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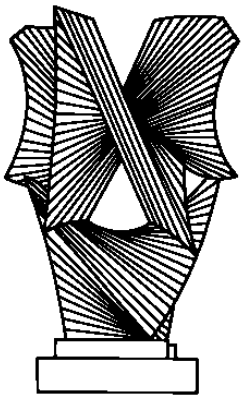

Inferring the Winning Party in the Supreme Court from the Pattern of Questioning at Oral Argument

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INFERRING THE WINNING PARTY IN THE SUPREME COURT FROM THE PATTERN OF QUESTIONING AT ORAL ARGUMENT

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Abstract

Chief Justice John Roberts, and others, have noticed that the lawyer in an oral argument in the Supreme Court who is asked more questions than his opponent is likely to lose the case. This paper provides rigorous statistical tests of that hypothesis and of the related hypothesis that the number of words per question asked, as distinct from just the number of questions asked, also predicts the outcome of the case. We explore the theoretical basis for these hypotheses. Our analysis casts light on competing theories of judicial behavior, which we call the "legalistic" and the "realistic." In the former, the questioning of counsel is a search for truth; in the latter, it is a strategy for influencing colleagues. Our analysis helps to distinguish between these hypotheses by relating questioning practices to the individual Justice's ideology and to the role of a "swing" Justice.

I. Introduction

Chief Justice John Roberts, and others, have noticed that the lawyer in an oral argument in the Supreme Court who is asked more questions than his opponent is likely to lose.[2] Our main purpose in this paper is to provide empirical tests

[1] We thank Ben Foster and Laura Bishop for their very helpful research assistance. Epstein thanks the National Science Foundation, and Landes and Posner thank the John M. Olin Program in Law and Economics at the University of Chicago Law School for financial support.

[2] The Chief Justice examined 28 U.S. Supreme Court cases—14 from the 1980 term and 14 from 2003. In 24 of the cases, the Justices asked more questions to the losing party, leading the Chief Justice to conclude "the secret to successful advocacy is simply to get the Court to ask your opponent more questions." John G. Roberts, Jr., "Oral Advocacy and Re-emergence of a Supreme Court Bar," 30 *Journal of Supreme Court History* 68 (2005). Three other studies reach roughly similar conclusions. Shullman analyzed oral arguments in ten cases and found that the Justices asked fewer and less hostile questions of the party that eventually won. Sarah Shullman, "The Illusion of Devil's Advocacy: How the Justices of the Supreme Court Foreshadow their Decisions During Oral Argument," 6 *Journal of Appellate Practice and Process* (2004). Lawrence Wrightsman examined 24 cases from the 2004 term—12 that were ideologically contested and 12 that were not. He concluded that the number of questions and the number of hostile questions are good predictors of case outcome. Lawrence S. Wrightsman, *Oral Arguments Before the Supreme Court* (2008). Finally, Timothy Johnson and his coauthors analyzed oral arguments in cases decided in the 1979 through 1995 terms. After controlling for other factors that might affect petitioner (or respondent) success, they found that the Court tended to rule against the party asked more questions. Timothy Johnson et al., "Inquiring

of that hypothesis and the related hypothesis that the number of words asked, as distinct from the number of questions, also predicts the outcome. We also explore the theoretical basis for these hypotheses, and we begin with a brief discussion of the theoretical issue.

There are, roughly speaking, two competing theories of judicial behavior. One, which we'll call the legalistic, claims that judges, including Supreme Court Justices, create and apply legal rules by using techniques of legal reasoning that are objective, impersonal, and politically neutral. The other, which we'll call the realistic, claims that judges, especially those who sit on supreme courts and so both deal with the more indeterminate cases and are not constrained by threat of reversal by a higher court, often behave strategically and politically. The legalistic theory suggests two possible explanations for why the losing party might be asked more questions at the oral argument.[3] Suppose a judge asks a question of one of the lawyers, and gets an unsatisfactory answer. So he asks a follow-up question, and again gets an unsatisfactory answer. The longer the string of such answers, the likelier it is that the judge believes the lawyer has a weak case, and so the likelier the judge is to rule against the lawyer's client. The second possible legalistic explanation is that a judge who coming into the argument is leaning against one party on the basis of the judge's reading of the briefs and other pre-argument study of the case will direct most questions at the lawyer for that party in order to test whether his case is indeed as weak as the judge had inferred from the briefs.

The realistic theory is that judges usually make up their mind before oral argument. Indeed, in the case of judges, such as the Supreme Court Justices, who have discretion to decide which cases to hear, their minds may be made up when they decide whether to vote to hear the case. They use oral argument to try to persuade the other judges, and this implies asking more questions of the lawyer for the party they plan to vote against in order to punch holes in the lawyer's case and perhaps prevent him from articulating his best arguments. This tactic is especially important because judges usually do not discuss the cases before argument, although, in the case of Supreme Court Justices, their votes on whether to grant certiorari will often indicate their leanings. Moreover, at their post-argument conference, at which they discuss the case and vote on the outcome, they speak (and usually, in speaking, indicate their vote) in a prescribed order. In some courts, the judges speak in reverse order of seniority; in the Supreme Court, they speak in order of seniority. A judge high on the seniority ladder in the first type of court, or low on the ladder in the second type, has to fear that a majority will have in effect decided the case before he gets to speak, and this motivates him to speak his mind at the oral argument in the guise of questioning the lawyers, in order to communicate his views to the Justices who will vote ahead of him at the conference.

Minds Want to Know: Do Justices Tip Their Hands with Questions at Oral Argument in the U.S. Supreme Court?" (*Washington University Journal of Law and Policy*, forthcoming 2009).

[3] We thank Chris Nosko for suggesting the first explanation. The second was suggested by Justice Ruth Bader Ginsburg to Linda Greenhouse.

II. The Data

Our source for case characteristics is the Spaeth [U.S.] Supreme Court Database, and for number of questions and number of words in questions it is a team led by Timothy Johnson, who obtained the data by first downloading all available oral argument transcripts and then using a computer program to count the number of questions and words. Our analysis begins with the 1997 term of the Supreme Court because the data for earlier terms are not available in a form that we can analyze.[4] Our data on questions asked by individual Justices come from transcripts of oral arguments in the 2004 to 2007 terms; the transcripts for earlier terms do not reveal which Justice was asking which questions.

III. Preliminary Analysis

It is unclear a priori whether number of questions or number of words in questions is a better proxy for how a Justice may be leaning at the time of the oral argument and hence how he may ultimately vote in the case. Both measures are subject to the idiosyncrasies of a particular Justice. Suppose Justice A is wordy and ponderous whereas Justice B is precise and efficient. Then A might consume more of one party's time even though he asked fewer questions than B. It turns out, however, that there is a strong positive correlation between number of questions and number of words in questions (the correlation is .79 between questions and words addressed to the petitioner's lawyer and .78 between questions and words addressed to the respondent's lawyer), so our empirical results do not depend on which measure we use.

A. Descriptive Statistics

Figure 1 presents frequency distributions of the number of words contained in questions to the petitioner and respondent at oral argument in the 1979–2006 terms, and Figure 2 presents the same distributions for the number of questions. The mean number of words and questions to both two parties combined is 2,737.6 and 112.3; the average number of words per question is therefore about 24. The means for the petitioner and respondent are 1341.0 and 1396.6, respectively, for words and 56.0 and 56.3 for questions. The standard deviations are large—607.2 (petitioner) and 649.1 (respondent) for words and 22.2 (petitioner) and 23.0 (respondent) for questions. The difference in means is statistically significant for words (t=3.36) but not for questions (t=0.64).

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[4] For more details, see Timothy R. Johnson, Ryan Black, and Justin Wedeking, "Leaving the Attorneys Out: Justice Interruptions of their Colleagues during Oral Arguments" (*Loyola Law Review*, forthcoming). We conducted a reliability analysis on a randomly drawn sample of the data (10 percent), recalculating the number of questions and words. The counts are quite accurate.

Figures 1 & 2

Figures 1 and 2 mask an important difference in the questions asked petitioner and respondent: the identity of the winning and losing party.[5] As Figures 3 and 4 show, the losing party is asked more questions (both in terms of numbers and words) than the winning party and these differences are always highly significant. Figure 3 shows the mean number of words to each party when the respondent wins (left panel) and when the petitioner wins (right panel), and Figure 4 shows the corresponding data for the number of questions.

Figures 3 & 4

There are 158 more words on average in questions to the petitioner when the respondent wins and 187 more words on average to the respondent when the petitioner wins. The corresponding figures for questions are 6.7 and 4.6.[6]

B. Questions and Outcomes

The last column in Table 1 shows that petitioners won 62 percent and respondents 38 percent of the 2,886 cases in our sample. These probabilities change significantly once we take account of the questions the Justices ask the parties. If the total number of words in questions asked the petitioner is less than the number in questions asked the respondent, the petitioner's win rate increases from .62 to .73 (an 18 percent increase) and the respondent's decreases from .38 to .28 (a 26 percent decrease). Alternatively, if the number of words in questions asked the petitioner is greater than the number of words in questions asked the respondent, the petitioner's success rate falls from .62 to .50 (a 19 percent decrease) and the respondent's increases from .38 to .51 (a 34 percent increase). Similarly, when the petitioner is asked relatively fewer questions, his win rate increases from .62 to .71 (a 15 percent increase) and the respondent's decreases from .38 to .29 (a 24 percent decrease). And if the petitioner is asked relatively more questions, his win rate decreases from .62 to .53 (a 15 percent decease) and the respondent's increases from .38 to .47 (a 24 percent increase). All these results are statistically significant. In the small number of cases (48) in which the parties are asked the same number of

[5] We rely on Spaeth's "win" variable to determine whether the Court held for the respondent or for the petitioner. Spaeth codes "affirm" and "petition dismissed" as wins for the respondent; and "reversed," "reversed and remanded," "vacated and remanded," and "vacated" as wins for the petitioner.

[6] For the difference in questions, t=12.2; for the difference in words, t=16.2. Both are statistically significant at $p < .05$.

questions, the petitioner and respondent success rates are not significantly different from their overall success rates.[7]

Table 1

Of course other factors besides which party is asked more questions, such as whether the federal government participates in the case as a party or as an amicus curiae, the subject matter of the case, or the term in which the case is decided, may also influence which side wins. We correct for these factors later in the paper.

C. Questions and The Closeness of the Vote

We might expect that the smaller the difference in number of questions (or words in questions) to the two parties, the closer the outcome of the case. Table 2 supports this hypothesis.

Table 2

Columns (4) and (7) show the ratio of the number of questions asked the petitioner to the number asked respondent as (moving down the columns) the vote becomes increasingly one-sided. The more one-sided the votes in favor of the petitioner, the fewer questions he is asked, and likewise the fewer questions asked the respondent the more one-sided the votes in his favor.[8]

D. Trends over Time

In 1970, well before the first term in our sample, the Court formally reduced the time allocated to each side from one hour to one-half hour.[9] There are exceptions, but they are rare. We would not expect a trend in the number of questions used during the period of our study. Yet as Figure 5 shows, the number increased. For example, the average number of questions and words in questions per case were 108 and 2,093 in the 1979–1983 terms but 125 and 3,762 in the 2002–2006 terms. The number of words increased more rapidly than the number of questions; the Justices got wordier.

Figure 5

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[7] Because there was only one case in the sample in which the parties were asked the same number of words in the Justices' questions to them, we cannot study win rates for such cases.

[8] We have excluded from the table cases in which not all nine Justices participated (about 12 percent of cases in our sample) because the number of questions is likely to depend on the number of Justices that participate in the oral argument.

[9] This rule change apparently formalized the existing norm, which was ½ hour per side for most cases. See Eugene Gressman, et al., *Supreme Court Practice* 672–673 (2007).

We regressed the number of questions and words in questions (averaged by case and term) on both a time (term) variable and a variable for number of cases per term. All variables other than time are in logarithms,[10] and so the regression coefficients are percentage changes in response to a 1 percent change in cases or a unit change in time. In both regressions, the number of cases has a significant negative effect. For example, a 10 percent decline in the number of cases leads to a 4.8 percent increase in questions and a 6.4 percent increase in the number of words. We conjecture that as the caseload decreases, the Justices have more time to prepare for each oral argument and, being thus better prepared, engage the lawyers more by asking more questions. We find no significant change in the relative number of questions and words to petitioners versus respondents and no significant time trend in those ratios

We find a significant positive time trend (about a 1.4 percent growth rate per year) in the total number of words (holding constant the number of cases) but not in the number of questions. A possible interpretation of the increase in number of words is a "law professor" effect related to the appointment of Ginsburg, who replaced White in 1993, and Breyer, who replaced Blackmun the following term. Until then, only Scalia was a former professor. Our conjecture is supported by the fact that Breyer utters more words at oral argument than any other Justice—an average of 860, which is almost 200 words more than Scalia, another former professor, who ranks second with 688 words. Ginsburg, however, ranks only fifth. Scalia and Roberts ask the most questions, followed closely by Breyer; Ginsburg again ranks fifth. We do not have individual data for White and Blackmun, but if their numbers were merely average, Breyer's appointment would be sufficient to explain the positive time trend in the number or words in questions since the early 1990s. To test this hypothesis, we added a 1994 dummy variable (Breyer's first term) to the regressions; the variable is positive and statistically significant and renders the time-trend variable insignificant.[11]

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[10] The regressions are as follows:

ln Q = 11.3 – .478 ln Cases – .002 Term R2=.64
(1.31) (-4.09) (-0.53)

ln W = –16.6 – .643 ln Cases + .014 Term R2=.90
(-1.82) (-5.21) (3.18)

where Q=mean number of questions per case per term; W=mean number of total words in questions per case per term; C = number of cases per term in the Spaeth database and Term= the term of the court. t-statistics are in parentheses.

[11] The regression results are:

ln Q = 21.96 – .317 ln Cases – .008 Term + .197 Dummy94 R^2=.69
(2.50) (2.60) (1.85) (2.61)

IV. Advanced Analysis

To control for other factor besides question patterns that may influence the outcome of a case, we estimate regression equations of the following general form:

(1) Win = f(Q, T, US, I, A, u)

Win is a dummy variable that takes the value 1 if the petitioner wins and 0 if the respondent wins; Q represents a set of question variables, such as number of questions, or number of words in questions, or average number of words per question, that the Justices ask petitioner and respondent; T is a series of dummy variables for the Court's term; US stands for dummy variables identifying the federal government as a petitioner or respondent in the case; I denotes a set of dummy variables for four issue areas in our sample (Civil Liberties, Economics, Judicial Power, and Federalism)[12]; A is a series of variables relating to amicus curiae participation, including the number of briefs filed in support of the respective parties and whether the Solicitor General filed an amicus curiae brief in support of the petitioner or the respondent;[13] u is the residual. Table 3 summarizes the variables.

Table 3

We have no predictions for the time dummy (T) and issue (I) variables, but include them because they might influence the likelihood that the petitioner will prevail. For example, although the petitioner win rate is similar across issue areas—it is .64 in civil liberties cases, .60 in economics cases, .57 in judicial power cases, and .64 in federalism cases—the results of the regression require us to reject the null hypothesis (at the .05 level) that the win rates are equal across areas.

The dummy variables for when the federal government is a party are highly correlated with the win rate. When the government is the petitioner it wins about 76 percent of the time compared to the overall petitioner win rate of 62 percent, and when the government is the respondent it wins nearly 59 percent of the time compared to the overall respondent win rate of 38 percent. We need to consider whether the higher government win rate is the main reason that we observe a neg-

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ln W = –2.21 – .426 ln Cases + .006 Term + .266 Dummy94 R^2=.93
(0.26) (3.65) (1.46) (3.67)

[12] Civil liberties includes criminal procedure, civil rights, first amendment, due process, privacy and attorney; economics includes economic activity, unions and taxation; federalism includes federalism and interstate relations (only 1 case in our sample) and judicial power is its own category plus 15 miscellaneous cases.

[13] We thank Paul Collins for supplying data on amicus curiae participation. His dataset is available at: http://www.psci.unt.edu/~pmcollins/data.htm.

ative correlation between the win rate and number of questions (or words in questions).

We expect the filing of an amicus brief in support of a party's position to have a positive effect on the likelihood that that party wins. There is some cost to preparing a brief, and so a party could be expected to write one only if it expects the brief to influence the outcome of the case, although an alternative possibility is a desire to express solidarity with a party that may belong to the organization filing the amicus brief or just a desire to draw attention to oneself or express a view publicly. The government is a repeat player in the Supreme Court, and may hope to increase its win rate by persuading the Justices that it is a responsible litigator, and this may make it reluctant to file an amicus brief on the losing side.

Tables 4 and 5 present our regression results, with Table 5 adding the amicus curiae variables to the analysis of the 1979 to 2001 terms, the only terms for which we have the requisite data. These are logit regressions that transform Win into the logarithm of the odds that the petitioner wins (= log (P/(1–P)) as a linear function of the independent variables. The regression coefficient of a particular independent variable equals the percentage change in the odds ratio brought about by a unit change in that variable; the coefficient of a dummy independent variable equals the percentage change in the odds as the dummy changes from 0 to 1. All regressions include separate dummy variables for each term of the Court (the left-out variable is the 1979 term), three issue dummy variables (the left-out variable is federalism), and variables denoting whether the U.S. is a petitioner or a respondent. We use three alternative specifications of the question variables: the number of questions to the petitioner and the number to respondent; the total number of words in questions to the petitioner and to the respondent; and both the number of questions to the petitioner and the respondent and the average number of words per question to each party. The results are unaffected by which of the three specifications is used. The regression coefficients are highly significant (t-ratios over 7 and many over 9) and in the predicted direction. The fewer the number of questions or words in questions that the Justices ask party A, holding constant the number or words asked party B, the higher the probability that A wins. Notice that it makes no difference whether the winning party is the petitioner or the respondent. This suggests that we could have just used one party variable. We have estimated several regressions using the one-variable specification, and the results are materially the same as in Tables 4 and 5.

Tables 4 & 5

The effects of number of questions or words are large. The top panel of Figure 6[14] shows the predicted probability of success for the petitioner as the number

[14] Figure 6 simulates the probabilities for an abbreviated version of eq. 4.1: instead of incorporating dummies for each term, we cluster on term. The results for the variables of interest are virtually identical.

of questions increases (setting the number of questions to the respondent at its mean level), and the bottom panel shows the predicted probability for the respondent's winning (setting the number of questions to the petitioner at its mean level). We set the value of all dummy variables equal to zero.

Figure 6

The Court reverses more than it affirms. When the Justices ask the same number of questions to each party, the petitioner prevails in about 63 percent of the cases. But the petitioner's advantage quickly dissipates as the Justices ask the petitioner more and more questions relative to the respondent. Holding the number of questions to the respondent constant at 56 (the mean number of questions asked a respondent), we see that if the petitioner is asked 25 more questions, his probability of prevailing drops to .52 (the 95 percent confidence interval is .44 to .59). Were the Justices to be especially inquisitive and ask the petitioner 125 questions, our regression analysis predicts that the probability of his winning would fall to .33. And if the Justices asked the petitioner 56 questions and the respondent only half as many, the probability of the respondent's winning would rise to .51, compared to .38 when the respondent is asked the same number of questions as the petitioner. The results are similar for the other specifications.

The two U.S. dummy variables and the four amicus curiae variables (Table 5) are highly significant. When the federal government is the petitioner, the regression coefficient in equation (4.1) implies that the probability of the petitioner's winning increase from an average of .62 to .76 (holding constant the value of the other variables in the regression).[15] And when the U.S. is the respondent, the probability of its winning increases from .38 to .60.

Figure 7 presents three simulations from regression (4.1) for the United States as petitioner and as respondent.[16] When the government is the petitioner and the Court asks its lawyer many questions (say, 125) and its opponent just the mean number, the government has a .46 probability of losing. In the reverse situation, the government has a .93 probability of winning.

Figure 7

Table 6 presents separate regressions for U.S. as petitioner (eq. 6.1), as respondent (eq. 6.2), and as neither (6.3).

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[15] The change in the probability of winning with respect to a unit change in an independent variable ($\partial Pw/\partial X$ where P denotes the probability and X an independent variable) can be written as $\beta(1-P)P$.

[16] For the top panel in Figure 7, we set the "questions to the respondent" variable at its mean and USParty1 at 1. For the bottom panel, we set the "questions to the petitioner" variable at its mean and USParty2 at 1. Although we do not present simulations for regression equations (4.2) and (4.3), the results are very similar to Figure 7.

Table 6

The coefficients in these regressions indicate that the proportionate change (or elasticity) in the petitioner win rate for a given percentage change in the number of questions is greater for the federal government. (The elasticities are –.42 for the petitioner and .27 for the respondent in equation (6.1), and –.57 for the petitioner and 1.29 for the respondent in equation (6.2).) Why the Justices' questions to the United States appear to matter more than questions asked the other party is a puzzle, but maybe the explanation is that the Justices respect the Solicitor General's competence and probity. If the government's lawyer cannot dispel the doubts reflected in the Justices' questions, this is strong evidence that the government's case is weak; if the government's case seems strong, the Justices ask few questions rather than thinking it necessary to probe for possible weaknesses. This conjecture supports the legalistic theory (see Introduction) of the effect of questions on outcomes.

The filing of an additional amicus brief in support of one of the parties significantly increases the likelihood that the party will win. For example, the regression coefficient of .100 on the number of petitioner amicus briefs in eq. 5.1 indicates that an additional brief increases the petitioner's probability of winning by .024 (=.100(.62)(.38)), which is 1.6 percent above the mean petitioner win rate of .62. Curiously, however, the coefficient of –.148 on the number of respondent amicus briefs increases the respondent's probability of winning by .035 (=.148(.62)(.38), which is 9.2 percent increase over the mean respondent win rate of .38.[17] This large difference in favor of the respondent may reflect an informational advantage. Amicus briefs supporting the petitioner are filed first, which enables the respondent and his potential amici to observe not only the number and content of the amicus briefs supporting the petitioner but also the identity of the filers before having to decide whether or how many amicus briefs to submit on the respondent's behalf.[18] Because the respondent and its allies thus have more information about the petitioner's case than the petitioner and its allies have about the respondent's case, so the respondent's amici can file more effective briefs. And they have the last word, so far as amicus participation is concerned, because, while the petitioner can file a reply brief, his amici curiae cannot.

This discussion would lead one to expect that there would be more amicus briefs filed in support of the respondent than in support of the petitioner. But no;

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[17] The change in the probability of winning per unit change in the independent variable equals the regression coefficient in the logit equation multiplied by P(1–P) where P is the probability that the plaintiff wins.

[18] Rule 37(3)(a) of the Supreme Court Rules provides that an amicus brief shall be filed within seven days after the brief of the party (in a case accepted for oral argument) that the amicus is supporting is filed. Rule 25(3) gives the respondent 35 days after the petitioner has filed its brief to file the respondent's brief, so a potential amicus has plenty of time to decide whether to file a brief in support of the respondent; by the same token, the respondent has plenty of time to line up amicus briefs in support of tis position.

the average number of amicus briefs filed in support of the petitioner and the respondent is virtually identical (1.69 for the petitioner and 1.70 for the respondent). And the more amicus briefs that support the petitioner, the more that are likely to support the respondent. For example, no amicus briefs were filed for the petitioner in 1,047 cases, and in nearly 80 percent (832 cases) of them there were no amicus briefs supporting the respondent or just one. In 957 of the 1,522 cases in which between one and five amicus briefs were filed in support of the petitioner (63 percent), there were between one and five amicus briefs supporting the respondent, while in 63 if the 159 cases in which six or more amicus briefs were filed for the petitioner (40 percent), six or more amicus briefs were filed in support of the respondent. Overall, there is a statistically significant positive correlation (=.51) between the number of amicus briefs filed on each side of the case.

Table 7

A possible reconciliation of the higher marginal benefit of an amicus brief supporting the respondent than of one supporting the petitioner with the data in Table 7 is that the respondent's marginal cost of producing another amicus brief is greater than the petitioner's. Amici are reluctant to be associated with losers, and respondents lose more frequently in the Supreme Court than petitioners do. That may make it more difficult (costly) to attract parties to file amicus briefs in favor of the respondent. In equilibrium, therefore, the higher marginal cost of the respondent would just offset his higher marginal product, and the number of respondent and petitioner amicus briefs would be about the same.

An amicus curiae brief filed by the Solicitor General has 5 to 8 times the impact of an amicus brief filed by another party. For example, in equation (5.1) the regression coefficients are .700 and –.809 on amicus briefs filed by the Solicitor General in support of the petitioner and respondent respectively compared to .100 and –.148 filed by other groups in support of the petitioner and respondent respectively. This result is consistent with the hypothesis that the Solicitor General as a repeat player in the Supreme Court has a strong interest in maintaining its reputation with the Justices and so will be more selective in filing an amicus brief compared to trade associations or public interest groups that may have strong ties to a particular party.

V. Explaining Variations in the Number of Questions or Words in Questions

Our principal focus in this paper has been on differences in the number of or words in questions in oral argument in the Supreme Court as significant predictors of who will win the case. We now turn the question around and try to explain variations in the number (N) and total words (W) in questions. We offer several hypotheses:

1. The more Justices that attend the oral argument, the greater will N and W be. Although we do not know the number of Justices present at any given oral argument in our sample, the number of Justices voting will closely approximate the number present. In 2,557 (87.9 percent) of our sample nine Justices voted; in 310 cases eight; in 33 case seven; and in 6 cases six.

2. The closer the case, the more questions the Justices are likely to ask. We proxy closness as follow: *Unanimous* = 1 if the vote is unanimous (9-0, 8-0, 7-0 or 6-0, but notice that 98 percent of the 1,172 unanimous decisions in our sample are either 9–0 or 8–0) and 0 otherwise; *Close* = 1 if the vote is close (637 decisions), of which the vote was 5-4 in 562 cases, or 5-3, 4-3, or 4-2. The left-out variable is votes that are neither unanimous nor close. This category includes 220 8–1 decisions, 320 7–2 decisions, 434 6-3 decisions, and 137 decisions with votes of 6–2, 6–1, 5–3, or 5–2 votes. We predict a negative regression coefficient on the *Unanimous* variable and a positive coefficient on the *Close* variable, relative to the left-out variable.

3. We predict that the greater the importance of a case, the more interest the Justices will take in the oral argument and the greater, therefore, the number of questions or words. We use two measures of the overall importance of a case: Epstein and Segal's measure of front-page coverage in the *New York Times*, coded 1 if the *Times* mentions the case on the front page and 0 otherwise;[19] and the number of amicus curiae briefs filed. The two variables are strongly correlated.[20]

Table 8 summarizes the variables used in the regression analysis.

Table 8

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[19] See Lee Epstein and Jeffrey A. Segal, "Measuring Issue Salience" 44 *American Journal of Political Science* 66 (2000).

[20] We estimated the following regression (t-statistics in parentheses)

AC= -265.6 + 5.542 NYT + .134Term – .002 Cases R2=.19 N=2507
(5.94) (21.30) (6.08) (0.43)

where AC = the number of amicus briefs filed in a case; NYT= a dummy variable indicating front-page coverage in the *Times*; Term= the term of the court (which is associated with the increase in the number of lawyers and lobbyists), and Cases= the number of cases per term. There is a very strong and significant positive effects of both the *Times* variable (i.e., front-page coverage is associated with 5.5 more amicus briefs) and the term of the court (i.e., each later term is associated with .13 more amicus briefs per case). whereas the number of cases per term has no observable effect on the number of amicus briefs.

Table 9 presents the regression results. We cluster the observations by term to account for any correlation between questions and words in a given term.

Table 9

The results in Table 9 partly support our predictions. There are about 8 percent fewer questions (eqs. 9.1 and 9.3) and words in questions (eqs. 9.2 and 9.4) in unanimous decisions, but there is no significant difference in number of questions or words between close and other decisions. The greater the number of Justices voting, the greater the number of questions and words; a unit increase in the number of Justices who vote (say from 8 to 9) leads to an 8 percent increase in the number or words in questions. They ask significantly more questions in civil liberties and judicial power cases than in economics and federalism (the left-out issue) cases. This is a surprising result because both measures of importance (the *Times* variable and the amicus variable) are positively correlated with more questions and total words in questions, and we would expect those variables to account for any greater importance of civil liberties and judicial power cases. We also observe highly significant increases in question and words (around 30 to 40 percent) correlated with the period since Breyer's appointment in the 1994 term; no time trend in the number of questions but a positive and significant trend in the number of words in questions; and fewer questions (both numbers and words) when the federal government is a party, although the effect is only statistically significant in regressions (9.1) and (9.3).

VI. Individual Justices

Thus far we have treated the Justices as interchangeable by studying the total and average number of questions (and words in questions) asked during oral argument. We now consider the question practices of individual Justices. Our data are limited to the 2004-2007 terms because until then the transcripts of oral argument did not identify which Justice was asking which question. There are recordings before then from which the identities of questioning Justices could be gleaned, but we have not attempted to do that. We limit our consideration to Justices who are still on the Court, and thus exclude O'Connor and Rehnquist.

A. Number of Questions and Total Words in Questions

As Table 10 shows, the Justices vary considerably in the extent of their participation during oral argument.

Table 10

Measured by number of questions, Scalia is the most inquisitive Justice. In no case in our sample did he fail to ask a question. Ginsburg is the only other Justice who

asks at least one question in every case; Scalia's minimum number of words is 6 and Ginsburg's 3. On average, Scalia asks about 25 questions per case, though his standard deviation is reasonably high (12.9). Roberts and Breyer ask about 18 to 22 questions per case, but t-tests indicate that Scalia's mean is significantly higher than anyone else's. Breyer, however, is the "wordiest" Justice by a large margin, with 860.9 words per oral argument, Scalia being second with 681.4 words. Ginsburg is in the middle of the Court in both number of questions and number of words, but her maximum in an individual case of 1,846 words is second only to Breyer's (2,550). Thomas is the only Justice whose means are significantly lower than all the other Justices. His median number of questions/words is 0. Alito's means are second lowest, perhaps because he is the most recent appointee to the Court and may still be feeling his way.

The Justices can be divided into two or three groups, depending on whether number of questions or number of words in questions is the measure. With respect to number of questions, there are three groups:[21] Scalia, Roberts, and Breyer ask significantly more questions than average; Souter, Ginsburg, Kennedy, and Stevens are not significantly different from average; Alito and Thomas ask significantly fewer questions than average. In terms of words, Breyer, Scalia, Roberts, Souter, and Ginsburg ask significantly more words than average; Stevens, Kennedy, Thomas, and Alito ask significantly fewer.

Do the Justices spend more time questioning one side? Typically not, as Table 11 indicates. Breyer is the principal exception. On average he asks about 3 more questions of the respondent than of the petitioner but uses 141 more words in questions to the latter. Stevens asks on average the same number of questions of respondent and petitioner but he too uses significantly more words when questioning the respondent. Kennedy uses significantly more words when speaking to petitioner, but the number of questions that he asks of petitioners and of respondents is statistically indistinguishable.[22] This is consistent with his role as the Court's swing voter. That position makes him the most powerful Justice, and hence increases the perceived benefit to him of "getting it right." In addition, the fact that he is the swing Justice suggests that he sees more merit in both sides of more cases than the other Justices do.

Table 11

[21] These groupings reflect a comparison of the expected number of questions to the actual number of questions asked by each Justice. The expected number is simply the total number of questions divided by the number of Justices. We then ran (paired) t-tests for each Justice against expected questions. We did the same for the number of words.

[22] It turns out, however, that Table 11 masks an important characteristic of the Justices' questioning. They tend to use more words when speaking to the party with whom they are inclined to disagree on ideological grounds. Three four liberals (Souter, Ginsburg, and Breyer) ask significantly fewer questions of liberal petitioners than of conservative ones. Stevens asks about five fewer questions of liberal petitioners. Conversely, the two George W. Bush appointees and Scalia are significantly less likely to question conservative respondents and conservative petitioners than liberal ones.

B. Questions and Votes

Our earlier analysis showed that the party asked more questions is likely to lose. We now ask whether a particular Justice's vote can be predicted from the number of questions he or she asks. Figure 8 shows the mean number of questions to each party when the respondent wins and when the petitioner wins, by Justice. As we would expect, more questions to a party predict that the Justice will vote against the party.[23] Chief Justice Roberts, for example, when he votes for the respondent asks on average (14.1-8.6=) 5.5 more questions to the petitioner, and when he votes for the petitioner (12.1-10.2=) 1.9 more questions to the respondent. The same holds for Stevens, Scalia, Souter, and Ginsburg. Alito and Breyer fit the basic pattern—they tend to vote against the party they question more—but the difference is not statistically significant when Alito votes for the petitioner and when Breyer votes for the respondent. Kennedy does not ask more questions of the party he votes against, but does ask the petitioner more questions when he votes in the petitioner's favor. The difference is statistically significant for words, though only marginally so for questions (p <.08).

Figure 8

We estimate multiple regressions for each Justice (except for Thomas, who asked only one petitioner a question and four respondents questions in 229 cases) of the following form:

(2) Jwin = f(Q, US, LC, u)

Jwin is a dummy variable that takes the value 1 if the Justice votes for the petitioner and 0 if he votes for the respondent; Q represents the number of questions (or total words in questions) asked the petitioner and the number asked the respondent; US stands for two dummy variables identifying the federal government as a petitioner or respondent in the case; LC denotes the ideological direction of the lower court decision and takes the value 1 if the lower court's decision is liberal and 0 if it is conservative; and u is the residual. We include the LC variable to allow for the possibility the liberal Justices are more likely to reverse conservative lower-court decisions and conservative Justices are more likely to reverse liberal lower-court decisions. Since the petitioner is the losing party in the lower court, a positive coefficient on LC would indicate a conservative vote in favor of the petitioner who is appealing a liberal lower-court decision. In estimating the regressions, we clustered the observations by the term of the court.

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[23] The results are virtually identical when we use the number of words in questions instead of the number of questions.

Table 12 displays the results. Even after we control for the direction of the lower-court decision and the participation of the United States, the number of questions and the total words in question still provide a reasonable predictor of most Justices' votes. Regardless of the way in which we measure questions, the variables are always significant ($p \leq .05$) and have the expected sign for Breyer, Ginsburg, Scalia, Souter, and, with one exception, Stevens. For Roberts, questions to and words in questions to the petitioner are more predictive of his vote than are questions to the respondent; for Alito the reverse holds. The one exception is Kennedy; none of his question variables produces a statistically significant coefficient. This is consistent, as explained earlier, with his being the swing Justice.

Kennedy's and Thomas's questions (or in Thomas's case the absence of questions) to the petitioner and respondent have no significant effects on their votes; but might their votes be influenced by the questions of other Justices? The question is explored in the second part of Table 12. All eight regression coefficients have the expected signs--that is, Kennedy and Thomas tend to vote for the outcome signaled by the questions asked by the other Justices--and seven are statistically significant. Unsurprisingly, the effects tend to be smaller than the corresponding effects of a Justice's own questions.

We also considered whether Kennedy's and Thomas's votes are more responsive to questioning by other conservative Justices than to questioning by liberal Justices. The answer is yes, but most of the regression coefficients (not shown in Table 12) are not statistically significant. Both Thomas and Kennedy are less likely to vote for the petitioner the more questions conservatives ask the petitioner (Thomas, significantly so); and Thomas and Kennedy are more likely to vote for the petitioner the more questions conservatives ask the respondent (although the regression coefficients are not statistically significant).[24] Kennedy but not Thomas is significantly less likely to vote for the petitioner the more questions the liberals ask the petitioner's lawyer. Kennedy's votes are not affected by the number of questions the liberals ask the respondent's lawyer. Thomas's votes are affected, but the influence runs counter to our other findings: the more questions the liberal Justices ask to the respondent, the *more likely* Thomas is to vote in his favor ($p \leq .10$).

Table 12

The ideological variable in Table 12 has a significant positive effect on the voting of the five conservative Justices and a negative effect on the voting of the four liberal Justices. For the latter group, however, the negative coefficient is significant only for Breyer. The implication is that the conservative Justices, plus Breyer, have a stronger political commitment than the liberal Justices, other than Breyer. Petitioners won about 69 percent of the cases in the period covered by our study, but when the petitioner was appealing a liberal lower-court decision the

[24] The t-ratio is 1.27 for Thomas and 0.49 for Kennedy.

figure exceeded 90 percent for Scalia, Roberts, and Thomas and 75 percent for Alito and Kennedy. The corresponding figure for the liberal Justices is less than 50 percent, but it is statistically significant only for Breyer.

VII. Conclusion

Our main purpose has been to test the hypothesis that, even after correcting for possible confounding factors, it is indeed the case that Supreme Court Justices are more prone to question at oral argument parties against whom they will vote than parties for whom they will vote. The hypothesis is strongly supported. We suggested at the outset two possible explanations: the "legalistic," which is that questions probe weakness, and hence the more questions the weaker the case; and the "realist," that Justices often (or perhaps always) make up their mind on a case before argument (for that matter, perhaps before briefing) and use oral argument to try to persuade the other Justices to vote with them. We found support for both hypotheses, and of course they are not inconsistent. Both Justices and cases differ in their susceptibility to legalistic versus realist analysis. Justice Kennedy, for example, as the swing Justice, emerges as the most open-minded Justice in argument; presumably, the lawyers' arguments really can sway him. And certainly in many cases, the party asked more questions ends up the winner.

FIGURES AND TABLES

Figure 1
Distribution of Total Words in Questions to Petitioner and Respondent, 1979–2006 Terms

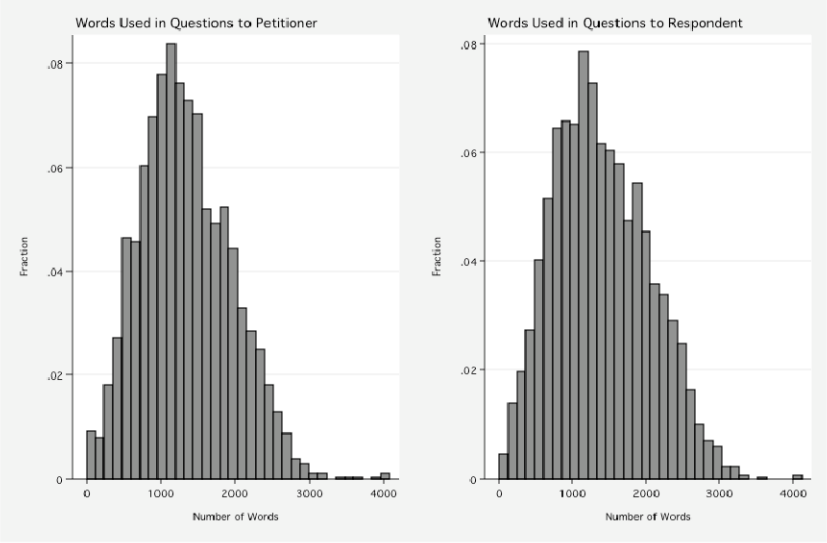


Figure 2
Distribution of Number of Questions to Petitioner and Respondent, 1979–2006 Terms

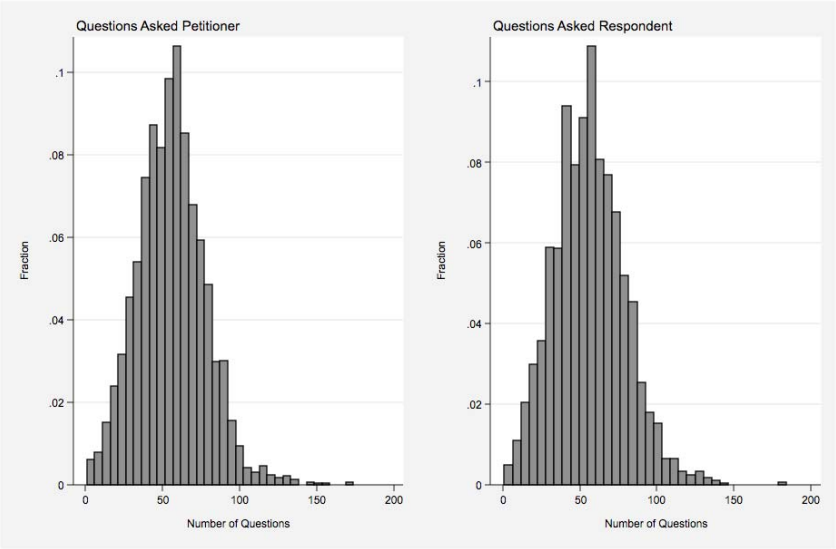


Figure 3
Mean Number of Words in Questions Asked Each Party, by the Winning Party, 1979–2006 Terms

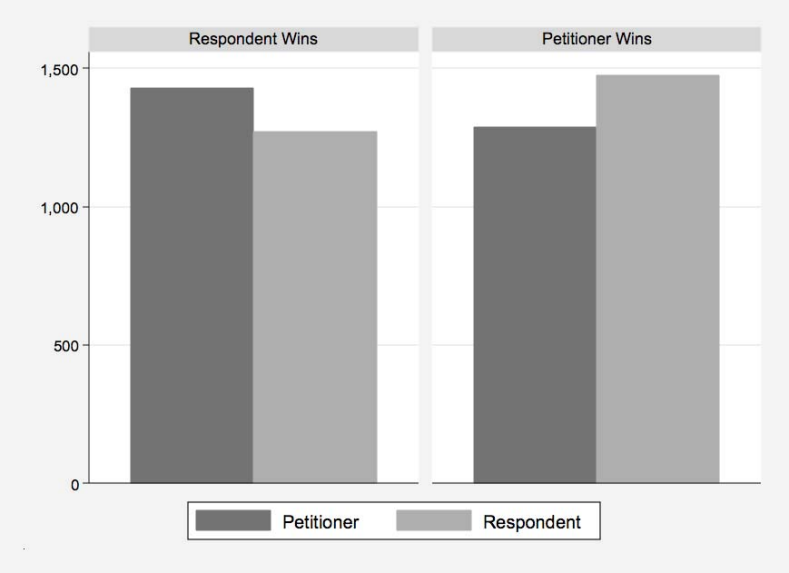


Figure 4. Mean Number of Questions Asked Each Party, by the Winning Party, 1979–2006 Terms

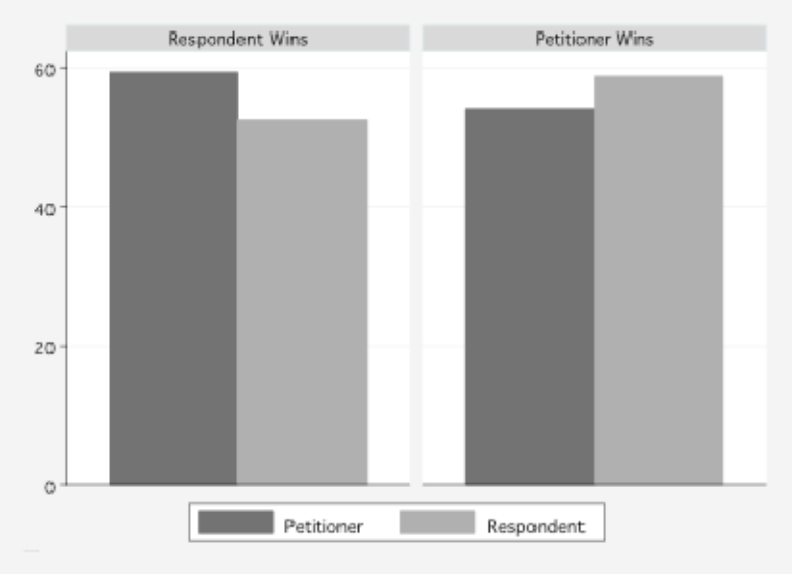


Table 1
Cross-tabulation of the Relationship between Winning and the Fraction of Words in Questions and Number of Questions to the Petitioner and Respondent

	More Words to Respondent than Petitioner (1)	*More Words to Petitioner than Respondent* (2)	*More Questions to Respondent than Petitioner* (3)	*More Questions to Petitioner than Respondent* (4)	*Equal Number Questions to Parties* (5)	*Number and Words in Questions Not Considered* (6)
Respondent Wins	.28 (428)	.51 (670)	.29 (407)	.47 (674)	.38 (18)	.38 (1099)
Petitioner Wins	.73 (1130)	.50 (657)	.71 (1008)	.53 (749)	.63 (30)	.62 (1787)
Total	(1327)	(1558)	(1415)	(1423)	(48)	(2886)

Notes: 1. Due to rounding, the proportions do not always total to 1.0; 2. the number of cases are in parentheses; 3. the table excludes the one case in our sample in which the Justices spoke the same number of words to the petitioner and respondent; 3. In our sample of 2886 cases, there is one case with the same number of words to the petitioner and respondent (which the respondent won) and 48 cases with the same number of questions to the petitioner and respondent. The win rates are reported in the table. 5. For the relationship between More Words to Respondent or Petitioner and the Winning Party [(1) and (2)], X^2=161.07, $p < .05$; for the relationship between Questions and the Winning Party [(3) and (4)], X^2=104.11, $p < .05$.

Table 2
Number of Questions to Petitioner and Respondent and the Closeness of the Vote

		Petitioner Wins			Respondent Wins		
	Number of Cases (1)	*Petitioner Questions* (2)	*Respondent Questions* (3)	*Ratio* (4)	*Petitioner Questions* (5)	*Respondent Questions* (6)	*Ratio* (7)
5–4	562	57.4	57.2	1.003	60.9	59.8	1.018
6–3	434	58.7	58.9	.997	59.9	54.4	1.101
7–2	320	58.5	64.1	.913	63.0	53.8	1.171
8–1	220	53.6	59.8	.896	59.7	51.9	1.150
9–0	1001	51.2	58.8	.871	59.1	49.1	1.203
All Votes	2537	54.1	58.7	.921	59.2	52.5	1.128

Figure 5
Questions and Words Indices, Means per Term (1979=100)

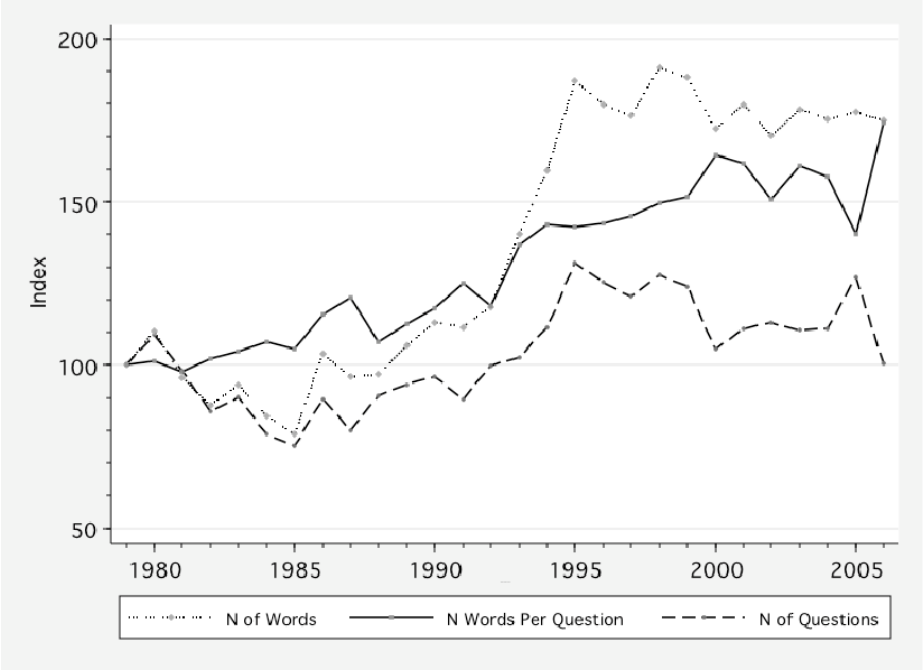


Table 3
Summary of Variables in Regression Analysis of Petitioner Win Rate, 1979–2006 Terms

Variable	Mean	Std. Dev.	Minimum	Maximum
Petitioner Win Rate	0.62	0.49	0	1
No. Q to Petitioner	56.0	22.2	1	174
No. Q to Respondent	56.3	23.0	1	184
No. Words to Petitioner	1341.0	607.2	1	4076
No. Words to Respondent	1396.6	649.1	1	4123
Words/Q to Petitioner	24.0	6.9	1	61.9
Words/Q to Respondent	24.9	7.2	1	67.5
U.S. Petitioner	0.18	0.38	0	1
U.S. Respondent	0.14	0.34	0	1
Civil Liberties	0.56	0.50	0	1
Economics	0.25	0.43	0	1
Judicial Power	0.13	0.34	0	1
Federalism	0.05	0.22	0	1
No. Amicus Briefs for Petitioner	1.69	2.43	0	34
No. Amicus Briefs for Respondent	1.70	2.33	0	21
Solicitor General Amicus for Petitioner	0.17	0.37	0	1
Solicitor General Amicus for Respondent	0.09	0.29	0	1

Note: N=2886 except for the variables denoting amicus curiae participation. For those variables the N is smaller (2728) because the data cover five fewer terms (1979-2001).

Table 4
Logit Regression on the Log of (P/(1–P)) where P equals the Probability the Petitioner Wins, 1979–2006 Terms (t-statistics in parentheses)

	Log (P/(1-P))		
Independent Variables	(4.1)	(4.2)	(4.3)
No. Q to Petitioner	-0.0194*** (9.04)	-	-0.0244*** (10.48)
No. Q to Respondent	0.0194*** (9.10)	-	0.0249*** (10.91)
No. Words to Petitioner	-	-0.00115*** (11.52)	-
No. Words to Respondent	-	0.00117*** (12.11)	-
Words/Q to Petitioner	-	-	-0.0572*** (6.96)
Words/Q to Respondent	-	-	0.0644*** (7.94)
U.S. Petitioner	0.615*** (5.19)	0.655*** (5.44)	0.664*** (5.50)
U.S. Respondent	-0.911*** (7.71)	-0.945*** (7.87)	-0.950*** (7.87)
Civil Liberties	0.0946 (0.53)	0.0734 (0.40)	0.0755 (0.41)
Economics	-0.108 (0.57)	-0.115 (0.60)	-0.108 (0.56)
Judicial Power	-0.205 (1.01)	-0.207 (1.00)	-0.219 (1.07)
Term Dummies	*Yes*	*Yes*	*Yes*
Constant	0.395 (1.25)	0.337 (1.08)	0.216 (0.53)
No. Observations	2886	2886	2886
Significance Levels: * $p < 0.05$ **p<0.01 ***p<0.001			

Table 5
Logit Regression on the Log of (P/(1–P)) where P denotes the Probability the Petitioner Wins, 1979–2001 Terms (t-statistics in parentheses)

	Log (P/(1-P))		
Independent Variable	(5.1)	(5.2)	(5.3)
No. Q to Petitioner	-0.0200*** (8.46)	-	-0.0246*** (9.67)
No. Q to Respondent	0.0223*** (9.43)	-	0.0264*** (10.56)
No. Words to Petitioner	-	-0.00117*** (10.34)	-
No. Words to Respondent	-	0.00123*** (11.41)	-
Words/Q to Petitioner	-	-	-0.0548*** (5.48)
Words/Q to Respondent	-	-	0.0533*** (5.86)
U.S. Petitioner	0.811*** (6.06)	0.840*** (6.20)	0.835*** (6.16)
U.S. Respondent	-1.018*** (7.41)	-1.073*** (7.65)	-1.069*** (7.65)
No. Amicus Petitioner	0.100*** (4.01)	0.104*** (4.14)	0.101*** (4.05)
No. Amicus Respondent	-0.148 (6.37)	-0.153*** (6.50)	-0.151*** (6.43)
SG Amicus Petitioner	0.700*** (4.97)	0.667*** (4.67)	0.652*** (4.58)
SG Amicus Respondent	-0.809*** (5.03)	-0.782*** (4.77)	-.782*** (4.79)
Issue Dummies	*Yes*	*Yes*	*Yes*
Term Dummies	*Yes*	*Yes*	*Yes*
Constant	0.478 (1.40)	0.470 (1.40)	0.515 (0.442)
No. Observations	2507	2507	2507
Significance Levels: * $p < 0.05$ **p<.01 ***p<.001			

Figure 6: Predicted Probability of Success as the Number of Questions to One Party Increases Holding Constant (at the Mean Level) the Number of Questions to the Other Party (The small vertical lines are 95% confidence intervals. Created using S-Post with bootstrapped confidence intervals.**)**

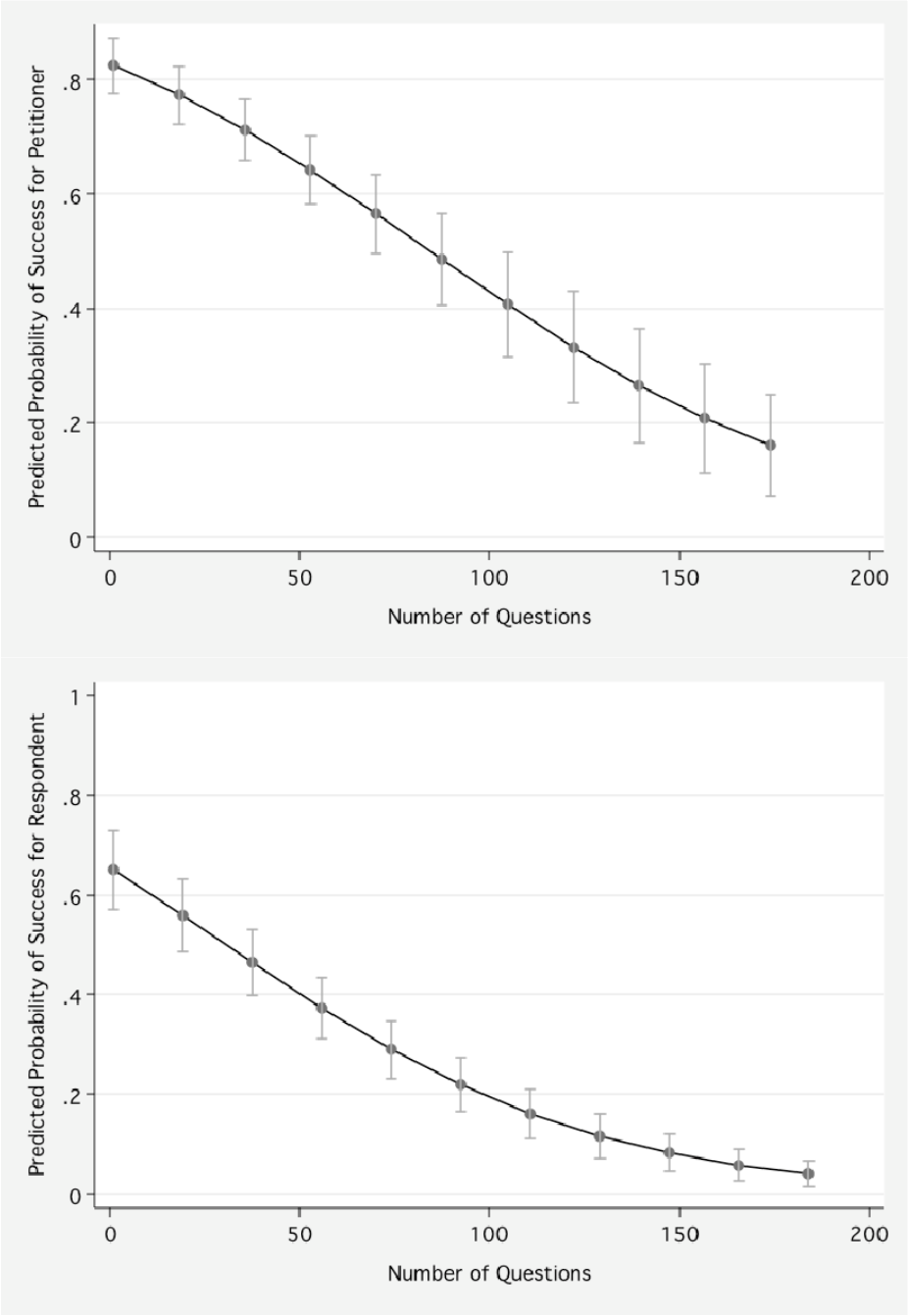
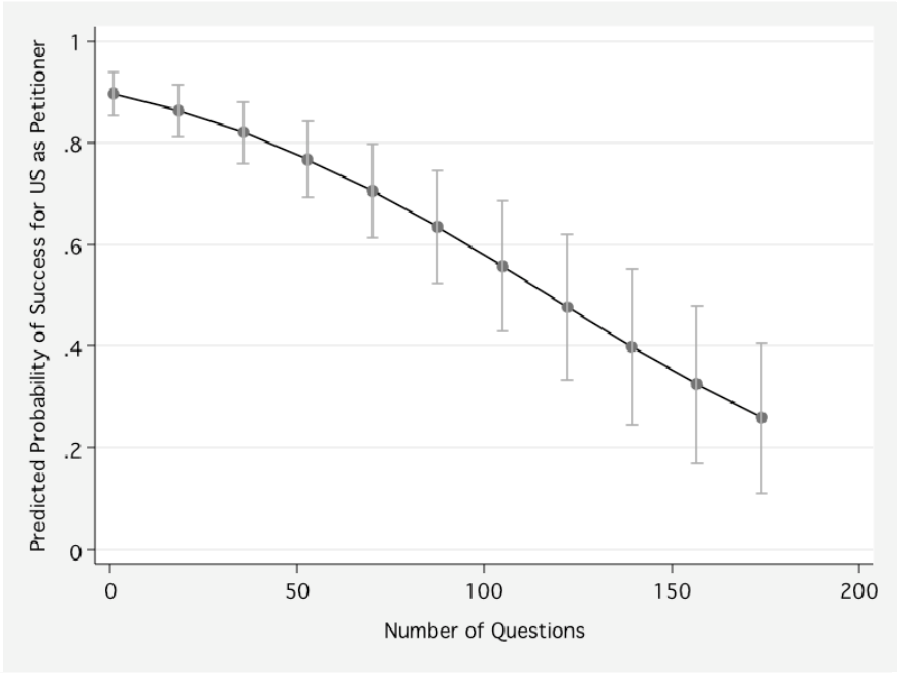


Figure 7: Predicted Probability of Success of the United States as Petitioner and Respondent for Variations in the Number of Questions to the Petitioner and Respondent (The predictions are based on Eq. 4.1 with all other variables set at their mean or mode)



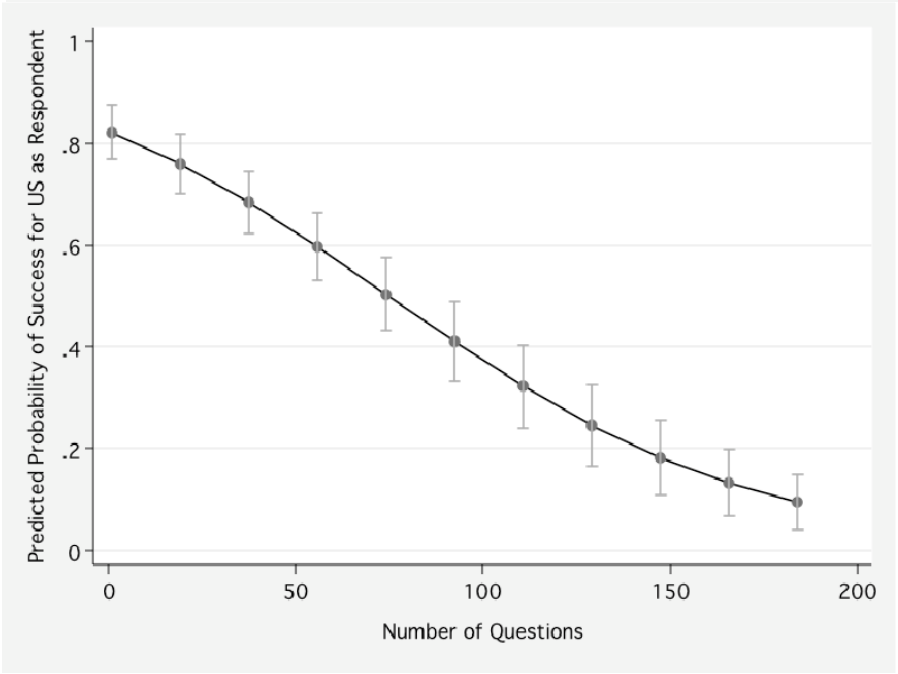


Table 6
Logit Regression on the Log of (P/(1–P)) where P equals the Probability the Petitioner Wins, 1979–2006 Terms (t-statistics in parentheses)

	Log (P/(1–P))		
	U.S. Petitioner	*U.S. Respondent*	*U.S. Not a Party*
Independent Variables	*(6.1)*	*(6.2)*	*(6.3)*
No. Q to Petitioner	-0.0343*** (5.38)	-0.0166*** (-2.72)	-0.0183*** (-7.21)
No. Q to Respondent	0.0208*** (3.45)	0.0382*** (5.96)	0.0168*** (6.69)
Civil Liberties	0.594 (1.04)	-0.347 (-0.59)	0.0730 (0.36)
Economics	0.225 (0.38)	-0.187 (-0.31)	-0.147 (-0.68)
Judicial Power	0.167 (0.26)	0.0346 (0.05)	-0.294 (-1.29)
Term Dummies	*Yes*	*Yes*	*Yes*
Constant	1.432 (1.69)	–1.452 (-1.53)	0.423 (1.13)
No. Observations	511	389	1986
Significance Levels: *p < 0.05 **p<.01 ***p<.001			

Table 7
Cross-Tabulation of Amicus Briefs Filed for Petitioner and Respondent
1979–2001 Terms

No. Respondent Amicus Briefs	*No. Petitioner Amicus Briefs*						*Total Respondent Amicus Briefs*
	0	*1*	*2–5*	*6–10*	*11–15*	*>15*	
0	587	236	220	13	0	0	1056
1	245	171	207	14	0	0	637
2–5	198	190	389	61	5	3	846
6–10	15	24	77	37	9	2	164
11–15	2	1	5	6	1	4	19
>15	0	0	2	2	0	2	6
Total Petitioner Amicus Briefs	1047	622	900	133	15	11	2728

Table 8
Summary of Variables in Regression Analysis of Questions, 1979–2006 Terms (2886 Observations)

Variable	*Mean*	*Std. Dev.*	*Min*	*Max*
No. Questions	112.3	37.8	16	322
No. Words in Questions	2737.6	115.09	175	8134
No. Judges Voting	8.86	.39	6	9
Close Vote	.22	.49	0	1
Unanimous Vote	.41	.49	0	1
Other Vote	.37	.48	0	4
U.S. Party	.31	.46	0	4
NYT	.13	.34	0	1
No. Amicus Briefs	4.03	4.95	0	78

Table 9
Regression Analysis of Questions, 1979–2007 Terms, Clustered by Terms
(t-statistics in parentheses)

	Ln(Quest)	*Ln(Words)*	*Ln(Quest)*	*Ln(Words)*
Independent Variables	(9.1)	(9.2)	(9.3)	(9.4)
U,S.Party	-0.0398* (-2.66)	-0.0223 (-1.43)	-0.0389* (-2.68)	-0.0204 (-1.35)
Civil Liberties	0.101** (3.69)	0.108*** (3.75)	0.125*** (4.39)	0.130*** (4.18)
Economics	0.0519 (1.70)	0.0144 (0.44)	0.0698* (2.11)	0.0308 (0.82)
Judicial Power	0.0817** (3.14)	0.0835** (2.84)	0.109*** (3.98)	0.113** (3.60)
Unanimous Vote	-0.0803*** (-5.07)	-0.0792*** (-5.19)	-0.0811*** (-4.61)	-0.0859*** (-5.21)
Close Vote	-0.0160 (-1.13)	-0.00284 (-0.18)	-0.00961 (-0.70)	-0.00679 (-0.42)
No. Judges Voting	0.0820*** (3.82)	0.0759** (3.19)	0.0994*** (4.86)	0.0794** (2.95)
1994 Term Dummy	0.298*** (3.82)	0.395*** (4.28)	0.281** (3.75)	0.370*** (4.33)
Term	-0.000839 (-0.16)	0.0153* (2.55)	0.00164 (0.25)	0.0207* (2.79)
NY Times	0.0898*** (5.00)	0.0824*** (5.13)	0.0674** (3.24)	0.0539** (2.91)
No. Amicus Briefs			.004* (2.41)	.004* (2.39)
Constant	5.454 (0.51)	-23.54 (-1.97)	0.337 (0.03)	-34.18* (-2.33)
Adj. R^2	.17	.45	.17	.41
N	2886	2886	2507	2507

Table 10
Number of Questions and Total Words in Questions for the Individual Justices, 2004–2007 Terms

		No. Questions Asked Per Case		*Words in Questions Per Case*	
Justice (N)	*No. Cases*	*Mean*	*Std. Deviation*	*Mean*	*Std. Deviation*
Scalia	232	24.77	12.89	681.35	318.79
Roberts	204	22.44	8.62	622.12	250.20
Breyer	228	18.27	11.94	860.94	472.79
Souter	232	15.09	9.60	560.69	338.32
Ginsburg	232	14.66	7.74	506.32	266.16
Stevens	231	13.18	9.68	316.43	218.09
Kennedy	231	13.26	8.54	353.70	226.06
Alito	174	4.61	3.50	156.03	120.73
Thomas	229	0.04	.41	1.20	11.39

Table 11
Mean Number of Questions and Words to Petitioner and Respondent, 2004-2007 Terms
(P = Petitioner and R = Respondent)

	Mean No. Questions to		*Difference*	*Mean No. Words to*		*Difference*
Justice (N)	*P*	*R*	*(* p<.05)*	*P*	*R*	*(*p<.05)*
Roberts (204)	11.52	10.91	0.61	311.44	310.68	0.75
Scalia (232)	12.60	12.17	0.43	342.20	339.15	3.05
Breyer (228)	7.68	10.59	-2.91*	359.75	501.20	-141.45*
Souter (232)	7.53	7.56	-0.02	280.30	280.39	–0.09
Ginsburg (232)	7.78	6.87	0.91	264.51	241.81	22.70
Stevens (231)	6.22	6.96	-0.74	144.09	172.34	-28.25*
Kennedy (231)	6.98	6.27	0.71	195.66	158.03	37.63*
Alito (174)	2.53	2.08	0.45	85.81	70.22	15.59
Thomas (164)	0.00	0.04	-0.03	0.15	1.05	0.90

Note: N= total number of cases. *$p < .05$ (based on a paired *t*-test). We exclude cases in which the Justice did not participate in the decision.

Figure 8
Mean Number of Questions to Respondent and Petitioner, by Whether the Justice Voted for Respondent or Petitioner, 2004-2007 Terms

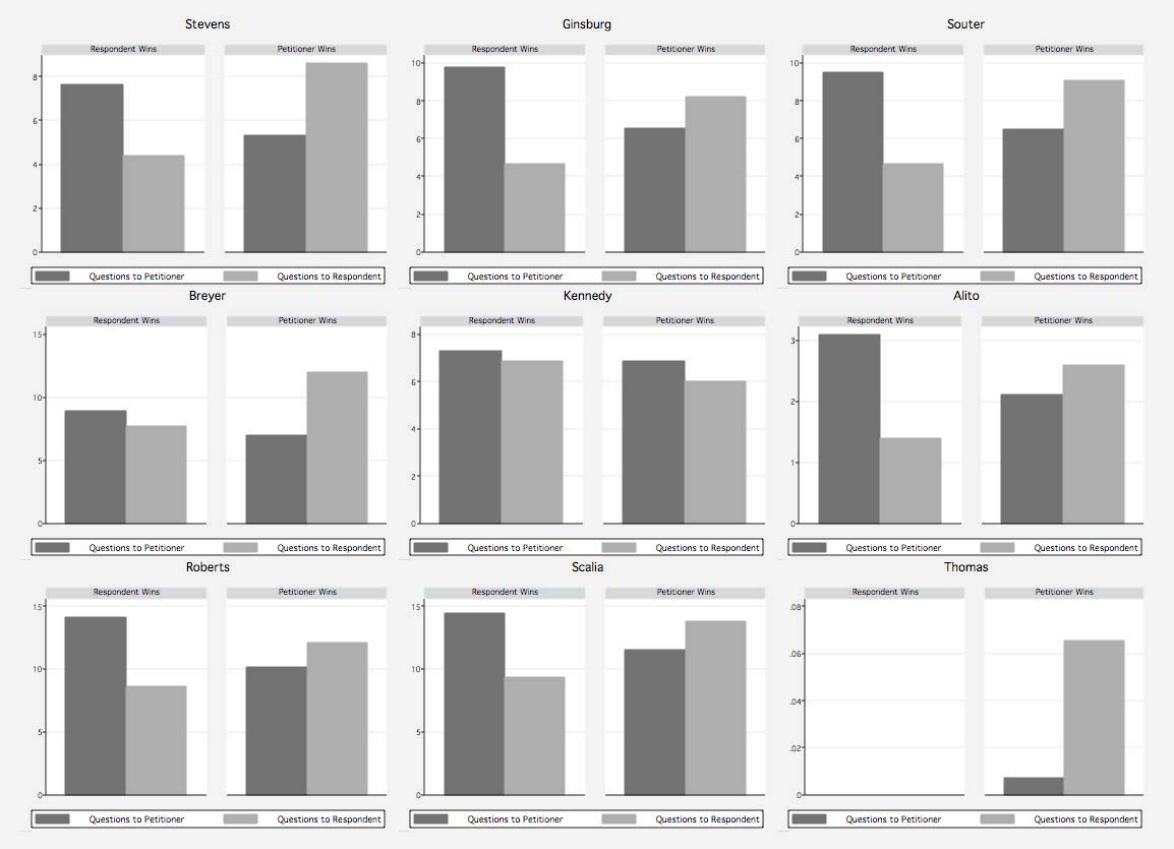


Table 12
Logistic Regressions of the Votes of Each Justice on the Number of Questions (or Words), 2004-2007 Terms (t-statistics in parenthesis)

A. Individual Regressions

	No. Questions		Ideological Direction of the Lower Court's Decision	No. Words		Ideological Direction of the Lower Court's Decision
Justice	Petitioner	Respondent		Petitioner	Respondent	
Alito (N=170)	-0.044 (-0.71)	0.186* (2.06)	0.376 (0.94)	-.001 (-0.58)	.005# (1.89)	0.403 (1.01)
Breyer (N=223)	-0.042* (-2.08)	0.098*** (3.87)	-1.63*** (-4.37)	-.001* (-1.96)	.003*** (4.87)	-1.597*** (-4.17)
Ginsburg (N=227)	-0.137*** (-3.89)	0.141*** (3.95)	-1.19*** (-3.31)	-.005*** (-3.97)	.005*** (4.68)	-1.017** (-2.77)
Kennedy (N=226)	-0.015 (-0.51)	-0.030 (-1.08)	0.440 (1.46)	-.001 (-1.12)	.000 (0.17)	0.456 (1.52)
Roberts (N=200)	-0.047# (-1.89)	0.046 (1.62)	0.763* (2.03)	-.002** (-2.95)	.002# (1.72)	0.520 (1.33)
Scalia (N=227)	-0.045* (-2.31)	0.057** (2.82)	1.013** (3.00)	-.002** (-2.86)	.003*** (4.08)	0.728* (2.06)
Souter (N=227)	-0.063** (-2.70)	0.092*** (3.32)	-1.281*** (-3.69)	-.002** (-2.81)	.003*** (3.39)	-1.226*** (-3.52)
Stevens (N=226)	-0.046# (-1.79)	0.127*** (3.84)	-0.991** (-2.70)	-.002 (-1.47)	.004*** (3.39)	-1.028** (-2.78)
B. Additional Regressions						
Kennedy (N=226)	-.030*** (-3.36)	.018* (2.11)	0.477 (1.54)	-0.001*** (-3.82)	0.001*** (3.91)	0.498 (1.57)
Thomas (N=224)	-.017* (-2.04)	.000 (0.02)	1.628*** (5.07)	-0.001* (-2.52)	0.001** (2.65)	1.64*** (5.04)

Note: N= number of observations. All regressions include dummy variables indicating whether the U.S. is a respondent or petitioner and the ideological direction of the lower court's decision. The Individual Regressions show the coefficients for the number of questions (words) asked by the Justice. The Additional Regressions show the coefficients for the number of questions (words) asked by all Justices (except Kennedy in the Kennedy row and Thomas in the Thomas row).

Significance Levels: #$p \leq 0.10$ *$p \leq 0.05$ **$p \leq 0.01$ ***$p \leq 0.001$

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