

SUPREME COURT CLERKSHIPS AND “FEEDER” JUDGES*

LAWRENCE BAUM AND COREY DITSLEAR

Because law clerks are integral to the work of the Supreme Court, the selection of clerks is important. Observers of the Court have referred to “feeder judges,” by which we mean court of appeals judges from whom justices draw large numbers of clerks. This article analyzes the feeder-judge phenomenon in the 1976-1985 and 1995-2004 terms of the Court. It verifies that justices do rely heavily on certain court of appeals judges as sources of clerks and that justices differ considerably in the sets of feeder judges from whom they draw clerks. It also shows that there is a strong ideological element to the use of feeder judges by individual justices and that this element has strengthened over time.

Law clerks play a prominent role in the work of the Supreme Court, a role that has long fascinated observers of the Court. This fascination is reflected in a large body of popular and scholarly writing on the clerks (e.g., Wilkinson, 1974; Lazarus, 1998; Peppers, 2006; Ward and Weiden, 2006). In the writing on the Court’s law clerks, the primary issue has been the extent and form of their influence on the justices’ work. But there has also been considerable interest in the clerks themselves—who they are and how they are chosen. The racial and gender composition of the law clerk corps became a public issue in the 1990s (Brown, 1996; Mauro, 1996, 1998), and the gender issue arose again several years later (Greenhouse, 2006).

One aspect of the selection process that has received widespread notice, though not yet close and systematic analysis, is the identities of the lower-court judges for whom Supreme Court clerks have worked. Over the past three decades, the standard practice for Supreme Court justices has been to choose their law clerks from those who have served (or are serving) in other courts, primarily the federal courts of appeals. The development of that practice apparently was spurred by the perceived benefits of clerkship experience (Peppers, 2006:31-32). The growing reliance on the courts of appeals as sources of law clerks is noteworthy in itself. In the 1976-1985 terms, among the Supreme Court clerks who had served in lower courts, 15 percent came from the district courts or (much less often) from state courts. In the 1995-2009 terms, that proportion dropped to 2 percent. (These data are drawn from our data set, described later in the article; see also Ward and Weiden, 2006:77.) With this change, the Court’s clerks collectively have a narrower range of experience than in the past, and they may be a more insular group.

This reliance on the courts of appeals for law clerks raises the question of whether there are distinct patterns in the choices of judges from whom the justices draw their clerks. The justices might draw their clerks randomly from court of appeals judges, in

* We appreciate comments and suggestions by James Brudney, David Klein, Elliot Slotnick, Michael Solimine, Craig Volden, Artemus Ward, participants in a seminar of the Center for Interdisciplinary Law and Policy Studies at Ohio State University, and the reviewers for this journal. We are grateful to Corwin Smidt for his design of the simulations that we used in the study.

the sense that the identity of the judge who employs a clerk has no impact on the clerk's chances of promotion to the Supreme Court. But random selection seems quite unlikely, because there are several reasons for justices to draw more clerks from some judges than from others.

First, there undoubtedly are systematic differences among judges in the traits of their law clerks—traits ranging from the law schools they attended to their level of competence. If justices seek clerks with traits that are also preferred by certain judges, they will draw clerks disproportionately from those judges even if they pay no attention to who those judges are.

Second, in reality justices are very likely to pay attention to judges' identities and use them as indicators of the qualities of candidates for clerkships. In the last several decades, justices (and those who assist them) have been faced with a large and growing pool of applicants. According to a 1994 report, more than one thousand people apply for clerkships each year (Biskupic, 1994), and applicants increasingly apply to all or nearly all the justices (Peppers, 2006:35; Ward and Weiden, 2006:58-59). Thus, justices need to find ways to winnow down the applications they receive. Undoubtedly, some judges develop reputations for hiring clerks with traits that reflect their style of judging and expectations, traits such as their ideological positions, racial or gender status, or legal experience. As a result, justices can simplify their decision-making process by looking to judges with the desired reputations.

Finally, judges interact with current and future justices and develop relationships with them. A justice may seek out law clerks from a particular judge because acquaintanceship with the judge gives the justice greater confidence in the judge's clerks. Further, acquaintanceship facilitates the exchange of information, making it easier for a justice to learn whether a specific clerk has the traits that the justice seeks. On a different level, friendship in itself may be a basis for choosing clerks from a particular judge.

Because of these three considerations, we would expect Supreme Court clerks to be drawn from court of appeals judges in a highly nonrandom way. Some judges should provide many more clerks to the Court as a whole than do others, and individual justices should draw clerks even more disproportionately from certain judges. These expectations are hardly novel. Indeed, the first expectation accords with the perception of lawyers and judges who pay attention to Supreme Court clerkships. That perception is reflected in the widespread use of the term “feeders” to refer either to judges who have any of their clerks hired by justices or to judges whose clerks frequently ascend to the Supreme Court (e.g., Lazarus, 1998:19; McCann, 2003:20). We will adopt the latter usage: by feeders, we mean those judges from whom the justices draw many law clerks.

At least some court of appeals judges care about achieving feeder status. Success in sending law clerks on to the Supreme Court is a source of personal pride for some judges (Mauro, 1998). Moreover, this success can enhance judges' reputations, serving as a sign of achievement and thus as a way to distinguish themselves from colleagues with the same formal status. As Judge Alex Kozinski of the Ninth Circuit put

it, "It's a little bit of a prestige matter" (Bossert, 1997). Feeder status also has the practical benefit of helping judges to attract the candidates for clerkships whom they want to hire, thus strengthening their own capacities as judges. As Judge Patricia Wald (1990:153) of the Court of Appeals for the D.C. Circuit said, "an excellent versus a mediocre team of clerks makes a huge difference in the judge's daily life and in her work product" (see also Kozinski, 1991:1708).

It is a simple task to count the number of law clerks that each judge sends to the Supreme Court in a given period. Indeed, lists of judges with the largest numbers of Supreme Court clerks appear from time to time, sometimes accompanied by discussions of the characteristics associated with those feeder judges (e.g., Bossert, 1997). However, examination of the feeder-judge phenomenon seldom goes deeper than that, and there has been relatively limited attention to feeder relationships between court of appeals judges and specific Supreme Court justices. Todd Peppers (2006:31-34) and Artemus Ward and David Weiden (2006:82-85) analyzed feeder judges more deeply and systematically in their landmark books on Supreme Court law clerks, but their analyses related to only certain aspects of the feeder phenomenon.

It could be argued that there is no need for a more extensive analysis of the feeder phenomenon: it is a curiosity and nothing more. We think otherwise. The selection of law clerks, including the use of a feeder system, provides a window on the justices' behavior. By learning what matters to the justices when they select clerks, we also learn about their goals as decision makers and the ways they make choices. The extent to which a feeder system exists and the attributes of that system also tell us about the linkages between justices and the judges who serve one level below them in the federal judiciary.

In this article we examine the feeder phenomenon since the 1970s. We focus on two decade-long periods: the 1976-1985 terms and the 1995-2004 terms. We will call these periods the "first" and "last" periods, respectively. In each period the Court's membership was unchanged (1995-2004) or nearly unchanged (Sandra Day O'Connor succeeded Potter Stewart in 1981).¹ We can compare the two periods to identify changes in the feeder-judge phenomenon over the past three decades. Several membership changes occurred during the 1986-1994 terms. Because we give considerable attention to hiring patterns by individual justices during a particular period, the 1986-1994 period is not as amenable to analysis as the first and last periods. For that reason, we will omit that "middle" period from our comparisons. But what we can determine about the middle period is consistent with the trends shown by comparison of the first and last periods.²

¹ Both of those periods start one term after the period of stable membership began. Clerk selection in a justice's first term necessarily works differently from the usual process, especially when the justice begins service during the term. Thus exclusion of the first terms for John Paul Stevens (1975) and Stephen Breyer (1994) avoids one complication.

² The Herfindahl-Hirschmann index that measures the overall strength of the feeder system increased from the first to the middle period to the last period, though the index multiplied by the number of clerks is actually a little lower in the middle period than in the first period. The analysis of the ideological element in clerk selection as a whole by Ditslear and Baum (2001:878) shows that ideological polarization was weakest in the 1975-85 terms, higher in 1986-92, and highest in 1993-98.

The next two sections address the collective and individual levels of the feeder phenomenon. The first section describes the feeder system from court of appeals judges to the Supreme Court as a whole. In this section, we probe the extent to which a feeder system exists and whether it has strengthened or weakened over time. The second section probes the extent to which the feeder system is specific to individual justices, in the sense that different justices draw their clerks from different feeder judges. We also examine the extent to which differences among justices in the feeders from whom they draw clerks follow ideological lines. In the final section we consider the implications of the patterns found in the first two sections.

THE FEEDER SYSTEM FOR THE COURT AS A WHOLE

Supreme Court justices are entitled to employ four law clerks each term. (The chief justice can hire a fifth law clerk, but only once—John Roberts in 2005—has a chief done so.) Thus, in a decade-long period, justices in active service hire a maximum of 360 clerks. Because some justices do not hire the full complement of four clerks each term, the actual totals are somewhat smaller.

Our analysis is restricted to the Supreme Court law clerks who had prior experience in the courts of appeals. We exclude two subsets of that group, those who served with retired justices and those who had served with the hiring justice in a court of appeals.³ With those exclusions, the total numbers of clerks that the justices promoted from the courts of appeals were 271 in 1976-1985 and 333 in 1995-2004. Data on the clerks were obtained from lists supplied by the Public Information Office of the Supreme Court. Our coding of those data is described in the Appendix.

The justices could draw these clerks from a set of court of appeals judges that varied in number over time. Legislation adding new judgeships was enacted in 1978, 1984, and 1990, and the number of authorized judgeships increased from 97 to 167. During this period, the number of clerks per judge at the court of appeals level also increased, from two to three in 1980 (Kester, 1983:22).

Court of appeals judgeships often are unfilled for a time. Yet over a decade-long period, the number of judges from whom the justices could draw clerks greatly exceeds the number of authorized judgeships, because senior judges can supply clerks and because judges come and go over the years.

Our central question in this section is whether a feeder system existed for the Supreme Court as a whole in the time periods we analyzed. Although we cannot define a feeder system with precision, we can say that such a system exists if the distribution of Supreme Court law clerks across court of appeals judges is far more concentrated than it would be if there were a random distribution of clerks from judges to justices. Because of the shifting membership of the courts of appeals and other complexities, the overall distribution of clerks cannot be compared comprehensively with a

³ We exclude retired justices because they are entitled to only a single clerk, and clerkships with them are somewhat different from those with active justices.

Table 1
Comparison of Simulated Random Distributions of Supreme Court Clerks
Across Court of Appeals Judges with Actual Distributions

# of Clerks	1976-1985 Terms # of Judges		1995-2004 Terms # of Judges	
	Random	Actual	Random	Actual
0	2	19	5	37
1	5	3	14	15
2	8	4	18	5
3	8	0	16	3
4	7	0	10	1
5	4	4	5	1
6	2	1	2	1
7	1	1	1	1
8	0	2	0	1
9	0	0	0	1
10+	0	3	0	7
Total	37	37	71	73
s.d.	1.69	5.34	1.57	5.35

Notes: "s.d." is the standard deviation of the numbers of clerks taken from each judge.

The numbers in the tables are numbers of judges with the indicated number of clerks hired by justices. Totals for judges in the random and actual columns for 1995-2004 do not match because of rounding errors in the random column.

Court of appeals judges were included if they served as active judges throughout the period that began and ended one year before the terms indicated. E.g., for 1976-85, a judge needed to serve through the period from July 1, 1975 through June 30, 1985.

As in other analyses, Supreme Court clerks were credited to court of appeals judges in the "actual" column if they met the general coding rules for the study, described in the text. The simulation procedure is described in the text and in the Appendix.

random distribution. However, this comparison can be made for the subset of judges who served as active (i.e., non-senior) judges throughout a time period, since each of those judges had a full opportunity to provide clerks to the justices during that period.

A random distribution, of course, differs from an equal distribution. Even if justices' choices of clerks were unrelated to the identities of the judges with whom clerks worked, by chance some judges would send many more clerks to the Supreme Court than would others. To take this complication into account, we used a simulation procedure. The simulations began with the number of court of appeals judges who were in active service throughout a time period, with a one-year lag (e.g., 1975-1984 for the 1976-1985 period), and the number of clerks that they collectively sent to the Supreme Court in the period. (About half of the Supreme Court clerks in these periods served judges who met our criterion of active service throughout a decade.) Each simulation then calculated a random distribution of Supreme Court clerks among these judges. The results showed how many judges would have supplied no clerks to the Supreme Court over that period, how many would have supplied one clerk, and so forth, if justices had chosen clerks randomly from the judges. The mean of these num-

bers across 1,000 simulations was then calculated. This result could be compared with the actual distribution of clerks across this subset of judges.

The results are shown in Table 1, and they underline the extent of a feeder system for the Court as a whole. Even if the justices chose clerks randomly from judges, a few judges might look like feeders; in both the first and last periods, one judge would have supplied seven clerks to the Supreme Court. But the actual distribution of clerks across judges was far more skewed. Compared with the random distributions, many more judges actually provided no clerks to the justices, and some judges provided more clerks to the justices than any judge would have sent under a random distribution. In the 1976-1985 terms, five judges who were in active service throughout the period sent at least eight clerks to the Supreme Court; in the 1995-2004 terms, nine judges supplied at least eight clerks. This difference between random and actual patterns is captured by the standard deviations, which measure the deviation of the distribution of clerks across judges from a distribution in which each judge provided the same number of judges to the justices. In both time periods, the standard deviation was more than three times as high for the actual distribution as it was for the random distribution. Thus, it is clear that the identities of the judges who employ law clerks have considerable impact on the justices' choices of clerks.

Like the existence of a feeder system, identification of individual judges as feeders necessarily has an arbitrary element. We chose to define judges who supplied ten clerks to the justices in a decade-long period as feeders for two reasons. First, an average of one clerk per year has intuitive appeal. Second, as the simulations showed, ten is distinctly more than the number that any judge would achieve under a random distribution.

Table 2 lists the judges who met this criterion in our first and last periods. Those lists, in contrast with Table 1, include judges who were in active service for only part of a period, and they also include clerks who served senior judges. For this reason the numbers of feeders and the numbers of clerks provided by some of them are larger than the totals in Table 1 indicate.

The large numbers of clerks drawn from a few individual judges over a decade—26 from J. Skelly Wright in 1976-85, 30 from J. Michael Luttig in 1995-2004—are striking. The same is true of the numbers of judges who exceeded the ten-clerk criterion by a large margin, especially the eight judges who supplied at least 15 clerks to the Court in the last period. The high proportion of feeder judges who served in the District of Columbia circuit, which we discuss in the next section, is also noteworthy. Because the lists are limited to specific ten-year periods, and because our coding rules exclude a few clerkships (see the Appendix), the lists do not count all the clerks that some judges have provided to Supreme Court justices over their whole careers. Even so, they offer another type of evidence that a distinct feeder system exists.

One question is whether this system has become more or less pronounced over time. Both trends seem possible. On the one hand, when justices first began to draw clerks overwhelmingly from the courts of appeals, they might have relied on a small number of judges until they developed methods to search more broadly. Further, the

Table 2
Court of Appeals Judges Who Supplied at Least
Ten Clerks to the Supreme Court in the First and Last Periods

1976-1985 Terms	Circuit	Number of Clerks
J. Skelly Wright	DC	26
Wilfred Feinberg	2	14
James Oakes	2	13
David Bazelon	DC	12
Carl McGowan	DC	12
Malcolm Wilkey	DC	12
John Minor Wisdom	5	10
1995-2004 Terms		
J. Michael Luttig	4	30
Guido Calabresi	2	19
Alex Kozinski	9	18
David Tatel	DC	18
J. Harvie Wilkinson	4	18
Laurence Silberman	DC	17
Michael Boudin	1	15
Harry Edwards	DC	15
Richard Posner	7	11
Douglas Ginsburg	DC	10
Pierre Leval	2	10

Note: This table, in contrast with Table 1, includes judges who were in active service for only part of a ten-term period and includes clerks who served judges when the judges had senior status. Like Tables 5 and 6, the table counts only clerkships that met the study's criteria for inclusion.

number of judges has increased over time. On the other hand, it may have taken time for the justices collectively to identify the judges who were reliable sources of highly qualified clerks.

The data in Tables 1 and 2 are inconsistent with a weakening of the feeder system over time. The evidence is less clear as to whether the system has strengthened. The list of judges who provided ten or more clerks is longer for the last period, but that was also the period with more Supreme Court clerks who had served in the courts of appeals. Comparisons of random and actual distributions of clerks in Table 1 suggest a basic stability across the periods.

A more systematic comparison of the two periods can be obtained by adapting the Herfindahl-Hirschmann Index, a standard measure of concentration among firms in an industry (see Golan, Judge, and Perloff, 1996). We describe our adaptation of the index in the Appendix; briefly, the higher the index figure for a period, the greater the tendency to choose law clerks from a small number of judges.

The index shows a slight increase between the first and last period, from .0318 in 1976-1985 to .0353 in 1995-2004. The trend indicated by these figures is a bit mislead-

ing, in that—all else being equal—the index tends to decline as the number of eligible clerks in a period increases, as it did between the first and last periods. Multiplying the index by the number of clerks overcorrects for that bias and, thus, produces a bias in the other direction, but the results are still of interest: the resulting figure is 8.63 in the first period and 11.76 in the last. Taken together, the two sets of results suggest a modest strengthening of the feeder system over time but a basic stability. In both periods we have analyzed, there clearly was a feeder system.

THE FEEDER SYSTEM FOR INDIVIDUAL JUSTICES

In this section we consider how individual justices fit into the feeder system. Such an inquiry might encompass all the clerks that justices hire. Instead, we focus on subsets of judges who supply large numbers of clerks to the Court as a whole (those we have defined as feeders) or to specific justices. We do so for two reasons. First, those subsets are of particular interest because the judges whose clerks are chosen by the justices in unusually large numbers clearly have attributes that make them especially attractive as sources of clerks. Second, this focus allows us to complement a prior study on one of the questions that we address, the ideological element in the feeder system; that prior study included all the clerks (Ditslear and Baum, 2001).

We examine two questions. The first is how much the feeder system that we found in the preceding section is specific to individual justices. To what extent do judges who qualify as feeders by our definition supply clerks to a limited subset of the Court? The second question is the impact of judges' and justices' ideological positions in structuring the feeder system. To what extent are feeder relationships at the individual level based on ideological affinities between judges and justices?

The first question relates to the bases for a feeder system in the first place. It might be that all justices look to the same court of appeals judges as sources of clerks, based on attributes such as judges' prestige and their reputation for hiring able clerks. But several factors work against that possibility. Acquaintanceship undoubtedly helps to create feeder relationships, and different justices are acquainted with different judges. In turn, geography—the circuit of a justice's prior service as a judge or current service as circuit justice—can affect acquaintanceship. Inevitably, justices differ in their assessments of particular judges and, thus, in their willingness to hire clerks who have worked for those judges. Further, feeder relationships are probably path dependent to a degree: if a justice employs a few clerks who have served a particular judge and is impressed with their work, the justice may be inclined to choose additional clerks from the same judge (see Ward and Weiden, 2006:83).

As our second question indicates, we look specifically at one possible source of differences among justices in feeder relationships, ideological affinity. The role of ideological affinity in structuring feeder relationships is intriguing because it illuminates the justices' perspectives. If justices seek law clerks who share their own conceptions of good legal policy, one means to achieve this end is to draw clerks from like-minded court of appeals judges who have themselves chosen clerks on an ideological basis.

Indeed, there is evidence that some judges on the courts of appeals do consider the ideological positions of prospective clerks (Kozinski and Bernstein, 1998:58; Walsh, 1998:1389). And if justices' acquaintanceship with and respect for lower-court judges is based largely on shared ideological positions, then liberal and conservative justices will be inclined toward different feeders on that basis. Thus, the extent to which justices diverge in their choices of feeders along ideological lines tells us something about the extent to which they think in ideological terms.

It is clear that ideological considerations do come into play in the selection of law clerks. Ward and Weiden (2006:103-05) have provided systematic evidence of a correlation between the voting behavior of the justices in ideological terms and the self-described ideological positions of their law clerks (see also Peppers, 2006:35). Further, Ditslear and Baum (2001) have shown that justices tend to draw their law clerks from like-minded court of appeals judges. Thus, an inquiry into differences in feeder relationships among the justices would be incomplete without probing the extent to which those differences are structured by ideology. Our goal is not to ascertain the strength of ideological considerations in creating feeder relationships relative to other considerations but simply to take into account the role of ideology in differentiating among the justices.

We can begin our inquiry by ascertaining the extent of a justice-specific element to the feeder system. In the preceding section, we identified feeder judges as those who provided at least ten clerks to the Supreme Court in the decade-long first and last periods of the study. In probing the existence of a feeder system for the Court as a whole, we compared the actual distribution of the Court's clerks across court of appeals judges with a random distribution. We can use the same approach to probe the individual element in the feeder system.

Suppose that 18 of a judge's clerks went up to the Supreme Court in a period of stable Court membership. In a perfectly even distribution of those clerks, each justice would hire two of those clerks. Here too, a random distribution of clerks from judge to justices would deviate somewhat from an even distribution. Based on the same technique used for the Court as a whole, the distribution of 18 clerks across nine justices was simulated. The results showed that for a hypothetical set of 18 clerks, we would expect one justice to choose four of the clerks while another chose none, with the other seven justices in between those extremes.

We can measure the difference between the random and actual distributions of a judge's clerks among justices by proportionate deviations: for each judge, the deviation from an even distribution of clerks among the justices as a proportion of the maximum possible deviation. The greater the deviation is, the greater the concentration of a judge's clerks among a few justices. The calculation of proportionate deviations is described in the Appendix. The benchmark is our simulated distribution of 18 clerks. That distribution had a proportionate deviation of .250, one-quarter of the maximum.

Table 3 presents the distributions of proportionate deviations for the first and last periods. The proportions in the table show that no judge came close either to an even

Table 3

Proportionate Deviations from Even Distributions of Clerks Among Justices,
Judges with Ten or More Supreme Court Clerks

1976-1985 Terms		1995-2004 Terms	
<i>Judge</i>	<i>Deviation</i>	<i>Judge</i>	<i>Deviation</i>
McGowan	.452	Boudin	.737
Oakes	.441	Luttig	.602
Bazelon	.425	Kozinski	.528
Wright	.411	Leval	.517
Feinberg	.407	Calabresi	.509
Wisdom	.354	Posner	.490
Wilkey	.320	Tatel	.486
		Edwards	.483
		Silberman	.457
		Wilkinson	.413
		Ginsburg	.304
Mean	.401	Mean	.502
s.d.	.044	s.d.	.108

Notes: "s.d." is the standard deviation across the judges for that period.

The procedure for calculating proportionate deviations is described in the Appendix. The proportionate deviation would be close to .000 if a judge supplied the same number of law clerks to each justice, 1.000 (or slightly less) if a judge supplied clerks only to one justice. If a judge's clerks were distributed randomly across the justices, the proportionate deviation would be approximately .250.

distribution among the justices or to concentration with a single justice. Every judge was above the benchmark of .250, but there was considerable variation among judges in how much they exceeded that benchmark figure. That variation was much greater in the last period, with a range from Douglas Ginsburg's .304 to Michael Boudin's .737.

The more striking difference between periods was the higher mean of the judges' deviations from a random distribution in the last period, .502 (versus .401 in the first period). And nine of the eleven feeder judges in the last period had deviations higher than any of the seven feeders in the first period. Thus, there was a fairly strong individual element to the feeder system in the 1976-1985 terms and a considerably stronger individual element in the 1995-2004 terms.

Additional analyses can provide a fuller sense of this individual element and probe the ideological component of that individualism. But to do so, we need to confront the task of measuring judges' and justices' ideological positions. A great deal of effort has gone into that task, because of its value for the analysis of judicial behavior. For the Supreme Court, most measures have been based on the justices' votes on case outcomes, a few on independent sources of evidence. For the courts of appeals, independent sources have predominated. Both types of measures have flaws. Those based on independent sources, such as the ideological positions of presidents and senators who

played a role in a court of appeals appointment or perceptions of a Supreme Court nominee's ideological position, suffer from a degree of inaccuracy. Those based on justices' and judges' votes can be more accurate but suffer from circularity when they are used to predict judges' behavior.

Despite the imperfections of these measures, they still have considerable utility for analysis of the relationship between the ideological positions of court of appeals judges and Supreme Court justices. The circularity problem in measures based on justices' votes does not exist when those measures are used simply to gauge where justices stand rather than to predict their votes. And the measures need not be perfectly accurate to probe the relationship that concerns us.

Because of the imperfections in any specific measure, we employed four measures for each court level. For Supreme Court justices, the measures were as follows (with shortened labels for each in italics):

1. Of the votes on case outcomes that could be classified as liberal or conservative, the proportion of conservative *votes* that a justice cast in the period during which a clerk was employed, with a one-year lag. Thus, for the 1976-1985 period, voting scores were calculated for the 1975-1984 terms. This measure is based on data in the Supreme Court Database, compiled by Harold Spaeth.⁴

2. The justice's *common space* score for the term before the term that a Supreme Court clerk was employed. These scores are transformations of the "Martin-Quinn" scores created by Andrew Martin and Kevin Quinn, which themselves are transformations of judges' voting patterns that are designed to take into account changes in the ideological content of cases the Court decides (Martin and Quinn, 2002). The transformation of Martin-Quinn scores into common space scores, undertaken by Epstein et al. (2007), was designed to make these scores comparable with common space scores for court of appeals judges (discussed below).⁵

3. The justice's *Segal-Cover* score. These scores, developed by Jeffrey Segal and Albert Cover, are based on content analysis of newspaper editorials about Supreme Court nominees (Segal et al., 1995). They capture the perceptions of nominees' ideological positions as expressed in the editorials.⁶

4. The justice's *political ideology* score. These scores, developed by David Nixon, are intended to be comparable with political ideology scores for court of appeals judges as well as officials in the other branches. The comparability is based on analysis of voting on issues by policy makers who served both in Congress and in one of the other branches.⁷

⁴ The Supreme Court Database is archived at scdb.wustl.edu. Following standard practice, cases from the database were included in the calculations if the unit of analysis was 0 or 4 and if the decision type was 1, 6, or 7. Of course, the relative liberalism of a justice's voting varies somewhat across issue areas. But the justices' voting patterns take a fundamentally unidimensional form (Grofman and Brazill, 2002).

⁵ The Martin-Quinn scores are archived at <http://mqscores.wustl.edu/measures.php>, the common space scores at <http://epstein.law.northwestern.edu/research/JCS.html>.

⁶ The Segal-Cover scores are archived at <http://ws.cc.stonybrook.edu/polsci/jsegal/qualtable.pdf>.

⁷ The political ideology scores are archived at <http://www2.hawaii.edu/~dnixon/PIMP/>.

For court of appeals feeder judges, the measures were as follows:⁸

1. The *party* affiliation of the president who appointed a judge to the court of appeals.⁹
2. The judge’s *common space* score. This score, which remains constant for a judge’s career, is based on ideological scores for the appointing president and for home-state senators of the president’s party at the time a judge was appointed (see Giles, Hettinger, and Peppers, 2001). The calculation of these scores is described in Epstein et al. (2007).
3. The score for the appointing president’s *social liberalism*, based on expert ratings by scholars who specialize in the presidency. These scores were developed by Jeffrey Segal, Richard Timpone, and Robert Howard (2000).
4. The judge’s *political ideology*. These scores are based on the same procedure used to calculate political ideology scores for justices (discussed above).

To compare the ideological positions of justices and judges, we converted each measure of justices’ ideological positions into a score for each feeder judge, based on the mean of the relevant scores for the justices to whom the judge provided clerks. For instance, if a judge supplied two clerks to Justice Breyer in the 1996 term, one clerk to Breyer in the 1997 term, and one clerk to Justice Scalia in the 1997 term, the judge’s score for the vote measure would be Breyer’s score for the 1996 term multiplied by two plus Breyer’s score for the 1997 term plus Scalia’s score for the 1997 term (in each instance using a one-year lag), with that total divided by four. Thus, each feeder judge for the first and last periods has ideological scores on the four measures for the judge, as well as ideological scores on the four measures for the justices to whom the judge supplied clerks, taking into account the numbers supplied to each justice. By correlating the two sets of scores, we can gauge the impact of ideological affinity between judge and justice on the feeder system.

The correlations are shown in Table 4. The coefficients for the 1976-1985 terms certainly are high; the lack of statistical significance for the coefficients is simply a product of the small number of judges. Thus, the correlations suggest that there was considerable ideological affinity between justices and the feeder judges from whom they drew law clerks: liberal justices tended to take clerks from liberal judges, conservatives from conservatives.

The coefficients for the 1995-2004 terms are considerably higher, and all but one is statistically significant by conventional standards. That fact is remarkable given the number of judges in the analysis, eleven—higher than in the 1976-1985 terms but still low. The coefficients indicate a strong ideological element in the selection of clerks

⁸ Another possible measure of judges’ ideological positions is the proportions of liberal and conservative votes that they cast in the sample of cases included in the U.S. Court of Appeals Database (compiled by Donald Songer). We do not present this measure because of the lack of full comparability of the cases decided by different judges, especially judges who served in different circuits. That attribute is reflected in the relatively weak correlations between this measure and other measures of judges’ ideological positions.

⁹ Appointing presidents were identified from the Federal Judicial Center’s Biographical Directory of Federal Judges, archived at <http://www.fjc.gov/public/home.nsf/hisj>.

Table 4
Correlations Between Ideological Positions of Feeder Judges
and Positions of the Justices to Whom They Supplied Clerks

1976-85 Terms				
<i>Justice</i>	Party	<i>Judge</i>		
		Common space	Social liberalism	Political ideology
Vote	.326 (.238)	.454 (.153)	.387 (.196)	.284 (.268)
Common space	.303 (.255)	.435 (.165)	.362 (.213)	.279 (.273)
Segal-Cover	.384 (.198)	.537 (.107)	.345 (.224)	.335 (.232)
Political ideology	.171 (.357)	.403 (.185)	.216 (.321)	.160 (.366)
1995-2004 Terms				
<i>Justice</i>		<i>Judge</i>		
Vote	.765 (.003)	.622 (.021)	.793 (.002)	.894 (<.001)
Common space	.756 (.004)	.621 (.021)	.778 (.003)	.885 (<.001)
Segal-Cover	.752 (.004)	.663 (.013)	.717 (.007)	.841 (<.001)
Political ideology	.572 (.033)	.412 (.104)	.596 (.027)	.731 (.006)

Notes: Feeder judges are those who supplied ten or more clerks to the justices in the period in question.

The coefficients generally are simple correlation coefficients between the judges' ideological positions and the ideological positions of the justices to whom the judges supplied law clerks, taking into account the numbers of clerks supplied to each justice and (for some measures) the terms in which justices employed the clerks. The levels of statistical significance by one-tailed tests are in parentheses. The coefficients involving the party of a judge's appointing president are point biserial correlation coefficients, appropriate for relationships between continuous and dichotomous variables.

The ideological scores have each been coded so that positive correlations indicate positive relations between a pair of scores (i.e., more-liberal judges supply clerks disproportionately to more-liberal justices).

from feeder judges. Thus, it appears that liberal and conservative justices were drawing clerks largely from different sets of feeders, sets structured by the ideological positions of the feeder judges.

To get a more concrete sense of the individual element in the feeder system in general and its ideological component more specifically, we can look at relationships between individual judges and justices. Table 5 presents the distribution among the justices of the law clerks who had served feeder judges in our first and last time periods. To help in identifying patterns, we have separated judges appointed by Democratic presidents from those appointed by Republicans, and we have ordered the justices according to the relative liberalism and conservatism of their votes in cases during the relevant period.

Table 5
Distribution of Clerks from Feeder Judges
Among the Justices

<i>Judge</i>	<i>Total</i>	1976-1985 Terms									
		<i>TM</i>	<i>WJB</i>	<i>JPS</i>	<i>HAB</i>	<i>BYW</i>	<i>PS</i>	<i>LP</i>	<i>SOC</i>	<i>WEB</i>	<i>WHR</i>
Bazelon	12	2	5	0	2	0	1	1	0	1	0
Feinberg	14	5	2	2	2	0	0	0	0	1	2
McGowan	12	1	0	1	0	2	3	3	1	1	0
Wright	26	6	8	3	1	2	1	2	3	0	0
Oakes	13	5	3	0	2	1	0	2	0	0	0
Wilkey	12	0	0	1	2	1	1	3	1	1	2
Wisdom	10	1	2	0	1	0	1	2	2	1	0

<i>Judge</i>	<i>Total</i>	1995-2004 Terms								
		<i>JPS</i>	<i>RBG</i>	<i>DHS</i>	<i>SB</i>	<i>SOC</i>	<i>AK</i>	<i>WHR</i>	<i>AS</i>	<i>CT</i>
Calabresi	19	4	3	2	8	1	0	0	1	0
Edwards	15	2	2	6	2	3	0	0	0	0
Leval	10	3	2	3	0	1	1	0	0	0
Tatel	18	4	6	3	2	3	0	0	0	0
<i>Boudin</i>	15	2	0	7	6	0	0	0	0	0
<i>Ginsburg</i>	10	0	1	1	1	0	2	2	1	2
<i>Kozinski</i>	18	0	2	0	0	4	8	1	3	0
<i>Luttig</i>	30	0	0	0	0	1	5	2	11	11
<i>Posner</i>	11	0	0	0	3	2	2	1	3	0
<i>Silberman</i>	17	0	0	0	3	1	2	1	4	6
<i>Wilkinson</i>	18	0	2	1	0	5	2	1	1	6

Notes: Feeder judges are those who supplied ten or more clerks to the justices in the period in question.

Judges appointed by Democratic presidents are listed prior to those appointed by Republicans in each period, and Republican appointees are in italics.

Justices are listed in the order of their proportions of liberal votes during the relevant period, as described for the "votes" measure in the text.

Abbreviations for justices' names are as follows (justices are listed alphabetically): HAB = Blackmun; WJB = Brennan, SB = Breyer, WEB = Burger, RBG = Ginsburg, AK = Kennedy, TM = Marshall, SOC = O'Connor, LP = Powell, WHR = Rehnquist, AS = Scalia, DHS = Souter, JPS = Stevens, PS = Stewart, CT = Thomas, BYW = White.

In the 1976-1985 terms, some ideological patterns are apparent. David Bazelon, Wilfred Feinberg, and J. Skelly Wright, Democratic appointees who can be characterized as liberals, sent their clerks primarily to the more liberal justices. The same was true of James Oakes, a relatively liberal Republican appointee (Liptak, 2007). But clerks from the other judges, especially the moderates Carl McGowan (Goulden, 1974:253) and John Minor Wisdom (Bass, 1981), were distributed to justices widely across the ideological spectrum.

The ideological element is considerably more pronounced in the 1995-2004 terms. The four Democratic appointees and Republican appointee Michael Boudin sent clerks almost entirely to liberal and moderately conservative justices. (Of the fifteen clerks Boudin supplied to the Court in the 1995-2004 terms, thirteen went to

Justice Breyer, who served with Boudin on the Court of Appeals for the First Circuit, or Justice Souter, a resident of the First Circuit who served as its circuit justice.) Alex Kozinski and J. Michael Luttig sent clerks solely to the Court's conservatives. Of the eleven judges on the list, only Douglas Ginsburg's clerks came at all close to an even distribution across the ideological spectrum of justices, and even he had more success with the Court's conservatives than with its liberals.

We can gain additional information about the individual element in justices' selection practices and the role of ideology in that element by moving from judges who qualified as feeders for the Court as a whole to those who supplied substantial numbers of clerks to individual justices. Our operational definition of "substantial" is three clerks in a decade-long period. Simulations of random clerk selection indicate that we would expect a justice with 40 clerks over the decade to choose three clerks from no more than one single judge, and perhaps one justice on the whole Court would take four or more clerks from one judge.

The lists of judges supplying three or more clerks to a justice in the first and last periods are shown in Table 6. The most striking characteristic of the lists is their length. Even in the first period, when only two justices selected as many as 35 clerks who had served in the courts of appeals, the list is fairly long. In the last period the list is even longer, and many judges supplied four or more law clerks to a justice. In that period only Justice Ginsburg and Chief Justice Rehnquist drew a total of fewer than ten clerks from feeder judges as defined here.¹⁰ The variation among justices in reliance on feeder judges is interesting in itself. We cannot offer a general explanation for that variation, but it might be significant that the justices who relied most on individual feeders were the highly liberal Marshall and Brennan in the first period and the highly conservative Scalia and Thomas in the last period. It may be that justices who have the strongest policy agendas are also the most interested in hiring clerks who have similar views, and reliance on a small number of dependable judges as sources of clerks is a good way to achieve that end.

Although our interest is in the role of ideology in creating feeder relationships, it is impossible to ignore the role of personal acquaintanceship. As noted earlier, a high proportion of the judges whom we have defined as feeders served in the District of Columbia Circuit. In all likelihood, this advantage reflected primarily the geographical proximity that gives D.C. judges opportunities to interact with justices, though the court's prestige may also have come into play (Ward and Weiden, 2006:80).

Among the judge-justice combinations listed in Table 6, several other kinds of personal linkages existed. Five judges sent at least three clerks to their circuit justice. Five judges and justices served together on a court of appeals. Two judges had clerked for the justice to whom they provided several clerks (Alex Kozinski and Anthony

¹⁰ Like Chief Justice Burger, Chief Justice Rehnquist drew his clerks from a relatively wide range of lower-court judges. To a lesser extent, the same is true of Chief Justice Roberts. Rehnquist had a similar practice as an associate justice. Chief Justices Warren, Burger, and Rehnquist shared another form of diversity in clerk selection: they all drew clerks from a relatively wide range of law schools (Peppers 2006:27).

Table 6

Judges Who Supplied at Least Three Clerks to Individual Justices in First or Last Period

1976-1985 Terms	N	1995-2004 Terms	N
Marshall (n=38)		Stevens (n=30)	
J. Wright (D)	6	G. Calabresi (D)	4
W. Feinberg (D)	5	<i>S. Reinhardt</i> (D)	4
J. Oakes (R)	5	D. Tatel (D)	4
<i>S. Robinson</i> (D)	4	P. Leval (D)	3
Brennan (n=33)		Ginsburg (n=38)	
J. Wright (D)	8	D. Tatel (D)	6
D. Bazelon (D)	5	G. Calabresi (D)	3
J. Oakes (R)	3	Souter (n=40)	
Stevens (n=19)		M. Boudin (R)	7
<i>R. Sprecher</i> (R)	3	H. Edwards (D)	6
J. Wright (D)	3	P. Leval (D)	3
Blackmun (n=32)		D. Tatel (D)	3
<i>A. Mikva</i> (D)	3	Breyer (n=38)	
<i>A. Sofaer</i> (D)	3	G. Calabresi (D)	8
White (n=26)		M. Boudin (R)	6
(none)		R. Posner (R)	3
Stewart (n=13)		L. Silberman (R)	3
C. McGowan (D)	3	O'Connor (n=39)	
Powell (n=37)		J. Wilkinson (R)	5
C. McGowan (D)	3	A. Kozinski (R)	4
M. Wilkey (R)	3	H. Edwards (D)	3
O'Connor (n=16)		D. Tatel (D)	3
J. Wright (D)	3	Kennedy (n=39)	
Burger (n=32)		A. Kozinski (R)	8
(none)		J. Luttig (R)	5
Rehnquist (n=25)		Rehnquist (n=29)	
<i>J. Sneed</i> (R)	3	<i>D. Sentelle</i> (R)	3
		Scalia (n=40)	
		J. Luttig (R)	11
		<i>D. O'Scannlain</i> (R)	5
		L. Silberman (R)	4
		A. Kozinski (R)	3
		R. Posner (R)	3
		Thomas (n=40)	
		J. Luttig (R)	11
		L. Silberman (R)	6
		J. Wilkinson (R)	6
		<i>D. Sentelle</i> (R)	3

Notes: The numbers after the justices' names indicate the total number of the justice's law clerks who met the criteria for inclusion for that period, described in the text.

The party designation following each judge's name is the party of the president who appointed the judge to the court of appeals. Judges' names are in *italics* if the judge did not supply a total of 10 clerks to the justices in that period.

The justices are listed in order from most liberal to most conservative according to their proportions of liberal votes in that period, as described for the "votes" measure in the text.

Judge Sofaer (1976-85, Blackmun) was a district judge. All other judges were on the courts of appeals. Altogether, Judge Sofaer supplied four clerks to the Court in the 1976-85 period, that number, achieved by three other district judges in the 1976-85 period, was the largest number of clerks for any district judge or state supreme court justice in either period.

Kennedy, J. Michael Luttig and Antonin Scalia). Spottswood Robinson and Thurgood Marshall had practiced together with the NAACP Legal Defense Fund. Three pairs of judges and justices had gone to the same law school at the same time. And although friendships between judges and justices are not systematically documented, at least three of the judges are known to have been friends with the justices (in one instance, two justices) to whom they provided at least three clerks (Taubman, 1979; Danforth, 1994:53-54), and another had “close ties” with the two justices who each hired several of his clerks (Ward and Weiden, 2006:83).

Acquaintanceship aside, Table 6 makes clear the impact of ideological linkages between judges and justices. In each period, as in Table 5, the justices are arrayed from most liberal to most conservative according to their voting records. In general, the ideological composition of the justices’ feeders—as crudely represented by the party of their appointing presidents—reflects the justices’ own ideological positions. In the first period this relationship is obscured somewhat by two of the judges whose partisan affiliation belied their position on the ideological scale (Oakes and, to a lesser extent, McGowan). In the last period the correlation is clear and strong: the three most liberal justices used only judges appointed by Democratic presidents as feeders (with the exception of Souter and Boudin), the next two had mixes of Democratic and Republican appointees, and the four most conservative justices drew three clerks or more only from Republican appointees.

The lists for Justices Breyer and Kennedy in Table 6 are perhaps the most interesting, because they suggest a high level of bipartisanship for Breyer and a lack of bipartisanship for the relatively moderate Kennedy. The overall patterns of clerk selection for the two justices are consistent with that impression. In the 1995-2004 terms, Breyer (57 percent of his clerks were from Democratic-appointed judges) and Justice O’Connor (43 percent Democratic) came closest to equal representation of Republican and Democratic judges as their sources of clerks. Kennedy (3 percent Democratic) was among the most extreme in this respect.

Three judges in the first period and eleven in the last period provided at least three clerks to two or more justices; in the last period, David Tatel served as a feeder for four different justices. As indicated by the ordering of justices in Table 6, the justices who were linked by feeder judges generally were close to each other on an ideological scale. The only linkages between justices who were ideologically distant were for J. Skelly Wright in the first period (O’Connor, along with Marshall and Brennan) and Laurence Silberman in the second period (Breyer, along with Scalia and Thomas).

We have ascertained that feeder relationships between judges and justices tend to follow ideological lines, but this does not tell us whether ideology plays a role in judges’ achieving feeder status at all. It might be posited, to take one possibility, that judges who are relatively extreme ideologically enjoy an advantage because they appeal to justices with ideological agendas (see Garrow 2006:417-18). In the absence of fairly precise measures of judges’ ideological positions, we cannot test that hypothesis. What we do know is that the judges who achieve the status of feeders supply law clerks chiefly to like-minded justices.

IMPLICATIONS

The evidence presented in this article shows that the feeder system perceived by observers of the Supreme Court certainly exists, in that a small proportion of court of appeals judges contribute a highly disproportionate number of clerks to the Court as an aggregate. There is a second level to the feeder system as well: individual justices differ considerably in their sources of clerks. Judges who can be labeled feeders for the Court as a whole typically supply far more clerks to some justices than to others. Indeed, some judges supply significant numbers of clerks to one or two justices and few to any other justices.

To a considerable degree, linkages between individual judges and justices seem to reflect personal acquaintanceship. But more noteworthy is the evidence that ideological compatibility is important to these linkages. Without taking other variables systematically into account, we cannot ascertain the impact of that compatibility on justices' choices of judges from whom to draw clerks. Nor can we distinguish among possible sources of the ideological element in feeder relationships. Still, the role of ideology in structuring those relationships is striking.

The patterns found in the 1995-2004 terms continued in the 2005-2009 terms. In those five terms, fourteen judges could be labeled as feeders because they provided an average of at least one clerk per term to the justices. Indeed, four judges provided at least ten clerks. These fourteen judges accounted for 67 percent of all the clerks that the justices drew from court of appeals judges other than the hiring justices themselves. There were also fourteen different judge-justice combinations involving at least three clerks. The ideological element in the feeder judge phenomenon remained strong. Of the clerks that Ginsburg, Souter, Stevens, and Sotomayor drew from feeder judges, 76 percent came from Democratic appointees. Of the clerks that Kennedy, Scalia, Thomas, Roberts, and Alito drew from feeders, 6 percent came from Democratic appointees.¹¹

In the introduction to this article, we suggested that the selection of law clerks tells us something about the justices' thinking. Our inquiry into the bases for the feeder system has been limited. Still, our findings strongly suggest that the justices use the identities of court of appeals judges as cues to help them find suitable law clerks.

It is especially intriguing that this reliance is so heavily structured by ideology. In all likelihood, one reason that justices go to ideologically similar judges for law clerks is because personal acquaintanceship is fostered by ideological agreement. More important, we think, is the perceived need for clerks who agree with the justice's point of view—or, at least, who can be trusted not to balk at reflecting that point of view in their work.

¹¹ Among all the former courts of appeals clerks that Ginsburg, Souter, Stevens, and Sotomayor hired, 69 percent had served with Democratic-appointed judges; for Kennedy, Scalia, Thomas, Roberts, and Alito, the proportion was 9 percent. These figures, and those for feeder judges, do not include the two O'Connor clerks whom Alito selected when he joined the Court during the 2005 term. As in the 1995-2004 terms, Justice Breyer showed no strong ideological tendencies, drawing 50 percent of his clerks from judges appointed by presidents of each party.

The feeder system changed considerably between our first and last periods. The system strengthened somewhat, in that the justices' tendency to take clerks from certain judges became more pronounced. More noteworthy was a growing polarization in the system. In the last period, far more than the first, clusters of justices diverged in their sources of law clerks. This divergence was primarily along ideological lines, with both liberal and conservative justices (especially the latter) drawing heavily from ideologically compatible judges.

It is not clear why this polarization has occurred (see Ditslear and Baum, 2001:882-83).¹² One possibility is that it was a product of change in the Court's membership, with new justices more ideological in their selection practices than their predecessors had been. The four justices with the most pronounced ideological tendencies in clerk selection were Rehnquist, Kennedy, Scalia, and Thomas, and three of the four were appointed in 1986 or later. On the other hand, three of those justices became increasingly unwilling to choose clerks who had served Democratic court of appeals judges. In the 1986-1994 terms, Justice Kennedy took 15 percent of all his clerks from Democrats, Justice Scalia 13 percent, and Chief Justice Rehnquist 22 percent. In the 1995-2004 terms, each took 3 percent of his clerks from Democrats. (Justice Thomas took no clerks from Democratic judges in either period.) So any explanation based on change in the characteristics of the justices (such as the increasing homogeneity of their pre-Court experiences) is incomplete.

One possible source of this change is the growing tendency of prospective law clerks to apply to all nine justices, noted earlier. Since most applicants are unselective, justices cannot infer their ideological proclivities from the fact that they applied. Thus, the identity of the judge with whom a clerk works has become more valuable as a source of information about the clerk's proclivities.

The polarization in law clerk selection is not mirrored by polarization in the justices' voting on case outcomes: the standard deviations across the overall voting scores for the justices were almost exactly the same in our first and last periods. Nor do personal divisions within the Court seem to have become sharper. Perhaps the polarization reflects the same hardening of ideological lines that has occurred in Congress (Bond and Fleisher, 2000); even if the justices' behavior in deciding cases has remained stable, they may think more strongly in ideological terms than they did in the past. In any event, this development tells us that something in the justices' thinking has changed. If they are more determined to choose clerks who will help them advance missions that follow ideological lines, this in itself constitutes a major change in the Supreme Court. In turn, that change merits consideration by scholars who seek to understand the Court as an institution. **jsj**

¹² It may be that there has been polarization among law clerks as well as justices. One former clerk depicted conflicts between alliances of liberal and conservative clerks in the 1988 term (Lazarus, 1998). A study of clerks' post-Court careers provides evidence of what it calls polarization in their career paths (Nelson et al., 2009).

REFERENCES

- Bass, J. (1981). *Unlikely Heroes*. New York: Simon and Schuster.
- Biskupic, J. (1994). “Clerks Gain Status, Clout in the ‘Temple’ of Justice,” *Washington Post*, January 2, p. A1.
- Bond, J. R., and R. Fleisher, eds. (2000). *Polarized Politics: Congress and the President in a Partisan Era*. Washington, DC: CQ Press.
- Bossert, R. (1997). “Clerks’ Route to Top Court,” *National Law Journal*, October 20, p. A1.
- Brown, M. R. (1996). “Gender Discrimination in the Supreme Court’s Clerkship Selection Process,” *75 Oregon Law Review* 359.
- Danforth, J. C. (1994). *Resurrection: The Confirmation of Clarence Thomas*. New York: Viking.
- Ditslear, C., and L. Baum (2001). “Selection of Law Clerks and Polarization in the U.S. Supreme Court,” *63 Journal of Politics* 169.
- Epstein, L., A. D. Martin, J. A. Segal, and C. Westerland (2007). “The Judicial Common Space,” *23 Journal of Law, Economics and Organization* 303.
- Garrow, D. J. (2006). “Acolytes in Arms,” *9 Green Bag* 411.
- Giles, M. W., V. A. Hettinger, and T. Peppers (2001). “Picking Federal Judges: A Note on Policy and Partisan Selection Agendas,” *54 Political Research Quarterly* 623.
- Golan, A., G. Judge, and J. M. Perloff (1996). “Estimating the Size Distribution of Firms Using Government Summary Statistics,” *44 Journal of Industrial Economics* 69.
- Goulden, J. C. (1974). *The Benchwarmers: The Private World of the Powerful Federal Judges*. New York: Weybright and Talley.
- Greenhouse, L. (2006). “Women Suddenly Scarce Among Justices’ Clerks,” *New York Times*, August 30, p. A1.
- Grofman, B., and T. J. Brazill (2002). “Identifying the Median Justice on the Supreme Court Through Multidimensional Scaling: Analysis of ‘Natural Courts’ 1953-1991,” *115 Public Choice* 55.
- Kester, J. G. (1983). “The Law Clerk Explosion,” *9:3 Litigation* 20.
- Kozinski, A. (1991). “Confessions of a Bad Apple,” *100 Yale Law Journal* 1707.
- Kozinski, A., and F. Bernstein (1998). “Clerkship Politics,” *2 Green Bag* 57.
- Lazarus, E. (1998). *Closed Chambers*. New York: Random House.
- Linder, D. (1987). “Clerkships: Picking the Elite,” *National Law Journal*, February 9, p. 1.
- Liptak, A. (2007). “James L. Oakes, 83, Nixon Choice for Federal Bench,” *New York Times*, October 16, C13.
- Martin, A. D., and K. M. Quinn (2002). “Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999,” *10 Political Analysis* 134.
- Mauro, T. (1998). “Corps of Clerks Lacking in Diversity,” *USA Today*, March 13, p. 12A.
- (1996). “‘De Facto Discrimination’: Study Blasts Paucity of Female Clerks at High Court,” *Legal Times*, May 20, 1.

- McCann, T. (2003). "Clerks See Life on the Inside of the U.S. Supreme Court," *Chicago Lawyer*, September, p. 20.
- Nelson, W. E., H. Rishikof, I. S. Messinger, and M. Jo (2009). "The Supreme Court Clerkship and the Polarization of the Court: Can the Polarization Be Fixed?" 13 *Green Bag* 59.
- Peppers, T. C. (2006). *Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk*. Stanford, CA: Stanford University Press.
- Segal, J. A., L. Epstein, C. M. Cameron, and H. J. Spaeth (1995). "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited," 57 *Journal of Politics* 812.
- Segal, J. A., R. J. Timpane, and R. M. Howard (2000). "Buyer Beware? Presidential Success Through Supreme Court Appointments," 53 *Political Research Quarterly* 557.
- Taubman, P. (1979). "Milton Kronheim's, Where the Justices Adjourn for Lunch," *New York Times*, July 15, p. 36.
- Wald, P. M. (1990). "Selecting Law Clerks," 89 *Michigan Law Review* 152.
- Walsh, L. E. (1998). "The Future of the Independent Counsel Law," *Wisconsin Law Review* 1379.
- Ward, A., and D. L. Weiden (2006). *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court*. New York: New York University Press.
- Wilkinson, J. H. III (1974). *Serving Justice: A Supreme Court Clerk's View*. New York: Charterhouse.

APPENDIX

METHODOLOGICAL ISSUES

Data on Law Clerks. Data on the clerks were obtained from lists supplied by the Public Information Office of the Supreme Court. Those lists have been compiled annually since 1992; for prior years, comprehensive lists for each justice were compiled. There may be errors in the lists, but the number of errors clearly is very small. (Data on the judges for whom some clerks worked in our first period were missing; those judges were identified from other sources.) Clerks were omitted if they did not serve in a court of appeals. The lists typically include only one prior clerkship for a Supreme Court clerk, even when the clerk served multiple judges. Where we identified multiple clerkships, we sought to determine the most recent clerkship and coded that one for each clerk. Clerks who served with multiple justices were coded for only the first justice. Clerks who served the same person on a court of appeals and the Supreme Court were not counted. One consequence of these rules is that the number of clerks supplied to the Supreme Court by some judges in our data set is a little lower than the total number of a judge’s clerks who later served in the Supreme Court during one of the study periods.

Simulations. The simulation procedure is summarized in the text. For practical reasons, two realities were not incorporated into the procedure. The procedure did not take into account the maximum number of clerks that any judge could provide, and it did not reduce the probability of choosing a judge’s clerks once one or more of those clerks had been chosen. As a result of these limitations, the simulations produced a slight overestimate of the numbers of judges who would supply relatively large numbers of clerks to the Supreme Court under a random-selection process. Thus, it underestimated the difference between a random selection of clerks from judges and the actual pattern of selection.

The Herfindahl-Hirschman Index. In this adapted index, the proportion of all Supreme Court clerks in a period who came from a particular court of appeals judge is squared, and the resulting figures are summed across all court of appeals judges who supplied any clerks to the Court. If all these clerks came from one judge, the index would be 1.0. If every clerk came from a different judge, the index would be at its minimum—1.0 divided by the number of clerks who came from the courts of appeals. Both the minimum and maximum are artificial, since the justices could not draw all their clerks from a single judge and there are too few court of appeals judges to eliminate all duplication. Nonetheless, the index provides a meaningful measure of the extent of concentration: the higher the index, the greater the concentration.

Proportionate Deviations. The proportionate deviation for each judge was calculated with the following procedure. The number of clerks that the judge would provide to each justice if the clerks were distributed evenly to justices was calculated, without rounding to whole numbers. Thus, if the judge provided ten clerks to the justices and Justice Breyer employed 11.5 percent of all law clerks in that period, the

number for Breyer would be 1.15. The absolute value of the difference between that number and the number that the judge actually provided to the justice was then calculated. The absolute values were summed across the justices to determine the total deviation. The maximum possible deviation for the judge was calculated as the sum of deviations if the judge supplied all clerks to the justice who employed the fewest clerks in that period. The total deviation for the judge was divided by the maximum deviation to produce the proportionate deviation.