the Court" advocates with respect to public opinion. Wasby accepted the essentials of Schubert's generalization concerning

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5. H. PRITCHETT, CONGRESS VERSUS THE SUPREME COURT, 1957-1961, at 119 (1961).

6. G. SCHUBERT, CONSTITUTIONAL POLITICS 257-58 (1960).

7. Halper, *Supreme Court Responses to Congressional Threats: Strategy and Tactics*, 19 DRAKE L. REV. 292, 320-23 (1970).

lawyers. In Wasby's hypothesis: "Lawyers are more likely to comply with Supreme Court decisions than are non-lawyers."<sup>8</sup>

To what extent is Congressional antagonism toward the Court "recent"? Has there been a truly significant change in Congressional attitudes in the last three or four decades? Were the bitter ideological attacks leveled against Fortas because of Congressional antagonism to the thrust of the Warren Court decisions uncharacteristic of Congressional-Court relations in the 20th Century? Has the shift from a pro-business, anti-regulatory position by the Roosevelt, Stone, Vinson and Warren Courts ultimately eroded significant and influential bases for support in American Society? Subsequent analysis of 147 House and Senate roll calls in the post-World War II era was undertaken to provide preliminary answers to these questions. The roll call and membership data provided by the Inter-University Consortium for Political Research, Ann Arbor, Michigan, was utilized.

This research report is an investigation of Congressional roll call behavior and interest group activity in response to Supreme Court decisions involving civil rights and liberties, and economic, labor and welfare issues. The report is designed to explore the nature and relative stability of those variables which may influence Congressmen when they vote on judiciary-oriented roll calls in the above mentioned issue categories. The conceptual frame of reference of Walter Burnham's emphasis upon time series analysis,<sup>9</sup> and of contemporary investigations of the impact of judicial decisions,<sup>10</sup> is basic to this study. A broader perspective for understanding the nature of Congressional-Court relations may be gained by utilization of an investigatory emphasis which embodies a convergence of interest group analysis and roll call behavioral studies in chronological sequence. This report is a followup of the original research reported in John R. Schmidhauser and Larry L. Berg, *Congress and the Supreme Court: The Post War Era, 1945-1968*.

A number of students of the Supreme Court have argued that a discernable distinction can be made between Congressional attitudes toward the Court regarding ordinary legislative reversals of statutory interpretations and extraordinary actions which, in substance, would

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8. S. WASBY, *THE IMPACT OF THE UNITED STATES SUPREME COURT: SOME PERSPECTIVES* 261, 266 (1970).

9. W. BURNHAM, *CRITICAL ELECTIONS AND THE MAINSPRINGS OF AMERICAN POLITICS* x-xi (1970).

10. See, e.g., T. BECKER, *THE IMPACT OF SUPREME COURT DECISIONS: EMPIRICAL STUDIES* (1969); S. WASBY, *THE IMPACT OF THE UNITED STATES SUPREME COURT: SOME PERSPECTIVES* (1970).

weaken the Court as an institution. Summarizing conventional historical descriptions of legislative anti-decision and anti-Court attacks, Stuart Nagel argued that “relatively milder” Court-Curbing bills had a “substantially higher rate of success.”<sup>11</sup> More specifically, Harry Stumpf concluded that:

The prestige or sacrosanctity argument in Congress is used and used with some effectiveness in protecting the judiciary against anti-Court legislative reaction. . . . However, in anti-decision action, especially in simple reversals, the argument that reversal advocates are showing disrespect for the Court is not only little used, but if used at all, is almost totally ineffective.<sup>12</sup>

Presumably, if Stumpf’s hypothesis is correct, members of Congress may be expected to demonstrate higher levels of support for the Supreme Court when voting on roll calls involving direct institutional attacks on the Court than when the roll calls involve statutory reversals.

Another related hypothesis focuses attention directly upon the interest group behavior and tactics of business-oriented organizations. Thus, Arthur S. Miller has argued, building upon a seminal paper by Alan Westin, that Congress has developed a system of “appellate review” of administrative and judicial decisions which were viewed by business-oriented interest groups as detrimental.<sup>13</sup>

If, as Alan Westin suggested, direct institutional clashes between the corporate business community and the Supreme Court were averted because business interests developed resort to Congress to secure reversals of anti-business judicial statutory interpretations, then the incidence of direct institutional attacks upon the Supreme Court would bear an inverse correlation to the number of Congressional reversals of statutory interpretations by the Court. Since the members of the Conservative Coalition in Congress generally are oriented toward the interest groups representing the business community (*i.e.*, U.S. Chamber of Commerce, the National Association of Manufacturers and other groups including the American Bar Association operating through

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11. S. NAGEL, *THE LEGAL PROCESS FROM A BEHAVIORAL PERSPECTIVE* 277 (1969).

12. Stumpf, *Congressional Response to Supreme Court Rulings: The Interaction of Law and Politics*, 14 J. PUB. L. 376, 394 (1955).

13. A. MILLER, *THE SUPREME COURT AND AMERICAN CAPITALISM* 108 (1968) [hereinafter cited as MILLER]; see also A. Westin, *Corporate Appeals to Congress from Supreme Court Rulings*, (unpublished paper presented to the 1962 Convention of the American Political Science Ass’n).

interest group "summit" conferences such as Greenbrier),<sup>14</sup> do members of this Coalition attack the Court institutionally more frequently when statutory reversals decrease or vice versa? Furthermore, is there any significant difference in Congressional roll call behavior when civil rights and civil liberties issues are at stake in contrast to economic issues such as statutory reversal controversies involving business, labor, or welfare? Arthur Miller argues that there is a difference, contending that "Much less success has resulted in efforts by others to legislatively overrule the Supreme Court in civil-liberty and civil-rights decisions. . . ."<sup>15</sup> One hundred and forty-seven House and Senate roll calls (all are categorized and described chronologically in the Appendix *infra*) were voted upon in the period 1945-1968 which comprised virtually every division relating to Congressional-Supreme Court relations in the post-World War II era. Utilizing the totality of roll calls, what do these divisions indicate?

#### I. DIRECT INSTITUTIONAL ATTACKS CONTRASTED TO REVERSAL OF STATUTORY INTERPRETATIONS BY CONGRESS

An examination of the voting behavior of Congressmen and Senators was made of the ten roll calls in the House of Representatives and the twenty-one roll calls in the Senate which were distinctly attacks on the Court as an institution during the period 1947-1968, the 80th through 90th Congresses. The 79th Congress was analyzed separately. These were compared with the roll calls which were not direct institutional attacks, but mere reversals by Congress of statutory interpretations made by the Supreme Court. To what extent did successful invocation of the Congressional power to reverse statutory reversals avert direct institutional attacks upon the Supreme Court?

In Table 1, the incidence of the two types is summarized by Congress. The results generally indicate that direct institutional attacks did not occur as often in Congresses which frequently reversed statutory interpretations. But this summary does not provide direct evidence to either support or contradict Westin's hypothesis. Roll calls, by the very fact that they have been invoked in the legislative process, generally represent divisions which were not susceptible of resolution by negotiation or bargaining. In both categories of issues, specific legislative disagreements sometimes proliferated a large number of roll

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14. D. HALL, COOPERATIVE LOBBYING—THE POWER OF PRESSURE 32-34, 188-212 (1969) [hereinafter cited as HALL].

15. MILLER 108.

call divisions. In the 79th Congress, for example, five of the six statutory interpretation reversal roll calls involved variations on a single parliamentary theme, the Congressional attempt at substituting its interpretation for that of the Supreme Court regarding *Tidelands Oil*. Thus, the actual number of contested bills (indicated in parentheses) is considerably smaller in most Congresses than the roll call divisions which were called for by the protagonists of competing positions. The proliferation of roll call divisions is, at best, a crude indicator of intensity of conflict and, perhaps, parliamentary skill. Ultimately, it shall be necessary to utilize the total universe of legislative actions in each successive Congress in order to accurately test the validity of Westin's hypothesis. The diminishing number of economic roll call divisions generally apparent in the chronological order of Congresses from 1945 to 1968 may well reflect the growing success of the corporate business community in overturning statutory interpretations *without* provoking the numerous roll call divisions characteristic of the late 1940's and the 1950's. In 1966, for example, the 89th Congress, importuned by various interest groups including the American Bar Association, passed H.R. 11256, a bill relating to the priority of federal tax liens and levies. Although this bill overruled two Supreme Court decisions,<sup>16</sup> it was approved as Public Law 89-719 without a roll call division in either the House or the Senate.<sup>17</sup>

To what extent do the differences in roll call behavior support Harry Stumpf's hypothesis, which posited higher levels of support for the Supreme Court when it was under direct attack as an institution? The data summarized in Tables 2, 3, 4, and 5 affirm Stumpf's hypothesis. In fact, a comparison of the average percentage of Democratic, Republican and Northern Democratic Representatives supporting the Court in the 80th through 90th Congress indicate stronger Court support in direct Court-curbing roll calls for every classification. But it is interesting to note that the differences are not great except for the Northern Democrats. 55.4% of all Democrats supported the Court against direct institutional attacks while 48.1% supported it against Congressional statutory reversals. 19.2% of the Republicans supported the Court against direct attacks and 13% supported it against statutory reversals. But 82.3% of the Northern Democrats supported the Court against

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16. *United States v. Bull Const. Co.*, 355 U.S. 587 (1958); *United States v. White Beer Brewing Co.*, 350 U.S. 1010 (1956).

17. From the data gathered by Albert Melone for The American Bar Association and Public Policy, 1947-1968 (Preliminary draft of a doctoral dissertation, University of Iowa, 1971).

TABLE 1  
 INCIDENCE OF CONGRESSIONAL ROLL CALLS AND BILLS  
 ON (1) REVERSAL OF SUPREME COURT STATUTORY  
 INTERPRETATIONS AND (2) DIRECT ATTACKS  
 ON THE SUPREME COURT AS AN INSTITUTION  
 BY CONGRESS: 1945-1968

Congress	Type of Roll Call (Actual Number of Bills Contested in Parentheses)	
	Statutory Reversals (by number)	Direct Institutional Attacks (by number)
79th	6 (2)	1 (1)
80th	8 (2)	0
81st	20 (5)	0
82nd	12 (2)	0
83rd	15 (2)	1 (1)
84th	9 (1)	0
85th	12 (4)	5 (1)
86th	12 (3)	3 (1)
87th	2 (2)	0
88th	3 (2)	8 (2)
89th	3 (1)	9 (3)
90th	9 (2)	5 (1)

direct institutional attacks while 65.3% supported it against Congressional statutory reversals. It is clear, therefore, that the distinction between types of anti-Court actions is far more meaningful to Northern Democrats in the House than it is to those Congressmen who may comprise the Conservative Coalition. The data for the Senators indicate a similar pattern. Support by every classification of Senator is stronger for the Supreme Court in divisions involving direct institutional attacks. But Senate Republicans gave stronger support in both issue



categories and Northern Democratic Senators did not make as sharp a distinction between the types of roll calls. Thus, 60% of all Democratic Senators supported the Court against direct institutional attacks in contrast to 55.4% against ordinary reversals. A higher percentage of Senate Republicans opposed institutional attacks (37.3%) than House Republicans (19.2%); 24.2% of the Republican Senators opposed reversals; 83% of the Senate Democrats supported the Court against direct attacks, virtually identical to House Democrats (82.3%), while they supported the Court on statutory reversals 72.3% compared to 65.3% by their House counterparts.

TABLE 2

AVERAGE PERCENTAGE OF DEMOCRAT, REPUBLICAN AND NORTHERN DEMOCRAT REPRESENTATIVES SUPPORTING THE COURT ON ROLL CALLS DIRECTLY ATTACKING THE COURT OR SEEKING TO CURB THE COURT, 80TH THROUGH 90TH CONGRESS

	Party		
	Democrat	Republican	Northern Democrat
Average Percentage (10 roll calls)	55.4%	19.2%	82.3%

TABLE 3

THE AVERAGE PERCENTAGE OF DEMOCRAT, REPUBLICAN, AND NORTHERN DEMOCRAT SENATORS SUPPORTING THE SUPREME COURT ON ROLL CALLS ON LEGISLATION TO CURB OR DIRECTLY ATTACK THE COURT, 80TH THROUGH 90TH CONGRESS

	Party		
	Democrat	Republican	Northern Democrat
Average Percentage (21 roll calls)	60.0%	37.3%	83.0%

TABLE 4

AVERAGE PERCENTAGE OF DEMOCRAT, REPUBLICAN AND  
NORTHERN DEMOCRAT REPRESENTATIVES SUPPORTING  
THE SUPREME COURT ON ROLL CALLS TO MODIFY  
OR REVERSE SUPREME COURT DECISIONS,  
80TH THROUGH 90TH CONGRESS

	Party		
	Democrat	Republican	Northern Democrat
Average Percentage (35 roll calls)	48.1%	13.0%	65.3%

TABLE 5

AVERAGE PERCENTAGE OF DEMOCRAT, REPUBLICAN AND  
NORTHERN DEMOCRAT SENATORS SUPPORTING THE  
SUPREME COURT ON ROLL CALLS ATTEMPTING  
TO MODIFY OR REVERSE SUPREME COURT  
DECISIONS, 80TH THROUGH  
90TH CONGRESS

	Party		
	Democrat	Republican	Northern Democrat
Average Percentage (71 roll calls)	55.4%	24.2%	72.3%

What do the roll call data show with respect to Arthur Miller's distinction between statutory reversals involving economic issues (business, labor, and welfare) and those concerning civil rights and civil liberties? A comparison of these diverse issue categories generally contradicts Miller's assumption that Congressional support for the Court is higher when civil rights and civil liberties rather than economic issues are subjects for statutory reversal. The data from the House roll calls consistently support an opposite conclusion. The data for both chambers are summarized in Tables 6, 7, 8, and 9. In the House of Representatives, all Democrats supported the Court in statutory reversal roll calls involving economics more strongly than in the area of civil rights (53% to 42.4%). The House Republicans followed a similar

pattern (16.5% to 8.9%). Northern Democrats, interestingly enough, showed the widest variation (74.2% to 54.8%). The Senate Democrats as a whole indicated an identical voting pattern, indicating higher Court support on economic issues by 56.9% compared to a civil liberties support level of 50.6%. Conversely, the Senate Republicans did indicate a higher percentage of civil rights support rather than economic issue support but, significantly, neither category comprised majority Republican senatorial support for the Supreme Court (30.8% in civil rights and liberties compared to 22.1% on economic statutory reversal decisions). The Northern Democratic Senators also provided very marginal evidence for Miller's hypothesis by supporting the Supreme Court on civil rights and liberties issues 74.7% and on economic issues by 71.6%.

TABLE 6

AVERAGE PERCENTAGE OF DEMOCRATIC, REPUBLICAN AND NORTHERN DEMOCRATIC REPRESENTATIVES SUPPORTING THE SUPREME COURT ON ROLL CALLS TO MODIFY OR REVERSE SUPREME COURT DECISIONS IN THE AREAS OF ECONOMICS, LABOR, AND WELFARE, 80TH THROUGH 90TH CONGRESSES

	Party		
	Democrat	Republican	Northern Democrat
Average Percentage (19 roll calls)	53.0%	16.5%	74.2%

TABLE 7

AVERAGE PERCENTAGE OF DEMOCRATIC, REPUBLICAN AND NORTHERN DEMOCRATIC REPRESENTATIVES SUPPORTING THE SUPREME COURT ON ROLL CALLS TO MODIFY OR REVERSE SUPREME COURT DECISIONS IN THE AREA OF CIVIL LIBERTIES, 80TH THROUGH 90TH CONGRESSES

	Party		
	Democrat	Republican	Northern Democrat
Average Percentage (16 roll calls)	42.4%	8.9%	54.8%

TABLE 8

AVERAGE PERCENTAGE OF DEMOCRATIC, REPUBLICAN AND  
NORTHERN DEMOCRATIC SENATORS SUPPORTING  
THE SUPREME COURT ON ROLL CALLS TO MODIFY OR  
REVERSE SUPREME COURT DECISIONS INVOLVING  
ECONOMIC, WELFARE AND LABOR ISSUES  
80TH THROUGH 90TH CONGRESSES

	Party		
	Democrat	Republican	Northern Democrat
Average Percentage (54 roll calls)	56.9%	22.1%	71.6%

TABLE 9

AVERAGE PERCENTAGE OF DEMOCRATIC, REPUBLICAN AND  
NORTHERN DEMOCRATIC SENATORS SUPPORTING THE  
SUPREME COURT ON ROLL CALLS ATTEMPTING TO  
MODIFY OR REVERSE SUPREME COURT DECISIONS  
RELATING TO CIVIL LIBERTIES ISSUES,  
80TH THROUGH 90TH CONGRESSES

	Party		
	Democrat	Republican	Northern Democrat
Average Percentage (17 roll calls)	50.6%	30.8%	74.7%

As was true in the preliminary investigation of roll call data conducted by John R. Schmidhauser and Larry L. Berg,<sup>18</sup> this additional investigation indicates that Congressional voting patterns relating to Supreme Court support or opposition bear a close resemblance to the overall voting tendencies of House and Senate members. For example, Jewell and Patterson had summed up the research findings on party differences and party cohesion in 1966 as follows:

The few studies available indicate that the Democratic congressmen

18. See CONGRESS AND THE COURT, esp. Chapter VII.

who vote most consistently with the party have been those from Northern metropolitan districts, with a high proportion of foreign-born or (in more recent years) non-white population. Rural Republicans are likely to have a more loyal voting record than those who represent the kind of metropolitan distrust that usually votes Democratic.<sup>19</sup>

Basic to most scholarly evaluations of Congressional-Court relations has been the assumption that Congressmen view the Court as a hallowed institution. As was indicated above, if this assumption is valid, then the members of Congress presumably will treat judiciary-oriented issues different from non-judicial issues and will vote in a manner which reflects special attention to the Court as an institution. Neither the original data nor the additional data analyzed in this study of Congressional roll call behavior indicate this kind of marked departure from the "normal" partisan and regional patterns of voting. Indeed, a comparison of party cohesion indexes by table and by graphic figure etches more clearly the persistence of party differences leavened, of course, by the significant impact of the Conservative Coalition. Coalition voting on these judiciary-oriented roll calls generally weakened Democratic rather than Republican unity. Tables 10, 11, 12, and 13 and Figures 3, 4, 5, 6, 7, 8, 9, and 10 sum up the new data while Figures 1 and 2 are reproduced for comparative purposes.

TABLE 10

RICE INDEX OF COHESION FOR DEMOCRATIC, REPUBLICAN AND  
NORTHERN DEMOCRATIC REPRESENTATIVES ON ROLL CALLS  
TO MODIFY OR REVERSE COURT DECISIONS IN THE  
AREAS OF ECONOMICS, LABOR, AND WELFARE,  
80TH THROUGH 90TH CONGRESSES

	Party		
	Democrat	Republican	Northern Democrat
Rice Index (19 roll calls)	17.4	65.1	48.0

19. M. JEWELL & S. PATTERSON, *THE LEGISLATIVE PROCESS IN THE UNITED STATES* 437 (1966).

TABLE 11  
RICE INDEX OF COHESION FOR DEMOCRATIC, REPUBLICAN AND  
NORTHERN DEMOCRATIC REPRESENTATIVES ON ROLL CALLS  
TO MODIFY OR REVERSE COURT DECISIONS IN THE  
AREA OF CIVIL LIBERTIES, 80TH  
THROUGH 90TH CONGRESSES

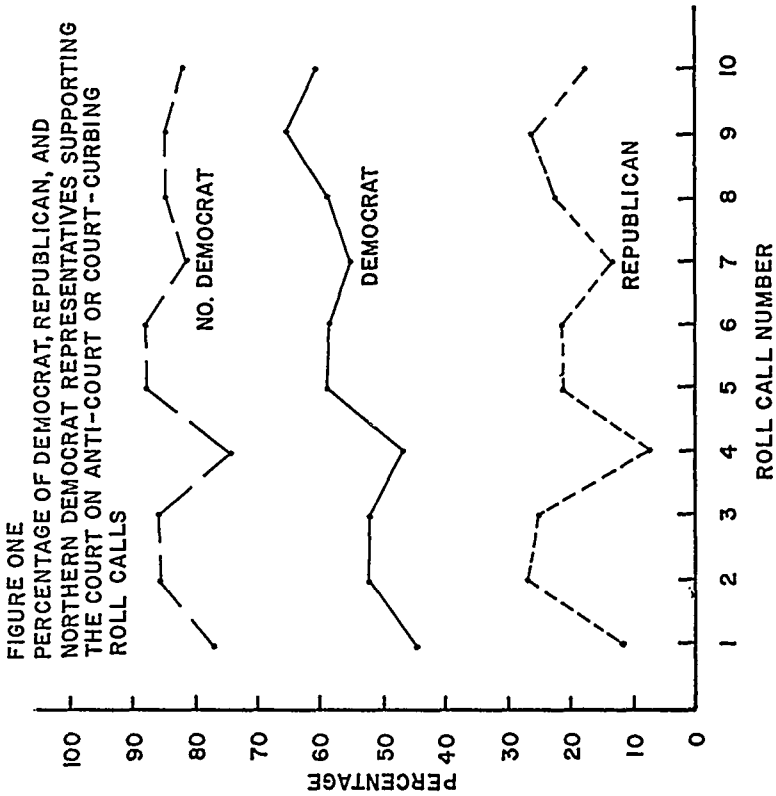
	Party		
	Democrat	Republican	Northern Democrat
Rice Index (16 roll calls)	29.8	75.9	35.4

TABLE 12  
RICE INDEX OF COHESION FOR DEMOCRATIC, REPUBLICAN AND  
NORTHERN DEMOCRATIC SENATORS ON ROLL CALLS MODIFYING  
OR REVERSING SUPREME COURT DECISIONS RELATING TO  
ECONOMIC, WELFARE OR LABOR ISSUES,  
80TH THROUGH 90TH CONGRESSES

	Party		
	Democrat	Republican	Northern Democrat
Rice Index (54 roll calls)	31.3	61.2	48.7

TABLE 13  
RICE INDEX OF COHESION FOR DEMOCRATIC, REPUBLICAN AND  
NORTHERN DEMOCRATIC SENATORS ON ROLL CALLS MODIFYING  
OR REVERSING SUPREME COURT DECISIONS RELATING  
TO CIVIL LIBERTIES ISSUES, 80TH  
THROUGH 90TH CONGRESSES

	Party		
	Democrat	Republican	Northern Democrat
Rice Index (17 roll calls)	41.4	56.9	58.0



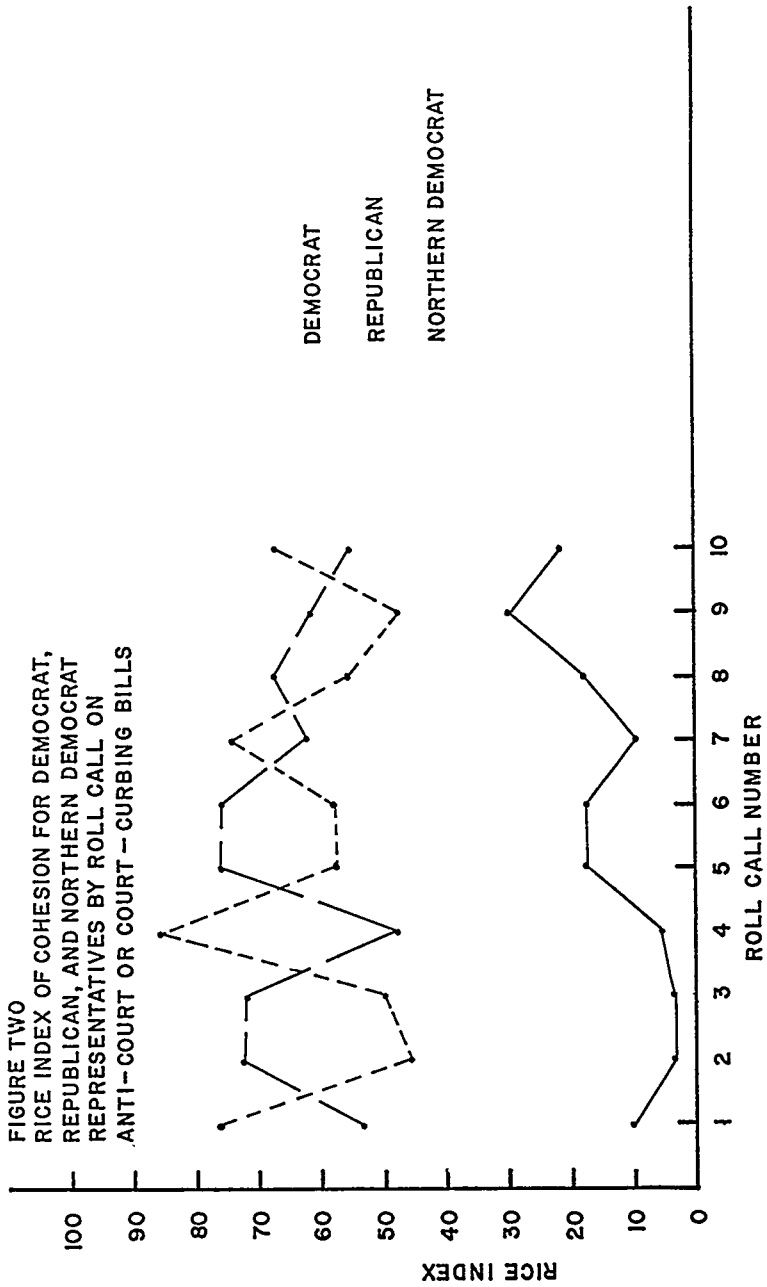




FIGURE THREE  
PERCENTAGE OF DEMOCRAT, REPUBLICAN AND NORTHERN  
DEMOCRAT REPRESENTATIVES SUPPORTING THE SUPREME  
COURT ON ROLL CALLS TO MODIFY OR REVERSE SUPREME  
COURT DECISIONS IN THE AREAS OF ECONOMICS, LABOR,  
AND WELFARE.

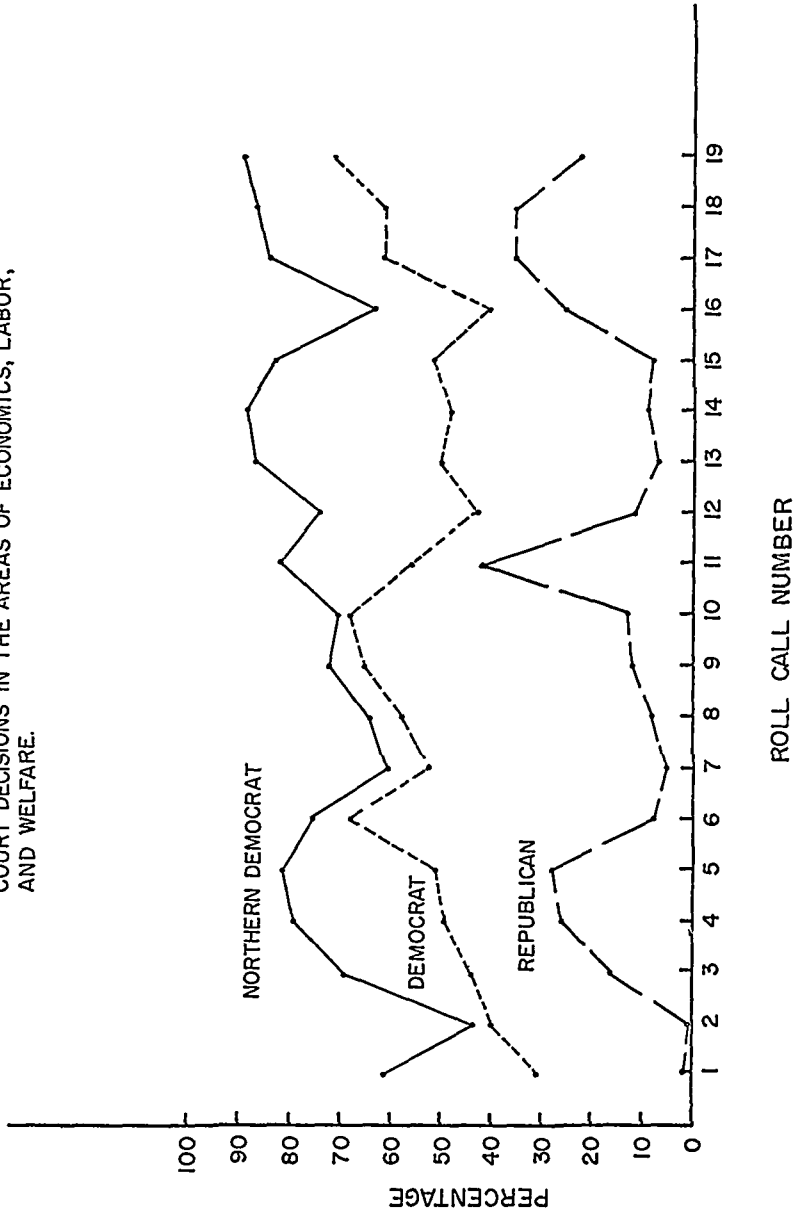


FIGURE FOUR  
PERCENTAGE OF DEMOCRAT, REPUBLICAN, AND NORTHERN  
DEMOCRAT REPRESENTATIVES SUPPORTING THE SUPREME  
COURT ON ROLL CALLS TO MODIFY OR REVERSE SUPREME  
COURT DECISIONS IN THE AREA OF CIVIL LIBERTIES

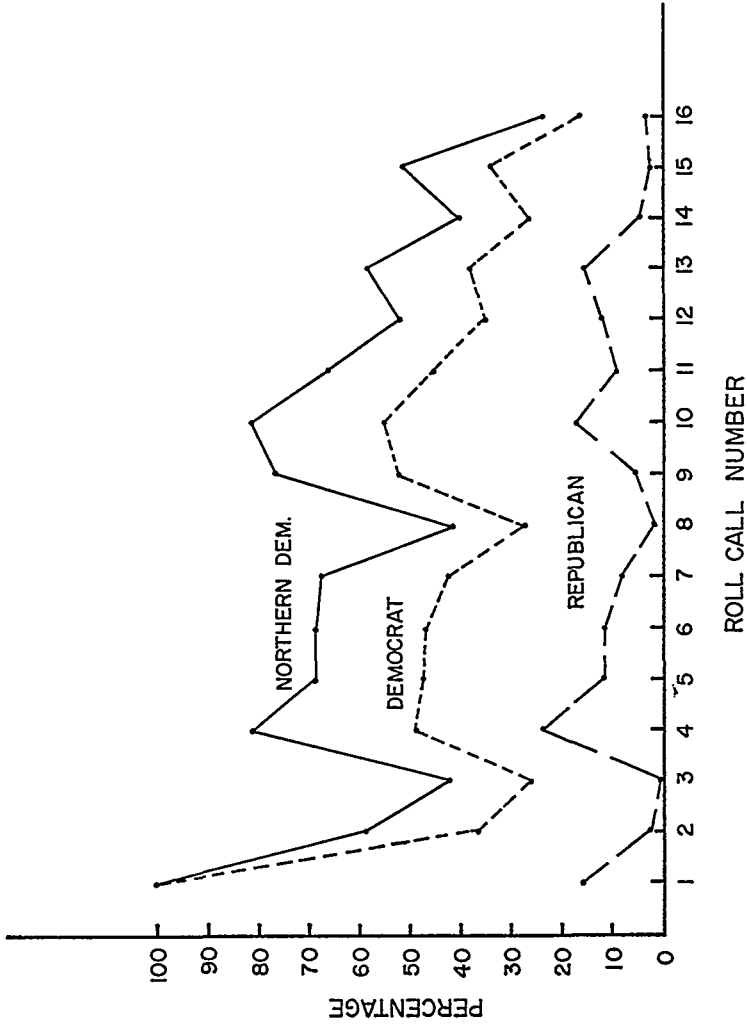


FIGURE FIVE  
RICE INDEX OF COHESION FOR DEMOCRAT, REPUBLICAN  
AND NORTHERN DEMOCRAT REPRESENTATIVES ON ROLL  
CALLS TO REVERSE OR MODIFY SUPREME COURT DECISIONS  
IN THE AREAS OF ECONOMICS, LABOR AND

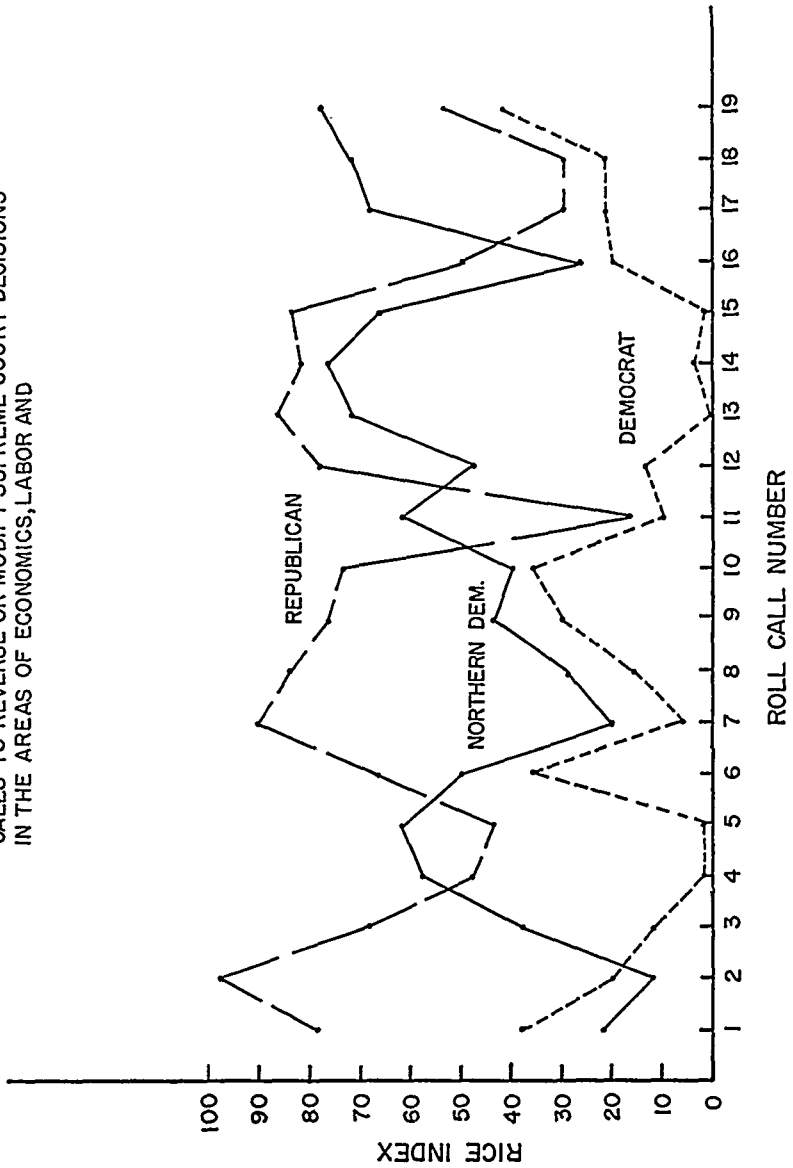
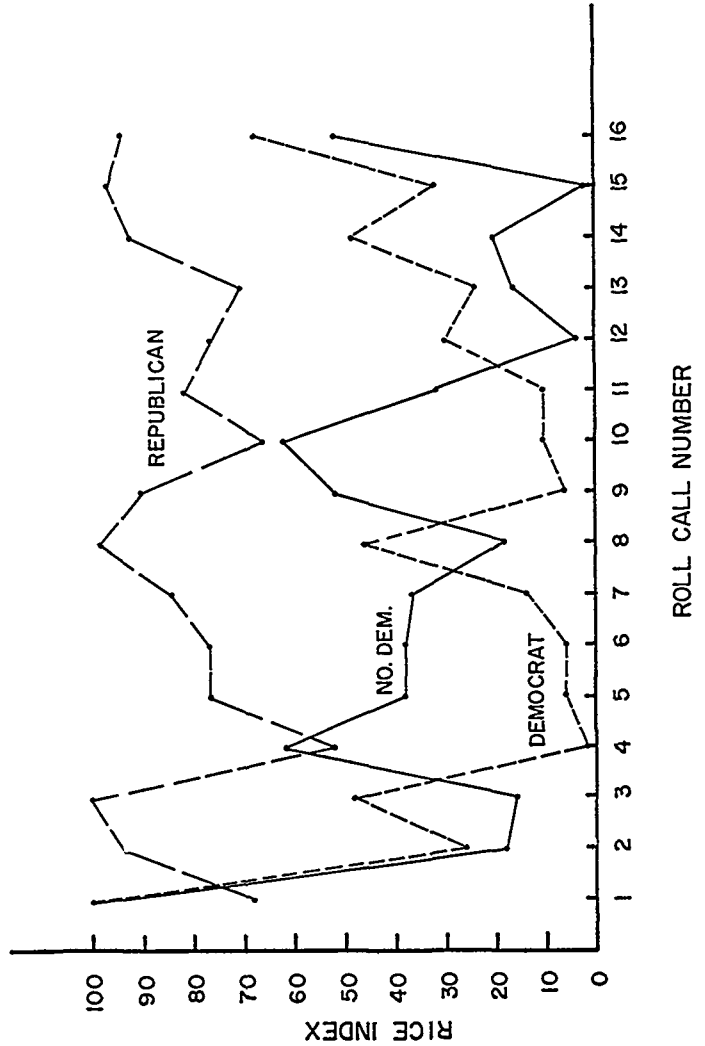


FIGURE SIX  
RICE INDEX OF COHESION FOR DEMOCRAT, REPUBLICAN  
AND NORTHERN DEMOCRAT REPRESENTATIVES ON ROLL  
CALLS TO MODIFY OR REVERSE SUPREME COURT  
DECISIONS IN THE AREA OF CIVIL LIBERTIES





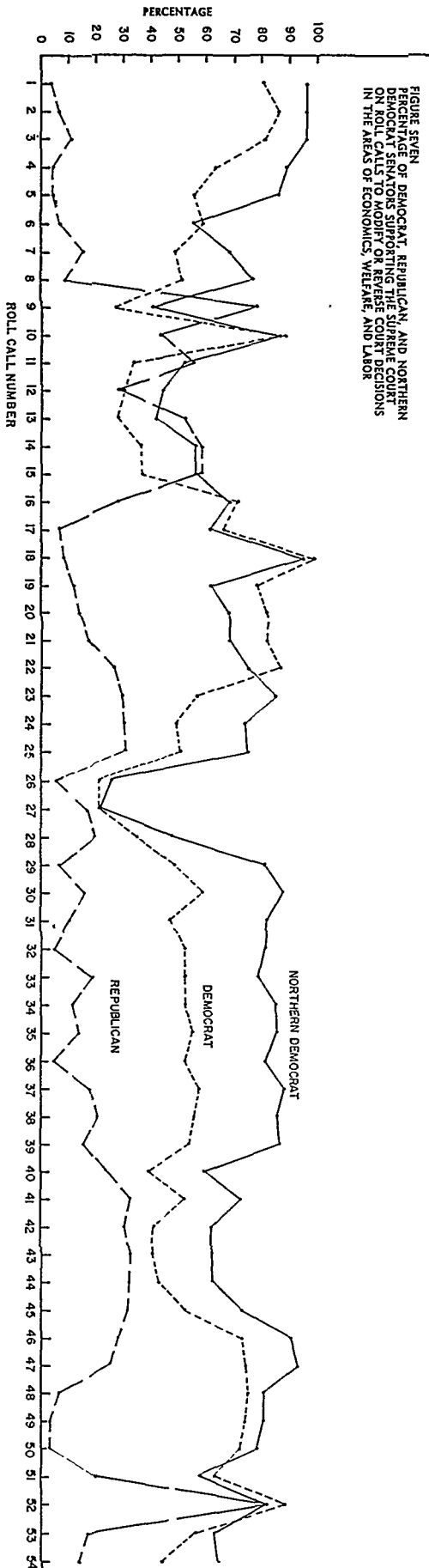


FIGURE SEVEN  
 PERCENTAGE OF DEMOCRAT, REPUBLICAN, AND NORTHERN  
 DEMOCRAT SENATORS SUPPORTING THE SUPREME COURT  
 ON ROLL CALLS TO MODIFY OR REVERSE COURT DECISIONS  
 IN THE AREAS OF ECONOMICS, WELFARE, AND LABOR

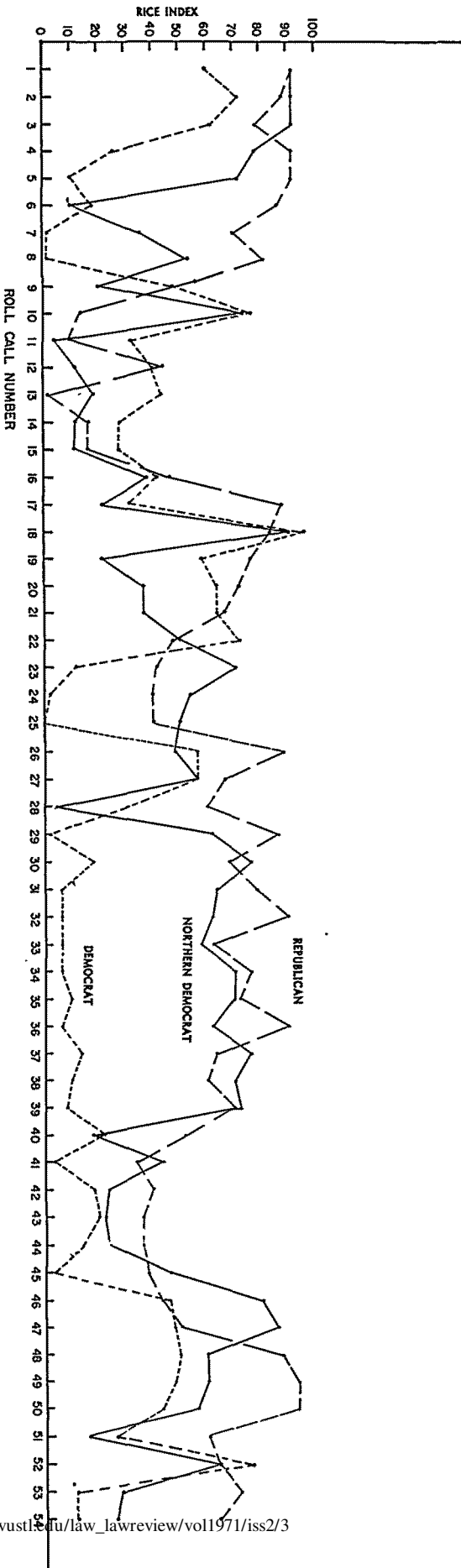


FIGURE EIGHT  
 COSSION FOR DEMOCRAT, REPUBLICAN AND NORTHERN  
 DEMOCRAT SENATORS ON ROLL CALLS TO MODIFY OR REVERSE SUPREME  
 COURT DECISIONS IN THE AREAS OF ECONOMICS, LABOR, AND WELFARE

FIGURE NINE  
PERCENTAGE OF DEMOCRAT, REPUBLICAN AND NORTHERN  
DEMOCRAT, SENATORS SUPPORTING THE SUPREME COURT  
ON ROLL CALLS TO MODIFY OR REVERSE COURT  
DECISIONS IN THE AREA OF CIVIL LIBERTIES

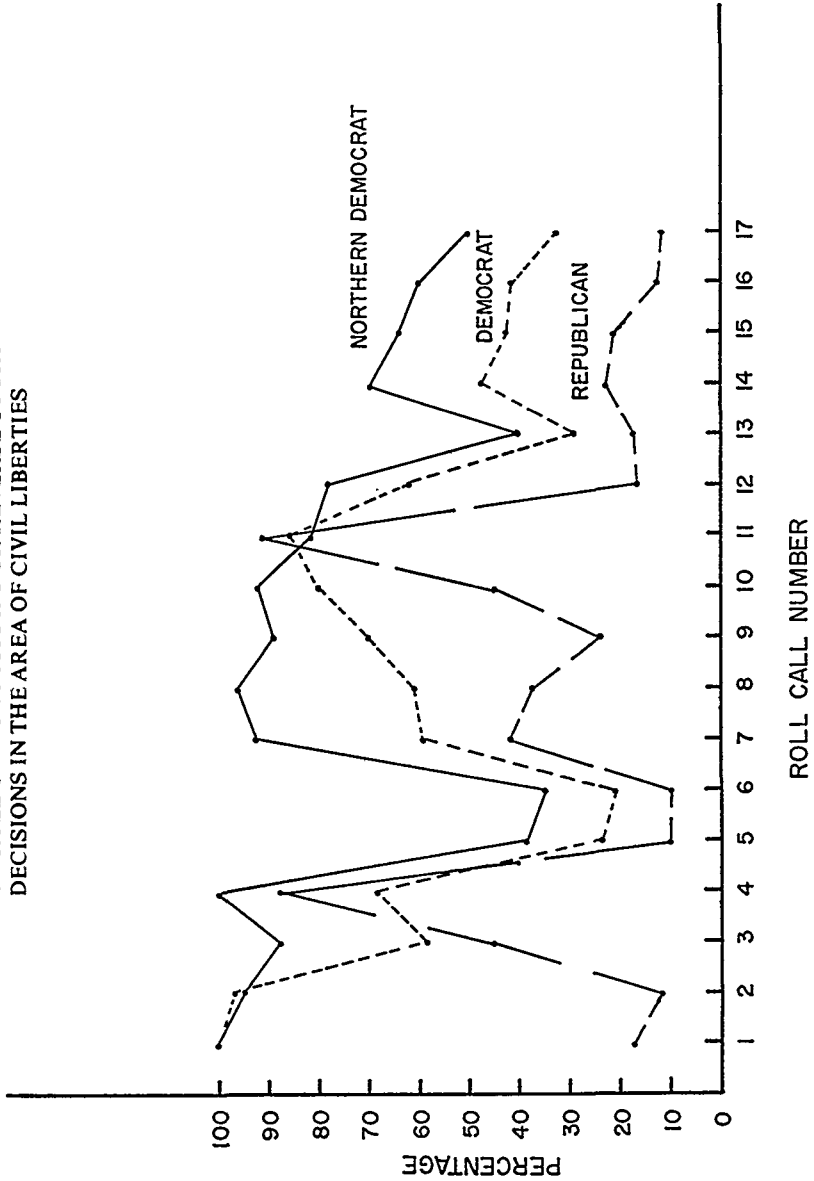
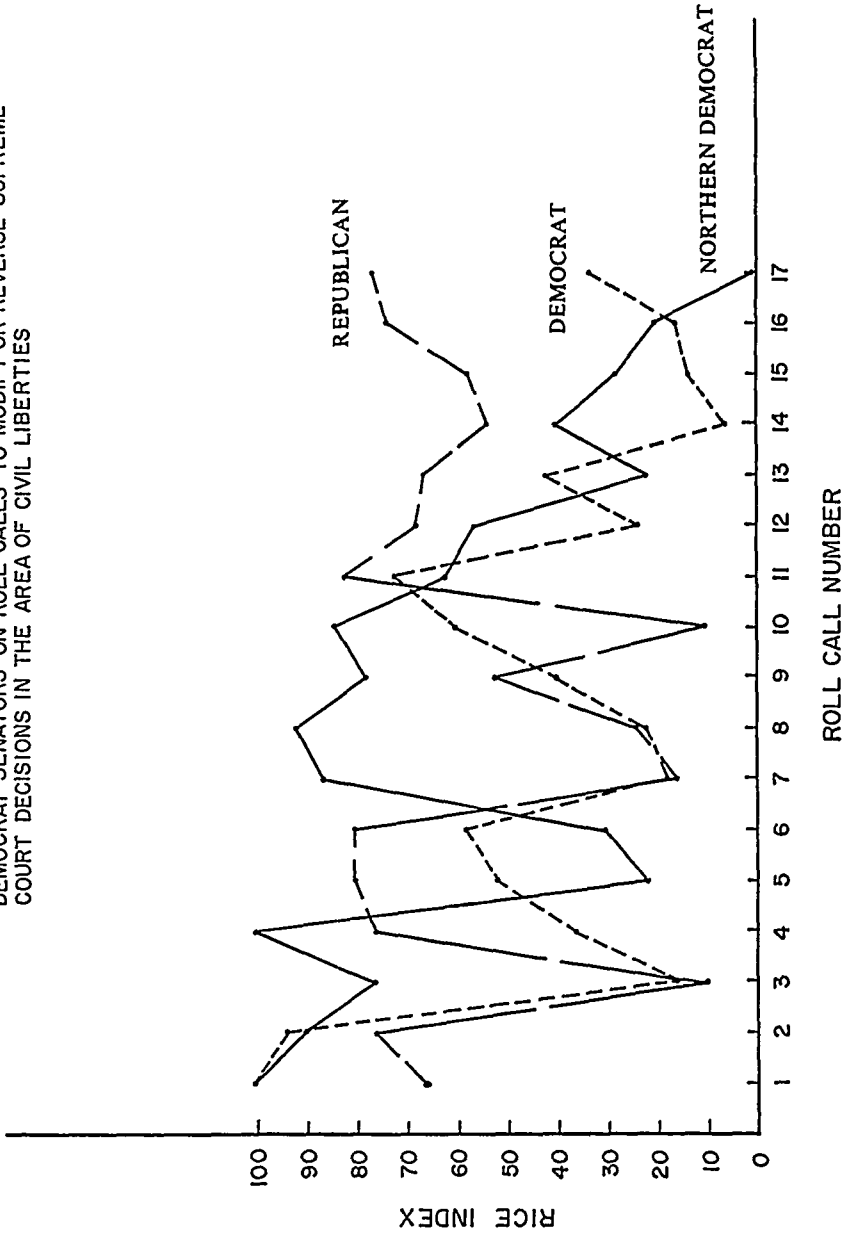




FIGURE TEN  
RICE INDEX OF COHESION FOR DEMOCRAT, REPUBLICAN, AND NORTHERN  
DEMOCRAT SENATORS ON ROLL CALLS TO MODIFY OR REVERSE SUPREME  
COURT DECISIONS IN THE AREA OF CIVIL LIBERTIES



## II. LAWYER-CONGRESSMEN AND COURT SUPPORT

Some political scientists accorded a particularly reverential role to lawyer-legislators apparently on the assumption that the professional socialization of lawyers in some way contributed to early development of such an institutional attitude. An initial investigation of the hypothesis was made utilizing all the judiciary-oriented roll calls voted upon in the Senate, 2nd Session, 79th Congress. Four separate votes, all involving reversal of statutory interpretation issues comprised the total. The percentage of lawyer-legislators and non-lawyer legislators supporting or opposing the Supreme Court is summarized for each consecutive roll call in Table 14. The percentages were derived through utilization of the Nucros program for multivariate cross-classification developed by Professor Kenneth Janda of Northwestern University and adapted for the Political Research Laboratory, University of Iowa, by Merle Wood.<sup>20</sup>

TABLE 14  
SENATORIAL LAWYER AND NON-LAWYER SUPPORT FOR THE  
SUPREME COURT, 2ND SESSION, 79TH CONGRESS  
BY PERCENTAGE

(Roll Call No. 3)		
	Lawyer	Non-Lawyer
Pro-Court	27%	36%
Anti-Court	71%	60%
(Roll Call No. 4)		
	Lawyer	Non-Lawyer
Pro-Court	43%	46%
Anti-Court	57%	54%
(Roll Call No. 5)		
	Lawyer	Non-Lawyer
Pro-Court	39%	39%
Anti-Court	61%	61%
(Roll Call No. 6)		
	Lawyer	Non-Lawyer
Pro-Court	44%	39%
Anti-Court	52%	61%

The results not only fail to support the lawyers' 'reverence' hypothesis, in fact, in only one roll call is the percentage of lawyer-legislators supporting the Court higher (by a slight margin) than that of the non-lawyer legislators. In two roll calls the reverse is true, while in the third the percentages are identical.

One tentative explanation for the conspicuous lack of lawyer-Congressional support for the Court may be provided by a more incisive investigation of the social and political role of the lawyers' professional associations.

The total environment in which members of the Supreme Court interact with members of Congress encompasses a variety of relationships which provide links between the two institutions. Thus, lawyers, officials of legal professional organizations, and law school faculty members comprise the "attentive constituents" of the judiciaries in a manner not totally dissimilar to that of V.O. Key's middlemen of politics.<sup>21</sup> During the many decades of institutional maturation and change which have influenced the legal profession in America, many fundamental developments were taking place. The fierce antagonism which was often directed against lawyers during the first four decades of the 19th century gradually was replaced by conditions much more advantageous to lawyers as professionals, to the development of legal professional associations, and to the enhanced influence of corporate law firms. The frontal attacks upon lawyers typified by William Sampson's "Anniversary Discourse" of 1824, were, during the evolution of the 19th century, superseded by a gradual strengthening of the position of lawyers and the common law and by the development and growth of lawyers' associations.<sup>22</sup> Out of this period of transition has emerged strong private political institutions whose total impact upon the federal judicial system is still not fully understood. Indeed, the relative paucity of information concerning the interest group and private political roles of legal professional groups serves to substantiate Frank Sorauf's contention that "the large and powerful groups now languish as an unexplored area of political science."<sup>23</sup>

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21. See Boynton, Patterson & Hedlund, *The Missing Links in Legislative Politics: Attentive Constituents*, 31 J. POL. 700-701, 709-715 (1969).

22. Compare, for example, Sampson's negative "Discourse" of 1824 with Joseph Story's inaugural discourse of 1829 and the proliferation of affirmative commentaries which were presented in the 1830's, '40's and '50's in *THE LEGAL MIND IN AMERICA* 119-134, 176 *et seq.* (P. Miller ed. 1962).

23. Quoted in Dayton McKean's *Forward* to HALL at vii.

By 1970, the American Bar Association has emerged from nearly a century of development as the single most influential of the lawyer associations in the nation. By the 1960's, the ABA was recognized as a significant intermediary in interest group negotiations and efforts. As such the ABA has participated regularly in the "summit" conferences of the two most influential coalitions of business oriented interest groups—the Greenbrier Conferences and the meetings of the Conference of National Organizations.<sup>24</sup>

A preliminary investigation of the American Bar Association's lobbying activities before Congressional committees suggests that economic and ideological objectives may be more significant objectives than development of attitudes of reverence for the Supreme Court among lawyer-Congressmen. To provide some measure of the diversity of the ABA's legislative interests, the following summary of cooperative lobbying efforts was compiled. The American Bar Association supported a constitutional amendment designed to overrule *Baker v. Carr* in 1965.<sup>25</sup>

**ABA COOPERATED WITH:**

U.S. Chamber of Commerce  
 National Association of  
 Manufacturers  
 National Association of  
 Real Estate Boards  
 U.S. Junior Chamber of  
 Commerce  
 American Farm Bureau  
 Federation  
 National Cotton Council of  
 America  
 National Farmers Union  
 National Livestock Feeders  
 Association  
 National Council of Farmer  
 Cooperatives  
 Liberty Lobby  
 Citizens Committee for Balanced  
 Legislative Representation

**ABA WAS OPPOSED BY:**

American Civil Liberties Union  
 American Veterans Committee  
 AFL-CIO  
 International Ladies Garments  
 Workers Union  
 Americans for Democratic Action  
 Alliance for Social, Economic  
 and Political Progress  
 American Ethical Union  
 American Jewish Congress

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24. *Id.* 32-34, 188-212. Chapter V in CONGRESS AND THE COURT explores some of the relationships of this national lawyers' association to the federal judiciary, in particular the role played by the American Bar Association as an intermediary in Presidential-Supreme Court relations and in Congressional relations with the federal judiciary.

25. *Hearings on S.J. Res. 2 Before the Senate Judiciary Comm.*, 89th Cong., 2d Sess. (1965).  
 Washington University Open Scholarship

In 1962, the ABA opposed Senate Joint Resolution 159 which sought to overrule statutory interpretations of aspects of the Fair Trade Act.<sup>26</sup>

ABA COOPERATED WITH:	ABA WAS OPPOSED BY:
AFL-CIO	American Association of Small Business
Democratic Administration	Chemical and Research Manufacturers Association
Food Town Ethical Pharmacies, Inc.	Corning Glass Works Co.
National Association of Consumer Organizations, Inc.	Daneville Wholesale Association
National Consumer League	Evyan Perfumes
National Association of Retired Persons	Hamilton Watch Co.
National Retail Furniture Association	Hastings Manufacturing Co.
Independent Oil Men's Association of New England	Green Shoe Manufacturing Co.
National Oil Jobbers Conference	Longines—Wittnauer Watch Co.
National Retired Teachers Association	McKesson and Robbins, Inc.
	National Association of Retail Druggists
	National Small Business Association
	National Retail Hardware Association
	National Wholesale Druggist Association
	National Wholesale Jewelers' Association
	Meiers Wine Cellars, Inc.
	Lincoln Metal Products Corp.
	Retail Gasoline Dealers' Association
	Retail Jewelers of America
	P. H. Hanes Knitting Co.
	Standard Knitting Mills, Inc.
	Troy Industries, Inc.
	Quality Brands Associates of America, Inc.
	Union Underwear Co.

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<sup>26</sup>. See *United States v. Parke, Davis & Co.*, 362 U.S. 29 (1960); *United States v. McKesson*, 351 U.S. 305 (1955); *Hearings on S.J. Res. 159 Before the House Ways and Means Comm.*, 87th Cong., 2d Sess. (1962).

In another instance, the ABA opposed the Kennedy Administration's effort to obtain authorization for the Department of Justice to make demands for evidence in civil anti-trust investigations. Here the Justice Department wanted a change in the law to circumvent *U.S. v. Proctor and Gamble*.<sup>27</sup>

**ABA COOPERATED WITH:**

American Mining Congress  
 Association of the Bar of  
 the City of New York  
 National Coal Association  
 National Association of  
 Manufacturers  
 Manufacturing Chemist  
 Association

**ABA WAS OPPOSED BY:**

Justice Department of the  
 Kennedy Administration

These samples of ABA lobbying efforts are not sufficient to establish a consistent ideological or economic pattern, but they were included to illustrate the diversity of interests of the most influential of the legal professional associations. These diverse interests included both Court opposition as well as Court support in a variety of statutory reversal controversies. At this very preliminary stage of the investigation, it is difficult to posit an hypothesis that the socialization of lawyers in associations such as the American Bar Association is likely to engender consistent support for the Court in statutory reversal conflicts in the Congress.

### III. CONCLUSION

The assumptions which have comprised the conventional wisdom concerning the fundamentals of Court-Congressional relations are still given wide currency as the following commentator in the *Christian Science Monitor* indicated:

. . . Most lawmakers appear to expect that, as before, an undefined sense of congressional tolerance will provide the bridge. . .  
 . . . even when Congress has given vent to the noisiest complaints about the court by the constituents back home, the lawmakers have kept an attitude of near reverence for the court's standing as the ultimate constitutional arbiter. . . .<sup>28</sup>

27. 356 U.S. 677 (1958). See also *Hearings on S. 167 Before the Senate Judiciary Comm.*, 87th Cong., 1st Sess. (1961).

28. *Congress v. the Court*, *Christian Science Monitor*, July 18, 1960, § 2, at 9.

The evidence suggests a more careful evaluation lest an overdependence upon an alleged Congressional attitude of "reverence" for the Court compound the difficulty by masking the significance of the Court's modern opposition.

The investigation of Court oriented voting divisions in the period 1945-1968 indicates that partisan and ideological considerations play a far greater role in Congressional behavior toward the Court than protagonists of the "reverence" theme have recognized. The persistence and relative growth of Conservative Coalition antagonism toward the Supreme Court should be evaluated more thoroughly. Since 1969, the presence of a President who has often associated himself with the Conservative Coalition on issues involving crime, procedural due process and judicial nominations has compounded the seriousness of the Supreme Court's position.

APPENDIX: IDENTIFICATION  
OF ROLL CALLS SELECTED FOR ANALYSIS

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
1	1	79th	House	1st	H. J. Res. 60. Proposed amendment to treaty-making powers (Bricker)	Pro = nay Anti = yea	House Journal p. 73 (5/9/45).
2	2	79th	House	1st	H. Res. 248. To provide appeal to S. Ct. from Court of Claims	Pro = yea Anti = nay	House Journal p. 152 (7/31/45).
3	2	79th	Senate	2nd	Motion to take up H.R. 225 re Tidelands Oil	Pro = nay Anti = yea	C.R., v. 92, part 8, p. 9425.
4	2	79th	Senate	2nd	Barkley motion to nullify effort to consider H.R. 225	Pro = yea Anti = nay	C.R., v. 92, part 8, p. 9632.
5	2	79th	Senate	2nd	Motion to exclude California Tidelands from H.R. 225	Pro = yea Anti = nay	C.R., v. 92, part 8, pp. 9633-34.
6	2	79th	Senate	2nd	Vote on Final Passage H.R. 225 Tidelands Oil	Pro = nay Anti = yea	C.R., v. 92, part 8, pp. 9641-42.
7	2	79th	House	2nd	Question: Whether to Override President Truman's veto of H.R. 225-Tidelands Oil	Pro = nay Anti = yea	C.R., v. 92, part 8, p. 10745.
8	2	80th	House	1st	H.R. 2157—Portal to Portal Pay—to limit Court's jurisdiction	Pro = nay Anti = yea	C.R., v. 93, part 2, p. 1573.
9	2	80th	House	1st	H.R. 221 Motion to recommit S. 110, a bill limiting 2 S. Ct. decisions	Pro = nay Anti = yea	C.R., v. 94, part 4, pp. 5647-48.



Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
10	2	80th	Senate	1st	Substitute amendment to a bill (H.R. 2157) to modify Court's Portal-to Portal interpretations.	Pro = yea Anti = nay	C.R., v. 93, part 2, p. 2366.
11	2	80th	Senate	1st	Holland motion to modify provisions relating to Welsh-Haley and Bacon-Davis Acts	Pro = yea Anti = nay	C.R., v. 93, part 2, p. 2367.
12	2	80th	Senate	1st	Additional modification of Portal-to-Portal	Pro = yea Anti = nay	C.R., v. 93, part 2, p. 2367.
13	2	80th	Senate	1st	Eliminate statute of limitations re Portal-to-Portal	Pro = yea Anti = nay	C.R., v. 93, part 2, p. 2368.
14	2	80th	Senate	1st	Final Passage H.R. 2157, Portal-to-Portal	Pro = nay Anti = yea	C.R., v. 93, part 2, p. 2375.
15	2	80th	Senate	1st	Final Passage S.110, nullify Court veto decisions	Pro = nay Anti = yea	C.R., v. 93, part 6, p. 7215.
16	2	81st	House	1st	Vote on amendments to Natural Gas Act, H.R. 1758	Pro = nay Anti = yea	C.R., v. 95, part 8, p. 10783.
17	2	81st	House	1st	Motion to recommit H.R. 1758, a bill to nullify a Court interpretation	Pro = yea Anti = nay	C.R., v. 95, part 8, pp. 10869-10870.
18	2	81st	House	1st	Vote on Final Passage of anti-Court Bill H.R. 1758	Pro = nay Anti = yea	C.R., v. 95, part 8, p. 10871.
19	2	81st	House	1st	Motion to recommit Conference Report on S. 1008	Pro = yea Anti = nay	C.R., v. 95, part 11, p. 14616.

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote		Major Source
						Pro = nay	Anti = yea	
20	2	81st	House	1st	Vote on Conference Report on S. 1008 re basing point interpretations	Pro = nay	Anti = yea	C.R., v. 95, part 11, pp. 14616-17.
21	2	81st	Senate	1st	An amendment to anti-Court Holland Amendment	Pro = yea	Anti = nay	C.R., v. 95, part 9, p. 12519.
22	2	81st	Senate	1st	Holland anti-Court motion	Pro = nay	Anti = yea	C.R., v. 95, part 9, p. 12520.
23	2	81st	Senate	1st	Douglas motion to delay anti-Court basing point vote, S. 1008	Pro = yea	Anti = nay	C.R., v. 95, part 11, p. 14842.
24	3	81st	Senate	1st	Morse Motion to recommit Sherman Minton's nomination	Pro = nay	Anti = yea	C.Q. Congress & Nation pp. 104-05a.
25	3	81st	Senate	1st	Nomination of Sherman Minton as Associate Justice	Pro = yea	Anti = nay	C.Q. Congress & Nation pp. 104-05a.
26	2	81st	Senate	2nd	S. 75 Amendment to committee amendment to clarify S.Ct. decision regarding Colorado River water uses	Pro = nay	Anti = yea	Senate Journal p. 118 (2/21/50).
27	2	81st	Senate	2nd	Motion to recommit S. 1498, Natural Gas	Pro = yea	Anti = nay	C.R., v. 96, part 4, p. 4298.
28	2	81st	Senate	2nd	Amendment exempting small producers, S. 1498	Pro = yea	Anti = nay	C.R., v. 96, part 4, p. 4301.
29	2	81st	Senate	2nd	Amendment relating to FPC's power, S. 1498	Pro = yea	Anti = nay	C.R., v. 96, part 4, p. 4303.
30	2	81st	Senate	2nd	Additional Amendment relating to FPC, S. 1498	Pro = nay	Anti = yea	C.R., v. 96, part 4, p. 4304.

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
31	2	81st	Senate	2nd	On final Passage with Kerr Amendment S. 1498	Pro = nay	C.R., v. 96, part 4, p. 4304.
32	2	81st	Senate	2nd	Motion to reconsider Conference Report on S. 1008	Anti = yea	C.R., v. 96, part 4, p. 4969.
33	2	81st	Senate	2nd	Motion to accept Conference Report, Basing Point S. 1008	Pro = nay	C.R., v. 96, part 6, pp. 7976-77.
34	2	81st	House	2nd	Motion to reopen Conference action on S. 1008	Anti = yea	C.R., v. 96, part 2, p. 2515.
35	2	81st	House	2nd	Motion to table House version of S. 1008	Pro = nay	C.R., v. 96, part 2, pp. 2515-16.
36	2	81st	House	2nd	Motion to recommit Conference Report S. 1008	Anti = nay	C.R., v. 96, part 3, p. 3332.
37	2	81st	House	2nd	Motion for vote on final passage	Pro = nay	C.R., v. 96, part 4, pp. 4567-68.
38	2	82nd	Senate	2nd	S.J. Res. 20 McFarland motion to recess re Tidelands Oil	Pro = yea	Senate Journal p. 124 (2/27/52).
39	2	82nd	Senate	2nd	Knowland motion to table McFarland motion	Anti = yea	C.R., v. 98, part 2, p. 1726.
40	2	82nd	Senate	2nd	S. J. Res. 20 McKeller motion to reconsider Knowland motion	Pro = yea	C.R., v. 98, part 2, p. 1726.
41	2	82nd	Senate	2nd	2nd consideration of Knowland motion S.J. Res. 20	Pro = nay	C.R., v. 98, part 2, p. 1726.
42	2	82nd	Senate	2nd	McFarland motion to proceed with S.J. Res. 20	Anti = nay	C.R., v. 98, part 2, p. 1727.

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti		Major Source
						Court	Vote	
43	2	82nd	Senate	2nd	Holland motion to table Hill amendment allotting mineral lease income to Federal aid to education	Pro = nay	Anti = yea	C.R., v. 98, part 3, p. 3346.
44	2	82nd	Senate	2nd	Knowland motion to accept Holland jurisdictional amendment S.J. Res. 20	Pro = nay	Anti = yea	C.R., v. 98, part 3, p. 3367.
45	2	82nd	Senate	2nd	Knowland motion for final vote S.J. Res. 20	Pro = nay	Anti = yea	C.R., v. 98, part 3, p. 3370.
46	2	82nd	Senate	2nd	H.R. 5767 Douglas amendment supporting Court's statutory interpretation	Pro = yea	Anti = nay	Senate Journal p. 562 (7/2/52).
47	2	82nd	Senate	2nd	H.R. 5767 Final Passage, nullified 1951, Court ruling	Pro = nay	Anti = yea	Senate Journal p. 562 (7/2/52).
48	2	82nd	Senate	2nd	S. 1084 Amendment to Natural Gas Act	Pro = yea	Anti = nay	Senate Journal p. 624 (7/5/52).
49	2	82nd	House	2nd	S.J. Res. 20 Conference Report	Pro = nay	Anti = yea	C.R., v. 98, part 4, pp. 5251-52.
50	2	83rd	House	1st	H.R. 4198 Tidelands Oil Bill. Celler motion to recommit	Pro = yea	Anti = nay	C.R., v. 99, part 2, p. 2637.
51	2	83rd	House	1st	H.R. 4198 Final Passage	Pro = nay	Anti = nay	C.R., v. 99, part 2, p. 2638.
52	2	83rd	House	1st	Vote on House acceptance of Senate version of Tidelands Oil bill	Pro = nay	Anti = yea	C.R., v. 99, part 4, p. 4898.

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
53	2	83rd	Senate	1st	S.J. Res. 13 Motion to set aside Tidelands Oil legislation	Pro = yea Anti = nay	C.R., v. 99, part 3, p. 4488.
54	2	83rd	Senate	1st	Vote to kill Anderson motion to substitute federal for state ownership	Pro = nay Anti = yea	C.R., v. 99, part 3, pp. 3956-57.
55	2	83rd	Senate	1st	Douglas amendment to limit state control of Tidelands	Pro = nay Anti = yea	C.R., v. 99, part 3, p. 4114.
56	2	83rd	Senate	1st	Monroney amendment limiting state jurisdiction of Tidelands Oil	Pro = yea Anti = nay	Senate Journal p. 250 (4/30/53).
57	2	83rd	Senate	1st	Douglas amendment modifying definition of "coast line"	Pro = yea Anti = nay	Senate Journal p. 255 (4/30/53).
58	2	83rd	Senate	1st	Lehman amendment devoting all submerg'd oil revenues to educational purposes	Pro = yea Anti = nay	Senate Journal p. 265 (5/5/53).
59	2	83rd	Senate	1st	Kefauver amendment to create oil revenue allocating federal commission	Pro = yea Anti = nay	C.R., v. 99, part 4, p. 4473.
60	2	83rd	Senate	1st	Nealy amendment for earmarking federal Tidelands revenue	Pro = yea Anti = nay	C.R., v. 99, part 4, p. 4483.
61	2	83rd	Senate	1st	Langer amendment providing that Tidelands revenue be used to reduce the national debt	Pro = yea Anti = nay	Senate Journal p. 270 (5/5/53).

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
62	2	83rd	Senate	1st	Final vote to accept committee amendments of S.J. Res. 13	Pro = nay Anti = yea	C.R., v. 99, part 5, p. 4488.
63	2	83rd	Senate	2nd	H.R. 976 Morse motion to recommit	Pro = yea Anti = nay	Senate Journal p. 190 (3/15/54).
64	1	83rd	Senate	2nd	S.J. Res. 44 Amendment relating to jurisdiction and composition of the Supreme Court	Pro = yea Anti = nay	Senate Journal p. 295 (5/11/54).
65	2	83rd	House	2nd	H.R. 8649 Willis amendment requiring court order re use of certain evidence	Pro = yea Anti = nay	House Journal p. 51 (4/8/54).
66	2	84th	House	1st	Motion to accept rule H. Res. 317 on Natural Gas bill H.R. 6645	Pro = nay Anti = yea	C.Q., v. 13, p. 933.
67	2	84th	House	1st	Motion to recommit H.R. 6645, Natural Gas amendments	Pro = yea Anti = nay	C.R., v. 101, part 9, pp. 11929-11930.
68	2	84th	House	1st	Final Passage H.R. 6645	Pro = nay Anti = yea	C.R., v. 101, part 9, p. 11930.
69	3	84th	Senate	1st	Nomination of John Marshall Harlan as Associate Justice	Pro = yea Anti = nay	ICPR p. 4
70	2	84th	Senate	2nd	S. 1853, motion to recommit Natural Gas Act amendments, anti-regulatory	Pro = yea Anti = nay	C.R., v. 102, part 2, pp. 2063-64.

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
71	2	84th	Senate	2nd	Pastors amendment to protect consumers	Pro = yea Anti = nay	C.R., v. 102, part 2, p. 2067.
72	2	84th	Senate	2nd	Potter amendment adding new consumer protection criteria	Pro = yea Anti = nay	C.R., v. 102, part 2, p. 2069.
73	2	84th	Senate	2nd	Humphrey amendment to prohibit escalation clauses in gas purchases	Pro = yea Anti = nay	C.R., v. 102, part 2, p. 2070.
74	2	84th	Senate	2nd	Douglas substitute limiting impact on small producers	Pro = yea Anti = nay	C.R., v. 102, part 2, p. 2079.
75	2	84th	Senate	2nd	Final Passage H.R. 6645	Pro = nay	C.R., v. 102, part 2, p. 2096.
76	2	85th	Senate	1st	Natural Gas Amendments	Anti = yea	Senate Journal p. 529 (8/26/57).
77	2	85th	Senate	1st	Dirksen Amendment to S. 2377 limiting Jencks decision	Pro = nay Anti = yea	Senate Journal p. 529 (8/26/57).
78	2	85th	Senate	2nd	Dirksen Amendment to S. 2377 further modifying Jencks ruling	Pro = nay Anti = yea	Senate Journal p. 529 (8/26/57).
79	2	85th	Senate	2nd	H.R. 11477 anti-Mallory amendment	Pro = yea	C.Q. v. 14, p. 458 (8/19/58).
80	2	85th	Senate	2nd	Ervin amendment re powers of trial judge	Pro = nay Anti = yea	C.Q. v. 14, p. 459 (8/19/58).
81	2	85th	Senate	2nd	Morse amendment strengthening Mallory rule	Pro = yea	C.Q. v. 14, p. 459 (8/19/58).
					H.R. 11477 Final Passage modifying Mallory rule	Pro = nay Anti = yea	C.Q. v. 14, p. 459 (8/19/58).

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or		Major Source
						Court	Vote	
82	1	85th	Senate	2nd	H.R. 6789 Motion to table modified Jenner Amendment to limit S.Ct. Jurisdiction	Pro = yea	Anti = nay	C.Q., v. 14, p. 459 (8/20/58).
83	1	85th	Senate	2nd	Motion to table McClellan amendment to substitute H.R. 3 anti-Court bill	Pro = yea	Anti = nay	C.Q., v. 14, p. 460 (8/20/58).
84	2	85th	Senate	2nd	S. 654 Motion to table motion to reject anti-Court legislation re state control of subversives	Pro = nay	Anti = yea	C.Q., v. 14, p. 460, (8/21/58).
85	2	85th	Senate	2nd	Motion to recommit S. 654	Pro = yea	Anti = nay	C.Q., v. 14, p. 460, (8/21/58).
86	2	85th	House	2nd	H.R. 11477 modifying Mallory rule	Pro = nay	Anti = yea	C.Q., v. 14, p. 396, (7/2/58).
87	2	85th	House	2nd	Amendment to S. 1411 extending internal security program	Pro = nay	Anti = yea	C.Q., v. 14, p. 398, (7/10/58).
88	1	85th	House	2nd	Adoption of rule H. Res. 597 on H.R. 3 anti-Court bill	Pro = nay	Anti = yea	C.Q., v. 14, p. 400, (7/15/58).
89	2	85th	House	2nd	H.R. 977 amendment to reverse Nelson decision	Pro = nay	Anti = yea	C.Q., v. 14, p. 400, (7/17/58).
90	1	85th	House	2nd	Motion to recommit H.R. 3	Pro = yea	Anti = nay	C.Q., v. 14, p. 400, (7/17/58).
91	1	85th	House	2nd	H.R. 3 Final Passage	Pro = nay	Anti = yea	C.Q., v. 1, p. 400, (7/17/58).



Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
92	2	85th	House	2nd	S. 3974 Labor-Mang, Reporting and Disclosure Act	Pro = yea Anti = nay	C.Q., v. 14, p. 408, (8/18/58).
93	1	86th	House	1st	H.R. 3 vote on rule H. Res 288 would reverse Nelson et al. decisions	Pro = nay Anti = yea	C.Q., v. 15, p. 372, (6/22/59).
94	1	86th	House	1st	Lindsay motion to recommit H.R. 3	Pro = yea Anti = nay	C.Q., v. 15, p. 372, (6/24/59).
95	1	86th	House	1st	H.R. 3 Final Passage	Pro = nay Anti = yea	C.Q., v. 15, p. 372, (6/24/59).
96	2	86th	House	1st	Motion to recommit H.R. 4957, anti-Mallory rule bill	Pro = yea Anti = nay	House Journal p. 109, (7/7/59).
97	2	86th	House	1st	H.R. 4957 Final Passage	Pro = nay Anti = yea	C.Q., v. 15, p. 376, (7/7/59).
98	2	86th	Senate	1st	S. 1555 McClellan amendment re NLRB statutory interpretations	Pro = nay Anti = yea	C.Q., v. 15, p. 405, (4/23/59).
99	2	86th	Senate	1st	Prouty amendment to portion of S. 1555	Pro = nay Anti = yea	C.Q., v. 15, p. 405, (4/24/59).
100	3	86th	Senate	1st	Nomination of Potter Stewart as Associate Justice	Pro = yea Anti = nay	C.Q., v. 15, p. 410, (5/5/59).
101	2	86th	Senate	1st	S. 2524 Kerr motion to table Gore study proposal re state taxes	Pro = nay Anti = yea	C.Q., v. 15, p. 435, (8/19/59).

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
102	2	86th	Senate	1st	Dirksen motion to enable Senate to reconsider Kerr tabling motion	Pro = nay Anti = yea	C.Q., v. 15, p. 435, (8/19/59).
103	2	86th	Senate	1st	Reconsideration of Kerr motion	Pro = nay Anti = yea	C.Q., v. 15, p. 435, (8/19/59).
104	2	86th	Senate	2nd	S. 3483 Reversal of S.Ct. decisions relating to athletic antitrust issues	Pro = nay Anti = yea	C.Q., v. 16, p. 509, (6/28/60).
105	2	86th	Senate	2nd	S. 3483 Carroll motion to recommit	Pro = yea Anti = nay	C.Q., v. 16, p. 509, (6/28/60).
106	2	87th	House	1st	Lindsay motion to recommit H.R. 7053 D.C. Mallory reversal bill	Pro = yea Anti = nay	C.Q., v. 17, p. 528, (6/12/61).
107	2	87th	House	1st	H.R. 187 to limit judicial review in certain deportation and exclusion matters	Pro = nay Anti = yea	C.Q., v. 17, p. 534, (7/10/61).
108	2	88th	House	1st	Mathias motion to recommit H.R. 7525, D.C. Crime Bill nullifying Mallory and Durham rules	Pro = yea Anti = nay	House Journal p. 124 (1963).
109	1	88th	House	2nd	Brown motion for rule for H.R. 11926 Limiting Court's reapportionment powers	Pro = nay Anti = yea	C.Q., v. 22, p. 1952, (8/19/64).
110	1	88th	House	2nd	H.R. 11926 Final Passage	Pro = nay Anti = yea	C.R., v. 110, part 15, p. 20300.

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
111	1	88th	Senate	2nd	H.R. 7152 limitations on Federal Courts in Civil Rights Bill (Thurmond)	Pro = nay Anti = yea	ICPR p. 14
112	1	88th	Senate	2nd	Allot amendment to Salary Bill (H.R. 11049) reducing S.Ct. pay raise	Pro = nay Anti = yea	C.Q., v. 22, p. 1475 (7/2/64).
113	1	88th	Senate	2nd	Dirksen motion to close debate on apportionment amendment to Foreign Oil Act of 1969	Pro = nay Anti = yea	C.R., v. 110, part 17, p. 21896.
114	1	88th	Senate	2nd	Aiken motion to table Dirksen amendment	Pro = yea Anti = nay	C.R., v. 110, part 17, p. 21900.
115	1	88th	Senate	2nd	Javits amendment on apportionment	Pro = yea Anti = nay	C.R., v. 110, part 17, p. 2095.
116	1	88th	Senate	2nd	Thurmand amendment substituting H. Res. 11926 for Dirksen amendment	Pro = nay Anti = yea	C.R., v. 110, part 17, p. 22104.
117	2	88th	Senate	2nd	Mansfield substitute for Dirksen apportionment amendment	Pro = yea Anti = nay	C.R., v. 110, part 17, p. 22758.
118	2	88th	Senate	2nd	Motion to table Mansfield amendment	Pro = nay Anti = yea	C.R., v. 110, part 17, p. 22762.
119	1	89th	Senate	1st	Javits amendment to substitute amendment allowing departure from strict population apportionment	Pro = nay Anti = yea	C.R., v. 111, part 14, p. 19322.

Roll Call Number	Type of Roll Call	Congress	Chamber	Session	Description	Pro or Anti Court Vote	Major Source
120	1	89th	Senate	1st	Final Passage of modified Dirksen amendment	Pro = nay Anti = yea	C.R., v. 111, part 14, p. 19355.
121	1	89th	Senate	1st	Final Passage of S.J. Res. 66 as amended by Dirksen amendment	Pro = nay Anti = yea	C.R., v. 111, part 14, p. 19373.

