CODEBOOK

The dataset for this study consists of all Supreme Court cases decided after the 1983 Term decision in *Chevron U.S.A., Inc. v. National Resources Deference Council* and before the end of the 2005 term in which a federal agency interpretation of a statute was at issue. Each case was coded for 156 variables, described below.

The cases are listed in chronological order. The Burger Court cases are assigned numbers between 1 and 138. The Rehnquist Court cases are assigned numbers between 139 and 975. The Roberts Court cases are assigned numbers between 976 and 1014.

Variables

Reporter
Lists the Supreme Court Reporter citation for each case.

Term
Identifies the term in which the case was decided and the chronological order of cases within that term (e.g., the first relevant case for the 1985 term is 85.1, the second is 85.2, etc.).

Name
The case name consists of one to three words from the petitioner's name, unless the plaintiff is a common entity, such as the United States or the NLRA. In such cases, the case name consists of one to three words from the respondent's name. If both the petitioner and respondent have common names, the case name incorporates parts of both. Case names are included only to make case identification quicker and easier for database users.

Chief Justice
Burger = 0
Rehnquist = 1
Roberts = 2

President
Reagan = 0
Bush I = 1
Clinton = 2
Bush II = 3

Presidential Politics
Liberal = 0 (Clinton)
Conservative = 1 (Reagan, Bush I, Bush II)

House
Liberal = 0 (Democrats control)
Conservative = 1 (Republicans control)

Senate

Liberal = 0 (Democrats control)
Conservative = 1 (Republicans control)

Note: Party control of the Senate shifted several times during the period we studied. The Republicans controlled the Senate until January 3, 1987. The Democrats controlled the Senate until January 3, 1995. The Republicans controlled the Senate between January 3, 1995 and May 24, 2001, when Senator Jeffords switched parties in an evenly divided Senate. The Democrats controlled the Senate between May 24, 2001 and January 3, 2003. The Republicans controlled the Senate for the remainder of the period covered by this study, January 3, 2003 through July 1, 2006.

Agency

Treasury = 0	ICC = 16	FEC = 32
Copyright = 1	INS/DHS = 17	Nuclear Reg. Comm'n = 33
DOD/Armed Forces = 2	Interior = 18	FDA = 34
DOJ = 3	IRS = 19	CIA = 35
Education = 4	Labor = 20	CFTC = 36
EEOC = 5	NLRB = 21	Agriculture = 37
Energy = 6	OPM = 22	Commerce = 38
EPA = 7	Patent & Trademarks = 23	HUD = 39
FDIC = 8	Pension Guar. = 24	Veterans Admin. = 40
Federal Reserve = 9	Post Office = 25	Customs = 41
FERC = 10	President/White House = 26	FAA = 42
FHLBB/FSLIC = 11	SEC = 27	Nat'l R.R. Adj. Board = 43
FLRA = 12	Sentencing = 28	Judicial Conference = 44
FTC = 13	Transportation = 29	Nat'l Mediation Bd. = 45
FCC = 14	Panama Canal Comm'n = 30	Comptroller General = 46
HHS = 15	Dep't of State = 31	

Note: For agencies within larger executive departments (such as the Coast Guard and the Army Corps of Engineers, both within the Department of Defense (DOD)), the department rather than the specific agency was coded, with the exception of the CIA, which has its own category. The residual category was the Department of Justice, whose Solicitor General represents the federal government before the Court in almost all cases and whose staff routinely make policy-significant decisions that the agencies themselves would not have made (and sometimes do not support).

Subject Matter

Bankruptcy = 1	Health & Safety = 11	Education = 21
Business Regulation = 2	Immigration = 12	Foreign Affs/Nat'l Security = 22
Civil Rights = 3	Indian Affairs = 13	Housing = 23
Criminal Law = 4	IP = 14	
Energy = 5	Labor Relations = 15	
Entitlement Programs = 6	Maritime = 16	
Environment = 7	Pensions = 17	
Federal Government = 8	Tax = 18	
Fed. Jur. & Proc. = 9	Telecom = 19	
Federal Lands = 10	Transportation = 20	

Agency Interpretation
Liberal = 0
Conservative = 1
Neutral or Mixed = 2

Note: Interpretations were coded as *liberal* if the agency view favored the interests of bankruptcy debtors, antitrust and securities plaintiffs, civil rights plaintiffs and other victims of discrimination (except claimants in "reverse discrimination" cases), criminal defendants, energy consumers, claimants seeking information or entitlement benefits from the government, citizens demanding environmental protection, plaintiffs seeking access to federal courts, governmental and private employees, persons benefiting from health/safety protections, immigrants, Native Americans, claimants opposing intellectual property interests, pension beneficiaries and state regulators of pension funds, taxpayers, telecomm and transportation consumers, students and their parents seeking educational benefits, and tenants.

Interpretations were coded as *conservative* if the agency view favored the interests of bankruptcy creditors, antitrust and securities defendants, alleged discriminators in civil rights cases (except defendants in "reverse discrimination" cases), criminal prosecutors, energy companies, agencies withholding information, government institutions paying for statutory entitlements, companies accused of polluting the environment, defendants opposing access to federal courts, governmental and private employers, defendants charged with violating health/safety rules, officials opposing the rights of immigrants, state and federal entities denying claims by Native Americans, holders of intellectual property interests, pension funds and their managers, tax collectors, telecomm

and transportation companies, schools and school boards, and landlords.[391]

Interpretations were coded as *neutral or mixed* if the agency interpretation was liberal on one issue and conservative on another. See, for example, *IBP, Inc. v. Alvarez*, 546 U.S. 21 (2005) (presenting two issues to the Court, with Department of Labor regulation liberal on one issue, conservative on the other).

Agency Format
Legislative Rule or Executive Order = 0
Formal Adjudication = 1
Informal Agency Interpretation = 2

Informal Interpretation
Agency Litigating Position = 1
Interpretative Rule/Guidance = 2
Agency Manual or Letter = 3
Agency/Solicitor General Amicus Brief = 4
Not Applicable = 999

Continuity (Agency Position is . . .)
Longstanding and Fairly Stable = 0
Evolving = 1
Recent = 2

Note: An agency position was coded as *longstanding and fairly stable* if the agency had publicly and stably adhered to that same interpretation for a number of years before the Supreme Court took the case. The coding did *not* rely on a bright-line cut-off point, such as any interpretation that was ten years old counted as longstanding. The main reason is that the category is "longstanding *and* fairly stable," so time is not determinative without a judgment of stability. Also, it was often hard to tell exactly when the agency first took the position before the Court. Finally, the concept of "longstanding" is relative: a five-year-old child's practice of two years is longstanding, while something an eighty-year-old has been doing for a couple of years is not.

For recent statutes, therefore, a longstanding and fairly stable interpretation could be embodied in a formal declaration that was less than a decade old; if the agency had taken the same position since the early days of its enforcement of the statute, the position was coded as longstanding and fairly stable. Compare

391. The tax category could have been coded differently, as Michael Graetz pointed out to us. Is it *conservative* for a court to sustain the tax load of the well-to-do taxpayers and companies who bring most of the claims against the IRS? The coding choice to label pro-IRS rulings as conservative was driven by consistency with the other categories, which reflect the conventional view that pro-government rulings are conservative. The same normative ambiguity can be seen in criminal cases: it is not inevitably *conservative* for a court to sustain federal prosecutions against purveyors of fraud, auto thieves, sexual assaulters, etc., but that is the conventional, process-driven categorization in criminal law and procedure, and the coding scheme follows that idea in the tax cases.

Bragdon v. Abbott, 524 U.S. 624 (1998), where the relevant agencies' interpretation of the ADA in 1990 had been formally adopted within a decade of the Supreme Court decision but reflected the only public interpretation those agencies had offered on the issue of AIDS coverage (and reflected the construction those agencies had placed on the Rehabilitation Act, upon which the ADA was based), with *Spector v. Norwegian Cruise Line, Ltd.*, 545 U.S. 119 (2005), where the relevant agencies took no position on the ADA issue until 2004. *Bragdon* was coded as longstanding, *Spector* as recent.

For older statutes, an interpretation was not coded as longstanding and fairly stable unless the relevant agency had adhered to it, without wobbling, for a somewhat longer period of time. As before, the coding was attentive to whether the agency's position was consistent with its prior positions. For example, *Texaco, Inc. v. Dagher*, 547 U.S. 1 (2006) (interpreting the Sherman Act (1890)), was coded as longstanding, even though the DOJ/FTC Guidelines dated from 2000; the reason is that the Guidelines apparently reflected the agencies' stance well before that date. In contrast, *Illinois Toolworks, Inc. v. Independent Ink, Inc.*, 547 U.S. 28 (2006) (also interpreting the Sherman Act), was coded as recent, even though the DOJ/FTC position was articulated in earlier 1995 Guidelines. The reason for the different treatment was that the DOJ/FTC Guideline in *Toolworks* was a renunciation of the position those agencies had taken in the prior generation (and was embedded in Supreme Court precedent the agencies were asking the Court to overrule in *Toolworks*) and so was not as stable as their interpretation in *Dagher*.

Evidence of a continuing agency interpretation was culled from the briefs in the case and from the Court's opinion.[392] The agency position did not have to be reflected in a formal rule or adjudication but did have to have repeated (quasi)public expression over a period of time. In criminal cases, a pattern of lower court opinions accepting or rejecting the Department of Justice's interpretation over a period of five years or more was sufficient evidence of a longstanding and fairly stable interpretation on the part of DOJ (which of course rarely engages in national rulemaking to announce its interpretations of the criminal code). For example, see *Cook County v. United States*, 538 U.S. 119 (2003), where DOJ's interpretation of the False Claims Act had been developed and followed in a series of prosecutions over time, ultimately winning acceptance by the Court.

In regulatory cases, the best evidence of longstanding and fairly stable agency interpretation would be legislative rules left unchanged by the agency for a relatively long period of time. For example, see *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281 (1988), where the Customs Service had issued a series of

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392. The methodology in text creates a bias in favor of *longstanding and fairly stable* interpretations because the Solicitor General's briefs almost always present the most detailed accounts of agency practice, and the Solicitor General has an incentive to present the agency's practice as longstanding and stable because that appeals to the Court's rule-of-law values.

narrowing regulations in the 1930s–50s, therefore presenting an easy case of a longstanding and fairly stable interpretation by the time the Court heard the case (and struck down one of the regulations). Equally good evidence would be public adjudications taking the same position on a point of law over a lengthy period. If the agency adjudications wandered, however, then the agency position would be considered either *evolving* (if the wandering proceeded in a direction clearly indicating that the agency position was being driven by experience with a changing world) or *recent*.

Also, good evidence of longstanding and fairly stable agency views would be public rulings by the agency or opinions by its counsel (as in *Bedroc Ltd. v. United States*, 541 U.S. 176 (2004)); agency memoranda (as in *Alaska Department of Environmental Conservation v. EPA*, 540 U.S. 461 (2004)), especially if the memoranda were contemporaneous with the statute (as in *National Archives & Records Administration v. Favish,* 541 U.S. 157 (2004)); agency compliance manuals and letters (as in *Pennsylvania State Police v. Suders,* 542 U.S. 129 (2004)); agency testimony before Congress or other public fora (as in *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000)); and so on.

If Recent, Because . . .
New Issue for the Agency = 0
New Administration = 1
New Statute = 2
Practical Experience = 3
Litigating Position = 4
Not Applicable = 999

Note: An issue was coded as a *new issue for the agency* when the agency addressed the precise issue only recently, based on the evidence outlined in the previous Note. See, for example, *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004), where the Court followed a 2002 EEOC manual, and the case was coded as involving a recent interpretation because there was no evidence the EEOC had taken a position on the issue before 2002. Often agencies will take positions on new issues when the Supreme Court requests an amicus brief from the Solicitor General; often the whole point of the Court's request is probably to get the Solicitor General or the agency to think about an issue it has not taken a public position on, and so many of these cases will be coded as a new issue for the agency. This is especially true in bankruptcy cases, where there is no agency in charge of bankruptcy policy, but the Court frequently asks for Solicitor General briefs on Bankruptcy Act issues.

Notice and Comment
No = 0
Yes = 1

Note: Cases were coded "yes" for *notice and comment* if they involved an agency rule that had been issued after notice to and comment from interested persons, companies, and groups. Because most such rulemaking that is published in the Code of Federal Regulations involves notice and comment, cases involving legislative rules were coded as yes for notice and comment unless the briefs or the judicial opinion(s) indicated otherwise. For example, in *Gonzales v. Oregon*, 546 U.S. 243 (2006), both the Solicitor General's brief and the opinion for the Court emphasized that the Attorney General's Directive was not a rule issued pursuant to the notice-and-comment process.

Acting Pursuant to Congressional Delegation of Lawmaking Authority
No = 0
Yes = 1

Note: To make this determination, the coder examined the underlying statutory authorization under which the agency was rendering the interpretation in suit. Agencies were coded as *acting pursuant to congressional delegation of lawmaking authority* if they were acting pursuant to a statutory authorization that met *either* the strict Merrill-Watts criterion (explained in the next Note) or the more lenient criterion developed by the federal courts in the 1970s, what we call the *Petroleum Refiners* criterion (explained in the Note after that). The Supreme Court's opinion in *United States v. Mead Corp.*, 533 U.S. 218 (2001), includes all the cases that would be coded "yes" under Merrill-Watts and probably includes all or almost all of the cases that would be coded "yes" under *Petroleum Refiners*. *Mead* also theoretically includes some cases falling outside both categories, namely, those where there has been an "implicit" delegation of lawmaking authority, considering the broad context of the legislation. *Mead* did not supply sufficient guidance for this study to use in coding statutory delegations, and the lower courts have not been able to derive predictable standards either. Hence, cases are not coded for *Mead*'s residual category, and delegated lawmaking authority under *Mead* might include some cases, but probably very few, if any, that are not so coded under this study's standards.

Type of Delegation
Delegation According to Strict (Merrill-Watts) Approach = 0
Delegation According to Lenient (*Petroleum Refiners*) Approach = 1
Not Applicable = 999

Note: An agency rule or order was coded as falling under the *strict approach* if the statutory delegation met the rigorous standard set forth in Thomas Merrill & Kathryn Tongue Watts, *Agency Rules with the Force of Law: The Original Convention*, 116 HARV. L. REV. 467 (2002). For statutes enacted before 1973, the Merrill-Watts standard requires that the statute vest an agency with the authority to issue rules or orders whose violation carries with it the possibility

of immediate sanctions. For example, the NLRA (1935) does not satisfy this standard, because a party prevailing before the NLRB must still go to court to obtain an order requiring the losing party to comply. Other examples of early general statutory delegations that do *not* meet the strict approach include the Bank Holding Company Act of 1956 § 5(b), 12 U.S.C. § 1844(b) (2000); Food Drug & Cosmetic Act, 21 U.S.C. § 346 (2000); I.R.C. § 7805 (2000); Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201–209 (2000); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2000); Age Discrimination in Employment Act (ADEA) of 1967 § 628, 29 U.S.C. § 628 (2000); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1682 (2000).

Statutory delegations that *do* meet the Merrill-Watts standard include the Federal Water Pollution Control Act (Clean Water Act) § 307, 33 U.S.C. § 1317 (2000) (concerning the EPA), and § 403, 33 U.S.C. § 1343 (2000) (concerning the Army Corps of Engineers); Longshoremen and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901–50 (2000) (delegating adjudication authority to the Office of Workers' Compensation Programs (OWCP) within the Department of Labor (DOL)); Securities and Exchange Act of 1933 § 10(b), 15 U.S.C. § 78j(b) (2000) (SEC); Federal Power Act, 16 U.S.C. § 824e (2000) (Federal Power Commission (FPC), now Federal Energy Regulatory Commission (FERC)); Sentencing Reform Act of 1984, 28 U.S.C. § 994 (2000). Statutory authorizations to the INS to detain, adjudicate, and deport noncitizens have the same lawmaking-delegation feature. Some agencies, such as IRS (under IRC) and DOL (under FLSA) do not have lawmaking authority under their general delegations, but their authorizing statutes have been amended to provide specific lawmaking authority (i.e., meeting Merrill-Watts) to address certain problems. See, for example, *Auer v. Robbins*, 519 U.S. 452 (1997) (DOL acting under special FLSA authorization, 29 U.S.C. § 213(a)(1) (2000)); *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996) (FDA acting under special Medical Device Amendments of 1992, 21 U.S.C. § 360(k) (2000)).

Section 405(a) of the Social Security Act, 42 U.S.C. § 605 (2000), is a slightly special case. Like the other delegations, § 409(a) does not give the SSA (now in HHS) the authority to make substantive law, and so it does not meet the Merrill-Watts standard for lawmaking delegation. See, for example, *Sullivan v. Everhart*, 494 U.S. 83 (1990). But § 405(a) does delegate to SSA the authority to make and enforce procedural rules, and some of the SSA cases involve that particular authority, which was coded as meeting Merrill-Watts. See, for example, *Sullivan v. Zebley*, 493 U.S. 521 (1990).

Merrill and Watts demonstrate that this standard had been forgotten by the 1970s and was obliterated by a series of court of appeals decisions announcing a more lenient standard. For statutes enacted in or after 1973 (a date Professor Merrill suggested to us), the Merrill-Watts standard would be satisfied by a statute vesting an agency with the authority to issue legislative (substantive) rules and engage in formal adjudications, the standard adopted in *Petroleum Refiners.* Thus, Congress enacted ERISA in 1974 and delegated general rulemak-

ing authority to the Department of Labor and the IRS, 29 U.S.C. § 1135. This delegation would *not* meet the Merrill-Watts test before 1973 but does meet it after that date. Another example is the Civil Service Reform Act (CSRA) of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (codified as amended in scattered sections of 5 U.S.C.), which creates the Federal Labor Relations Authority and vests it with NRLB-like adjudication power. Before 1973, this would not meet Merrill-Watts; after 1973 it does.

The second category is a residual one, covering agency rules or orders that might be considered authorized lawmaking, but not according to the strict Merrill-Watts standard articulated above. Thus, an agency rule or order was coded as falling under the *lenient approach* if the statutory delegation did *not* meet the Merrill-Watts standard but *did* meet the more lenient approach of *Petroleum Refiners*, which suggested that congressional grants of power to issue legislative rules or engage in formal adjudications were lawmaking delegations. Thus, the NLRB's authorization to engage in formal adjudications would meet the *Petroleum Refiners* standard but not Merrill-Watts. For another example, IRC § 7805 gives the IRS general rulemaking authority, but not power to impose sanctions (other IRC provisions do have immediate sanctions). Hence, this authority would not meet the Merrill-Watts standard and would fit into the residual category of *Petroleum Refiners*. In contrast, ERISA (1974) delegates legislative rulemaking authority to the IRS and the Department of Labor *after* Merrill-Watts pronounces that a more lenient standard has prevailed, and so ERISA cases involving IRS or DOL rules fall under Merrill-Watts and not *Petroleum Refiners*, as the coding system works for this study.

Agency Issue 1: Jurisdiction and Regulatory Authority
Agency's Jurisdiction or Regulatory Authority NOT at Issue = 0
At Issue = 1

Note: An agency interpretation was coded as relating to the *agency's jurisdiction or regulatory authority* only if the agency was asserting (or denying) its own power to regulate a whole category of conduct or activity. Examples include *Gonzales v. Oregon*, 546 U.S. 243 (2006), where the Attorney General was asserting a new authority to criminalize a doctor's prescription of drugs in compliance with a state death-with-dignity law, and *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), where the FDA was asserting a new authority to regulate tobacco products. In *National Cable & Telecommunication Association v. Brand X Internet Services*, 545 U.S. 967 (2005), the FCC opined that it did not have the authority to regulate cable companies providing broadband internet access pursuant to Title II of the Communications Act. Even though the agency was denying regulatory authority, the case was coded as relating to the agency's jurisdiction.

In contrast, if the agency were setting forth rules that regulated entities must follow or clarifying a regulatory category, the interpretation was coded as *not*

involving the agency's jurisdiction or regulatory authority. Thus, in *Bragdon v. Abbott*, 524 U.S. 624 (1998), it was not disputed that Dr. Bragdon was subject to the ADA; he only argued that the ADA did not require him to treat a patient who was infected with HIV, the virus that leads to AIDS. Hence, this was *not* a case involving the agency's jurisdiction or regulatory authority.

Agency Issue 2: Interpretation
Agency Interpretation of Own Regulation NOT at Issue = 0
At Issue = 1

Note: Like some of the other variables in this Codebook, this one can only be figured in most cases by reading the briefs as well as the opinions in the case. The agency's brief, whether a party or an amicus brief, will usually identify the relevant rule(s). If the rule does not address the issue by its plain language, the brief typically represents the agency's interpretation of its own rule. (In order to avoid the fatal tag, "litigating position," the agency brief will identify any earlier written interpretations if they exist.)

Agency Issue 3: Preemption
Preemption of State Law NOT at Issue = 0
At Issue = 1

Agency Issue 4: National Security
Agency Interpretation Does NOT address Foreign Affairs or National Security Issue = 0
At Issue = 1

Note: Issues of foreign affairs or national security include immigration, international travel and trade, military affairs, and treaty interpretation. Issues having a transnational element were coded as *foreign affairs or national security.* Thus, the issue in *Pasquantino v. United States*, 544 U.S. 349 (2005), was whether the ADA applied extraterritorially; because this had potential international implications, the issue was coded as involving foreign affairs or national security.

Decision Overall
Liberal = 0
Conservative = 1
Neutral or Mixed = 2

Note: Applies the same criteria for liberalism and conservatism as described above. Neutral decisions are those where there is no political valence for the issue decided. Mixed decisions are those where the Supreme Court ruled conservative on one issue and liberal on another issue, or split the political difference on one issue.

Decision with Respect to Agency
Case Decided in Favor of Agency's Interpretation = 0
Case Decided Against Agency's Interpretation = 1
Mixed Decision = 2

Note: *Mixed decision* captures situations in which the Supreme Court ruled for the agency with regard to some issues and against the agency with regard to others. For example, in *South Florida Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004), the Court agreed with the agency suggestion that the case be remanded, but went against the agency on other issues raised in the case. Hence, this was coded as a mixed decision with respect to the agency's interpretation.

The Court did not have to accept the agency's interpretation 100% for the decision to be coded *in favor of the agency's interpretation*. In some cases, for example, the agency will offer a broader rationale or statement of the proper interpretation, but the Court accepts a narrower rationale or version. In those cases, the coding would still be in favor of the agency's interpretation.

Outcome
Affirmed Lower Court = 0
Reversed Lower Court = 1
Remanded and/or Vacated = 2
Mixed = 3

Note: The *remanded and/or vacated* category includes cases where the Supreme Court decided an issue of law but remanded the case back to the lower court to apply the rule to the case, to consider other legal issues, or to conduct other proceedings. See, for example, *South Florida Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004). This category does *not* include cases where the Supreme Court just remands a case to a lower court for routine procedural action such as entry of a judgment consistent with the Court's opinion.

The *mixed* category includes cases where the Supreme Court affirmed in part and reversed in part.

Unanimous
No = 0
Yes = 1

Note: Some cases included both statutory and constitutional issues; this study focused only on the statutory issues. Thus, a decision was coded as unanimous if there was no dissent from the disposition of the statutory issue, even if there was non-unanimity as to the constitutional issue(s). For example, the Court in *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003), was

unanimous in concluding that the Family Medical Leave Act of 1993 applied to the states as employers (a contested issue on which certiorari was granted), but sharply divided as to the constitutionality of that application.

Concurrences
Number of concurring opinions written.

Note: As above, only concurrences as to statutory issues are noted. In *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003), there were concurring opinions as to the statutory issue (which are included in the coding), but not as to the constitutional issue.

Dissents
Number of dissenting opinions written

Note: As above, only dissents as to statutory issues are noted. For example, the Court in *McConnell v. FEC*, 540 U.S. 93 (2003), generally upheld the 2001 McCain-Feingold campaign finance law against First Amendment attack, but the majority narrowly construed § 323(d), regulating donations. Justice Kennedy's opinion dissenting on the constitutional issues also tackled and disagreed on the statutory issue, but Justice Thomas's separate constitutional dissent ignored the statutory issue. Hence, only the Kennedy dissent was coded for purposes of this study.

***Chevron* Cited**
No = 0
Yes = 1

Note: Decisions are coded as citing *Chevron* if the Court majority cited a precedent following and discussing *Chevron* and applying its two-step framework. For example, *Chemical Manufacturers Ass'n. v. Natural Resources Defense Council*, 470 U.S. 116 (1985); *INS v. Cardozo-Fonseca*, 480 U.S. 421 (1987); and *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281 (1988), were early and leading cases that followed *Chevron* and applied its two-step formula. Some subsequent Supreme Court decisions cite only *Chemical Manufacturers*, *Cardozo-Fonseca*, or *K Mart* for the two-step *Chevron* test and so were coded as citing *Chevron* itself.

***Chevron* Step Zero**
Does the Court think that the *Chevron* framework applies?
No = 0
Yes = 1

Note: Decisions are coded as applying the *Chevron* framework if the Court cited *Chevron* or a *Chevron* precedent (*Chemical Manufacturers*, *Cardoza-*

Fonseca, or *K Mart*) and then applied a deference approach consistent with *Chevron*.

Decisions are coded as *not* applying the *Chevron* framework when the Court cited *Chevron* or a *Chevron* precedent but announced that it need not decide whether *Chevron* applies, as the Court did in *California Dental Ass'n v. FTC*, 526 U.S. 756 (1999) (holding that the statute clearly supported the agency, so there was no need to determine whether *Chevron* governs). Obviously, this category also includes cases where the Court was not deferring, did not cite *Chevron* or a *Chevron* precedent, etc.

***Chevron* Step One**

Does the Court determine that Congress has clearly addressed the issue?
No = 0
Yes = 1
Not Applicable = 999

Note: Decisions are coded as *yes*, Congress has clearly addressed the issue, when the Court announces that there is an answer dictated by traditional sources of statutory meaning (statutory text, the whole act, legislative history and purpose, judicial precedent, various canons of statutory construction). It does not matter to the coding scheme whether Congress's answer is the same as, or different from, that of the agency.

Decisions are coded as *no*, Congress has not clearly addressed the issue, when the Court is unable to say for sure that there is one answer dictated by traditional sources of statutory meaning, as in *Chevron* itself. Thus, even when the Court believes that the traditional sources provide somewhat more support for one interpretation than another, but is not prepared to say that the other interpretation is precluded, the decision is coded as *no*, Congress has not *clearly* addressed the issue.

***Chevron* Step Two**

Does the Court determine that the agency interpretation is reasonable?
No = 0
Yes = 1
Not Applicable = 999

Note: Decisions are coded as *yes*, the Court determines that the agency interpretation is reasonable, when the Court applies *Chevron* (Step 0), announces that Congress has not clearly addressed the issue (Step 1), and says that the agency interpretation prevails. It is implicit in such decisions that the Court has made a judgment that the agency interpretation is "reasonable" for *Chevron* purposes. And, of course, if the Court explicitly says the agency interpretation is reasonable (Step 2), then the decision is coded as *yes*.

Reasons Cited for Reliance on Agency Interpretation

Note: For each reason-category below, decisions are coded as *no* reliance on the reason if the Court says nothing explanatory and just cites and follows *Chevron* or another deference regime (such as *Skidmore*, *Curtiss-Wright*, and so forth).

Agency Expertise
No = 0
Yes = 1

Accountability
No = 0
Yes = 1

Longstanding Agency Interpretation
No = 0
Yes = 1

Contemporaneous Agency Interpretation
No = 0
Yes = 1

Public Reliance
No = 0
Yes = 1

Rulemaking Authority
No = 0
Yes = 1

Congressional Acquiescence
No = 0
Yes = 1

Role of *Chevron*
Not Cited = 0
Cited but Not Applied = 1
Cited and Applied = 2

Note: See the Notes on *Chevron* Cited and *Chevron* Step Zero, above.

Deference Regime Invoked
No Regime Indicated, Directly or Indirectly = 0
Anti-Deference (Lenity) = 1
Consultative (*Skidmore*-Lite) Deference = 2
Skidmore or Similar = 3
Beth Israel et al. = 4
Chevron = 5
Seminole Rock = 6
Curtiss-Wright = 7

Note: "Deference regime invoked" captures the approach the Court takes towards agency deference. It does not measure whether the Court opinion was ultimately in favor of the agency interpretation, which is captured by the "decision with respect to agency" variable. Indeed, every deference regime includes both cases in which the agency interpretation is upheld and others in which it is rejected by the Court. There are *eight* possible deference regimes, listed below in reverse order (highest to lowest). Some Supreme Court decisions discuss and seem to apply more than one regime. In that event, the case was coded for the regime with the highest number. Thus, if the Court cited and seemed to apply *Seminole Rock, Chevron*, and *Skidmore*, as it did in *Barnhart v. Walton*, 535 U.S. 212 (2002), the case would be coded as *Seminole Rock*, the most deferential category.

7. Curtiss-Wright *Super-Deference.* A decision was coded *Curtiss-Wright super-deference* only if the Court announced that it was applying a special deference to executive department actions touching upon foreign affairs or national security. A decision was *not* coded *Curtiss-Wright* simply because it involved foreign affairs or national security issues. In most cases so coded, the Justices cited *Curtiss-Wright* or an analogous precedent, such as *Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (broad statement of executive authority over immigration), but we also coded the decision *Curtiss-Wright* if the Court made clear it was applying special deference. Thus, in *Department of Navy v. Egan*, 484 U.S. 518, 530 (1988), the Court deferred to the agency on security clearances, saying that, "unless Congress specifically has provided otherwise, courts traditionally [should be] . . . reluctant to intrude upon the authority of the Executive in military and national security affairs."

6. Seminole Rock *Strong Deference.* A decision was coded *Seminole Rock* only if the agency was interpreting one of its own regulations *and* the Court announced that it was following *Seminole Rock* or an analogous precedent, such as *Auer v. Robbins,* 519 U.S. 452 (1997), or *Thomas Jefferson University v. Shalala*, 512 U.S. 504 (1994). If the Court said nothing or announced the applicability of another deference regime, the coding will not invoke *Seminole Rock*. In *Christensen v. Harris County,* 529 U.S. 576 (2000), for example, the agency claimed to have been interpreting its own regulation, but the Court only applied *Skidmore* deference because the regulation was clear and did not require interpretation. Justice Scalia's dissenting opinion argued the applicability of *Chevron* and did not invoke *Seminole Rock*, probably for the reason given by the majority.

5. Chevron *Deference*. A decision was coded *Chevron* only if the Court cited *Chevron* or another *Chevron* case (*Chemical Manufacturers*, *Cardozo-Fonseca*, or *K Mart*) and followed the *Chevron* framework of analysis. More than for the previous two categories, the agency did not prevail in many of the cases where the Court was applying *Chevron* deference. For example, Justice Scalia's plurality opinion in *Rapanos v. United States*, 126 S. Ct. 2208 (2006), applied *Chevron* deference and rejected the Corps of Engineers' interpretation because it was contrary to the plain meaning of the statute.

Decisions were coded as *Chevron* when the Court applied *Chevron,* even if the coder thought the Court was wrong. For example, the Court in *Presley v. Etowah County Commission*, 502 U.S. 491 (1992), applied *Chevron* to a Department of Justice interpretation of the Voting Rights Act, even though the Act delegates no lawmaking authority to the Department, which is usually a litigant. This was, in our view, an incorrect deployment of *Chevron*, but the decision was coded as *Chevron* deference, as was *Mead Corp. v. Tilley*, 490 U.S. 714 (1989) (also an incorrect deployment of *Chevron*, in regard to a Department of Labor guidance and a letter).

4. Beth Israel *Deference.* Decisions were coded as *Beth Israel* deference if the Court applied a framework similar to *Chevron* (allowing any "reasonable" agency interpretation if Congress has not addressed the issue) but cited one of the pre-*Chevron* cases applicable to particular subject areas, including *Beth Israel Hospital v. NLRB*, 437 U.S. 483 (1978), and *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), for NLRA cases; *National Muffler Dealers Ass'n v. United States*, 440 U.S. 472 (1979), for tax cases; *Kolovrat v. Oregon*, 366 U.S. 187 (1961), and *Sumitomo Shoji of America, Inc. v. Avagliano*, 457 U.S. 176 (1982), for treaty-interpretation cases.

For some areas judgment calls were made. The Court has not applied a consistent deference approach to the Guidelines developed and interpreted by the Sentencing Commission. In *United States v. LaBonte*, 520 U.S. 751 (1997), for example, the Court discussed *Chevron* deference but ultimately applied a more general deference, which was coded as *Beth Israel*—something beyond *Skidmore* but clearly not *Chevron*. In at least one sentencing case, the Court announced that it was applying *Chevron* deference, and the case was coded as *Chevron*.

3. Skidmore *Deference.* Decisions were coded as *Skidmore* deference if the Court announced that it would give deferential weight to agency views based upon considerations of expertise, continuity, and other *Skidmore* factors. Obviously, if the Court cited *Skidmore* and said it was applying its level of deference, the coding was easy. See, for example, *Gonzales v. Oregon*, 546 U.S. 243 (2006), and *Christensen v. Harris County*, 529 U.S. 576 (2000). Even when the Court failed to cite *Skidmore,* the decisions were coded as *Skidmore* (or higher) if the Court deployed the rhetoric of "deference." For example, in *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81 (2002), the Court gave a Department of Labor rule "substantial weight" in the interpretation of the FMLA; the decision was coded as *Skidmore*, even though the Court did not cite *Skidmore*.

In *Smith v. City of Jackson*, 544 U.S. 228, 238–39 (2005), the Court said it was deferring to the EEOC's ADEA Guidelines, without citing a particular deference regime. Because the Court has consistently used *Skidmore* and not *Chevron* for EEOC interpretations of Title VII and the ADEA, for example, in *EEOC v. Aramco*, 499 U.S. 244 (1991), and because the *Smith* decision emphasized *Skidmore*'s functional factors, this decision was coded as *Skidmore*.

The Court in *Lopez v. Monterey County*, 525 U.S. 266 (1999), announced it

was giving "substantial deference" to the Department of Justice's VRA interpretation. This decision might have been coded as *Beth Israel*, for the Court cited a pre-*Chevron* case (*Sheffield*), but the earlier case had emphasized the *Skidmore* factors of expertise and practical application. The *Beth Israel* category was reserved for pre-*Chevron* cases that emphasize *Chevron*-like delegations of lawmaking or gapfilling authority to agencies, not agency expertise and consistency.

In *Meyer v. Holley*, 537 U.S. 280 (2003), the Court mentioned both *Chevron* and *Skidmore* in deferring to a HUD interpretation. Normally, under the rule of the highest-numbered regime, the decision would have been coded as *Chevron*, but Justice Breyer's opinion for the Court only emphasized the functional *Skidmore* factors, and so the decision was coded as *Skidmore*. This was rare and may have been unique in this regard.

*2. Consultative (*Skidmore-*Lite) Deference.* This is a category that arose from the coder's perception that there were many cases where the Court's statutory interpretation was significantly influenced by agency-generated factual materials, interpretations, and recommendations—but where the rhetoric of "deference" or interpretive "weight" was substantially absent. Most of the decisions could have been coded as *Skidmore* (hence our nickname, *Skidmore*-Lite), because the agency inputs had functional value for the Court, and we would have no quarrel. The reason these cases are placed in a separate category is that the decisions were *not* written along lines of "deference," as *Skidmore* clearly is. Instead, the Court built on agency inputs to reach a decision, or used agency inputs to confirm the correctness of a decision. Hence, the separate category in this study.

There were several kinds of cases where this category was particularly apt. *First* are the decisions where the agency provides factual materials relevant to the statute as understood by the Court. An example is *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006). The Court not only rejected Justice Thomas's argument for applying *Curtiss-Wright* super-deference to the President's interpretation of the relevant treaties and military justice laws, but declined to invoke either *Chevron* or *Skidmore* deference in responding to the President's arguments. However, as to one issue the statute imposed a practicability requirement, and as to that the Court announced itself open to persuasion by the superior factual understanding the executive branch brought to that issue (though the Court ultimately disagreed with the President's bottom line). *Id.* at 2791. For that reason, *Hamdan* was coded as consultative deference. For another example, see *Schaeffer v. Weast*, 546 U.S. 49, 51, 59 (2006), where the Court relied on agency data on the enforcement of IDEA. Generally, a decision was *not* coded as consultative deference for this reason unless the Court explicitly acknowledged the value of the agency's factual inputs.

Second, cases were coded as consultative deference when the Court followed an agency amicus brief (usually solicited by the Court) propounding a distinctive resolution of the statutory issue before the Court. Thus, in *Ministry of*

Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Elahi, 546 U.S. 450 (2006), the Court acknowledged and closely followed the Department of State's amicus suggestions as to the proper (and safe) construction of the Foreign Sovereign Immunities Act (1976). In *Texaco, Inc. v. Dagher*, 126 S. Ct. 1276 (2006), the Court closely followed the Solicitor General's brief and the DOJ/FTC Antitrust Guidelines, but without explicit acknowledgment in the opinion for the Court. Nonetheless, the decision is coded consultative deference because the agency input *significantly influenced* the Court's interpretation. In *Associates Commercial Corp. v. Rash*, 520 U.S. 953 (1997), a bankruptcy case, the Court adopted the test proposed by the Solicitor General's amicus brief, and so that decision was coded as consultative deference. Cases are *not* coded as consultative deference when the United States was a party to the case, as in criminal matters, and the Court agreed with and followed its brief on the merits; in these cases, the agency is just another winning litigant. Consultative deference as a category in this study is reserved for those cases where the United States' participation is in a lawmaking or judge-like capacity, rather than as a litigant.

Third, cases were coded as consultative deference when the Court used an agency rule, policy, or interpretation as a *premise* or *step* in the Court's chain of reasoning (but without announcing at any point that the Justices were "deferring" or giving "weight" to the agency rule, etc.). For example, the Court in *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999), rejected the Independent Counsel's and DOJ's aggressive reading of the criminal law barring "unlawful gratuities." Although the Court had problems with the government's plain meaning arguments, the clinching argument for Sun-Diamond was that the government's broad reading undermined the regulations issued by the Office of Government Ethics. The regulations were part of the broad tapestry of law the Court was willing to consider. Likewise, in *Illinois Tool Works Inc. v. Independent Ink, Inc.*, 547 U.S. 28 (2006), the Court counted revised DOJ/FTC Antitrust Guidelines as one reason it could overrule an old Sherman Act precedent that had been urged upon an earlier Court by the same agencies.

1. Anti-Deference. A decision was coded as *anti-deference* when the Court applied a presumption against the agency interpretation of the statute.

Most of the anti-deference cases were those where the Court invoked the rule of lenity (which construes ambiguous statutes in favor of criminal defendants). Most substantive criminal cases were *not* coded as anti-deference because the Court did not even mention the rule of lenity. Any mention of the rule of lenity triggered this coding, even if the mention were at the end of the opinion and even if the Court still accepted the Department of Justice's interpretation. A possible exception to this precept is *Reno v. Koray*, 515 U.S. 50 (1995), where the Court briefly discussed the rule of lenity as it might apply to a Bureau of Prisons interpretation relating to a defendant's conditions of confinement. Because the Court ultimately applied *Skidmore* deference to the Bureau's interpre-

tation, the case was coded as *Skidmore* and not anti-deference.

Cases involving the constitutional avoidance canon (favoring interpretations that do not raise serious constitutional concerns) were coded as *anti-deference* if the Court anchored its opinion on the canon *and* it cut against the agency interpretation. For example, in *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568 (1988), the Court rejected an NLRB interpretation because it raised serious constitutional concerns. The case was coded as *anti-deference* because the Court's discussion started with the avoidance canon and concluded that there was no reason to determine *Chevron*'s applicability because of the constitutional problem. The Court structured its opinion the same way in *Solid Waste Agency v. Army Corps of Engineers*, 531 U.S. 159 (2001), which rejected the Corp's construction of the Clean Water Act Amendments without reaching the *Chevron* issue, and so the case was coded as anti-deference. Contrast *Rapanos v. United States*, 126 S. Ct. 2208 (2006), where the plurality opinion opened with *Chevron*'s applicability and mentioned the avoidance canon as a reason supporting the plurality's plain meaning analysis; hence, *Rapanos* was coded as *Chevron* deference and was not coded as anti-deference.

We only included in this category those avoidance-canon cases in which the Court used the canon to create a presumption against the agency interpretation; we did not include cases that used the avoidance canon to rule in the agency's favor.

0. No Deference. A decision was coded as *no deference regime* when the Court applied its traditional sources of statutory meaning, without citation to any deference regime and without any apparent reliance on the special facts or arguments advanced by the agency (in an amicus brief, etc.). The agency view might prevail under this regime, and the Court might in fact agree with the agency's argument(s), but unless the Court cited to the agency's position or its factual presentation *or* followed the unique argumentation of the agency's brief, the decision was coded as *no deference regime.*

Interpretive Reasoning

Every opinion in every case was coded according to the methods of statutory interpretation relied on by the Justices. The methods of statutory interpretation evaluated are outlined below.

Each method of interpretation was coded with the following rubric.

0	No reference to this method of interpretation
1	Some reference to the method, but not meaningfully relied on to advance reasoning
2	Genuine/positive reliance on method that helps bring about the result reached

3	Method is “a” or “the” key determining factor in the reasoning process
999	Indicates that ranking is not applicable because no such opinion in case

Note that opinions are abbreviated as follows:

Majority = M
Concurrence(s) = C1, C2, C3, etc.
Dissent(s) = D1, D2, D3, etc.

Thus, in the dataset, “PlainM” is the column that lists reliance on plain meaning in the majority opinion (0, 1, 2, 3, or 999), while “PlainC1” is the column that lists reliance on plain meaning in the first concurrence (0, 1, 2, 3, or 999), and so on.

The methods of statutory interpretation that were evaluated are:

Plain Meaning

This method includes reliance on how an ordinary speaker would interpret the relevant statutory language, considering dictionaries, grammar, usage, and the linguistic canons such as *inclusio unius*. If an opinion discussed the text and found it ambiguous, it was coded as l; if the opinion found a textual “plain meaning,” it was coded as 2 or 3 depending on the reliance on this plain meaning in the opinion.

Whole Act

This method includes the whole-act canons, such as the rule against surplusage, the meaningful-variation maxim, etc. If an opinion discussed the whole act and found it ambiguous, it was coded as l; if the opinion found that the whole act established or supported a “plain meaning,” it was coded as 2 or 3 depending on the reliance on this reasoning in the opinion.

Whole Code

This method considers how other statutes shed light on the interpretation of the statute at issue. It includes the *in pari materia* rule, references to borrowed statutes, the presumption against implied repeals, etc. If an opinion discussed the whole code and found it ambiguous, it was coded as l; if the opinion found that the whole code established or supported a “plain meaning,” it was coded as 2 or 3 depending on the reliance on this reasoning in the opinion.

Legislative History

This method considers reliance on legislative history, such as committee reports and floor statements. It includes reliance on “subsequent legislative

history," but not legislative inaction. If an opinion discussed the legislative history and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the legislative history confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the legislative history provided an independent basis for a statutory interpretation, it was coded as 3.

Legislative Purpose

This method considers reliance on references to what Congress meant to accomplish, the mischief aimed at being remedied, and general policy justifications imputed to a statute. (It also includes the purpose/policy behind a Constitutional provision when that is applicable.) If an opinion discussed the legislative purpose and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the legislative purpose confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the legislative purpose provided an independent basis for a statutory interpretation, it was coded as 3.

Stare Decisis

This method includes reliance on the stare decisis doctrine and more general reliance on past decisions as authoritative or probative. If an opinion discussed precedent(s) and found it/them irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that precedent confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that precedent provided an independent basis for a statutory interpretation, it was coded as 3.

Legislative Acquiescence

This method includes reliance on evidence that the post-enactment Congress agreed with the agency view (for example, by ratifying the view when it reenacted or amended the statute, or by acquiescing in the agency view by leaving it intact after learning of it). If an opinion discussed legislative acquiescence and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that legislative acquiescence confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that legislative acquiescence provided an independent basis for a statutory interpretation, it was coded as 3.

Common Law

This method includes reliance on common law meanings of terms used in statutes, as well as common law rules or baselines that are presumptively left

in place or incorporated into statutes. If an opinion discussed the common law and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the common law confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the common law provided an independent basis for a statutory interpretation, it was coded as 3.

Federalism Canons

This method includes the presumptions and clear-statement rules the Court has developed to protect federalism values, including the rules that judges ought not presume that Congress meant to preempt laws in which states are exercising their traditional police powers; that Congress must use specific language to abrogate state Eleventh Amendment immunity; etc. If an opinion discussed a federalism canon and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the canon confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the canon provided an independent basis for a statutory interpretation, it was coded as 3.

Avoidance Canon

This method includes application of the rule that when a statute is susceptible of two readings, one of which raises "serious constitutional questions," judges should adopt the reading that "avoids" those questions. If an opinion discussed the avoidance canon and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the canon confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the canon provided an independent basis for a statutory interpretation, it was coded as 3.

Due Process Canons

The method encompasses the rule of lenity, the notion that ambiguous penal statutes should be construed in favor of defendants. If an opinion discussed the rule of lenity and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that lenity confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that lenity provided an independent basis for a statutory interpretation, it was coded as 3.

Other Substantive Canons

This category absorbs residual substantive cannons, such as the rules presuming Congress not to invade the inherent powers of the other branches; not to apply regulations outside the territorial limits of the United States; to protect the rights of Native Americans; and so forth. If an opinion discussed a

substantive canon and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the canon confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the canon provided an independent basis for a statutory interpretation, it was coded as 3.

Votes of Individual Justices (by Name)

The vote of each justice is recorded with a three digit code. The first two digits indicate the opinion.

10 = Majority
21 = Concurrence 1
22 = Concurrence 2
23 = Concurrence 3
31 = Dissent 1
32 = Dissent 2
33 = Dissent 3

The third digit indicates whether the judge wrote the opinion (0) or joined it (1). So, for example, a judge who wrote the second concurrence would be coded as 220. Judges are only coded for one opinion. If a judge wrote an opinion, s/he is automatically coded for that opinion. If a judge wrote or joined a concurrence, s/he is coded for the concurrence, even if s/he also joined the majority.

0 = Not on Court
400 = Did Not Participate in Decision

Authorship of Opinions for Majority, Concurrence(s) and Dissent(s)

Not Applicable Because No Such Opinion in Case = 999
Brennan = 1
White = 2
Marshall = 3
Burger = 4
Blackmun = 5
Powell = 6
Rehnquist = 7
Stevens = 8
O'Connor = 9
Scalia = 10
Kennedy = 11
Souter = 12
Thomas = 13
Ginsburg = 14

Breyer = 15
Roberts = 16
Alito = 17
Per Curiam = 18
Joint = 19