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*May It Please the Chief? Opinion Assignments in the Rehnquist Court**

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Theory: Majority opinion assignments made by the Chief Justice of the Supreme Court can be accounted for with both organizational and attitudinal models of behavior.

Hypotheses: The likelihood that the Chief assigns an opinion to a justice depends upon the importance of each case, the size of the initial majority coalition, the timing of the decision, and each justice's expertise, efficiency, workload, and policy preferences.

Method: A discrete choice model is used to test a multivariate model of the assignments made by Chief Justice William Rehnquist.

Results: Chief Justice Rehnquist's assignments are determined by the Court's organizational needs, rather than the Chief's policy preferences.

The Chief Justice is in a unique position to shape the decisions of the Supreme Court. One of the Chief Justice's most important tools is his prerogative to assign the Court's opinion when he is in the majority (Murphy 1964). The power of this tool goes beyond the ability to affect the outcome of the case, that is, who wins and who loses, but stems from the importance of the opinions issued by the Court. At its most basic level, opinion assignment in the Supreme Court is critical because the majority opinion sets the law of the land and precedent for future cases. As a result, Supreme Court opinions establish referents for future behavior and thus have an impact beyond the parties that are principals in the litigation (Knight 1992; North 1990).

The Chief's authority to assign the majority opinion can have significant ramifications on the legal rules adopted by the Court. The Chief can

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The analysis is based on data contained in or derived from *United States Supreme Court Judicial Database, 1953-1990 Terms*, 3rd release (Spaeth 1992), Lexis/Nexis, or the docket books of Justice Thurgood Marshall. Marshall's docket books are available at the Library of Congress, Manuscript Room. All of the data needed to replicate this analysis are available from the authors. The model was run using Stata's Conditional Logistic Regression procedure.

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affect the impact of a ruling by assigning an opinion to a justice who is expected to write an opinion of a certain scope and a particular legal basis (Danelski 1989). This is especially true given the discretion the author of the majority opinion has to justify the opinions reached by the Court. This power is highlighted by Justice Douglas's anger over Chief Justice Burger's assignment of *Roe v. Wade* (1973) in spite of Burger's apparent failure to support the majority in conference. In a memo that he circulated to his fellow brethren, Douglas (1972) argued that

The matter of assignment is not merely a matter of protocol. The main function of the Conference is to find what the consensus is. . . . When, however, the minority seeks to control the assignment, there is a destructive force at work in the Court. When a Chief Justice tries to bend the Court to his will by manipulating assignments, the integrity of the institution is imperiled.

Douglas's memo suggests that both he and Burger recognized the importance of controlling the assignment to advance their respective policy positions.

Given the centrality of the assignment process to Court outcomes, students of the Court have sought to explain the politics of assignments. It has been argued that the Chief Justice uses this tool in several, and potentially contradictory, ways. Some scholars have suggested that the Chief secures his policy preferences by assigning the case to an ideologically compatible justice. Others have suggested that he tries to hold an unstable majority coalition together by assigning the opinion to the most moderate member of the majority. Still others have suggested that the Chief attempts to enhance the efficiency of the Court by assigning opinions to justices who have an expertise in the issues related to the opinion. And others, including Chief Justice Rehnquist himself, have argued that the Chief assigns opinions equitably to promote harmony among all of the justices (Rehnquist 1987).

Although earlier studies have explored the politics of opinion assignment, we build on these works in two respects. First, with rare exception (Cook 1992), scholars have not developed a multivariate model of opinion assignment. As a result, our understanding of the dynamics of the Chief's assignments is incomplete. Without subjugating individual variables to multivariate controls, our understanding of the relative influence of any particular variable is tenuous. Second, earlier studies examine aggregate patterns of opinion assignment. None of the earlier studies has modeled the Chief Justice's decision with a case-level unit of analysis. Through a discrete choice model, a variant of the multinomial logit that allows us to model a decision with several alternatives, we estimate the likelihood that

the Chief will assign the decision to each member of the Court's majority. In this paper, we use data collected from the papers of the late Justice Thurgood Marshall to test a multivariate model of Chief Justice William Rehnquist's opinion assignment decisions in the 1987 through 1989 terms.¹

Explanations of Supreme Court Opinion Assignments

Previous portrayals of the assignment process suggest two alternative approaches to modeling the politics of assignments. The attitudinal model portrays the Chief as utilizing assignment authority to shape judicial outcomes (Segal and Spaeth 1993). According to this model, the Chief uses the assignment process to further his own policy goals. This can be accomplished in several ways. Whenever possible, the Chief rewards his coalition within the Court by assigning cases to justices who are ideologically proximate to himself (Murphy 1964; Ulmer 1970; Rohde 1972; Rohde and Spaeth 1976). This tendency may be particularly evident when the case is especially salient. The Chief, of course, can be even more assured of an opinion that is consistent with his preferences if he writes it himself. A Chief Justice, consequently, will self-assign opinions in those cases that are especially important (Slotnick 1978; Brenner 1993). Alternatively, a Chief may attempt to preserve a fragile majority, and his preferred outcome, by assigning the opinion to a moderate member of the majority (Murphy 1964; Rohde 1972; Rohde and Spaeth 1976).²

In contrast to the attitudinal model, other students of the Court have proposed an "organizational needs" model (Baum 1985, 150) in which the Chief distributes the workload evenly among justices (Rehnquist 1987,

¹Because the Chief Justice assigns approximately 80–85% of the Court's majority opinions (Segal and Spaeth 1993, 262), our study focuses on the Chief's assignments. The senior associate justice, nevertheless, assigns a significant number of opinions (Slotnick 1988; Johnstone 1992).

²This strategy may not work. Brenner and Spaeth (1988) discovered that during the Warren Court a marginal justice of a minimum winning coalition was no more likely than any other member of the coalition to maintain the original coalition.

For different reasons, Brenner, Hagle, and Spaeth (1990), Danelski (1989), Ulmer (1970), and McLauchlan (1972) agree that the Chief Justice is more likely to assign highly contested opinions to the pivotal justice. Brenner, Hagle, and Spaeth (1990) suggest that one reason the marginal justice is favored in cases with a minimum winning coalition is to avoid the breakup of the original majority and thus the need to reassign the majority opinion. Danelski (1989) argues that this strategy is designed to encourage dissenters to join the opinion of the court. Brenner, Hagle, and Spaeth's (1990) analysis of docket books demonstrates that the marginal justice's authorship of a majority opinion rarely convinces dissenters to join the majority. Ulmer (1970) claims that Chief Justice Warren assigned cases to the pivotal justice to obscure his inability to lead the Court. McLauchlan (1972) argues that the pivotal justice is assigned the case to promote court harmony.

297; Spaeth 1984), assigns cases to those justices who are most efficient (Brenner and Palmer 1988) and encourages specialization by routinely assigning similar cases to the same justice (Brenner 1984; Brenner and Spaeth 1986). By equitably distributing cases among all the justices, the Chief is able to promote Court harmony and thus facilitate Court operations. By assigning cases to those justices who are most efficient, the Chief enhances the number of cases the Court can handle and reduces the time pressure that occurs at the end of each term. By encouraging specialization, the Chief Justice may both increase the quality of Court opinions and reduce the time individual justices consume in crafting their opinions.

To empirically test hypotheses drawn from these models, students of the Court have analyzed either the number of cases assigned to each justice and/or the opinion assignment ratio (OAR) for each justice. Because the raw number of assignments is sensitive to a justice's "availability" for assignment of majority opinions, most contemporary scholars have utilized the OAR, which is simply the percentage of the time a justice is assigned an opinion when he or she is in the majority.³ When studying the Chief Justice's assignment patterns, students of the Court have based their OAR calculations on those cases where the Chief Justice is in the majority.

Comparisons of the OAR for each justice have revealed that although the justices have a relatively equal workload, the Chief disproportionately assigns cases to those who are ideologically proximate to him (Segal and Spaeth 1993). It has also been shown that the more recent Chief Justices (Warren, Burger, and Rehnquist) have been more equitable than their immediate predecessors (Hughes, Stone, and Vinson) (Segal and Spaeth 1993, 269; Slotnick 1979; Spaeth 1984; Davis 1990). In showing that certain justices have a disproportionately large OAR for certain types of cases, Brenner and Spaeth argue that Chief Justices Warren (Brenner 1984) and Burger (Brenner and Spaeth 1986) promoted specialization among associate justices. Because justices who are ideologically proximate to the Chief Justice (or the Chief Justice himself) are disproportionately assigned important cases, some scholars conclude that Chief Justices frequently promote their policy preferences on especially salient issues (Rohde 1972; Rohde and Spaeth 1976; Slotnick 1978; Spaeth 1984; Davis 1990; Cook 1992). By looking at the assignment patterns on cases where the majority is a minimum winning coalition, Rohde (1972), Danelski (1960), Rohde and Spaeth (1976), and Brenner and Spaeth (1988) demonstrate that the marginal justice disproportionately writes the majority opinion. Thus, the most sophisticated and theoretically rich studies have suggested that the nature of the

³Because of the limited availability of information about how justices initially voted during conference, the OAR is usually based upon the final votes.

assignment process depends upon the identity of the Chief Justice, the size of the majority coalition, and/or the importance of the case being decided (Rohde 1972; Rathjen 1974; Rohde and Spaeth 1976; Slotnick 1978, 1979; Brenner 1982, 1984; Segal and Spaeth 1993).

Despite the substantial literature on opinion assignment, our understanding of the Chief's assignment decisions is far from complete. As evidenced above, the current literature has examined many relevant factors, but has done so one at a time. Judicial scholars have thus created a portrait of opinion assignment that focuses on individual factors without placing these factors in the broader context. With the exception of Cook (1992), there has been little effort to bring all of these explanations together with a single coherent explanation. Without subjugating individual variables to multivariate controls, our understanding of the relative influence of any particular variable is tenuous. While we know that both attitudinal and organizational factors play an important role in opinion assignment, judicial scholars have not disentangled the effects of each factor from the others. Multivariate analysis is required to accurately assess the independent effect of each factor.

Furthermore, since earlier work used aggregate patterns to test hypotheses of individual behavior, we might question whether the conclusions they drew will be sustained at an individual level. For instance, it is impossible to interpret the Chief's behavior if at the end of the term justices who have similar policy preferences have a large number of majority opinion assignments from the Chief and a relatively low OAR and justices who are ideologically distant from the Chief have a high OAR and relatively few assignments. Aggregate patterns of opinion assignment may display an ideological or an equitable pattern, but this begs the question of whether the Chief's decision in a particular case is motivated by his policy convictions or his sense of fairness. This is better tested through a model that examines the Chief's decision using a case-level of analysis.

In this paper, we build on the numerous explanations that other judicial scholars have previously explored to construct a multivariate model of the Chief Justice's opinion assignments, examining the Chief's decision in each case that he assigned. Such an approach enables us to assess the independent impact of several attitudinal and organizational factors on the Chief's assignment decisions, while controlling for all other relevant factors.

A Multivariate Model of Assignment Decisions

The Chief Justice faces both strategic and organizational demands. Inevitably, both sets of demands affect the assignments that he makes. Acting in a strategic context, he tries to make assignments that maximize his policy preferences. To accomplish this, the Chief prefers to have opinions written

by those whose policy views most closely match his own. For Chief Justice Rehnquist, this suggests that opinions are disproportionately assigned to conservative members of the Court. Of course, the Chief's ability to shape the outcome is greatest if he writes the opinion himself. These patterns should be particularly pronounced when the case is especially salient, since these cases are likely to have the most pronounced political and legal impact.

While we expect Chief Justice Rehnquist to favor his conservative associates, the Chief is more likely to assign cases to those justices who are ideologically distant when one of two conditions is met: either every justice agrees with the Chief or the Chief is positioned in a fragile majority. Because the Chief tries not to alienate a large contingent of the Court, the Chief needs to assign some cases to justices who are not his ideological allies. By assigning cases where a consensus exists to a more moderate justice, Rehnquist can prevent the alienation of the court's moderates without setting back his policy goals. Thus, we expect Rehnquist to be most willing to assign moderate justices unanimous cases.

In addition to preventing the alienation of any of the Court's ideological factions, the Chief wants to ensure that his preferences are supported by the majority of the Court. Toward this end, he may reward those members whose views are more distant from his own, but who are willing to support his position. Indeed, Danelski (1960, 1989) and Rohde (1972) have suggested that ideological crossovers are more likely to be rewarded when the Chief is part of a minimum winning coalition.

The expectations about the use of opinion assignments to further policy goals suggest five hypotheses.

Hypothesis 1: The Chief Justice is more likely to assign cases to associates who are ideologically aligned with himself.

Hypothesis 2: The Chief Justice is more likely to assign important cases to an associate who is ideologically proximate.

Hypothesis 3: The Chief Justice is more likely to assign important cases to himself.

Hypothesis 4: The Chief Justice is more likely to assign unanimous cases to an associate who is not an ideological ally.

Hypothesis 5: Under conditions of a minimum winning coalition, the Chief Justice is more likely to assign a case to a justice who is ideologically moderate.

Although the Chief Justice acts in a strategic context, he acts in an institutional context as well. His personal policy preferences can drive his opinion assignments only to a certain extent. Like any organization, the Court faces institutional demands that restrict the activities of individual members. One dimension of institutional context is the Court's workload.

As the term progresses, justices may increasingly face the pressure of completing their opinions prior to the end of the term. The actions of the Chief Justice are likely to be affected by each justice's ability to complete the cases that have been assigned to them (Brenner and Palmer 1988). Indeed, Chief Rehnquist has written that "As the term goes on, I take into consideration the extent to which the various justices are current in writing and circulating opinions that have been previously assigned" (1987, 297). Because of the Court's tradition of adjourning at the beginning of July, the Chief may feel especially constrained at the end of each court term. It is the Court's calendar that led Rehnquist to discuss the need "to avoid the annual 'June crunch,' at which time so much of our work seems to pile up" (Rehnquist 1989).

A second dimension is the expectation of each justice that he or she will have the opportunity to write a reasonable proportion of the Court's majority opinions. While reflecting on his years as an associate justice, Rehnquist explains "I know . . . how important the assignment of the cases is to each member of the Court. . . . When I was an associate justice I eagerly awaited the assignments. . . ." (1987, 296). Because of the importance that the justices attach to the assignment processes, Rehnquist believes that "it is desirable that it (the assignment process) be discharged carefully and fairly" (1987, 297). Presumably, a Chief concerned about equity would attempt to equalize the number of assignments each justice receives. In light of the Chief's concerns about equality, coordination with the senior assignor is important. As Chief Justice Burger (1978) explained "Even one change in [opinion assignments] has a 'domino impact on all other assignments. . . ." As a result, the assignment decisions will be affected by the assignments made by the majority's senior justice when Rehnquist votes with the minority.

A third dimension of the Court's institutional context is comprised of the skills and experience of the associate justices who serve with the Chief. By assigning cases to those justices with the relevant substantive expertise, the Chief is able to reduce the research time that the opinion writer needs and possibly improve the quality of the court's opinion (Brenner and Palmer 1988). As taskmaster for the Court, the Chief must make an effort to ensure the smooth and efficient operation of the Court.

These institutional needs suggest four additional hypotheses.

Hypothesis 6: The Chief Justice is less likely to assign cases to justices who have received assignments from other associate justices.

Hypothesis 7: The Chief Justice is more likely to assign cases to justices who have substantive expertise in the type of case being considered.

Hypothesis 8: The Chief Justice is more likely to assign cases to justices who write their opinions in a timely manner.

Hypothesis 9: Toward the end of each term of the court, the Chief Justice is more likely to assign cases to justices who take the least amount of time to prepare opinions.

Data and Methods

According to Court custom, when the Chief votes with the majority at conference, he or she assigns the case; when the Chief is in the minority, the senior associate justice in the majority assigns the case. Although who will assign a case is determined by votes cast at conference, assignment decisions are not made during conference. Instead, the Chief Justice's chambers release assignment sheets approximately eight times a term.⁴ These sheets list the assignments made by the Chief and by any other justice who had the opportunity to make an assignment.⁵ By relying upon the initial assignment sheets that are available in Justice Thurgood Marshall's papers, it is possible to systematically study the assignment decisions that have been made by Chief Justice Rehnquist.⁶

To test the assignment hypotheses, we use data from the Court's docket during the 1987–89 terms. This time period provides the longest natural court occurring during the Rehnquist court for which original data is available. The dependent variable is whether or not a member of the Supreme Court who voted with the majority was initially assigned the majority opinion. If a particular justice was assigned an opinion, it is coded as 1, and 0

⁴During the 1987–89 terms, exactly eight assignment sheets were circulated. During the 1989 terms, one case was argued and assigned after the last assignment sheet had been issued.

⁵According to both Rehnquist (1987, 296) and an anonymous interview with a former clerk, justices usually discover that they have been assigned an opinion when assignment sheets are circulated. The assignment sheets issued during Rehnquist's tenure clearly state who is being assigned a case and who is making the assignment.

⁶Previous studies of the Chief's assignment decision have usually determined the opinion assignor and the justice assigned by making two assumptions. First, it is assumed that assignment was made by either the Chief (or the most senior associate justice) who eventually voted with the majority. Second, it is assumed that the person who wrote the final majority opinion received the initial assignment. Both assumptions result in some degree of measurement error (Palmer 1990; Segal and Spaeth 1993; Cook 1992). For example, Palmer's study of the Vinson Court suggests that the first assumption would lead to misattribution of the assignor 16% of the time (1990, 149). Cook's (1992) study of opinion assignments during the Burger Court reveals that the first assumption would lead to a misidentification of the assignor in approximately 5% of the cases. Our analysis demonstrates that during the 1987–89 terms, an assumption that Chief Justice Rehnquist assigned every case in which he was a member of the final majority would be incorrect in 18 of 334 cases (5.4%) where Chief Justice Rehnquist eventually voted with the majority. Our analysis also shows that of the 398 majority opinions released during the period included in our study, 386 (97%) were written by the justice who received the initial assignment.

Table 1. Cases Assigned by Chief Justice Rehnquist: 1987–89 Terms

Justice	# Voted With Majority	# Majority Opinions Written	Opinion Assignment Ratio	# Important Majority Opinions Authored
Blackmun	222	32	14.4	1
Brennan	177	18	10.2	0
Kennedy	238	26	10.9	0
Marshall	181	35	19.3	1
O'Connor	282	41	14.5	3
Rehnquist	316	43	13.6	3
Scalia	278	37	13.3	1
Stevens	230	36	15.7	1
White	289	48	16.6	2
TOTAL	2,213	316	14.3	12

Source: Derived from the papers of Justice Thurgood Marshall (The Library of Congress) and Spaeth (1992).

otherwise. We restrict our analysis to the 316 cases in which Chief Justice Rehnquist was in the initial majority.⁷ Rehnquist voted with the majority in conference in 79.4% of the 398 cases heard by the Court during the 1987–89 terms. Because our dependent variable is whether or not a justice who voted with the majority wrote the majority opinion, the data set consists of one observation for each majority vote. To determine who cast a vote with the majority at conference, we rely upon Justice Marshall's docket book.⁸ In the 316 cases, 2,213 majority votes were cast. For those 316 cases included in our analysis, Table 1 shows the number of times each justice voted with the majority, the number of majority opinions that he or she wrote, and his or her OAR.

⁷These decisions are limited to cases that were orally argued before the Court and in which the Court released a signed opinion. We omit *per curiam* decisions, memorandum decisions, and decrees. Although Rehnquist eventually voted with the majority in 334 of the 398 cases (83.9%) heard during the 1987–89 terms, the assignment sheets make clear that Rehnquist only assigned 320 of these cases. Marshall's docket book suggests that in 14 of 334 cases where Rehnquist eventually voted with the majority, he initially voted with the minority. Because we omit four cases, as explained in note 9, our analysis is based upon 316 of Rehnquist's assignments.

⁸For some cases, Marshall's docket book was ambiguous enough that it was not possible to determine how a justice voted at conference. For these cases, we went through Marshall's case files to see if there were any memos that provided information about the initial conference vote. In a few cases, we were unable to determine how a judge voted in conference. For these cases, we assumed that the vote cast in conference was consistent with the final vote cast by the justice. Information on the final votes cast was obtained from Spaeth (1992).

We estimate the likelihood that Rehnquist assigns the opinion to each justice in the majority. As noted above, our unit of analysis is whether a justice in the majority is assigned the opinion, measured as a dichotomous variable. Normally, one would use logistic regression to estimate the likelihood that a specific choice will be made (King 1989; Aldrich and Nelson 1984). Logistic regression is based on the assumption that the observations are independent and identically distributed binary variables. In these data, however, the observations are not independent. The likelihood that the opinion will be assigned to O'Connor, for instance, is dependent on the probability that it will be assigned to another member of the majority, say, Scalia. Under these conditions, a more appropriate estimation strategy is a multinomial logit model, the discrete choice model (Greene 1993; Maddala 1983). Such a model allows us to estimate the likelihood that the Chief will assign an opinion to a specific justice, conditioned upon the likelihood that the opinion will be assigned to another justice. This is reflected in the functional form of the multinomial logit model:

$$\text{Prob } [y_i = j] = \frac{\exp(\beta'x_{ij})}{\sum_{k=1}^m \exp(\beta'x_{ik})}$$

where $\text{Prob } [y_i = j]$ is the probability that Rehnquist will assign the opinion to justice j in each case i , β is the vector of coefficients, x is the vector of characteristics unique to each justice, k is each justice in the majority, and m equals the number of justices in the majority (Maddala 1983, 42). Thus, the alternative that is chosen is based on the characteristics of that justice given the other available choices.

Justice-Specific Attributes

Ideology. To assess each justice's ideological compatibility with Rehnquist on each case, we use issue-specific interagreement scores between each associate justice and Rehnquist. To determine this score, we use 12 substantive value groups identified by Spaeth (1992).⁹ For each of these areas we use the interagreement score between each justice and Rehnquist from the beginning of the Rehnquist court through the 1990 term (Epstein

⁹Spaeth (1992) identified 13 value groups. His thirteenth group consists of miscellaneous cases. Rehnquist was in the majority in four such cases during the 1987–89 terms. Because of the ambiguous nature of this value area, we dropped these four cases from our analysis.

et al. 1994, Table 6-5). From these scores we rank order all nine justices.¹⁰ A low score indicates that a particular justice had a high interagreement score with Rehnquist. Since Rehnquist always had a 100% interagreement score with himself, he consistently had the lowest ranking for all 12 categories. Hypothesis 1 leads us to expect this score to be negatively correlated with a justice's likelihood of being assigned a case.

Equity: Hypothesis 6 suggests that the Chief is unlikely to make assignments to those justices who receive a disproportionate share of senior associate justice majority opinion assignments. To test this hypothesis, we calculate the number of associate justice assignments that each justice had on every assignment sheet.¹¹ If Rehnquist is concerned about equalizing the distribution of the Court's workload, we would expect this number to be negatively correlated with Rehnquist making an additional assignment to that justice during that round of assignment decisions.

Expertise. To measure whether a justice has substantive policy expertise, we calculate an issue-specific opinion ratio (OR) for the nine justices.¹² The OR is based upon the number of majority opinions, dissents and concurrences written by each justice during their tenure on the Supreme Court. More specifically, the OR is the number of cases in which a justice wrote an opinion, dissent or concurrence divided by the number of cases which reached the Court since that justice's appointment. Since the OR takes account of all opinions written by each justice over their Supreme Court career, it—unlike a justice's OAR—is not sensitive to a justice's ideological position relative to their colleagues or the Chief Justice's assignment decisions (Brenner 1990). More specifically, it is not overly reliant on the opinions assigned by Rehnquist.¹³ If a justice's OR is more than 1.65 standard

¹⁰If two or more justices had the same interagreement score in a particular area, we report each of these justice's rank as the average among the justices with tied scores. Although we have relied on a different set of value groups, this approach is similar to that used by Davis (1990).

¹¹In all but one of the 24 assignment sheets circulated during the 1987–89 terms, there was very little variance in the number of assignments across justices—there is a range of one. The lone exception is on the April 2, 1990 assignment sheet where the range of two is directly attributable to Brennan's self-assignment of three cases, while other justices received one or two assignments.

¹²Each justice is given a unique OR for each of 133 narrow issue areas that Spaeth (1992) identified. To identify the 133 issues, we rely upon the 263 issue categories that Spaeth identifies and then group those issues that Spaeth reports as being related. For example, the five specific issue areas that Spaeth identified as related to federal transportation regulation (railroad, boat, truck, pipeline, and airline) are grouped together.

¹³In fact, Rehnquist assignments account for very few of the written opinions of most justices. This is especially true for the justices appointed before the 1980s—other than Rehnquist himself, White's opinions contained the highest proportion of Rehnquist assignments, 6.5%. While the more recent appointees' opinion writing includes a higher percentage

deviations above the average OR for the nine justices in an issue area, we consider the justice a specialist on that issue.¹⁴ If a justice is a specialist in an issue area relevant to a particular case up for assignment, that justice is coded as 1, and 0 otherwise. Hypothesis 7 leads us to expect a positive relationship between expertise and receiving an opinion assignment.

Efficiency. Efficiency has two distinct dimensions that need to be assessed. The first dimension pertains to the amount of time it takes a justice to write an opinion. The second dimension relates to the number of days remaining in a term when a case is assigned. Quickly producing an opinion at the end of the term is not the same indicator of efficiency as promptly writing an opinion at the beginning of the term. To measure efficiency, we must account for both the time each justice needs to write the Court's opinion and the amount of time remaining in the term.¹⁵ To tap this, we calculate an average efficiency score for each justice over this three year period by subtracting the number of days that it took a justice to write a majority opinion during the 1987–89 terms from the number of days remaining in a term when a particular case is assigned and then dividing this by the number of days remaining in the term.¹⁶ Thus, the higher the number, the more efficient the justice would be. Because we anticipate the Chief assigns cases to those justices who are most efficient (hypothesis 8), we expect justices with a higher efficiency score to be more likely to receive an assignment.

Case Specific Attributes

Important Cases. Hypothesis 2 and 3 predict that the Chief is more likely to assign an important case to either himself or an associate justice

of Rehnquist assignments (Kennedy opinions consist of 19.2% Rehnquist assignments, Scalia 17.4% and O'Connor 14.2%), this does not seem to approach problematic levels. Indeed, the correlation between expertise and ideology is a mere .015.

¹⁴The decision to use 1.65 standard deviations should result in a 5% likelihood that a justice will specialize in an issue area. Indeed, 57 of the 133 issue areas (42.9%) had no specialist and 71 areas had a solitary specialist (53.4%). In three areas (3.8%), two justices were specialists. When we ran our analysis again using one standard deviation (rather than 1.65), our results held up.

¹⁵The average amount of time a justice takes to write an opinion varies by approximately one month. During the 1987–89 terms, Marshall and Rehnquist were the fastest majority opinion writers on the Court. Marshall took an average of 63.4 days to put together a majority opinion and Rehnquist needed 64.2 days. Scalia (91.3 days) and Brennan (87.2 days) were the slowest writers.

¹⁶To determine the number of days it took a justice to write an opinion, we assume that each justice began to work on the majority opinion on the day the assignment sheet was circulated. We also assume that each opinion was completed on the day that the final draft was circulated. The date of the final draft was determined by looking through Justice

who is an ideological ally. To determine the significance of each case, we calculate the number of amicus briefs filed on the merits for every case heard by the Supreme Court during the 1987–89 terms.¹⁷ If a particular case has a disproportionately large number of amicus briefs filed at the merit stage, we classify the case as important.¹⁸ Cases that are classified as important are coded as a 1, 0 otherwise. The interaction between this variable and each justice's ideological rank poses a test of hypothesis 2. The interaction between this variable and a dummy variable to designate Chief Justice Rehnquist provides a test of hypothesis 3.

Consensus. If every member of the Court votes with the majority, it is coded as 1, and 0 otherwise. Although we expect Rehnquist to be more inclined to assign cases to conservative justices, hypothesis 4 suggests that moderate justices are more likely to receive cases when there is a consensus on the Court. By interacting this case specific variable with each justice's ideological rank, we test this hypothesis.

Minimum Winning Coalition (MWC). If a case is decided by a margin of one vote or less, it is coded as 1, and 0 otherwise. Hypothesis 5 suggests that when a case is decided by a minimum winning coalition, a more moderate justice will be assigned the opinion. The interaction between this case-specific measure and each justice's ideological rank poses a test of this hypothesis.

End of Term. Hypothesis 9 suggests that at the end of a term the Chief is most likely to be concerned with each justice's capacity to finish his or her opinions in a timely manner. Although our efficiency measure weights the justice's speed in opinion writing by the number of days remaining in

Marshall's case files for each of the 398 cases released by the Court during the period. The end of the term was identified as the last date on which a decision was released.

¹⁷Amicus participation serves as a signal of the potential policy significance of a case. (Caldeira and Wright 1988). Alternative methods for determining the importance of a case have included looking at casebook citations (Danelski 1989) or advance sheet headlines (Spaeth 1984). For a discussion of methodological issues pertaining to assessing case significance, see Cook (1993).

¹⁸The number of briefs filed was calculated from data available through the Lexis information service. We considered any case that had more than 1.65 standard deviation above the average number of briefs for the 398 cases heard during these terms to be important. Since the average case had 2.4 amicus briefs filed at this stage and the standard deviation across all 398 cases was 3.7 briefs, any case that had nine or more briefs is considered important. Of the 316 cases assigned by Rehnquist, 12 (3.3%) had enough amicus briefs to satisfy our importance criterion. When we ran our analysis again using one standard deviation (rather than 1.65), 43 of the 316 cases (13.6%) were important. There were no significant differences, nevertheless, between the two models. Table 1 shows the number of important cases written by each justice and assigned by Rehnquist.

a term, it does not enable us to test the proposition that Rehnquist particularly cares about efficiency at the end of the Court's term. To test this, we must demarcate the point in the term when the Chief Justice becomes concerned with concluding the term's business. We have chosen the date of the final three assignment sheets as this point. For the three terms that we include in our analysis, this sheet was distributed between March 5 and 7. If a case is assigned on one of the final three assignment sheets, we code it as 1, and 0 otherwise. The interaction between this term and our efficiency measure permits us to independently assess the significance of the court's calendar on the opinion assignments made by the Chief Justice.

Analysis

Table 2 presents the estimated coefficients and significance levels for a multinomial logit model predicting Rehnquist's opinion assignments during the 1987–89 terms.¹⁹ The model demonstrates that equity, efficiency, and expertise are the three organizational variables that appear to influence Rehnquist's assignment decisions. The only time that Rehnquist appears to consistently take ideology into account is when he is assigning cases that have a fragile majority. The highly significant chi-square enables us to reject the null hypothesis that each coefficient equals zero.²⁰ Whereas the average OAR is 14.3%, our multivariate model predicts 89 of the 316 assignment made by Rehnquist (28.2%).²¹ This is a reduction of error (tau) of 17.2%. To assess the substantive impact of the statistically significant independent variables reported in Table 2, we ran several simulations that show the likelihood that a justice will be assigned an opinion. By holding all significant independent variables constant except one, Table 3 enables one to see how each independent variable affects the likelihood that a justice will be assigned a case.²²

The results of the model run counter to many of our expectations.

¹⁹Because we are modeling the probability that the Chief makes a discrete choice among each of the justices, the model does not have an intercept (Greene 1993).

²⁰The reader might suspect that the error term for each justice is correlated across cases. If the error terms were so correlated, the efficiency of our coefficients would be affected. Tests and correction procedures for such error correlation are currently in a young stage of development for multinomial logit models.

²¹The percent correctly predicted is the ratio of predicted to observed outcomes aggregated across all cases. The justice with the greatest likelihood of being assigned a particular case is determined by applying the coefficients generated by our model to the data. We predict that Rehnquist will assign each case to the justice with the highest predicted value.

²²The benchmark probability is the likelihood that a justice will be assigned the majority opinion when the value of each variable is set at its mean or in the case of categorical data (expertise and equity) at its modal category. The simulation (except where noted) is based upon a 9 to 0 case.

Table 2. Discrete Choice Model of Rehnquist Majority Opinion Assignments

Variable	Coefficient	Standard Error
Ideology	.042	.037
Consensus × Ideology	.059	.051
MWC × Ideology	.136*	.081
Important × Ideology	-.140	.176
Important × Chief	-.019	.945
Equity	-.638***	.145
Expertise	1.053***	.199
Efficiency	.939	1.383
End of Term × Efficiency	3.216*	1.697
Log-likelihood	-575.629***	
Number of Observations	2,213	

*Significant at $\leq .05$ (one-tailed).

**Significant at $\leq .01$ (one-tailed).

***Significant at $\leq .001$ (one-tailed).

Perhaps the most surprising findings center on the attitudinal model. We hypothesized that the Chief would assign opinions to justices whose views are proximate to his own except when there is either a minimum winning coalition or consensus on the Court; in the latter circumstances we expect him to assign the opinion to a moderate member of the majority. The positive, but statistically insignificant, ideology score suggests that while Rehnquist might have a slight bias towards more liberal justices, it is not significantly different from zero. Such a discovery fails to confirm our first hypothesis.

Although we expected the impact of ideology to be accentuated in particularly salient cases, and reduced in consensus cases, our findings do not provide any support for these hypotheses. Although the negative coefficient suggests that Rehnquist was more likely to assign important cases to relatively conservative justices, the coefficient is statistically insignificant. We are unable to definitively conclude that Rehnquist steered important cases to either his ideological allies or moderates. This calls the validity of hypothesis 2 into question. Likewise, the fact that Rehnquist does not consistently assign himself salient cases leads us to reject hypothesis 3. The small and insignificant interaction between ideology and consensus demonstrates that, contrary to the fourth hypothesis, Rehnquist is not more likely to favor moderates when a case is unanimous.

The interaction between ideology and MWC, however, provides empirical support for the fifth hypothesis. When a case is decided by a single

Table 3. Simulated Probabilities of Rehnquist's Assignments

Characteristics	
Benchmark ¹	10.7
Ideology ²	
Liberal	16.1
Moderate	10.7
Conservative	7.2
Ideology (MWC cases only) ³	
Moderate	27.7
Conservative	13.6
Equity ⁴	
One Associate Justice Assignment	6.0
Two Associate Justice Assignments	3.2
Three Associate Justice Assignments	1.7
Expertise ⁵	
Yes	25.6
No	10.7
End of Term × Efficiency ⁶	
Fast	12.9
Slow	8.9

¹The benchmark probability is the likelihood that the median justice will be assigned the majority opinion when the value of interval data (efficiency) is set at its mean or in the case of categorical data (expertise and equity) at its modal category (0 in both instances). Interacted terms are also set at their modal category, zero. The simulation (except where "MWC cases only" is noted) is based upon a 9 to 0 case.

²Ideological rank ranges from 1 to 9. The conservative justice has the rank of 1, the moderate justice the rank of 5, and the liberal justice a rank of 9.

³This simulation is based upon a 5 to 4 case. The conservative justice has the ideological rank of 1 and the moderate justice the rank of 5.

⁴Equity refers to having a majority opinion assignment from an associate justice.

⁵Expertise refers to a justice having a substantive expertise related to the case in question.

⁶The fast justice has an efficiency that is one standard deviation above the average. The slow justice has an efficiency score that is one standard deviation below the mean.

vote, Rehnquist appears reluctant to assign the case to one of his ideological allies. Instead, he assigns the case to a more moderate member of the majority. Table 3 enables one to contrast the substantive impact of ideology on a case where the majority is a MWC to the impact of ideology on a 9 to 0 case. Because the chief has a smaller choice set on a 5 to 4 case than a 9 to 0 case, all justices enjoy a higher probability of being assigned the majority opinion when they are part of a five-person majority than when they are part of a nine-person majority. The odds of a moderate justice being assigned the majority opinion on a 5 to 4 case are 2.0 times greater, nevertheless, than the odds of a conservative justice being assigned a 5 to

4 case. In contrast, the odds of a moderate justice being assigned a 9 to 0 case are only 1.5 times the odds of a conservative being assigned a 9 to 0.

Since these findings are largely counterintuitive, one might ask whether our use of ideology and three variables that are linear combinations of ideology has produced multicollinearity. There is, however, no evidence of multicollinearity. There is little bivariate correlation between ideology and the other related variables. The variable that displays the highest level of correlation with ideology is consensus—its correlation coefficient is .53. The other two variables have a correlation with ideology of less than .10. There is little multiple correlation, moreover, as indicated by an R-square of .36 when we regressed ideology on all other independent variables. The tolerance of the other ideologically based measures are even lower. These findings confirm that collinearity is not a serious threat to our analysis.

While our results are inconsistent with the attitudinal model, the organizational needs model successfully explains Rehnquist's assignments. The negative and statistically significant coefficient for the equity variable provides support for the sixth hypothesis. Rehnquist was less likely to assign an additional case to a justice who was being assigned a majority opinion by a senior associate justice (usually Brennan) who controlled the assignment. Table 3 shows that the more assignments a justice received from an associate justice, the less likely they are to receive an assignment from Rehnquist. Whereas our benchmark justice has no assignments from an associate justice and a 10.7% chance of being assigned a case, a justice with one associate justice assignment has a 6.0% chance of getting the Chief's assignment.

Our analysis also supports the seventh hypothesis—that the Chief Justice assigns cases according to the expertise of his colleagues. The simulation demonstrates that a justice who is an expert is more than twice as likely to be assigned a case than a justice who is not. Such a finding is consistent with Brenner's (1984) analysis of Chief Justice Warren's opinion assignments and Brenner and Spaeth's (1986) characterization of Chief Justice Burger's assignments.

Hypothesis 8 and 9 suggest that Rehnquist's concern with the smooth operation of the court will lead him to favor justices who routinely complete their cases relatively quickly. The insignificant coefficient for the efficiency variable leads us to reject the eighth hypothesis. Throughout the term, Rehnquist was not more likely to favor those justices who on average complete their opinions in the fewest days. Although our analysis leads us to reject the seventh hypothesis, the result for the variable interacting end of term and efficiency variables supports the ninth hypothesis. At the end of the term, Rehnquist appears to systematically favor justices who write their opinions promptly. The simulation shows that a justice who was one stan-

dard deviation more efficient than his or her colleagues was 1.4 times more likely to be assigned a case that occurred at the end of a term than a justice who was less efficient than his/her colleagues.

It is possible, of course, that organizational needs are not independent of attitudinal factors. In particular, the equity (organizational needs) variable and ideology (attitudinal) variable might be related. This would occur if the opinions not assigned by Rehnquist had been overwhelmingly assigned to liberals. If so, and if Rehnquist assigned overwhelmingly to conservatives, Rehnquist's actions could be due to either equalization or ideological concerns. This, however, is not the case. The associate justice who most frequently assigned opinions in the 1987–89 terms was Brennan. Although we might reasonably expect his assignments to go to the more liberal justices, this expectation was only partially fulfilled. Although Brennan did assign himself 35% of the cases he assigned, the other 65% of the opinions he assigned were equitably distributed. During the 1987–89 natural court, each associate justice received between five and nine opinions from Brennan over these three terms.²³ The distribution is even more equal if we include the assignments made by other associate justices. More importantly, the correlation between ideology and equity is only .33, which is well below the usual threshold for collinearity problems (Judge et al. 1988). In addition, the organizational factors, as a whole, are not significantly related to ideology.²⁴

Discussion

Our analysis of Rehnquist's assignments suggests that the organizational needs model provides a better characterization of Rehnquist's assignment decisions than does the attitudinal model. Our model suggests that each justice's efficiency, expertise, and the number of majority opinion assignments by other justices—and not ideological compatibility—are the factors that shape Rehnquist's decisions. The only instance where Rehnquist demonstrates a bias related to ideology is when the initial majority coalition cannot afford to lose a single vote.

This portrait of Rehnquist's assignment decisions views Rehnquist as uniquely unconstrained in allowing the needs of the Court to drive his assignment decisions. Studies of the Chief's assignment decisions that are

²³Marshall, Blackmun, and Stevens each received nine opinions from Brennan between 1987 and 1989. Brennan assigned Kennedy seven opinions, while White and O'Connor were assigned six opinions apiece. Scalia received the fewest assignments from Brennan with five.

²⁴The R-square for a regression of ideology on all organizational needs variables is about .1.

Table 4. Chief Justice Opinion Equalization

Chief Justice	Terms	CRV
Taft	21–29	.32
Hughes	29–40	.35
Stone	41–45	.39
Vinson	46–52	.35
Warren	53–68	.22
Burger	69–85	.21
Rehnquist	86–90	.23
Rehnquist (w/o 86 term)	87–90	.19

Source: Slotnick (1979) and Segal and Spaeth (1993).

based upon Rehnquist's predecessors have argued that Chief Justices frequently use control of the assignment process to advance an ideological agenda. The most sophisticated of these studies, however, have noted discernible differences between Chief Justices. Although most studies of the Chief's assignments have pre-dated Rehnquist, the few studies that have examined Rehnquist's assignment patterns have suggested that Rehnquist has been one of the most equitable Chief Justices (Davis 1990; Segal and Spaeth 1993). In order to assess the equality of a Chief's assignment decisions, judicial scholars have typically relied upon the Chief Justice's coefficient of relative variation (CRV). This CRV is the standard deviation of the number of opinions assigned to each justice by the Chief divided by the mean assignment across all of the justices. Table 4 reports the CRV for each of the twentieth century Chief Justices.²⁵ The table makes clear that Rehnquist had one of the lowest CRVs. During his first term as Chief Justice, Rehnquist distributed cases in a manner that was uneven (CRV = .35) and uncharacteristic of the pattern he used during the 1987–90 terms. Thus, the 1986 term inflates Rehnquist's CRV. If one excludes the 1986 term, Rehnquist clearly had the lowest CRV (.19). Rehnquist's low CRV confirms his self-professed claim of "even-handedness" in terms of the overall number of cases assigned to each justice (Rehnquist 1987, 297).

This does not necessarily mean that Rehnquist foregoes policy considerations in ensuring the smooth operation of the Court. In fact, it is clear that during the period we study, Rehnquist's failure to demonstrate a conservative bias in the distribution of assignments might not have a significant impact on his ability to promote his policy views. During the terms under study, a conservative coalition of justices clearly dominated the court. This

²⁵These figures are from Slotnick (1979) and Segal and Spaeth (1993).

Table 5. 5-4 Coalitions That Included Rehnquist

Coalition	Frequency	Percent
Rehnquist, Kennedy, O'Connor, Scalia, White	37	67.3
Rehnquist, Kennedy, O'Connor, Scalia, Stevens	4	7.3
Rehnquist, Brennan, Marshall, Stevens, White	2	3.6
Rehnquist, Blackmun, Kennedy, O'Connor, White	2	3.6
Rehnquist, Blackmun, Kennedy, Stevens, White	1	1.8
Rehnquist, Brennan, Kennedy, Scalia, White	1	1.8
Rehnquist, Kennedy, Scalia, Stevens, White	1	1.8
Rehnquist, Blackmun, Kennedy, Scalia, Stevens	1	1.8
Rehnquist, Brennan, Kennedy, Scalia, Stevens	1	1.8
Rehnquist, Kennedy, Marshall, O'Connor, Scalia	1	1.8
Rehnquist, Blackmun, Kennedy, Scalia, White	1	1.8
Rehnquist, Blackmun, O'Connor, Scalia, White	1	1.8
Rehnquist, Kennedy, O'Connor, Stevens, White	1	1.8
Rehnquist, Blackmun, Brennan, Kennedy, Scalia	1	1.8
TOTAL	55	99.8

Source: Derived from Justice Thurgood Marshall's docket book.

can be seen in Table 5 which shows that Rehnquist led coalitions in 5 to 4 decisions. In 67.3% of all Rehnquist led 5 to 4 decisions the coalition consisted of Rehnquist, Kennedy, O'Connor, Scalia, and White. Four of the aforementioned justices voted together in 89.1% of the 5 to 4 decisions that included Rehnquist.

As a result, justices such as O'Connor and Kennedy are frequently the most moderate member of the majority coalition. While Rehnquist's egalitarian impulses frequently result in moderate justices such as O'Connor having as good a chance of being assigned an opinion as more conservative justices such as Scalia, the significance of this on Rehnquist's policy agenda is relatively minimal. Although decisions written by Scalia and O'Connor may vary in many respects, their voting patterns suggest that neither of them is likely to be hostile to Rehnquist's policy agenda. Whereas Scalia's overall interagreement score with Rehnquist was 86.1% during the 1987-89 terms, O'Connor's score was 84.4%.²⁶

Conclusions

Most studies of the Chief's assignment decisions have looked at the issue from an aggregate rather than individual level. With a discrete choice model and the use of original coalition and assignment data, it is possible

²⁶The overall interagreement score is compiled from Spaeth (1992).

to assess what factors affect the Chief's assignment decisions across cases. Our analysis of Rehnquist's assignments during the 1987–89 term suggests that Rehnquist's decisions are primarily driven by institutional constraints, such as his desire to be evenhanded, rather than by his ideological agenda. Although Chief Justices can—and indeed have—manipulated assignments to promote their policy goals, our study suggests that opinion assignment is at best an imperfect tool for protecting those preferences. Institutional demands clearly press the Chief to make assignments that potentially run counter to his policy preferences and ideological agenda. One of the more prominent features of the Rehnquist court in the court terms studied is that the Chief Justice utilizes the power he has for institutional, rather than policy reasons.

Our research raises a number of questions for future research. Do the differences between our findings and those of previous scholars reflect our use of multivariate controls? Or are there genuine differences between Rehnquist's assignment patterns and those of his predecessors? Douglas's memo noted at the outset of this article, as well as secondary accounts (Woodward and Armstrong 1979) suggest that Burger, unlike Rehnquist, aggressively used his assignment powers to shape policy outcomes. Whether Burger's behavior is isolated to a few prominent cases, or whether he systematically manipulated assignments can only be determined with a multivariate model.

If there are indeed genuine differences between Rehnquist and earlier Chief Justices, do they reflect Rehnquist's personality or the strategic context in which he operates? For example, is Rehnquist's failure to consistently assign opinions to conservative justices a reflection of his evenhandedness or of his realization that moderate and conservative justices on the Court were, for the most part, writing similar opinions during the period? In other words, did Rehnquist's willingness to assign cases to ideological foes set back his policy agenda? These questions should fuel further inquiry into the politics of opinion assignments and can only be answered with a more comprehensive and historical study of the assignment process.

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