Research Note

Majority Opinion Assignment in Salient Cases on the U.S. Supreme Court: Are New Associate Justices Assigned Fewer Opinions?*

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Are new associate justices on the United States Supreme Court assigned fewer salient opinions than can be expected by chance? This question was investigated for the 1930 to 1995 terms of the Court, a sixty-six-year period in which thirty-two new associate justices took their oath of office. I discovered that first-year associate justices were assigned less than half the opinions than can be expected by chance. Second-year associate justices, however, were not disadvantaged in opinion assignment in the salient cases.

After hearing oral arguments in a case, the U.S. Supreme Court justices meet in secret conference to decide, by formal vote, whether to affirm or to reverse the decision of the lower court. This vote is called the conference vote on merits. If the chief justice is in the majority at the conference vote, he assigns the majority opinion. He can assign the opinion to himself or to any other justice who voted with the majority. If the chief justice is in the minority at the conference vote or fails to vote, the senior associate justice in the majority makes the assignment. On the Warren Court, for example, Chief Justice Warren assigned 1,319 of the 1,538 opinions, or 86 percent; Frankfurter assigned 91, or 6 percent; Black 71, or 5 percent; and four other associate justices 57, or 4 percent (Segal and Spaeth, 1993:264).

Because different majority opinion writers are likely to draft different majority opinions, it is important who is selected to write the majority opinion. And it is crucial who is chosen to write the majority opinion in salient cases, for these cases are more likely to influence both the future decisions of the Court and the future direction of American society. It is not surprising, therefore, that a host of Supreme Court scholars have investigated the determinants of majority opinion assignment in salient cases. (For a partial list, see the studies cited in the "Hypotheses" section of this research note.)

I will determine the extent to which the majority opinions in salient cases are self-assigned, assigned to a freshman associate justice, or assigned to another associate justice. I am particularly interested in ascertaining whether first-year and second-year associate justices on the Court are assigned fewer majority opinions in salient cases than can be expected by chance. This question is compelling because the prior research does not answer it.

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Hypotheses

Chief justices assign most of the majority opinions in the salient cases. Chief Justice Vinson, for example, assigned 78 percent of these opinions, while Chief Justice Warren assigned 92 percent.[1] And we know from the prior research that the chief justices tended to self-assign in salient cases. Brenner (1993), for example, inspected majority opinion assignment in salient cases in the 1801 to 1989 era and discovered that the chief justices self-assigned in 35 percent of the cases in which they were in the majority coalition. The percentages were somewhat lower for the Stone (23 percent), Warren (26 percent), Burger (28 percent), and early Rehnquist (20 percent) Courts. But even these lower percentages indicate that the chief justices favored themselves in these cases.[2] When an associate justice assigns the opinion in a salient case, we expect a great deal of self-assignment for some of the same reasons why a chief justice is likely to self-assign (e.g., the desire to further his policy goals, the pleasure he gets out of doing important work.) Based on this analysis, it can be expected that:

H1 The chief justices or the other assigning justices will author more majority or plurality opinions in salient cases than can expected by chance.

But whether first-year and second-year associate justices will be assigned fewer majority opinions than can be expected by chance is uncertain. Elliot Slotnick (1979) was the first scholar who explored the assignment of majority opinions in salient cases to freshmen justices. Slotnick inspected the opinion assignment in salient constitutional cases in the 1921 to 1973 era and discovered that first-year justices were assigned to write 7.9 percent of the opinions. This contrasted with 9.3 percent for second-year justices, 6.6 percent for third-year justices, 5.9 percent for fourth-year, and 4.75 percent for fifth-year. But there are at least four problems in interpreting Slotnick's findings. First, should we compare the first-year results (7.9 percent) with the second-year (9.3 percent) and conclude that the first-year justices are given fewer assignments, or should we compare the first-year results with all subsequent years, which might suggest a different conclusion? Second, we do not know whether the 7.9 percent statistic is higher or lower than can be expected by chance. To answer this question, we need to know how often the first-year justices were members of the majority coalitions in the salient cases and the sizes of these coalitions. Slotnick does not supply this information. Third, Slotnick's 7.9 percent statistic includes self-assignments by first-year chief justices. But it cannot be expected that the first-year chief justices will author fewer opinions in salient cases. Indeed, the converse is more likely. Finally, Slotnick includes all the salient constitutional cases whether there is a first-year justice on the Court in the majority coalition in that case or not (Rathjen, 1980). It is possible that this approach biases the result. It is

[1] Data derived from Spaeth's data set (ICPSR 9422).

[2] In arriving at these findings, Brenner used the *Congressional Quarterly*'s list of salient cases. Epstein and Segal (2000:78) employed the *New York Times* list and obtained somewhat less dramatic results. (Compare Brenner's 26 percent self-assignment result for Chief Justice Warren with Epstein and Segal's 20 percent result.)

better to focus on those cases in which the first-year justices are members of the majority coalition in the case and, therefore, can be selected to write the majority opinion.

The authors of six other studies (Rubin and Melone, 1988; Melone, 1990; Johnson and Smith, 1992; Smith and Johnson, 1993; Smith et al., 1994; Smith, Baugh, and Hensley, 1995) investigated whether the last six new associate justices were assigned fewer opinions in the salient cases. These authors discovered that Scalia authored zero opinions out of fourteen salient cases, Souter zero out of thirty-one, Thomas one out of twenty-eight, Ginsburg one out of thirty-one, and Breyer two out of twenty-six. In contrast, Kennedy authored four out of thirty-three. The various authors concluded that the first five new associate justices were disfavored in opinion assignment, but Kennedy was not. The authors of these six studies, however, used various measures of saliency and, therefore, their findings are not comparable with each other.[3]

I assume that first-year associate justices will be assigned fewer majority opinions in salient cases than can be expected by chance for three reasons: First, if H1 is supported, then the assignment rate for the nonassigning justices, including the first-year justices, will be low. Second, the assigning justices might believe that the first-year associate justices are experiencing acclimation problems (see Hagle, 1993:1144). Third, the opinion assigners may be uncertain whether the first-year justices are experiencing acclimation problems and may wait until the new justices have written one or more opinions in nonsalient cases before evaluating whether they can do a good job in salient cases. Thus:

> **H2** First-year associate justices will be assigned fewer majority or plurality opinions in salient cases than can be expected by chance.

Finally, if both H1 and H2 are supported it is uncertain how these results will influence whether the other associate justices will be assigned more or fewer majority opinions to write in salient cases. In the absence of this information, it is reasonable to posit that:

> **H3** The other associate justices will be assigned approximately the same amount of majority or plurality opinions in salient cases as can be expected by chance.

I also want to test whether second-year associate justices on the Court are likely to write fewer opinions in salient cases. I do not expect the second-year justices, or anyone else, to do as well as the chief justices or other opinion assigners. But it is uncertain whether they are likely to do as well as the other senior associate justices on the Court. Nevertheless, I will posit hypotheses parallel to those that pertain to first-year justices:

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[3] Two of them used the covers of the advanced sheets of the *U.S. Supreme Court Reports, Lawyer's Edition;* two employed both the *New York Times* review of the term in question and *Congressional Quarterly*'s list of major decisions; and two used the *New York Times* list alone. The Kennedy study, in addition, pertains to a longer freshman period of time than the other five studies.

H4 The chief justices and other assigning justices will author more majority or plurality opinions in salient cases than can be expected by chance.

H5 The converse will be true regarding the second-year associate justices.

H6 The other senior associate justices will be assigned approximately the same amount of majority or plurality opinions in salient cases as can be expected by chance.

Data and Methods

I will test these hypotheses for the 1930 to 1996 era of the Court, a sixty-six-year period in which thirty-two new associate justices took their oath of office (Owen Roberts to Stephen Breyer). 1996 coincides with the end of Breyer's two-year freshmen period. There were too few salient cases from before 1930 in the list that I used for this study.

Research regarding Supreme Court behavior, like all other research, depends heavily on the measures used. Yet there is no ideal or even agreed-upon measure of the salience of cases for Supreme Court research. An ideal measure of salience for this study would reflect the cases the opinion assigners considered "salient" or "important" before the assignment. But there is no obvious surrogate measure for what is on the minds of the opinion assigners.

Supreme Court scholars have proposed numerous measures of salience. Some are still in use, and others have been abandoned. Supreme Court scholars have made three major attempts to evaluate these measures. Cook (1993:1136) evaluated fifteen measures and concluded that the *Congressional Quarterly*'s (*CQ*'s) list of major decisions was the best of the lot and is a short "but . . . reliable authority for research on contemporary decisions." (For the most recent version of this list, see Biskipic and Witt, 1997.) Brenner and Spaeth (1995) judged five different measures and also concluded that the *CQ* measure was the best. Epstein and Segal (2000), on the other hand, inspected seven measures, including the *CQ* list, and argued that all seven are defective for several reasons and recommended that judicial scholars turn to the lead headlines on the first page of the *New York Times* (*NYT*) for this purpose. The *NYT* list compiled by Epstein and Segal (2000), however, does not cover the pre-1946 era and, therefore, is not sufficiently comprehensive for this study. Instead, I will use the *CQ* list.[4]

[4] Epstein and Segal (2000) believe that the *CQ* list contains five drawbacks. I will evaluate their argument. First, they argue that *CQ*'s list is not contemporaneous. I agree, although the author of the original 1979 list (Witt) was probably trying to select cases that were perceived by the justices and others as salient at the time they were decided. Second, they contend that *CQ*'s list contains too many civil liberties and constitutional cases. But all scholars agree that the justices in the post-World War II era regarded civil liberties and constitutional

I will treat a justice's first two years on the Court as the freshman period. I will measure the first year from the date the justice took the oath of office and end it one year later. The second year will start with this latter date and end one year later. Using this measure enables me to focus on the same amount of time for all freshman justices. Maltzman, Spriggs, and Wahlbeck (2000) measured the freshman period the same way, except that they did not break down this period into two parts.

Using this measure, however, may bias the results against a first-year associate justice who took the oath of office later in the term. Many of the salient decisions are handed down in June. Some of these decisions may have been assigned either before a justice was a member of the Court or shortly after she or he began this tenure on the Court. To test for this possibility, I will ascertain whether first-year associate justices who took their oath of office between December 1 and June 30 were less likely to be assigned an opinion in a salient case than the other first-year associate justices.

I will use cases from the *Congressional Quarterly* list in which there was a majority or plurality opinion and that opinion was written by one justice.[5] Cases that generated two or more majority or plurality opinions by two or more different justices will be treated as two or more separate cases. In a few cases five justices agreed with one part of the majority opinion, and all nine agreed with one another. I will treat the majority coalition in this situation as a five-person coalition. I will follow the same rule in testing H4, H5, and H6. Thus, I will examine different cases when I test the two sets of hypotheses.

In testing H1, H2, and H3, I will compare the expected number of assignments with the actual number for the three kinds of justices. If, for example, in a given case there was an opinion coalition consisting of six members, i.e., the chief justice, three senior associate justices, and two first-year associate justices, and the case was assigned by the chief justice to one of the senior associate justices, then the expected scores of the justices in the three groups are 1/6 (chief justice), 3/6 (senior associate justices), and 2/6 (first-year associate justices), and their actual scores are 0, 1, and 0. I will use the same procedure in testing H4, H5, and H6.

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cases as important. Thus, it is uncertain whether the bias in the *CQ* list reflects the bias of the justices. Third, Epstein and Segal argue that the *CQ* list is not transportable; i.e., that it cannot be adopted to study other political institutions, such as Congress. But if this is a requirement for our measures, then we would have to abandon almost all the instruments we now use to study decision making on the Court. Fourth, they inform us that the *CQ* list changed from one edition to the next. I compared the 1990 list with the 1997 list (Biskupic and Witt) for the 1946 through 1989 era and discovered that there were 236 cases on the *CQ* 1990 list in this period. All but eight of these cases (96.6 percent) were retained on the 1997 list. One case was added to the 1997 list. Finally, they contend that the *CQ* list suffers from a recency bias; i.e., it includes more salient cases per term as the years progress. This is true and of some consequence. But the presence of this bias does not suggest that this list should not be used. Rather, it suggests that the people who use it ought to be sensitive to this bias.

The *NYT* list, proposed by Epstein and Segal, is not free of problems. It contains about three times as many cases as the *CQ* list and, therefore, may contain a number of cases that do not reach a certain threshold of salience. Because the *CQ* list is mainly a subset of the *NYT* list (Epstein and Segal, 2000:76) it is reasonable to prefer the shorter list.

[5] *Congressional Quarterly*'s list also includes five per curiam cases and one case (*Planned Parenthood v. Casey* 505 US 833 1992), in which the majority opinion was written by three justices. These six cases were not used.

Table 1
Expected and Actual Assignment of Opinion in Salient Cases to First-Year Justices, 1930-1995

	Expected	Actual	%	Significance Level
(1) Self-assignment (H1)	14.8	20	135.1	.07*
(2) Assigned to first-year associate justices (H2)	18.1	9	49.7	.009
(3) Assigned to other associate justices	65.1	69	106	.2*
	98	98	100	

* Not significant.

A justice, of course, is not a member of the winning coalition for the purposes of opinion assignment unless that justice is a member of the winning coalition at the conference vote on the merits. In this study, and in most opinion assignment studies, it is assumed that the justices voted the same way at the conference vote as they voted at the final vote. At times, this assumption is contrary to fact. But I have no alternative but to make it in this study, for conference vote data is only available in Spaeth's data set for the 1946 to 1969 era. In other words, if I used conference vote data, I would only be able to investigate the assignment of majority opinions in salient cases for ten of the thirty-two justices. In any event, the problem caused by the use of final vote data is less serious than it might be because in 90 percent of the votes in salient cases (at least in the 1956 to 1967 era) there was no fluidity in voting (Brenner, 1982)

There were 98 salient cases in my data set regarding H1, H2, and H3 and 106 salient cases concerning H4, H5, and H6.

Findings

I first examined opinion assignment in salient cases when at least one first-year associate justice was a member of the winning opinion coalition in the case (see **Table 1**). Two of the three hypotheses were supported. I discovered that first-year associate justices were assigned nine opinions, slightly less than half the expected 18.1 (a difference in proportions test yields a Z score of -2.370, significant at the .009 level). Thus, H2 was supported. I also found that the other associate justices wrote approximately the same number of opinions as can be expected by chance. Their expected rate was 65.1 and actual rate was 69. Thus, H3 was supported. Finally, the chief justices and other opinion assigners self-assigned in 20 cases, about one-third more than the expected 14.8. But these results, although in the expected direction, are not statistically significant (Z=-.759, significance level=.07).

Table 2
Expected and Actual Assignment of Opinions in Salient Cases to Second-Year Justices, 1930-1995

	Expected	Actual	%	Significance Level
(1) Self-assignment (H3)	16.8	32	190.5	.00009
(2) Assigned to second-year associate justices (H4)	19.0	16	84.2	.22*
(3) Assigned to senior associate justices	66.0	54	81.8	.008
(4) Assigned to first-year associate justices	4.2	4	95.2	.5*
	106.0	106	100	

* Not significant.

I also investigated opinion assignment in salient cases when at least one second-year associate justice was a member of the winning opinion coalition (see **Table 2**). I discovered that the chief justices and other opinion assigners wrote almost twice as many opinions in salient cases as can be expected by chance (Z=4.039, significant at the .00009 level). Thus, H4 was supported. The second-year associate justices, however, were assigned to write sixteen opinions or 84.2 percent of the expected nineteen. These results are in the expected direction, but are not statistically significant (Z=-.759, significance level=.22). Indeed, the second-year associate justices scored somewhat better than the nonassigning senior associate justices (84.2 percent v. 81.8 percent).

Discussion

Although the findings regarding self-assignment and assignments to other associate justices are of interest, the main focus of this research note is on the assignments to the freshman associate justices.

Of the thirty-two new associate justices on the Court in the post-1930 era, eight (Cardozo, Black, Frankfurter, Byrnes, Minton, Brennan, Powell, and Stevens) were assigned their first opinion in a salient case during their first year on the Court (see **Table 3**). Stevens was assigned two such opinions. Indeed, Justice Cardozo handed down an opinion in *Nixon v. Cordon* 286 US 73 (1932), less than two months after he took his judicial oath. In contrast, two justices were assigned their first opinions as six-year justices (Burton and O'Connor), an additional two as seven-year justices (Reed and White), two others never wrote such an opinion (Rutledge and Whittaker), and two justices have not written one through the end of the 1995 term (Thomas and Breyer). Of the twenty-nine opinions assigned to the new justices, twenty-six (90 percent) were assigned by a chief justice (see **Table 3**).

Table 3
Assignment of Majority or Plurality Opinion in a Salient Case to New Associate Justices, 1930-1995

Justice	Oath Taken	Date of First Opinion	Year on Court	Assigner
(1) Roberts	June 2, 1930	March 5, 1934 (*Nebbia v. New York*)	4th	Hughes
(2) Cardozo	March 14, 1932	May 2, 1932 (*Nixon v. Condon*)	1st	Hughes
(3) Black	August 19, 1937	May 23, 1938 (*Johnson v. Zerbst*)	1st	Hughes
(4) Reed	January 31, 1938	April 3, 1944 (*Smith v. Allwright*)	7th	Stone
(5) Frankfurter	January 30, 1939	May 22, 1939 (*Lane v. Wilson*)	1st	Hughes
(6) Douglas	April 17, 1939	May 20, 1940 (*Sunshine v. Adkins*)	2nd	Hughes
(7) Murphy	February 5, 1940	March 9, 1942 (*Chaplinsky v. NH*)	3rd	Stone
(8) Byrnes	July 8, 1941	November 24, 1941 (*Edwards v. Calif.*)	1st	Stone
(9) Jackson	July 11, 1941	November 9, 1942 (*Wickard v. Filburn*)	2nd	Stone
(10) Rutledge	February 15, 1943			
(11) Burton	October 1, 1945	April 30, 1951 (*Joint Anti-Fascist Refugee Comm.*)	6th	Black
(12) Clark	August 24, 1949	June 4, 1951 (*Garner v. Board of Public Works*)	2nd	Vinson
(13) Minton	October 12, 1949	February 20, 1950 (*US v. Rabinowitz*)	1st	Vinson
(14) Harlan	March 28, 1955	June 17, 1957 (*Yates v. US*)	3rd	Warren
(15) Brennan	October 16, 1956	June 24, 1957 (*Roth v. US*)	1st	Warren
(16) Whittaker	March 25, 1957			
(17) Stewart	October 14, 1958	June 27, 1960 (*Elkins v. US*)	2nd	Warren
(18) White	April 16, 1962	May 20, 1968 (*Duncan v. LA*)	7th	Warren
(19) Goldberg	October 1, 1962	June 15, 1964 (*Murphy v. Waterhouse*)	2nd	Warren
(20) Fortas	October 1, 1965	May 15, 1967 (*In Re Gault*)	2nd	Warren
(21) Marshall	October 2, 1967	June 23, 1969 (*Benton v. MD*)	2nd	Warren
(22) Blackmun	June 9, 1970	June 21, 1971 (*McKeiver v. PA*)	2nd	Burger
(23) Powell	January 7, 1972	May 22, 1972 (*Kastigar v. US*)	1st	Burger
(24) Rehnquist	January 7, 1972	February 21, 1973 (*Mahan v. Howell*)	2nd	Burger
(25A) Stevens	December 19, 1975	July 2, 1976 (*Jurek v. Texas*)	1st	Burger
(25B) Stevens	December 19, 1975	July 2, 1976 (*Roberts v. Louisiana*)	1st	Brennan
(26) O'Connor	September 25, 1981	April 21, 1987 (*Tison v. Arizona*)	3rd	Rehnquist
(27) Scalia	September 26, 1986	June 26, 1989 (*Stanford v. Kentucky*)	3rd	Rehnquist
(28) Kennedy	February 18, 1988	March 21, 1989 (*Skinner v. Railway*)	2nd	Rehnquist
(29) Souter	October 9, 1990	June 27, 1994 (*Kiryas Joel v. Grumet*)	4th	Blackmun
(30) Thomas	October 23, 1991			
(31) Ginsburg	August 10, 1993	June 26, 1996 (*US v. VA*)	3rd	Rehnquist
(32) Breyer	August 4, 1994			

How can we explain why some justices were assigned an opinion in a salient case during their first year on the Court while others were not? I tested three hypotheses that might explain these results and found that these hypotheses were not supported: 1) Justices who took their oath of office between July 1 and November 30 were no more likely to be assigned an opinion in a salient case during their first-year on the Court than justices who took their oath between December 1 and June 30 (23.5 percent and 26.7 percent); 2) Justices who began their service in Warren Court era or in the post-Warren Court era, when there were more salient cases per term on the *CQ* list, were no more likely to be assigned an opinion in a salient case during their first year on the Court than justices who began service in the pre-Warren Court era (21 percent v. 38.4 percent); and 3) Justices with prior appellate court experience were no more likely to be assigned an opinion in a salient case during their first year on the Court than justices without appellate court experience (23.7 percent v. 26.7 percent)

I also tested whether there was any relationship between a justice's reputation and whether she or he was assigned an opinion in a salient case during her or his first year on the Court. In 1993 Mersky and Blaustein asked more than 100 judges, lawyers, and teachers of constitutional law or constitutional history to rank the 108 justices who had served on the Court by that year into one of five categories: "Great" (1), "Near Great" (2), "Average" (3), "Below Average" (4), and "Failure" (5). Ross (1996) reported the findings of this study. Of the thirty-two justices in this study, ten received a score of 2.697 or lower, twenty obtained a score higher than that, and the two newest justices (Ginsburg and Breyer) were not ranked. I discovered that five of the eight justices (62.5 percent) who were assigned an opinion in a salient case during their first year on the Court were in the top-ten group (Black, Brennan, Cardozo, Frankfurter, and Powell), and the other three were in the bottom-twenty group (see **Table 4**). This result is significant at the .01 level in a one-tail test (Z=2.514).

But the instrument I used to measure the justices' reputations is far from perfect for three reasons. First, and probably most important, it cannot be assumed that the opinion assigners, when assigning the opinions in the salient cases, evaluated the justices the same way as the Supreme Court scholars who responded to the survey. Second, this survey suffers from a number of biases, as Ross (1996) points out. Third, the number of salient opinions written by the justices might have influenced their reputations among Supreme Court scholars, instead of their reputations among opinion assigners influencing the number of salient opinions they were assigned.[6] Both events are likely to have taken place.

Nevertheless, this is the only instrument we have to measure the reputations of these justices, and it is reasonable to believe that opinion assigners assigned opinions in salient cases based, in part, on their perceptions of the justices' reputations. It is hardly surprising, for example, that Cardozo, who ranked high is the 1993 Mersky and Blaustein

[6] But more relevant to the specific hypothesis I am discussing, whether a given justice was assigned to write a majority or plurality opinion in a salient case during his or her first year on the Court is unlikely to have been an important influence on the justices' ranking by the Supreme Court scholars.

Table 4
Reputation of Associate Justice and Time Justice Wrote First Majority or Plurality Opinion in a Salient Case*

	Justice	Ranking	Year of 1st Opinion
1.	Black	1.416**	1st
2.	Brennan	1.440	1st
3.	Harlan	1.490	3rd
4.	Cardozo	1.763	1st
5.	Douglas	1.960	2nd
6.	Frankfurter	1.970	1st
7.	Jackson	2.082	2nd
8.	Marshall	2.310	2nd
9.	Powell	2.653	1st
10.	Blackmun	2.697	2nd
11.	Stewart	2.740	2nd
12.	Murphy	2.802	3rd
13.	Stevens	2.838	1st
14.	O'Connor	2.857	6th
15.	Rutledge	2.863	—-
16.	Roberts	2.916	4th
17.	White	2.970	7th
18.	Scalia	3.023	3rd
19.	Kennedy	3.069	2nd
20.	Rehnquist	3.111	2nd
21.	Clark	3.118	2nd
22.	Goldberg	3.122	2nd
23.	Reed	3.125	7th
24.	Souter	3.164	4th
25.	Fortas	3.242	2nd
26.	Burton	3.412	6th
27.	Minton	3.773	1st
28.	Byrnes	3.795	1st
29.	Thomas	3.940	—-
30.	Whittaker	4.041	—-

* Based on Ross (1996)
** 1 = Great
2 = Near Great
3 = Average
4 = Below Average
5 = Failure

poll (see **Table 4**) handed down an opinion in a salient case less than two months after he took his judicial oath. Cardozo was viewed by numerous legal scholars at the time of his nomination to the Court as the greatest state judge in American history and was perceived by these scholars as a master craftsman of opinions. Nor is it unexpected that Whittaker, who obtained the lowest score of all the thirty justices (see **Table 4**) was never assigned to write an opinion in a salient case throughout his five-year tenure on the Court. It was common knowledge on the Court that Whittaker had a difficult time in drafting opinions. Indeed, he retired early (at age 61), in part because he was unable to do his work.

The above discussion assumes that whether a first-year justice is assigned to write a majority opinion in a salient case is mainly dependent on some characteristic of the first-year justice. But it is the opinion assigners who decide whether this justice is chosen. Possibly, therefore, one ought to focus on these assigners. Because the chief justices had much greater opportunities of assigning opinions to first-year justices in salient cases than any senior associate justices, I will inspect the chief justices' activity. Chief Justice Hughes assigned opinions in salient cases to three first-year justices (Cardozo, Black, and Frankfurter) out of seven, Stone to one (Byrnes) out of four, Vinson to one (Minton) out of two, Warren to one (Brennan) out of eight, Burger to two (Powell and Stevens) out of five, and Rehnquist to zero out of six. The Ns involved are simply too small to indicate any definite conclusions. Hughes, however, does seem to be more willing to select a first-year justice than Rehnquist or Warren.[7]

Conclusion

The major finding of this research note is that first-year associate justices are assigned fewer opinions in salient cases than can be expected by chance, but there is no such evidence regarding second-year associate justices. I also discovered that justices with better reputations, at least in the retrospective eyes of the Supreme Court scholars, are more likely to be assigned to write a majority or plurality opinion in a salient case during their first year on the Court. These findings are of consequence for our understanding of judicial behavior, for they concern one of the most important decisions of the justices; i.e., the assignment of the majority or plurality opinion in salient cases. **jsj**

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[7] The identities of the opinion assigners for the Hughes and Stone Courts and for the Rehnquist Court in the post-1990 era are derived from the final vote, while the identities of the opinion assigners for the Vinson, Warren, and Burger Courts and the rest of the Rehnquist Court are derived from Spaeth's data set (ICPSR 9422). Spaeth obtained this information from the justices' assignment sheets.

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