

# Interest Group Politics

Second Edition

edited by

**Allan J. Cigler**  
**Burdett A. Loomis**

*University of Kansas*



A division of Congressional Quarterly Inc.  
1414 22nd Street N.W., Washington, D.C. 20037

## 15. Interest Groups in the Courts: Do Groups Fare Better?

*Lee Epstein and C. K. Rowland*

---

When we think of interest group politics, the first things that we are likely to consider are high-powered lobbyists or extravagant political action committee donations. Litigation does not leap to mind as a major interest group strategy. Throughout the twentieth century, however, groups representing the disadvantaged (minorities) and the difficult-to-organize (consumers) have successfully, if unevenly, used the judicial system to win policy victories. At the same time, other interests, representing corporations and other major social institutions, have devised litigation strategies in confronting trade unions or complying with government regulations.

In this chapter Lee Epstein and C. K. Rowland examine whether group sponsorship of litigation makes much difference in obtaining policy victories within the federal judicial system. Although litigation by interest groups, either on behalf of an individual or on its own, has increased substantially since the 1960s, the question of impact remains difficult to answer. Indeed, as the authors note, even addressing the question of group impact requires data that are difficult to collect and analyze. Nevertheless, their initial research efforts lead them to conclude that group intervention does make a difference. To the extent that we have become a society of litigants, the resources and expertise of interest groups can play a major role in shaping the decisions reached and policies imposed by the court system.

Most political commentators and scholars of interest group behavior focus on the lobbying activities of groups in the legislative, executive, and electoral arenas, but organized interests also play an integral role in the judicial process. In courtrooms throughout the United States, attorneys employed by the American Civil Liberties Union (ACLU), the Pacific Legal Foundation, and numerous other organizations try to persuade judges to adopt their policy preferences. Given the rules of adjudication, however, interest group lawyers refrain from approaching decision makers directly: Rather, groups use oral arguments and legal briefs to convince judges of the relative merits of their claims.

In this chapter we explore the use of litigation as an interest group lobbying strategy. Because of the relative “uniqueness” of this tactic, we first

present a review of the literature. Based on this review, we conclude that many interest groups view litigation as a viable political strategy. But we also discover that this body of research has not examined systematically the relative "success" of interest groups and other litigants at the trial court level. In the remainder of this chapter, then, we combine these two issues by examining how interest groups (versus nongroups) fare in the federal district courts.

### Interest Group Litigation: A Review

Since the 1908 publication of Arthur Bentley's seminal work, *The Process of Government*,<sup>1</sup> scholars have recognized that interest groups use the courts to channel their policy goals into the common law and "actively seek to assure that their view of the legal good is imposed on the society at large."<sup>2</sup> Because of the perceived apolitical nature of the courts, research on lobbying through litigation, at least through the 1950s, was almost nonexistent. Although scholars recognized early that some interest groups might view the courts as influential policy makers, their research emphases implied that groups would most likely achieve important objectives in legislative or executive corridors.

Scholarly interests in groups and the courts changed dramatically in the late 1950s because of the work of political scientist Clement E. Vose.<sup>3</sup> Vose reexamined old assumptions about the judiciary by describing the litigation activities of several diverse organizations, including the National Consumers League (NCL) and the National Association for the Advancement of Colored People (NAACP). Although these organizations had very different political agendas, Vose noted that they shared at least one characteristic—a common belief in the utility of litigation. In documenting the activities of these and other groups, Vose described in minute detail their litigation strategies and their reasons for choosing to use the courts.

#### The National Consumers League and Labor Law

The National Consumers League took to the courts when employer associations challenged the protective legislation (e.g., maximum hours and minimum wages) for which the league had successfully lobbied in state legislatures. The NCL and its general counsel, Louis Brandeis (who was later to become a distinguished U.S. Supreme Court justice), devised a brilliant strategy, which, Vose argued, enabled the NCL to accomplish what the states alone would have been unable to do: win major victories in the Supreme Court.

The case of *Muller v. Oregon* (1908), for example, tested the constitutionality of the Oregon law for which the NCL had lobbied; the law mandated that women's workdays be limited to ten hours. The employers based their arguments on an earlier Court decision, *Lochner v. New York* (1905), which declared a state maximum-hour law for bakers unconstitu-

tional because it violated the Fourteenth Amendment's due process clause.

Brandeis and the NCL leaders knew they faced a difficult legal challenge. To counter the negative Supreme Court precedent, Brandeis developed two tactics. First, he asked the State Industrial Commission to allow him to represent Oregon in court. Although somewhat unusual, Brandeis's request made a good deal of sense: he wanted sole control of the case at the trial court level so that he could develop a good record for later appeals. Moreover, Brandeis did not want to jeopardize his case by allowing relatively inexperienced state attorneys to handle it.

Second, Brandeis asked NCL workers to gather "facts, published by anyone with expert knowledge of industry in its relations to women's hours of labor such as factory inspectors, physicians, trade unions, economists, and social workers."<sup>4</sup> Brandeis requested this information because he wanted to distinguish *Lochner* by showing the courts that long hours of work, while perhaps safe for male bakers, were detrimental for women. The results of the NCL's fact-finding mission indicated just that: long workdays jeopardized the health of women. This information, which was incorporated into the NCL's legal arguments, later became known as the "Brandeis Brief."

The strategies developed by the NCL paid off. The U.S. Supreme Court distinguished women bakers from their male counterparts and allowed the Oregon law to stand. More important, Brandeis's tactics—control over the case from the trial court level and the use of statistical data—continued to succeed during a judicial era marked by hostility to state regulation of economic activity.

#### The NAACP and Race Discrimination

Vose's findings on the NAACP, while different from those on the NCL, make an equally compelling case for the utility of interest group litigation. Unlike the NCL, which had successfully lobbied state legislators into passing its favored legislation, the NAACP had no such access. The plight of blacks in the United States in 1909, when the group was founded, was an unpopular cause. To eliminate (or at least chip away at) discrimination, the NAACP was forced into the courts as a plaintiff because the popularly elected branches of government provided no support.

Faced with this situation, the NAACP did not venture haphazardly into the judicial arena. Rather, according to accounts of Vose and others, NAACP leaders, including Thurgood Marshall, its general counsel and current U.S. Supreme Court justice, developed well-planned and well-executed litigation strategies.<sup>5</sup>

The school desegregation cases, involving both higher education and public schools, provide some of the best examples of how the NAACP used litigation as a political weapon. Like the NCL, the NAACP had major legal obstacles to overcome because of the way the courts interpreted the Fourteenth Amendment. Ratified in 1868, the amendment purportedly guaranteed blacks equal protection of the law. But, as is well known now, much of the

South tried to circumvent the amendment by creating separate facilities for the races. When the Supreme Court in 1896 established the doctrine of "separate but equal" (*Plessy v. Ferguson*), such practices were only reinforced.

When the NAACP was formed, one of its major goals was to eradicate "separate but equal" policies, particularly as they affected education. The organization understood, however, that the courts would resist challenges to the doctrine because only thirteen years had passed since it had been first enunciated. Therefore, instead of trying to eradicate the policy immediately, the NAACP began to whittle away at it through a series of well-planned and carefully executed attacks on separate but decidedly unequal education facilities.

The case of *Sweatt v. Painter* (1950) concerned Homan Sweatt, a black man living in Texas, who wanted to attend law school there, but was denied admission to the all-white University of Texas. The NAACP seized the opportunity to defend Sweatt for two reasons. First, his case violated the separate but equal principle. There was no other "equal" place for him to attend law school. Thus, the NAACP did not have to ask the court to strike down the doctrine. Second, the NAACP leaders thought it was to their advantage to start with discrimination in graduate schools. They believed that the courts would be more willing to eliminate discriminatory practices aimed at older students.

When the case approached trial, the state judge continued it for six months. In the interim, Texas constructed a makeshift black law school, which was to be run by part-time professors from the University of Texas and was to contain less than a quarter of the number of books available in the University of Texas library. When the case reached trial, the judge ignored the NAACP's claim that this black law school was not equal to the University of Texas and ruled in favor of the state. The NAACP appealed, and the case eventually reached the U.S. Supreme Court. The Court, while refusing to review the principle of separate but equal, ruled in favor of Sweatt. The majority fully concurred with the NAACP's argument that the schools simply were not equal and that Sweatt should be admitted to the University of Texas Law School.

After other victories in similar cases, the NAACP decided it was time to shoot for the big victory: eradication of the separate but equal doctrine at all levels of education. It accomplished this goal in the brilliantly conceived and executed case of *Brown v. Board of Education* (1954). The plaintiff in this case was a schoolchild, Linda Brown, who lived down the block from a white public school in Topeka, Kansas, but was forced to go to a black school (of comparable quality) much farther from her home. NAACP leaders were careful to select a case in which the schools would be of comparable quality so that the Court would be forced to rule squarely on the constitutionality of the separate but equal doctrine. Moreover, because the black and white schools in Topeka were not as flagrantly unequal as their counterparts in the South, the precedential value of this case would be clear for future challenges to the

South's segregated schools.

As Vose and others have documented, the NAACP had on its side not only the favorable precedents it helped to build, but also important (and later controversial) data indicating the negative effects of segregation on children.<sup>6</sup> Like the statistical evidence used by Brandeis, these data convinced the justices of the Supreme Court: in a unanimous decision, the Court struck down the doctrine of separate but equal.

### The Decline and Resurgence of Studies on Group Litigation

Vose's discussion of the litigation successes of the NCL and NAACP generated a great deal of interest in the subject. Scholars focusing on interest groups began to reexamine past assumptions about the nature of the judiciary and lobbying through litigation. Most concluded that the courts were just as open to political processes as the other branches of government.<sup>7</sup>

Then, although many scholars continued to examine judicial behavior, specific emphasis on interest groups in court came to a grinding halt during the late 1960s with publication of political scientist Nathan Hakman's "folklore" article.<sup>8</sup> Hakman tried to show that group litigation rarely occurred. Ignoring group-sponsored cases (that is, when interest groups provide lawyers for plaintiffs as the NAACP did in *Sweatt*) and focusing exclusively on interest group participation as *amicus curiae* (groups filing friend of the court or third party briefs), Hakman found that groups filed *amicus curiae* briefs in only 18.6 percent of all noncommercial cases decided by the Supreme Court from 1928 to 1966. Based on this evidence, Hakman concluded that because interest group participation in cases was mere folklore, scholars should not waste their time studying what was surely an arcane phenomenon.

Academics followed Hakman's advice; for more than a decade, work on interest group litigation was virtually nonexistent. The scholarly community seemed to agree that it was fruitless to study a phenomenon that was almost certainly episodic. The examples of the NAACP and the NCL were treated as anomalies.

Despite the popularity of this view, the subject of interest groups and the courts would not disappear. And, in fact, this field of inquiry recently received a major boost from a 1981 study that replicated and updated Hakman's findings. The authors found that, although interest group participation as *amicus curiae* during the time Hakman's study was published may have been sporadic, the situation had changed dramatically. Between 1970 and 1980, interest groups had filed *amicus curiae* briefs in more than half of all the non-commercial cases coming before the Supreme Court.<sup>9</sup>

Since publication of that study, many more scholars have corroborated its results not only for *amicus* participation, but for group sponsorship as well. For example, Lettie Wenner's study of environmental litigation during the 1970s revealed that environmental groups, such as the Environmental Defense Fund (EDF) and the Natural Resources Defense Council (NRDC),

were plaintiffs in 636 cases before federal district courts. The government was a defendant in 575 of these cases, indicating that these groups used the courts to secure implementation of prior successes in the legislative and bureaucratic arenas. Wenner wrote:

They [environmentalists] were the chief proponents of most of the legislation under which these cases were litigated, and they were instrumental in inserting provisions for citizen suits into many of the laws. They had a large ideological stake in seeing that the laws were used, and [they] were committed to the belief that the courts constituted a useful watchdog to prod less-than-energetic administrators of the law[s] into realizing the full potential of the laws.<sup>10</sup>

The environmental cases by no means exhaust contemporary examples of group litigation. Studies examining cases involving women's rights, abortion, voting rights, religious freedom, handicapped rights, conservative causes, and race discrimination all have found high proportions of cases sponsored by organizations.<sup>11</sup> This is not surprising given that the Center for Public Interest Law, an umbrella organization for litigating groups, now estimates that there are more than 150 groups who use the courts.

In addition to revealing the scope of group litigation, the 1980s work on amicus and sponsorship participation has made explicit the distinctions among forms of participation and encouraged scholars to develop typologies of group participation as a prerequisite to understanding the effects of group litigation on judicial outcomes. Wayne V. McIntosh has distinguished forms of participation at the trial-court level and found that the tendency to focus on amicus activity underestimates group activity here.<sup>12</sup> Susan Olson has offered a typology of roles groups may play in the litigation process. This typology minimizes the problems of distinguishing amicus participation at the appellate level from other forms of group activity at the trial-court level. Olson distinguishes among interest group-as-lawyer (e.g., the NCL), interest group-as-plaintiff (e.g., the EDF) and cases where both the plaintiff and the lawyer are organized (e.g., an ACLU defense of organizations), noting that, "Each of the official roles . . . has rules to channel or constrain group activity in that capacity."<sup>13</sup>

In sum, the 1980s have seen a resurgence of group litigation scholarship that includes case studies and efforts to refine the framework of fundamental research. We know that national organizations can achieve policy goals through concerted, long-term litigation strategies at the U.S. Supreme Court level. Yet, because research has focused primarily on the litigation of groups without controls for nongroups and on the Supreme Court, many questions remain unanswered.

One concerns the effects of group involvement on litigation outcomes. Are interest groups more successful than independent litigators? Are they more successful than other organizations; for example, large law firms, with comparable experience and resources? Do ad hoc local groups and local affiliates of national groups achieve success in trial courts comparable to that achieved at the appellate level by national groups?

### Success and Interest Group Litigation

Although the systematic examination of interest group success in litigation is conspicuous by its absence, case studies of their participation in various areas of the law suggest that they perform better than independent litigants. Such an inference emanates from a number of factors. First, interest groups are "repeat players," frequently appearing before the courts to achieve their objectives. Consider the following scenario: two lawyers represent their respective clients before a federal court. One is from the NAACP, has appeared in the same court, making similar claims in dozens of suits, and has the support of the organization's national legal staff. The other lawyer has rarely practiced in this particular court and has no national support staff. The NAACP's advantages, without any further details about the nature of the controversy, are apparent. In fact, in some instances, interest groups are so well known that they take on a status akin to a district attorney or U.S. attorney.

A second advantage of interest groups in court is expertise. Simply stated, many interest groups are known for their ability to select and cultivate outstanding legal talent, such as Alvin Bronstein, director of the ACLU's National Prison Project, a group dedicated to defending prisoners' rights. Before coming to the project, Bronstein served as a consultant to numerous litigating groups, including the Lawyers Constitutional Defense Counsel and the NAACP. One should also keep in mind that two of the legal counsels for organizations that were in the vanguard of litigation became Supreme Court justices! By contrast, our hypothetical adversary is typically an overworked prosecutor or a state attorney engaged in general practice.

A final advantage of interest groups lies at the heart of group litigation itself: groups have long-term policy objectives. Rather than bringing just any case to the court, interest groups try to pick "winners," cases that they cannot only win, but also those that will help them to build favorable precedent. The ability to pick and choose among cases is not a luxury enjoyed by other kinds of lawyers. Typically, lawyers have little choice in deciding whether to take on a client. They must simply do their best to win whatever case they are handling. Interest group lawyers, by contrast, can sift through the various controversies brought to their attention to select those meeting a specified set of criteria.

Given the advantages outlined above, it comes as no surprise that most studies of group litigation at the appellate level are success stories; that is, groups ultimately achieve most of their policy goals. At the local, trial court level, however, group advantages may be mitigated by two countervailing factors. First, local practitioners may be repeat players at home; they may be familiar with local judges' predilections and have advantages in jury selection and in securing the trust or cooperation of witnesses. These advantages are reinforced by the documented "localism" of trial judges<sup>14</sup> and the perception of national litigants as intruders into local disputes.<sup>15</sup> Second, at this level the group litigant may be a local ad hoc organization with few of the advantages

associated with national groups. Thus the "resource gap" may be narrowed or closed.

In combination these local conditions may vitiate the advantages of expertise and long-term commitment that national groups enjoy. At a minimum they raise the question: Are group successes at the appellate level replicated by groups in local trial courts? Because the answer to this question is not found in the literature, we address it directly by examining empirically interest group success in the federal district courts.

### Group Success in Federal District Courts

We focus our empirical analysis on the federal district courts for three related reasons. First, because the district courts are the final arbiters of most disputes before them, it is important to understand the role of group litigants at this level. Second, as Americans become more litigious and access to the courts expands, groups are encouraged to try to achieve their goals via litigation. This litigiousness is enhanced by the evolution of "fiduciary jurisprudence," a philosophy that views judges as trustees for general, ill-defined rights and duties that subsequently must be specified and applied at trial.<sup>16</sup> Finally, litigation becomes a more attractive avenue for the transformation of group objectives into law as the federal courts become more politicized and receptive to group pressures. Certainly, recent works concerning the Reagan appointment process and the political influences on Carter and Reagan appointees to the lower federal courts suggest that trial court litigation is an increasingly viable vehicle for the pursuit of political goals.<sup>17</sup>

Given the contemporary importance of federal trial courts as forums for group litigation, it is somewhat surprising that relatively few systematic empirical examinations of group effects at this judicial level have been conducted. Several factors may account for this research lacuna. The tendency of public law scholars to focus on the U.S. Supreme Court is well documented.<sup>18</sup> Such a research bent has been reinforced by the case study design of most work on interest groups as litigants. In selecting cases, scholars are attracted to the most visible disputes, those in which questions of national concern are resolved by the nation's highest court.

Moreover, federal trial courts are rather inhospitable research settings. Most of their decisions are not published, which makes data collection time consuming and expensive. Many of these unpublished decisions are routine dispute resolutions; this forces researchers to wade through numerous routine cases of little interest to group litigants to find appropriate group-sponsored or group-litigated cases.

Finally, the diversity of the federal trial courts creates serious problems of comparability among different judges and cases at different times and places. Unlike scholars who focus on a single case or court, those who would systematically compare cases across courts must devise valid categories of analogous cases and controls for inherent factual variation across time and among jurisdictions.

### Estimating Groups' Effectiveness

Ultimately, the most accurate way of examining a group's effectiveness and ability to influence a judge's decision is to determine whether a group litigant is more successful than other litigants presenting the same case to the same judge. Because the same judge does not hear identical cases under control for group participation, the question cannot be answered directly. It can, however, be addressed indirectly by comparing the success rates of group litigants and other litigants in cases of analogous fact and law. To do this, one must impose time constraints, develop categories of similar legal disputes, and isolate judges who have resolved these disputes for group and nongroup litigants. Moreover, to obviate the possibility that a judge may be unresponsive to all litigants on either side of these disputes, we must further reduce our focus to those judges who have a balanced record of dispute resolution for the selected category of disputes. We did this by developing a research strategy that focused attention on one category of litigation and on judges who had responded to group and individual claims under the controls proposed above.

To implement this research strategy, we examined cases involving conscientious objection to military service (CO). We first identified judges who had published three or more CO opinions in the *Federal Supplements* between 1968 and 1970 (the time constraints reduced the number of judges and cases; however, they were necessary to enhance the comparability of cases within each category). We then defined group litigation as that involving group-as-plaintiff, group-as-litigator, or group as both plaintiff and litigator. Through correspondence with participating attorneys, we classified each case as individual or group litigation. We then limited our sample to those judges whose published opinions involved group and nongroup cases and whose decisions reflected a balanced record of support and opposition to these First Amendment claims. These controls limited our focus to seven judges, each of whom had heard at least three cases; however, it reinforced our confidence that any observed differences would be the result of group effects rather than surrogates for unacknowledged intervening factors.

### Aggregate Group Influence

Table 15-1, which illustrates the success of group versus nongroup cases, indicates that most cases qualifying for our sample involved group litigants. More important, before judges with relatively even propensities to support CO claims, group litigants fared better than independent litigants. The overall success rate before these judges was 59 percent; however, the success rate for groups in this sample was 67 percent, and the success rate for independent litigants dropped to 45 percent. Thus, for this tightly controlled sample of cases, group sponsorship appears to be an advantage.

Several factors may account for these apparent group effects. First, we

**Table 15-1** Comparison of Independent and Group Success in Conscientious Objector Litigation in Selected Federal District Court Decisions: 1968-1972

	Support CO Claim	Oppose CO Claim
Group (21)	14	7
Independent (11)	<u>5</u> 19	<u>6</u> 13

Source: Data collected by the authors.

must acknowledge that they may be artifacts of the small sample imposed by our design constraints. The magnitude of difference, however, suggests that these group effects reflect group strategies and advantages. That is, their expertise and information networks and other advantages yielded a substantively significant success rate. Second, closer examination of the cases also suggests that any "localism" disadvantages may have been neutralized; the group participants were, with two exceptions, either local groups or local representatives of national organizations. For example, an Iowan who resisted the draft on religious grounds was represented by a local group whose lawyer was a repeat player in the local district court. Likewise, a San Antonio, Texas, litigant was represented by the ACLU's local affiliate and a local, repeat player from the ACLU. Thus, whatever disadvantages groups may have on the local level appear to be offset by localizing group involvement.

### Influence on a Single Judge

Despite the evidence of group success, the possibility remains that aggregate differences between group and independent litigation may be accounted for by factors other than group effects. To explore this possibility, we focused our attention on a single judge who had heard analogous cases presented by group and independent litigants. The limitations of this traditional, ideographic analysis are well documented by judicial behaviorists; nonetheless, it afforded us the opportunity to search for specific corroboration of the aggregate evidence of group influence on a single judge.

We chose to analyze the opinions of Judge John Reynolds from the Eastern District of Wisconsin.<sup>19</sup> Reynolds issued six opinions in cases involving religious objections to draft status. Three involved group litigants, three did not. Two of his nongroup decisions rejected First Amendment religious claims, and one supported such a claim. All three of his group-

involved cases supported free-exercise claims against military service. Thus, Reynolds would seem, on the surface, an ideal subject for our textual exploration.

To compare group and nongroup litigation we looked for three things in Reynolds's published opinions: reference to group litigants, different weighing of evidence and precedent between group and independent disputes, and legal argumentation unique to group litigation. Our own analysis was replicated independently by two University of Kansas law professors. Our results do not corroborate the aggregate-level analysis. Neither we nor the professors found evidence of group influence reflected in Reynolds's opinions. This is not to say that the legal reasoning expressed in the opinions did not consciously or unconsciously conceal subtle group influences. Perhaps it did. But analysis of these published opinions reveals no overt group influence. Rather, what appear initially to be group effects, on closer examination, may be interpreted as a traditional adjustment to appellate decisions and changes in controlling precedent.

The possible spuriousness of apparent group effects on Reynolds may be illustrated by comparing his decisions in two cases. In the first, *U.S. v. Shermeister* 286 F. Supp. 1 (1968), no groups were involved, and the judge ruled against a defendant's claim that the local draft board's failure to reconsider his CO petition violated his due process rights. In the second, *U.S. v. Johnson* 310 F. Supp. 624 (1970), CO support groups were involved, and Reynolds ruled that failure to consider a CO petition submitted under analogous circumstances violated the defendant's due process guarantees. Thus, the judge appears to have been influenced by the group litigants. But a more detailed textual analysis suggests a very different interpretation of these differences.

In *Shermeister*, the defendant's motion to reconsider his draft status was filed one day before his induction. This motion was processed by a clerk but not formally considered by the local draft board; Shermeister argued that the board improperly failed to reconsider his classification. Reynolds disagreed. He ruled that the motion for reconsideration revealed no change in the defendant's status that would require reclassification and that the failure to reclassify was, therefore, consistent with federal regulations and due process.

In a 2-1 decision, *Shermeister* was reversed on appeal to the Seventh Circuit. The majority in *U.S. v. Shermeister* (1970) ruled that, despite its last-minute submission, the board's failure to reconsider the petition and its failure to notify the defendant constituted a violation of due process. Moreover, Reynolds's finding that the new petition contained insufficient evidence to merit reconsideration was "surplusage"; in other words, extraneous and beyond the powers of the district court.

In *Johnson*, Reynolds's reasoning was guided explicitly by the Seventh Circuit's *Shermeister* decision. He found that a local draft board violated Johnson's due process guarantees by refusing to consider a CO petition filed after an order to report for induction had been issued. Citing *Shermeister*, Reynolds reasoned that if federal regulations and due process as interpreted

in that case require *reopening* claims to CO status after notice, the claim for opening initial claims under analogous circumstances is even more compelling.

Thus, although a judge ruled one way in an "independent" case, then differently in an analogous "group" case, closer examination suggests that the key difference was not group involvement, but the intervening decision by the Seventh Circuit. What are we to make of this?

### Conclusion

It seems appropriate to conclude by assessing what we know and do not know about group litigation. We know from the literature that groups often succeed when they use litigation to channel group goals into public policy. We do not know much about group failures because failures are less appealing research topics. We know from our own empirical analysis that group litigants are more successful than are independent litigants in winning a particular kind of dispute, CO status, in the federal district courts. This suggests that, all things being equal, group litigants tend to be more skilled than are independent litigators at this level. However, it does not tell us whether groups as groups influence trial judges. Although individual judges may be responsive to group influences, the apparent responsiveness of our exemplar judge resembled a traditional response to precedent and appellate reversal. Thus, what appears to be group influence may be a surrogate for other skill factors such as case selection or "forum shopping," that attach to large law firms or corporate litigators. In other words, although groups may be inordinately successful adversaries, whether they are more successful than independent litigators of comparable skill, resources, determination, and persistence remains a question for future research.

How can we expand our knowledge about group influence and what leads to group success in the future? The combination of nomothetic and ideographic analysis utilized should be continued and extended to other dispute categories and forums. This replication should be expanded, however, by specifying the nature of group involvement as a control and, more important, by comparing interest groups with other litigants of comparable organizational capacity. Only then can we determine whether groups actually "influence" the courts and whether their success can be differentiated from that of comparable adversaries.

### Notes

1. Arthur Bentley, *The Process of Government* (Chicago: University of Chicago Press, 1908).
2. Gregory J. Rathjen, "Lawyers and Appellate Choice: An Analysis of Factors Affecting the Decision to Appeal," *American Politics Quarterly* 6 (1978): 391.

3. Clement E. Vose, "NAACP Strategy in the Restrictive Covenant Cases," *Western Reserve Law Review* 6 (1955): 101-145; Vose, "National Consumers' League and the Brandeis Brief," *Midwest Journal of Political Science* 1 (1957): 178-190; and Vose, *Caucasians Only* (Berkeley: University of California Press, 1959).
4. Vose, "National Consumers' League." See also Karen O'Connor, *Women's Organizations' Use of the Courts* (Lexington, Mass.: Lexington Books, 1980).
5. Vose, "NAACP Strategy"; Vose, *Caucasians Only*; Charles F. Kellogg, *NAACP: A History of the National Association for the Advancement of Colored People* (Baltimore: Johns Hopkins University Press, 1967); Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black Americans' Struggle for Equality* (New York: Alfred A. Knopf, 1976).
6. Vose, *Caucasians Only*; and Jack Greenberg, *Judicial Processing and Social Change: Constitutional Litigation* (St. Paul, Minn.: West Publishing, 1977).
7. For an excellent review of this literature, see C. Herman Pritchett, "Public Law and Judicial Behavior," *Journal of Politics* 30 (1968): 480-509.
8. Nathan Hakman, "The Supreme Court's Political Environment: The Processing of Noncommercial Litigation," in *Frontiers of Judicial Research*, ed. Joel B. Grossman and Joseph Tananhaus (New York: John Wiley & Sons, 1969).
9. Karen O'Connor and Lee Epstein, "An Appraisal of Hakman's 'Folklore,'" *Law and Society Review* 16 (1981-1982): 701-711.
10. Lettie M. Wenner, *The Environmental Decade in Court* (Bloomington: Indiana University Press, 1982), 44.
11. O'Connor, *Women's Organizations' Use of the Courts*; Eva R. Rubin, *Abortion, Politics and the Courts: Roe v. Wade and Its Aftermath* (Westport, Conn.: Greenwood Press, 1982); Joseph Stewart and Edward Heck, "Ensuring Access to Justice: The Role of Interest Group Lawyers in the '60s Campaign for Civil Rights," *Judicature* 66 (1982): 84-95; Leo Pfeffer, "Amici in Church-State Litigation," *Law and Contemporary Problems* 44 (1981): 83-110; Susan M. Olson, *Clients and Lawyers—Serving the Rights of Disabled People* (Westport, Conn.: Greenwood Press, 1984); O'Connor and Epstein, "An Appraisal of Hakman's 'Folklore'"; L. Epstein, *Conservatives in Court* (Knoxville: University of Tennessee Press, 1985); and Stephen L. Wasby, "Civil Rights Litigation by Organizations: Constraints and Choices," *Judicature* 68 (1985): 337-352.
12. Wayne V. McIntosh, "And Now for Something Completely Different: Amicus Curiae Activity in Federal District Courts" (Paper delivered at the Annual Meeting of the Northeastern Political Science Association, Boston, Mass., 1984).
13. Susan M. Olson, "Reconceptualizing Interest Group Litigation in Federal Trial Courts" (Paper delivered at the Annual Meeting of the American Political Science Association, New Orleans, La., 1985).
14. Kenneth Vines, "Federal District Judges and Race Relations Cases in the South," *Journal of Politics* 26 (1964): 337-357.
15. Jack W. Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* (New York: Harcourt, Brace & World, 1961).
16. Jethro Lieberman, *The Litigious Society* (New York: Basic Books, 1981).
17. Sheldon Goldman, "Reagan's Judicial Appointments at Mid-Term: Shaping the Bench In His Own Image," *Judicature* 66 (1983): 335-347; Robert A. Carp, C. K. Rowland, and Donald Songer, "The Effects of Presidential Appointment, Group Identification, and Fact/Law Ambiguity on Lower-Court Federal Judges' Policy Choices: The Case of Carter and Reagan Appointees on the Lower



Federal Courts” (Paper delivered at the Annual Meeting of the American Political Science Association, New Orleans, La., 1985).

18. Robert A. Carp and C. K. Rowland, *Politics and Policy Making in the Federal District Courts* (Knoxville: University of Tennessee Press, 1983).
19. Judge John Reynolds was born in Green Bay, Wisconsin, in 1921. He received his law degree from the University of Wisconsin and served as Wisconsin attorney general, 1959-1962, and as governor of Wisconsin, 1963-1965. President Lyndon Johnson appointed him to the federal bench in 1965. Reynolds is described as “sympathetic to criminal defendants” and having “a relaxed courtroom style.” “1984 Guide to Federal District Judges: Background, Major Rulings and Courtroom Style,” *The American Lawyer* (July-August): 65.