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FEDERAL JUDGES AND PRESIDENTIAL POWER: TRUMAN TO REAGAN

by

CRAIG R. DUCAT*
AND
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INTRODUCTION

Contemporary research in judicial politics has shown that political attitudes and values significantly influence the votes cast by judges in the decision of concrete cases.[1] There has also been a convincing demonstration of the linkage between the political values of various presidential administrations and the appointment of federal judges who then have effected basic policy changes through their decisions,[2] although presidents have shown differences in interest and commitment to judicial policymaking premised on ideological conviction.[3] However, despite the fact that more than a decade has now elapsed since the various legal controversies included under the generic title of Watergate, there remains a complete absence of any empirical examination of federal judicial decisionmaking on the issues of presidential power, as distinguished from inquiries about federal judicial support for policy items comprising the president's agenda.

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[1] *See, e.g.*, C. PRITCHETT, THE ROOSEVELT COURT (1948); T. BECKER, POLITICAL BEHAVIORALISM AND MODERN JURISPRUDENCE (1964); G. SCHUBERT, QUANTITATIVE ANALYSIS OF JUDICIAL BEHAVIOR (1959); the JUDICIAL MIND (1965); THE JUDICIAL MIND REVISITED (1974); HUMAN JURISPRUDENCE (1975); Pritchett, *The Development of Judicial Research*, FRONTIERS OF JUDICIAL RESEARCH (J. Grossman and J. Tanenhaus, eds. 1969); W. MURPHY & J. TANENHAUS, THE STUDY OF PUBLIC LAW (1972); H. SPAETH, SUPREME COURT POLICY MAKING (1979); Gibson, *From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior*, 5 POL. BEHAV. 7 (1983); Tate, *The Methodology of Judicial Behavior Research: A Review and Critique*, 5 POL. BEHAV. 51 (1983).

[2] H. ABRAHAM, JUSTICES AND PRESIDENTS (1974); R. CARP & C. ROWLAND, POLICYMAKING AND POLITICS IN THE FEDERAL DISTRICT COURTS (1983) [hereinafter CARP & ROWLAND]; Goldman, *Judicial Appointments to the United States Courts of Appeals*, 1967 WIS. L. REV. 186; *Reaganizing the Judiciary: The First Term Appointments*, 68 JUDICATURE 313 (1985); *Reagan's Second Term Judicial Appointments: The Battle at Midway*, 70 JUDICATURE 324 (1987); Gottschall, *Reagan's Appointments to the U.S. Courts of Appeals: The Continuation of a Judicial Revolution*, 70 JUDICATURE 48 (1986); H. SCHWARTZ, PACKING THE COURTS: THE CONSERVATIVE CAMPAIGN TO REWRITE THE CONSTITUTION (1988).

[3] H. CHASE, FEDERAL JUDGES: THE APPOINTING PROCESS (1972), HEREINAFTER H. CHASE, CARP & ROWLAND, supra note 2, at 53-57.

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While there is a considerable literature consisting of commentaries on the substance of federal court decisions about presidential power,[4] there has been little quantitative investigation of political factors influencing judicial decisionmaking in those cases.[5] Analyzing the votes cast by judges at all levels of the federal judiciary during the post-World War II era, this study examines several conventional expectations about the impact of such political factors as political party affiliation and presidential appointment, the difference between the foreign and military affairs and domestic policy areas, length of judicial tenure, and judges' possession of prior legislative or executive experience.

The relevance of such political factors was underscored by Justice Jackson over a quarter century ago in his remarkably candid concurrence in the Steel Seizure Case.[6] In his opinion, now famous as an essay on the causes and contours of presidential leadership and the Supreme Court's limited capacity for fastening restraints upon it, Justice Jackson observed that, in resolving these sorts of cases, a judge's policy preferences and practical experience were likely to prove decisive. In any event, he concluded, scholarly materials "only suppl[y] more or less apt quotations from respected sources on each side of any question[]" and therefore "largely cancel each other."[7] The text of court decisions he also found "indecisive because of the judicial practice of dealing with the largest questions in the most narrow way."[8]

An examination of the judicial treatment of presidential power from a political perspective would thus appear to be long overdue, especially in light of the events of the postwar era. Reviewing judicial responses to presidential power from the Steel Seizure to Watergate, one commentator announced the emergence of "new patterns in judicial control of the presidency."[9] Traditional works had concluded that the courts were largely ineffectual in restraining the expansion of presidential power,[10] and that the few constraints courts had imposed upon the executive in peacetime all but disappeared in crisis times.[11] In any case, like Justice Jackson, we doubted that

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[4] R. BLAND, T. HINDSON, & J. PELTASON, CORWIN'S THE PRESIDENT: OFFICE AND POWERS (5TH ED. 1984); G. SCHUBERT, THE PRESIDENCY IN THE COURTS (1957); R. SCIGLIANO, THE SUPREME COURT AND THE PRESIDENCY (1971); A. MILLER, PRESIDENTAL POWER IN A NUTSHELL (1977).

[5] A rare example is M. GENOVESE, THE SUPREME COURT, THE CONSTITUTION, AND PRESIDENTIAL POWER (1980). As contrasted with the domain of our study, which is limited to judicial decisions involving the president's statutory or constitutional authority, Genovese's inquiry extended beyond this to include presidential effectiveness with the Supreme Court generally, i.e., an administration's success in getting judges to accept political preferences that accorded with the executive's public policy agenda. *See infra* note 13.

[6] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 634 (1952) (Jackson, J., concurring).

[7] *Id.* at 634-635.

[8] *Id.* at 635.

[9] Dionisopoulos, *New Patterns in Judicial Control of the Presidency: 1950's to 1970's*, 10 AKRON L. REV. 1 (1976).

[10] *See supra* note 4.

[11] E. CORWIN, TOTAL WAR AND THE CONSTITUTION (1947); J. RANDALL, CONSTITUTIONAL PROBLEMS UNDER LINCOLN (1951); C. ROSSITER, THE SUPREME COURT AND THE COMMANDER IN CHIEF (1951, 1976); G. SCHUBERT, *supra* note 4.

judicial rhetoric could be counted on to supply the answer. Our analysis is therefore directed to examining what federal judges do, not what they say--to how they vote, not how they talk.

DATA

The decisional data for this study consist of the 1,337 votes cast by federal judges and justices in 531 cases on presidential power decided by federal courts at all levels between January 1949 and June 1984. We first consulted *Shepard's Citations* and screened all of the cases which were listed as citing any portion of the following parts of the Constitution: article I, sec. 7, article II, or amendments XII, XX, XXII, or XXV. From this general collection, all of the cases dealing with matters which could not reasonably be described as relating to presidential power were eliminated (*e.g.*, presidential electors, voting rights, the treaty power generally). The collection of cases was reduced further by deleting all cases which merely cited one or more of the constitutional provisions identified above only in a peripheral or illustrative way (usually in a footnote). The cases included in this study identified via *Shepard's* mentioned the president or executive in the headnotes or in points of law or else contained substantial discussion or reference to presidential power in the opinion (usually a paragraph or more).

The second source for identifying cases included in this study was *Westlaw*. Reliance upon a resource capable of reaching beyond only constitutional cases was essential because many important cases on presidential power have been decided without implicating constitutional provisions (e.g., impoundment, the Iranian hostage settlement). As Martin Shapiro pointed out long ago, there is much more to political power than constitutional power. Decisions governing statutory authority are perhaps just as important and such cases are more numerous than those implicating constitutional provisions.[12] Because a simple *Westlaw* search of federal cases using the terms "president" and "executive" would turn up thousands of completely irrelevant cases (involving, *e.g.*, presidents or executives of corporations, unions, school boards), we searched *Westlaw* for all federal cases decided after 1948 in which "executive" or variations of the word "president" appeared in the headnotes or as topics, or where those terms appeared in individual points of law under any of the following topics: "war," "national emergency," "constitutional law," or "United States." Even this narrowing of the *Westlaw* search turned up more than 3,500 cases. This field was then screened according to the following principles which governed inclusion of cases in this study. We required that the discussion of presidential power in the opinion be directly related to the decision of the case, in other words, that it not be peripheral. We eliminated disputes in which judicial reference to congressional and presidential power was made in the same breath so that there was no separate mention or focus on executive power. We also deleted cases involving administrative, as distinguished from executive, power.

[12] M. SHAPIRO, LAW AND POLITICS IN THE SUPREME COURT (1964).

Although on occasion it was difficult to draw this distinction, we sought to restrict the inclusion of suits naming cabinet officers, other officeholders inferior to the president, and agencies to those cases in which validity of an executive order was at issue (as distinguished from controversies over the interpretation of such an order, unless the president's intention in the order was clear and under attack). In other cases where a cabinet officer or officeholder inferior to the president was impleaded as the defendant, we included the case if there was evidence in the opinion that the officer was executing an order from the president, where the matter at hand was of such significance it was inconceivable that the president would not have been involved, or where the opinion dealt with the officeholder's actions in such a manner as to refer to specific powers of the executive branch or to identify the officer as the alter ego of the president. We also eliminated from the *Westlaw* collection cases where the suit named the United States as a party and the interest identified and discussed by the court was "governmental" as distinguished from one specifically executive or presidential, or where there was only a very casual mention of the executive and far greater emphasis was placed on the governmental interest of the United States. Obviously, cases which named the president or a former president personally were included. Since the focus of our case data base was decisions on executive power, not all cases reflecting on a president's political power or his policies were included. Only those implicating the constitutional or statutory authority of his office were counted.[13] We were also reluctant to include cases involving the claims of Indians unless the involvement of presidential power was explicit. Cases involving threats against the president's life or the validity of sanctions imposed for demonstrating against him or making statements critical of his administration were invariably not included because those disputes did not involve presidential power but the validity of certain criminal processes.

The association of specific court decisions with particular presidents was governed by the exact dates of presidential tenure. Where the decisional process in a given case overlapped the replacement of one administration by another, this was duly noted. The only exception to the assignment of court decisions according to the

[13] In describing the precise focus of this study, we think the difference between looking at presidential policy preferences and presidential power needs to be emphasized. The decisions we included directly implicate the president's authority. Ours is not an inquiry into the general success rate of presidential administrations in persuading the federal courts to adopt or validate the executive's views of policy. Were this our focus, we would have examined the won-lost record of the solicitor general, since his views in litigation are taken to mirror administration policy (*see*, Segal, *Amicus Curiae Briefs by the Solicitor General During the Warren and Burger Courts*, 41 WEST. POL. Q. 135 (1988); *Segal & Reedy, The Supreme Court and Sex Discrimination: The Role of the Solicitor General*, 41 WEST. POL. Q. 553 (1988); L. CAPLAN, THE TENTH JUSTICE: THE SOLICITOR GENERAL AND THE RULE OF LAW (1987)). Consequently, decisions included in our study do not include cases on the exclusionary rule, affirmative action, the death penalty, and a host of other controversial issues about which administrations have sought to influence the federal courts but which, without more, do not implicate the president's powers of office. However, controversies about the pocket veto, mandatory drug testing of federal employees, and the conduct of covert operations abroad, for example, are included because such disputes directly implicate the statutory or constitutional authority of the president. We alluded to this distinction by way of contrasting the focus of this study with that taken by Genovese, *see supra* note 5.

then-incumbent president occurred for a number of cases involving suits by or against former President Nixon which had their origins in the events of Watergate or certain surveillance practices of his administration. Because each of these cases specifically named the former president as plaintiff or defendant, these cases were regarded as personal to Nixon.

Background data on the judges and justices participating in the decision of these cases were obtained from a number of standard sources.[14] Data on the identity of the appointing president, the length of a judge's or justice's tenure on the bench at the time of decision, and the nature of his or her experience prior to appointment were obtained for all those whose votes are included here. As anticipated, political party affiliation at the time of appointment proved to be much more difficult to obtain. Using the standard sources cited, newspapers, *Congressional Quarterly Weekly Reports*, and information supplied by helpful colleagues in the discipline who had collected data on federal judges for their own research,[15] we were able to link the judges's or justice's party affiliation to 1,330 of the 1,337 votes cast.

DISCUSSION

We found a high level of support overall for presidential power among the votes cast by federal judges. Of the 1,337 votes cast, two-thirds (67 percent) upheld the exercise of presidential power. Presidents fared poorest with federal district judges who voted to uphold exercises of executive power 59.4 percent of the time (224 out of 377 votes). Chief executives did better before the Supreme Court where the justices favored the actions taken by presidents with 66.3 percent of their votes (275 out of 415). The postwar presidents were most successful with federal appeals court judges who validated the exercise of presidential power with 73.4 percent of their votes (400 out of 545). Thus, although some variation could be found among the different levels of the federal judiciary, support for the exercise of presidential power was consistently strong.[16]

Political Party Affiliation and Presidential Appointment

Because political party affiliation has been shown to be a useful but crude predictor of judicial behavior,[17] we began by examining whether in general Demo-

[14] JUD. CONF. OF THE U.S, JUDGES OF THE UNITED STATES (2D ed. 1983); W. DORNETTE & R. CROSS, FEDERAL JUDICIARY ALMANAC (1984); H. CHASE, S. KRISLOV, K. BOYUM, & J. CLARK, BIOGRAPHICAL DICTIONARY OF THE FEDERAL JUDICIARY (1976); WHO'S WHO IN AMERICAN LAW (3d ed. 1983).

[15] We are indebted to professors Elliot Slotnick, C.K. Rowland, and especially Sheldon Goldman for some of the particularly hard-to-find party affiliation data.

[16] Analysis of the votes cast solely by federal district judges is presented in Ducat & Dudley, *Federal District Judges and Presidential Power During the Postwar Era*, 51 J. OF POL. 98 (1989). That analysis discloses nothing peculiar about the behavior of federal district judges in such cases that significantly distinguishes their decisionmaking behavior from that of their appellate court colleagues.

[17] *See*, Nagel, *Political Party Affiliation and Judges' Decisions*, 55 AMER. POL. SCI. REV. 843 (1961); Adamany, *The Party Variable in Judges' Voting: Conceptual Notes and a Case Study*, 63 AMER. POL. SCI.

cratic or Republican judges looked more favorably on presidential power. We expected that Democratic judges generally would be more receptive to the exercise of presidential power than Republicans.

This expectation seemed logical since virtually all of the federal judges included in this study were appointed since the Depression. Given the extent to which the expectation of vigorous presidential leadership had become linked to the New Deal-Fair Deal-New Frontier-Great Society domestic programs of Democratic presidents, we thought Democratic judges and justices would be much more inclined to support exercises of presidential power than Republicans. By contrast, we expected that Republican judges and justices, presumably much more sympathetic to a philosophy of negative government, would be quite resistant to exercises of presidential power.

The data presented in Table 1 provide a surprising refutation to those expectations. It was Republican judges, not Democratic judges, in the postwar era who were more receptive to exercises of presidential power. While Democratic judges voted to uphold presidential actions 63 percent of the time, Republican judges validated exercises of presidential power with nearly three-quarters of their votes.

REV. 57 (1969); Feeley, *Another Look at the "Party Variable" in Judicial Decision-Making: An Analysis of the Michigan Supreme Court*, 4 POLITY 91 (1971); CARP & ROWLAND, *supra* note 2, 25-32; Tate, *Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978*, 75 AMER. POL. SCI. REV. 355 (1981).

TABLE 1

JUDICIAL SUPPORT FOR PRESIDENTIAL POWER BY JUDGES' PARTY AFFILIATION

Policy Area	Votes Cast by Democratic Judges: Total	Votes Cast by Democratic Judges: Percent Suporting President	Votes Cast by Republican Judges: Total	Votes Cast by Republican Judges: Percent Supporting President
Foreign Affairs	207	65.7	146	83.6
War Powers	108	84.3	74	86.5
Spending	56	50.0	36	27.8
Law Enforcement	99	36.4	84	63.1
Appointment and Removal	92	58.7	50	88.0
Economic Regulation	37	59.5	25	76.0
Presidential Privilege and Confidentiality	48	25.0	30	50.0
Legislative Power	42	83.3	25	88.0
Military Personnel	37	86.5	16	100.0
Pardoning	18	77.8	9	100.0
ALL AREAS	777	62.4	523	74.8

At least as revealing as the aggregate level of support for presidential actions exhibited by Republican judges and justices is the consistency of such support. In nine of the ten policy areas into which we divided the cases,[18] Republican judges were more favorably disposed to actions taken by the president than were Democratic judges. The only policy area in which the presidential support score of Democratic judges was greater than that of Republican judges was the spending power where the former group voted to uphold executive actions with 50 percent of their votes while the latter group sustained them only half as often.

Some of the differential support tied to party affiliation doubtless reflects the effect of party affiliation as a surrogate measure of political ideology. Probably the best evidence of this is the high degree of polarization between the two groups of judges on the use of the president's law enforcement powers. Presumably, the nearly 30-point spread that separates the 63.1 percent support score for Republican judges from the 36.4 percent support score for their Democratic colleagues can be explained by the conventional juxtaposition of security and liberty interests that conventionally distinguishes conservatives from liberals. Since cases involving covert operations, travel restrictions, and the treatment of aliens comprised a portion of the decisions included in the policy area broadly labeled "foreign affairs," some of the 18-point difference that separated Republican judges (83.6 percent support) from Democratic judges (65.7 percent support) similarly can be attributed to the ideological factor. However, no such ready explanation can account for the 30-point difference between Democratic and Republican judges in the area of presidential appointment and removal powers or the 15-point gap that separates the two groups of judges in the policymaking area of economic regulation.

A refinement of the party variable, capable of linking voting patterns in these highly diverse fields, is that of a judge's loyalty to the appointing president or political party. Although presidents occasionally have been disappointed by the performance of their judicial appointees, there is substantial evidence that "the surprised president" is a myth.[19] Appointments to the federal bench are generally calculated to advance policy goals of the incumbent administration, and appointees are generally picked to support those policies.[20] Moreover, since it is well-

[18] The policy areas, with descriptions of their component cases, are as follows: (1) foreign affairs (embargoes, tariff adjustments, passports, travel restrictions, covert operations, extradition, treatment of aliens, etc.); (2) war powers (deployment of weapons, legality of engaging in undeclared war, draft registration and regulations, trial of civilians by the military, decisions made by the president as commander-in-chief during a declared war, etc.); (3) spending (impoundment, program termination, orders related to practices of federal contractors); (4) law enforcement (surveillance regarding national security, censorship, keeping order, control over prosecutions, suits to compel the executive branch to follow the law, presidential tort liability); (5) appointment and removal; (6) economic regulation (seizure of industries, wage and price regulation, injunction to halt a strike, etc.); (7) presidential privilege and confidentiality (executive privilege, control of presidential papers, presidential depositions, etc.); (8) legislative power (pocket veto, legislative veto, executive branch reorganization, proclamations, etc.); (9) military personnel (military discipline, personnel, promotions); and (10) pardoning.

[19] L. TRIBE, GOD SAVE THIS HONORABLE COURT 50-76 (1985).

[20] *See supra* note 2.

established that the job does not seek the individual but instead that eager individuals seek posts as federal judges,[21] one might naturally expect that the political activism of such candidates would reflect itself in a general identification with the political positions of the party from which they were appointed. The focus of this study, judicial treatment of presidential power, offers an especially good context in which to examine a factor such as personal political loyalty.

Table 2 presents data on judicial voting patterns in the cases on presidential power in terms of personal and party relationships between judges and presidents. In addition to examining whether each judicial vote supported or opposed the exercise of presidential power, we examined whether the judge casting the vote had been appointed by the same president as that whose exercise of power was at issue, and, if it were a different president (as it usually was), whether the incumbent president whose action was at issue was of the same party or a different party than that from which the judge had been appointed.

TABLE 2

RELATIONSHIP OF PRESIDENT AND PARTY TO JUDGES' VOTES

Relation of President in Decision to Judge's Appointment and Judge's Party	Supporting the President		Opposing the President	
	Votes	Percent	Votes	Percent
Same President-Same Party	167	77.3	49	22.7
Different President-Same Party	288	71.1	117	28.9
Same President-Different Party	22	71.0	9	29.0
Different President-Different Party	408	62.0	250	38.0
TOTAL	885	67.0	425	33.0

[21] CHASE, *supra* note 3, at 29-32.

Table 2 shows that when the inquiry is narrowed from the frequency of Democratic or Republican judicial support for exercises of presidential power to one of matching judicial votes with appointing presidents and with the congruence of party affiliation between sitting judge and president involved, a clearly discernible pattern emerges. The strongest support for postwar presidents came from their own appointees who were also of the president's party. Such judges voted to sustain exercises of presidential power more than three-quarters (77.3 percent) of the time. Occupying a sort of middle ground were those judges deciding the claims of different presidents but of the same political party and those judges who, while appointed by the same president as that whose power was in dispute, were of a different party affiliation. These two groups of judges virtually tied in their support of presidential power with a score of 71 percent. As might be expected, presidents fared poorest with federal judges and justices who had neither been appointed by them nor shared their party affiliation. Although these different president-different party judges still voted to sustain exercises of presidential power with over three-fifths of their votes (62 percent), they were clearly the group most inclined to disagree with the president, and they did so 38 percent of the time.

In sum, the data in Table 2 lead us to the inference that the probable reason why Republican judges exhibit higher levels of support for presidential power is not because of any particular philosophical attraction between Republican judges and the concept of a powerful presidency but because Republican judges, like Democratic judges, are more supportive of presidents of their own party. Since more than 70 percent of the cases included in this study were decided in the period dating from the inauguration of Richard Nixon in 1969, Republican judicial support could result from the simple fact that during this period Republicans controlled the White House three times longer than did Democrats (twelve years as compared with four).

Are There "Two Presidencies"?

When the relationship of president and party to judges' votes is examined according to the type of power involved, it provides an appropriate context in which to consider whether there are not in fact "two presidencies." Scholarship analyzing the legislative process has suggested that there are two quite different spheres of executive influence. Based upon his analysis of roll call votes in Congress on presidential proposals from 1948 to 1964, Aaron Wildavsky reported that presidents experienced markedly greater success in the realm of foreign and defense policy than domestic policy.[22] While the postwar presidents in this period (Truman to Johnson) experienced legislative success about 40 percent of the time in domestic affairs, congressional support in the realm of foreign and military policy was approximately 30 points higher.[23] In light of this gap in legislative support for presidential powers, Wildavsky argued that the interbranch relationship might more usefully be portrayed

[22] Wildavsky, *The Two Presidencies*, in THE PRESIDENCY (A. Wildavsky, ed. 1969).
[23] *Id.* at 231.

in terms of two distinctly different realms of executive power.

That the Supreme Court has recognized the existence of two different presidencies, however, has not been something scholars have had to infer. Over half a century ago, Justice Sutherland announced as much in his opinion for the Court in *United States v. Curtiss-Wright Export Corp.*[24] Both as a matter of constitutional theory and political practicality, the Court embraced the proposition that the president's authority, leadership, and independence were markedly greater in the conduct of foreign affairs than in the formulation of domestic policy.[25] Even Justice Jackson who saw considerable ambiguity and fluidity in presidential power domestically, as we have noted, explicitly acknowledged the Court's recognition in *Curtiss-Wright* that the president was operating in a different sphere when conducting foreign policy.[26] In light of this explicit recognition by the Court, we thought it was doubly important to examine whether federal judges during the postwar period considered presidential power cases in terms of this duality.

The ten policy areas included in our study were partitioned into the realms of foreign and military powers, on the one hand, and domestic powers, on the other. The judicial votes cast in these two realms of presidential power were then arrayed according to the relationship of president and party to judges' votes. These distributions are presented in Tables 3 and 4 for foreign and military powers and domestic powers respectively.

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[24] 299 U.S. 304 (1936).

[25] Disagreement still persists, however, over the exact scope of the Court's holding in *Curtiss-Wright*. Probably the most recent evidence of this surfaced in the colloquy between Col. Oliver North and Sen. George Mitchell during the joint hearings conducted by the select House and Senate committees investigating the Iran-Contra affair. Col. North in effect argued that the Court recognized the president's authority for conducting foreign affairs was substantially extra-constitutional. Sen. Mitchell, a former federal judge, asserted the Court had held nothing more than that the parameters of Congress' authority to delegate power to the president were wider in foreign than domestic affairs. *Iran-Contra Investigation: Joint Hearings Before the Senate Select Comm. on Secret Military Assistance to Iran and the Nicaraguan Opposition and the House Select Comm. to Investigate Covert Arms Transactions with Iran,* 100th Cong., 1st Sess. 38-39 (1987) (testimony of Col. Oliver L. North, Pt. 2).

[26] Youngstown Sheet & Tube Co.v. Sawyer, 343 U.S. 579, 635-636 n.2 (Jackson, J., concurring). As that portion of his opinion makes clear, there is no question about whose interpretation Justice Jackson would have favored in the clash between Col. North and Sen. Mitchell, *see supra* note 25; it would have been Sen. Mitchell's.

TABLE 3

RELATIONSHIP OF PRESIDENT AND PARTY TO JUDGES' VOTES IN CASES INVOLVING FOREIGN AND MILITARY POLICY

Policy Area	Same Pres.- Same Party		Diff. Pres.- Same Party & Same Pres.- Diff. Party		Diff. Pres.- Diff. Party		All Judges	
	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.
Foreign Affairs	52	75.0	147	77.5	158	67.7	357	72.8
War Powers	41	90.2	58	81.0	87	86.2	186	85.4
Military Personnel	7	100.0	20	95.0	25	88.0	52	92.3
FOREIGN AND MILITARY POLICY	100	83.0	225	80.0	270	75.5	595	78.4

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TABLE 4

RELATIONSHIP OF PRESIDENT AND PARTY TO JUDGES'S VOTES IN CASES INVOLVING DOMESTIC POLICY

Policy Area	Same Pres.-Same Party		Diff. Pres-Same Party & Same Pres.-Diff. Party		Diff. Pres.-Diff. Party		All Judges	
	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.
Spending	12	66.6	26	42.3	57	40.3	95	44.2
Law Enforcement	39	58.9	48	52.0	96	41.6	183	48.0
Appoint./Removal	22	81.8	36	80.5	84	60.7	142	69.0
Economic Regulation	11	72.7	24	58.3	27	70.3	62	66.1
Pres. Privilege	16	68.7	20	30.0	41	19.5	77	32.4
Legislative Power	10	100.0	21	80.9	36	83.3	67	85.0
Pardoning	1	100.0	7	100.0	19	78.9	27	85.1
DOMESTIC POLICY	111	71.1	182	59.8	360	51.6	653	57.2

Comparison of the data in these tables provides impressive confirmation of the "two presidencies" thesis. Postwar presidents from Truman to Reagan received support from federal judges and justices 57.2 percent of the time on domestic policymaking, but when the policymaking focus changed to foreign and military policy, presidential support increased more than 20 points to 78.4 percent. It is nearly always true that same president-same party judges show the highest degree of support and it is likewise equally true that different president-different party judges support presidents the least, with the remaining judges falling somewhere in between. While all three groups of judges show greater presidential support as one moves from domestic to foreign and military policy, what is especially noteworthy in confirming the "two presidencies" thesis is that the greatest proportional increase in support comes from that group of judges and justices least inclined to favor the president. The different president-different party judges increased their support from 51.6 percent to 75.5 percent, nearly 24 points.

Although our findings confirm the "two presidencies" thesis as applied to judicial support for exercises of presidential power during the postwar era, we are mindful of the fact that Wildavsky's research appeared twenty five years ago. Since then, other scholars have argued that congressional support for the president in the realm of foreign and defense policy has deteriorated to a point where it is not significantly higher than that enjoyed by the president in domestic affairs, and, furthermore, that presidential success with Congress has declined overall.[27] We were interested in examining whether these revisionist corollaries held true for presidential success in the federal courts as well. Table 5 presents data on judicial support

[27] *See* LeLoup & Shull, *Congress Versus the Executive: The "Two Presidencies" Reconsidered*, 59 SOC. SCI. Q. 704 (1979); Zeidenstein, *The Two Presidencies Thesis Is Alive and Well and Has Been Living in the U.S. Senate Since 1973*, 11 PRES. STUD. Q. 511 (1981). Indeed, legislatively speaking, there is some evidence that the "two presidencies" phenomenon may exist only for presidents of one party, *see* Fleisher & Bond, *Are There Two Presidencies? Yes, But Only for Republicans*, 50 J. OF POL. 747 (1988). However, examining only key votes on major issues, as distinguished from Wildavsky's inclusion of all roll call votes involving presidential initiatives, whether major or minor, another scholar found no support for Wildavsky's conclusion, *see* Sigelman, *A Reassessment of the Two Presidencies Thesis*, 41 J. OF POL. 1195 (1979); *but see* Shull & LeLoup, *Reassessing the Reassessment: Comment on Sigelman's Note on the "Two Presidencies,"* 43 J. OF POL. 563 (1981). Finally, in an article that weaves several of these conclusions together, yet another scholar of the presidency observed:

> [T]he two presidencies did flourish under President Eisenhower, but the additional support for foreign policies that characterizes the two presidencies has been modest since the 1960s and no longer reliably appears. Moreover, the locus of additional support for foreign policy has always been the opposition party. . . .
>
> . . . Contrary to the conventional wisdom, analysis reveals that the source of the two presidencies is not congressional bipartisanship or deference in foreign affairs, nor is it the relative advantages of the president in foreign policymaking. Instead, the two presidencies appears to be a natural outgrowth of a president proposing foreign policies, but not domestic policies, that appeal to a substantial segment of the opposition party. Similarly, we cannot attribute the decline of the two presidencies to the trauma of Vietnam. Simply stated, when the appeal of a president's foreign policies to the opposition diminishes, so does the two presidencies.

Edwards, *The Two Presidencies: A Reevaluation*, 14 AMER. POL. Q. 247, 261-262 (1986).

of presidential power for each of the policy areas in the realms of foreign and military affairs and domestic affairs partitioned into two periods of time which roughly can be described as during and after the time period covered by Wildavsky's article.

TABLE 5

JUDICIAL SUPPORT FOR PRESIDENTIAL POWER DURING EARLY AND LATER PERIODS OF THE POST-WAR ERA

	1949 - 1968		1969 - 1984	
Policy Area	Total Judges' Votes	Percent Supp. Pres.	Total Judges' Votes	Percent Supp. Pres.
Foreign Affairs	144	63.9	228	78.5
War Powers	107	86.9	84	84.5
Military Personnel	49	89.8	6	100.0
FOREIGN AND MILITARY POLICY	300	76.3	318	80.5
Spending	16	62.5	78	37.2
Law Enforcement	23	47.8	164	48.8
Appoint./Removal	63	74.6	84	64.3
Economic Regulation	46	58.7	20	80.0
Pres. Privilege	1	0.0	79	31.6
Legislative Power	22	100.0	48	77.1
Pardoning	6	100.0	22	77.3
DOMESTIC POLICY	177	69.4	495	52.1
ALL POLICY AREAS	477	73.7	813	63.0

Although there has been approximately a 10-point decline in judicial support for presidential power overall (from 73.7 percent to 63 percent) between these two periods, there is no evidence to suggest that this increased policitization has diminished judicial support for presidential actions in the area of foreign and military affairs. Indeed, our data show a slight increase in presidential success of about 4 points (from 76.3 percent to 80.5 percent).

What is significant, however, is that the gap between judicial support for presidential actions in foreign and military affairs as distinguished from domestic affairs has widened noticeably. For the first two decades of the postwar era, approximately 7 points separated judicial support for presidential action in foreign and military matters (76.3 percent) from that given domestic policy actions (69.4 percent). Since 1969, however, that gap has widened to 28 points (80.5 percent support in foreign and military affairs to 52.1 percent in domestic affairs). As Table 5 shows, the principal reason for this is deteriorating judicial support for presidential action in domestic affairs.

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TABLE 6

RELATIONSHIP OF PRESIDENT AND PARTY TO JUDICIAL SUPPORT FOR PRESIDENTIAL POWER DURING EARLY AND LATER PERIODS OF THE POST-WAR ERA

Policy Area	Period	Same Pres.-Same Party		Diff. Pres-Same Party & Same Pres.-Diff. Party		Diff. Pres.-Diff. Party	
		Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.
Foreign Affairs	1949-1968	27	74.0	53	62.2	53	64.1
	1969-1984	25	76.0	94	86.1	105	69.5
War Powers	1949-1968	22	86.3	37	78.3	43	93.0
	1969-1984	19	94.7	21	85.7	46	80.4
Military Personnel	1949-1968	6	100.0	17	94.1	23	86.9
	1969-1984	1	100.0	3	100.0	2	100.0
FOREIGN AND MILITARY POLICY	1949-1968	55	81.8	107	72.9	119	79.0
	1969-1984	45	84.4	118	86.4	153	73.2
Spending	1949-1968	3	100.0	3	33.3	9	66.7
	1969-1984	9	55.6	23	43.4	48	35.4
Law Enforcement	1949-1968	5	40.0	6	16.7	11	72.7
	1969-1984	34	61.8	42	57.1	85	37.6

TABLE 6 - (Continued)

Policy Area	Period	Same Pres.-Same Party		Diff. Pres-Same Party & Same Pres.-Diff. Party		Diff. Pres.-Diff. Party	
		Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.
Appoint./Removal	1949-1968	15	80.0	12	66.7	32	75.0
	1969-1984	7	85.7	24	87.5	52	51.9
Economic Regulation	1949-1968	10	70.0	17	47.0	16	68.7
	1969-1984	1	100.0	8	87.5	11	72.7
Pres. Privilege and Confidentiality	1949-1968	0	0.0	0	0.0	1	0.0
	1969-1984	16	68.7	20	30.0	40	20.0
Legislative Power	1949-1968	4	100.0	7	100.0	9	100.0
	1969-1984	6	100.0	14	71.4	27	77.8
Pardoning	1949-1968	0	0.0	0	0.0	5	100.0
	1969-1984	1	100.0	7	100.0	14	71.4
DOMESTIC POLICY	1949-1968	37	75.7	45	55.6	83	75.9
	1969-1984	74	68.9	138	61.6	277	44.4
ALL POLICY AREAS	1949-1968	92	79.3	152	67.7	202	77.7
	1969-1984	119	74.8	256	73.0	430	54.7

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Table 6 arrays judicial support for presidential actions in the major policy realms for these two periods in terms of the relationship of president and party to judges' votes. As the figures in Table 6 make clear, the largest single factor associated with the widening gap in judicial support for presidential foreign/military actions as against domestic policy actions is the precipitous decline in support in domestic affairs by different president-different party judges and justices. Comparing the period 1949-1968 with that of 1969-1984, their support declined from 73.2 percent to 44.4 percent, a drop of nearly 30 points. That presidents have experienced diminished judicial support is mainly attributable, therefore, to the increasing polarization of the federal bench in the area of domestic policy.

Judicial Independence

The loyalty of new federal judges to the appointing president prompted us to examine further the factor of judicial independence. Since the jurisdiction of their courts emanates from art. III of the Constitution, the judges and justices included in this study enjoyed tenure during good behavior, which is to say life tenure. Life tenure, like the guarantee that judicial compensation will not be diminished during tenure in office, reflects a commitment to the principle of judicial independence. In view of this, we wondered if increased tenure on the federal bench was associated with increased resistance to exercises of presidential power.

Table 7 arrays positive and negative judicial votes according to the length of the judge's tenure on the federal bench at the time of decision. The data show some support for the observation that, as judicial tenure increases, so does judicial opposition to presidential power. There is an apparent trend as one moves through judicial tenure at five-year intervals. Federal judges with five years of service or less supported presidential power about 70 percent of the time. With better than a decade of experience, this general support score dropped about 3 points; and after finishing a second decade on the federal bench, presidential support fell 6 more points.

TABLE 7

JUDICIAL TENURE AND JUDGES' VOTES

Years on the Federal Bench	Judicial Votes Supporting the President		Judicial Votes Opposing the President	
	N	Percent	N	Percent
0 - 5	290	70.4	122	29.6
6 - 10	217	67.6	104	32.4
11 - 15	204	66.7	102	33.3
16 - 20	117	66.9	58	33.1
Over 20	84	60.4	55	39.6
TOTAL	912	67.0	441	33.0

It is possible, however, that any relationship between length of judicial tenure and declining presidential support in fact may be a reflection of the basic relationship of president and party to judges' votes. Given the time lag characteristic of the federal courts, created by the combination of presidential appointment and life tenure, it is likely that the bulk of those judges with the least tenure were appointed by the incumbent administration while judges with greater tenure were appointed by not only a different president, but one of a different political party. Table 8 presents data on judicial support for presidential power when votes according to judicial tenure are arrayed against the relationship between president and party.

TABLE 8

RELATION OF PRESIDENT AND PARTY TO JUDGES' VOTES IN THE CONTEXT OF LENGTH OF SERVICE ON THE FEDERAL BENCH

	Same Pres.-Same Party		Diff. Pres.-Same Party & Same Pres.-Diff. Party		Diff. Pres.-Diff. Party	
Years of Service	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.	Total Votes	Percent Supp. Pres.
0 - 5	185	79.4	77	64.9	225	36.0
6 - 10	22	68.1	100	74.0	197	64.9
11 - 15	6	33.3	147	73.4	135	60.7
16 - 20	0	0.0	63	73.0	104	64.4
Over 20	1	100.0	53	67.9	79	53.1

While Table 8 lends support to the proposition that judicial tenure may be a factor negating presidential support for some president-same party judges, there is no evidence to suggest it is a significant factor in the behavior of federal judges generally. Indeed, the data in Table 8 suggest that the most significant pocket of opposition to presidential power is not long-entrenched federal judges whose guaranteed tenure has made them feisty, but relatively recent appointees of a previous administration whose party was not continued in office. In the context of the support scores presented in Table 8, this is the logical conclusion to be drawn from the remarkably low presidential support score of 36 percent registered by the votes of different president-different party judges with five years of service or less on the federal bench.

Prior Executive or Legislative Experience

A fourth and final factor which we considered was prior executive or legislative experience. We thought that federal judges who previously had served in the executive branch, either at the federal or state level, might sympathize with a president resisting limitations on his powers of office,[28] while judges with prior legislative experience might be more prone to resist exercises of executive power.

TABLE 9

RELATIONSHIP OF PRIOR EXECUTIVE OR LEGISLATIVE EXPERIENCE TO JUDGES' VOTES ON PRESIDENTIAL POWER

	Supporting the President		Opposing the President	
Experience	Votes	Percent	Votes	Percent
FOREIGN AND MILITARY POLICY CASES				
No experience	184	82.1	60	17.9
Executive experience only	62	69.6	27	30.4
Legislative experience only	39	68.4	18	31.6
Executive and legislative experience	22	91.6	2	8.4
DOMESTIC POLICY CASES				
No experience	323	61.1	206	38.9
Executive experience only	143	66.5	72	33.5
Legislative experience only	83	71.6	33	28.4
Executive and legislative experience	26	78.8	7	21.2
ALL CASES				
No experience	507	65.6	266	34.4
Executive experience only	205	67.4	99	32.6
Legislative experience only	122	70.5	51	29.5
Executive and legislative experience	48	84.2	9	15.8

[28] Surely one of the most direct statements of this thesis is to be found in the introductory remarks of Justice Jackson in his concurring opinion in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 634-635 (1952).

Table 9 arrays the data on the votes cast by federal judges and justices in cases on presidential power by major policy area and by judge's possession of prior executive or legislative experience, both, or none. The data present an ambiguous pattern.[29]

It seems clear, however, that there is no support to be found in the data in Table 9 for the notion that votes cast by judges with prior executive experience at either the federal or state level are particularly associated with greater than average support for presidential power. Likewise, there is nothing to support the belief that judges with prior legislative experience are more likely to be hostile to exercises of executive power. Indeed, we were surprised to find that the votes cast by federal judges with legislative, as opposed to executive, experience tended to favor presidential power even more often (70.5 percent support as contrasted with 67.4 percent). Moreover, votes cast by judges with both prior executive and legislative experience tended more often (84.2 percent) to favor presidential actions than votes cast by judges who did not have such dual experience. Since the lowest general level of support given presidential power came in the votes associated with judges who had neither executive nor legislative experience before appointment to the federal bench, there may be some truth in the proposition that prior officeholding experience in the executive or legislative branch is associated with greater sympathy for presidential actions than is its absence.

CONCLUSION

Our examination of the votes cast by federal judges and justices in cases on presidential power during the postwar era has focused on four factors thought to affect judicial decisionmaking: political party affiliation and presidential appointment, the difference between foreign and military policy and domestic policy, the length of judicial tenure, and judicial possession of prior executive or legislative experience. Examining the first of these factors, we found that presidential support was highest in the votes cast by judges who were appointed by the same president whose power was at issue and who shared a common party affiliation. Least supportive of presidential power were the votes cast by judges appointed by a different president of the opposite party. We also found strong support for the "two presidencies" thesis that the president experiences a higher level of support in the realm of foreign and military affairs than in domestic affairs. Our evidence suggests

However, it is worth recalling, particularly in light of the findings which we report, that while Justice Jackson empathized with "the poverty of really useful and unambiguous authority applicable to concrete problems of executive power as they actually present themselves[,]". *Id.* at 634. He nevertheless voted in *Youngstown Sheet & Tube* to invalidate President Truman's seizure of the steel mills.

[29] Table 9 contains an apparent anomaly. Some same president-same party judges have periods of tenure so extensive as to reach beyond any legally possible duration of a president's term of office., at least since the adoption of the Twenty-Second Amendment. The explanation lies in the fact that calculation of a judge's or justice's tenure dates from his initial appointment to the federal bench. If a district judge is elevated to an appellate judgeship, for example, his votes after his second appointment are evaluated in terms of his relation to the president making the more recent appointment, but his tenure is not recalculated from that date.

that the validity of the "two presidencies" thesis is growing and that the widening gap in support which recent presidents have received in foreign and military policy as compared with domestic policy is associated with a significant decline in support for domestic policy actions by different president-different party judges.

We found little or ambiguous support for the influence of the two remaining factors, length of judicial tenure and judicial possession of prior executive or legislative experience. Although increased tenure on the bench appeared to be associated with diminished presidential loyalty by same president-same party judges, there was no evidence that opposition to presidential power could be attributed to the length of judicial entrenchment. Nor could we find evidence to confirm supposition that votes cast by judges with prior executive experience would be more sympathetic to presidential power while those with only legislative experience would be more hostile. At best, we found mild support for the proposition that prior officeholding experience of either sort was generally associated with judicial votes more supportive of presidential power than was apparent in the votes of judges with no such officeholding experience at all.

It is unclear whether these observations about political factors associated with judicial deference and constraint on executive power disclose "new patterns in judicial control of the presidency"[30] since the cases included in this study go back no further than President Truman's elected term of office. Nor is it likely that an analysis of cases prior to that could be conducted in the manner we have done here, since the frequency of cases challenging assertions of presidential power is largely a contemporary phenomenon. But whether these simultaneous patterns of constraint and deference are new or not, it is clear that presidential powers are not all cut from the same cloth. The prospect of presidential success in federal court appears to be closely related to the kind of executive power at issue. In judicial-executive relations at least, there are indeed "two presidencies." Finally, as Justice Jackson suggested when the postwar era was still in its infancy, in the decision of cases involving challenges to the exercise of domestic presidential power, it makes much more of a difference who the judge is than what previous judges have said.

[30] *See supra* note 9.

APPENDIX

The cases on presidential power that were included in this study are arrayed below according to the type of power involved. The citations given below may present an incomplete history of a given case because other rulings in the controversy were not identified according to our rules for case selection or did not implicate presidential power as we have defined it. Citations in this Appendix are *only* to those cases included in this study.

FOREIGN AND MILITARY AFFAIRS

Foreign Affairs

Ozanic v. United States, 83 F. Supp. 4 (S.D.N.Y. 1949), *aff'd,* 188 F.2d 228 (2d Cir. 1951).
Knauff v. Shaughnessy, 88 F. Supp. 607 (S.D.N.Y. 1949), *aff'd,* 179 F.2d 628 (2d Cir. 1950).
United States *ex rel.* Knauff v. Watkins, 173 F.2d 599 (2d Cir. 1949).
Propper v. Clark, 337 U.S. 472 (1949).
McGrath v. Cities Service Co. 93 F. Supp. 408 (S.D.N.Y. 1950), *rev'd,* 189 F.2d 744 (2d Cir. 1951), 342 U.S. 330 (1952).
United States *ex rel.* Kwong Hai Chew v. Colding, 97 F. Supp. 592 (E.D.N.Y. 1951).
Latvian State Cargo & Passenger S.S. Line v. McGrath, 188 F.2d 1000 (D.C. Cir. 1951).
United States v. Guy W. Capps, Inc. 100 F. Supp. 30 (E.D. Va. 1951), *aff'd,* 204 F.2d 655 (4th Cir. 1953).
United States *ex rel.* Mezei v. Shaughnessy, 101 F. Supp. 66 (S.D.N.Y. 1951), *aff'd in part and rev'd in part* 195 F.2d 964 (2d Cir. 1952), *rev'd,* 345 U.S. 206 (1953).
Bauer v. Acheson, 106 F. Supp. 445 (D.D.C. 1952).
Artukovic v. Boyle, 107 F. Supp. 11 (S.D. Cal. 1952).
Tucker v. United States, 118 F. Supp. 371 (Ct. Cl. 1954).
S. J. Charia & Co. v. United States, 135 F. Supp. 727 (Cust.Ct. 1954).
Shachtman v. Dulles, 225 F.2d 938 (D.C.Cir. 1955).
American Bitumuls & Asphalt Co. v. United States, 146 F. Supp. 703 (Cust.Ct. 1956).
Dayton v. Dulles, 146 F. Supp. 876 (D.D.C. 1956). Aris Gloves, Inc. v. United States, 154 F. Supp. 203 (Cust.Ct. 1957), *aff'd* 281 F.2d 954 (C.C.P.A. 1958).
Best Foods, Inc. v. United States, 158 F. Supp. 583 (Cust. Ct. 1957).
Kent v. Dulles, 357 U.S. 116 (1958).
Eastern States Petroleum & Chem. Corp. v. Seaton, 163 F. Supp. 797 (D.D.C. 1958).
Schmidt Pritchard & Co. v. United States, 167 F. Supp. 272 (Cust. Ct. 1958)
Star-Kist Foods, Inc. v. United States, 169 F. Supp. 268 (Cust. Ct. 1958), *aff'd* 275 F.2d 472 (C.C.P.A. 1959).

Cheng Fu Sheng v. Rogers, 177 F. Supp. 281 (D.D.C. 1959).
United States v. Broverman, 180 F. Supp. 631 (S.D.N.Y. 1959).
Worthy v. Herter, 270 F.2d 905 (D.C. Cir. 1959).
Porter v. Herter, 278 F.2d 280 (D.C. Cir. 1960).
Marcello v. Kennedy, 194 F. Supp. 750 (D.D.C. 1961).
United States v. Travis, 241 F. Supp. 468 (S.D. Cal. 1963).
Zemel v. Rusk, 228 F. Supp. 65 (D. Conn. 1964), *aff'd,* 381 U.S. 1 (1965).
MacEwan v. Rusk, 228 F. Supp. 306 (E.D. Pa. 1964).
South Puerto Rico Sugar Co. Trading Corp. v. United States, 334 F.2d 622 (Ct. Cl. 1964).
United States v. Laub, 253 F. Supp. 433 (E.D.N.Y. 1966), *aff'd* 385 U.S. 475 (1967).
Sardino v. Federal Reserve Bank of N.Y., 361 F.2d 106 (2d Cir. 1966).
Lynd v. Rusk, 389 F.2d 940 (D.C. Cir. 1967).
Welch v. Kennedy, 319 F.Supp. 945 (D.D.C. 1970).
Aimcee Wholesale Corp. v. United States, 324 F.Supp. 514 (Cust.Ct. 1971).
Mandel v. Mitchell, 325 F. Supp. 620 (E.D.N.Y. 1971), *rev'd sub nom.* Kleindienst v. Mandel, 408 U.S. 753 (1972).
E. Dillingham, Inc. v. United States, 328 F.Supp. 1392 (Cust.Ct. 1971).
Fiocconi v. Att'y Gen. of United States, 339 F. Supp. 1242 (S.D.N.Y. 1972)
Avranova v. United States, 354 F. Supp. 420 (S.D.N.Y. 1973)
Yoshida Int'l, Inc. v. United States, 378 F. Supp. 1155 (Cust.Ct. 1974), *rev'd,* 526 F.2d 560 (C.C.P.A. 1975).
Federal Energy Admin. v. Algonquin SNG, Inc., 426 U.S. 548 (1976).
United States v. Gurrola-Garcia, 547 F.2d 1075 (9th Cir. 1976).
Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977).
Drummond v. Bunker, 560 F.2d 625 (5th Cir. 1977).
Sneaker Circus, Inc. v. Carter, 566 F.2d 396 (2d Cir. 1977).
Dole v. Carter, 444 F. Supp. 1065 (D. Kan. 1977), *aff'd,* 569 F.2d 1109 (10th Cir. 1977).
Edwards v. Carter, 445 F.Supp. 1279 (D.D.C. 1978), *aff'd,* 580 F.2d 1055 (D.C. Cir. 1978).
Smith v. Eagleton, 455 F. Supp. 403 (W.D. Mo. 1978).
Sneaker Circus, Inc. v. Carter, 457 F. Supp. 771 (E.D.N.Y. 1978).
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United States v. Hooker, 607 F.2d 286 (9th Cir. 1979).
Rossi v. Brown, 467 F. Supp. 960 (D.D.C. 1979), *aff'd sub nom.* Weinberger v. Rossi, 456 U.S. 25 (1982).
Behring Int'l, Inc. v. Imperial Iranian Air Force, 475 F. Supp. 383 (D.N.J. 1979), 699 F.2d 657 (3d Cir. 1983).
Goldwater v. Carter, 481 F. Supp. 949 (D.D.C.), *rev'd,* 617 F.2d 697 (D.C. Cir.), *judg. vacated* 444 U.S. 996 (1979).
Narenji v. Civiletti, 481 F. Supp. 1132 (D.D.C. 1979), *rev'd* 617 F.2d 745 (D.C. Cir. 1979), *cert. denied* 446 U.S. 957 (1980).

Agee v. Vance, 483 F. Supp. 729 (D.D.C. 1980), *rev'd sub nom.* Haig v. Agee, 453 U.S. 280 (1981).
Yassini v. Crosland, 618 F.2d 1356 (9th Cir. 1980).
Escobedo v. United States, 623 F.2d 1098 (5th Cir. 1980).
National Airmotive Corp. v. Iran, 499 F. Supp. 401 (D.D.C. 1980).
Haitian Refugee Center v. Civiletti, 503 F. Supp. 442 (S.D. Fla. 1980), *judg. modified sub nom.* Haitian Refugee Center v. Smith, 676 F.2d 1023 (5th Cir. 1982).
Behring Int'l, Inc. v. Miller, 504 F. Supp. 552 (D.N.J. 1980)
Electronic Data Systems v. Social Sec. Org. of Gov't of Iran, 508 F.Supp. 1350 (N.D. Tex. 1981), *rev'd* 651 F.2d 1007 (5th Cir. 1981)
Eain v. Wilkes, 641 F.2d 504 (7th Cir. 1981)
Chas. T. Main Int'l v. United States, 509 F. Supp. 1162 (D. Mass.), *aff'd, sub nom* Chas. T. Main Int'l v. Khuzestan Water & Power Authority, 651 F.2d 800 (1st Cir. 1981)
Itek Corp. v. First Nat'l Bank, 511 F. Supp. 1341 (D. Mass. 1981), *judg. vacated* 704 F.2d 1 (1st Cir. 1983).
Unidyne Corp. v. Iran, 512 F. Supp. 705 (E.D. Va. 1981).
Security Pac. Nat'l Bank v. Iran, 513 F. Supp. 864 (C.D. Cal. 1981).
Marschalk Co. v. Iran Nat'l Airlines, 518 F. Supp. 69 (S.D.N.Y. 1981).
American Int'l Group v. Islamic Republic of Iran, 657 F.2d 430 (D.C. Cir. 1981).
Dames & Moore v. Regan, 453 U.S. 654 (1981).
Akbari v. Godshall, 524 F. Supp. 635 (D. Colo. 1981).
Elwood v. Lehman, 525 F. Supp. 1148 (E.D. Va. 1981).
Alcan Sales v. United States, 528 F. Supp. 1159 (Ct. Int'l Trade 1981).
International Fashions v. Buchanan, 534 F. Supp. 828 (Ct. Int'l Trade 1981).
United States v. Arlington County, Va., 669 F.2d 925 (4th Cir. 1982).
Gulf Ports Crating Co. v. Ministry of Roads & Transp. of Gov't of Iran, 674 F.2d 318 (5th Cir. 1982).
Nademi v. Immigration & Naturalization Serv., 679 F.2d 811 (10th Cir. 1982).
United States v. Valenzuela-Bernal, 458 U.S. 858 (1982).
Mid States Cane Sugar Refiners' Ass'n v. Block, 544 F. Supp. 883 (Ct. Int'l Trade), *aff'd,* 683 F.2d 399 (C.C.P.A. 1982).
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Int'l Trade 1984).
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