Collegial Influence and Judicial Voting Change: The Effect of Membership Change on U.S. Supreme Court Justices

Scott R. Meinke Kevin M. Scott

Understanding the source of voting changes by appellate judges provides an important window into the factors that shape the votes of the judges more generally. We argue that membership changes, by altering the collegial context in which judges make their choices, affect the information environment, long-term collegial considerations, and short-term strategic calculations. As a result, membership change should lead to greater uncertainty and more frequent voting changes among continuing justices in the term following a replacement. We test this proposition by looking at vote change by justices of the U.S. Supreme Court in two separate analyses: justices' votes on search-and-seizure cases since *Mapp v. Ohio* (1961) and on the progeny of *Miranda v. Arizona* (1966). Our results support the argument that the collegial context helps explain changes in voting choices. Our analysis suggests that collegial considerations are an important component of judges' behavior and merit further evaluation in a cross-national context.

Theoretical perspectives on judicial behavior provide good reason to expect that collegial court judges—across courts, nations, and levels of the judiciary—are subject to intracourt influence. Judicial scholars know that, despite the importance of ideology, the collegial context in which judges decide cases has a significant effect on how their preferences are expressed. On rare occasions, judges can be quite forthright about the influence their colleagues have on their behavior, offering important insights into what factors influence their behavior. Tom Clark, a U.S. Supreme Court justice from 1949 to 1967, offered such an insight into his decisions leading up to the Court's landmark *Mapp v. Ohio* (1961) decision. Just before Clark became a justice, the Court decided *Wolf v. Colorado* (1949).

This article reflects the views of the authors and does not necessarily reflect the views of the Congressional Research Service or the Library of Congress. For helpful comments and conversations on this work, we thank Lawrence Baum, Lauren Bell, Eileen Braman, Corey Ditslear, Rich Pacelle, Jeff Staton, and Margaret Williams, and we thank Carl Marchioli for excellent research assistance. Portions of this research were presented at the 2005 American Political Science Association annual meeting. Authors are listed alphabetically. Please direct correspondence to Scott Meinke, Department of Political Science, Bucknell University, Lewisburg, PA 17837; e-mail: smeinke@bucknell.edu.

Law & Society Review, Volume 41, Number 4 (2007)

In that case, a six-justice majority declined to extend the exclusionary rule (suppressing evidence obtained in an illegal search) to the states. Through the 1950s, Court majorities held to this position, and Justice Clark joined these majorities. But in 1961, Justice Clark wrote the majority opinion in *Mapp v. Ohio*, reversing both *Wolf* and his own earlier support of that precedent. Justice Clark's writings help explain this interesting reversal. In *Irvine v. California* (1954), which upheld *Wolf*, Clark offered the following observations in a concurring opinion:

> Had I been here in 1949 when *Wolf* was decided, I would have applied the doctrine of *Weeks v. United States*, 232 U.S. 383 (1914), to the states. But the Court refused to do so then, and it still refuses today. . . . [I]t is with great reluctance that I follow *Wolf*. Perhaps strict adherence to the tenor of that decision may produce needed converts for its extinction (*Irvine v. California*, 347 U.S. 128, 138 [1954]).

Justice Clark's unusually candid reflections nicely illustrate the quandary that collegial court judges face: their ability to affect decisions rests not only on their own preferences but also on their ability to convince their fellow judges of the merits of their position. In Justice Clark's case, building a majority required both the appointment of new justices allied with his sincere preference and the conversion of continuing justices (Schubert 1962:91–2).

The experience of Justice Clark on the U.S. Supreme Court has been buttressed by scholarly findings in a variety of environments. For example, several scholars have concluded that under some circumstances, female judges behave differently from male judges (see, e.g., Allen & Wall 1987; Songer et al. 1994), and the presence of female judges may even change the behavior of male judges (O'Connor & Segal 1990, but see Palmer 2002). Judges are concerned about the esteem of their colleagues (Baum 2006) and may alter their behavior in order to secure respect. Judges are also frequently characterized as strategic actors; if they are concerned about the ultimate content of policy, they may take account of the anticipated behavior of their colleagues. This literature is particularly well-developed on the U.S. courts of appeals, where regularly rotating panels for decisions allow the measurement of the impact of panel composition on judges' decisionmaking behavior (Cross & Tiller 1998; Hettinger et al. 2004; Revesz 1997; Van Winkle 1996). In very different fields of research, scholars have produced considerable empirical evidence to highlight the impact of collegial context on judges' individual choices, and all of this work suggests that collegial context matters to judges.

If judicial decisionmaking is indeed subject to collegial influence, and if that influence is strong, then we should be able to

witness changes in the voting positions of continuing judges when the composition of a collegial court changes. Although existing perspectives on judicial choice emphasize stability over time in individual judges' choices, substantial intracourt influence should set the stage for judges to reconsider their choices when they find themselves in a significantly altered collegial environment: membership changes present new sources of information and persuasion, new prospects for building both working relationships with and respect from court colleagues, new opportunities for strategic short-term coalition-building, and new uncertainty over the relationship between choices and outcomes.

To explore the systematic relationship between membership change and vote switching, we examine merits-vote choices on several recurring issues before the U.S. Supreme Court, looking for the effects of membership changes on continuing justices. To do so, we present a new approach to analyzing judicial decisionmaking over time, one that allows us to identify and assess vote switching by individual justices on similar questions over a relatively long period. Where some existing research has described the trajectory of appellate judges' positions aggregated by term over a broad issue area (Baum 1992; Epstein, Hoekstra, et al. 1998; Ostberg et al. 2003), we compare the direction of individual votes from one case to the next. Our focus is on two enduring questions before the U.S. Supreme Court: the admissibility of searches under the Fourth Amendment after *Mapp v. Ohio* (1961), and the admissibility of confessions after *Miranda v. Arizona* (1966). As we explain below, this approach allows us to study the effects of membership changes on continuing justices' choices because we can relatively easily isolate other factors that we know affect voting. The case-vote analysis also permits us to explore how case-level variables such as opinion writing relate to the stability of justices' positions.

Using this method, we find evidence that changes in the Supreme Court's composition make continuing justices more likely to reverse their positions on merits votes. While we do not disentangle the several theoretical origins of this change, we emphasize that the evidence reflects collegial influence broadly defined (see Revesz 1997:1767–8 for similar conclusions on U.S. courts of appeals panels). The evidence comports with the role of compromise, deliberation, and consensus in collegial decisionmaking—in other words, changes in the intracourt context bring greater instability as justices are affected by new collegial interactions (Baum 1997:113–5). The findings likely also reflect the role of short-term strategic accounts, in which justices become more likely to change positions as they attempt to build new majorities or preserve outcomes in changing contexts. In presenting and discussing the findings, we highlight the connection between our

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

U.S. Supreme Court findings and expectations about other collegial courts, and in the concluding section, we offer some specific discussion of the potential effect of institutional variables on the dynamics we describe.

Voting Change on Collegial Courts

Changes in a judge's behavior appear, at first glance, to be difficult to reconcile with the belief that high court judges in different countries and different institutional contexts seek to pursue their policy preferences (see, e.g., Ostberg et al. 2002). Most models of judicial behavior begin with the assumption that judges' preferences are fixed and that their votes in cases are responses to the issues that each case presents. This assumption of stability, generally speaking, is not unreasonable. For judges, consistency is one of the objectives of decisionmaking (Baum 1997:26) and, for high court judges in particular, consistency allows lower courts and decision makers outside the judiciary to invest in future decisions on the assumption that judicial decisions in a policy area will remain relatively constant.[1] Furthermore, judges' reliance on policy preferences for decisions suggests that their behavior should be consistent. If an attitude is a "relatively enduring organization of beliefs about an object or situation" (Rokeach 1968:134), then it follows that judges should have well-developed and consistent positions, and a judge's decision history itself could reinforce this stability. Finally, one might interpret the consistency of judicial behavior as an indicator of the degree to which judges make decisions free of external political pressure. Consistency in decisions may allow a court or its judges to demonstrate latitude (or lack thereof) to make and enforce decisions (Helmke 2002, 2005).

This stability assumption has been made explicit in most of the major works on judicial behavior from both attitudinal and rational choice schools of thought, but it has been particularly important to the attitudinal model (Segal & Spaeth 2002). The attitudinal view is shaped by the work of Schubert (1962), who characterized the preferences of U.S. Supreme Court justices as representing independent ideal points (points on a continuum where individuals most prefer to locate public policy) and cases representing external

[1] In the context of the U.S. Supreme Court and other common law courts, judges attach great importance to precedent (Epstein & Knight 1996; Spriggs & Hansford 2001), even if they do not adhere to it so closely that they allow precedent to supplant their policy preferences. Spaeth and Segal (1999) make much of the fact that justices refuse to alter their behavior to comply with a precedent with which they disagree. The view taken by Segal and Spaeth reinforces the argument that one should not expect justices to change their behavior, even if precedent suggests that they should do so (compare Richards & Kritzer 2002).

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

stimuli to which the justices react.[2] Justices' votes on the cases could be explained, in Schubert's view, by assessing the relationship between the stimuli of the cases and the location of the justices' ideal points. Contemporary attitudinal work sustains the assumption of preference stability by relying on ideology measures that remain fixed over the justices' careers (Segal & Cover 1989; Segal et al. 1995; Segal 1997), and within the strategic framework (Epstein & Knight 1998), the assumption of stable *preferences* is typically implicit, even though the logic of the strategic model anticipates that the expression of those preferences may not be stable over time.

Sources of Voting Change

To the extent that scholarship has considered behavioral change by judges, most inquiry has focused on sources of change in the aggregate policy outputs of courts (see Baum 1988, 1992). This *collective* voting change follows from a combination of three factors: membership change, issue change, and individual position change (Baum 1992:5).[3] While we understand these collective dynamics relatively well, our grasp of one of the collective change components—individual change—is still fairly weak, although it has received some descriptive attention in recent analyses. For example, Epstein, Hoekstra, and colleagues (1998) show that there is observable change in the revealed preferences of U.S. Supreme Court justices, even when one accounts for issue change. While some justices move consistently in the conservative (Reed, White) or liberal (Blackmun, Clark) directions, other justices (Black, Douglas, Frankfurter, Powell, & Warren) exhibit somewhat more complex patterns. Ostberg et alia (2003:716), in a similar study of justices of the Supreme Court of Canada, found only two justices (Estey & Lamer) whose behavior later in their careers was significantly different from their earlier behavior once one accounts for issue change.

The work of explaining individual change largely remains to be done. From a purely attitudinal perspective, explanation would begin and end with the influence of issue change and attitude change on individual judges. If individual judges change their behavior, either the judges' preferences or the content of the cases (or both) have changed. And if judges have no reason to concern themselves with the preferences of their colleagues or with changes

[2] Schubert and others have extended this work to other courts in other countries. Ostberg et alia (2002:236) and Smyth (2003) review the state of the literature for courts outside the United States.

[3] In discussing the U.S. Supreme Court, Baum notes that individual-level position change may result from either attitude change or changes in "other relevant forces, such as events external to the Court" (1992:5).

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

in the political environment, then the attitudinal perspective would provide a complete theoretical explanation for change.

But if contextual factors do constrain judges, then issue and attitude change are not the only possible sources of change: shifts in the decisionmaking context, both internal and external, may also lead to individual-level change. The *external context* is altered by changing influences from external political actors, including other branches of the government, interest groups, and the media. The *internal context* of judges' decisions, which is our focus here, is adjusted by changes in court membership. On a collegial court, the departure of one colleague and the arrival of a new one presents new choice considerations for continuing judges, particularly when the old and new judges contrast sharply in their attitudes.

The effects of replacement may manifest themselves in several ways, all of which point toward a greater likelihood of position instability when court membership shifts. Membership change should affect the behavior of continuing judges, first, by increasing their uncertainty about how their positions in a particular case affect their broader, long-term goals. All collegial courts are characterized by repeated interactions among relatively autonomous actors, though the extent to which they interact may vary considerably by country, court, and era (see, e.g., Baum 2004:145; 2006:58–9; Narayan & Smyth 2005:150; Ostberg et al. 2003). These regular interactions mean that judges "learn to cooperate and engage in reciprocity, rewarding those who have cooperated with them in the past and punishing others" (Maltzman et al. 2000:20–1; see also Baum 1997:113; McCormick 2004:29; Murphy 1964:49–54).[4] Similarly, the collegial nature of high courts elevates the importance of consensus (Caldeira & Zorn 1998; Epstein, Segal, et al. 2001; Howard 1968; see, however, Allen & Wall 1987; Narayan & Smyth 2005; Smyth 2002) as well as the need for esteem from court colleagues (Baum 2006). The reinforcing pressures of consensus, reciprocity, and respect should give judges reason to reconsider how short-term choices will affect their long-term collegial relationships and their individual long-term goals.

Similarly, collegial court judges value the respect of their intracourt colleagues and may adjust their behavior toward that goal (Baum 2006). More generally, since the collegial court environment inherently involves some deliberation and exchange of information (Kornhauser & Sager 1986:100–2), a change in personnel can expose continuing justices to new views and persuasive personalities. All of these long-term factors have the potential to bring new information and social considerations into judges'

[4] Engaging in this sort of generalized "reciprocity" is not, however, the same as constructing logrolls across specific cases.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

decisions, making membership change lead to position shifts on specific cases as new collegial considerations make past decisions less relevant as a guide to the current choice.

Finally, replacing judges reconfigures the ideological alignment of the court, changing the short-term strategic calculations of the continuing judges. If judges ultimately seek to secure majorities for their preferred positions, they will compromise on doctrine (Epstein & Knight 1998; McCormick 2004) and may even change positions in order to influence the legal policy embodied in the majority opinion.[5] Membership change that alters the location of the median judge provides some judges new opportunities to build majorities, while others lose coveted bargaining positions at or near the median. The prospect of losing influence over the majority opinion may lead judges to conceal their sincere preferences if they know that expressing them will leave them in dissent and without any leverage on the majority. Similarly, membership change could alter the strategic situation in the opposite direction for an individual judge, depriving that judge of an incentive to behave strategically that was previously in place. In short, a change in ideological alignments should make a justice more likely to change his or her revealed preferences when a membership change occurs.[6]

Evidence of Voting Change

Empirical evidence demonstrates that judges on collegial courts make some short- and long-term behavioral changes, and some of this change may follow from changes in court composition. One example of this kind of voting change can be found in research on courts with rotating decision panels, where some evidence suggests short-term strategic behavior contingent on panel composition. If judges are strategically oriented toward securing policy outputs closest to their preferred outcomes, then judges who sit on courts that decide cases in rotating panels will exploit this institutional feature, behaving sincerely when their views hold a

[5] On the U.S. Supreme Court, Chief Justice Warren Burger's well-documented manipulation of the opinion in *Roe v. Wade* (1973) is an extreme example of gaming the majority opinion (Maltzman et al. 2000:29). But significant movement may also occur from case to case in addition to occurring across different stages of a single case.

[6] This view of judges as strategic actors on final votes contrasts with the sincere-actor perspective in some of the literature. For the U.S. Supreme Court, though, there is existing evidence that justices are not irrevocably attached to their sincere preferences. One piece of evidence comes from the existing literature on strategic decisionmaking, which highlights the fluidity of decisions between conference and final merits votes (Howard 1968; Maltzman & Wahlbeck 1996; Maltzman et al. 2000; Murphy 1964:56–68; but see Brenner 1980). It is also clear that justices bargain over opinion content, and this behavior demonstrates strategic flexibility in the service of policy goals (Epstein & Knight 1998:65–79, 95–106).

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

majority on the panel and strategically suppressing those views when in the panel minority in an effort to move the panel outcome toward their preferred policy position. There is an ongoing debate in the literature on the U.S. courts of appeals as to the likelihood of such behavior (Cross & Tiller 1998; Hettinger et al. 2004, 2006; Revesz 1997; Van Winkle 1996), and scholars of courts outside the United States have also found mixed results. Flemming (2004) suggests that such behavior by justices on leave panels of the Supreme Court of Canada is unlikely, given uncertainty about coram (panel) composition to hear appeals. His finding does not, however, rule out the possibility of strategic behavior at the merits stage. Given that Hausegger and Haynie find that the chief justices of the Supreme Court of Canada and the Appellate Division of the Supreme Court of the Republic of South Africa strategically assign justices who are ideologically closer to them to hear cases that involve politically salient issues (2003:655), one might expect strategic behavior by the justices on the panels as well.

Existing work also provides mixed evidence for long-term behavioral shifts, although the sources of these shifts have received less empirical attention. As mentioned above, Epstein, Hoekstra, and colleagues (1998) establish that a considerable amount of long-term change exists in the aggregate voting behavior of individual justices on the U.S. Supreme Court, while Ostberg et alia (2003) find less long-term change by justices on the Supreme Court of Canada.[7] Relatedly, in his study of collective voting change on the U.S. Supreme Court, Baum (1992) found that collective change was not fully explained by the direct effects of replacement: for at least five of the eight natural court changes between 1949 and 1980, Baum attributes collective change, in part, to changes in the voting patterns of the continuing justices (1992:13). Baum concludes that the source of this collective change could not be divided between issue change and individual position change, but drawing on the congressional literature, he also observes that issue change may be controlled by focusing on "relatively narrow areas of policy in which the subjects of legislative or judicial votes are relatively

[7] Related research on the "freshman effect" suggests that U.S. Supreme Court justices exhibit higher variability in their votes early in their careers (and participate less in opinion writing) as they attempt to settle in to their career patterns (Hagle 1993; Howard 1968; Maltzman et al. 2000; Murphy 1964). Ostberg et alia (2003) investigate the freshman effect for justices of the Supreme Court of Canada. They argue that a freshman effect should be less likely on the Supreme Court of Canada due to a pervasive norm of consensus and a less-polarizing appointment process controlled by the prime minister, as opposed to the contentious process by which U.S. Supreme Court justices are nominated and confirmed. They find that there is no evidence of a freshman effect—variability or change in voting patterns—but that novice justices participate less in their first terms than they do later in their careers. Smyth (2005) finds that freshman justices on the High Court of Australia are less likely to dissent than their more senior colleagues.

parallel in content" (1992:6). Taken together, these existing findings demonstrate that voting change occurs, but they provide relatively little explanation for that change. Our general argument suggests that changing dynamics may explain at least some of the instability.

The literature on court leadership and patterns of agreement provides some further evidence of changing judicial behavior. For example, scholars have observed long-term changes in behavior of associate justices who move to the chief justice chair on the U.S. Supreme Court (Lanier & Wood 2001). On the Supreme Court of Canada, Wetstein and Ostberg (2005) find that the promotion to chief justice increases the number of majority opinions a justice writes and decreases the number of dissenting votes (though, interestingly, save Chief Justice Beverley McLachlin, not the number of dissenting opinions authored). The effect may be particularly robust on the Supreme Court of Canada, given the chief justice's power to strike panels of different sizes. More relevant to our analysis, Ostberg and Wetstein find that membership change does not affect any of these patterns in chief justice behavior. Nonetheless, the move from associate to chief and the accompanying changes in behavior suggest that continuing justices can and do alter their behavior during their careers.

Furthermore, some evidence suggests that membership change can have an impact on the degree to which the continuing justices agree or disagree with one another. McCormick (2004:28) has noted that changes in membership are often associated with changes in the frequency and patterns of dissent on the Supreme Court of Canada. During the Lamer Court, the departures of Justices John Sopinka (in 1997) and Gérard La Forest (in 1998) translated into lower dissent rates for four of the continuing justices (McCormick 2004:28). Membership change, then, affects both new justices and continuing justices on the Supreme Court of Canada, suggesting that continuing justices respond to the new opportunities created or eliminated by membership change. Smyth and Narayan (2004, see also Narayan & Smyth 2005; Smyth 2002, 2003) argue that weak leadership on the High Court of Australia has contributed to periods of high levels of dissent, and that membership changes (particularly those that create or eliminate personality conflicts) shape the behavior of continuing justices.

Analytical Approach

For our empirical analysis, we have focused on voting changes among continuing U.S. Supreme Court justices. In order to explore justices' voting changes in relation to membership shifts, we need to draw not only theoretical but also empirical distinctions

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

between the possible sources of individual vote change. These possible sources—attitude change, issue change, and membership changes—should follow different patterns. Sincere preference change (attitude change) affects some justices significantly over time, but these patterns of change are individualized—some justices grow more liberal and some more conservative, while some exhibit little attitude change (Epstein, Hoekstra, et al. 1998). Issue change would affect the behavior of all justices similarly. If the Court's case mix grows harder[8] from one term to the next (due to membership change and its effect on the issue agenda), then one would expect conservative votes to be more likely for all of the justices. Voting change in response to membership change would be most likely to affect those justices whose preferred outcomes are made strategically more or less easy to achieve by the contextual shift; it should also affect other justices as they encounter new information in Court deliberations and as they experience more uncertainty in considering the link between their behavior and their long-term objectives. Thus, because content changes across cases can be controlled and because pure attitude shifts are not systematic across all justices (they do not all become more liberal or more conservative), we can associate other measurable behavior changes with change in the Court's internal alignments produced by membership change.

This empirical approach could proceed at one of several levels of analysis. At the level of aggregate voting patterns, if issue change could be controlled successfully, we would expect to see significant shifts in justices' level of liberal (conservative) voting in general issue areas. At the level of individual case votes, we would expect to see that individual justices become more (less) likely to support a liberal (conservative) outcome on similar cases over time when the intracourt strategic context shifts significantly. Both approaches have strengths and weaknesses. At the aggregate level, the most significant challenge is controlling successfully for issue change. While there are notable attempts to do so (Baum 1988, 1992, 1995; Epstein, Hoekstra, et al. 1998; Ostberg et al. 2003), individual case analysis facilitates fine-tuned controls for the change in the precise factual situations from case to case. Looking at individual cases also allows us to examine the possibility that stability at the aggregate level masks instability at the level of the individual case.

At the level of the individual case, however, the justices may resist the appearance of changing. Accordingly, individual-case analysis may underestimate the true degree to which the justices

[8] "Harder" and "easier" refer to the difficulty or ease of casting a liberal vote. The direction of this terminology throughout is not intended to convey a value judgment but rather to follow conventions in the literature that date at least to Schubert 1962.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

conceal their preferences and act strategically to build majorities on the Court. An additional disadvantage of this case-level approach may be generalizability. In order to account for this concern, we conduct two separate individual-level analyses of justices' vote switches on recurring questions; the first examines search-and-seizure cases since 1963, and the second studies the progeny of *Miranda v. Arizona* (1966). A focus on merits votes creates an additional limitation. The existing literature makes clear that justices care about the content of opinions and not simply about the direction of case outcomes, and the behavioral change we hypothesize should manifest itself not only in the merits votes justices cast but also in the content and tone of the opinions justices join and write. In this analysis, we assess the impact of membership change on the vote outcomes only, expecting that heightened instability in merits votes is a relatively tough test of the argument.

Independent Variables

Our argument posits that vote switching on recurring issues should be related to significant shifts in the Court's ideological composition. That is, when a new justice (or justices) joins the Court and causes the Court median to shift relative to the previous term, the continuing justices should reassess their positions. As we discussed above, behavioral changes in response to membership change may reflect collegial pressures (reciprocity, esteem), changes in information and deliberation, and shifts in the context for strategic behavior, but in each case, membership shifts with clear potential consequences for the Court's output are the ones that should induce the greatest response from continuing justices. While all of these changes in the decisionmaking environment may be brought about by the addition of any new justice, changes that shift the median of the Court (which we characterize as "significant" Court changes) should be most consequential in these instances since these replacements involve freshman justices who bring substantially different ideas to intracourt deliberation, significant new uncertainty about policy outcomes and long-term relationships, and new alignments for short-term strategic calculations.[9] The central hypothesis, then, is that *a continuing justice will be more likely to change his or her vote on recurring issues in the first term of a new natural court that brings significant ideological movement, compared with other court terms*.

In the analyses, we operationalize "significant" natural court changes as those replacements that change the median aggregate

[9] As we briefly examine herein, some of the theoretical sources of change would lead us to expect some vote change in the case of "insignificant" membership shifts as well.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

civil liberties support score of the Court.[10] For example, the median adjusted civil liberties score of the 1990 court term—the last court of liberal justice Thurgood Marshall's tenure—was 0.42. If Justice Marshall is removed from this court and the first-term score of his replacement, conservative justice Clarence Thomas, is substituted, the 1990 court's median drops to 0.36. This change indicates a significant court change in the conservative direction for the following term, 1991. Replacements that do not move the median of the Court are not coded as significant changes, even if there is an ideological contrast between the departing and arriving justices. During the time period covered by our analyses, significant median movements occurred in nine of the 14 terms with membership changes.[11]

Since our exploration of the central hypothesis requires us to compare votes across cases, we must first address the comparability of the cases themselves. As we describe below, the cases in both datasets have been selected for their general comparability, but we know that on search-and-seizure (Segal 1984) and confessions cases (Benesh 2002; Benesh & Martinek 2002), variations in case facts have significant effects on justices' choices. In order to account for this variation and to reveal the effects of other influences, we have created a series of fact variables for each of the two datasets. Relying on facts that previous research has established as salient in each area, we employ a series of indicator variables that summarize whether the changes in case facts from $t-1$ to t make it easier or more difficult to support a pro-defendant position. We expect these indicators to be related to position changes in the following ways. First, as the fact pattern in a case makes excluding a confession or search easier than in the previous case, a vote change from pro-prosecution to pro-defendant should be more likely. Conversely, as the fact pattern in a case makes excluding a confession or search more difficult than in the previous case, a vote change from pro-defendant to pro-prosecution should be more likely. Details on the construction of the fact variables are outlined below as each analysis is introduced.

[10] Aggregate support scores for this calculation are adjusted for issue change (Baum 1988). We use the adjusted civil liberties scores as an illustration here, as those scores are designed to account for issue change, meaning that over-time change in the scores reflects membership change and change by continuing justices. Other measures of Court tendencies (Martin & Quinn 2002) are more agnostic about what forces influence change, making them less appropriate in this particular context.

[11] Terms with significant liberal changes include 1962, 1967, 1987, and 1993. Terms with significant conservative changes include 1969, 1970, 1971, 1975, and 1991. The indicator for significant court change equals 1 for each justice-vote cast during one of these terms with significant change (or, in a few instances, during the first term after the significant change in which a case in the issue area was decided).

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

We account for other factors that can be expected to indicate a greater likelihood of position-switching in a given case. In particular, issuing a concurring opinion can be viewed as an outcome-based indicator of a justice's bargaining earlier in the process (Epstein & Knight 1998:76–9; Maltzman et al. 2000:66–9; Murphy 1964:54–68). Justices in the minority seeking votes for their position in the current case would be most likely to turn to a justice whom they perceive as a less-committed member of the majority, giving that justice bargaining leverage. It follows that the author of a (regular or special) concurring opinion at $t-1$ is more likely to change positions at t.

If justices ultimately are looking to build majorities, then they may apply differential levels of pressure on their colleagues given the outcome the previous time an issue was considered. If the decision in the previous case was 7–2, the dissenters know they are three votes away from gaining a majority and may simply find it a waste of effort to convince other justices to switch. If, however, the previous decision was 5–4, then the dissenting justices know they are one vote switch away from the opportunity to hold a majority. Accordingly, they will be more willing to compromise with a justice in a minimum winning coalition (MWC) than with a justice in any other coalition. A justice who was a member of an MWC at $t-1$, then, should be more likely to change position at t.

Characteristics of the individual justices may also affect their propensity to switch positions, and we account for this potential relationship in the analyses. Regardless of the case-specific factors described above, justices who are more moderate should be more likely to switch positions for several reasons. First, they are more likely to find themselves in a powerful bargaining position; they will find more opportunities to influence a majority by sacrificing some of their pure preferences. Similarly, it is possible that intangible *costs* of strategy—especially the amount of ideological purity lost for the sake of influence—are higher for those justices farther from the median and lower for those at or near the median. Moderate justices can also be seen as more likely to respond, in their merits vote choices, to the influence of deliberation and persuasion among the justices. Finally, more moderate justices may observe more relevant differences from case to case: liberal Justice William Douglas may have been unlikely to distinguish between a search of a dorm room and an apartment, but moderate Justice Sandra Day O'Connor may have found such a difference dispositive. For all these reasons, we expect that justices closer to the median will be more likely to change their votes, while those farther away will be less likely to do so, other things being equal.

In the analyses, we define ideological location as justice j's absolute distance from the Court median (m) at time t. Our

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

measures of ideological location are based on Martin and Quinn's aggregate estimates of justices' ideal points (Martin & Quinn 2002); we take the absolute value of the difference between the ideal point of *j* and the ideal point of *m*. We approach the use of these estimates with a fair amount of caution, as using vote scores to predict votes may prove problematic due to problems of circularity. Using the scores as an independent variable in analysis of discrete issue areas, as we do here, raises far fewer concerns (Martin & Quinn 2005:5), so we believe this an appropriate and adequate measure of the justices' ideological distances.

A final factor, uncertainty, should affect the stability of all justices over time. In their study of switching from initial to final merits votes, Maltzman and Wahlbeck (1996) emphasize the role of uncertainty over vote choices in explaining instability. Among other factors, Maltzman and Wahlbeck find that the uncertainty related to lack of experience (freshman status) predicts switching prior to the final merits vote. In our longer-term view of vote switching, uncertainty should have a similar effect. Here, it is not simply tenure on the Court that we are interested in but also the length of a justice's voting history on a particular issue.[12] If uncertainty affects justices' choices, then justices with shorter issue-voting histories to draw upon should reverse votes more often as they seek the position that best satisfies their goals within the collegial context.[13] In short, as a justice's voting history in an issue area grows longer, vote reversals from one case to the next should be less likely.[14]

Methods

Each analysis orders each justice's votes on all of the cases in chronological order and creates a variable that indicates whether a justice changed the direction of his or her vote (pro-defendant to pro-prosecution or vice versa) from one case to the next. Each set of cases is analyzed using a pooled binary time-series cross-sectional logit analysis in which the unit of analysis is the justice-case (justice *j*'s vote in the case at time *t*) and the dependent variable is the

[12] Parallel research on legislative voting has demonstrated the importance of vote history in explaining stability and change in U.S. House vote choices. See Asher and Weisberg 1978 and Meinke 2005.

[13] The data in both analyses were shown to be duration-dependent in likelihood ratio tests, so the inclusion of a variable controlling for the duration of justice *j* in a stable voting position as of time *t* corrects for the effects of this duration dependence (see Beck et al. 1998 on this general approach) as it also measures an effect of theoretical interest.

[14] This control also allows us to account for vote switches that may appear idiosyncratic—unrelated to membership change. Justices with shorter vote histories should be more prone to such changes, while those with significant evidence of voting stability should be less likely to change for reasons unrelated to the included variables.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

indicator of vote change from $t-1$ to t (1 = changed vote, 0 = same vote).[15] In order to account not only for position change itself but also for the *direction* of position change, we create a model that conditions the independent variables' effects on the direction of the previous vote. Two versions of each independent variable are entered into the model—one for justices with a pro-prosecution vote at $t-1$ and one for justices with a pro-defendant vote at $t-1$. Where a justice voted pro-prosecution at $t-1$, the pro-prosecution variables take on their actual values, and the pro-defendant variables are all set to zero. Similarly, for a justice with a $t-1$ pro-defendant vote, the slate of pro-defendant variables reflects their actual values, while the pro-prosecution variables are zero. The model also includes an indicator variable for the justice's position at $t-1$. The coefficients for the two sets of independent variables, then, indicate the effect of each variable *conditional on* the justice's voting position at $t-1$. This approach to modeling conditional effects, which is described in detail by Wright (1976), yields results that are *identical* to a conventional dummy-variable interaction model. We follow this approach for the cleaner interpretation and presentation of conditional effects that it affords. For a recent application of this approach, see Giles et alia (2001).

To account for the time-series cross-sectional nature of the data, we estimate a population-averaged logit. While conditional models "are more useful when the primary question of interest is the effect of changes in covariates within a particular observation, [marginal models] are more valuable for making comparisons across groups or subpopulations" (Zorn 2001:475). Using a marginal, or population-averaged (PA), model avoids estimating cluster-specific effects (the approach a fixed-effects model would take) or assuming that the cluster-specific effect follows a stochastic distribution. Rather, a PA model adjusts "the covariance matrix of the estimated parameters to account for non-independence across observations or time points" (Zorn 2001:474). As a result, coefficients in a PA model represent "the *average* effect, across the entire population, of a one-unit shift in X_{it} on $Pr(Y_{it})$" (Zorn 2001:474–5). This approach is desirable in our application because we are interested in understanding effects *across* subpopulations (here, the individual justices whose votes are assumed to be correlated).

[15] The data for both analyses originally contained several cases in which decisions were announced on the same day. These cases are separate decisions with distinct *U.S. Reports* citations; in other words, they are not simply cases with differing docket numbers joined together for a decision (such cases are obviously treated in the dataset as one decision). In each analysis, we have included votes on these distinct but simultaneously decided cases as separate sets of observations in the longitudinal analysis, ordering them consistently by their appearance in the *U.S. Reports*. Eliminating all of the simultaneously decided cases except for the first on each date does not substantially change the results for either model.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

Search and Seizure

To analyze vote change on U.S. Supreme Court search-and-seizure cases, we begin with the dataset collected by Segal (Segal 1984, 1985; Segal & Spaeth 2002) and updated by Kritzer and Richards (Kritzer & Richards 2005).[16] The dataset includes every search-and-seizure case decided by the Supreme Court from its landmark decision in *Mapp v. Ohio* (1961) through the 2002 term. The issues presented in these cases do vary somewhat from case to case, requiring us to account for changing fact patterns. To establish the fact profile of each case relative to its predecessor, we create an indicator of intrusiveness, which we generate for each search.[17] Searches with positive values are more intrusive than searches with negative values. We then calculate the difference between the case at $t-1$ and t. If the value is negative, the search under consideration is less intrusive than the search under review in the previous case. A positive value means the search is more intrusive than the previous search. We then recode this to two dummy variables: *more intrusive* and *less intrusive*. *More intrusive* takes on the value 1 if the case at t represents a search that is more intrusive than the previous search, and is 0 otherwise. *Less intrusive* takes on the value 1 if the case at t represents a search that is less intrusive than the previous search, and is 0 otherwise.[18]

Results

Table 1 presents the results of the search-and-seizure analysis. As described above, the first set of coefficients represents the independent variables' effects *conditional on* a pro-prosecution vote at $t-1$. In other words, the coefficients show the effect of each variable on the likelihood of a switch from a pro-prosecution to a

[16] We thank Jeffrey Segal, Herbert Kritzer, and Mark Richards for sharing the data.

[17] Intrusiveness is calculated using the following equation: 1.180 (house) + 0.992 (business) + 0.807 (person) + 0.676 (car) + 0.826 (full search) – 0.706 (warrant issued) – 0.391 (lower court finding of probable cause) – 0.571 (incident to arrest) – 0.034 (after arrest) – 0.099 (after unlawful arrest) – 0.828 (exceptions). The weights are derived from a logistic regression of all of the justice-votes, and the regression includes Segal-Cover measures of the justices' ideology. This approach follows the approach to measuring intrusiveness of a search taken by Cameron et alia 2000, though our equation includes probable cause.

[18] One fundamental problem remains: several cases in the dataset involve the admissibility of more than one search. In some cases, there is more than one defendant. In other cases, there is more than one search—say, the search of a home and a vehicle. Collapsing the searches would overstate the intrusiveness and not accurately reflect the decisionmaking process, and some justices allow one search but not the other. Arbitrarily determining which search comes first in the justices' sequence also seems to be inaccurate, so we exclude from our analysis the 19 cases (of a total 202 cases) where more than one search is considered by the justices.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

Table 1. Vote Changes on Search-and-Seizure Cases, 1963–2003

	b	S.E.
Pro-Prosecution Vote at $t-1$		
Less Intrusive	−0.663	(0.395)
More Intrusive	0.780*	(0.379)
Significant Natural Court Change	0.432*	(0.199)
Member of Minimum Winning Coalition$_{t-1}$	−0.075	(0.202)
Concurrence Author$_{t-1}$	0.644**	(0.231)
Distance From Court Median	0.081	(0.061)
Pro-Defendant Vote at $t-1$		
Less Intrusive	1.208*	(0.496)
More Intrusive	0.085	(0.507)
Significant Natural Court Change	0.610**	(0.226)
Member of Minimum Winning Coalition$_{t-1}$	−0.115	(0.212)
Concurrence Author$_{t-1}$	−0.023	(0.266)
Distance From Court Median	−0.332**	(0.058)
Stable Votes	−0.121**	(0.019)
Pro-Defendant Vote$_{t-1}$	0.648	(0.649)
Constant	−0.914*	(0.383)
Wald χ^2 (14 d.f.)	216.17	
$\Pr > \chi^2$	<0.001	
Observations	1537	

Cell entries are population-averaged logit coefficients. Standard errors in parentheses. *$p<0.05$; **$p<0.01$; ***$p<0.001$, two-tailed tests.

pro-defendant position. We find, first, that justices are more likely to change to a pro-defendant vote when the search is more intrusive. Looking at the second set of coefficients (for justices with pro-defendant votes at $t-1$), we see that justices are more likely to change from a pro-defendant to a pro-prosecution vote when the search is less intrusive than the search considered in the previous case. These results provide an important validity check on the construction of the intrusiveness variable and confirm that the justices are sensitive to changes in the fact patterns.

Consistent with our central hypothesis, justices are significantly more likely to change their vote positions in the term following a significant change in the Court's composition. The positive and statistically significant coefficients on the court-change variables in both sets of coefficients indicate that justices are more likely to defect from a pro-prosecution position *and* from a pro-defendant position. In short, the evidence indicates that the justices react to membership changes by becoming more likely to switch their positions in search-and-seizure cases.

Justices who express doubt about the drift of the majority coalition by concurring in the previous case are, in fact, more likely to change their votes in the subsequent case, but this finding holds only for justices who voted pro-prosecution in the previous case. Justices who cast pro-defendant votes in the previous case and concurred are neither more nor less likely to change their votes. Justices who are members of MWCs are no more likely to change votes than justices who cast votes in cases that are less narrowly

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

Table 2. Predicted Probability of a Vote Change on Search-and-Seizure Cases, Significant Court Membership Changes

		Significant Court Membership Change	
		No	Yes
Previous Vote	Liberal	0.409	**0.560**
	Conservative	0.273	**0.367**

Note: Ideological distance from the median justice is set at its sample mean of 1.632. All other variables are set to median values: there was one stable vote; the search neither more nor less intrusive than in the previous case; no concurrence in the previous case; the previous case was decided by a minimum winning coalition. Effects significantly different from the baseline (conservative previous vote, no significant change) are in bold.

decided. This may reflect intense pressure from both sides of cases decided by MWCs. That is, justices interested in keeping a majority may lobby wavering colleagues as intensely as minority justices, effectively canceling one another out. The impact of ideological distance is not significant for the pro-defendant shift, but ideological distance is significant for justices who supported the defendant in the previous case. These justices are more likely to switch their votes as they come closer to the median (and less likely to switch votes as they move away from the median). Finally, justices who have changed positions more recently are more likely to change again. Put differently, as justices vote consistently for a longer period of time, they become less likely to change their positions.[19]

To demonstrate the magnitude of these effects, we calculate predicted probabilities that a justice will switch from a pro-defendant to a pro-prosecution vote and vice versa. Table 2 displays the results of those calculations. A justice whose ideological distance from the median justice is set at its mean (and all other values set at their medians) has a predicted probability of 41 percent of making a pro-prosecution switch in the absence of significant court change. The probability of a vote change rises to 56 percent in the term following a significant membership change on the Court. For justices who voted pro-prosecution in the previous case, the probability of a switch absent a membership change is 27 percent, and it rises to 37 percent in the presence of a significant Court change. As the coefficients suggest, the effect of membership change is

[19] An additional case-level variable—unanimity—may be relevant to explaining change since unanimous cases may bring with them particular pressures for outlying justices to join a supermajority (Nicoll 1999). To control for the possibility that unanimous decisions are "different" and that unanimity could explain a significant amount of vote change, we have constructed an alternative model that includes variables for unanimity at t and at $t-1$. In the search-and-seizure cases, unanimity in the present case is significantly related to vote change, at least for pro-defendant switches. Including these additional variables has little substantive impact on the other coefficient estimates.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

somewhat greater on pro-prosecution switches than pro-defendant switches, but both kinds of vote change are significantly more likely during the term following a membership change than during other terms of the Court.

Miranda Progeny

The second exploration of our argument relies on a narrower set of cases—*Miranda v. Arizona* (1966) and its progeny. In constructing the dataset for this analysis, we build on the approach that Spaeth and Segal (1999; Segal & Spaeth 1996) have developed in their research on precedential behavior on the Court (see also Brenner & Stier 1996; Songer & Lindquist 1996). Spaeth and Segal select Court decisions and identify their progeny, tracking the voting behavior of the justices who participated in the precedent-setting cases and examining progeny-case votes for consistency with the preferences expressed in the precedential cases.

Like Spaeth and Segal, we examine progeny votes for consistency over time, but our basic empirical approach differs substantially, reflecting our interest in case-to-case vote change rather than in precedential behavior specifically. Using a precedent-progeny approach first requires a systematic method of identifying *Miranda* progeny. As previous authors have acknowledged, this is a difficult task; the selection of progeny is "far from an exact science" (Spaeth & Segal 1999:25). We employ a version of Spaeth and Segal's selection method, modified for our different theoretical focus, which we believe is reasonably accurate, transparent, and replicable. Since this approach does not rely on an existing set of cases as our search-and-seizure analysis does, the progeny case selection rules are described in more detail in the Appendix, which also lists the 64 cases included in the *Miranda* analysis.[20]

As in the search-and-seizure analysis, our hypothesis on the influence of issue change requires us to construct a series of indicators for changing case facts in *Miranda* progeny. The indicator variables for fact changes are coded from issues closely related to the holding in *Miranda*—the coerciveness of the interrogation and access to counsel. We identify two factual circumstances in the progeny cases that increase the coerciveness of the interrogation and therefore make it easier to vote pro-defendant (if the defendant was not Mirandized, and if the defendant was questioned without an attorney after requesting one) and two that decrease the

[20] The raw data used for this analysis, with the exception of the author-coded fact variables, are from the Supreme Court Justice-Centered Judicial Databases (Benesh & Spaeth 2003a, 2003b, 2005), updated by the authors through the 2003 term with data drawn from the original Spaeth database (Spaeth 2005).

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

Table 3. Vote Changes on *Miranda* Progeny Cases, 1966–2003

	b	S.E.
Pro-Prosecution Vote at $t-1$		
Less Coercive	−0.432	(0.418)
More Coercive	1.603***	(0.330)
Significant Natural Court Change	0.440	(0.351)
Member of Minimum Winning Coalition$_{t-1}$	−0.745	(0.396)
Concurrence Author$_{t-1}$	0.904*	(0.380)
Distance From Court Median	−0.021	(0.138)
Pro-Defendant Vote at $t-1$		
Less Coercive	−0.766*	(0.336)
More Coercive	−1.111**	(0.414)
Significant Natural Court Change	0.836*	(0.389)
Member of Minimum Winning Coalition$_{t-1}$	−1.722*	(0.737)
Concurrence Author$_{t-1}$	0.563	(0.429)
Distance From Court Median	−0.561***	(0.125)
Stable Votes	−0.020	(0.044)
Pro-Defendant Vote$_{t-1}$	2.211***	(0.454)
Constant	−1.459***	(0.351)
Wald χ^2 (14 d.f.)	77.39	
$\Pr > \chi^2$	<0.001	
Observations	542	

Cell entries are population-averaged logit coefficients. Standard errors in parentheses. *$p<0.05$; **$p<0.01$; ***$p<0.001$, two-tailed tests.

coerciveness of the interrogation, making it more difficult to vote for the defendant (whether the defendant waived his or her *Miranda* rights, and whether the questioning took place when the defendant was not in custody).[21] A variable was then created to describe the relative level of coercion (i.e., difficulty of voting pro-defendant) *in each case:* it equals 1 in the presence of facts making the interrogation less coercive and the absence of facts making it more coercive, 0 in the presence of both types of facts or in the absence of both types of facts, and −1 in the presence of facts making the interrogation more coercive and absence of facts making it less coercive. Finally, we recode this variable into a series of dummy variables to capture the direction of change in coerciveness (or ease of voting pro-defendant) from case to case: *less coercive* and *more coercive* (with no change being the comparison category).[22]

Results

Table 3 displays the results of the *Miranda* analysis. The results, first, reveal the effects of case facts on vote reversals. The positive

[21] Other analyses of confessions cases at the level of lower courts, such as Benesh's study (2002), use a much more expansive set of fact variables. While appropriate for understanding whether lower courts respond to the Supreme Court's precedents, many of the fact variables reflect the outcome of the progeny cases themselves and would be tautological in studying the Court's own decisions. We instead confine ourselves to facts that are at the core of the original *Miranda* decision's holding.

[22] Facts are coded from the fact summaries given by the majority opinion author. We code a factual circumstance as present *only* if it is clearly mentioned in the opinion.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

Table 4. Predicted Probability of a Vote Change on *Miranda* Progeny, Significant Court Membership Change

		Significant Court Membership Change	
		No	Yes
Previous Vote	Liberal	**0.457**	**0.660**
	Conservative	0.180	0.255

Note: Ideological distance from the median justice is set at its sample mean of 1.612. All other variables are set to median values: there was one stable vote; interrogation neither more nor less coercive than in previous case; no concurrence in the previous case; the previous case was not decided by a minimum winning coalition. Effects significantly different from the baseline (conservative previous vote, no significant change) are in bold.

and statistically significant coefficient on the *more coercive* variable in the pro-prosecution set of coefficients indicates that, as case facts make a pro-defendant vote easier, justices who voted pro-prosecution at $t-1$ are more likely to switch to a pro-defendant position. Meanwhile, justices who voted pro-defendant at $t-1$ are less likely to make a switch to a pro-prosecution position, relative to cases that present no factual shift. The effect of less-coercive case facts, however, is uneven across the two types of switching. Justices who voted pro-prosecution on the previous case are no more likely to switch their votes when a pro-defendant vote becomes harder (i.e., facts suggest less coercion), but interestingly, pro-defendant voters from the previous case are even less likely to switch than they are in cases that present no difference in coerciveness.

The *Miranda* model, then, is like the search-and-seizure model in that factual differences generally affect the stability of justices' voting positions. The confessions cases also provide some support for the central hypothesis about membership change, though for one type of switch only. For justices who voted for the defendant in the previous case, significant court change makes vote switching more likely, indicated by the statistically significant and positive court change variable in the second set of coefficients. The predicted probabilities displayed in Table 4 demonstrate the magnitude of this effect. When other factors are held constant, a justice's probability of switching to a pro-prosecution position rises from 46 to 66 percent in the first term after a significant composition change. Meanwhile, significant shifts in Court composition are positively related to pro-defendant shifts (the direct effect of the court-change variable), as expected, but this effect is not statistically significant.

The *Miranda* results reinforce the search-and-seizure findings in other respects as well. Justices who voted pro-prosecution and issued a concurring opinion on the previous case are more likely to switch to a pro-defendant position than other justices, but again the effect of the concurrence variable does not extend to justices who voted pro-defendant at $t-1$. Greater ideological distance from the

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

Court median decreases the likelihood of vote change for justices who voted pro-defendant on the previous vote, and the *Miranda* results parallel search-and-seizure in that the MWC variable does not show significant effects.[23]

The Effect of "Insignificant" Membership Change

To this point, our argument has emphasized that continuing justices should be most affected by membership change that moves the Court's ideological median. However, it is possible that some informational changes and new dynamics of personal influence also could be felt in the term following an "insignificant" Court change—that is, one that does not lead to any movement in the Court's median justice. We have tested this possibility and found mixed results.[24] In search-and-seizure cases, there is no statistically significant increase in the likelihood of vote change in the term following membership change when membership change includes all appointments of new justices. For *Miranda* progeny, the effect of membership change on vote switching in the following term remains the same, however: justices who cast pro-defendant votes are more likely to make a pro-prosecution switch. Table 5 presents the results of the predicted probabilities calculated from these models. Given that our argument should be most clearly supported where the ideological consequences of replacement are strongest, we are reluctant to make strong claims about these findings on insignificant membership change. However, taken together, the results highlight that some of the changes brought about by replacement can affect continuing justices' choices even when the replacement has less effect on the Court's policy alignments.[25]

[23] As in the search-and-seizure analysis, we have conducted supplementary analysis on the *Miranda* cases to ensure that results are not unduly affected by unanimous decisions. This robustness check is complicated somewhat in the confessions cases by the fact that, in the original dataset, all of the unanimous decisions involve vote changes among justices who had voted pro-prosecution at $t-1$; therefore, a full conditional model cannot be estimated. We have, however, estimated a *Miranda* model with the problematic observations deleted, and this model produces essentially similar results to those in Table 2, although the conditional effect of significant court change on vote switching is significant only at $p = 0.08$ in a one-tailed test.

[24] Results available from the authors upon request.

[25] We also estimate models that allow for longer lags than the term following significant membership change. If we count the first two Court terms after a significant membership change, rather than one, there are no significant effects for the Miranda progeny (at the 0.05), but there is a significant effect for the pro-prosecution switch in the old search-and-seizure cases. While some effect of membership change may appear at a lag of greater than one term, any specification of a longer duration captures overlapping membership changes, and we regard the one-term measurement as the clearest test of our hypothesis.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

Table 5. Predicted Probability of a Vote Change, All Court Membership Changes

Search-and-Seizure Cases			
		Court Membership Change	
		No	Yes
Previous Vote	Liberal	0.404	0.483
	Conservative	0.267	0.318
Miranda Progeny Cases			
		Court Membership Change	
		No	Yes
Previous Vote	Liberal	**0.661**	**0.868**
	Conservative	0.235	0.171

Note: Control variables are set at the same values as for Tables 2 and 4, respectively. Effects significantly different from the baseline (conservative previous vote, no membership change) are in bold.

Discussion

We began with a generalized argument that pointed to a place for membership change in explaining changes in the voting patterns of collegial court judges. Significant shifts in court composition, we argued, should alter the intracourt context enough to yield changes in some continuing judges' choices if collegial interactions matter for decisionmaking. The two empirical analyses we have conducted on the U.S. Supreme Court provide support for that view. On these regularly recurring issues, justices responded to changes in their decisionmaking environment by showing more instability in their voting, a change that may follow from both the justices' collegial interactions and shifts in short-term strategic calculations. Given the conventional expectation that there is little change in the behavior of Supreme Court justices that is not driven by issue change, finding discrete change as we do is particularly significant.

In our analysis, we have established the presence of change and its relationship to membership change, but we have not sought to parse the relative impact of the several sources of the replacement effect. Like some of the research on U.S. circuit court panel composition (Revesz 1997), we emphasize the likely importance of several intracourt dynamics that are linked to membership stability, but we leave the distinction between these collegial interactions as a matter for future research with different types of data.

Still, our general argument about intracourt influence and the effect of membership change should apply more broadly to other collegial appellate courts within the United States and to similarly

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

situated courts in other systems. Existing comparative judicial literature provides some evidence for strategic choices and a little evidence for long-term behavioral change. It is likely, we think, that our findings would receive some support in some other U.S. courts and collegial courts in other systems; however, institutional differences across courts and systems can be expected to affect the extent of both strategic behavior and collegial interaction and, therefore, the degree of membership change's impact. Institutions (and norms) such as the use of conferences for decisionmaking and the rules for judicial appointments can be expected to affect the degree to which judges interact and, perhaps, the degree to which judges value such things as consensus and bargaining. We conjecture that judges on a court such as the Supreme Court of Canada, with a less-divisive appointment process and related norms of consensus (see, e.g., Ostberg et al. 2003), would be likely to engage in the kinds of collegial interactions that would make membership change an important effect on the behavior of continuing members, as it is on the U.S. Supreme Court. At the other end of the spectrum, the High Court of Australia, with its lack of a conference tradition and frequent use of separate opinions (e.g., Narayan & Smyth 2005), would feature weaker connections between judges and, therefore, weaker effects of membership change on behavior. One particular institutional feature—the use of panels or en banc decisionmaking—would complicate the effects of replacement on continuing members and provide an additional membership-based window into strategic behavior. Where strategic interactions take place within constantly changing subsets of the court, membership change is less likely to reveal shifts in behavior than on courts with constant collegial dynamics.[26]

On balance, we believe that there is significant potential for future research on the connection between collegial interactions, membership change, and final votes in both the U.S. Supreme Court and similarly situated collegial courts. Our finding that the collegial context of U.S. Supreme Court justices' decisions affects their final merits votes is important, first, because it brings to the debate over judicial behavior new, outcome-based evidence of the consequences of long-term collegial interactions that other scholars have begun to examine using process-based evidence. More important, it demonstrates that observed changes in judges' voting

[26] Still, as we discussed above, rotating panels themselves serve as a type of membership shift that regularly places judges in new contexts. On a court such as the Supreme Court of Canada or one of the U.S. courts of appeals, variations in judges' behavior across panels would constitute evidence similar to what we find here for the U.S. Supreme Court. Some limited evidence to suggest this behavior on courts that employ panels already exists (Cross & Tiller 1998; Van Winkle 1996). This research is ripe for extension to courts outside the United States.

positions on final votes result from factors *other* than changes in preferences and issue content. This is an important step forward in our understanding of the forces that influence the behavior of appellate judges. Knowing that observed behavior changes (Baum 1988, 1992, 1995; Epstein, Hoekstra, et al. 1998; Ostberg et al. 2003) should stimulate a desire to understand *why* votes change. As a preliminary answer to that question for the U.S. Supreme Court, we conclude that while issue change and preference change certainly play a role, changes in Court membership also lead to behavioral change.

Appendix: *Miranda* Progeny Case Selection Rules

Spaeth and Segal (1999:25–33) have outlined a method for progeny case selection that, very generally speaking, involves checking case syllabi for references to the precedent and expanding that list in some cases by using *Shepard's Citations* to identify other cases with citations to the precedent that also address the same core question. We revisit and modify their selection rules in order to expand their list to the present and minimize the judgment calls required in our selection (see Brenner & Stier 1996), and because we believe it is appropriate to include non–orally argued cases, at least when they have enough information to allow us to assess the basis for decision as well as the voting alignments.

Our modified approach begins with a *Shepard's* search, followed by assessment of syllabus citations and more subjective judgments when necessary. The specific selection rules are as follows:

1. Using *Shepard's*, identify Supreme Court cases citing *Miranda* through OT2003.
2. Isolate all cases with a *Shepard's* analysis[27] or with >1 unanalyzed citation in any opinion.
3. For cases without *Shepard's* analysis but with >1 unanalyzed citation, determine if the syllabus contains a *Miranda* reference.[28]
4. Eliminate any case that has neither a syllabus reference to *Miranda* nor a *Shepard's* analysis.

[27] Previous precedent-progeny works use the *Shepard's* analysis in differing ways. Spaeth and Segal, for instance, "especially focus on those citations that contain an entry in the *Shepard's* analysis column, particularly if the entry reads 'followed,' 'questioned,' or 'overruled'" . . . but they "also examine all the other entries that *Shepard's* uses" (1999:28). Brenner and Stier limit themselves to "followed" cases only (1996:1038). We cast a broad net first and narrow from there, taking a *Shepard's* analysis as a neutral initial indication that a case may be progeny.

[28] Either a full citation or reference to "*Miranda* warnings" in the syllabus is considered a reference.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

5. Eliminate any case that has a *Shepard's* "distinguished" analysis with no other *Miranda* reference, since these cases are unlikely to focus on core *Miranda* issues.
6. Eliminate any case that hinges on a non-*Miranda* issue.
7. Eliminate any case that is not resolved by a merits decision as well as *per curiams* without obvious voting positions indicated.

These rules, while admittedly complex, offer the advantage of being relatively replicable—the judgment about the progeny hinging on a *Miranda* issue is subjective, but it is relatively straightforward. Our search produced a list of 63 cases, plus *Miranda* itself.

Progeny of *Miranda v. Arizona* (1966)

Case Name	Decision Year	Decision Term	*U.S. Reports* Citation
Johnson v. New Jersey	1966	1965	384 U.S. 719
Davis v. North Carolina	1966	1965	384 U.S. 737
Schmerber v. California	1966	1965	384 U.S. 757
In re Gault	1967	1966	387 U.S. 1
U.S. v. Wade	1967	1966	388 U.S. 218
Mathis v. U.S.	1968	1967	391 U.S. 1
Darwin v. Connecticut	1968	1967	391 U.S. 346
Orozco v. Texas	1969	1968	394 U.S. 324
Jenkins v. Delaware	1969	1968	395 U.S. 213
Harris v. New York	1971	1970	401 U.S. 222
Kirby v. Illinois	1972	1971	406 U.S. 682
Schneckloth v. Bustamonte	1973	1972	412 U.S. 218
Michigan v. Tucker	1974	1973	417 U.S. 433
Oregon v. Hass	1975	1974	420 U.S. 714
U.S. v. Hale	1975	1974	422 U.S. 171
Brown v. Illinois	1975	1974	422 U.S. 590
Michigan v. Mosley	1975	1975	423 U.S. 96
Beckwith v. U.S.	1976	1975	425 U.S. 341
U.S. v. Mandujano	1976	1975	425 U.S. 564
Doyle v. Ohio	1976	1975	426 U.S. 610
Oregon v. Mathiason	1977	1976	429 U.S. 492
Mincey v. Arizona	1978	1977	437 U.S. 385
North Carolina v. Butler	1979	1978	441 U.S. 369
Fare v. Michael C.	1979	1978	442 U.S. 707
Tague v. Louisiana	1980	1979	444 U.S. 469
Roberts v. United States	1980	1979	445 U.S. 552
Rhode Island v. Innis	1980	1979	446 U.S. 291
Jenkins v. Anderson	1980	1979	447 U.S. 231
Estelle v. Smith	1981	1980	451 U.S. 454
Edwards v. Arizona	1981	1980	451 U.S. 477
California v. Prysock	1981	1980	453 U.S. 355
Wyrick v. Fields	1982	1982	459 U.S. 42
South Dakota v. Neville	1983	1982	459 U.S. 553
Oregon v. Bradshaw	1983	1982	462 U.S. 1039
Minnesota v. Murphy	1984	1983	465 U.S. 420
U.S. v. Gouviea	1984	1983	467 U.S. 180
New York v. Quarles	1984	1983	467 U.S. 649
Berkemer v. McCarty	1984	1983	468 U.S. 420
Smith v. Illinois	1984	1984	469 U.S. 91
Oregon v. Elstad	1985	1984	470 U.S. 298
Wainwright v. Greenfield	1986	1985	474 U.S. 284
Moran v. Burbine	1986	1985	475 U.S. 412
Michigan v. Jackson	1986	1985	475 U.S. 625
Colorado v. Connelly	1986	1986	479 U.S. 157
Connecticut v. Barrett	1987	1986	479 U.S. 523
Colorado v. Spring	1987	1986	479 U.S. 564

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press

Arizona v. Mauro	1987	1986	481 U.S. 520
Greer v. Miller	1987	1986	483 U.S. 756
Arizona v. Roberson	1988	1987	486 U.S. 675
Patterson v. Illinois	1988	1987	487 U.S. 285
Pennsylvania v. Bruder	1988	1988	488 U.S. 9
Duckworth v. Eagan	1989	1988	492 U.S. 195
Michigan v. Harvey	1990	1989	494 U.S. 344
New York v. Harris	1990	1989	495 U.S. 14
Illinois v. Perkins	1990	1989	496 U.S. 292
Pennsylvania v. Muniz	1990	1989	496 U.S. 582
Minnick v. Mississippi	1990	1990	498 U.S. 146
Stansbury v. California	1994	1993	511 U.S. 318
Davis v. U.S.	1994	1993	512 U.S. 452
Dickerson v. U.S.	2000	1999	530 U.S. 428
Ferguson v. City of Charleston	2001	2000	532 U.S. 67
Yarborough v. Alvarado	2004	2003	541 U.S. 652
Missouri v. Seibert	2004	2003	542 U.S. 600
U.S. v. Patane	2004	2003	542 U.S. 630

References

Allen, David W., & Diane E. Wall (1987) "The Behavior of Women State Supreme Court Justices: Are They Tokens or Outsiders?," 12 *Justice System J.* 232–45.

Asher, Herbert B., & Herbert F. Weisberg (1978) "Voting Change in Congress: Some Dynamic Perspectives on an Evolutionary Process," 22 *American J. of Political Science* 391–425.

Baum, Lawrence (1988) "Measuring Policy Change in the U.S. Supreme Court," 82 *American Political Science Rev.* 905–12.

——— (1992) "Membership Change and Collective Voting Change in the United States Supreme Court," 54 *J. of Politics* 3–24.

——— (1995) "Measuring Policy Change in the Rehnquist Court," 23 *American Politics Q.* 373–82.

——— (1997) *The Puzzle of Judicial Behavior.* Ann Arbor: Univ. of Michigan Press.

——— (2004) *The Supreme Court*, 8th ed. Washington, DC: CQ Press.

——— (2006) *Judges and Their Audiences: A Perspective on Judicial Behavior.* Princeton, NJ: Princeton Univ. Press.

Beck, Nathaniel, et al. (1998) "Taking Time Seriously: Time-Series—Cross-Section Analysis with a Binary Dependent Variable," 42 *American J. of Political Science* 1260–88.

Benesh, Sara C. (2002) *The U.S. Court of Appeals and the Law of Confessions*. New York: LFB Scholarly Publishing.

Benesh, Sara C., & Wendy L. Martinek (2002) "State Supreme Court Decision Making in Confession Cases," 23 *Justice System J.* 109–33.

Benesh, Sara C., & Harold J. Spaeth (2003a) "The Justice-Centered Rehnquist Court Database, 1986–1998 Terms," The S. Sidney Ulmer Project: U.S. Supreme Court Databases, http://www.as.uky.edu/polisci/ulmerproject/sctdata.htm (accessed 7 July 2005).

——— (2003b) "The Justice-Centered Burger Court Database, 1969–1985 Terms," The S. Sidney Ulmer Project: U.S. Supreme Court Databases, http://www.as.uky.edu/polisci/ulmerproject/sctdata.htm (accessed 7 July 2005).

——— (2005) "The Justice-Centered Warren Court Database, 1953–1969 Terms," The S. Sidney Ulmer Project: U.S. Supreme Court Databases, http://www.as.uky.edu/polisci/ulmerproject/sctdata.htm (accessed 7 July 2005).

Brenner, Saul (1980) "Fluidity on the United States Supreme Court: A Reexamination," 24 *American J. of Political Science* 526–35.

Brenner, Saul, & Marc Stier (1996) "Retesting Segal and Spaeth's Stare Decisis Model," 40 *American J. of Political Science* 1036–48.

Caldeira, Gregory A., & Christopher J. W. Zorn (1998) "Of Time and Consensual Norms in the Supreme Court," 42 *American J. of Political Science* 874–902.

Cameron, Charles, et al. (2000) "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions," 43 *American Political Science Rev.* 162–85.

Cross, Frank B., & Emerson H. Tiller (1998) "Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeal," 107 *Yale Law J.* 2155–76.

Epstein, Lee, & Jack Knight (1996) "The Norm of Stare Decisis," 40 *American J. of Political Science* 1018–35.

——— (1998) *The Choices Justices Make*. Washington, DC: CQ Press.

Epstein, Lee, & Valerie Hoekstra, et al. (1998) "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices," 60 *J. of Politics* 801–18.

Epstein, Lee, & Jeffrey A. Segal, et al. (2001) "The Norm of Consensus on the U.S. Supreme Court," 45 *American J. of Political Science* 362–77.

Flemming, Roy B. (2004) *Tournament of Appeals: Granting Judicial Review in Canada*. Vancouver, BC: Univ. of British Columbia Press.

Giles, Micheal W., et al. (2001) "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas," 54 *Political Research Q.* 623–41.

Hagle, Timothy M. (1993) "'Freshman Effects' for Supreme Court Justices," 37 *American J. of Political Science* 1142–57.

Hausegger, Lori, & Stacia Haynie (2003) "Judicial Decisionmaking and the Use of Panels in the Canadian Supreme Court and the South African Appellate Division," 37 *Law & Society Rev.* 635–57.

Helmke, Gretchen (2002) "The Logic of Strategic Defection: Judicial Decision-Making in Argentina Under Dictatorship and Democracy," 96 *American Political Science Rev.* 291–300.

——— (2005) *Courts under Constraints: Judges, Generals, and Presidents in Argentina*. New York: Cambridge Univ. Press.

Hettinger, Virginia A., et al. (2004) "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals," 48 *American J. of Political Science* 123–37.

——— (2006) *Judging on a Collegial Court: Influences on Appellate Decision Making*. Charlottesville, VA: Univ. of Virginia Press.

Howard, J. Woodford Jr. (1968) "On the Fluidity of Judicial Choice," 62 *American Political Science Rev.* 43–56.

Kornhauser, Lewis A., & Lawrence G. Sager (1986) "Unpacking the Court," 96 *Yale Law J.* 82–117.

Kritzer, Herbert M., & Mark J. Richards (2005) "The Influence of Law in the Supreme Court's Search-and-Seizure Jurisprudence," 33 *American Politics Research* 33–55.

Lanier, Drew N., & Sandra L. Wood (2001) "Moving on Up: Institutional Position, Politics and the Chief Justice," 22 *American Rev. of Politics* 93–127.

Maltzman, Forrest, & Paul J. Wahlbeck (1996) "Strategic Policy Considerations and Voting Fluidity on the Burger Court," 90 *American Political Science Rev.* 581–92.

Maltzman, Forrest, et al. (2000) *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge Univ. Press.

Martin, Andrew D., & Kevin M. Quinn (2002) "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999," 10 *Political Analysis* 134–53.

——— (2005) "Can Ideal Point Estimates Be Used as Explanatory Variables?" Unpublished paper, Washington University, St. Louis, Missouri.

McCormick, Peter C. (2004) "Blocs, Swarms, and Outliers: Conceptualizing Disagreement on the Modern Supreme Court of Canada," 42 *Osgood Hall Law J.* 1–40.
Meinke, Scott R. (2005) "Long-Term Change and Stability in House Voting Decisions: The Case of the Minimum Wage," 30 *Legislative Studies Q.* 103–26.
Murphy, Walter F. (1964) *Elements of Judicial Strategy*. Chicago: Univ. of Chicago Press.
Narayan, Paresh Kumar, & Russell Smyth (2005) "The Consensual Norm on the High Court of Australia: 1904–2001," 26 *International Political Science Rev.* 147–68.
Nicoll, Jennifer (1999) "A Study of Unanimity on the Court: Can We Assume the Supreme Court Wants Unanimous Decisions?" Presented at the Midwest Political Science Association Meeting, Chicago.
O'Connor, Karen, & Jeffrey A. Segal (1990) "Justice Sandra Day O'Connor and the Supreme Court's Reaction to Its First Female Member," 10 *Women & Politics* 95–104.
Ostberg, C. L., et al. (2002) "Attitudinal Dimensions of Supreme Court Decision Making in Canada: The Lamer Court, 1991–1995," 55 *Political Research Q.* 235–56.
——— (2003) "Acclimation Effects on the Supreme Court of Canada: A Cross-Cultural Examination of Judicial Folklore," 84 *Social Science Q.* 704–22.
Palmer, Barbara (2002) "Justice Ruth Bader Ginsburg and the Supreme Court's Reaction to Its Second Female Member," 24 *Women & Politics* 1–23.
Revesz, Richard L. (1997) "Environmental Regulation, Ideology, and the D.C. Circuit," 83 *Virginia Law Rev.* 1717–72.
Richards, Mark J., & Herbert M. Kritzer (2002) "Jurisprudential Regimes in Supreme Court Decision Making," 96 *American Political Science Rev.* 305–20.
Rokeach, Milton (1968) *Beliefs, Attitudes, and Values: A Theory of Organization and Change*. San Francisco: Jossey-Bass.
Schubert, Glendon (1962) "The 1960 Term of the Supreme Court: A Psychological Analysis," 56 *American Political Science Rev.* 90–107.
Segal, Jeffrey A. (1984) "Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962–1981," 78 *American Political Science Rev.* 891–900.
——— (1985) "Measuring Change on the Supreme Court: Examining Alternative Models," 29 *American J. of Political Science* 461–79.
——— (1997) "Separation-of-Powers Games in the Positive Theory of Congress and Courts," 91 *American Political Science Rev.* 28–44.
Segal, Jeffrey A., & Albert D. Cover (1989) "Ideological Values and the Votes of U.S. Supreme Court Justices," 83 *American Political Science Rev.* 557–66.
Segal, Jeffrey A., & Harold J. Spaeth (1996) "The Influence of Stare Decisis on the Votes of United States Supreme Court Justices," 40 *American J. of Political Science* 971–1003.
——— (2002) *Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge Univ. Press.
Segal, Jeffrey A., et al. (1995) "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited," 57 *J. of Politics* 812–23.
Smyth, Russell (2002) "Historical Consensual Norms in the High Court of Australia," 37 *Australian J. of Political Science* 255–66.
——— (2003) "Explaining Historical Dissent Rates in the High Court of Australia," 41 *J. of Commonwealth and Comparative Politics* 83–114.
——— (2005) "The Role of Attitudinal, Institutional and Environmental Factors in Explaining Variations in the Dissent Rate on the High Court of Australia," 40 *Australian J. of Political Science* 519–40.
Smyth, Russell, & Paresh Kumar Narayan (2004) "Hail to the Chief! Leadership and Structural Change in the Level of Consensus on the High Court of Australia," 1 *J. of Empirical Legal Studies* 399–427.

Songer, Donald R., & Stefanie A. Lindquist (1996) "Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making," 40 *American J. of Political Science* 1049–63.
Songer, Donald R., et al. (1994) "A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals," 56 *J. of Politics* 425–39.
Spaeth, Harold J. (2005) "The Original United States Supreme Court Database, 1953–2005 Terms," The S. Sidney Ulmer Project: U.S. Supreme Court Databases, http://www.as.uky.edu/polisci/ulmerproject/sctdata.htm (accessed 7 July 2005).
Spaeth, Harold J., & Jeffrey A. Segal (1999) *Majority Rule or Minority Will: Adherence to Precedent on the U.S. Supreme Court*. New York: Cambridge Univ. Press.
Spriggs, James F. II, & Thomas G. Hansford (2001) "Explaining the Overruling of U.S. Supreme Court Precedent," 63 *J. of Politics* 1091–111.
Van Winkle, Steven R. (1996) "Three-Judge Panels and Strategic Behavior on the U.S. Courts of Appeals." Presented at the Conference on the Scientific Study of Judicial Politics, St. Louis, Missouri.
Wetstein, Matthew E., & C. L. Ostberg (2005) "Strategic Leadership and Political Change on the Canadian Supreme Court: Analyzing the Transition to Chief Justice," 38 *Canadian J. of Political Science* 653–73.
Wright, Gerald C. (1976) "Linear Models for Evaluating Conditional Relationships," 20 *American J. of Political Science* 349–73.
Zorn, Christopher J. W. (2001) "Generalized Estimating Equation Models for Correlated Data: A Review with Applications," 45 *American J. of Political Science* 470–90.

Cases Cited

Irvine v. California, 347 U.S. 128 (1954).
Mapp v. Ohio, 367 U.S. 643 (1961).
Miranda v. Arizona, 384 U.S. 436 (1966).
Roe v. Wade, 410 U.S. 113 (1973).
Irvine v. California, 347 U.S. 128, 138 (1954).
Wolf v. Colorado, 338 U.S. 25 (1949).

Scott R. Meinke *is Assistant Professor of political science at Bucknell University. His primary research agenda addresses the relationship between institutions and elite behavioral change, with an emphasis on the U.S. Congress. His recent articles on voting change in the early and contemporary House of Representatives have appeared in* Legislative Studies Quarterly.

Kevin M. Scott *is an Analyst on the federal judiciary at the Congressional Research Service. His research focuses on appointments to the federal judiciary and appellate court decisionmaking. His recent publications appear in* Social Science Quarterly, Justice System Journal, *and* Judicature.

https://doi.org/10.1111/j.1540-5893.2007.00329.x Published online by Cambridge University Press