

South Dakota State University

Open PRAIRIE: Open Public Research Access Institutional Repository and Information Exchange

Electronic Theses and Dissertations

1977

A Study of the Relationship Between the Ideological Tendencies of United States Supreme Court Cases Affecting the Press, 1946-1974

Thomas A. Schwartz

Follow this and additional works at: <https://openprairie.sdstate.edu/etd>

Recommended Citation

Schwartz, Thomas A., "A Study of the Relationship Between the Ideological Tendencies of United States Supreme Court Cases Affecting the Press, 1946-1974" (1977). *Electronic Theses and Dissertations*. 5111. <https://openprairie.sdstate.edu/etd/5111>

This Thesis - Open Access is brought to you for free and open access by Open PRAIRIE: Open Public Research Access Institutional Repository and Information Exchange. It has been accepted for inclusion in Electronic Theses and Dissertations by an authorized administrator of Open PRAIRIE: Open Public Research Access Institutional Repository and Information Exchange. For more information, please contact michael.biondo@sdstate.edu.

A STUDY OF THE RELATIONSHIP BETWEEN THE IDEOLOGICAL TENDENCIES
OF UNITED STATES SUPREME COURT JUSTICES AND THEIR VOTING
BEHAVIOR IN SELECTED CASES AFFECTING THE
PRESS, 1946-1974

BY

THOMAS A. SCHWARTZ

A thesis submitted
in partial fulfillment of the requirements for the
degree Master of Science, Major in Journalism
and Mass Communications, South Dakota
State University

1977

A STUDY OF THE RELATIONSHIP BETWEEN THE IDEOLOGICAL TENDENCIES
OF UNITED STATES SUPREME COURT JUSTICES AND THEIR VOTING
BEHAVIOR IN SELECTED CASES AFFECTING THE
PRESS, 1946-1974

This thesis is approved as a creditable and independent investigation by a candidate for the degree Master of Science, and is acceptable as meeting the thesis requirements for this degree, but without implying that the conclusions reached by the candidate are necessarily the conclusions of the major department.

[Redacted Signature]

Thesis Adviser

Date

[Redacted Signature]

Head, Department of Journalism
and Mass Communication

Date

ACKNOWLEDGMENTS

The author wishes to express his appreciation to:

Professor Robert E. Drechsel, thesis adviser, for his cogent remarks and for making the study of mass communication law more stimulating;

Professor Ruth L. Laird, journalism department head, for her encouraging advise and professional suggestions;

Dr. Richard M. Ritter and Professor John W. Lytle for making social scientific methods interesting and meaningful;

Dr. Glendon Schubert, whose creative scientific applications have made judicial behavioralism an important aspect of public law;

Mr. Scott Jones, Miss Cindy Kranz, Mrs. Patricia Bortnem, Miss Colleen Goodman, and Professor D. J. Cline for their heartening thoughts and generous friendships;

My parents, for their love and prayers;

Kate, who promised to do something if I mentioned her name; and

Mrs. Betty Prunty for her extraordinary assistance in typing this thesis.

TAS

TABLE OF CONTENTS

	Page
LIST OF TABLES	viii
LIST OF FIGURES	x
LIST OF FORMULAS	xii
CHAPTER	
I. INTRODUCTION	1
Statement of the Problem	10
Purpose of the Study	12
Justification	16
Limitations	18
Definitions	20
Methodology	21
<u>Unit of Analysis</u>	21
<u>Units of Measurement</u>	24
<u>Objective One</u>	26
<u>Theoretical Framework</u>	27
<u>Unit of Analysis</u>	27
<u>Independent and Dependent Variables</u>	27
<u>General Procedure</u>	27
<u>Hypothesis One</u>	30
<u>Objective Two</u>	31
<u>Theoretical Framework</u>	31
<u>Unit of Analysis</u>	31
<u>Independent and Dependent Variables</u>	32
<u>General Procedure</u>	32
<u>Hypothesis Two</u>	32
<u>Objective Three</u>	32
<u>Theoretical Framework</u>	32
<u>Unit of Analysis</u>	32
<u>Independent and Dependent Variables</u>	32
<u>General Procedure</u>	32
<u>Hypothesis Three</u>	32
Organization of the Thesis	33
<u>Chapter One</u>	33
<u>Chapter Two</u>	33
<u>Chapter Three</u>	33
<u>Chapter Four</u>	33
<u>Chapter Five</u>	33
<u>Chapter Six</u>	33
APPENDICES	33

CHAPTER	Page
II. THE JUDICIAL MIND	34
Legal Realism	34
<u>Introduction</u>	34
<u>Early Legal Realism</u>	35
<u>Systematic Induction</u>	37
<u>Judicial Legislation</u>	39
<u>Conclusion</u>	40
Political Jurisprudence	41
<u>Introduction</u>	41
<u>Judicial Lobbies</u>	42
<u>Judges as Politicians</u>	44
<u>Constitutional Politics</u>	46
<u>Conclusion</u>	48
Judicial Behavioralism	50
<u>Introduction</u>	50
<u>Judicial Science</u>	54
<u>Predicting Decisions</u>	59
III. THE JUDICIAL MIND AND THE FIRST AMENDMENT	61
First Amendment Realism	61
<u>Introduction</u>	61
<u>Early Free Expression Scholarship</u>	63
<u>Zechariah Chafee, Jr.</u>	65
<u>Social Responsibility Theory</u>	68
<u>Thomas Emerson</u>	73
<u>Conclusion</u>	75
Political Jurisprudence and the First Amendment	76
<u>Virtue and Law</u>	76
<u>Politics and the First Amendment</u>	81
<u>First Amendment Doctrines</u>	85
<u>Clear and Present Danger Versus</u>	
<u>Balancing of Interests</u>	88
<u>Conclusion</u>	98
Judicial Behavioralism and the First Amendment	103
<u>Introduction</u>	103
<u>S. Sidney Ulmer</u>	103
<u>C. Herman Pritchett</u>	105
<u>Glendon Schubert</u>	106
<u>Conclusion</u>	112
IV. A MODEL OF JUDICIAL BEHAVIOR	115
<u>Introduction</u>	115
<u>Correlation Matrix</u>	115
<u>Extraction of Initial Factors</u>	118
<u>Rotation of Factors</u>	119
<u>Rankings</u>	120

CHAPTER

Page

Data Collection	120
<u>Fourfold Tables</u>	120
<u>G Index of Agreement</u>	125
<u>Correlation Matrixes</u>	127
<u>Eigenvalues</u>	130
<u>Initial Factor Matrix</u>	133
<u>Rotated Factor Matrix</u>	135
<u>Graphs</u>	137
<u>Rankings</u>	142
<u>Conclusion</u>	145
V. THE JUDICIAL MIND AND THE FIRST AMENDMENT REVISITED . .	147
<u>Introduction</u>	147
G Factor Analysis	148
<u>G Vinson Court</u>	148
<u>G Early Warren Court</u>	152
<u>G Middle Warren Court</u>	156
<u>G Late Warren Court</u>	157
<u>G Burger Court</u>	163
Observations	170
C Factor Analysis	171
<u>Introduction</u>	171
<u>C Total Court</u>	172
<u>C Vinson Court</u>	178
<u>C Early Warren Court</u>	181
<u>C Middle Warren Court</u>	186
<u>C Late Warren Court</u>	187
<u>C Burger Court</u>	193
Observations	199
P Factor Analysis	200
<u>Introduction</u>	200
<u>P Total Court</u>	202
<u>P Vinson Court</u>	206
<u>P Early Warren Court</u>	211
<u>P Middle Warren Court</u>	212
<u>P Late Warren Court</u>	219
<u>P Burger Court</u>	224
Observations	225
VI. CONCLUSION	230
Problem	230
Objectives	232
Design	232
Major Findings	233
Methodology	233

CHAPTER

Page

Objective One	233
<u>G Total Court</u>	233
<u>G Vinson Court</u>	234
<u>G Early Warren Court</u>	234
<u>G Middle Warren Court</u>	235
<u>G Late Warren Court</u>	235
<u>G Burger Court</u>	235
Objective Two	236
<u>C Total Court</u>	236
<u>C Vinson Court</u>	236
<u>C Early Warren Court</u>	236
<u>C Middle Warren Court</u>	237
<u>C Late Warren Court</u>	237
<u>C Burger Court</u>	237
Objective Three	238
<u>P Total Court</u>	238
<u>P Vinson Court</u>	238
<u>P Early Warren Court</u>	239
<u>P Middle Warren Court</u>	239
<u>P Late Warren Court</u>	239
<u>P Burger Court</u>	240
Conclusions	240
Implications	241
Recommendations	241
 BIBLIOGRAPHY	 243
 APPENDIX A - APSA Package	 256
 APPENDIX B - List of Cases	 259
 APPENDIX C - Press Package	 262
 APPENDIX D - Data Compilation	 268

LIST OF TABLES

Sample Table	Page
1. INTERAGREEMENT FOURFOLD TABLE FOR JUSTICES J_1 AND J_2	28
2. FOURFOLD TABLES AND G COEFFICIENT MATRIX FOR G TOTAL COURT	29
3. FACTOR LOADINGS MATRIX	31

Table

3-1. SCALES FOR HYPOTHESIZED SEMANTIC SUBCOMPONENTS OF POLITICAL LIBERALISM (POLITICAL FREEDOM)	108
3-2. SCALE RANKINGS FOR POLITICAL AND ECONOMIC LIBERALISM, AND FOR HYPOTHESIZED SEMANTIC SUBCOMPONENTS OF POLITICAL LIBERALISM (PF)	109
3-3. COMPOSITE RANKINGS FOR SCALES AND SUBSCALES (PF)	113
4-1. G TOTAL COURT FOURFOLD TABLES AND G INDEX MATRIX	122
4-2. G TOTAL COURT INPUT CORRELATION MATRIX	128
4-3. KEY TO ABBREVIATIONS OF JUSTICES	130
4-4. EIGENVALUES AND PROPORTIONS OF VARIANCE FOR G TOTAL COURT	132
4-5. INITIAL FACTOR MATRIX FOR G TOTAL COURT	134
4-6. TERMINAL FACTOR MATRIX FOR G TOTAL COURT	136
4-7. G TOTAL COURT RANKING OF LIBERALISM	143
5-1. G VINSON COURT RANKING OF LIBERALISM*	151
5-2. G EARLY WARREN RANKING OF LIBERALISM*	155
5-3. G MIDDLE WARREN RANKING OF LIBERALISM	159
5-4. G LATE WARREN RANKING OF LIBERALISM	164

Table	Page
5-5. G BURGER COURT RANKING OF LIBERALISM*	169
5-6. PROPORTIONS OF CASES INVOLVING CIVIL LIBERTIES AND ECONOMIC ISSUES	172
5-7. C TOTAL COURT RANKING OF LIBERALISM***	176
5-8. C VINSON COURT RANKING OF LIBERALISM*	182
5-9. C EARLY WARREN RANKING OF LIBERALISM*	185
5-10. C MIDDLE WARREN RANKING OF LIBERALISM	189
5-11. C LATE WARREN RANKING OF LIBERALISM	194
5-12. C BURGER COURT RANKING OF LIBERALISM*	198
5-13. P TOTAL COURT RANKING OF FAVORABLENESS***	207
5-14. P VINSON COURT RANKING OF FAVORABLENESS*	210
5-15. P EARLY WARREN RANKING OF FAVORABLENESS*	214
5-16. P MIDDLE WARREN RANKING OF FAVORABLENESS*	220
5-17. P LATE WARREN RANKING OF FAVORABLENESS	223
5-18. P BURGER COURT RANKING OF FAVORABLENESS*	227

LIST OF FIGURES

Figure		Page
3-1.	Selected subscales of C, degree of support	111
4-1.	G Total Court first and second dimensions	139
4-2.	G Total Court third and fourth dimensions	141
5-1.	G Vinson Court first and second dimensions	150
5-2.	G Early Warren first and second dimensions	154
5-3.	G Middle Warren first and second dimensions	158
5-4.	G Late Warren first and second dimensions	162
5-5.	G Burger Court first and second dimensions	166
5-6.	G Burger Court first and third dimensions	168
5-7.	C Total Court first and second dimensions	175
5-8.	C Vinson Court first and second dimensions	180
5-9.	C Early Warren first and fourth dimensions	184
5-10.	C Middle Warren first and second dimensions	188
5-11.	C Late Warren first and second dimensions	191
5-12.	C Late Warren first and third dimensions	192
5-13.	C Burger Court first and second dimensions	196
5-14.	C Burger Court first and fourth dimensions	197
5-15.	P Total Court first and second dimensions	205
5-16.	P Vinson Court first and second dimensions	209
5-17.	P Early Warren first and second dimensions	213

Figure	Page
5-18. P Middle Warren first and second dimensions	217
5-19. P Middle Warren second and third dimensions	218
5-20. P Late Warren first and second dimensions	222
5-21. P Burger Court first and second dimensions	226

LIST OF FORMULAS

	Page
1. G Index of Agreement	28
2. Factor Analysis	30
3. Factor Analysis	119

CHAPTER I

INTRODUCTION

The First Amendment states that "Congress shall make no law . . . abridging the freedom . . . of the press." It does not say that the government shall make no law affecting the freedom of the press. Article I of the Constitution and the United States Supreme Court's own doctrine of political questions aside, the Supreme Court, in fact, makes law affecting and, in the minds of some libertarians, abridging freedom of the press.¹

First Amendment scholar Thomas I. Emerson contended that certain legislation affecting freedom of expression by the Supreme Court is not only a "fact of life" but also a necessity in the operation of an effective system of freedom of expression.² The Supreme Court is the preferred branch of government in the preservation of liberties of expression, partly because it has the necessary political power to maintain the system.³ To understand the role of the Supreme Court in the system of freedom of expression is to understand, at least in part, the system itself.⁴

1 Martin Shapiro, Freedom of Speech (Englewood Cliffs, N. J.: Prentice-Hall, 1966).

2 Thomas I. Emerson, The System of Freedom of Expression (New York: Vintage Books, 1970), pp. 692-716.

3 Ibid., p. 14.

4 Thomas I. Emerson, "Toward a General Theory of the First Amendment," Yale Law Journal 72 (1963):877, 893-895, in Thomas I.

The Bill of Rights was written by politicians, and constitutional historian Leonard W. Levy characterized it as a "chance product of political expediency."⁵ James Madison believed civil rights had a political, not legal, foundation.⁶ Alexander Hamilton agreed to endorse the Bill of Rights on the grounds that it would be "an object of political education . . . and an anchor for political forces."

According to Professor Rene de Visme Williamson:

Hamilton asserted that the freedom of the press could not be guaranteed by constitutionally prescribed definitions and affirmations but "must altogether depend on public opinion and on the general spirit of the people and of the government."⁷

Professor Rorert J. Harris maintained the Supreme Court has been "obsessed" with the First Amendment, invalidating federal statutes, state law, and local ordinances that allegedly legislated freedom of expression, thereby saving that task for itself.⁸

A system of expression, especially a system of the press, is part of a political system as well as a legal system. Differences

Emerson, David Haber, Norman Dorsen, Political and Civil Rights in the United States, 2 vols. (Boston: Little, Brown and Co., 1967) 1:25-27.

5 Leonard W. Levy, Legacy of Suppression (Cambridge, Mass.: Harvard University Press, 1960), p. vii.

6 Rene de Visme Williamson, "Political Process or Judicial Process: The Bill of Rights and the Framers of the Constitution," Journal of Politics 23 (May, 1961):207.

7 Ibid., pp. 208, 211.

8 Rorert J. Harris, "Judicial Review: Vagaries and Varieties," Journal of Politics 38 (August, 1976):190, 206.

among systems of the press are part differences among "philosophical and political rationales and theories."⁹ Conceptions of press systems change over time and in different societies.¹⁰

As long as courts are willing to take on legislative business, the legislatures seem willing to relegate many of their "politically hot" controversies to the courts.¹¹ It has been suggested that those litigants with the most political power win Supreme Court decisions.¹²

To say that courts generally, and the United States Supreme Court particularly, are involved in politics¹³ and make law is no longer startling or heretical.¹⁴ Professor Charles G. Haines's 1922 statements are no longer discomfoting:

. . . The process of judicial decision is determined to a considerable extent by the judges' views of fair play, public policy, and their general consensus as to what is right and just. Law and politics are indeed inseparable and politics is the very

9 Fred S. Siebert, Theodore Peterson, Wilbur Schramm, Four Theories of the Press (Urbana, Ill.: University of Illinois Press, 1956), p. 2.

10 Commission on Freedom of the Press, The Problems and the Principles of Freedom and Responsibility (Chicago: University of Chicago Press, 1947), pp. 16-18; Theodore Peterson, "The Social Responsibility Theory of the Press," in Siebert, Four Theories, pp. 73-103.

11 Jerrold K. Footlick, "Too Much Law?" Newsweek, 10 January 1977, pp. 42, 44, 47.

12 Eloise Snyder, "Political Power and the Ability to Win Supreme Court Decisions," Social Forces 39 (October, 1960):36-40.

13 See John P. MacKenzie, "Dark Doings Among the Judges," Saturday Review, 28 May 1977, pp. 18-19.

14 A cursory survey of titles of studies on courts seems to establish involvement of politics and courts, e.g., Jerome Frank,

stuff of life. Its relations are intensely human, and generally intimately personal . . .¹⁵

Although legal realism¹⁶ is still a neglected aspect of law and the courts in many law schools, the school of thought exists in legal circles and political science schools of public law. Legal and

Courts on Trial: Myth and Reality in American Justice (Princeton, N. J.: Princeton University Press, 1950); Andrew C. McLaughlin, The Courts, The Constitution and Parties; Studies in Constitutional History and Politics (Chicago: University of Chicago Press, 1912); Henry J. Abraham, Justice and Presidents (New York: Oxford University Press, 1974); Jonathon D. Casper, The Politics of Civil Liberties (New York: Harper & Row, 1972); Stuart Nagel, The Legal Process from a Behavioral Perspective (Homewood, Ill.: Dorsey Press, 1969); C. Herman Pritchett, The Roosevelt Court: A Study of Judicial Politics and Values, 1937-1947 (New York: Macmillan, 1948); John R. Schmidhauser, The Supreme Court: Its Politics, Personalities and Procedures (New York: Holt, Rinehart and Winston, 1960); Kenneth Vines and Herbert Jacob, Studies in Judicial Politics (New Orleans: Tulsa University Studies in Political Science, 1962); David H. Everson, The Supreme Court as Policy-Maker: Three Studies on the Impact of Judicial Decisions (Carbondale: Public Affairs Research Bureau, Southern Illinois University, 1968); Charles H. Haines, The Supreme Court: Politicians in Robes (Beverly Hills, Calif.: Glencoe Press, 1970); T. L. Becker, Political Behaviorism and Modern Jurisprudence: A Working Theory and Study in Judicial Decision-Making (Chicago: Rand-McNally, 1962); Glendon Schubert, Constitutional Politics (New York: Holt, Rinehart and Winston, Inc., 1964); Arthur A. North, The Supreme Court; Judicial Process and Judicial Politics (New York: Appleton-Century-Crofts, 1966).

15 Charles G. Haines, "General Observations on the Effects of Personal, Political and Economic Influences in the Decisions of Judges," Illinois Law Review 17 (1922):96-116, in Glendon Schubert, ed. Judicial Behavior: A Reader in Theory and Research (Chicago: Rand McNally, 1964), p. 45.

16 Legal realism is a school "started" by the thoughts of Holmes, Llewelyn, and Frank, among others. Oliver Wendell Holmes, "The Path of the Law," Harvard Law Review 10 (1897):457-478; Karl N. Llewelyn, "Some Realism About Realism," Harvard Law Review 44 (1931): 1222-1264, in Rita James Simon, ed., The Sociology of Law (San Francisco: Chandler Publishing Co., 1968), pp. 19-28, 29-46; Frank, Courts on Trial.

political science schools of political jurisprudence¹⁷ and judicial behavioralism¹⁸ have established the need for supplementing traditional case analysis approaches to law with social scientific techniques.¹⁹

Mass communication law is a burgeoning subdivision of both law and journalism, although it has never been regarded as a separate discipline.²⁰ Litigation involving the First Amendment is increasing as

17 Martin Shapiro, "Political Jurisprudence," Kentucky Law Journal 52 (1964):294-343, in Simon, Sociology of Law, p. 201.

18 For a bibliography of the many aspects of the birth and development of judicial behavioralism, see Glendon Schubert, "Bibliographical Essay; Behavioral Research in Public Law," American Political Science Review 57 (June, 1963):433-445.

19 This is not a value-free assertion. Controversy stirs over the new schools. See Joseph Tannenhaus, "Supreme Court Attitudes Toward Federal Administrative Agencies, 1947-1956--An Application of Social Science Methods to the Study of the Judicial Process," Vanderbilt Law Review 14 (1961):473-502 in Schubert, Judicial Behavior, pp. 533-534; Glendon Schubert, "Ideologies and Attitudes, Academic and Judicial," Journal of Politics 29 (1967):3-40; Wallace Mendelson, "The Untroubled World of Jurimetrics," Journal of Politics 26 (1964):914-922; Wallace Mendelson, "The Neo-Behavioral Approach to the Judicial Process: A Critique," American Political Science Review 57 (September, 1963):596-603; Schubert, "Behavioral Research," pp. 433-445; Theodore L. Becker, "Inquiry into a School of Thought in the Judicial Behavior Movement," Midwest Journal of Political Science 7 (1963):259-260; Glendon Schubert, The Judicial Mind Revisited (New York: Oxford University Press, 1974), pp. 19-20; John D. Sprague, Voting Patterns of the United States Supreme Court; Cases in Federalism, 1889-1959 (Indianapolis: Bobbs-Merrill, 1968), pp. 9-11, 157-160; S. Sidney Ulmer, "The Dimensionality of Judicial Voting Behavior," Midwest Journal of Political Science 13 (1969):471-483; Theodore L. Becker, "Judicial Structure and its Political Functioning in Society: New Approaches to Teaching and Research in Public Law," Journal of Politics 29 (May, 1967):302-333.

20 Fred S. Siebert, "Research in Legal Problems of Communication," in Ralph O. Nefziger and Marcus M. Wilkerson, eds., An Introduction to Journalism Research (Baton Rouge, La.: Louisiana State University Press, 1949), p. 26.

the public becomes more aware of its right to freedom of expression. As Emerson suggested, there has been little resolved in major areas of First Amendment claims and much more research needs to be done.²¹

The traditional approach to law is common in mass communication law sequences of journalism schools. The popular textbooks are primarily "casebooks" containing Supreme Court decisions, opinion analyses, and the philosophical background of the First Amendment. This approach is valuable and necessary.²²

Political jurisprudence and judicial behavioralism can add much to a better understanding of First Amendment adjudication. The perspectives of these new movements should be given more attention in mass communication law study in journalism schools. Mass communication law study should be less concerned with legal science tools such as Shepard's Citations, case briefs, and explanation of Supreme Court

21 Emerson, The System, p. 5.

22 Donald M. Gillmor and Everette E. Dennis, "Legal Research and Judicial Communication," in Steven Chafee, ed., Political Communication; Issues and Strategies for Research (Beverly Hills, Calif.: Sage Publications, 1975), pp. 297-299. Commonly used textbooks include Donald M. Gillmor and Jerome A. Barron, Mass Communication Law; Cases and Comment, 2nd ed. (St. Paul: West Publishing Co., 1974); William A. Hachten, The Supreme Court on Freedom of the Press; Decisions and Dissents (Ames, Iowa: Iowa State University Press, 1968); Kenneth S. Devol, Mass Media and the Supreme Court; The Legacy of the Warren Years (New York: Hastings House, 1971); William E. Francois, Mass Media Law and Regulation (Columbus, Ohio: Grid, Inc., 1975); Harold L. Nelson and Dwight L. Teeter, Jr., Law of Mass Communication; Freedom and Control of Print and Broadcast Media (Mineola, N. Y.: The Foundation Press, 1973). Cf. one departure, William I. Gordon, Nine Men Plus; Supreme Court Opinions on Free Speech and Free Press; An Academic Game Simulation (Dubuque, Iowa: William C. Brown Co., 1971).

First Amendment doctrines and more concerned with the impact of law on the role of media in society.

Study of mass communication law should be more closely aligned with the social sciences, especially political science. It should be attempting to give meaning to what is actually happening in regard to press freedom and less involved with the "technicalities of American Constitutional law."²³ Political jurisprudence and judicial behaviorism ask questions traditional jurisprudence would never consider asking.

Journalism students should not be misled to believe that only "natural law" instructs Supreme Court policies affecting freedom of the press. Supreme Court justices who dissent from the majority of their colleagues do not do so because they failed adequately to research the Constitution.

Some political jurisprudential and judicial behavioral work involving the First Amendment has been done.²⁴ Little of this work has found its way into mass communication law scholarship. None of it has been done by mass communication law scholars.²⁵

23 Charles S. Hyneman, "Free Speech: At What Price?" American Political Science Review 56 (December, 1962):847.

24 Roscoe Pound deplored mechanical jurisprudence. Roscoe Pound, "Mechanical Jurisprudence," Columbia Law Review 8 (1908):605, in Ray D. Henson, ed., Landmarks of Law; Highlights of Legal Opinion (New York: Harper and Brothers, 1960), pp. 101-116.

25 Robert H. Birkby, "Supreme Court Libertarians and the First Amendment; An Analysis of Voting and Opinion Agreement, 1956-1964," Southwestern Social Science Quarterly 48 (March, 1968):586-594;

Understanding political aspects of freedom of the press issues can help the study of political decision-making affecting that freedom. If concentration of ownership in media becomes too great a detriment to freedom of expression, the government may order alleged monopolies to divest. Recent legislative activity has demonstrated this need.²⁶ As the Commission on Freedom of the Press feared:

. . . Since action to break up an agency of communication must be taken at the instance of a department of the government, the risk is considerable that the freedom of the press will be imperiled through the application of political pressures by that department.²⁷

Constitutional scholar Wallace Mendelson suggested that liberals and conservatives may both recognize the legislative process as the ultimate civil liberties decision-maker:

. . . As Madison saw it, majority rule--given a vast empire of diffused sociopolitical power--was the only reliable security against government inhumanity. . . . As Madison anticipated, the congressional batting average is about .999; The Court's is .000. . . . [L]iberals appreciate the political process far too little, and expect far more judicial review than . . . [the court] has ever been able to deliver. Conservatives no longer make that mistake. . . . Meanwhile a select little company of

Schubert, Constitutional Politics, pp. 513-591; C. Herman Pritchett, Civil Liberties and the Vinson Court (Chicago: University of Chicago Press, 1966), pp. 23-79, 177-239; Samuel Krislov, The Supreme Court and Political Freedom (New York: The Free Press, 1968); Glendon Schubert, The Judicial Mind; The Attitudes and Ideologies of Supreme Court Justices, 1946-1963 (Evanston, Ill.: Northwestern University Press, 1965), pp. 159, 170, 173, 174, 177, 182, 282; Schubert, Judicial Mind Revisited, pp. 26, 27, 36, 37, 44, 47, 50, 61, 62, 66, 68, 88, 106, 114, 141, 145; Shapiro, Freedom of Speech.

26 "Kennedy's Antitrust Group Watching Media Takeovers," Editor & Publisher, 28 May 1977, p. 10; "Udall Re-enters Anti-Group Bill with 25 Co-Sponsors," Editor & Publisher, 11 June 1977, p. 12.

27 Commission on Freedom of the Press, Problems and Principles, p. 391.

libertarians--with far less social support than conservatives in the old days--is trying to repeat all of the Old-Guard mistakes: the twisted history, the tortured parchment, the sugar-coated bias called public policy, the preferred place that can hope only to delay defeat. Sooner or later libertarians will have to face it--the real victories are won in legislatures and at the polls. Man after all is a political, not legal, animal.²⁸

But present political threats to freedom of expression rest in the Supreme Court, which "passes judicial legislation" affecting the freedom of the press. Decisions involving free press and obscenity²⁹ and national security³⁰ demonstrate that Supreme Court justices are legislators. The basic attitudes of Supreme Court justices play a significant part in this law-making process. Discovery of these underlying attitudes in First Amendment litigation should be beneficial to the study of mass communication law. By outlining basic attitudes on the Supreme Court, judicial behavioralism can give traditional study a better-directed focus in its efforts to explain freedom of expression.

28 Wallace Mendelson, "The First Amendment and the Judicial Process: A Reply to Mr. Frantz," Vanderbilt Law Review 17 (1964):n.p., in Martin M. Shapiro, ed., The Supreme Court and Constitutional Rights: Readings in Constitutional Law (Palo Alto, Calif.: Scott, Foresman and Co., 1967), p. 21. Cf. Laurent Frantz, "Is the First Amendment Law? A Reply to Professor Mendelson," California Law Review 51 (1963):729, in Shapiro, Readings, p. 26.

29 Harry Kalven, Jr., "'Uninhibited, Robust, and Wide Open'--A Note on Free Speech and the Warren Court," Michigan Law Review 67 (December, 1968):289, in Devol, Mass Media, p. 350.

30 Jerome A. Barron, Address to the Council on Security in State Legislatures, "Security Legislation in a Constitutional Perspective," 26 March 1971, in Gillmor, Mass Communication Law, pp. 79-81; Emerson, The System, p. 168.

Statement of the Problem

It is no longer necessary to speculate that the basic attitudes of United States Supreme Court justices play a significant role in their policy-making function in the American political process. Judicial behavioralists Glendon Schubert, S. Sidney Ulmer, and others have established that these attitudes play a part.³¹

Through use of various social scientific techniques, judicial behavioralists have found consistencies in the voting by justices on various issues. Justices have been divided into "blocs." Some justices agree often with certain other justices. They disagree with certain other justices. They sometimes agree with certain other justices.

By controlling the kinds of cases under study, agreement blocs become more pronounced. This led the behavioralists to confirm similar, albeit a priori, assumptions by other Supreme Court observers that basic predilections of Supreme Court justices often steer the justices toward conclusions about particular kinds of social, political, and economic issues.³²

Behavioralists have formulated blocs of Supreme Court justices in samples of all types of cases, civil liberties cases, economic cases, and a considerable number of cases in subcategories. Some work

³¹ See especially Schubert, Judicial Mind, Judicial Mind Revisited.

³² Glendon Schubert, Quantitative Analysis of Judicial Behavior (Glencoe, Ill.: The Free Press, 1959), pp. 379-380.

has been done with First Amendment cases.³³ While these studies shed light on judicial behavior in cases affecting freedom of the press, confirmation of this work could be done by mass communication law researchers by creating a subcategory of cases dealing with freedom of the press.

Although the freedom of the press clause of the First Amendment has not been clearly recognized by the Supreme Court as independent of the freedom of the speech clause,³⁴ the Supreme Court does seem to treat media litigants differently from soapbox orators, union picketers, Communist organizers, and religious pamphleteers. Therefore, it should be of some value to discover blocs of justices in cases affecting the press, in which freedom of the press, rather than freedom of speech or freedoms of religion, petition, or assembly, was particularly cited by either or both litigants or Supreme Court justices.

33 See n. 25.

34 There is some doubt about whether or not the Supreme Court has ever made a distinction between the freedoms of speech and press in the First Amendment. Supreme Court justices and others often bunch both clauses under "freedom of expression." Hachten, The Supreme Court, pp. 7-8; Zechariah Chafee, Jr., Government and Mass Communication, 2 vols. (Chicago: University of Chicago Press, 1947) 1:34-35; Gillmor, Mass Communication Law, p. 8; Edward S. Corwin, The Constitution and What It Means Today, rev. Harold W. Chase and Craig R. Ducat (Princeton, N. J.: Princeton University Press, 1974), p. 290; John Tyler, "Government Regulation of Broadcasting," Freedom of Information Center Report No. 368 (Columbia, Mo.: Freedom of Information Center, March, 1977), pp. 1-3. Cf. Potter Stewart, Address to Yale Law School, "Or of the Press," 2 November 1974, in Potter Stewart, "Press Function Upheld," Editor & Publisher, 9 November 1974, pp. 7, 64; Kovacs v. Cooper, 336 U. S. 77 (1949), Jackson Concurring, Black dissenting; Schubert, Constitutional Politics, pp. 524-525.

Do justices form blocs in cases regarding freedom of the press? Are the blocs clearly defined? Are there basic predilections of Supreme Court justices concerning freedom of the press? Can attitudes be inferred? Are the attitudes different from attitudes toward civil liberties generally? Do the attitudes form justices into different blocs in freedom of the press cases in which different social values are involved? Is there a relationship between the ideological tendencies of Supreme Court justices and their voting behavior in cases affecting the press?

Purpose of the Study

Analysis of United States Supreme Court decision-making in cases affecting the press is important to communication law because many significant aspects of the court's political behavior cannot be studied by reading the opinions of the court. The great volume of cases and range of issues simply preclude meaningful analysis except when subjected to the quantitative techniques of data processing and measurement.³⁵ In the words of Ulmer:

It is both pertinent and instructive to study the interpersonal relationships and behavior patterns of the members of a collegial court. By doing so, we recognize what legal analysis ignores, namely, that the law, the courts and the judges are something more than mere abstractions. The nature of the endowments, outlooks and attitudes which judges bring to the discharge of their duties may be revealed in the identification of

³⁵ Reed C. Lawlor, "What Computers Can Do: Analysis and Prediction of Judicial Decisions," American Bar Association Journal 49 (1963):337, in Schubert, Judicial Behavior, p. 492.

individual behavior patterns. The discrepancies among these patterns, in turn, reflect the differences among the actors.³⁶

This study will attempt to illustrate some ways voting patterns of Supreme Court justices in cases affecting the press can be analyzed.

There are three specific purposes for this study that are intended to lead to three more general purposes. Specific purposes are: (1) to discover whether or not there are basic attitudes of Supreme Court, justices toward the freedom of the press clause of the First Amendment, and if there are such attitudes, (2) to determine whether or not the blocs can be identified, and (3) to begin a discussion about the depths of the ideologies these attitudes might represent.

The three general purposes of the study are: (1) to introduce political jurisprudence and judicial behavioralism to the study of mass communication law, (2) to give a behavioralist's perspective to mass communication law, and (3) to help better explain the history and present status of the Supreme Court in relation to the free press clause of the First Amendment.

Hypotheses seek to establish that basic attitudes (ideological preferences) toward freedom of the press and the media exist among Supreme Court justices, that these basic attitudes are represented by identifiable voting blocs of justices, and that these blocs will partially confirm a priori conceptions of the attitudes held by justices.

³⁶ S. Sidney Ulmer, "The Analysis of Behavior Patterns on the United States Supreme Court," Journal of Politics 22 (1960):630.

This study begins with a confirmed hypothesis of Schubert: that differences in the attitudes of the justices toward basic issues raised by the cases before the court account for the differences in the voting behavior of the justices.³⁷

Minimum investigation of the work of C. Herman Pritchett, Schubert, and Ulmer and the work of traditionalists provides ample evidence for an assumption, if not a fact, that the Supreme Court consistently forms into at least two blocs, representing at least two basic attitudes. According to Schubert:

If we consider the substantive content [of cases under study] from the point of view of the history of political philosophy, it seems clear that the political values with which . . . [we are] concerned all are among the core concerns of the long-standing dispute between liberal and conservative philosophies.³⁸

Stuart S. Nagel, after completing a series of studies associating background characteristics of Supreme Court justices and their voting behavior, concluded:

The propensities observed . . . all appeared to be a part of a general affinity for the "liberal" as contrasted to the "conservative" position. In this context the term "liberal" labels the viewpoint associated with the interests of the lower or less privileged economic or social groups in one's society and (to a lesser extent) with acceptance of long-run social change; and the term "conservative" refers to the

37 Glendon Schubert, "Judicial Attitudes and Voting Behavior: The 1961 Term of the United States Supreme Court," Jurimetrics 28 (Winter, 1963):100, in Schubert, Judicial Behavior, pp. 571-573.

38 Schubert, Judicial Mind, p. 103; Schubert, Quantitative Analysis, p. 312.

viewpoint associated with the interests of the upper or dominant groups and with resistance to long-run social change.³⁹

Professor Samuel Krislov defended the proposition that the Supreme Court reacts to issues in a unidimensional manner. Issues themselves are unidimensional. They normally require an answer that can only be one of two options. The issues or cases are often socially or culturally related by general consensus to certain societal groups, including those from which Supreme Court justices are drawn. The justices can only respond to the issues in a manner in which the unidimensional consensus allows them to respond. Also, the judicial process encourages unidimensionality because judges who can interrelate various kinds of issues in order to demonstrate consistency of philosophy are much admired.⁴⁰

It is possible to construct a continuum along which the attitudes of individual justices might range, with the most liberal attitudes falling at the left end and the most conservative attitudes at the right end.⁴¹ It is also possible to construct a similar continuum with favorable press attitudes at the left end and unfavorable press attitudes at the right end.

39 Stuart S. Nagel, "The Relationship Between the Political and Ethnic Affiliations of Judges and Their Decision-Making," in Schubert, Judicial Behavior, p. 245.

40 Krislov, Political Freedom, pp. 161-162.

41 Schubert, Quantitative Analysis, p. 312.

The hypotheses are:

1. Basic attitudes of Supreme Court justices contribute to their voting behavior.
2. Basic attitudes of Supreme Court justices toward civil liberties issues contribute to their voting behavior in civil liberties cases.
3. Basic attitudes of Supreme Court justices toward press issues contribute to their voting behavior in press cases.

Justification

Professors Donald M. Gillmor and Everette E. Dennis believe there is need for application of behavioralist approaches to the study of mass communication law. They agree a study of this type could be useful in examining "patterned behavior" of Supreme Court justices in free speech and press cases.⁴² Dennis surmised that behavioralist research in communication law has not been pursued because communication law scholars lack training in social scientific techniques.⁴³ Schubert, a leading behavioralist, said a study of this nature could be worthwhile.⁴⁴

Since the maintenance of the First Amendment is in the hands of United States Supreme Court justices, there surely is a need to know

42 Gillmor, "Legal Research," pp. 297-299.

43 Dennis, letter.

44 Glendon Schubert, personal letter.

"how and why"⁴⁵ justices reach decisions affecting the press. By learning about the justices' behavioral tendencies in regard to press freedom, mass communication practitioners and academicians can better support those attitudes resulting in the promotion of freedom of the press and better refute those attitudes resulting in abridgement of freedom of the press. To understand the attitudes of the Supreme Court toward the press is to understand, at least in part, the "political and social role of journalism in modern American life," according to Professor William A. Hachten.⁴⁶

The justification for the methodological techniques employed by this study rests in the basic philosophy of the social scientist. It is to transform the prevalent methods of knowledge from tenacity, authority, and a priori to those of science. It is the method of the scientist to produce theories and conduct research to explain phenomena commonly accepted but empirically unsupported.⁴⁷

Ultimate justification for any scientific inquiry must be its contribution to prediction-making.⁴⁸ If the hypotheses are confirmed, an examination of the divisions of opinion, manifest in voting behavior, "should afford an interesting approach to the problem of judicial motivation," as Pritchett planned. He wrote:

45 Schubert, Judicial Behavior, p. 1.

46 Hachten, Supreme Court, p. viii. See also Schubert.

47 Fred N. Kerlinger, Foundations of Behavioral Research, 2nd ed. (New York: Holt, Rinehart and Winston, 1973), p. 6.

48 Schubert, Judicial Behavior, p. 4.

Analysis of this voting behavior should be of value in explaining Supreme Court action, in revealing basic relationships among the justices, and, in short, in "predicting" the law.⁴⁹

Schubert elaborated:

Significance lies not in the individual decision, either of a single justice or of the Court, but rather is found in the uniformities that can be perceived best in the aggregate data for the decisions of several justices in many cases over a substantial period of time. . . . What is important to be able to predict, therefore, is what the Supreme Court . . . is likely to decide in regard to a given issue, or set of issues, through time. The importance of the Supreme Court's policy-making function does not usually flow from the consequences to the immediate parties in a particular case; one evaluates such importance by making . . . probability statements about the likelihood of other parties inducing equivalent response from the Court if the same issue . . . were to be raised again. It is by establishing trends of this sort that the Court makes policy; and these are the uniformities about which judicial behavioralists make predictions, because these are the more meaningful and important kind of predictions to make (Schubert emphasis).⁵⁰

Limitations

This study will not be the final word on judicial behavioralism relative to mass communication law. It is only an introduction to the subject. A priori knowledge would inform this study that certain Supreme Court justices are "liberal" and other justices are "conservative" in their attitudes toward issues affecting the press. But, as

49 C. Herman Pritchett, "Divisions of Opinion Among Justices in the U. S. Supreme Court, 1939-1941," American Political Science Review 35 (1941):890.

50 Schubert, "1961 Term," p. 551. See also Schubert, Quantitative Analysis, pp. 13-14, 377.

Ulmer said, it is the "establishment of existing fact . . . [that is] the starting point for all research."⁵¹

As an introduction, this study may include some of the immature hypothesizing done by behavioralists in other subcategories of law. It is susceptible to false assumptions and uncontrollable variables. In addition, judicial behavioralism is not immune from researcher bias. However, protection against prejudice will be incorporated into the study.

Methodological limitations will be noted as the study progresses. Sample sizes, tests, units of analysis and measurement, and "external stimuli" can be properly addressed only in the context of their applications.

These tests are not meant to yield charts to "prove" that Supreme Court justices are "good" or "bad."⁵² It does not follow that justices who consistently appear to vote against the interests of the press are opposed to freedom of expression.

51 S. Sidney Ulmer, "Homeostatic Tendencies in the United States Supreme Court," in S. Sidney Ulmer, ed., Introductory Readings in Political Behavior (Chicago: Rand McNally, 1961), pp. 168-169, in Schubert, Judicial Behavior, p. 163.

52 The tests are not meant to be abused like the chart used by a United States senator indicating the number of times each member of the court had "voted in accordance with the position advocated by Communists," assuming that, as Anthony Lewis put it, facts and laws are irrelevant if Communists support the same results as the Supreme Court supports. If decisions coincide with how Communists wish them to be decided, that does not mean that the justices are Communists. Anthony Lewis, "The Supreme Court and Its Critics," Minnesota Law Review 45 (1960-1961):305, in Devol, Mass Media, p. 333.

Definitions

C-blocs, C-cases, C-scales:

Blocs, cases, and scales involving civil liberties issues.

Conservative justices and blocs:

Justices and blocs they form who consistently vote together and vote differently than liberal and moderate justices and blocs; justices and blocs representing ideologies based on public policy content of the issues confronting them; justices and blocs representing a disposition in politics to preserve what is established, a political philosophy based on a tradition of social stability and stressing established institutions, and a preference for gradual development rather than abrupt change.⁵³

E-blocs, E-cases, E-scales:

Blocs, cases, and scales involving economic issues.

G-blocs, G-cases, G-scales:

Blocs, cases, and scales involving civil liberties and economic issues.

Liberal justices and blocs:

Justices and the blocs they form who consistently vote together and vote differently than conservative and moderate justices and blocs; justices and blocs representing an ideology based on the public policy content of the issues confronting them; justices and blocs representing a political philosophy based on a belief

⁵³ Webster's Seventh New Collegiate Dictionary, (1971), s.v. "Conservatism."

in progress, the essential goodness of man, and the autonomy of the individual, and standing for the protection of political and civil liberties.⁵⁴

Moderate justices and blocs:

Justices and the blocs they form who consistently vote together and vote differently than liberal and conservative justices and blocs; justices and blocs representing an ideology based on the public policy content of the issues confronting them; justices and blocs who sometimes vote liberally and sometimes conservatively so that they are distinct from either liberal or conservative justices and blocs.

P-blocs, P-cases, P-scales:

Blocs, cases, and scales involving press issues.

Methodology

Unit of Analysis

The unit of analysis is the Supreme Court case. Cases brought before the Supreme Court may be regarded as questions with dichotomous answers. The facts determine the issue the court will address. The justice perceives the issue through his interpretation of the facts. The votes on the issues are counterparts of the external and internal values held by the justice.

It may be assumed each case can be considered in the same manner as the value range the justice holds. Measurement of the relationship

⁵⁴ Ibid., s.v. "Liberalism."

between the value of the votes cast in regard to a particular issue and the value of the favorableness of the case outcome to the same issue should reveal the value the justice places on that issue.⁵⁵

Schubert explained:

More generally, any justice would vote to uphold an issue (such as freedom of speech) if, and only if, his sympathy for the issue was equal to or greater than the amount of sympathy required for anyone to agree with the claim raised in the case. . . .⁵⁶

One sample and two subsamples of cases will be used in this study: (1) all nonunanimous cases decided on their merits by the Supreme Court between October, 1946, and February, 1974 (including subsamples of civil liberties cases and economic cases), (2) all nonunanimous cases affecting civil liberties decided on their merits by the Supreme Court for the same period, and (3) all nonunanimous cases affecting freedom of the press decided on their merits by the Supreme Court for the same period.

The first sample consists of 1,992 cases collected by the American Political Science Association Data Package (hereinafter called the APSA package). It includes 1,201 civil liberties cases (C-cases), the second sample, and 791 economic cases (E-cases).⁵⁷

The third sample consists of 92 press cases (P-cases). P-cases provide a good basis for study because they more often address the

55 Schubert, "1961 Term," p. 555.

56 Ibid.

57 John Paul Ryan and C. Neal Tate, The Supreme Court in American Politics: Policy Through Law (Washington, D.C.: American Political Science Association, 1975). See App. A.

essence of the First Amendment than do nonpress First Amendment cases, which are often decided on procedural grounds, "overbreadth of legislation" grounds, or other grounds not unique to the First Amendment.⁵⁸ P-cases have sharply divided justices on the merits of the issues.

Four criteria qualified a P-case as a unit of analysis: (1) the case had to be nonunanimous because unanimity does not reveal differences in attitudes,⁵⁹ (2) it had to fall between the dates of the APSA package used in the study, (3) it had to involve, at least minimally, the printed word or aspects of other media that would be interchangeable with the printed word, and (4) it had to prompt either or both litigants or any or all justices to invoke the freedom of the press clause of the First Amendment as a major argument.

The P-case sample was derived from several sources. Casebooks suggested most of the sample. Gillmor and Barron indexed 1,642 cases involving freedom of expression and related areas.⁶⁰ Emerson listed 548 cases in one text⁶¹ and 956 cases in another.⁶² Harold L. Nelson and Dwight L. Teeter, Jr., listed 782 cases.⁶³ These cases, of course, related to many jurisdictions.

58 Shapiro, Freedom of Speech, pp. 140-150.

59 William P. McLaughlan, "Research Note: Ideology and Conflict in Supreme Court Opinion Assignment, 1946-1962," Western Political Quarterly 25 (March, 1972):18-19.

60 Gillmor, Mass Communication Law, pp. XXIX-XLVIII.

61 Emerson, The System, pp. 729-741.

62 Emerson, Political and Civil Rights, 2:2219-2240.

63 Nelson, Law of Mass Communication, pp. 687-698.

The 92 P-cases were finally selected from 237 First Amendment C-cases and E-cases after elimination of 146 cases which did not invoke the freedom of the press clause. Of the 92 P-cases, 11 involved fair trial, 7 involved privacy-reputation, 14 involved community order-national interest, 49 involved community morality, and 11 involved national security.

Units of Measurement

There are five units of measurement: (1) Supreme Court justices, (2) the "courts" formed by the justices, (3) the ideological outcomes of the C-cases and G-cases, (4) the press favorableness of the outcomes of the P-cases, and (5) the votes of the justices.

The first unit of measurement is the justice. Since 1789, 90 justices (including Justice Stevens) and 15 chief justices have served on the Supreme Court.⁶⁴ During the 1946-1974 period under study, 24 justices (starting with Justice Black and up to, but not including, Justice Stevens) and Chief Justices Vinson, Warren, and Burger served.⁶⁵

The second unit of measurement is the "court" that justices form. The APSA package lists five kinds of courts, representing normal fiscal terms, periods between justice changeovers, and periods representing the Vinson Court (1946-1953), Early Warren Court (1954-1959),

⁶⁴ George E. Delury, ed., The World Almanac and Book of Facts, 1976 (Cleveland: National Enterprise Association, 1975), p. 337.

⁶⁵ App. A.

Middle Warren Court (1959-1965), Late Warren Court (1966-1968), and the Burger Court (1969-1974). These are called "detailed court eras." The Vinson Court decided 10 P-cases, the Early Warren Court decided 8 P-cases, the Middle Warren Court decided 18 P-cases, the Late Warren Court decided 33 P-cases, and the Burger Court decided 23 P-cases.⁶⁶

The third unit of measurement is the ideological outcome of the case. The APSA package lists two possible outcomes for each case: liberal and conservative. APSA decided whether an affirmance or reversal would represent a liberal or conservative outcome. The decision was based on an examination of each of the sample cases. Depending on the outcome, each case was given a liberal or conservative designation. Of the sample, 848 cases were decided conservatively and 1,144 cases were decided liberally.⁶⁷

The fourth unit of measurement is the press favorableness outcome of the P-case.⁶⁸ There are two possible outcomes for each case: favorable and unfavorable. This study decided whether affirmance or reversal constituted favorable or unfavorable outcomes. The decision was based on a combination of two considerations: (1) which litigant claimed that the freedom of the press clause had been violated, and (2) which litigant represented the media. Depending on the direction

66 Apps. B and C.

67 App. A.

68 Cf. use of terms "conservative" and "liberal" in Francois, Mass Media Law, pp. 28-29; Gillmor, Mass Communication Law, p. 202; Pritchett, Civil Liberties, pp. 186-226; Schubert, Judicial Mind, passim; Devol, Mass Media, pp. 1-4.

of the outcome, each case was assigned a favorable or unfavorable designation. Of the sample, 41 cases were decided unfavorable and 51 cases were decided favorably.⁶⁹

The fifth unit of measurement is the vote of the individual justice. The justices voted conservatively or liberally in G-cases and C-cases and favorably or unfavorably in P-cases. In the APSA package, justices voted liberally 9,288 times and conservatively 9,218 times. They were credited with 31,085 "no votes"⁷⁰ (in cases occurring when the justice abstained from voting, was absent from the court, or was not on the court). In P-cases, the justices voted favorably 438 times and unfavorably 340 times. They were credited with 2,864 no votes in P-cases.

Objective One

The first objective of this study is to replicate tests⁷¹ showing that there are basic attitudes held by Supreme Court justices in G-cases.

69 App. C.

70 Ibid. Shapiro thinks that nonunanimous decisions are actually responses with more than two possible explanations. In other words, a 5-4 decision might more aptly be described as perhaps "a 3-2-1-1-2 decision." Martin Shapiro and Douglas S. Hobbs, The Politics of Constitutional Law (Cambridge, Mass.: Winthrop Publishers, Inc., 1974), p. 5. But as Devol has pointed out, the effect of the justices' vote can only be dichotomous. The court "cannot create . . . it merely says 'yes' or 'no'--and even then only when asked to do so." Devol, Mass Media, p. 356.

71 See pp. 54-60, chap. 2, *infra*.

Theoretical Framework. By observing the concurrence and dissent behavior of Supreme Court justices, Pritchett, Schubert, and Ulmer found that justices form in blocs.⁷² They have concluded that the blocs represent the basic attitudes present in the Supreme Court toward issues that confront it. By a priori knowledge of the general behavior of the justices comprising each of the blocs and the ideological direction of the outcome of the case, the researchers have designated the blocs by different names. But they agree that the blocs generally represent basic liberal, moderate, and conservative attitudes.

Unit of Analysis. The unit of analysis is the G-case.

Independent and Dependent Variables. The independent variable is the G-case. The dependent variable is the vote of the Supreme Court justice.

General Procedure. G-cases are to be dichotomized into pairs of Supreme Court justices' interagreement over the entire period of the study and in each of the court eras. In other words, each justice is to be compared with every other justice on the number of times they agreed and disagreed with each other.

Fourfold interagreement tables of pairs of justices will be constructed (Sample Table 1).

Cell a (+/+) represents the number of times both J_1 and J_2 voted conservatively (or unfavorably, depending on whether the sample is made up of G-cases or P-cases, respectively). Cell b (+/-)

72 Ibid.

represents the number of times J_1 voted conservatively but J_2 voted liberally. Cell c (-/+) represents the number of times J_1 voted liberally but J_2 voted conservatively. Cell d (-/-) represents the number of times both J_1 and J_2 voted liberally.

SAMPLE TABLE 1

INTERAGREEMENT FOURFOLD TABLE FOR JUSTICES J_1 AND J_2

		JUSTICE J_2		
		UNFAVORABLE OR CONSERVATIVE (+)	FAVORABLE OR LIBERAL (-)	
JUSTICE J_1	UNFAVORABLE OR CONSERVATIVE (+)	a	b	p
	FAVORABLE OR LIBERAL (-)	c	d	q
		p'	q'	

G indexes of agreement will be computed from the fourfold tables. Formula 1 will be used.

$$(1) \quad G_{J_1 J_2} = \frac{a + d - b + c}{n}$$

W. G. Br. Guilford and Benjamin Fruchter, Elementary Statistics
 in Psychology and Education, 5th ed. (New York: McGraw-Hill, 1973).

where $G_{J_1J_2}$ is the G index of agreement for justices J_1 and J_2 , a is the +/+ total, b is the +/- total, c is the -/+ total, d is the -/- total, and n is the number of cases in the fourfold table.⁷³

Both fourfold tables and interagreement G coefficients of all pairs of justices will be arranged in a single matrix (Sample Table 2). Similar tables will be constructed for each of the five detailed court eras.

SAMPLE TABLE 2
FOURFOLD TABLES AND G COEFFICIENT MATRIX FOR G TOTAL COURT

		JUSTICES														
		J ₁		J ₂		J ₃		J ₄		...		J ₂₄				
		+	-	+	-	+	-	+	-	+	-	+	-			
JUSTICES	J ₁	+		a	b							(Interagreement Fourfold Tables)				
		-		c	d											
	J ₂	+	$G_{J_1J_2}$			a	b									
		-			c	d										
	J ₃	+		$G_{J_3J_2}$			a	b								
		-					c	d								
	J ₄	+	(G Agreement Coefficients)			$G_{J_4J_3}$						a	b			
		-										c	d			
		.														
		.														
	.															
J ₂₄	+															
	-							$G_{J_{24}J_4}$								

⁷³ J. P. Guilford and Benjamin Fruchter, Fundamental Statistics in Psychology and Education, 5th ed. (New York: McGraw-Hill, 1973), p. 311.

Factor analysis will be used to analyze the interagreement coefficients. Schubert explained that the

. . . initial product of factor analysis is a set of derived correlations or ("loadings," as they customarily are called) (sic) which purport to measure the extent to which each element of whatever has been associated in the correlation matrix, is related to the components or dimensions into which the basic correlation matrix has been broken down.⁷⁴

In this study, the justice is the element of factor analysis. The factor loadings represent correlations of justices' opinions with whatever the factors represent. If three factors can represent the dimensions of Supreme Court ideology, then Formula 2 would be used to compute the factor loadings.

$$(2) \quad d(i_1 i_2) = \left[(X_1 - X_2)^2 + (Y_1 - Y_2)^2 + (Z_1 - Z_2)^2 \right]^{\frac{1}{2}}$$

where d is the distance between justices, i_1 and i_2 are the ideal points for a pair of justices, and X, Y, and Z are the ideal point loadings on the reference axes.⁷⁵

Factor loadings will vary from +1.0 to -1.0. The variance will depend on the extremities of the correlation coefficients. A table of factor loadings will be constructed for each of the G-, C-, and P-total court analyses and detailed court era analyses (Sample Table 3).

If justices load onto the factors, Hypothesis One will be confirmed.

Hypothesis One. Basic attitudes of Supreme Court justices contribute to their voting behavior.

74 Schubert, "1961 Term," pp. 351-562.

75 Ibid., p. 562.

SAMPLE TABLE 3

FACTOR LOADINGS MATRIX

		FACTORS		
		I	II	III
JUSTICES	J ₁			
	J ₂			
	J ₃			
	⋮			
	J ₂₄			

Objective Two

The second objective is to replicate tests showing that there are basic attitudes held by Supreme Court justices in C-cases.

Theoretical Framework. Behaviorists recognized early in their studies that when certain kinds of cases are isolated, interagreement correlations become more pronounced. This led the researchers to conclude that certain issues elicited strong ideological voting behavior among the justices. The two most general types of cases are E-cases and C-cases. By isolating and studying C-cases, behaviorists learned the ideological tendencies of Supreme Court justices involving civil liberties issues.⁷⁶

Unit of Analysis. The unit of analysis is the C-case.

⁷⁶ Schubert, Judicial Mind, p. 70.

Independent and Dependent Variables. The independent variable is the C-case. The dependent variable is the vote of the justice.

General Procedure. Same as Objective One.

Hypothesis Two. Basic attitudes of Supreme Court justices toward civil liberties issues contribute to their voting behavior in C-cases.

Objective Three

The third objective is to discover whether or not there are basic attitudes held by Supreme Court justices in P-cases.

Theoretical Framework. Schubert found the correlation between cases involving political freedom (including freedom of the press cases) and C-cases so high that he defined the C attitude as the PF attitude.⁷⁷ By isolating cases involving freedom of the press, it may be discovered that Supreme Court justices have basic attitudes toward P-issues.

Unit of Analysis. The unit of analysis is the P-case.

Independent and Dependent Variables. The independent variable is the P-case. The dependent variable is the vote of the justice.

General Procedure. Same as Objectives One and Two.

Hypothesis Three. Basic attitudes of Supreme Court justices toward press issues contribute to their voting behavior in press cases.

⁷⁷ See pp. 106-114, Chap. 3, infra.

Organization of the Thesis

The thesis will be organized in the following fashion:

Chapter One. INTRODUCTION. Introduction, Statement of the Problem, Purpose of the Study, Justification of the Study, Definitions, Limitations, Methodology, Organization of the Thesis.

Chapter Two. THE JUDICIAL MIND (Review of literature). Legal Realism, Political Jurisprudence, Judicial Behavioralism.

Chapter Three. THE JUDICIAL MIND AND THE FIRST AMENDMENT (Review of literature). First Amendment Realism, Political Jurisprudence and the First Amendment, Judicial Behavior and the First Amendment.

Chapter Four. A MODEL OF JUDICIAL BEHAVIOR (Data collection). Introduction, Data Collection, Conclusion.

Chapter Five. THE JUDICIAL MIND AND THE FIRST AMENDMENT MIND REVISITED (Data analysis). Introduction, b Factor Analyses, C Factor Analyses, P Factor Analyses.

Chapter Six. CONCLUSION. Problem, Objectives, Design, Major Findings, Conclusions, Implications, Recommendations.

APPENDICES. A - APSA Codebook, B - List of Cases, C - Press Codebook, D - Data Compilation.

CHAPTER II

THE JUDICIAL MIND

Legal Realism

Introduction

The American legal system has had difficulty adjusting its function to the increasing needs of modern society. As other parts of government and the private sector responded to the service requirements of the public, courts, at least in theory, were restrained from doing the same. A dynamic society with far-reaching needs and a static judiciary maintaining the status quo have collided. During times when the public demands were great, the judiciary responded.⁷⁸

The judiciary was not intended to be a democratic institution reflecting desires of the electorate. It was planned to maintain basic principles upon which the American system of government was constructed. Judges were meant to apply law, not create law.⁷⁹

Pritchett explained this negative argument:

. . . (J)udicial review is inherently undemocratic in character. . . . Judges are appointed, not elected; and since they serve for life, they may easily be out of tune with the times. The Court's role is essentially negative; it cannot accept any real responsibility for formulation of public policy, and so, the argument runs, it should not stand in the way of political branches which do have that responsibility.⁸⁰

78 See C. Herman Pritchett, The American Constitution, 2nd ed., (New York: McGraw-Hill, 1968), pp. 44-58.

79 Ibid., pp. 158-177.

80 Pritchett, Civil Liberties, p. 240.

But legal realists and members of the many subschools of legal realism insist that Judges need to be cognizant of the desires of a changing society and need to be responsive to it. The courts were not given legislative powers by the constitution's framers, but they were eventually forced to exercise legislative powers as part of a service government.⁸¹

Early Legal Realism

The development of legal realism can be found in the works of legal theorists. Early legal realism was not directed at anything as much as away from traditional jurisprudence. Its primary objection was to the basis upon which legal positivists predicted law. Little else about the philosophies of the founders of realism was common among them except Oliver Wendell Holmes's inspiration: "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."⁸²

Fred V. Cahill characterized legal realism by its attempts to "broaden" study of law through the adoption of social science theories, including those of political science, sociology, psychology, and social statistics. But, in truth, 'legal realism' "defied definition. . . . (It) is less a description than a slogan and carries emotional connotations rather than precise meanings."⁸³

⁸¹ Fred V. Cahill, Jr., Judicial Legislation: A Study in American Legal Theory (New York: Ronald Press, 1953), pp. 3-7.

⁸² Holmes, "The Path of the Law," p. 21.

⁸³ Cahill, Judicial Legislation, p. 97.

The original realists were primarily academicians and considered foolish by some members of the bar and bench. The realists sought a true "science of law" by studying what courts actually do, as opposed to the traditionalists' emphasis on what courts ought to do, according to Karl N. Llewellyn.⁸⁴ The realists sought underlying factors involved in what courts do so that students and practicing attorneys could predict what courts do.

Roscoe Pound urged law professors to educate the public about "what law is and why law is and why law does and why it does it." He claimed the legal profession was the last bastion of the "sacred" and "mysterious" status of law. Historians, economists, sociologists, journalists, and politicians had begun their studies of the legal process while lawyers continued to believe in the "cult of the robe."⁸⁵

Pound wrote:

We must not make the mistake in American legal education of creating a permanent gulf between legal thought and popular thought. But we may commit the mistake not merely by teaching legal pseudoscience and obsolete philosophy but quite as much by the more prevalent method of saying nothing about these matters at all, leaving the student to pick up what he may here and there in the cases and texts, with no hint that there are other conceptions and other theories entertained by scholars of no small authority, and go forth in the belief that he is completely trained.⁸⁶

84 Llewellyn, "Some Realism About Realism," pp. 31-32.

85 Roscoe Pound, "The Need of a Sociological Jurisprudence," The Green Bag 19 (October, 1907):607-615, in Simon, Sociology of Law, p. 10.

86 Ibid., p. 12.

Pound feared that legalists and society had different sets of justice; one set for lawyers and judges and another set for lay persons. "But this cannot be. Law is a means, not an end," Pound stated.⁸⁷

Llewellyn clarified the ends-means reorientation of realism by saying that law is a means to social ends, not an end in itself. "Beyond rules lie effects." The realist approach involved certainty in law for both lay persons and lawyers.⁸⁸ Holmes conditioned law on its effects on society.⁸⁹ Legal realists wanted law considered a social science.⁹⁰ Llewellyn recognized the effects of laws on society and the effects of legalists on laws: "In personality and psychological studies of judges it has become clear that our government is not a government of laws, but one of laws through men."⁹¹

Systematic Induction

Legal realists did not intend to do away with the traditional approaches altogether.⁹² But a better prediction-making model was desired. The impact of law on society required transformation of

87 Ibid., p. 13.

88 Llewellyn, "Some Realism About Realism," p. 36.

89 Holmes, "The Path of the Law," pp. 23-24.

90 Tannenhaus, "Supreme Court Attitudes," p. 549.

91 Llewellyn, "Some Realism About Realism," pp. 36-37.

92 Nicholas Timasheff, "What is 'Sociology of Law'?" American Journal of Sociology 43 (1937):225.

"uncritical armchair speculation" to "systematic induction."⁹³ Work such as the "Brandeis Brief" exemplified to the realist the preferred appeal to social and economic facts as opposed to appeal to law in and of itself.⁹⁴ Interdisciplinary methods would give students appreciation for the environment in which law actually operates and the necessary evolution of law to fit the contemporary societal scheme.⁹⁵

Lee Loevinger sought a scientific certainty in fact collection by courts, a proposal he called "jurimetrics." He attacked all other jurisprudence:

It is based upon speculation, supposition and superstition; it is concerned with meaningless questions; and, after more than two thousand years, jurisprudence has not yet offered a useful answer to any question or a workable technique for attacking any problem.⁹⁶

Among the problems Loevinger hoped jurimetrics would face was unevenness in the behavior of judges.⁹⁷

John Dewey wielded much influence in the philosophy of legal realists. He insisted that there were no eternal truths, only truths that answered questions in the context in which the questions were

93 Robert C. Angell, "The Value of Sociology of Law," Michigan Law Review 31 (1953):516, in Simon, Sociology of Law, p. 66.

94 Ibid., p. 68.

95 Ibid., p. 67.

96 Lee Loevinger, "Jurimetrics: The Next Step Forward," Minnesota Law Review 33 (1949):455, in Simon, Sociology of Law, p. 179.

97 Ibid., p. 182.

posed. Science provided methods for finding contemporary social truths, and jurisprudence should adopt scientific methods.⁹⁸

Judicial Legislation

Legal realists were interested in judicial legislation. John Chipman Gray attempted to distinguish "Law" from judicial decision. He separated law from rules enforced by judges. Judges decide issues while the law commands general norms. Statutory or constitutional law, representing the will of the sovereign, was not the same as giving effect to the law. But when judges gave effect to the intent of law, they legislated by imposing their own ideas of the sovereign's will. Judicial freedom--even creativeness--was necessary in this function.⁹⁹

Joseph W. Bingham, Jr., developed the idea of judicial freedom to show that since no two persons could hold the same idea about what the effect of a general intent can be, judges, as persons, are not applying generalizations to facts and arriving at automatic conclusions but instead are making law. Bingham said this function was desirable because decisions based solely on precedent could not justify unjust decisions. To allow judges to hide behind generalizations was to protect arbitrariness. Judges, like legislators, should be free to make decisions open to public discussion and criticism.¹⁰⁰

98 Cahill, Judicial Legislation, p. 109.

99 Ibid., pp. 100-101.

100 Ibid., pp. 102-103.

Arthur F. Bentley thought a good way to analyze law is to study factional activities of appellate courts. He wrote:

It is possible to take a Supreme Court decision, in which nothing appears on the surface but finespun points of law, and cut through all the dialectic till we get down to the actual groups of men underlying the decisions and producing the decisions through different activity of the justices.¹⁰¹

Bentley said judges are subject to pressures similar to those faced by legislators and respond consciously, subconsciously, and unconsciously to these pressures. The courts are essentially advocacy tribunals, where demands are made from at least two sides. The courts also have inner pressures, representing needs of the judges.¹⁰²

Legal realists proposed reforms giving more freedom to judges to legislate.¹⁰³ The reforms centered on the institution of stare decisis and its supposed logic.¹⁰⁴ Exposure of what courts do was the first step, and borrowing from social sciences, the realists began comprehensive studies of the system of administration of justice.

Conclusion

Realist approaches to study of the courts have been fragmented and conflicting. Later regroupings found the school's basis remained only in the rejection of the exaggerated importance of legal rules and

101 Arthur F. Bentley, The Process of Government: A Study of Social Pressures, ed. Peter H. Odegaard (Cambridge, Mass.: Belknap Press, 1935), p. 205.

102 Cahill, Judicial Legislation, pp. 106-107.

103 Ibid., p. 113.

104 Ibid., p. 117.

the necessity for judicial discretion. Rules should not be the major premise of decisions but instead should be instruments in reconciling law with society. The concept of the modern jurist was that of a "social engineer."¹⁰⁵

Political Jurisprudence

Introduction

Among the functions of the Supreme Court are the interpretation of the Constitution and the establishment of the limits of powers of the branches of government. It decides on the limits of powers of the congress and the president several times each session. It has alternately expanded and contracted its own limits of influence.

Thomas Jefferson, John Marshall, and Alexis de Tocqueville recognized the Supreme Court as the ultimate political decision-maker.¹⁰⁶ The court has remained in that position through "simple inertia."¹⁰⁷

In deciding the so-called "imponderables,"¹⁰⁸ the Supreme Court steps away from law. According to Arthur A. North:

In weighing these conflicting interests, the Court goes beyond the realm of law. A peaceful solution to public questions

¹⁰⁵ Ibid., p. 77.

¹⁰⁶ North, Supreme Court, pp. 192-193.

¹⁰⁷ James Eisenstein, Politics and the Legal Process (New York: Harper and Row, 1973), p. 338.

¹⁰⁸ Justice Jackson called matters better left to the legislative system "imponderables" in *Dennis v. United States*, 341 U. S. 494 (1951).

which raise deep and fundamental issues is called statesmanship. This is political action at its best, and it is one of the outstanding contributions that the Court has made to the political life of America.¹⁰⁹

Traditional jurisprudence, by concentrating on "encyclopedic" work on "landmark" cases, ignores the political influence of the Supreme Court and fails to consider the full impact of the court on society, Schubert wrote.¹¹⁰

Political party leaders choose Supreme Court justices. But the court has managed to stay disengaged from partisan politics. Nevertheless, justices do not give up their political party beliefs once appointed to the court. They may give up their party memberships, but they retain their basic ideologies.

Judicial Lobbies

Evidence that the Supreme Court is political lies in its responsiveness to constituencies. It is subject to economic, moral, and political pressures from "judicial lobbies." The court looks at who writes "friend-of-the-court" briefs as well as what the briefs say.¹¹¹

Like the other branches of government, the court enforces broad middle-class standards of right and wrong. The poor and minorities, as

109 North, Supreme Court, p. 193.

110 Schubert, Constitutional Politics, p. v.

111 Ibid., p. 76.

part of the reality of political life, are often not given equal standing before the court.¹¹² As James Eisenstein suggested:

One point should be unmistakably clear: The legal process is an integral part of the political process. It not only displays the major characteristics of the political system in recruitment, operation, and impact, but appears to play a particularly crucial role in shaping who gets what. Because it is intimately bound up in the legitimate use of coercive force in society, it lies at the heart of politics.¹¹³

Krislov contended that the Supreme Court has always been at least conscious of organized interests. The court has been pragmatic when there existed the chance that the populace might react adversely to a dogmatic decision.¹¹⁴

The political court does have constituencies. Prior to 1937, conservative private interests enthusiastically supported the Supreme Court's defense of minority rights in regard to property. That support has eroded as other minority interests, at different times, have been given preferred status, sometimes at the expense of private property associations.¹¹⁵

Because the court has preferred different minorities at different times, Martin Shapiro concluded that the court does not necessarily

112 Eisenstein, Politics, pp. 340, 343.

113 Ibid., 351.

114 Krislov, Political Freedom, p. 19.

115 Schmidhauser, Politics, Personalities, Procedures, p. 157.

prefer minorities. It prefers groups.¹¹⁶ These political groups make demands of justices, who are political agents.¹¹⁷

Judges as Politicians

The study of the political legal system is called political jurisprudence, which, according to Shapiro, was born in sociological jurisprudence and legal realism. Its foundation rests in political science, not law.¹¹⁸

Starting with the premise that courts are an integral part of society and not aloof from it, political jurisprudence began to focus on the judicial process and behavior of judges. In common with legal realism, political jurisprudence recognizes that judges make law rather than discover it. Traditional jurisprudence, which fails to appreciate this fact, ignores what, according to North, "everyone," including members of the Supreme Court, admits. In dealing with some sorts of legislation, the court has not only addressed whether statutes have gone awry of the constitution but also whether they have gone awry of the court's vision of wisdom, providence, or propriety.¹¹⁹

116 Shapiro, Freedom of Speech, p. 111.

117 Martin Shapiro, Law and Politics in the Supreme Court; New Approaches to Political Jurisprudence (Glencoe: The Free Press, 1964), pp. 9, 16.

118 Shapiro, "Political Jurisprudence," p. 201.

119 North, Supreme Court, p. 199. See also Wallace Mendelson, "Mr. Justice Douglas and Government by the Judiciary," Journal of Politics 38 (November, 1976):918.

Shapiro intimated that as long as judges have choices, the courts will be involved in politics. The judges' decisions will be policy alternatives similar to those presented to other political agents.¹²⁰ Shapiro said:

The core of political jurisprudence is a vision of courts as political agencies and judges as political actors. Any given court is thus seen as a part of the institutional structure of American government basically similar to . . . the ICC, the House Rules Committee, the Bureau of the Budget, the city council of Omaha, the Forestry Service and the Strategic Air Command.¹²¹

In fact, bureaucrats and many politicians might not be subjected to political pressures as severe as those the justices experience.¹²² Strong political pressures are exerted during the justices' selection process and they become subjects for ideological debates.¹²³

Schmidhauser concluded:

It is certainly apparent that the ideological attitudes held by or attributed to candidates for nominations and appointment to the Supreme Court represented the most important factor influencing presidential choice.¹²⁴

Only on rare occasions have presidents reached across party lines in their selection of nominees to the Supreme Court. The prize of a Supreme Court seat has provided incentive for political support.¹²⁵

120 Shapiro, "Political Jurisprudence," p. 202.

121 Ibid., pp. 203-204.

122 Eisenstein, Politics, p. 342.

123 Schmidhauser, Politics, Personalities, Procedures, p. 13.

124 Ibid., p. 12.

125 Ibid., p. 48.

Judge Learned Hand encouraged examination of "personal preferences," since the courts were so involved with the political process:

. . . (I)t is apparent, I submit, that in so far as it is made part of the duties of judges to take sides in political controversies, their known or expected convictions or predilections will, and indeed should be at least one determinant in their appointment and an important one.¹²⁶

Political jurisprudence integrates courts into the American governmental and political systems. It subordinates "Law" to political science. According to Shapiro:

The political jurist begins with what any fool could plainly see if his eyes were not beclouded by centuries of legal learning, that judges and courts . . . would be meaningless and functionless outside government and politics. . . .¹²⁷

Constitutional law is the "most openly political of all areas of law," Shapiro maintained, especially in relation to the electoral process.¹²⁸ Williamson suggested in 1961 that the Supreme Court had become so political in apportionment decisions that guardianship of the constitution might have better been left to the legislative process.¹²⁹

Constitutional Politics

The supposed apolitical-political debate over judicial modesty and judicial activism is essentially a political debate in itself, and

¹²⁶ Learned Hand, The Bill of Rights (Cambridge, Mass.: Harvard University Press, 1954):66 in Emerson, Political and Civil Rights, p. 23.

¹²⁷ Shapiro, "Political Jurisprudence, p. 204.

¹²⁸ Ibid., p. 206.

¹²⁹ Williamson, "Political Process," p. 211.

the school of judicial modesty perpetuates politics in courts by continually asking where judicial review begins and quits.¹³⁰ Justice Frankfurter, the model of judicial restraint, may have insisted on modesty so as to disguise his own conservatism.¹³¹ Shapiro asserted:

(T)hanks to the efforts of the modests themselves . . . the issue of modesty has become so entangled in every substantive area of constitutional law so that constitutional scholarship as a whole has become essentially a political discipline.¹³²

The Supreme Court's doctrine of refusing to address political questions and other doctrines that impose limitations on itself¹³³ are political questions.¹³⁴

The modest's argument that politics can be avoided in judicial decision-making through reliance on precedents was disputed by Haines. He wrote that judges who claim to leave their own predilections out of their decisions by making good use of precedents ignore the fact that

130 Shapiro, "Political Jurisprudence," pp. 206-207.

131 Harold Spaeth, "Judicial Power as a Variable Motivating Supreme Court Behavior," Midwest Journal of Political Science 5 (1962): 165; Glendon Schubert, "The 1960 Term of the Supreme Court: A Psychological Analysis," American Political Science Review 56 (1962):90, 101.

132 Shapiro, "Political Jurisprudence," p. 211.

133 For a discussion of the internal and external factors limiting the effectiveness of the Supreme Court as guardians of civil rights and liberties, see M. Glenn Abernathy, Civil Liberties Under the Constitution, 2nd ed. (New York: Dodd, Mead and Co., 1973), pp. 2-12. See also Schubert, Constitutional Politics, pp. 173-256. Such internal factors as the job of opinion assignment can be a political consideration. Ulmer, "Supreme Court Behavior Patterns," pp. 640-651; McLaughlin, "Research Note," pp. 16-27.

134 Jack W. Peltason, "A Political Science of Public Law," Social Science Quarterly 34 (1953):51, in Schubert, Judicial Behavior, pp. 50-51.

the precedents were written by earlier judges who had no precedents and wrote those decisions based on their own personal and political philosophies.¹³⁵ Pritchett suggested that judges are forced to recognize the precedents but are not forced to conform with them:

The great strength of the Supreme Court's decision-making process is its recognition of the claims of rationality. The individual Justice may think that a particular precedent is wrong or outmoded. If so, he may follow his personal preference and state his reasons for voting to overrule the earlier holding. He is free to do that. But he is not free to ignore the precedents, to act as though they did not exist. He must dispose of them by rational arguments.¹³⁶

Conclusion

Elements in legislatures want courts to decide issues of social and political policy.¹³⁷ Elements in courts want to decide these policies.¹³⁸ And as long as the public insists on asking the courts to decide these questions, the courts are forced to look beyond "neutral principles." Judges must look to their own ideas of social and political justice and answer the questions in those terms.¹³⁹ Shapiro added:

In other words, [judges are] . . . asked to perform the same tasks that every other political decision maker is asked to perform and to do so as a complementary and supplementary

135 Haines, "General Observations," p. 42.

136 C. Herman Pritchett and Alan F. Westin, eds., The Third Branch of Government: 8 Cases in Constitutional Politics (New York: Harcourt, Brace & World, 1963), p. 17.

137 Footlick, "Too Much Law?" pp. 42, 44, 47.

138 Mendelson, "Mr. Justice Douglas," p. 918.

139 Shapiro, "Political Jurisprudence," p. 209.

segment of the whole complex of American political institutions.¹⁴⁰

Political jurisprudential studies have been involved in the impact of the courts on the broader political environment through demonstration of how courts interact with other governmental agencies at all jurisdictional levels. The school is also interested in differences between other politicians and judges. As Shapiro indicated, the mere fact that Justice Black and Al Capone were both politicians does not mean that Black was a gangster.¹⁴¹

Political jurisprudence is involved almost exclusively with the "is" of law and virtually outside the "ought" of law. But values are nevertheless considered since adherents ask judges to proclaim their social goals so that they may be publicly discussed. Shapiro hopes political jurisprudence prompts judges to evaluate their political roles in the governmental process.¹⁴² "It would be fantastic indeed if the Supreme Court, in the name of sound scholarship, were to disavow publicly the myth upon which its power rests."¹⁴³

Shapiro emphasized that until the disavowal is pronounced, the controversy over politics in courts will continue. But one fact should be clear; as long as ambiguities in the constitutional system exist, there will be discretionary resolutions in the courts. The

140 Ibid.

141 Ibid., p. 214.

142 Ibid., p. 219.

143 Shapiro, Law and Politics, p. 27.

ambiguities of the constitution's framers, the language of the constitution itself, and the status of the Supreme Court as a court prevent an apolitical constitutional system from functioning.¹⁴⁴

Judicial Behavioralism

Introduction

Freudianism has been the major influence on judicial behavioralism. Currents of psychology found their way into the legal realism movement primarily through the writings of Benjamin Cardozo, Jerome Frank, Harold Lasswell, and like-minded realists.

Freudian empiricism was neglected in their work, but they did place importance on understanding that judges are as human as other people. Judges' desires--based in their subconscious--are an important component of their policy-making function.

What early judicial behavioralists had in common was redirection of jurisprudence from content analysis of court decisions and norms found therein to study of the judicial process and behavior of judges in the process.

Variation in application of precedents and personal standards of justice among judges posed no problem for Cardozo, who accepted judge-made law as "one of the existing realities of life." He wrote:

There is in each of us a stream of tendency . . . which gives coherence and direction to thought and actions. Judges cannot escape that current any more than other mortals. . . . Deep below consciousness are other forces, the likes and dislikes, the predilections and the prejudices, the complex of instincts

144 Shapiro, The Politics of Constitutional Law, pp. 9-13.

and emotions and habits and convictions, which made the man, whether he be litigant or judge.¹⁴⁵

Frank sought to rid the legal system of "Santa Claus" myths about abilities of lawyers and judges to sustain exactness in law. Law is an abstraction and can only be an approximation because of the differing environments in which law is applied. But even if the environments could be stabilized, uniformity among judges' personalities would be impossible.¹⁴⁶

Lasswell traced links between judicial "character types," "political types," and "political roles." Depending on whether judges were "administrators" or "agitators," they were found to have psychological traits discernible in political and personal manifestations.¹⁴⁷

Haines debunked the "mechanical theory" of traditional jurisprudence and would have replaced it with the "free legal decision theory," which is often the practice. Judges arrive at conclusions based on their own concepts and consciences influenced by training and experiences and the social, political, and economic conditions around them.¹⁴⁸ Haines added:

Psychological motives and influences have been subjected to analysis in their effect upon political conduct to some extent,

145 Benjamin N. Cardozo, The Nature of the Judicial Process (New York: Yale University Press, 1921), pp. 13, 167, in Schubert, Judicial Behavior, pp. 15-16.

146 Jerome Frank, Law and the Modern Mind (New York: Coward-McCann, 1930), pp. 238-239.

147 Harold N. Lasswell, Power and Personality (New York: W. W. Norton & Co., 1948), pp. 61-88.

148 Haines, "General Observations," p. 40.

and it is conceded that these motives and influences are not altered when one assumes the role of judge. . . . (J)udicial opinions necessarily represent in a measure the personal influences of the judge.¹⁴⁹

Felix S. Cohen in 1935 proposed a functional approach to combat "transcendental nonsense" in the legal system. Instead of full-scale psychological analyses of judges, which would be impractical, statistical measurements of attitudes would be required. Cohen wrote:

I think the really creative legal thinkers of the future will not devote themselves . . . to the taxonomy of legal concepts and to the systematic explication of principles of "justice" and "reason," buttressed by "correct" cases. Creative legal thought will more and more look behind the "pretty" array of the "correct" cases to the actual facts of judicial behavior, will make increasing use of statistical methods in the scientific description and prediction of judicial behavior, will more and more seek to map the hidden springs of judicial decisions and to weight the social forces on the bench.¹⁵⁰

Cohen compared analysis of physical objects and their complex of positive and negative electrons to legal institutions and their complex of plaintiffs and defendants.¹⁵¹

In 1932, Underhill Moore and Gilbert Sussman proposed scientific techniques that would be applicable to the study of judicial behavior. The purpose was to yield data reinforcing lawyers' prediction-making.¹⁵²

149 Ibid., p. 69.

150 Felix S. Cohen, "Transcendental Nonsense and the Functional Approach," Columbia Law Review 35 (1935):809 in Schubert, Judicial Behavior, p. 64.

151 Ibid., p. 69.

152 Underhill Moore and Gilbert Sussman, "The Lawyer's Law," Yale Law Journal 41 (1932):566, in Schubert, Judicial Behavior, pp. 77-83.

At about the same time, realists began compiling data on the background characteristics of judges in a first step toward seeking relationships between judicial attributes and judicial decisions. Attitudes are based on these characteristics, and categorization of kinds of family life, education, and experience seemed important. A group of researchers began with the following premise:

In many kinds of cases, the temperament, the ideology, the social background, or the environment of the judge may be quite as important as his integrity. In a society where not only laws but even constitutions are intrusted to the judicial conscience, the collection of significant, accurate, and comparable data about the members of the bench assume major importance.¹⁵³

The researchers found a "judicial profession" within the legal profession.¹⁵⁴ Further work--such as Schmidhauser's--produced no surprises relative to Supreme Court justices' paternal, occupational, birth, ethnic, religious, educational, political, and nonpolitical backgrounds.¹⁵⁵ The judges were white, Anglo-Saxon, politically active, middle-aged or older, and well-educated. They were lawyers and had upper- or middle-class backgrounds and lives.¹⁵⁶

153 Rodney L. Mott, Spencer D. Albright, and Helen R. Semmerling, "Political Socialization," Annals of the American Academy of Political and Social Science 167 (1933):143, in Schubert, Judicial Behavior, p. 195.

154 Ibid., p. 205.

155 John R. Schmidhauser, "The Justices of the Supreme Court: A Collective Portrait," Midwest Journal of Political Science 3 (1959): 23.

156 Ibid.

Judicial Science

In a series of studies statistically correlating judicial characteristics, political party affiliations, and ethnic backgrounds with judicial decision-making, Nagel said a better case could be made for selecting more representative judges.¹⁵⁷ Study of political party affiliation found Democratic judges generally favored the defense in criminal cases, the government in business regulation cases, and private parties in other governmental cases. They also favored broadening free speech protections. Republican judges generally favored the other parties.¹⁵⁸ Studies of judges support the results of Nagel's work that the number of dimensions among attitudes of judges is small.¹⁵⁹

Nagel pointed out that while party voting patterns were apparent, they did not imply that judges consciously vote along party lines: "Values which make a judge join one party are the same values that make him decide cases the way he does."¹⁶⁰

157 Nagel, Legal Process, pp. 227-244. For a discussion of the problems with associating background characteristics directly with judicial decisions, see Joel B. Grossman, "Social Backgrounds and Judicial Decisions: Notes for a Theory," Journal of Politics 29 (May, 1967):335.

158 Ibid. Congress and state legislatures have shown high correlation between voting behavior and political party affiliation. For one bibliography on the subject, see Malcolm E. Jewell and Samuel C. Patterson, The Legislative Process in the United States, 2nd ed. (New York: Random House, 1973), pp. 434-437.

159 Schubert, "1961 Term," p. 551.

160 Stuart S. Nagel, "The Relationship Between the Political and Ethnic Affiliation of Judges and Their Decision-Making," in Schubert, Judicial Behavior, p. 245.

Elected judges are more prone to party-line voting than appointed judges.¹⁶¹ But no matter how judges are selected, there will be differences among their political and social philosophies and their attitudes toward issues that confront them.¹⁶² Although political party affiliation is a general indication of a judge's broader philosophical outlook, it is by no means the only attribute making up the behavioral pattern of his decisions. Judicial decisions are not a direct function of attributes. However, decisions are a direct function of attitudes.¹⁶³

Sociologists and psychologists invented scientific models to study behavior of individuals and groups.¹⁶⁴ The innovator in the application of such models to judicial behavior was Pritchett, who studied interagreement among pairs of Supreme Court justices along a single attitudinal continuum representing liberalism-conservatism.¹⁶⁵ Pritchett said that

. . . no one doubts . . . that justices of the United States Supreme Court . . . in deciding controversial cases involving important issues of public policy, are influenced by biases and philosophies of government, by "inarticulate major

161 Ibid., pp. 248-249.

162 Louis L. Thurstone and J. W. Degan, "A Factorial Study of the Supreme Court," Proceedings of the National Academy of Science 37 (1951):628, in Schubert, Judicial Behavior, p. 335.

163 Schubert, "Ideologies and Attitudes," pp. 26-27.

164 For a general explanation of the application of social scientific techniques to jurisprudence, see Nagel, Legal Process, pp. 1-33; Tannenhaus, "Supreme Court Attitudes," pp. 530-547.

165 Pritchett, "Divisions of Opinion," p. 890; Pritchett, Roosevelt Court.

premises," which to a large degree predetermine the position they will take on a given question. Private attitudes, in other words, become public policy.¹⁶⁶

Schubert developed more discriminating tests and in 1959 updated Pritchett's studies. He attempted to show that judicial "nuances" could be "easily mapped."¹⁶⁷ Application of linear cumulative scaling to Supreme Court voting behavior was started by a sociologist in 1955. Jessie Bernard concluded that conflicting ideologies and personalities were involved in Supreme Court decision-making.¹⁶⁸

Further exploratory work on quantification of judicial behavior was done by political scientists.¹⁶⁹ Questionnaire and interview survey measurements were also employed.¹⁷⁰ The primary tools of the present-day behavioralists are bloc analysis, cumulative scaling, and correlation analysis.¹⁷¹

166 Ibid.

167 Schubert, Quantitative Analysis, p. 383.

168 Jessie Bernard, "Dimensions and Axes of Supreme Court Decisions: A Study in the Sociology of Conflict," Social Forces 34 (October, 1955):27.

169 See especially Glendon Schubert, ed., Judicial Decision-Making (New York: Free Press of Glencoe, 1963); Ulmer, "Supreme Court Behavior"; Ulmer, "Analysis of Behavior Patterns"; S. Sidney Ulmer, "Scaling Judicial Cases: A Methodological Note," American Behavioral Scientist 8 (1961):31-34; S. Sidney Ulmer, "A Note on Attitudinal Consistency in the United States Supreme Court," Indian Journal of Political Science 22 (1961):195-204.

170 Nagel, Legal Process, pp. 12-28.

171 See Schubert, Judicial Behavior, chap. IV; Schubert, Judicial Mind; Schubert, Judicial Mind Revisited. For a clear development of the techniques, see Sheldon Goldman and Thomas P. Jahnige, The Federal Courts as a Political System (New York: Harper & Row, 1971), pp. 149-200.

Sociometrics, role theory, and game theory have been employed to determine attitudes of judges toward each other and themselves. A judge on a collegial court must apply the psychology of group activity to influence other judges to agree with him. The influence of the chief justice of the Supreme Court,¹⁷² logical argument and cooptation, "glad handing," opinion assignment bargaining, politics of compromise, and strategies of dissent have all provided measures of how judges interact with other judges and what roles judges believe they play.¹⁷³

The group dynamics of the Supreme Court in relation to its writ of certiorari process prompted a Schubert study that concluded that justices normally vote to review a case when they think the consideration of the case will further their own policy goals.¹⁷⁴ This was the result despite an internal policy that has been construed to mean that no conclusions about a denial of certiorari could be reached except that "less than four justices voted to review the case."¹⁷⁵

172 Evidence showed that Chief Justices Vinson and Warren were much stronger leaders than Chief Justice Stone. Schubert, Quantitative Analysis, p. 380.

173 Walter F. Murphy, "Marshaling the Court: Leadership, Bargaining and the Judicial Process," University of Chicago Law Review 29 (1962):640, in Schubert, Judicial Behavior, p. 395.

174 Schubert, Quantitative Analysis, pp. 25-76.

175 See Frankfurter's comments with Sheppard v. Ohio, 352 U. S. 910, cert. den. (1956) and Maryland v. Baltimore Radio Show, 338 U. S. 912, cert. den. (1950).

Other courts have also been studied in their jurisdictional gatekeeping functions.¹⁷⁶

Krislov applied a sociometric device to Supreme Court interaction to demonstrate the pivotal power of "swing" justices.¹⁷⁷ Group game theory has shown that the smallest bloc of the Supreme Court is not necessarily the weakest and that flexible justices wield the most power.¹⁷⁸

Opinion assignment behavior on the Supreme Court reveals much about judicial strategy.¹⁷⁹

Judges' regard for their own roles in society has been the subject of survey research. Conclusions of one study enunciated four basic judicial types: (1) Law Applier, who relies on precedents; (2) Law Extender, who uses precedents but is conscious of society's needs; (3) Mediator, who claims to use "common sense" in his decisions, and (4) Policymaker, who balances social interests.¹⁸⁰

176 E.g., Lawrence Baum, "Policy Goals in Judicial Gatekeeping: A Proximity Model of Discretionary Jurisdiction," American Journal of Political Science 21 (February, 1977):13-33.

177 Samuel Krislov, "Power and Coalition in a Nine-Man Body," American Behavioral Scientist 6 (April, 1963):24-26.

178 Ibid.

179 See Edwin McElwain, "The Business of the Supreme Court as Conducted by Chief Justice Hughes," Harvard Law Review 63 (1949):6, 12-20, in Schubert, Constitutional Politics, p. 122; Ulmer, "Behavior Patterns," pp. 418-424; McLaughlan, "Research Note," pp. 16-27.

180 Victor Eugene Flango, Lettie McSpadden Wenner, and Manfred W. Wenner, "The Concept of Judicial Role: A Methodological Note," American Journal of Political Science 19 (May, 1975):277.

Predicting Decisions

Development of behavior patterns of judges has strengthened confidence in behavioralists to predict outcomes of decisions.¹⁸¹ This is perhaps the most practical use of behavioral work.¹⁸²

It is the object of lawyers to predict court decisions. By assuring their clients they will win a case, they base their assertion on their experience in the legal system and their knowledge of law. Traditional jurisprudence involves a methodology of logic and precedents. If the prediction fails, the lawyer may blame the court for failing to use the proper logic in reaching its decision.¹⁸³ But, as Ulmer pointed out, it is "beyond dispute" that precedents can be found for virtually any point of view and both sides in a court suit are actually correct to a certain degree.¹⁸⁴

Behavioralists, dismissing traditional logic as the proper methodology, make predictions based on their knowledge of how judges have reacted in the past to similar presentations of issues. Even "perfect knowledge" of the facts in a case and law would not provide

181 For an effort at predicting Supreme Court decisions based on content analysis, see Fred Kort, "Predicting Supreme Court Decisions Mathematically: A Quantitative Analysis of the 'Right to Counsel' Cases," American Political Science Review 51 (March, 1957):1-12. See also Schubert, Quantitative Analysis, pp. 316-376.

182 Nagel, Legal Process, pp. 29-33.

183 This is called the "legal norm model." Schubert, Judicial Behavior, p. 444.

184 S. Sidney Ulmer, "Quantitative Analysis of Judicial Processes: Some Practical and Theoretical Applications," Jurimetrics 28 (Winter, 1963):165, in Schubert, Judicial Behavior, p. 506.

sufficient information for reliable prediction. How facts and law are construed by the judge is what the lawyer needs to know to make more accurate predictions.¹⁸⁵ As Schubert explained:

From the point of view of predicting judicial decision-making, the attitudinal approach takes the position that, given a complete knowledge of the attitudes of a set of judges toward the issue or issues that they purport to resolve in a case, the analyst predicts the behavior of the judges on the basis of the imputed differentials in their attitudes. In short, the judges are expected to behave consistently with their beliefs, and the decision of the court is a linear function of the decisions of the individual member.¹⁸⁶

185 Schubert, Judicial Behavior, pp. 444-445.

186 Ibid., p. 446.

CHAPTER III

THE JUDICIAL MIND AND THE FIRST AMENDMENT

First Amendment Realism

Introduction

Gillmor and Dennis described two major approaches to the study of communication law: documentary, employing traditional methods, and social scientific. Communication law scholars have used social science methods to a limited extent, e.g., some quantitative work has been done on the free press-fair trial problem.¹⁸⁷ But the authors admit that the former approach has dominated the field.¹⁸⁸

Most legal activity in communication law has been in the post-realist era. The Supreme Court had made no "substantial contribution" to free expression legal theory in its first 148 years.¹⁸⁹ Study of the effects of courts and legislatures on freedom of expression has been done primarily by realists. But until the retirement of Justice Douglas, practice of traditional jurisprudence had existed on the

187 Mary Dee Tans and Steven H. Chafee, "Pretrial Publicity and Jury Prejudice," Journalism Quarterly 43 (Winter, 1966):647-654; Bryce Rucker "What Solutions Do People Endorse in the Free Press-Fair Trial Dilemma?" Journalism Quarterly 44 (Spring, 1967):240-244; Rita James Simon, "Use of Semantic Differential in Research on the Jury," Journalism Quarterly 45 (Winter, 1968):670-676; J. Edward Gerald, "Press-Bar Relationships; Progress Since Sheppard and Reardon," Journalism Quarterly 47 (Summer, 1970):227-228; Rita James Simon and Thomas Eimermann, "The Jury Finds Not Guilty: Another Look at Media Influences on the Jury," Journalism Quarterly 48 (Summer, 1971):343-344.

188 Gillmor, "Judicial Communication," p. 284.

189 Krislov, Political Freedom, p. 168. See also Hachten, Supreme Court, p. 3; Gillmor, Mass Communication Law, p. 6.

Supreme Court. The well-known "abolutist" opinions of Justices Black and Douglas were based in a blind trust of altogether free speech and press.¹⁹⁰

To the realist, the absolutist argument that the First Amendment literally "means what it says"¹⁹¹ is an assumption modern jurisprudence should not make. Laurent B. Frantz wrote that the absolutist position implies that the First Amendment is

. . . self defining, that prefabricated answers to all questions of this type can be found merely by consulting the text. This cannot be true unless the words of the amendment must be deemed to contain every proposition and require every application which can rationally be attributed to them--unless every litigant who makes a colorably rational appeal to First Amendment protection must automatically win.¹⁹²

The other extreme to the Black and Douglas brand of absolutism was almost as absolute. "Balancing of interests," asserted by Justice Frankfurter and Judge Hand, involved deference to the legislatures in matters affecting First Amendment freedoms because the Supreme Court has no place in policy-making. This position, according to Frantz, is more concerned with relative powers than with wisdom of policy and ignores the realities of law and freedom.¹⁹³

190 Shapiro, Freedom of Speech, pp. 67, 93-94.

191 Barenblatt v. United States, 390 U. S. 109 (1959), Black dissenting.

192 Laurent B. Frantz, "The First Amendment in the Balance," Yale Law Journal 71 (1962):1424, in Shapiro, Constitutional Rights, p. 7.

193 Ibid., p. 11.

Frankfurter and Hand invoked the balancing of interests test to enforce judicial restraint. In theory, the principle could so weaken freedom of expression that the difference between a balancing First Amendment and no First Amendment at all "approaches, if it does not reach, a vanishing point," said Frantz.¹⁹⁴

Early Free Expression Scholarship

First Amendment legal scholarship appears to begin with the writings of Thomas Hobbes, John Locke, and John Milton. The matter of the right to free expression, of course, is much older than these philosophers. Socrates died as a result of truths he spoke. At least one scholar thinks the basis of free expression in the more modern writings is misplaced, mistaken, and detrimental to the good of society. Walter Berns declared:

Under the influence of liberal theory, we have denied or overlooked what ancient wisdom declared to be the primary function of law: the formation of character. For, not only are the liberal efforts to devise legal formulas, such as the clear and present danger test, ignorant of the dimensions of the problem, but liberalism compounds the error by attempting to deny the law of its primary function.¹⁹⁵

But the modern system of freedom of expression is a uniquely Anglo-Saxon experience. The most enduring writing was done by the defenders of the liberties of speech and press. Hobbes's "indefeasible rights," tempered by reason, inspired Locke's "natural rights." Both

194 Ibid., p. 12.

195 Walter Berns, Freedom, Virtue and the First Amendment (New York: Greenwood Press, 1969), p. 255.

promoted majoritarian rule,¹⁹⁶ and both played a part in the formulation of the Bill of Rights, which Madison reluctantly enumerated for the United States Constitution.¹⁹⁷

Milton's famous and passionate plea for free battle of truth and falsehood during a censor-minded British period¹⁹⁸ was the basis for the marketplace of ideas theory that occasionally won favor in Supreme Court dicta.¹⁹⁹

American legal thought on freedom of expression began with the colonial experiences with British repression and later with the framing of the constitution.²⁰⁰ Except for some reaction to the 1798 Alien and Sedition Acts, serious consideration of freedom of expression was not started until World War I, when the Supreme Court was asked to deal with wartime rights to speak and print.²⁰¹

196 Francis Edward Devine, "Absolute Democracy or Indefeasible Right: Hobbes Versus Locke," Journal of Politics 37 (1975):736-737, 759, 767.

197 Madison's "reluctance" is a matter of dispute. See Frantz, "Is the First Amendment Law?" p. 25. Cf. Mendelson, "On the Meaning of the First Amendment," p. 20.

198 John Milton, Areopagitica, ed. John W. Hales (Oxford: Clarendon Press, 1886), pp. 51-52.

199 Abrams v. United States, 250 U. S. 616 (1919), Holmes dissenting.

200 See Leonard W. Levy, ed., Freedom of the Press from Zenger to Jefferson (New York: Bobbs-Merrill, 1966).

201 An exception would be Henry Schofield, "Freedom of the Press in the United States," Papers and Proceedings, Ninth Annual Meeting, American Sociological Society 9 (1914):67-116 in Henry Schofield, Essays on Constitutional Law and Equity, 2 vols. (Boston: Northeastern University Law School, 1921), 2:510-571.

Zechariah Chafee, Jr.

Zachariah Chafee, Jr., a Harvard law professor, wrote the first major work on Supreme Court adjudication of freedom of expression cases.²⁰² But to that point, the only significant cases decided by the court were the sedition cases²⁰³ and a handful of others that have little influence on today's perspective of the First Amendment.²⁰⁴ In these early decisions, the Supreme Court had few precedents with which to work. So the court issued precedents during this period and Chafee traced the rationale of the new decisions in his first and later editions.²⁰⁵

Chafee was a legal realist with a singular bias. In answer to criticisms that he was too harsh toward promoters of censorship and too idealistic during wartime circumstances, Chafee commented:

One cannot get outside himself to do his thinking, or his feeling either. . . . I have endeavored to avoid the error of passing judgment on exciting events as if they were

202 Zechariah Chafee, Jr., Freedom of Speech (Cambridge, Mass.: Harvard University Press, 1920).

203 *Davis v. Beason*, 133 U. S. 333 (1890); *Turner v. Williams*, 194 U. S. 279 (1904); *Schenck v. United States*, 249 U. S. 47 (1919); *Frohwerk v. United States*, 249 U. S. 204 (1919); *Debs v. United States*, 249 U. S. 211 (1919); *Abrams v. United States*, 250 U. S. 616 (1919).

204 Ex Parte Jackson, 96 Otto 727 (1877); In re Ropier, 143 U. S. 110 (1892); *Robertson v. Baldwin*, 165 U. S. 275 (1896); *Patterson v. Colorado*, 205 U. S. 454 (1907); *Lewis Publishing Co. v. Morgan*, 229 U. S. 288 (1913); *Mutual Film Corp. v. Industrial Commission of Ohio*, 236 U. S. 230 (1915); *Fox v. Washington*, 236 U. S. 273 (1915); *Toledo Newspaper Co. v. United States*, 247 U. S. 402 (1918).

205 Zechariah Chafee, Jr., Free Speech in the United States (Cambridge, Mass.: Harvard University Press, 1954).

taking place in the peaceful room where I was writing them. Beyond this I cannot go. I am incapable of speaking calmly about what I believe to be injustice. And of all human sins, cruelty is to me one of the very worst. . . . I have often stressed the fact that the ultimate security for free and fruitful discussion lies in the tolerance of private citizens. Indeed, my main purpose in writing this new book is to make such men and women realize the great value of their own tolerance to the welfare of the nation.²⁰⁶

Although his case-by-case search for legal rules and facts upon which the rules were based is the hallmark of traditional jurisprudence, Chafee's "end" involved the impact of the rules on a society requiring healthy and free expression. He was a fact skeptic; he concluded that the Frohwerk outcome was the result of "an unsatisfactory record."²⁰⁷ Chafee was a rule skeptic too. Of the Blackstonian "no previous restraint" assertion, he said: "(T)his Blackstonian theory dies hard, but it ought to be knocked on the head once and for all."²⁰⁸

Chafee was also a behavioralist in a sense. He surmised that in the Schenck, Frohwerk, and Debs cases, Justice Holmes was "biding his time" until an appropriate case came along so he could "speak out his deepest thought about the First Amendment."²⁰⁹

On the one hand, Chafee was a sociological jurist. He meticulously searched the Supreme Court cases for facts and rules to buttress a metaphysical body of "natural law." As a lawyer, he was

206 Chafee, Freedom of Speech, pp. xiii-xiv.

207 Ibid., p. 83.

208 Ibid., p. 9.

209 Ibid., p. 86.

adversarial²¹⁰ and unscientific. He was overly concerned with dicta and has been accused of losing sight of the actual direction the court was taking.²¹¹

On the other hand, Chafee was willing to "leave aside" the Constitution to discuss the unreasonableness of abridgements of freedom of expression.²¹² Chafee supported the clear and present danger doctrine (implying a "preferred position" for First Amendment rights) because he found the absolutists' arguments unrealistic. He wrote:

The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through unlimited discussion. . . . Nevertheless, there are other purposes of government . . . which must be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom.²¹³

210 Supreme Court justices found Chafee's work useful in buttressing their own opinion. Between 1924 and 1956, he was cited in sixteen opinions. Only Felix Frankfurter, Charles Warren, and Thomas Reed Powell were cited more frequently. Chester A. Newland, "Legal Periodicals and the United States Supreme Court," Midwest Journal of Political Science 3 (February, 1959):65.

211 Chafee is frequently criticized in Shapiro, Freedom of Speech; Berns, Virtue and the First Amendment; Frantz, "The First Amendment in the Balance"; Mendelson, "On the Meaning of the First Amendment"; Frantz, "Is the First Amendment Law?"; and Wallace Mendelson, "The First Amendment and Judicial Process: A Reply to Mr. Frantz."

212 Chafee, Freedom of Speech, pp. 232-240.

213 Ibid., p. 31.

Social Responsibility Theory

Chafee was vice-chairman of the Commission on Freedom of the Press. He wrote one of the commission's reports in 1947.²¹⁴ In the interests of reasonableness, Chafee again put aside the constitution: "It is true that constitutionality and wisdom sometimes coincide, but this is not necessarily so."²¹⁵ As a member of the commission, Chafee advocated the idea that governmental control of the mass media might one day be required.²¹⁶ He was interested in promoting freedom of expression for all and not just the media.²¹⁷

The commission, made up of persons not affiliated with the press, verbalized the then extra-judicial principle that the press must be responsible. In a sense, development of the school of legal realism coincided with the development of the school of required social responsibility of the press.

There had always been objections to an absolutist application of the First Amendment, but there had not been recognition that the press should be socially responsible in order to earn the protection of the First Amendment. Theodore Peterson wrote:

When the framers of the federal Constitution appended an amendment establishing freedom of the press, they had no

214 Chafee, Government and Mass Communications.

215 Ibid., p. 35.

216 Ibid., pp. vii-x.

217 Ibid., pp. 36-37.

intention of binding the publisher to certain responsibilities in exchange for his freedom.²¹⁸

But "somewhere along the way" optimism that Milton's free market place would place truth as a top commodity was lost by many Americans. Anti-press legislation, one result of distrust in the system, was enacted.²¹⁹ Even Mill had predicted that

. . . the dictum that truth always triumphs over persecution is one of those pleasant falsehoods which men repeat after one another till they pass into commonplaces, but which all experience refutes.²²⁰

Immorality in the system of expression has provided one of the major objections to a system of pure freedom. As Lord Kenyon observed in 1799:

I said that liberty of the press was dear to Englishmen, and I will say that nothing can put that in danger but the licentiousness of the press.²²¹

Peterson pointed out:

Take for example degradation. If publishers deliberately, consistently, systematically pander in and exploit vulgarity, they have sacrificed their moral right to free expression. Having abandoned their moral claim to it, they have undermined their legal claim. True, there might be a better means than the law of correcting the publications. Yet society may decide that degradation is an invasion of its vital interests

218 Peterson, "Social Responsibility," p. 76.

219 Ibid., p. 77.

220 John Stuart Mill, On Liberty (New York: Doubleday, Doran & Co., 1935), p. 306.

221 Rex v. Cuthill, 27 St. Tr. 674 (1799), in Henry Schofield, "Freedom of Communication," Publications of the American Sociological Society 9 (1915):67-81, in Harold L. Nelson, Freedom of the Press from Hamilton to the Warren Court (Indianapolis: Bobbs-Merrill, 1967), p. 45.

against which it is justified in protecting itself. Therefore, it might prohibit degrading publications.²²²

Insistence that the press be more responsible is a popular thought. Paul G. Kauper believes that the free flow of information is necessary, but the "amoral attitude" of the press must be checked.²²³

The implementation of the social responsibility theory of freedom of the press is part of the essence of the legal realism movement--to give relevant social meaning to law and not to hide behind aloof sets of legal principles. The Supreme Court has held that newspapers are private businesses, not public utilities, and therefore not subject to special regulation by the government.²²⁴ But, as Ricky D. Pullen demonstrated, there

. . . is strong evidence that the Court has become more cognizant of the press serving with a duty to enlighten the public, service the political system, and safeguard civil liberties.²²⁵

Pullen analyzed decisions of the Supreme Court for traces of libertarian and social responsibility theories. Depending on the

222 Peterson, "Social Responsibility," p. 99.

223 Paul G. Kauper, "The Role of the Press in a Democratic Society," Editor & Publisher, 16 February 1974, p. 7. For an empirical approach to social responsibility theory, see H. Al Anderson, "An Empirical Investigation of what SR Theory Means," Journalism Quarterly 55 (Spring, 1977):33-39.

224 *Miami Herald Publishing Co. v. Tornillo*, 418 U. S. 241 (1974).

225 Ricky D. Pullen, "A Comparison and Contrast of the Libertarian and Social Responsibility Theories of the Press Based on United States Supreme Court Decisions," (Ph.D. Thesis, Southern Illinois University, 1973), p. 4.

political climate at the times of the cases, the "other interests" at stake, and the makeup of the court, elements of both theories have almost always been utilized. Neither of the theories was ever ignored.²²⁶

Pullen suggested that the institution by the press of ombudsmen, press councils, effective and responsible reporting, and "good news" display might persuade some Supreme Court justices to return to exclusively libertarian standards of adjudication of freedom of the press.²²⁷

In particular areas of freedom of the press, absolutism has been losing ground to social responsibility theory. Alexander Meiklejohn, who has exerted much influence over the theory of the freedoms of speech and press, helped bring a form of absolutism to the area of libel. His "political speech" concept involved an absolutist approach to the First Amendment that denied to the "subordinate" executive, judicial, and legislative branches of government the power to regulate the political discussion of the sovereign--the people.²²⁸

Absolutely guaranteeing only the right to vote was insufficient protection of expression. In the words of Meiklejohn:

Self government can exist only insofar as the voters acquire the intelligence, integrity, sensitivity, and generous

226 Ibid., pp. 245, 305-321.

227 Ibid., pp. 325-326.

228 Alexander M. Meiklejohn, "The First Amendment is an Absolute," in Supreme Court Review (Chicago: University of Chicago Press, 1961), p. 253 in Devol, Mass Media, p. 48.

devotion to the general welfare that, in theory, casting a ballot is assumed to express.²²⁹

Meiklejohn, like Chafee, was more concerned with the "ought" of First Amendment law than with the "is" of it. Meiklejohn used the traditionalists' tools to discover facts and norms to support his argument.

The Supreme Court essentially used Meiklejohn's thesis in formulating the New York Times doctrine,²³⁰ which strengthened public debate of political matters.

But more recent decisions of the Supreme Court have weakened the Meiklejohn doctrine.²³¹ The new rationale would seem to be based in what Jerome Lawrence Merin described as a recognition of other societal interests. He noted that an extreme danger existed in equating democratic deliberation with anarchial survival of the fittest:

Freedom flourishes when it is limited by the boundaries of self restraint and the rights of others. Free debate cannot be achieved merely by removing barriers to public speech and writings because true debate also depends on the willingness of men to enter the public arena . . . [in] the presence of credible statements and a responsive, educated, and unintimidated populace.²³²

229 Ibid., pp. 48-49.

230 New York Times v. Sullivan, 376 U. S. 254 (1964).

231 Gertz v. Robert Welch, 418 U. S. 323 (1974); Time, Inc. v. Firestone, 424 U. S. 448 (1976).

232 Jerome Lawrence Merin, "Libel and the Supreme Court," William and Mary Law Review 2 (1969):371, in Devol, Mass Media, p. 252.

Merin pled for more emphasis on "protection of the individual" in the realist's interests in society and less emphasis on free speech based on dogmatic rule-drawing.²³³ Frederick S. Siebert summarized the realist's attitude toward absolutist First Amendment rules:

One basic assumption (that) appears to be common to all theories of liberty of the press . . . is that freedom of the press is not and never can be absolute. All agree that some forms of restraint are necessary and that the government has a legitimate function to define the limitations. They differ only as to the nature of these limitations.²³⁴

Thomas Emerson

A nearly consummate attempt to describe the "is" and the "ought" of First Amendment law was started by Emerson in 1963, developed in 1966, and recast in 1970.²³⁵ Emerson found the major controversy involving the reconciliation of freedom of expression "with other individual and social interests sought by the good society."²³⁶ He explained both the theoretical and actual structures of the system of freedom of expression and examined the social interests at stake, the doctrines and tests proposed to guide Supreme Court adjudication, and proposed application of the speech-action rule to each First Amendment area.

233 Ibid., p. 253.

234 Frederick S. Siebert, Freedom of the Press in England, 1476-1776 (Urbana: University of Illinois Press, 1952), p. 9.

235 Emerson, "Toward a General Theory"; Thomas I. Emerson, Toward a General Theory of the First Amendment (New York: Random House, 1966); Emerson, The System.

236 Emerson, "Toward a General Theory," p. 877.

A realist too, Emerson concluded by propounding the public's stake in freedom of expression and possible regulation of the media.²³⁷ Despite the "uncertainty" and complexity in a society of shifting economic, social, and political forces,²³⁸ Emerson insisted that it is necessary to

. . . develop a framework of doctrine, practices, and institutions which will take into account the actual forces at work and make possible the realistic achievement of the objectives sought.²³⁹

J. C. Robbins sought further to refine Emerson's "ought" of First Amendment law by drawing a "full-fledged rule of law."²⁴⁰ Robbins said that by establishing a strict rule of law, judicial policy formation--"more properly left to legislative and executive bodies"--would be limited and more certainty would result.²⁴¹ Robbins's rule is:

On the presumption of unconstitutionality, the Supreme Court must enter a case with a prior estimate that the probability of correctness of a decision in favor of constitutionality is very low. It must demand of those who would restrict expression a showing of evidence that overcomes the prior estimate. Further, the Court must demand highly credible and convincing evidence, for the prior estimate must be overcome by a very large margin.²⁴²

237 Emerson, The System, pp. 627-673, 697-728.

238 Ibid., p. 5.

239 Ibid., p. 4.

240 J. C. Robbins, "Deciding First Amendment Cases: Part I," Journalism Quarterly 49 (Summer, 1972):263.

241 Ibid., p. 266.

242 Ibid., p. 269.

Conclusion

To the realist, full and complete study of what the law "is" and what the courts "do" is necessary before proposition of what the law "ought" to be can be implemented. Unless the study of First Amendment law has progressed faster than the study of most other areas of law, it would seem logical that "ought" has, in some cases, preceded "is." None of the legal realists would seem to have fully considered the findings of political jurisprudence. Further, the entire field of judicial behavioralism in First Amendment law has remained untouched.

Emerson admitted his work did not take into consideration all "facets of the problem,"²⁴³ some of which might more properly be addressed by political jurisprudence and judicial behavioralism.

The tasks of the communication law scholar would not seem to be any more finished today than they were for the political scientist in 1962, when Hyneman urged his colleagues to divorce themselves from the "technicalities of American constitutional law" and emphasize "an analysis of what true government problems are, in the light of what actually goes on in the world."²⁴⁴ He said, in the realist's tradition:

Believing, as I do, that a rule of reason will control the decisions that mark the front of developing constitutional law of free speech and press, I can tell the political scientist

243 Emerson, The System, p. 4.

244 Hyneman, "Free Speech: At What Price?" p. 847.

where he should stake his claim and assemble his tools. The scholarly study which helps lawmakers and judges decide what government may reasonably do to regulate the speech and other expression of the nation--this is what God had in mind for them to do when he created political scientists (Hyneman emphasis).²⁴⁵

Political Jurisprudence and the First Amendment

Virtue and Law

Walter Berns has pointed out that American political thought is based exclusively in American tradition. In the context of world political thought, contemporary conservative and liberal ideologies are peculiarly American. Both conservatives and liberals correctly assess the sources of their arguments.²⁴⁶

As Jefferson said,

. . . every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all republicans--we are all federalists.²⁴⁷

Berns contended that there is not a lack of ideology, but there is a lack of political philosophy. The lack of political philosophy has given Americans insufficient understanding of such concepts as freedom and justice.

Liberalism is so much a part of the American tradition that most Americans have been liberals of one variety or another--even self-styled conservatives--without recognizing the fundamental sense in which this is true. . . . What has distinguished them one from another is the difference between

245 Ibid., p. 848.

246 Berns, Virtue and the First Amendment, p. 16.

247 Thomas Jefferson, First Inaugural Address, 4 March 1801, in Emerson, Political and Civil Rights, p. 7.

regarding the property right as fundamental and the right to free speech as fundamental; or an emphasis placed on freedom of contract as opposed to an emphasis on freedom of speech.²⁴⁸

Modern liberals (liberals and conservatives) either subscribe to Lockean freedom or Hobbesian majoritarianism.²⁴⁹ Berns maintained that neither dogmatic adherence to a belief in an unattainable level of freedom nor a dogmatic adherence to a belief in deference to the majority has brought "common sense" standards of freedom of speech and press. Supreme Court adjudication of the First Amendment has been a compromise of the two extremes. But because the clash between the ideologies of modern conservatism and liberalism has been so truculent, no concise philosophy of freedom of speech and press has been verbalized.²⁵⁰

Berns asserted that the First Amendment lay at the center of the problem. It assumes that freedom is the highest value. Both conservatives and liberals make the same assumption--freedom with no strings attached. But freedom as the highest value is an arbitrary value judgment in light of world political philosophy.²⁵¹

Berns expressed the view that jurisprudence also assumes freedom is the highest value. But the Supreme Court, basing its judgment on this assumption, does not do justice to world political philosophy,

248 Berns, Virtue and the First Amendment, p. 46.

249 Ibid., p. 177.

250 Ibid., p. 187.

251 Ibid., p. 27.

which has designated virtue as the highest value.²⁵² The problem with the modern approach to freedom is embodied in the present problem of speech and press. Freedom and justice are not always the same thing. The Supreme Court has attempted to reconcile freedom and justice and, as a result, has failed to solve the problem of freedom of speech and press. The actual problem involves distinguishing between good and evil.²⁵³

Congress and the state legislatures have passed legislation abridging freedom of speech and press. This has been unavoidable, according to Berns.²⁵⁴ The legislatures are not tyrannical interests, which libertarians are supposedly guarding against.²⁵⁵ They pass these laws because they are involved in distinguishing between good and evil.²⁵⁶ Modern jurisprudence believes that this legislative process is sinful. It does not recognize evil itself as sinful.²⁵⁷

By assuming freedom of speech to be preferred to other social interests, libertarians have prejudged cases and have "made a shambles of the law of previous restraint," according to Berns.²⁵⁸ The result has been a preferred position rule that has rationalized keeping

252 Ibid., p. 44.

253 Ibid., p. 47.

254 Ibid., p. 48.

255 Ibid., p. 68.

256 Ibid., p. 72.

257 Ibid.

258 Ibid., p. 93.

speakers and writers out of jail, and a clear and present danger rule that has rationalized putting speakers and writers in jail.²⁵⁹ Berns stated:

The plain fact is that not all free speech is good speech. Which means that freedom of speech is not always a sound or just public policy. . . . There is always the danger that the abridgement of vicious speech will be followed by the abridgement of good, or virtuous speech, but the Court would be in a position to permit the former and prohibit the latter if it developed principles that recognized the difference between vice and virtue.²⁶⁰

Modern jurisprudence holds that the Supreme Court may distinguish legal from illegal but not virtue from vice. Berns maintained that this holding is superfluous since the court has distinguished, in effect, between good speech and bad speech (e.g., obscenity, libel, "fighting words," etc.), which is much the same as differentiating virtue from vice.²⁶¹

Good and evil can be distinguished with clarity by justices if they are allowed to do so. But because of false sets of standards, Saia was permitted to invade the public's tranquility,²⁶² Terminiello continued to preach hate,²⁶³ and Winters was allowed to sell violence.²⁶⁴ According to Berns:

259 Ibid., p. 121.

260 Ibid., pp. 125-126.

261 Ibid., p. 126.

262 Saia v. New York, 334 U. S. 558 (1948).

263 Terminiello v. Chicago, 372 U. S. 229 (1963).

264 Winters v. New York, 333 U. S. 507 (1948).

Freedom in itself has no intrinsic merit. Freedom not associated with a moral principle may be permitted when it produces no harm, but freedom becomes good when and only when it is so associated, even if the moral principle is the simple one that declares obscenity bad.²⁶⁵

Absolute freedom may be a safer policy than repression "in the long run."²⁶⁶ But the liberal conception of freedom as the highest value prevents virtuous justice from being the ideal of the Supreme Court, even though justices of the court have used virtue as their personal standard, however disguised in the rhetoric modern jurisprudence.²⁶⁷

Virtue should be, and actually is, a value held by Supreme Court justices. Emphasis on freedom as the highest standard will not bring a true understanding of the problem of freedom of speech and press. The First Amendment problem is not based only on the conception of liberty versus tyranny. It is also based on one conception of virtue versus another's.

Libertarians closely guard against the suspension of freedom of speech and press. They fear the rise to power of a tyrant, such as Hitler. But Lincoln suspended freedom of speech and press during the Civil War. How was America able to distinguish between tyranny and Lincoln's acts? In the words of Berns,

. . . the difference between them is of moral dimension, not methodological. To recognize this political fact involves making a judgment that liberals are usually loath to make. It

265 Berns, Virtue and the First Amendment, pp. 126-127.

266 Frantz, "First Amendment in the Balance," p. 10.

267 Berns, Virtue and the First Amendment, p. 128.

involves defining Americanism, that principle to which the good American is loyal, in terms of moral principle.²⁶⁸

Freedom should be compatible with practical wisdom. Assessment of this fact should distinguish between virtuous leaders and tyrants, between Lincoln and Hitler.²⁶⁹

Berns suggested that the confusion over the First Amendment was the result of not asking the proper questions and of prejudging answers to wrong questions. The wrong question is: How much freedom of speech and press? The wrong answer is based on a preferred freedom rule or a legislative deference rule. The right question is: Is the speech good or bad? The right answer has not been formulated because it has been obscured by prejudged answers based on mystical legal rules. But the correct answer may exist and may be found if the researcher can delve past the contrived standards of freedom and justice.

Politics and the First Amendment

There are ideological differences in the Supreme Court. Loud confrontations during Senate confirmation hearings demonstrate the differences among the attitudes toward the political role of the Supreme Court, the political behavior of the justices, and the political meaning of the First Amendment.²⁷⁰

268 Ibid., p. 225.

269 Ibid.

270 See "What Kind of Court Now? Who Really Lost? After the Carswell Defeat--Nixon's New Strategy," U. S. News & World Report, 20 April 1970, p. 19; Louis M. Kohlmeier, "Ideology and the Supreme Court," Wall Street Journal, 11 November 1971, p. 8; Kalven, "Uninhibited, Robust and Wide Open," pp. 350-351.

Political jurisprudence seeks to discover the scope of political values held by Supreme Court justices.²⁷¹ In the First Amendment area, it seeks to discover the dimensions of political values held by justices toward First Amendment freedoms.

Such study would seem to be part of what Chafee sought to accomplish:

. . . (T)he more understanding people have of the political and ethical policies which the First Amendment embodies and of the concrete situations to which these policies apply, the more patient they will be toward heterodox opinions, the less insistent on governmental action.²⁷²

Political jurisprudential study would be useful in the areas of obscenity. Because of strong public opinions about it, the Supreme Court has been subject to strong pressures. It ruled that unlike other forms of expression, obscenity may be regulated.²⁷³ However, Emerson could find no basis in the First Amendment nor in the system of freedom of expression for applying different rules or "levels" of First Amendment protection to sexual thought and other expression.²⁷⁴ The court has hidden virtue behind a concatenation of legal rules so well that it has failed to please either side of the issue.²⁷⁵ Those opposed to governmental regulation have accused the court of acting holy. Those proposing regulation accuse the court of avoiding the true issue of morality.

271 Chap. 2, *supra*.

272 Chafee, Government, 1:38.

273 *Roth v. United States*, 345 U. S. 476 (1957).

274 Emerson, The System, p. 499.

275 *Ibid.*, p. 486.

Despite the well-announced Burger Court retreat to strict judicial restraint,²⁷⁶ the court has paradoxically been charged with activism in the area of obscenity. In 1975, Justin J. Green, labeling the court a "national censoring body,"²⁷⁷ objected:

For seventeen years the Court has been mired in the swamps of obscenity regulation. The decisions of the last two years do little if anything to alleviate the situation. . . . This condition is likely to continue and could grow substantially worse if the minority was to insist on invoking the Rule of Four.²⁷⁸

Morality policy-making on the court prompted Justice Harlan, a proponent of judicial restraint, to dissent in the Ginzburg decision because of the majority's "astonishing piece of judicial improvisation."²⁷⁹ The court was accused of upholding Ginzburg's conviction, not because he had committed a crime but because he had committed a

276 For a variety of treatments of the subject of the Burger Court retreat to restraint, see Lyle Denniston, "Today's Godfathers," Quill, September 1976, p. 33; Fred Graham, "Missing the Boat on the Bill of Rights," Student Lawyer, March, 1977, p. 42; Elder Witt, "Term Review: Four Justices Voice Views of the Supreme Court," Congressional Quarterly, 26 July 1975, p. 1602; "Mid-Term Report: The Conservative Pattern Emerges," Congressional Quarterly, 23 February 1974, p. 499; "After the Carswell Defeat," U. S. News; "Changing Supreme Court--News Faces, New Philosophy," U. S. News & World Report, 4 October 1971, p. 15; "The Nixon Court: A Further Tilt to Conservatism," U. S. News & World Report, 15 July 1974, p. 33; "The 'Burger Court'; A Trend Toward Conservatism, But--" U. S. News and World Report, 16 July 1973, p. 29; "Some Surprises in High Court's Conservative Trend;" U. S. News & World Report, 11 July 1977, p. 20.

277 Justin J. Green, "Judicial Policy-Making, 1973-74," Western Political Quarterly 28 (March, 1975):172.

278 Ibid., p. 173.

279 Ginzburg v. United States, 383 U. S. 463 (1966).

"sin." Richard B. Dyson resented the court's "simplistic importation of personal values into the Constitution."²⁸⁰ He wrote:

Value judgments are inescapable in constitutional decisions, however much we might long for purely "neutral" principles. But there is a crucial difference between making necessary choices between competing goods, such as fairness to an accused versus prosecutory effectiveness, and gratuitously taking sides, in the name of the Constitution, in a value dispute where reasonable men differ. There is a point at which a wise judge must say: Although I feel strongly about this particular value choice . . . there is a significant body of respectable opinion on the other side and I must, therefore, refrain from making my feelings on this point the basis of a constitutional rule. To fail to do so is to place the Constitution on one side or the other of contemporary disputes. . . .²⁸¹

Gillmor and Dennis asked why justices would choose "hoary" precedents over "broad empirical findings" in deciding obscenity cases.²⁸² The answer lies in the value system of Supreme Court justices. Political jurisprudence would examine that value system.

Shapiro addressed Supreme Court adjudication of the First Amendment "because it provides a particularly good illustration of one of the Court's major functions."²⁸³ Shapiro wrote:

. . . [T]he debate over freedom of speech, as it has been urged by the justices and their critics, has so intermingled freedom of speech and role of the Court questions that they have become inseparable. It is impossible to discuss the First Amendment without involving the political role of the

280 Richard B. Dyson, "Looking Glass Law: An Analysis of the Ginzburg Case," University of Pittsburgh Law Review 28 (October, 1966):1, in Devol, Mass Media, p. 153.

281 Ibid., p. 155.

282 Gillmor, "Judicial Communication," p. 289.

283 Shapiro, Freedom of Speech, p. 1.

Supreme Court. . . . [T]he crucial issues in the constitutional debate over freedom of speech can only be resolved by a proper understanding of the place of the Supreme Court in American politics.²⁸⁴

First Amendment Doctrines

Supreme Court justices have attempted to give principled specificity in the form of "doctrines" or "tests" to the vague First Amendment admonition to Congress. Frantz and Devol felt the constitution's framers intended that specific principles reflecting contemporary political and social thought should be employed by the Supreme Court. The framers purposely wrote in generalization, such as "freedom of speech" and "due process of law," to encourage timely interpretations.²⁸⁵

But using vagueness of First Amendment language to limit freedom of speech and press transgresses the purpose of the Bill of Rights, Frantz asserted. Those that abuse the First Amendment in this manner refuse to see the "clarity with which it speaks to the heart of the current controversy if it is permitted to mean anything."²⁸⁶

The development of the many doctrines and tests of the First Amendment was a reflection of the shaping of the political role of the Supreme Court.²⁸⁷ Discovery of the true political meanings of the

284 Ibid., pp. 1-2.

285 Frantz, "First Amendment in the Balance," p. 24; Devol, Mass Media, p. 330.

286 Frantz, "Is the First Amendment Law?" p. 25.

287 Shapiro, Law and Politics, p. 40.

doctrines, helps "explain and anticipate doctrinal positions," according to Shapiro.²⁸⁸

The debate over judicial restraint and activism includes among its facets the controversy over the two principle doctrines of the First Amendment: clear and present danger and balancing of interests. Judicial modests used the balancing of interests test so as to give lesser weight to protection of speech than to government regulation because to do otherwise would be to undemocratically assume the role of the legislature. Weighing social interests, of which free speech is but one, is the duty of the legislature, not the courts.

Judicial activists, upholding the clear and present danger doctrine, contend that certain liberties were not intended to be subject to legislative determination and that the framers meant that the Supreme Court should mediate any balancing of interests. But weighing any other social need against freedom of expression must begin with the assumption that a heavier weight be given freedom of expression. This is the gist of the "preferred position" doctrine. Activists further argue that judicial restraint is undemocratic in the sense that deference to the legislature violates the principle of separation of powers. Without judicial activism, some social interests in freedom of expression would not be represented in government. Freedom of expression should be preferred to other social interests because it is necessary

288 Ibid., p. 48.

to the proper functioning of the political system. Without it the electorate cannot make intelligent decisions.

Krislov noted that the activists on the Supreme Court do not openly contend they recognize the court's role in society as political. On the contrary, Justice Black stated his absolutist position as part of his philosophy of judicial restraint. Krislov wrote:

. . . [I]t has become an activist argument . . . that the function of the Court is precisely determined by "orders" to it from the Constitution. The argument is that, under specific mandate, the Court operates safely in prescribed areas, with the maximum human objectivity, informed by history--both with regard to the adoption of the provision and its application--with clearcut legal authority, and, therefore enhanced moral respect. . . . [A]n agency has been created with precise and limited missions. One of these is to foster the specific rights of the First Amendment. It is appropriate that the agency be insulated from political pressures, for it is precisely to overcome the daily vagaries inherent in political pressures that the First Amendment was introduced.²⁸⁹

Other tests and doctrines have been used by the court. The court presently uses three distinct tests. The "redeeming social value" test is used in obscenity cases. The "clear and present danger" test is used in obstruction of justice and subversive activities cases, and the "balancing of interests" test is used in "incidental free speech infringement" cases.²⁹⁰ When new variations of facts are presented to the court, the tests are altered. This has

289 Krislov, Political Freedom, p. 32.

290 Ibid., p. 91.

become evident in recent Supreme Court opinions involving libel and privacy.²⁹¹

There have been many variations of these tests throughout the 60-year span since the first policies concerning freedom of expression were established by the court. Prototype doctrines have died easily. Edward Hudon pointed out that no judicial rule on freedom of expression has survived in its original form for more than 10 years.²⁹²

Shapiro wrote that the tests should be considered as "ideological weapons" in disputes involving freedom of expression. He rejected dicta supporting tests with philosophical theories since theories are useless. Theories can be found to support contradictory tests and are "readily deflatable." Shapiro said:

. . . [T]here is no agreed upon philosophy to which we can turn. Questions of freedom of speech will have to be considered as questions of political prudence or short term goals as posited preferences . . . [because this] is the level at which most political decisions have been made. Disguising the vagueness with outdated philosophy and incomplete intellectual history does not help very much.²⁹³

Clear and Present Danger Versus Balancing of Interests

Almost all the tests and doctrines find their roots in the clear and present danger test precedent. Justice Holmes first enunciated it

²⁹¹ Gertz v. Robert Welch, 418 U. S. 323 (1974); Time, Inc. v. Firestone, 424 U. S. 448 (1976).

²⁹² Edward Hudon, Freedom of Speech and Press in America (Washington, D.C.: Public Affairs Press, 1963), p. ix, in Krislov, Political Freedom, p. 91.

²⁹³ Shapiro, Freedom of Speech, pp. 46-47.

in *Schenck v. United States*.²⁹⁴ It is often described as a "rationalization" for sending war-time dissidents to jail.²⁹⁵ Holmes earned his reputation as a liberal in later dissents when he used the test to criticize the conservative majority.²⁹⁶

From 1880 until the Roosevelt court, the conservative majority of the court had maintained its power to overrule legislation on due process grounds in cases where property rights were threatened. Holmes proposed that the due process clause be used to oversee legislation affecting civil liberties, even though he had previously maintained that the court had usurped legislative powers by invalidating statutes affecting property.²⁹⁷

The court nationalized the First Amendment in the *Gitlow* decision,²⁹⁸ but Schubert noted:

There is no particular extension of human liberty if the Court admits that the states must recognize freedom of speech to the same extent as the national government--and then concludes that neither must give too much recognition to the right of freedom of speech when anything of political importance is being discussed.²⁹⁹

The justices used the vague phrases of the constitution and their own formulations to their own advantage. Holmes believed that

294 *Schenck v. United States*, 249 U. S. 47 (1919).

295 Pritchett, *Civil Liberties*, p. 25; Schubert, *Constitutional Politics*, p. 530; Berns, *Virtue and the First Amendment*, p. 121.

296 Pritchett, *Civil Liberties*, p. 25.

297 *Ibid.*, p. 29.

298 *Gitlow v. New York*, 268 U. S. 652 (1925).

299 Schubert, *Constitutional Politics*, p. 530.

due process should be applied to civil liberties issues but not to property issues. The conservative majority argued the opposite case. Neither side could justify its extension of judicial review on the basis of the constitution. Both sides used the flexibility of the constitution to their own ideological ends.

By 1941,³⁰⁰ the liberal activist bloc, led by Justice Black, and the conservative restraint bloc, led by Justice Frankfurter, were both claiming to be carrying out the intentions of Holmes.

Black, Douglas, Murphy, and Rutledge held that legislation had to meet "higher standards" in areas of "preferred freedoms."³⁰¹ Jackson, Frankfurter, Minton, Burton, Clark, and Reed held that the court "must trust the legislatures" and "allow them room for a 'choice of policy.'"³⁰²

The issue of censorship, according to Pritchett, elicited the first sharp division between the Blackstonian absolutists and the balancers. The absolutists felt that the demonstration of prior restraint was sufficient to invalidate legislation. The modests countered that the legislature could be justified in censorship if other "desirable social consequences" were evident.³⁰³

300 *Bridges v. California*, 314 U. S. 252 (1941).

301 Pritchett, Civil Liberties, p. 33.

302 *Ibid.*, p. 65.

303 *Ibid.*, p. 33.

The Vinson Court upheld "no prior restraint" as a standard in three film censorship cases,³⁰⁴ two licensing cases,³⁰⁵ and two sound truck cases.³⁰⁶ But the court also upheld censorship in three other decisions.³⁰⁷ Justice Reed spoke for the majority in several of the cases, adhering to a rule of reason: "Regulation and suppression are not the same, either in purpose or result, and courts of justice can tell the difference."³⁰⁸

The rule of reason allowed legislatures to pass laws regulating expression if the laws were narrowly drawn. In the event that they were not, absolutists emerged with favorable decisions. The libertarian activist became adroit at applying procedural rules to sustain decisions in his favor. Pritchett observed: "Where procedure is a restraint on interference with liberties, it is welcomed and even treated as a constitutional requirement."³⁰⁹

304 *United States v. Paramount Pictures*, 334 U. S. 131 (1948); *Burstyn v. Wilson*, 343 U. S. 495 (1952); *Gelling v. Texas*, 343 U. S. 960 (1952).

305 *Niemotko v. Maryland*, 340 U. S. 268 (1951); *Kunz v. New York*, 340 U. S. 290 (1951).

306 *Saia v. New York*, 334 U. S. 558 (1948); *Kovacs v. Cooper*, 336 U. S. 77 (1949).

307 *Poulos v. New Hampshire*, 345 U. S. 395 (1953); *Breard v. Alexandria*, 341 U. S. 622 (1951); *United Public Workers v. Mitchell*, 330 U. S. 75 (1947).

308 *Poulos v. New Hampshire*, 345 U. S. 395 (1953).

309 Pritchett, *Civil Liberties*, p. 200.

The activists contrived a procedural error in the Terminiello decision in 1946.³¹⁰ It saved a 5-4 decision favorable to freedom of speech.³¹¹ Douglas's majority opinion was apparently bargained. Justice Jackson's dissent logically appealed to a reasonable examination of the facts in the case. Pritchett said:

Douglas might have made the contest a real one by arguing the case for the right of a speaker to address willing listeners in a private hall and by examining the nature of the community's obligation to defend that right against violent interruptions from outsiders. He ignored this opportunity to make a constructive contribution to civil liberties theory, confining himself instead to an academic lecture about the importance of "unrest" or even "anger" in preventing "standardization of ideas."³¹²

The libertarians lost again to the rule of reason in the Feiner³¹³ and Beauharnais³¹⁴ cases. But in cases dealing with anti-Communist legislation, the modests clearly came in control. The Dennis decision³¹⁵ presented Frankfurter with the opportunity to reject the clear and present danger doctrine as "nothing but a formula, an inflexible dogma supporting 'uncritical libertarian generalities.'"³¹⁶ The

310 Terminiello v. Chicago, 372 U. S. 229 (1963).

311 Pritchett, Civil Liberties, p. 59.

312 Ibid., p. 61.

313 Feiner v. New York, 340 U. S. 315 (1951).

314 Beauharnais v. Illinois, 343 U. S. 250 (1952).

315 Dennis v. United States, 341 U. S. 494 (1951).

316 Pritchett, Civil Liberties, p. 74.

Dennis decision was a "serious defeat for the traditional libertarian position," according to Pritchett.³¹⁷

The majority used the clear and present danger doctrine to convict Dennis. But the court "manipulated" the test to its own purposes, Shapiro wrote. Holmes based his clear and present danger test on Milton's marketplace of ideas theory. In Dennis, the court upheld the conviction of a Communist partly on the basis of a publication sold in a literal marketplace, a bookstore. The Dennis clear and present danger test was "simply the remote bad tendency test dressed up in modern style."³¹⁸ Shapiro added:

In fact, all the actual ramblings on the international situation engaged in by the various judges concerned in convicting Dennis were mere excuses for sending men to jail under an indictment for a misty, ill defined crime without concrete evidence. Looking at it realistically, Dennis undoubtedly went to jail for what happened in Czechoslovakia and elsewhere, not for what he did. We couldn't catch his friends who did it in those places, and we could catch him.³¹⁹

In his concurring opinion, Frankfurter held:

Free-speech cases are not an exception to the principle that we are not legislators, that direct policy-making is not our province. How best to reconcile competing interests is the business of legislatures, and the balance they strike is a judgment not to be displayed by ours, but to be respected unless outside the pale of fair judgment.³²⁰

317 Ibid., p. 75.

318 Shapiro, Freedom of Speech, p. 64.

319 Ibid., p. 133.

320 *Dennis v. United States*, 341 U. S. 494 (1951), Frankfurter concurring.

Judge Hand, whose reformulation of the clear and present danger test influenced the majority opinion in Dennis, and Frankfurter believed the Holmesian test was not entirely applicable because the political milieu in which the Dennis facts occurred was different from that of Schenck.³²¹ But Shapiro argued that the fact situation "showed conclusively" that the clear and present danger test "was fully applicable to the problem of Communist subversion." And Frankfurter and Hand recognized this fact. Shapiro said:

. . . Hand and Frankfurter sought to scuttle the danger rule . . . not because they [the facts] failed to make sense in terms of the philosophy of freedom of speech, but precisely because they did make sense. . . . [Dennis was] actually determined not by the view that clear-and-present-danger is incompatible with a proper interpretation of the First Amendment, but by the belief that the Supreme Court is incompatible with the First Amendment. These opinions are not honest appraisals of whether clear-and-present-danger is a workable doctrine for relating the First Amendment to statutes prohibiting speech; they are a smoke screen behind which judges hide this refusal to relate the First Amendment to statutes prohibiting speech.³²²

The rejection, or "reinterpretation," of the clear and present danger doctrine was not a rejection of theory, but a rejection of the role of the Supreme Court and was based on a "fundamentally false vision of American government."³²³

Judicial deference is judicial enforcement. Dennis was "not abstention, but validation," according to Frantz. By utilizing a

321 Pritchett, Civil Liberties, p. 31.

322 Shapiro, Freedom of Speech, pp. 70-71.

323 Ibid., p. 71.

balancing test instead of the true clear and present danger test, the court allowed Congress to decide for itself what limits the First Amendment places on it. The balancing test, by deferring that decision to Congress, amounts to "rubberstamping of anything which Congress at a particular moment may reasonably think desirable."³²⁴

But Mendelson contended that "open balancing" had an advantage not emphasized by Frankfurter and Hand:

Open balancing compels a judge to take full responsibility for his decisions, and promises a particularized, rational account of how he arrives at them--more particularized and more rational at least than the familiar parade of hallowed abstractions, elastic absolutes, and selective history. Moreover, this approach should make it more difficult for judges to rest on their predispositions without ever subjecting them to the test of reason. It should also make their accounts more rationally auditable.³²⁵

The modests used the balancing test not as though it was based in theoretical argument but as a weapon against the activists' views of the Supreme Court's political role. The balancing test used in *Dennis* resulted in not so much a limitation of a Communist's "right" to free speech as an endorsement of the government's "right" and "duty" to defend the United States from Soviet aggression. By allowing equal focus on defense and speech, the modests escaped the natural advantage given free speech in the clear and present danger doctrine.³²⁶

Mendelson added:

In any event, the essence of balancing is realism--a repudiation of the modern activists' rhetorical, or magic phrase,

324 Frantz, "First Amendment in the Balance," p. 13.

325 Mendelson, "On the Meaning of the First Amendment," p. 20.

326 Shapiro, Freedom of Speech, p. 76.

technique. . . . Cut loose from its foundation in the distinction between discussion and incitement, the clear and present danger test lost its rational meaning and became a cloak for "vague but fervent transcendentalism." In short, the activists destroyed it as an intelligible guide to decision--and then abandoned it. . . . Meanwhile, they have tried, and apparently discarded, one "new" verbalism after another.³²⁷

Black's absolutist stand, Mendelson said, "again begs all the difficulties simply by ignoring them."³²⁸

Shapiro described the balancing of interests doctrine as a "confused" piece of Roscoe Pound social engineering at the cost of freedom.³²⁹ Balancing intrusion of one man's right to speak with preservation of the nation was to put a heavy thumb on the scale.³³⁰ Frantz argued that in the difficulty of ascertaining precisely what the "interests" are, the Supreme Court might logically decide that one man's freedom might well be the "national interest" at stake.³³¹ He stated:

As soon as he finishes measuring the unmeasurable, the judge's next job is to compare the incomparable. Even if he has succeeded in stating the interests quantitatively (or thinks he has), they are still interests of different kinds and therefore they can no more be compared quantitatively than sheep can be subtracted from goats. It is literally impossible for him to compare them unless he has some standard independent of both to which they can be referred.³³²

327 Mendelson, "On the Meaning of the First Amendment," p. 20.

328 Ibid.

329 Shapiro, Freedom of Speech, p. 83.

330 Ibid., p. 84.

331 Frantz, "Is the First Amendment Law?" p. 29.

332 Ibid., p. 30.

Shapiro objected to the use of balancing because it tended to favor society's most politically powerful.³³³ If the court abandoned a preferred freedom doctrine, "discrete and insular minorities"³³⁴ would have no representation in government. Since the legal process typifies, "perhaps exaggerates,"³³⁵ the problem of the most powerful getting its way, deference to the legislature would weaken the judiciary and lessen the impact of minority viewpoints. Frantz agreed that "despised ideological minorities" typically are not as well represented in the legislatures as economic interests and that freedom of expression matters are better left to the judgment of the court. The minorities have political influence of "less than zero" since it would be better politics for legislators to abuse them rather than listen and respond to them.³³⁶

Balancing of interests actually should undermine the modest goals since its ad hoc quality forces the court to act as an arbitrary decision-maker "constantly tampering with the weights," according to Shapiro.³³⁷ Frantz elaborated:

(Balancing of interests) is the most "activist" choice of all. If it is "activist" to put a statute aside on the ground that

333 Shapiro, Freedom of Speech, p. 86.

334 United States v. Carolene Products Co., 304 U. S. 144 (1938), Stone majority opinion, n. 4.

335 Eisenstein, Politics, p. 344.

336 Frantz, "First Amendment in the Balance," p. 13. Cf. Mendelson, "On the Meaning of the First Amendment," p. 19.

337 Shapiro, Freedom of Speech, p. 100.

it is contrary to what the Court conceives to be the meaning of the Constitution, surely it cannot be "restraint" to put a constitutional provision aside on the ground that it is contrary to what the Court conceives to be sound political theory.³³⁸

Shapiro objected to the numerous "ifs, ands, and buts" involved in the balancing formula. He saw it as a "cheap rationale" to subordinate freedom of speech to "anything that is given a weighty enough label."³³⁹

Pritchett believes the modests mistook the basis for balancing of interests, wrongly equating majoritarianism with democracy. "Democratic government is limited government, not unlimited government," he said.³⁴⁰ The Frankfurter philosophy seemed to deny that judicial review was ever intended, but this view fails to recognize "the overriding fact . . . that such authority has been exercised since 1803."³⁴¹

Conclusion

Shapiro asserted that Douglas and Black, in their absolutist opinions, ultimately were right. Their thoughts seemed "illegal" in the face of the "fine honed legalism and complex justification of the champion of modesty." Hand and Frankfurter were in agreement with the absolutists on the value of freedom of speech but they restrained

338 Frantz, "First Amendment in the Balance," p. 27.

339 Shapiro, Freedom of Speech, p. 104.

340 Pritchett, Civil Liberties, p. 241.

341 Ibid.

themselves from voicing that agreement because of their conception of the role of the judge--"and that concept was wrong."³⁴²

The modests live in a "fictional world" of Congressional supremacy that exists nowhere else, not even in Congress, where its committees often refuse to "give up a fight because Congress had spoken." The court should not relinquish power to the legislature. Shapiro said that the court's "contributions to American politics must be reckoned on the basis of how vigorously it furthers interests it chooses to represent."³⁴³

Frankfurter, the primary advocate of judicial restraint, nevertheless was a "fifth libertarian" of the Vinson Court, according to Pritchett.³⁴⁴ This would seem to be refuted on the grounds of his seemingly anti-libertarian dissents in crucial civil liberties cases and his assault on the clear and present danger doctrine. But his goal had a functional orientation, not a result orientation, for the Supreme Court.³⁴⁵

Pritchett explained that the Frankfurter approach was to base decisions on "appropriate judicial standards and proper manipulation of judicial techniques" rather than emphasizing "the jurist's own scheme

342 Shapiro, Freedom of Speech, pp. 109-110.

343 Ibid., p. 111.

344 Pritchett, Civil Liberties, p. 190.

345 Ibid., p. 201.

of values."³⁴⁶ Black and Frankfurter, apparently miles apart in their means, shared

. . . what the Vinson majority frequently failed to exhibit . . . a warm humanitarian sympathy, a conviction that libertarian values are tremendously important, an insistence that the Court use the full measure of its legitimate power to compel adherence to procedural safeguards, and a tough-minded scrutiny of the plausible rationalizations which are always available to explain away infringements of human liberty.³⁴⁷

Pritchett maintained that the ends were good but neither of the extremes of means was practical. Extreme judicial deference ignored the fact that "the most democratic system is (not) one in which the legislature is most unfettered."³⁴⁸ Respect for the legislative function does not preclude judicial responsibility. Frankfurter took pains to demonstrate his extreme subscription to judicial restraint in several decisions, even protesting that his deference to legislatures was at a cost to his personal beliefs.

But Pritchett delves past Frankfurter's conscientiousness:

These statements afford fascinating glimpses into a sophisticated judicial mind at work; but as public bulletins of successful inner purgation they carry a "holier than thou" inference with respect to disagreeing justices which seems quite unjustified; for Frankfurter's accounts certainly misstate or oversimplify the problem of judicial motivation. No matter how conscious or even heroic the efforts, the man and the judge can never be separated, and the gratifications of deprivation are as personally rooted as the gratifications of indulgence.³⁴⁹

346 Ibid.

347 Ibid., p. 238.

348 Ibid.

349 Ibid., p. 246.

The courageousness of the positivists could not be undervalued either.³⁵⁰ But this approach also challenges reasonableness. Pritchett suggested that the court's absolutists should be less concerned with labels and more concerned with the "seriousness of the threat to freedom and the justification offered for its limitation."³⁵¹

Label thinking by the libertarians led them toward abstractions and away from facts, toward legal tests and away from empirical tests. Neither the denial of the human element in decision-making nor the ignorance of reasonableness in abstract theory construction can protect freedom of expression. Both approaches, in the end, would be self-defeating.

Like Pritchett, Shapiro concluded that

. . . history of the development of both the balancing and absolutist positions very strongly indicates that both doctrines were invented for purely tactical use, and that both hinge on the role of the Court not freedom of speech problems. Any assessment of the current debate between absolutists and balancers . . . which does not keep clearly in mind the polemical origins of the doctrines is likely to make the very grave error of taking them seriously instead of viewing them in their true light as the superficial ploys of the deeper struggle between activist and modest tendencies on the Court.³⁵²

No principle can be anything but vague in the final analysis, according to Shapiro. The clear and present danger doctrine will not dictate the precise answer for every case, no more than any precisely

350 Ibid., p. 249.

351 Ibid.

352 Shapiro, Freedom of Speech, pp. 86-87.

written law can. But compared to balancing, the clear and present danger test is "child's play."³⁵³

Shapiro believes that a dismissal of the modests' apprehension of the Supreme Court role in the American political system combined with a recognition of the political justification for use of the preferred position-clear and present danger doctrine will return freedom of speech to the full libertarian freedom the First Amendment professes.³⁵⁴

Pritchett suggested that although Congress and the executive share with the Supreme Court the maintenance of democracy, "expectations of the Court are higher." He said:

The justices enjoy a perspective and an opportunity for reflection which is not available to more direct participants in the political process. Supreme Court discussion should not be on a par with legislative debates. It should be representative, not of our current thought, but of our best thought. We want assurance that the Court is judging us by our highest ideals, not on the basis of our average performance.³⁵⁵

The protection of the First Amendment rights cannot be given to overzealous emotions nor judicial neutralism that avoids substantive questions. The justice should be sensitive to the same public opinion that motivates legislators.³⁵⁶

More than mere legal rules and philosophical bases for rules have been involved in judicial decision-making. There are political

353 Ibid., pp. 128-129.

354 Frantz, "Is the First Amendment Law?" p. 28.

355 Pritchett, Civil Liberties, p. 251.

356 Ibid., p. 253.

and personal implications, however disguised. In the First Amendment area, examination of rules and proposed implementation of rules, such as those suggested by Emerson and Robbins, are important but incomplete in view of the depth of ideological involvement of justices in the process.

Judicial Behavioralism and the First Amendment

Introduction

Quantitative analysis of judicial behavior toward First Amendment freedoms has been limited. Pritchett studied civil liberties attitudes in his pioneer work on the Roosevelt Court.³⁵⁷ But since Pritchett's work has been replicated in Schubert's studies, Pritchett's findings will be discussed in context with updated materials.³⁵⁸

S. Sidney Ulmer

In 1960, Ulmer analyzed Supreme Court voting behavior in civil liberties cases during the 1958 term. Included in his sample of 43 cases were four "Free Speech" cases, six "Right to Withhold Information" cases (involving both the First and Fifth Amendments), and nine "Other 'Fair Trial' Rights" cases (including one case involving prejudicial publicity). By constructing phi correlation matrixes dichotomizing pairs of justices, Ulmer found two "typal relevancies." One bloc included Justices Douglas, Black, and Brennan and Chief Justice

357 Pritchett, Roosevelt Court, chap. 10.

358 Schubert, Judicial Mind, Judicial Mind Revisited, infra.

Warren, and the other bloc included Justices Whittaker, Frankfurter, Harlan, Stewart, and Clark.³⁵⁹

By computing a sociometric index, Ulmer determined that Whittaker and Brennan were the most "powerful" members of their respective blocs.³⁶⁰ As a "crude" measure of intensity of feelings in civil liberties cases, Ulmer analyzed opinion writing behavior of the justices and found the libertarian bloc much more prolific and possibly more "intense" in its feelings about civil liberties issues than the other bloc.³⁶¹

In order to better discuss the strategy involved in opinion assignment, Ulmer built a table that showed utilization of opinion assignment powers by Warren, Frankfurter, and Black. Warren chose himself most often (five times) to write majority opinions of the court in civil liberties decisions. Warren chose Brennan to write majority opinions four times. Douglas, Black, and Whittaker were each chosen three times.³⁶² Frankfurter was less generous toward the liberal bloc. But each time Brennan voted with the conservative bloc (twice), he was assigned the majority opinion. Ulmer inferred that this was an attempt by Frankfurter to temper the outcome of the cases.³⁶³

359 Ulmer, "Behavior Patterns," p. 414.

360 Ibid., p. 417.

361 Ibid., pp. 418-419.

362 Ibid., pp. 421-423.

363 Ibid., p. 424.

Ulmer also scaled the cases and justices and confirmed his hypothesis that one operating variable accounted for overall response in civil liberties cases: "Attitudes toward claimed civil liberty deprivations."³⁶⁴ Ulmer compared his findings with similar civil liberties data of the 1956 and 1957 terms³⁶⁵ and inferred that the court was becoming less liberal.³⁶⁶

As small a sample as 43 civil liberties cases in a single term provides little insight into the long-term values held by Supreme Court justices toward freedom of expression cases.

C. Herman Pritchett

Pritchett established civil liberties interagreement blocs for the Vinson Court.³⁶⁷ He found Douglas, Black, Murphy, and Rutledge in frequent agreement and comprising one bloc during the 1946-1948 terms. Chief Justice Vinson and Justices Reed and Burton made up a second bloc. Justices Frankfurter and Jackson comprised a third bloc.³⁶⁸

During the 1949-1952 terms the blocs shifted. Black and Douglas comprised one bloc, Jackson and Frankfurter a second bloc, and Reed, Minton, Burton, Vinson, and Clark a third bloc.³⁶⁹

364 Ibid., p. 427.

365 S. Sidney Ulmer, "The Supreme Court and Civil Liberties," Western Political Quarterly 13 (June, 1960):288.

366 Ulmer, "Behavior Patterns," p. 428.

367 Pritchett, Civil Liberties, pp. 177-190.

368 Ibid., p. 182.

369 Ibid., pp. 178-184.

Pritchett found that over the entire 1946-1952 period the Supreme Court seemed to form basically into two blocs. In free speech claims, Murphy, Rutledge, Douglas, Black, and to a much lesser extent, Frankfurter formed a libertarian bloc. Jackson, Clark, Burton, Minton, Vinson, and Reed formed an anti-libertarian bloc.³⁷⁰

Pritchett did not carry out the interagreement percentages to any statistically significant level so that they could satisfactorily be analyzed. To find judicial attitudes in free speech cases a more discriminating analysis would seem to be necessary.

Glendon Schubert

Schubert's elaborate scale and factor analysis of judicial attitudes from 1946 to 1963 resulted in the formulation of two major scales, economic and political.³⁷¹ The economic philosophies of the justices were found to differ in degree and kind from the political philosophies of the same justices. In other words, Justice A might be an economic liberal and a political moderate, while Justice B might be an economic conservative and a political liberal. By isolating the kinds of issues under study, a better understanding of the dimensions of the conservative and liberal ideologies could be achieved.

In the same manner, dimensions of the political attitudes of the justices could be better understood by hypothesizing and testing subscales, or dimensions, of the political scale. Schubert hypothesized

³⁷⁰ Ibid., p. 190

³⁷¹ Schubert, Judicial Mind, p. 97.

five subscales of the political scale (C-scale): political equality (PE), political freedom (PF), religious freedom (RF), the right to fair procedure (FP), and the right to individual privacy (RP).³⁷²

The First Amendment was involved in four of the subscales. The PF subscale related to freedoms of speech, association, and press, and loyalty dismissals. RF included free exercise of religion and separation of church and state issues. FP involved Fifth, Sixth, Eighth, and Fourteenth Amendment claims, some involving prejudicial publicity. RP was concerned with invasion of privacy, primarily by the government.³⁷³

RF was considered a distinct subscale because it involved issues not analogous to other First Amendment issues.³⁷⁴ It might have been involved in the present discussion, but because of an insufficient sample, it was not scaled by Schubert.³⁷⁵

Since the FP subscale was dominated by claims other than prejudicial publicity, it would be futile to try to sort out those cases relevant to the First Amendment. The same argument for elimination of the RP subscale can be made since it was primarily concerned with governmental intrusion on private persons, and only to a much lesser extent by private concerns (such as the media).

372 Ibid., p. 159.

373 Ibid.

374 Ibid., p. 171.

375 Ibid.

Schubert sampled 32 PF cases from the 1960-1962 terms. He drew the table like Table 3-1 for the PF subcomponent:

TABLE 3-1

SCALES FOR HYPOTHESIZED SEMANTIC SUBCOMPONENTS OF
POLITICAL LIBERALISM [POLITICAL FREEDOM]³⁷⁶

Justices [in order of C-scale liberalism]	PF Scale Scores
Douglas	1.00
Black	1.00
Warren	.94
Brennan	.88
Goldberg	.62
White	- .38
Stewart	.12
Whittaker	- .38
Frankfurter	- .75
Harlan	- .75
Clark	- .94

R Coefficient = .99

S Coefficient = .85

% Pro Decisions = 62%

Schubert eliminated Goldberg and White from the scale since they participated in less than 30 percent of the cases. He arranged the PF scale rankings in the order of Table 3-2.

376 Ibid.

TABLE 3-2

SCALE RANKINGS FOR POLITICAL AND ECONOMIC LIBERALISM, AND FOR
 HYPOTHESIZED SEMANTIC SUBCOMPONENTS OF
 POLITICAL LIBERALISM (PF)³⁷⁷

Rank	Justice
1.5	Douglas, Black
3	Warren
4	Brennan
5	Stewart
6	Whittaker
7.5	Frankfurter, Harlan
9	Clark

The PF and FP subscales and rankings strongly resembled the C-scale rankings. But several justices on the PF subscale ranked differently on other scales. For example, Whittaker ranked last on the E-scale and ranked sixth on the PF subscale. Black was tied for first place on the PF subscale but was fourth on the RP subscale. Justice Clark ranked last on the PF subscale but fifth on the E-scale.³⁷⁸

Since the dimensions of the C-scale and E-scale can be assumed to be different, no major problems seem to arise. Black had previously been observed to react differently (on the scale of liberalism) in privacy matters and free speech and press matters.³⁷⁹

³⁷⁷ Ibid., p. 172.

³⁷⁸ Ibid.

³⁷⁹ Schubert, Constitutional Politics, p. 611.

Schubert decided that the PF subscale was so integral to the C-scale that no purpose could be served in attempting to distinguish them:

. . . [W]hatever the distinctive content we might associate with the value of political freedom from a semantic point of view, we must conclude that from a psychological point of view, we cannot meaningfully distinguish them: in Guttman's language, both of these semantic values constitute a homogenous body of psychological content for the single attitudinal universe represented by the C-scale (Schubert emphasis).³⁸⁰

Methodologically, Schubert concluded that more could be learned about judicial attitudes toward PF issues if they were treated in the same manner as C issues. The correlation of PF-C was + .97, "much larger than the postulated criterion level of .90."³⁸¹

Schubert found the PF and FP subscales so closely associated to the C-scale he eventually defined political liberalism as political freedom and fair procedure.³⁸²

Schubert encouraged other researchers to develop better subcomponents of the major scales.³⁸³ He wrote:

Such information might make possible an operational test of the structure of both consistency and error in the major scales; and one might hypothesize that if major scales load on several different factorial dimensions, this is because different components (subscales) of the major scales load on certain factorial dimensions while other subscales load on other factorial dimensions.³⁸⁴

380 Schubert, Judicial Mind, p. 174.

381 Ibid.

382 Ibid., p. 182.

383 Ibid., p. 282.

384 Schubert, Judicial Mind Revisited, p. 27.

Schubert updated to 1968 study of the subscales. He added new subscales, none of which affected the PF subscale definition or content.³⁸⁵ In the new work, he altered the court term unit of measurement to coincide with that used later in the APSA package.³⁸⁶ The rearranged definition of the term variable reduced the reliability of the PF subscale.³⁸⁷

In an attempt to quantitatively show how much of the major scale each subscale represented, Schubert graphed the percentage of decisions made in the subscale areas by court periods (Figure 3-1).³⁸⁸

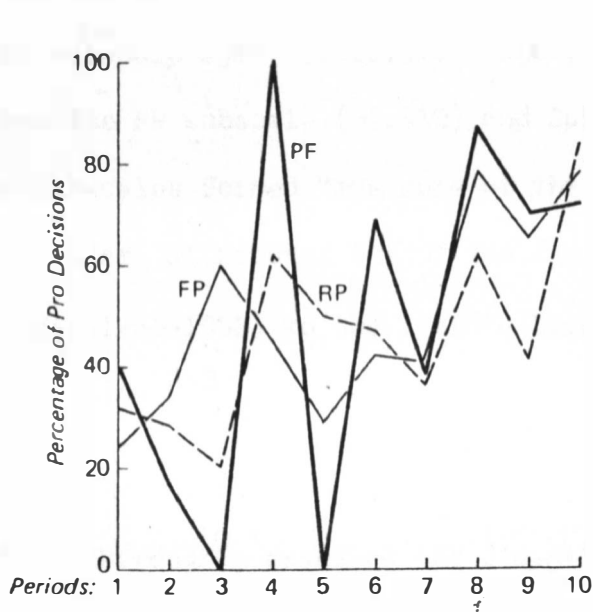


Figure 3-1. Selected subscales of C, degree of support.

385 Ibid., pp. 34-37.

386 App. A.

387 Ibid., pp. 44-45.

388 Ibid., p. 67.

Schubert did not assign any significance to the erratic performance of the PF subscale because of the small sample of C-case involved.

The new measurement criteria forced Schubert to better evaluate the intercorrelations with the PF subscale. While it was less acceptable in its new form, the PF subscale revealed itself as less consistent in its rankings than the RP and FP subscales. He concluded that the weakened consistency probably reflected "greater heterogeneity and variation in policy content for PF" than the other subscales.³⁸⁹

The updated rankings were presented in Table 3-3.

The PF subscale again correlated highly with the C-scale (+ .93)³⁹⁰ and the FP subscale (+ .912) and Schubert again concluded that the two subscales formed "the core of the content of the C-scale."³⁹¹ Schubert attributed one of the few pre-Warren C-scale liberal periods (1956-1958) to the court's backing away from the McCarthy inquisition.³⁹²

Conclusion

Schubert thoroughly examined the dimensions of civil liberties attitudes held by Supreme Court justices but no further discussion will be attempted here. Although PF, FP, and C scaling resulted in

389 Ibid., p. 60.

390 Ibid.

391 Ibid.

392 Ibid., p. 88.

TABLE 3-3

COMPOSITE RANKINGS FOR SCALES AND SUBSCALES [PF]³⁹³

Justices [in order of C-scale liberalism]	Rank
Murphy	2
Rutledge	2
Douglas	2
Fortas	10
Marshall	6.5
Warren	8
Brennan	6.5
Goldberg	4
Black	5
White	12
Stewart	9
Whittaker	12
Frankfurter	12
Jackson	14.5
Harlan	14.5
Burton	16.5
Vinson	20
Clark	18.5
Minton	16.5
Reed	18.5

393 Ibid., p. 62.

remarkable intercorrelation, communication law researchers should immediately recognize that there is a serious problem with considering political freedom and fair procedure as the same value. The fair trial-free press controversy has created a need for study of the distinction between the two values and how they can be reconciled.³⁹⁴ One would not expect a high behavioral correlation between PF and FP in decisions involving the clash of these values.³⁹⁵ Furthermore, the mere fact that Black, a leading libertarian, scored differently on the PF and RP subscales should create some curiosity as to why. By examining the meeting of the values of freedom of the press and right to privacy, an answer might emerge. Also of interest is the strange pattern of PF hearings before the court and shifting "heterogeneity and variation in policy content" of the PF subscale as opposed to other subscales.

Sorting out "pure" press cases from Schubert's PF sample should also help clarify some of the dimensions of the PF subscale and whether or not it should properly be equated with political liberalism generally.

394 See Donald M. Gillmor, Free Press and Fair Trial (Washington, D.C.: Public Affairs Press, 1966), pp. 79-93.

395 Attitudinal differences between lawyers and journalists could shed light on the differences between free press attitudes and fair trial attitudes. "The conflict between the press and bar" could be viewed "as an effect of psychological sources rooted in their respective belief systems." Holim Kim, "Free Press and Fair Trial: An Attitudinal Study of Lawyers and Journalists in a Conflict Between Two Professions," (Ph.D. Thesis, Southern Illinois University, 1972).

CHAPTER IV

A MODEL OF JUDICIAL BEHAVIOR

Introduction

Factor analysis is a method of determining the number and nature of the underlying variables among larger numbers of measures. It extracts common factor variances from sets of measures.³⁹⁶

There are basically three steps in factor analysis: (1) preparation of an intercorrelation matrix, (2) extraction of initial factors, and (3) rotation of the factors to terminal solutions.³⁹⁷

Correlation Matrix

The phi correlation coefficient, which Schubert used, and the tetrachoric r correlation coefficient are commonly used in factor analysis of dichotomized data. After the computation of several hundred phi coefficients for the fourfold tables in the present study, it became apparent that the statistic was not yielding truly reflective correlations of certain pairs of justices, e.g., Justices Black and Douglas. Despite the fact that, in the sample, the two agreed in 1,248 cases of 1,709 cases, their phi correlation coefficient was a meager .05821.

396 Kerlinger, Foundations, p. 659.

397 Norman H. Nie, C. Hadlai Hull, Jean G. Jenkins, Karin Steinbrenner, and Dale H. Bent, SPSS; Statistical Package for the Social Sciences, 2nd ed. (New York: Mc-Graw-Hill, 1975), p. 469.

Even though they disagreed over a fourth of the time, Black and Douglas agreed more often in sheer numbers than any other pair of justices and agreed liberally 1,191 times. In some instances, justices who agreed more often than they disagreed were negatively correlated because of the study's unique distributions of frequencies of agreement and disagreement in the four cells.

It was suggested that the G Index of Agreement could be substituted in this study since it was introduced to address this very problem. The G index is the equivalent of a phi coefficient for a two-cell table with a 50 percent expected frequency in each cell. The table measures only the extent to which two subjects agree or disagree.³⁹⁸

³⁹⁸ Sprague noted the spurious phi coefficients in Schubert's work but did not suggest an alternative for factor analysis. Sprague, Voting Patterns, pp. 21-24. Tetrachoric r does not help resolve this problem. J. W. Holley and J. P. Guilford, "A Note on the G Index of Agreement," Educational and Psychological Measurement 24 (1964):749. Richard M. Ritter, head of the Department of Psychology at South Dakota State University and member of the author's thesis committee, suggested the substitution. Ritter is of the opinion that since the G index is similar to a two-cell phi correlation coefficient, the G coefficient would be suitable for factor analysis. Ritter explained the "complexity of the coefficient" this way:

"Unless entries in a fourfold table are equally divided between the categories of each dichotomy, a single ϕ coefficient may represent two components of relationship. One component, that which directly determines the value of the coefficient, is based on discrepancies between observed cell frequencies and those that might be expected if each cell received an unbiased share of all table entries. This component can vary independently of a second, limiting component, that represented by the differences between the totals of the entries in the two pairs of diagonal cells. In the present study the latter differences are based on agreement v. disagreement. Thus, although two justices may have agreed more often than they disagreed, if their agreements have been fewer than one might expect on the basis of unbiased

The Black-Douglas phi coefficient⁴⁰⁰ is

$$\phi = \frac{(57 \cdot 1191) - (319 \cdot 142)}{(376 \cdot 1333 \cdot 199 \cdot 1510)} = .058$$

The Black-Douglas G index is

$$G = \frac{57 + 1191 - 142 + 319}{1709} = .460$$

The Black-Douglas attitudinal relationship is better measured by the G index than the phi coefficient.

Extraction of Initial Factors

Fourfold tables and G indexes of agreement for each pair of justices for each of the 18 samples were compiled and computed. The G indexes then were factor analyzed.

Principal component factoring without iteration was used. In this method, the first factor of the initial factor matrix represents the best linear combination of variables accounting for more of the variance in the data as a whole than any other linear combination of variables. The second component is the best linear combination of the

400 The formula for a phi correlation for a fourfold table is

$$\phi_{J_1 J_2} = \frac{ad - bc}{(pq p' q')^{\frac{1}{2}}}$$

where $\phi_{J_1 J_2}$ is the phi correlation coefficient for justices J_1 and J_2 , a is the +/+ total, b is the +/- total, c is the -/+ total, d is the -/- total, p is the sum of a and b, q is the sum of c and d, p' is the sum of a and c, and q' is the sum of b and d. George A. Ferguson, Statistical Analysis in Psychology and Education, 4th ed. (New York: McGraw-Hill, 1976), p. 409.

variables after the first component's variance is discounted, and so on.⁴⁰¹

The principle component model can be expressed by Formula 3.

$$(3) \quad z_j = a_{j1}F_1 + a_{j2}F_2 + \dots + a_{jn}F_n$$

where z_j is the standardized variable, a_{j1} is the index of agreement for variable j on Factor 1 (factor loading), and F_1 is the hypothetical factor.⁴⁰²

To account for all of the variance, as many factors as there are variables probably would be required. However, as the later factors would only represent individuals' voting tendencies, for the present study factoring was limited. The final factor depended on whether or not its eigenvalue exceeded 1.00, i.e., whether or not that factor represented at least one variable's maximum potential proportion of the total variance. In any case, the first factor represented the greatest percentage of variance, the second factor, the second greatest, and so on.⁴⁰³

Rotation of the Factors

The unrotated factor matrix could be meaningfully interpreted in most cases in the present study. But rotation of the axes allows

401 Nie, SPSS, p. 470.

402 Ibid., pp. 470-471.

403 Ibid., p. 479.

multi-loaded variables to appear on their other factors and the factor matrixes are given more meaning.

There are three general types of rotation: (1) varimax, which maximizes variable loadings on all factors, (2) quartimax, which maximizes variable loadings on a single factor, and (3) equimax, which is a compromise between varimax and quartimax.⁴⁰⁴

Quartimax was chosen as the best method of rotation since it minimized the cross-product terms of the variables. It did the best job of simplifying the data.

Rankings

The first factor was determined to be a bipolar, liberalism-conservatism dimension. Therefore, the justices were ranked on the basis of their loadings on that factor, i.e., on the degree of correlation of their opinions with the first factor. Little meaning could be assigned to ranks of justices who were moderate or neutral in their views toward whatever ideology was being measured by the first factor. Efforts were made to improve the rankings and these will be discussed below.

Data Collection

Fourfold Tables

The fourfold tables provide information that cannot be found in the rest of the data--the raw ideological voting interaction between

404 Ibid., p. 485.

any two justices. The tables allow a researcher to predict to a certain degree of success how one justice would vote if another justice's vote is given.

The aforementioned Black-Douglas fourfold table is one example. The G Total Court fourfold table (the fourfold tables are above the diagonal in Table 4-1) should be read as follows: Black voted conservatively 376 times and liberally 1,233 times (row totals). Douglas voted conservatively 199 times and liberally 1,510 times (column totals). On 57 rare occasions, both Black and Douglas voted conservatively. The most common situation, 1,191 times, was that both justices voted liberally.

Less frequently, 319 times, Black voted conservatively when Douglas voted liberally. And Black voted liberally 142 times when Douglas voted conservatively. They agreed 1,248 times (sum of the upper left and lower right cell frequencies) and disagreed 461 times (sum of the upper right and lower left cell frequencies). Douglas seems more liberal than Black. But a prediction that Black voted liberally, given that Douglas voted liberally, would have the best probability of success.

Any of the four cells with a high frequency relative to the other three cell frequencies will provide the researcher with a good predictor. These kinds of configurations represent a pair of justices who strongly agree. When justices of opposing ideologies were paired, the lower left and/or upper right cell frequencies were the largest.

An example is the Douglas-Rehnquist fourfold table. Only once in 115 cases did Douglas vote conservatively when Rehnquist voted liberally. In fact, Douglas voted conservatively a total of only three times while he served on the court with Rehnquist. Twice the pair agreed. They agreed liberally only three times. The highest cell frequency is in the $-/+$ cell, where Rehnquist voted conservatively 109 times when Douglas voted liberally. It is easy to predict, on the basis of their past voting interaction, that Douglas voted liberally when Rehnquist voted conservatively.

Fourfold tables which contain high and relatively equal frequencies in adjacent cells (cells not diagonal to each other) revealed the relationship between a justice with a strong ideological leaning and a justice with a generally moderate outlook.

An example of this situation is in the Douglas-White fourfold table of the G Total Court table. Douglas voted liberally 796 times and conservatively 88 times. White voted liberally 435 times and conservatively 449 times. The resulting contingency table indicates that when Douglas voted liberally or conservatively, White agreed as often as he disagreed. When White voted liberally, Douglas almost always agreed (393 times), but when White voted conservatively, Douglas rarely agreed (46 times).

In a very few instances, three cells with high frequencies would oppose a fourth cell of radically low frequency. An interpretation of this sort of interaction between two justices might be that one justice was semi-moderate with tendencies toward the ideology of the second justice, who had relatively strong ideological tendencies.

The White-Powell fourfold table demonstrates this kind of relationship. When White voted conservatively, so did Powell. Only once in 114 cases did White vote conservatively when Powell voted liberally. But they agreed conservatively 46 times and liberally 28 times. They disagreed 39 times--only when White voted liberally and Powell conservatively.

Fourfold tables with approximately equal frequencies in all four cells were most rare. Such a relationship would be most likely to occur when two moderate justices are paired. This kind of table could be explained by two justices who agreed as often as they disagreed--whether they voted liberally or conservatively. These justices could be either strong pragmatists or indecisive waverers. At any rate, these tables provide poor predictors. The White-Stewart table in the G Total Court table would be an example that approaches evenly distributed cells. Stewart voted conservatively 496 times and liberally 390 times. White voted conservatively 448 times and liberally 438 times. Compared with other justices, they were very moderate. They agreed more often (578 times) than they disagreed (308 times), but the distribution between cells is of such tenuous significance that prediction of what one would have voted given the other's vote is nearly impossible.

A certain amount of ordering of justices could be done on the basis of types of cell distributions. Fourfold tables dominated by the lower right cells could be aligned on the left (representing liberalism) and those dominated by the upper left cells could be aligned on

the right.⁴⁰⁵ Then tables with high right (or high bottom) two-cell frequencies could be placed inside the left-most tables and high left (or high upper) two-cell frequencies inside the right-most tables. Tables with four evenly distributed frequencies could then be placed in the middle with three-cell frequency tables arranged around them, depending on which of the justices is being ordered.

The resulting alignment would provide a raw continuum of ideology in the Supreme Court. It would be similar to a simple ordering of justices based on percentages of liberal or conservative voting by each justice. But such a process would be clumsy and not indicative of the underlying dimensions of attitudes in the Supreme Court. A much more elegant method is factor analysis, which is discussed below.

G Index of Agreement

The G index summarizes the relationships between the diagonals of a fourfold table, i.e., how often a pair of justices agree or disagree regardless of the ideological tendencies of the justices. No assumption about the political outlook of either of the justices can be made on the basis of a G index alone. A G index provides only a measurement of the degree of agreement.

A high positive G index means that the justices often agree. A high negative index means that the justices often disagree. G indexes

⁴⁰⁵ When measuring a row justice, the tables should be read from left to right. When measuring a column justice, the tables should be read from top to bottom with the four cells rotated one place and clockwise.

that approach zero mean that the justices agree as often as they disagree. Generally, depending on the sample size, G indexes between $+ .200$ and $- .200$ represented statistically insignificant relationships between pairs of justices' attitudes.

In the G Total Court table, G indexes (below the diagonal in Table 4-1) provide a variety of interagreement relationships. The highest G index in the positive direction was $.808$ for Marshall and Brennan. Other very high agreement relationships were between Marshall and Warren ($.801$), Rutledge and Murphy ($.762$), Brennan and Warren ($.785$), Fortas and Marshall ($.775$), Vinson and Clark ($.762$), Burger and Blackmun ($.745$), and Brennan and Goldberg ($.712$). Very notable are the high G indexes among Warren Court libertarians Warren, Brennan, Goldberg, Fortas, Marshall, Black, and Douglas.

Also showing cohesion by high G indexes among them are modern conservatives Burger, Blackmun, Powell, Rehnquist and, to a lesser extent, White. Also of importance are the relationships among Vinson Court liberals Black, Douglas, Murphy, and Rutledge and conservatives Vinson, Minton, Burton, and Reed.

Examples of noncorrelation between pairs of justices are abundant. Black has virtually no correlation with liberals Marshall and Fortas and conservatives Burger and Blackmun. Other justices with little in common are Brennan and Frankfurter, Douglas and White, Brennan and Burton, Goldberg and Clark, Fortas and Clark, and Marshall and Harlan.

Extreme disagreement among justices is less common than extreme agreement. Douglas and Rehnquist, as previously noted, almost never agreed. Their index is $-.912$. They are far and away the most polarized in voting behavior. Others strongly opposed to each other are Marshall and Rehnquist ($-.767$), Douglas and Burger ($-.697$), Rehnquist and Brennan ($-.651$), Murphy and Burton ($-.644$), Rutledge and Jackson ($-.624$), Douglas and Blackmun ($-.577$), and Douglas and Powell ($-.507$).

Again it could be said that a rough ordering of justices could be done by arranging G indexes in an organized manner of extreme disagreement to extreme agreement. But again, as discussed below, this is a function of factor analysis.

Correlation Matrixes

The correlation matrix used as input for the factor analysis consisted of a square, symmetrical table listing all of the justices of the sample under study as row and column headings. The common G index was entered into the matrix slots corresponding to that pair of justices. The diagonal was filled with $+1.00$ entries, representing a justice's perfect correlation with himself. The upper right triangle and the lower left triangle of the matrix are identical.

Beyond providing raw data for factor analysis, the correlation matrixes serve no function except to facilitate location of a particular justice's G index of agreement with any other justice.

The G Total Court input correlation matrix is Table 4-2. The key to the justices' abbreviations is contained in Table 4-3.

TABLE 4-2

G TOTAL COURT INPUT CORRELATION MATRIX

	HBLACK	JTREED	FRANKF	DOUGLA	MURPHY	JACKSO	RUTLED	BURTON	VINSON	TCLARK	MINTON	WARREN
HBLACK	1.00000	-0.30100	-0.25000	0.46000	0.67800	-0.38400	0.60500	-0.36400	-0.21200	-0.05400	-0.24600	0.43300
JTREED	-0.30100	1.00000	0.04400	-0.25000	-0.29800	0.30300	-0.18700	0.51200	0.61000	0.43700	-0.52200	0.04400
FRANKF	-0.25000	0.04400	1.00000	-0.31700	-0.35900	0.49100	-0.29600	0.25000	0.16700	0.16700	-0.04400	-0.20000
DOUGLA	0.46000	-0.25000	-0.31700	1.00000	0.51000	-0.51300	0.63100	-0.33300	-0.17600	-0.09400	-0.30800	0.57400
MURPHY	0.67800	-0.29800	-0.35900	0.51000	1.00000	-0.51000	0.79500	-0.64400	-0.37600	0.0	0.0	0.0
JACKSO	-0.38400	0.30300	0.49100	-0.51300	-0.51000	1.00000	-0.62400	0.32200	0.27200	0.39100	0.27000	0.20900
RUTLED	0.60500	-0.18700	-0.29600	0.63100	0.79500	-0.62400	1.00000	-0.50300	-0.26200	0.0	0.0	0.0
BURTON	-0.36400	0.51200	0.25000	-0.33300	-0.64400	0.32200	-0.50300	1.00000	0.52000	0.45700	0.45700	-0.10000
VINSON	-0.21200	0.61000	0.16700	-0.17600	-0.37600	0.27200	-0.26200	0.52000	1.00000	0.76200	0.57200	0.0
TCLARK	-0.05400	0.43700	0.16700	-0.09400	0.0	0.39100	0.0	0.45700	0.76200	1.00000	0.43500	0.23400
MINTON	-0.24600	0.52200	-0.04400	-0.30800	0.0	0.27000	0.0	0.45700	0.57200	0.43500	1.00000	0.13400
WARREN	0.43300	0.04400	-0.20000	0.57400	0.0	0.20900	0.0	-0.10000	0.0	0.23400	0.13400	1.00000
HARLAN	-0.39400	-0.09400	0.65900	-0.48200	0.0	0.0	0.0	0.30600	0.0	0.13000	-0.05400	-0.30300
BRENNA	0.30900	-0.22100	0.0	0.55300	0.0	0.0	0.0	0.0	0.0	0.22800	0.0	0.78500
WHITK	-0.43000	0.0	0.46600	0.54700	0.0	0.0	0.0	0.52700	0.0	0.27200	0.0	-0.32800
STEWAR	0.10900	0.0	0.42700	-0.08900	0.0	0.0	0.0	0.0	0.0	0.20000	0.0	0.07000
BWHITE	0.13700	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.33900	0.0	0.35900
GOLDBG	0.38900	0.0	0.0	0.55800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.68100
FORTAS	0.0	0.0	0.0	0.55700	0.0	0.0	0.0	0.0	0.0	0.04400	0.0	0.67900
MARSHL	-0.02600	0.0	0.0	0.60000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.80100
BURGER	0.04400	0.0	0.0	-0.69700	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
BLACKM	0.0	0.0	0.0	-0.57700	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
POWELL	0.0	0.0	0.0	-0.50700	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
REHNQT	0.0	0.0	0.0	-0.91200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

TABLE 4-2--Continued

	HARLAN	BRENNA	WHITK	STEWAR	BWHITE	GOLDBG	FORTAS	MARSHL	BURGER	BLACKM	POWELL	REHNQT
HBLACK	-0.39400	0.30900	-0.43000	0.10900	0.13700	0.38900	0.0	-0.02600	0.04400	0.0	0.0	0.0
JTREED	-0.09400	-0.22100	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
FRANKF	0.65900	0.0	0.46600	0.42700	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DOUGLA	-0.48200	0.55300	0.54700	-0.08900	0.0	0.55800	0.55700	0.60000	-0.69700	-0.57700	-0.50700	-0.91200
MURPHY	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
JACKSO	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
RUTLED	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
BURTON	0.30600	0.0	0.52700	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
VINSON	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TCLARK	0.13000	0.22800	0.27200	0.20000	0.33900	0.0	0.04400	0.0	0.0	0.0	0.0	0.0
MINTON	-0.05400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
WARREN	-0.30300	0.78500	-0.32800	0.07000	0.35900	0.68100	0.67900	0.80100	0.0	0.0	0.0	0.0
HARLAN	1.00000	-0.17300	0.48600	0.32800	0.10000	-0.44100	-0.21200	0.0	0.45100	0.33300	0.0	0.0
BRENNA	-0.17300	1.00000	-0.13400	0.20200	0.32700	0.71200	0.68500	0.80800	-0.43900	-0.30800	-0.26000	-0.65100
WHITK	0.48600	-0.13400	1.00000	0.36700	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
STEWAR	0.32800	0.20200	0.36700	1.00000	0.30300	0.18100	0.21200	0.34000	0.20000	0.27700	0.29600	-0.10900
BWHITE	0.10000	0.32700	0.0	0.30300	1.00000	0.34000	0.22500	0.07700	0.39200	0.48800	0.55600	0.38400
GOLDBG	-0.44100	0.71200	0.0	0.18100	0.34000	1.00000	0.0	0.0	0.0	0.0	0.0	0.0
FORTAS	-0.21200	0.68500	0.0	0.21200	0.22500	0.0	1.00000	0.77500	0.0	0.0	0.0	0.0
MARSHL	0.0	0.80800	0.0	0.34000	0.07700	0.0	0.77500	1.00000	-0.46400	-0.35600	-0.35000	-0.76700
BURGER	0.45100	-0.43900	0.0	0.20000	0.39200	0.0	0.0	-0.46400	1.00000	0.74500	0.68400	0.66900
BLACKM	0.33300	-0.30800	0.0	0.27700	0.48800	0.0	0.0	-0.35600	0.74500	1.00000	0.61400	0.49400
POWELL	0.0	-0.26000	0.0	0.29600	0.55600	0.0	0.0	-0.35000	0.68400	0.61400	1.00000	0.47600
REHNQT	0.0	-0.65100	0.0	-0.10900	0.38400	0.0	0.0	-0.76700	0.66900	0.49400	0.47600	1.00000

TABLE 4-3

KEY TO ABBREVIATIONS OF JUSTICES

HBLACK:	Justice Hugo L. Black
JTREED:	Justice Stanley F. Reed
FRANKF:	Justice Felix Frankfurter
DOUGLA:	Justice William O. Douglas
MURPHY:	Justice Frank Murphy
JACKSO:	Justice Robert H. Jackson
RUTLED:	Justice Wiley B. Rutledge
BURTON:	Justice Harold H. Burton
VINSON:	Chief Justice Frederick M. Vinson
TCLARK:	Justice Tom C. Clark
MINTON:	Justice Sherman Minton
WARREN:	Chief Justice Earl Warren
HARLAN:	Justice John M. Harlan
BRENNA:	Justice William J. Brennan, Jr.
WHITTK:	Justice Charles E. Whittaker
STEWAR:	Justice Potter Stewart
BWHITE:	Justice Byron R. White
GOLDBG:	Justice Arthur J. Goldberg
FORTAS:	Justice Abe Fortas
MARSHL:	Justice Thurgood Marshall
BURGER:	Chief Justice Warren E. Burger
BLACKM:	Justice Harry A. Blackmun
REHNQT:	Justice William H. Rehnquist

Eigenvalues

The initial function of factor analysis is the calculation of eigenvalues and corresponding proportions of variance for each of the factors. These are computed from the initial factor matrix.

In order to consider all of the possible variance, every variable must be considered a potential factor. In other words, 24 specific factors may exist in the total court samples where 24 justices act as variables. This means that 24 distinct ideologies could exist in the Supreme Court between 1946 and 1974. This would seem to be logical.

But, in fact, only half that number can account for virtually all of the variance in voting behavior in the G Total Court sample. Twelve potential factors are counterproductive to the purpose of this study, which is to reduce and identify the number of underlying ideologies in the Supreme Court.

Table 4-4 shows that in the G Total Court, 12 dimensions account for 99.5 percent of the variance. Further examination of Table 4-4 reveals that each of the first seven factors accounted for at least as much variance as one variable could account for. In a sample of 24 justices, one justice could account for 4.13 percent of the variance. Factor 7 accounts for 5 percent and Factor 8 accounts for 3.6 percent. The cutting point follows the last factor that can account for at least as much variance as one variable can account for.

The first seven factors account for 85.2 percent of the variance. The most important factor in every case is the first factor. In Table 4-4, Factor 1 accounts for 23.3 percent of the variance, Factor 2 accounts for 17.7 percent, Factor 3 accounts for 14.1 percent, and Factor 4 accounts for 10.5 percent.

TABLE 4-4

EIGENVALUES AND PROPORTIONS OF VARIANCE FOR G TOTAL COURT

07/12/77

TOTAL COURT

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	5.57336	23.2	23.2
2	4.25823	17.7	41.0
3	3.38237	14.1	55.1
4	2.52580	10.5	65.6
5	2.09790	8.7	74.3
6	1.41819	5.9	80.2
7	1.19000	5.0	85.2
8	0.85743	3.6	88.8
9	0.75599	3.2	91.9
10	0.70639	2.9	94.9
11	0.61819	2.6	97.4
12	0.50410	2.1	99.5
13	0.43985	1.8	101.4
14	0.39873	1.7	103.0
15	0.35006	1.5	104.5
16	0.27752	1.2	105.6
17	0.17358	0.7	106.4
18	0.13991	0.6	107.0
19	0.08469	0.4	107.3
20	-0.08424	-0.4	107.0
21	-0.20402	-0.9	106.1
22	-0.23580	-1.0	105.1
23	-0.43431	-1.8	103.3
24	-0.79420	-3.3	100.0

Initial Factor Matrix

The initial, unrotated factor matrix shows the "loading" of each variable on each factor. Standards of meaningfulness of factor loadings vary widely. In the present study, it was arbitrarily decided to consider only loadings exceeding .300.

Factor 1 of Table 4-5, representing the G Total Court, was significantly and positively loaded by Black, Douglas, Murphy, Rutledge, Warren, Brennan, Goldberg, Fortas, and Marshall. It was loaded negatively (even though unrotated factors do not normally reflect bipolar relationships) by Reed, Frankfurter, Jackson, Burton, Vinson, Harlan, Burger, Blackmun, Powell, and Rehnquist. Low loadings on Factor 1 were Clark, Minton, Whittaker, Stewart, and White.

Factor 1 seemingly represents liberalism. Douglas, who loads at 1.00, is the epitome of this factor. Rehnquist, who loads at -.6, is the most diametrically opposed. Stewart and White are uncorrelated with the factor, reflecting their moderate stands.

Keeping in mind the declining importance of the factors as each is examined from left to right, one can define each factor by its dominant loading variables. The factors, however, become more difficult to interpret as they decline in importance. Factor 2, for instance, has among its members generally acknowledged conservatives such as Reed, Frankfurter, Jackson, Burton, Vinson, and Minton and liberals such as Warren, Brennan, Fortas, and Marshall.

TABLE 4-5
INITIAL FACTOR MATRIX FOR G TOTAL COURT

G FACTOR ANALYSIS FROM CORRELATION MATRIX

07/12/77

FILE G (CREATION DATE = 07/12/77) TOTAL COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5	FACTOR 6	FACTOR 7
HBLACK	0.55147	-0.43040	0.33917	-0.17931	0.21414	0.20452	0.36375
JTREED	-0.32807	0.50226	0.02165	-0.37899	0.34495	-0.11660	-0.10731
FRANKF	-0.36353	0.37436	-0.00577	0.59012	-0.11113	0.24431	0.37170
DDUGLA	1.02113	0.09990	-0.08594	0.19931	0.27271	0.18382	-0.31527
MURPHY	0.45803	-0.57873	0.09510	0.09726	0.52951	-0.14641	0.19234
JACKSO	-0.38900	0.56900	0.04761	-0.15413	-0.29939	0.10580	0.32098
RUTLED	0.45193	-0.52442	0.07452	0.10433	0.61286	-0.13501	0.06767
BURTON	-0.45577	0.66357	-0.02535	0.02646	0.18451	0.14638	-0.29647
VINSON	-0.32064	0.60193	0.07606	-0.32644	0.42908	-0.03955	0.07685
TCLARK	-0.18453	0.54749	0.29493	-0.08440	0.59587	0.02676	0.20952
MINTON	-0.23617	0.43126	0.09092	-0.37068	0.47463	-0.22064	0.06452
WARREN	0.57398	0.35238	0.65901	-0.23278	-0.18163	-0.06560	0.02140
HARLAN	-0.47075	0.04043	0.00286	0.74773	0.11984	-0.19597	0.22424
BRENN	0.72780	0.49785	0.37152	0.07559	-0.17550	0.07151	0.15164
WHITTK	-0.14586	0.24825	-0.09509	0.71798	0.39040	0.30707	-0.46295
STEWAR	-0.03849	0.16078	0.45304	0.58257	0.06922	0.00235	0.23243
BWHITE	-0.05284	-0.00121	0.81324	0.08351	0.00988	0.08413	-0.10981
GOLDBG	0.41021	0.15133	0.48444	-0.16984	-0.04566	0.72653	-0.03177
FORTAS	0.44635	0.14304	0.43879	0.12364	-0.19720	-0.46521	-0.31904
MARSHL	0.66147	0.55625	0.12888	0.26305	-0.18340	-0.46909	0.01334
BURGER	-0.57136	-0.38544	0.59924	0.07549	-0.01452	-0.11080	-0.05100
BLACKM	-0.48714	-0.32005	0.60046	0.10850	-0.02450	-0.11745	-0.06095
POWELL	-0.42767	-0.30579	0.61120	0.00874	-0.04018	-0.03032	-0.16814
LEHNT	-0.60237	-0.43663	0.41232	-0.23325	-0.03505	0.07428	-0.17465

Rotated Factor Matrix

The problem with the initial factor matrix is that it reflects clusters of variables in space relative to each other and with little attention to the location of any axes. By rotating the axes to their algebraic "best fit" of the clusters, the factor interpretations begin to make better sense.

Table 4-6 is the rotated factor matrix for the G Total Court. The factors become more representative of the various factions that have existed on the court. The first factor in the rotated factor matrix appears to include middle and modern liberals Douglas, Warren, Brennan, Fortas, and Marshall. Loading negatively are conservatives Rehnquist and Burger. Loading moderately are Stewart, White, and Goldberg.

Factor 2 is clearly dominated by modern conservatives Burger, Blackmun, Powell, Rehnquist, and White. Loading negatively are modern liberals Douglas, Brennan, and Marshall.

Factor 3 includes early conservatives Reed, Burton, Vinson, Clark, Minton, and Jackson. Black and Douglas load negatively.

Factor 4 includes early liberals Black, Douglas, Murphy, and Rutledge. Early conservatives Reed, Frankfurter, Jackson, Burton, and Vinson load negatively.

Factor 5 includes an interesting conservative group which collectively spans the entire 29 terms--Frankfurter, Jackson, Clark, Harlan, Whittaker, and Stewart. Most crossed roads with the others during the early or middle Warren courts.

TABLE 4-6
 TERMINAL FACTOR MATRIX FOR G TOTAL COURT

G FACTOR ANALYSIS FROM CORRELATION MATRIX

07/12/77

FILE G (CREATION DATE = 07/12/77) TOTAL COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5	FACTOR 6	FACTOR 7
HBLACK	0.04803	0.02353	-0.14555	0.66895	-0.04652	0.50750	-0.35287
JTRCED	-0.01467	0.01892	0.75096	-0.21880	-0.15980	-0.08158	0.05928
FRANKF	-0.12007	-0.04849	0.02896	-0.37941	0.91253	0.04707	0.08231
DOUGLA	0.48230	-0.61315	-0.19005	0.53408	-0.16864	0.38190	0.45067
MURPHY	-0.02155	-0.01215	-0.11303	0.73826	0.01663	-0.00663	-0.07878
JACKSO	-0.01285	-0.02525	0.32447	-0.66241	0.24297	0.11182	-0.29830
RUTLED	-0.00828	-0.01706	-0.04307	0.94211	-0.02800	-0.01365	0.05760
BURTON	-0.03765	0.00479	0.57122	-0.50754	0.10501	-0.00594	0.44314
VINSON	-0.02450	-0.02920	0.85481	-0.18917	0.02251	0.02494	-0.00381
TCLARK	0.07427	0.03711	0.82925	0.06111	0.29326	0.17285	0.04012
MINTON	0.02865	0.01842	0.80141	-0.00416	-0.07894	-0.10110	-0.07523
WARREN	0.80241	0.06056	0.11351	0.02759	-0.12639	0.49759	-0.23417
HARLAN	-0.10790	0.19370	-0.00228	-0.03447	0.78529	-0.42924	0.18468
BRENNA	0.76006	-0.32792	-0.00039	0.01400	0.15294	0.51062	-0.11248
WITTK	-0.07216	-0.05724	0.07567	-0.00288	0.41589	-0.00344	0.93876
STEWAR	0.23324	0.23485	0.01364	0.07770	0.68455	0.10705	0.09545
BWHITE	0.35116	0.63381	0.09175	0.05777	0.13771	0.36122	0.07462
GOLDBS	0.16786	0.02547	-0.01904	0.00402	-0.06580	0.37255	0.08044
FJRTAS	0.92390	0.06586	-0.00333	-0.01412	-0.08680	-0.06519	0.10364
MARSHL	0.93517	-0.41907	-0.00357	0.00076	0.16281	-0.09512	-0.02970
BURGER	-0.10555	0.89627	-0.00706	0.02018	0.13153	-0.09431	-0.04352
BLACKM	-0.01690	0.93789	-0.01214	0.02145	0.14916	-0.06743	-0.02082
POWELL	-0.00557	0.82347	-0.01203	-0.00446	0.01324	0.03697	0.03166
RENNOT	-0.32933	0.81472	0.01377	-0.07392	-0.18858	0.01325	-0.03757

Beginning with Factor 5, little attention should be paid to loading justices except those that load very high. The amount of variance represented by Factor 5-7 is very little.

Factor 6, for instance, is a single dimension and is defined by Goldberg, who loads at .97. Others who load positively on the factor, although not nearly so much, are other Warren Court liberals Black, Douglas, Warren, Brennan, and White. The factor probably represents political liberalism and economic moderation. Goldberg, former labor secretary, could be counted on to join the Warren libertarian group in political cases, but his "unique" neutrality in economic cases is well documented.⁴⁰⁶

The final factor (representing just 6 percent of the variance) is defined by Whittaker, who loads at .93. The rest of the justices who load on Factor 7 all load significantly higher on other factors, which better explains their relationships.

Graphs

There are seven dimensions of the G Total Court worth noting. They can be represented by seven "best-fitting" vectors through space or by their relationships with rotated orthogonal axes. Two dimensions are the easiest to comprehend at one time. Since the first two factors normally account for most of the variance in a given sample, the relative positions of the justices on these factors can show most of the relationships.

406 Schubert, Judicial Mind Revisited, pp. 12-13.

Figure 4-1 represents the plottings along rotated axes of Factor 1 (modern liberalism) and Factor 2 (modern conservatism) for the G Total Court. The large cluster around the intersection of the axes is the result of several variables failing to load on either axis for usually one of two reasons: (1) they did not interact with either of the dimensions, or (2) they have neutral or moderate attitudes toward the ideologies the axes represent. The first group consists of Burton, Minton, Reed, Frankfurter, Rutledge, Vinson, Murphy, and Whittaker, who never served on the court with the modern conservatives and as a result had no voting interaction with them except their common relationships with the long-term justices--Black and Douglas. But this interaction evidently was so indirect that it had little significance on the first two factors.

Clark and Black, on the other hand, had much interaction with most of the justices who do load on the factors. As will be discussed below, Black and Clark were independent in their views (although in different ways) toward the primary ideologies the axes represent.

Factor 2 is highly loaded by the Nixon appointees--Burger, Blackmun, Powell, and Rehnquist. Factor 1 is highly loaded by liberals Brennan, Marshall, Warren, and Fortas. Wavering between the two scales in the positive quadrant are Stewart, who was appointed by Eisenhower, and White, who was appointed by Kennedy. Stewart loads low on both factors but slightly more on the liberal factor than on the conservative factor. His "swing" vote status on the court in recent years is testimony to this unique placement on the graph. White's position, however, is not the result so much of moderation as it is of

long-term shifting of ideologies. If the sample had been taken a few years earlier, his plotting would have been further to the right. His leftward movement toward the conservatism axis is indicative of his "rightward" ideological thinking.

In the lower right quadrant are Brennan, Marshall, and Douglas, who load high on the liberalism factor but negatively on the conservatism factor. Douglas ranks lowest of the five liberals not so much because he necessarily ranks fifth among liberals but because he reacts the strongest to the conservative thought of the Nixon appointees. He may be better described as anti-conservative than pro-liberal, if there is such a difference.

Two other justices remain to be discussed: Goldberg and Harlan. Harlan is as much conservative as he is anti-liberal. The fact that there are no justices who load highly negatively on Factor 2 may say something about the intensity of the justices' beliefs in the respective ideologies. Goldberg, discussed above, loads low on the liberalism axis not because he is any less the liberal than Stewart or White, but because he is an economic moderate. It is beneficial to keep in mind that the G sample includes political as well as economic cases. In comparing the C Total Court factor matrixes with the G Total Court factor matrixes, Goldberg, as well as other justices, can be observed shifting positions.

Figure 4-2 is a plotting of the early conservatives (Factor 3) and early liberals (Factor 4). The modern conservatives and liberals cluster around the intersection of the axes. The phenomena of the

Total Court rotated factors representing separate court periods is repaired by isolating the five historical courts. Each will be discussed in turn in Chapter 6.

Rankings

Justices were ranked for purposes of sample comparisons in two basic ways: (1) strictly on the bases of percentages of liberal and favorable voting,⁴⁰⁷ and (2) strength of correlation with the first factor of each of the 18 initial and terminal solutions.

Table 4-7 contains the rankings of the justices in the G Total Court sample. The left column is based on the percentage of votes cast by each justice for liberalism. The middle column is based on each justice's loading on terminal Factor 1. The right column is based on each justice's loading on initial Factor 1.

The square of the loading for each of the justices in the middle and right columns represents the proportion of the justice's variance accounted for by Factor 1. Thus the figures stand not only for the correlation with liberalism but also for the square root of the extent to which the variable accounts for the justice's variance from Factor 1's best linear fit.

Since the rotation of the axes tends to minimize the distances from the axes, many of the justices cluster at the intersection and are virtually indistinguishable. This is the case in ranks 9 to 23 in the middle column. The unrotated axes, on the other hand, maximize the

407 Apps. A and C.

TABLE 4-7

G TOTAL COURT RANKING OF LIBERALISM

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Murphy(95)	Marshall(94)	Douglas(1.0)
2.	Rutledge(90)	Fortas(92)	Brennan(73)
3.	Douglas(89)	Warren(80)	Marshall(66)
4.	Marshall(81)	Brennan(76)	Warren(57)
5.	Goldberg(81)	Douglas(48)	Black(55)
6.	Warren(80)	White(35)	Murphy(46)
7.	Fortas(79)	Stewart(28)	Rutledge(45)
8.	Brennan(79)	Goldberg(16)	Fortas(45)
9.	Black(78)	Clark(07)*	Goldberg(41)
10.	White(50)	Black(05)*	Stewart(-04)*
11.	Clark(43)	Minton(03)*	White(-05)*
12.	Stewart(43)	Powell(-01)*	Whittaker(-15)
13.	Frankfurter(34)	Rutledge(-01)*	Clark(-18)
14.	Minton(34)	Jackson(-01)*	Minton(-24)
15.	Vinson(30)	Blackmun(-02)*	Vinson(-32)
16.	Reed(29)	Murphy(-02)*	Reed(-33)
17.	Jackson(26)	Reed(-02)*	Frankfurter(-36)
18.	Burton(25)	Vinson(-03)*	Jackson(-39)
19.	Powell(25)	Burton(-04)*	Powell(-43)
20.	Harlan(23)	Whittaker(-07)*	Burton(-46)
21.	Whittaker(22)	Burger(-11)*	Harlan(-47)
22.	Blackmun(22)	Harlan(-11)*	Blackmun(-49)
23.	Burger(13)	Frankfurter(-12)*	Burger(-57)
24.	Rehnquist(04)	Rehnquist(-33)	Rehnquist(-60)

*Justices whose ranks could easily be interchanged among them. Their loadings are of such a noncommittal nature that they are indistinguishable.

**All loadings are two-place decimals except Douglas's in the right column.

distances and seemingly allow for more clear cut placements. The unrotated first factors proved to be more bipolar than would normally be the case in factor analysis.

For the G Total Court sample, the unrotated Factor 1 accounts for more of the variance (23 percent) than the rotated Factor 1 (15 percent). In the three total court samples and in some of the detailed court era samples, the unrotated Factor 1 appeared to be a superior measurement upon which to base rankings. An added advantage of the unrotated Factor 1 rankings is that they seem to consider all justices in relation with all other justices, whether or not they ever served on the same court. Conversely, rotation tends to "sort" justices by courts. Factor 1 is a composite dimension.

The three rankings in Table 4-7 vary because each measures different scales. The percentage column is strictly limited to the proportion of liberal voting by each justice, regardless of length of service on the court. Murphy voted liberally 95 percent of the time. Rehnquist voted conservatively 96 percent of the time.

The rotated loadings represent Factor 1 (modern liberalism). Only those justices involved in the modern court have loadings that can be regarded with confidence. In modern times, Marshall could be regarded as the most liberal justice and Rehnquist the most conservative justice.

The unrotated loadings, on the other hand, are the result of an attempt to map a vector through all of the clusters of justices. Thus, there is a ranking from Douglas, who is perfectly correlated, to

Rehnquist, who rests close to the other end of the axis. Douglas, over the entire period of the courts under study, is the most liberal justice. His voting behavior probably wielded the most liberal influence on the court between 1946 and 1974.

Other liberals, in close order, are Brennan, Marshall, Warren, Black, Murphy, Rutledge, Fortas, and Goldberg. In the moderate range are Stewart, White, Whittaker, and Clark. Rehnquist, considering all of the conservatives, is the most extreme. He is followed in order by Burger, Blackmun, Harlan, Powell, Jackson, Frankfurter, Reed, Vinson, and Minton.

Conclusion

In several instances, the unrotated factor matrix consisted of few and easily defined factors. In the cases where there were two factors--one defining liberalism and the other conservatism--the reverse rankings of one was the rankings of the other. In about half of the matrixes, conservatism was the first factor because it dominated that particular era's Supreme Court attitude. Therefore, rankings were reversed to reflect a scale of liberalism.

In three-factor matrixes, the normal definitions were liberalism, conservatism, and neutralism (or sometimes moderation). In these cases, it seemed appropriate to build composite rankings based on all three factors since it would not be reasonable to rank low a justice who loaded high on the neutralism factor and negatively on both the liberalism and conservatism factors. This maneuver would alter rankings several places in some courts. But since this study is

ranking justices on a scale of liberalism, an "anti-liberal" neutral could very easily rank lower than a conservative. When this situation occurs, it will be noted.

Another limitation causing some ranking ambiguity occurred when the fourfold tables failed to achieve significance because of insufficient sample sizes. This raised havoc with the Vinson Court and Early Warren Court P samples.⁴⁰⁸

Appendix D is a compilation of the tables and figures computed for each of the 18 samples.

408 Despite the fact that many of the fourfold tables were statistically insignificant because of poor sample sizes, their G indexes were entered in the fourfold tables and G index matrixes. They were not, however, input into the computer. The insignificant pairs in these cases were assigned zero (0.00) indexes.

relatively few opinions. Veteran justices tend to be more conservative, more dogmatic, and more prolific.⁴¹¹

G Factor Analyses

G Vinson Court

Eleven justices addressed 451 nonunanimous G-cases during the first court era. The era began with the start of the 1946 term, following Burton's appointment, and ended with the death of Chief Justice Vinson and the appointment of Chief Justice Warren in 1953. Murphy and Rutledge retired and were replaced with Clark and Minton in 1949. The court decided a high of 74 cases in 1946 and a low of 51 cases in 1949. It was a divided court. About 32 percent of the cases were decided by one vote or tie votes. The cases were almost evenly divided between civil liberties (224 cases) and economic (227 cases) issues. It was a conservative era. Of the 451 cases, 272 were decided conservatively and 179 were decided liberally.

Pairs of justices with high and positive G indexes were Black and Douglas (.678), Black and Rutledge (.605), Reed and Burton (.500), Reed and Vinson (.610), Reed and Clark (.527), Reed and Minton (.508), Frankfurter and Jackson (.492), Douglas and Murphy (.510), Douglas and Rutledge (.631), Murphy and Rutledge (.795), Burton and Vinson (.520), Burton and Clark (.630), Burton and Minton (.528), Vinson and Clark (.762), Vinson and Minton (.572), and Clark and Minton (.548).

411 Ryan, Policy Through Law, pp. 21-25.

Pairs with high and negative G indexes included Black and Jackson (- .379), Black and Burton (- .314), Reed and Murphy (- .298), Frankfurter and Murphy (- .359), Frankfurter and Rutledge (- .296), Douglas and Minton (- .343), Murphy and Vinson (- .376), and Rutledge and Burton (- .503).

Four factors accounted for 87.5 percent of the variance.

Loading highly and positively on initial Factor 1 were Reed, Burton, Vinson, Clark, and Minton. Black, Douglas, and Rutledge loaded negatively.

The same justices loaded with the same signs on terminal Factor 1. Black, Douglas, Murphy, and Rutledge loaded highly and positively on Factor 2. Factor 3 was defined by Frankfurter and Jackson. Factor 4 cannot be interpreted.

Figure 5-1 reveals the relationships between Factor 1 (conservatism) justices and Factor 2 (liberalism) justices. Reed, Burton, Vinson, Clark, and Minton are clustered around the positive pole of the Factor 1 axis. Black, Douglas, Murphy, and Rutledge are plotted just as extremely, although less cohesively, near the positive pole of the Factor 2 axis. Jackson is plotted along the Factor 1 pole, although at a meaningful distance from the other conservatives. Frankfurter's position reveals his extreme reaction to the philosophies of the liberals and some differences with the conservatives.

The factor analysis rankings in Table 5-1 are misleading with regard to Murphy, who was unquestionably the most liberal of all the Vinson Court justices. The preponderant proportion of his variance is

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) VINSON COURT

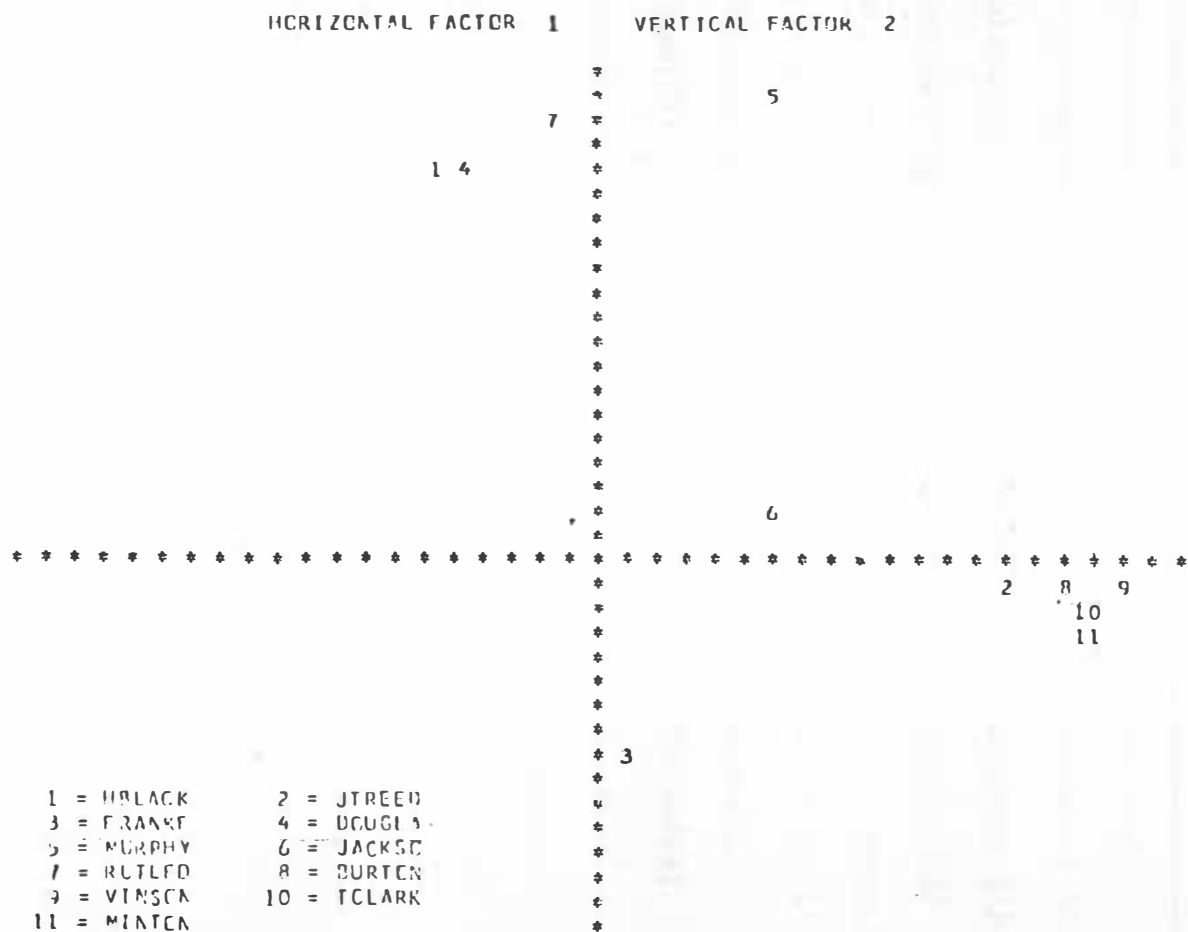


Figure 5-1. G Vinson Court first and second dimensions.

TABLE 5-1

G VINSON COURT RANKING OF LIBERALISM*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Murphy(95)	Black(-26)	Black(-59)
2.	Rutledge(90)	Douglas(-24)	Rutledge(-55)
3.	Black(87)	Rutledge(-06)	Douglas(-37)
4.	Douglas(79)	Frankfurter(05)	Murphy(-09)
5.	Frankfurter(38)	Murphy(26)	Frankfurter(38)
6.	Clark(35)	Jackson(30)	Jackson(57)
7.	Minton(34)	Reed(69)	Reed(63)
8.	Reed(30)	Burton(79)	Minton(68)
9.	Vinson(30)	Minton(81)	Clark(78)
10.	Jackson(26)	Clark(84)	Vinson(78)
11.	Burton(25)	Vinson(86)	Burton(79)

*The left column is a scale of liberalism. The two right columns are scales of anti-conservatism because in both cases, the first factors were conservatism factors.

**All loadings are two-place decimals.

accounted for by his loading on Factor 2, not Factor 1, which is measuring the rankings. Except for Murphy, both solutions seem to accurately depict the justices along the ideological scale of liberalism (or anti-conservatism) on the G Vinson Court.

G Early Warren Court

Twelve justices addressed 329 nonunanimous cases during the second court era. The era began with the start of the 1953 term and ended with the retirement of Burton and the appointment of Stewart in 1958. Jackson died in 1954 and was replaced with Harlan in 1955. Minton retired and was replaced with Brennan in 1956. Reed also retired and was replaced with Whittaker in 1957.

The Early Warren Court decided a high of 94 cases in 1957 and a low of 36 cases in 1954. About 23 percent of the cases were decided by one vote or tie votes. There were 171 civil liberties cases and 158 economic cases. It was a liberal era. Of the 329 cases, 134 were decided conservatively and 195 were decided liberally.

Pairs with high positive G indexes were Black and Douglas (.825), Black and Warren (.619), Reed and Burton (.546), Reed and Minton (.542), Frankfurter and Harlan (.614), Douglas and Warren (.530), Burton and Whittaker (.527), Warren and Brennan (.618), and Harlan and Whittaker (.578).

Pairs with high negative G indexes included Black and Reed (-.442), Black and Jackson (-.435), Black and Burton (-.433), Reed and Douglas (-.480), Douglas and Jackson (-.526), Douglas and Burton (-.452), Douglas and Harlan (-.409), and Douglas and Whittaker (-.413).

Five factors accounted for 84.9 percent of the variance.

Loading highly and positively on initial Factor 1 were Reed, Frankfurter, Jackson, Burton, Clark, Minton, Harlan, and Whittaker.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) EARLY WARREN

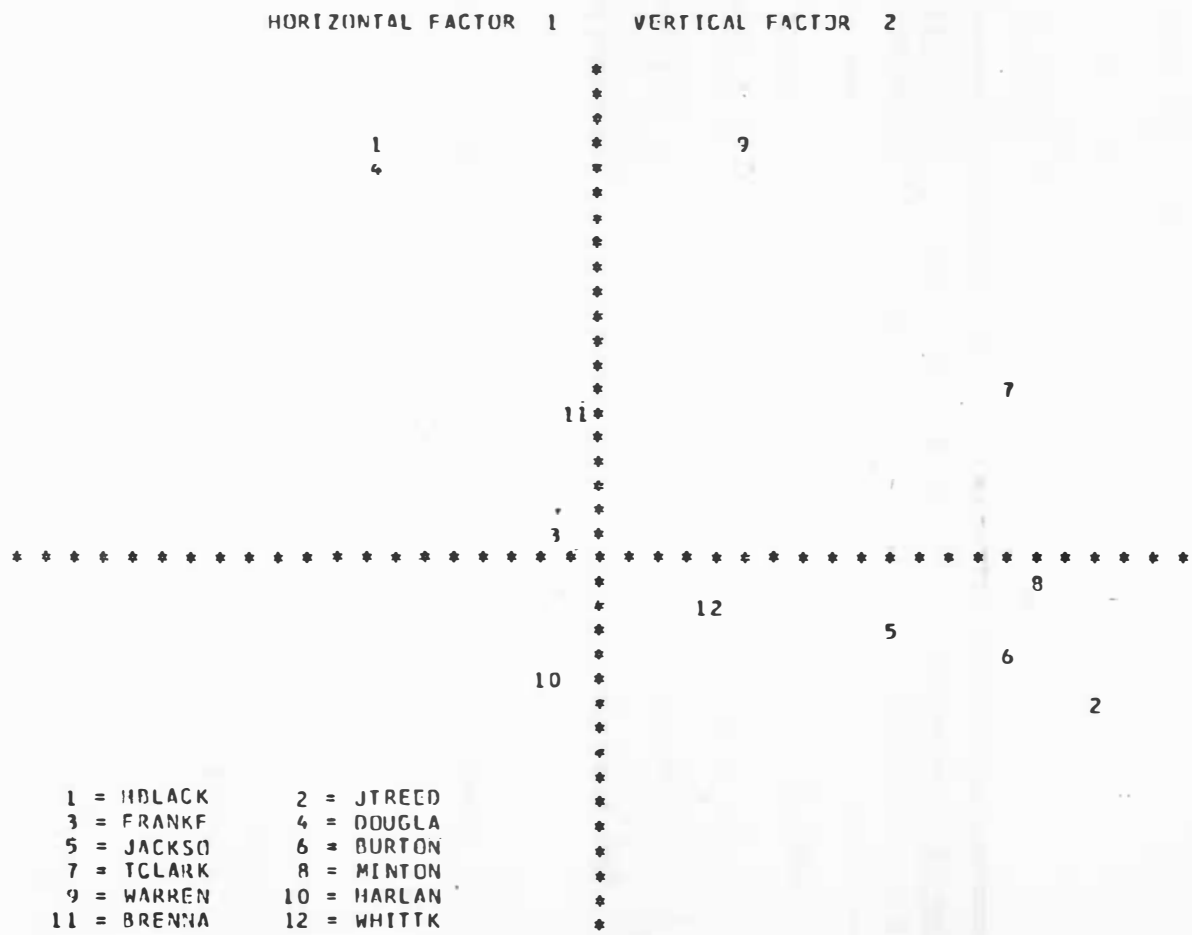


Figure 5-2. G Early Warren first and second dimensions.

Table 5-2 contains the comparative rankings. The left and right columns resemble each other. The core of the liberal dominance of the court for the next two eras begins to take form.

TABLE 5-2

G EARLY WARREN COURT RANKING OF LIBERALISM*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Douglas(94)	Douglas(-38)	Douglas(-86)
2.	Black(94)	Black(-36)	Black(-82)
3.	Warren(77)	Frankfurter(-09)	Warren(-36)
4.	Brennan(77)	Harlan(-08)	Brennan(-06)
5.	Clark(42)	Brennan(-03)	Clark(36)
6.	Frankfurter(41)	Whittaker(17)	Minton(44)
7.	Minton(34)	Warren(21)	Frankfurter(46)
8.	Harlan(32)	Jackson(47)	Harlan(54)
9.	Whittaker(31)	Clark(67)	Reed(55)
10.	Burton(37)	Burton(69)	Whittaker(56)
11.	Jackson(27)	Minton(71)	Jackson(59)
12.	Reed(26)	Reed(83)	Burton(75)

*The left column is a scale of liberalism. The two right columns are scales of anti-conservatism because in both cases, the first factors were conservatism factors.

**All loadings are two-place decimals.

G Middle Warren Court

Eleven justices addressed 564 nonunanimous cases during the third court era. The era began with the start of the 1958 term and ended with the resignation of Goldberg and the appointment of Fortas in 1965. Frankfurter retired and was replaced with White in 1962. Whittaker became ill in 1962 and was replaced with Goldberg.

The G Middle Warren Court decided a high of 112 cases in 1963 and a low of 69 cases in 1961. About 23 percent of the cases were decided by one vote or tie votes. There were 329 civil liberties cases and 235 economic cases. The era was a liberal one. Of the 564 cases, 372 were decided liberally and 192 were decided conservatively.

Pairs of justices with high and positive G indexes included Black and Douglas (.600), Black and Warren (.586), Black and Brennan (.493), Frankfurter and Harlan (.706), Frankfurter and Whittaker (.513), Frankfurter and Stewart (.427), Douglas and Warren (.669), Douglas and Brennan (.571), Douglas and Goldberg (.558), Warren and Brennan (.803), Warren and White (.449), Warren and Goldberg (.681), Harlan and Whittaker (.433), Brennan and White (.532), and Brennan and Goldberg (.712).

Pairs of justices with high and negative G indexes included Black and Frankfurter (- .535), Black and Harlan (- .541), Black and Whittaker (- .500), Frankfurter and Douglas (- .557), Douglas and Harlan (- .564), Douglas and Whittaker (- .625), Warren and Harlan (- .406), Warren and Whittaker (- .408), and Harlan and Goldberg (- .441).

Two factors accounted for 64 percent of the variance.

Black, Douglas, Warren, Brennan, White, and Goldberg loaded highly and positively on initial Factor 1. Frankfurter, Harlan, and Whittaker loaded highly and negatively.

The liberals loaded on terminal Factor 1, and all but White loaded negatively on Factor 2, which was positively loaded by Frankfurter, Harlan, Whittaker, and Stewart.

Figure 5-3 depicts the loose-knit and strong liberal Warren Court alliance at the positive extreme of the Factor 1 axis. Black and Douglas appear to be as much opposed to the conservative cluster on the Factor 2 axis as they are associated with the libertarian cluster. Warren is plotted between Black and Douglas and Goldberg and Brennan, who nearly define Factor 1. In the upper right factorial space are White, who loads highly on Factor 2 but positively on Factor 1, and Clark and Stewart. The three represent moderate or independent justices. Very cohesive in the upper left quadrant is the Frankfurter-Harlan-Whittaker cluster.

The terminal solution ranking in Table 5-3 is very nearly identical to the percentage ranking.

G Late Warren Court

Ten justices addressed 413 nonunanimous G-cases during the fourth court era. The era began with the start of the 1965 term and ended with the retirement of Warren and the appointment of Burger in 1969. Clark retired and was replaced with Marshall in 1967.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) MIDDLE WARREN

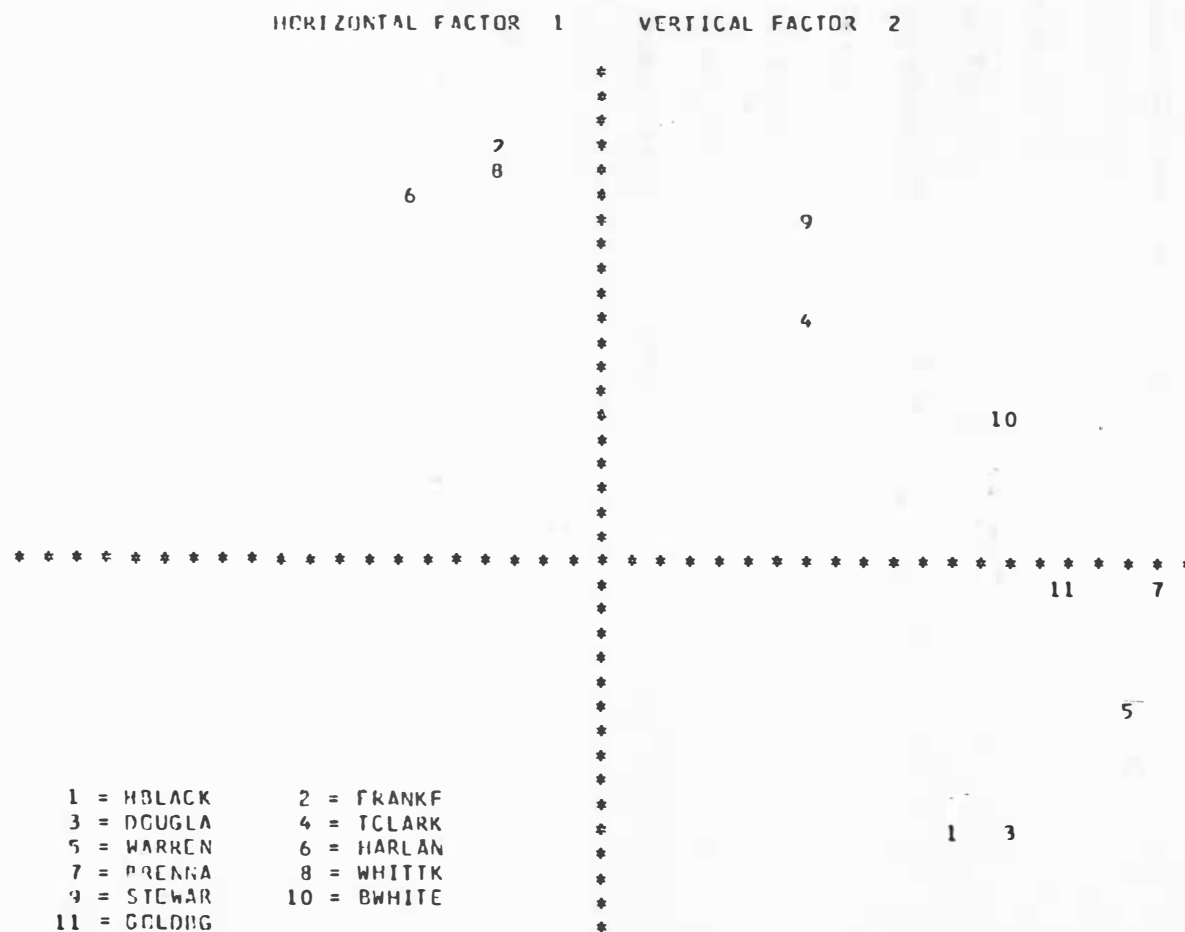


Figure 5-3. G Middle Warren first and second dimensions.

TABLE 5-3

G MIDDLE WARREN RANKING OF LIBERALISM

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS* Justice>Loading)	UNROTATED LOADINGS* Justice>Loading)
1.	Douglas(89)	Brennan(90)	Douglas(87)
2.	Black(86)	Warren(86)	Warren(86)
3.	Warren(85)	Goldberg(80)	Black(79)
4.	Goldberg(81)	White(68)	Brennan(75)
5.	Brennan(79)	Douglas(68)	Goldberg(65)
6.	White(59)	Black(58)	White(40)
7.	Clark(43)	Clark(31)	Clark(-05)
8.	Stewart(40)	Stewart(30)	Stewart(-15)
9.	Whittaker(17)	Frankfurter(-17)	Whittaker(-61)
10.	Frankfurter(17)	Whittaker(-20)	Frankfurter(-64)
11.	Harlan(17)	Harlan(-35)	Harlan(-71)

*All loadings are two-place decimals.

The G Late Warren Court decided a high of 131 cases in 1967 and a low of 77 cases in 1965. Only 14.5 percent of the cases were decided by one vote or tie votes. The sample included 278 civil liberties cases and 135 economic cases. It was a liberal era. Of the 413 cases, 302 were decided liberally and 111 were decided conservatively.

Pairs of justices with high and positive G indexes included Douglas and Warren (.477), Douglas and Brennan (.542), Douglas and

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) LATE WARREN

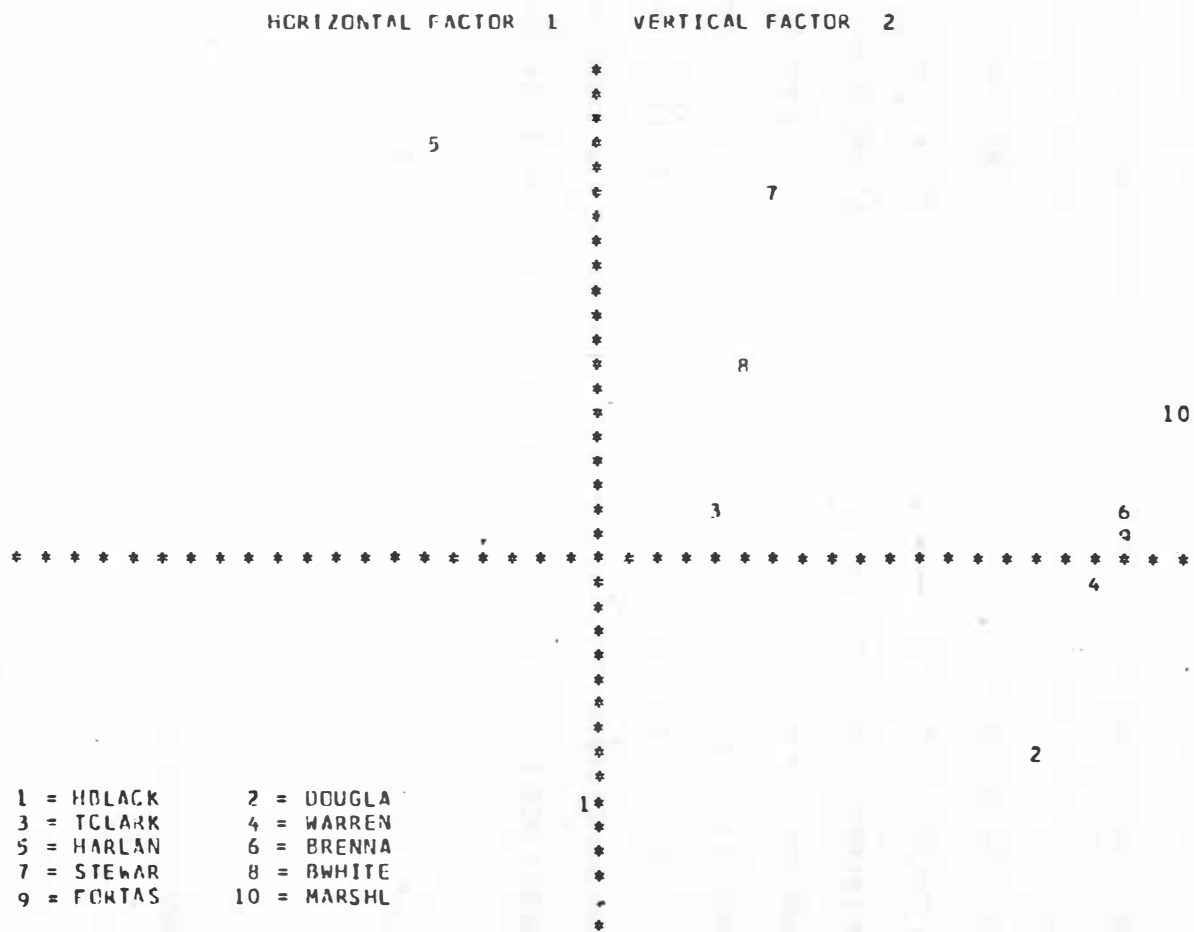


Figure 5-4. G Late Warren first and second dimensions.

unprecedented in the graphs to this point; at almost zero on the liberalism axis and of considerable distance from the conservatism axis.

The loading rankings in Table 5-4 do not do justice to Black's position unless it is kept in mind that these particular rankings deal only with liberalism. In other words, Douglas's standards of liberalism might have stayed the same as they were during the earlier courts (when Brennan agreed as often as he disagreed with the liberals) but those standards became somewhat archaic in the eyes of the new Supreme Court liberals, who now define them. If the concept of liberalism on the Supreme Court was ever altered, it was during this period when Douglas and Black seemed to drift from the Brennan-Marshall-Warren-Fortas brand of liberalism. Black, who is ranked low in the table, should not be mistaken for a conservative. The rankings are relative within the group. He is actually more anti-conservative than some of the Warren Court liberals.

G Burger Court

Eleven justices addressed 235 nonunanimous cases during the fifth court era. The era began with the start of the 1969 term and ended half way through the 1973 term, when data collection was halted. Fortas resigned in 1969 and Blackmun replaced him in 1970. Black and Harlan retired in 1971 and they were replaced with Powell and Rehnquist in 1972.

The G Burger Court decided a high of 66 cases in 1972 and, except for the 13 cases in the partial 1973 term, a low of 37 cases in

(.669), Blackmun and Powell (.614), Blackmun and Rehnquist (.494), and Powell and Rehnquist (.476).

Pairs with high and negative G indexes were Douglas and Burger (- .697), Douglas and Blackmun (- .577), Douglas and Powell (- .507), Douglas and Rehnquist (- .912), Brennan and Burger (- .439), Brennan and Rehnquist (- .651), Marshall and Burger (- .464), and Marshall and Rehnquist (- .767).

Three factors accounted for 72.7 percent of the variance.

Initial Factor 1 was loaded highly and positively by White, Burger, Blackmun, Powell, and Rehnquist. It was loaded highly and negatively by Douglas, Marshall, and Brennan.

Terminal Factor 1 was loaded highly and positively by the three liberals and negatively by the conservatives. White, Stewart, Harlan, and Black had insignificant loadings. The conservatives, joined by White, loaded positively on Factor 2. Stewart also loaded positively on this factor, but he also loaded with Harlan on Factor 3, which might represent an independent strain on conservatism due to Harlan's lack of voting interaction with half of the new conservatives and Stewart's moderation. Black loaded on none of the factors, although he loads negatively on Factor 3.

Figure 5-5 represents axes of liberalism (Factor 1) and conservatism (Factor 2). Marshall and Brennan virtually define the liberalism factor. Douglas, in his customary position in the lower right quadrant, reacts to the conservative cluster as well as the liberal cluster. Stewart and Harlan also are in their now customary

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) BURGER COURT

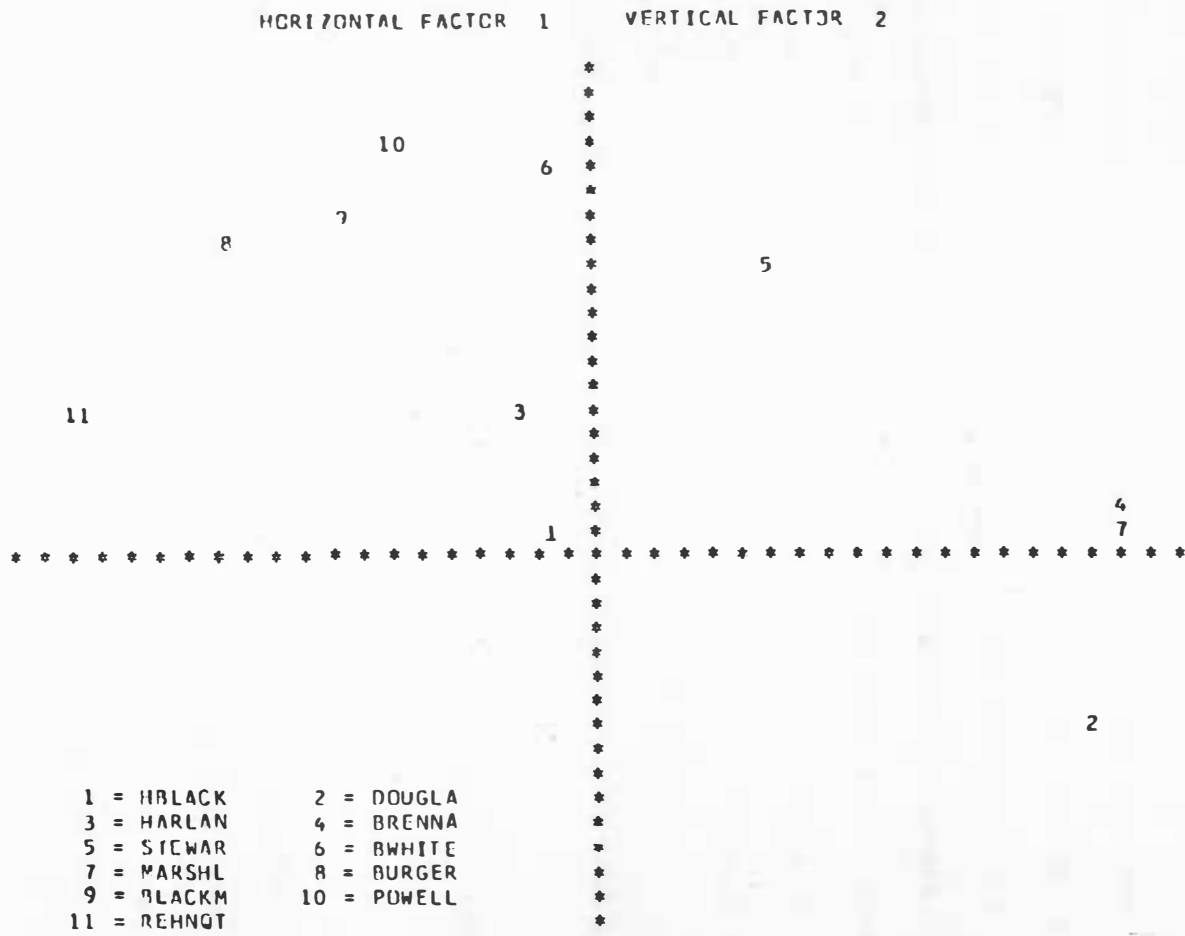


Figure 5-5. G Burger Court first and second dimensions.

positions. Stewart is plotted about equidistant from the two axes in the upper right quadrant. Harlan is equidistant from the axes in the upper left quadrant. Black continues to follow his own ideology and is located very near the intersection of the axes.

The plottings of the conservatives, at first glance, seem improper. The conservatism axis appears to be defined by White, who is closest to it. But White's voting, not the most conservative of the justices', represents the best dimension of the conservative voters. Rehnquist, at the negative extreme of the liberalism axis, is the first conservative justice to react so strongly to the liberal elements on the court. Spread out between the Rehnquist plotting and the positive pole of the conservatism axis are Burger, Blackmun, and Powell.

Figure 5-6 is the plottings of the justices along the Factor 1 axis (liberalism) and the Factor 3 axis (defined by Harlan and, to a lesser extent, Stewart). It is one of the few graphs that show a unidimensional relationship among all of the justices on a court. Clustered at the negative end of the liberalism axis are conservatives Burger, Blackmun, Powell, and Rehnquist. Clustered at the positive pole are Douglas, Brennan, and Marshall. In the middle of the upper right quadrant is Stewart. Situated along the bipolar vertical axis are Harlan, to the positive extreme, and Black, at the negative extreme. Acting as an anchor at the intersection is White.

Table 5-5 includes the liberalism rankings of the Burger Court justices. Always ranked highest are Douglas, Brennan, and Marshall. Always ranked at the other extreme are Powell, Rehnquist, Burger, and

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) BURGER COURT

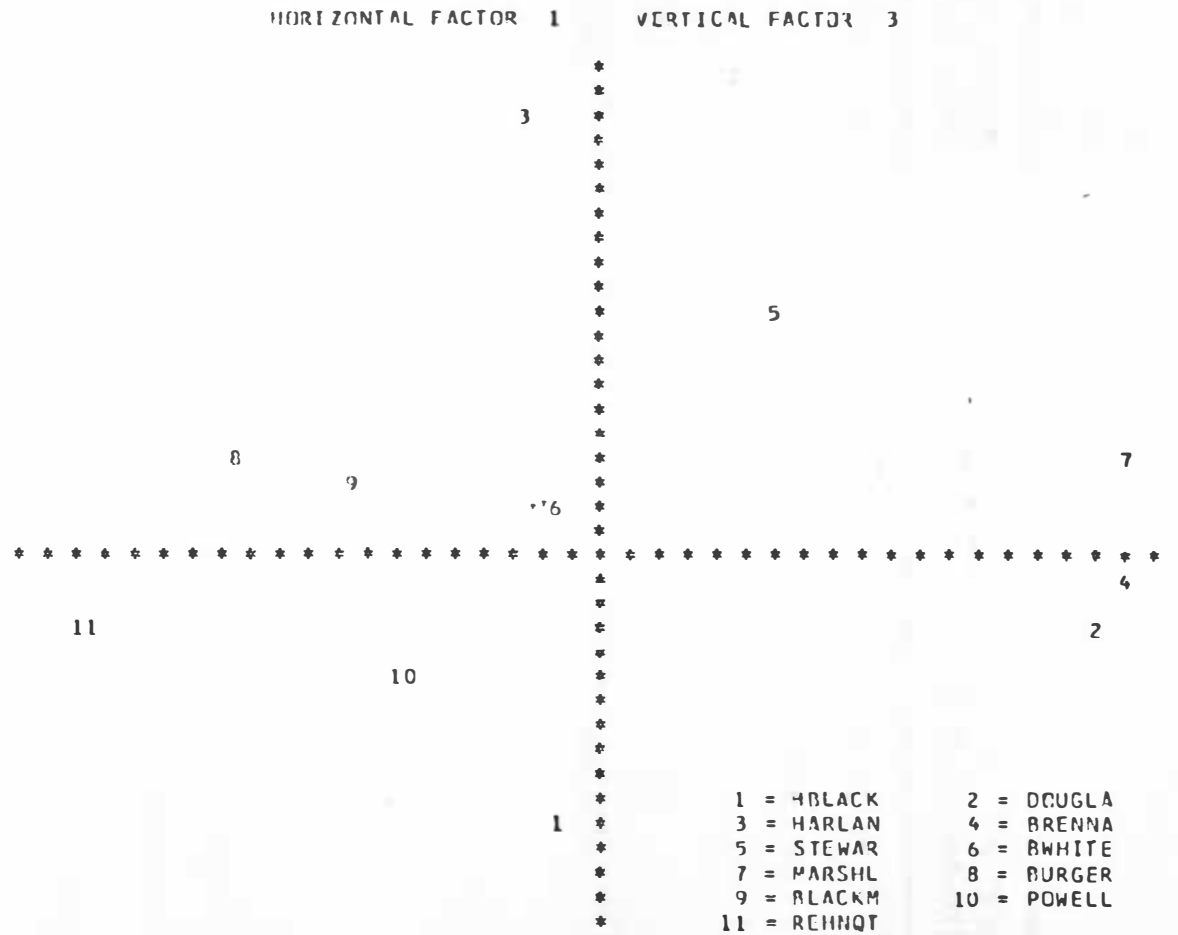


Figure 5-6. G Burger Court first and second demensions.

Blackmun. Again in the middle are independents Black and Harlan and moderates Stewart and White.

TABLE 5-5

G BURGER COURT RANKING OF LIBERALISM*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Douglas(96)	Marshall(88)	Douglas(-88)
2.	Brennan(82)	Brennan(87)	Marshall(-70)
3.	Marshall(82)	Douglas(83)	Brennan(-66)
4.	Black(48)	Stewart(26)	Black(02)
5.	Stewart(48)	Black(-05)	Stewart(17)
6.	White(34)	White(-06)	Harlan(33)
7.	Harlan(30)	Harlan(-18)	White(52)
8.	Powell(26)	Powell(-33)	Powell(72)
9.	Blackmun(22)	Blackmun(-44)	Blackmun(77)
10.	Burger(13)	Burger(-62)	Burger(87)
11.	Rehnquist(04)	Rehnquist(-88)	Rehnquist(87)

*The two left columns are scales of liberalism. The right column is a scale of anti-conservatism because the first factor in the terminal solution was a conservatism factor.

**All loadings are two-place decimals.

Observations

A number of observations can be made after a review of the G factor analysis.

1. Justices tend to vote in blocs. These blocs normally can be described as liberal, moderate, independent, or conservative.

2. The early conservatives included Burton, Vinson, Clark, Minton, Reed, and Jackson. Middle period conservatives included Whittaker, Harlan, Stewart, and early conservatives who overlapped into the middle periods. Late conservatives included Blackmun, Powell, Rehnquist, Burger, and White.

3. Early liberals included Murphy, Rutledge, Black, and Douglas. Middle liberals included Brennan, White, Warren, Black, and Douglas. Late liberals included Douglas, Warren, Marshall, Fortas, Brennan, and Goldberg.

4. Several justices changed blocs and became independent in their voting behavior. For the first half of the study, Black joined Douglas in liberal minorities and majorities. But in his later years, Black became independent in his thinking. Clark was a Vinson Court and Early Warren Court conservative, but he too became independent in his voting. White was a liberal early in his career but later adopted conservative voting tendencies. Frankfurter remains a puzzle. Harlan was always a conservative, but he became independent of the modern conservatives in his last years on the court.

5. Some pairs of justices evidently formed because of like thinking independent of the liberal-conservative dimension. Black and

Douglas often voted similarly. So did Murphy and Rutledge, Warren and Brennan, Brennan and Marshall, White and Powell, Clark and Vinson, Jackson and Frankfurter, and Burger and Blackmun.

6. Court eras tended to be dominated by single ideologies. The Vinson and Burger courts were conservative. The three Warren courts were liberal. The late Warren Court was clearly the most liberal era.

7. The court evidently has seen its role as adjudicator of civil liberties issues as growing more important than economic issues. The Vinson Court was the only court in the study that decided more economic cases than civil liberties cases. Since then the court has accepted civil liberties cases at an increasingly larger proportion of all cases. The Burger Court has the largest ratio of C-cases to E-cases.

C Factor Analyses

Introduction

To determine the attitudes of Supreme Court justices toward civil liberties issues, cases addressing constitutional freedoms can be isolated for study.

As was noted above, the Supreme Court has appeared to have gradually taken its role in these matters more seriously than cases involving economic matters. Table 5-6 represents the proportions of cases that have involved civil liberties and economic issues.

By studying the voting behavior of justices in C-cases, it may be found that justices vote differently than they do in G-cases. The

differences may be attributable to the justices' attitudes toward economic issues as well as civil liberties issues.

TABLE 5-6

PROPORTIONS OF CASES INVOLVING CIVIL LIBERTIES
AND ECONOMIC ISSUES

COURT	E-CASES No. (%)	C-CASES No. (%)	TOTAL No. (%)
Vinson Court	224(49.7)	227(50.3)	451(100)
Early Warren	171(48.0)	168(52.0)	329(100)
Middle Warren	235(41.7)	329(58.3)	564(100)
Late Warren	135(32.7)	278(67.3)	413(100)
Burger Court	36(15.3)	199(84.7)	235(100)
Totals	791(39.7)	1201(60.3)	1992(100)

C Total Court

Over the entire period of the study the Supreme Court addressed 1,201 nonunanimous civil liberties cases. About 26 percent of the cases were decided by one vote or tie votes. The court heard a high of 92 cases in 1967 and a low of 21 cases in 1949 (excepting the 12 cases in the partial 1973 term). Of the 1,201 cases, the court decided 646 liberally and 555 conservatively.

Pairs of justices with high and positive G indexes were Reed and Burton (.623), Reed and Vinson (.738), Reed and Minton (.617), Frankfurter and Harlan (.709), Douglas and Warren (.593), Douglas and

Brennan (.620), Douglas and Goldberg (.792), Douglas and Fortas (.692), Douglas and Marshall (.638), Murphy and Rutledge (.631), Burton and Vinson (.624), Burton and Clark (.554), Burton and Whittaker (.641), Vinson and Clark (.840), Vinson and Minton (.627), Warren and Brennan (.809), Warren and Goldberg (.841), Warren and Fortas (.754), Warren and Marshall (.890), Harlan and Whittaker (.572), Brennan and Goldberg (.830), Brennan and Fortas (.757), Brennan and Marshall (.842), White and Powell (.626), Fortas and Marshall (.814), Burger and Blackmun (.764), Burger and Powell (.650), Burger and Rehnquist (.702), and Blackmun and Powell (.650).

Pairs of justices with high and negative G indexes included Black and Minton (- .554), Reed and Murphy (- .677), Douglas and Minton (- .618), Douglas and Burger (- .683), Douglas and Blackmun (- .604), Douglas and Rehnquist (- .940), Murphy and Burton (- .700), Murphy and Vinson (- .723), Harlan and Goldberg (- .631), Brennan and Rehnquist (- .702), and Marshall and Rehnquist (- .836).

Seven factors accounted for 87.8 percent of the variance.

Initial Factor 1 was loaded highly and positively by Reed, Burton, Vinson, Clark, Minton, Harlan, Burger, Blackmun, Powell, and Rehnquist. It was loaded highly and negatively by Black, Douglas, Murphy, Rutledge, Warren, Brennan, Goldberg, Fortas, and Marshall.

Terminal Factor 1 was loaded highly and positively by middle and modern liberals Douglas, Warren, Brennan, Fortas, and Marshall. Rehnquist loaded highly and negatively. Factor 2 was loaded by modern conservatives White, Burger, Blackmun, Powell, and Rehnquist. Douglas

loaded highly and negatively. Factor 3 was loaded by early conservatives Reed, Burton, Vinson, Clark, and Minton. Black, Murphy, and Douglas loaded negatively. Factor 4 was loaded by middle conservatives Frankfurter, Harlan, Whittaker, and Stewart. Factor 5 was loaded by independent liberals Goldberg and Black. Factor 6 was loaded by early liberals Murphy and Rutledge. Factor 7 was defined by Jackson.

Figure 5-7 consists of axes representing modern liberalism (Factor 1) and modern conservatism (Factor 2). Powell, Blackmun, Burger, and Rehnquist are clustered at the positive pole of the conservatism factor axis. Warren, Fortas, Brennan, and Marshall are more loosely clustered at the positive extreme of the liberalism axis. Justices who never served on the modern courts are clustered about the intersection of the axes. Harlan is plotted in the upper left quadrant equidistant from ~~the~~ ^{and} moderately on both axes. Goldberg is plotted nearly half way between the intersection and the positive pole of the liberalism axis. His loading increased from that in the G Total Court matrix. Stewart is in his G swing vote position in the upper right quadrant. White is close to the conservative coalition of Nixon appointees but in the opposite quadrant.

Table 5-7 represents the three rankings of liberalism. Douglas increased his percentage of liberal voting from 89 percent in G-cases to 94 percent in C cases. This is due, at least in part, to his position on E-cases dealing with federal taxation. Douglas, a former tax law professor, often disagreed with his liberal colleagues in these

5 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) TOTAL COURT

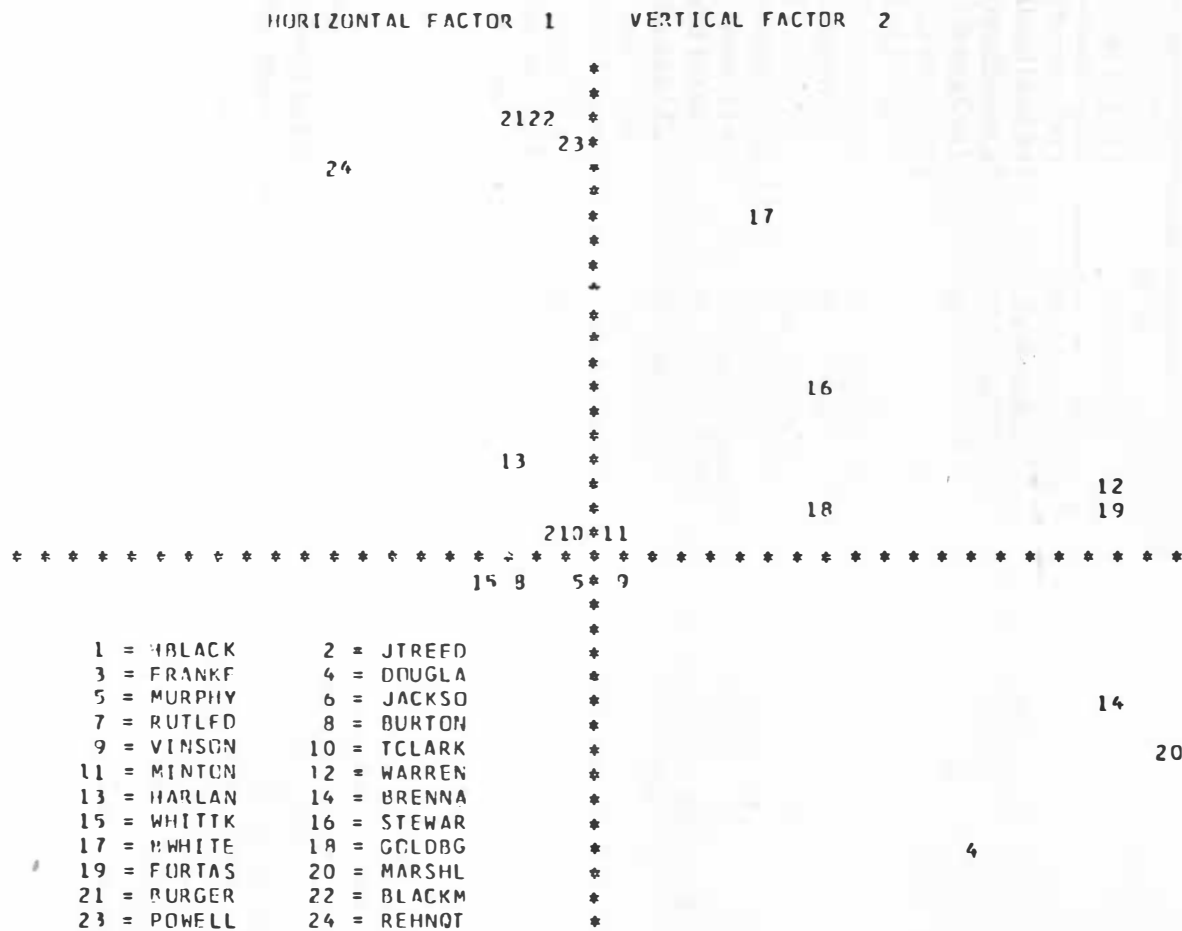


Figure 5-7. C Total Court first and second dimensions.

matters.⁴¹³ Thus, when the disagreement cases were erased from the sample, his percentage of liberal voting increased.

TABLE 5-7
C TOTAL COURT RANKING OF LIBERALISM***

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Murphy(94)	Marshall(96)	Douglas(-1.06)
2.	Douglas(94)	Brennan(88)	Brennan(-75)
3.	Goldberg(89)	Fortas(87)	Marshall(-62)
4.	Fortas(84)	Warren(86)	Warren(-59)
5.	Marshall(83)	Douglas(62)	Goldberg(-50)
6.	Rutledge(81)	Stewart(40)	Fortas(-47)
7.	Brennan(80)	Goldberg(37)	Black(-46)
8.	Warren(79)	White(26)	Murphy(-39)
9.	Black(73)	Jackson(04)*	Rutledge(-34)
10.	Frankfurter(47)	Vinson(01)*	Stewart(07)
11.	Stewart(46)	Frankfurter(01)*	White(13)
12.	White(44)	Rutledge(01)*	Frankfurter(20)
13.	Jackson(37)	Minton(00)*	Jackson(30)
14.	Powell(26)	Powell(-01)*	Whittaker(32)
15.	Whittaker(26)	Murphy(-01)*	Powell(37)
16.	Clark(25)	Black(-02)*	Minton(45)
17.	Harlan(23)	Clark(-03)*	Blackmun(46)
18.	Blackmun(21)	Reed(-06)*	Vinson(47)
19.	Burton(20)	Blackmun(-06)*	Clark(49)
20.	Vinson(17)	Burton(-11)*	Burger(52)
21.	Minton(16)	Burger(-14)*	Burton(54)
22.	Burger(14)	Harlan(-14)*	Rehnquist(56)
23.	Reed(11)	Whittaker(-15)*	Reed(56)
24.	Rehnquist(2)	Rehnquist(-43)	Harlan(58)

*Justices whose ranks could easily be interchanged among them. Their loadings are of such a noncommittal nature that they are indistinguishable.

**All loadings are two-place decimals except Douglas's in the right column.

***The two left columns are scales of liberalism. The right column is a scale of anti-conservatism because the terminal first factor was a conservative factor.

time. But on the C Total Court rankings Clark dropped to sixteenth place, voting liberally just 25 percent of the time. Schubert classified Clark as an economic liberal, the only justice so classified.⁴¹⁶

White's relative economic liberalism keeps him at some distance from the Nixon appointees in the G graphs, but he moves closer to their cluster in the C graphs.

Douglas is the venerable liberal of the C Total Court's terminal Factor 1. Brennan, Marshall, Warren, Goldberg, Fortas, Black, Murphy, and Rutledge also belong on the positive pole. Harlan, the venerable conservative, displaces Rehnquist at the conservative pole position, although the differences among them and Burger, Burton, and Reed are unimportant.

C Vinson Court

The C Vinson Court decided 224 nonunanimous civil liberties cases. It heard a high of 42 cases in 1951 and a low of 21 cases in 1949. About 35 percent of the cases were decided by one vote or tie votes. Of the 224 cases, 157 were decided conservatively and 67 were decided liberally.

Pairs of justices with high and positive G indexes included Black and Douglas (.453), Reed and Burton (.634), Reed and Vinson (.738), Reed and Clark (.681), Reed and Minton (.592), Douglas and Rutledge (.544), Murphy and Rutledge (.631), Jackson and Clark (.486), Burton and Vinson (.624), Burton and Clark (.707), Burton and Minton (.456),

416 Schubert, Judicial Mind Revisited, p. 12.

Vinson and Clark (.840), Vinson and Minton (.627), and Clark and Minton (.581).

Pairs with high and negative G indexes were Black and Reed (- .426), Black and Minton (- .539), Reed and Murphy (- .677), Reed and Rutledge (- .414), Douglas and Jackson (- .448), Douglas and Minton (- .607), Murphy and Burton (- .700), Murphy and Vinson (- .723), Jackson and Rutledge (- .516), and Rutledge and Vinson (- .460).

Four factors accounted for 85.4 percent of the variance.

Loading highly and positively on initial Factor 1 were Reed, Jackson, Burton, Vinson, Clark, and Minton. Loading negatively were Black, Douglas, Murphy, and Rutledge. Frankfurter loaded at a statistically insignificant level.

The same justices loaded with the same signs on terminal Factor 1. Factor 2 represented liberalism, although there is an aberration. Douglas, Murphy, and Rutledge loaded on Factor 2 with Minton. But Minton's attitudes can better be explained by Factor 1, on which he loads higher. Also, a reconstruction of Minton's G indexes with each of the three liberals cancels his correlation with the second factor. Factor 3 was loaded by Frankfurter, Black, and Jackson. But this factor contained only 12.7 percent of the variance and half of it was due to Frankfurter. He had some association with the other two justices, but the factor is best defined as the Frankfurter factor. Clark and Jackson, two independent conservatives, loaded on Factor 4.

Figure 5-8 represents axes of Factor 1 (conservatism) and Factor 2 (liberalism). Justices plotted at the positive pole of Factor

l were Reed, Burton, Vinson, Clark, and Minton. Frankfurter and Jackson take up positions in the lower right quadrant, which represents conservatism and reaction to liberalism. The liberals are much more diversified--spread out over the upper left quadrant. Black and Murphy approach the negative pole of the conservatism axis. Rutledge is midway between the two axes. Douglas defines the liberalism axis.

Table 5-8 includes the comparative rankings for the C Vinson Court. Differences between it and Table 5-1 (G Vinson Court) are virtually the same as noted above. Murphy, however, retains his first-place position in the right column by loading highly and negatively on Factor 1. Rutledge, Black, and Douglas also are clearly liberals. Most conservative is Vinson, followed by Reed, Burton, Clark, Minton, and Jackson. Frankfurter's loading is statistically insignificant in the C terminal matrixes as opposed to his moderate, but important, loading in the G matrixes. At any rate, he remains in the fifth position.

C Early Warren Court

The C Early Warren Court decided 170 nonunanimous C-cases. It decided a high of 55 cases during the 1957 term and a low of 23 cases in each of the 1953, 1954, and 1955 terms. About 28 percent of the cases were decided by one vote or tie votes. Of the 170 cases, 86 were decided conservatively and 84 were decided liberally.

Pairs of justices with high and positive G indexes included Black and Douglas (.825), Black and Warren (.486), Black and Brennan (.504), Reed and Burton (.594), Reed and Minton (.661), Frankfurter and

TABLE 5-8

C VINSON COURT RANKING OF LIBERALISM*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Murphy(94)	Murphy(-76)	Murphy(-73)
2.	Black(82)	Rutledge(-48)	Rutledge(-58)
3.	Rutledge(81)	Black(-44)	Black(-54)
4.	Douglas(77)	Douglas(-15)	Douglas(-42)
5.	Frankfurter(59)	Frankfurter(05)	Frankfurter(02)
6.	Jackson(36)	Jackson(39)	Jackson(56)
7.	Clark(27)	Minton(66)	Minton(56)
8.	Burton(23)	Clark(67)	Clark(74)
9.	Vinson(17)	Burton(85)	Burton(80)
10.	Minton(17)	Reed(87)	Reed(88)
11.	Reed(13)	Vinson(91)	Vinson(91)

*The left column is a scale of liberalism. The two right columns are scales of anti-conservatism because in both cases the first factors were conservatism factors.

**All loadings are two-place decimals.

Harlan (.631), Frankfurter and Brennan (.438), Brennan and Douglas (.515), Jackson and Minton (.600), Burton and Clark (.466), Burton and Minton (.402), Burton and Whittaker (.641), Warren and Brennan (.720), and Harlan and Whittaker (.533).

Pairs with high and negative loadings included Black and Reed (-.808), Black and Burton (-.508), Black and Clark (-.508), Black and Minton (-.581), Reed and Douglas (-.808), Douglas and Burton (-.602), Douglas and Clark (-.600), Douglas and Minton (-.635), and Clark and Brennan (-.449).

Four factors accounted for 81.5 percent of the variance.

Loading highly and positively on initial Factor 1 were Reed, Burton, Clark, Minton, Harlan, and Whittaker. Loading negatively were Black, Douglas, Warren, and Brennan. Nearly insignificant were loadings of Frankfurter and Jackson.

The era's early conservatives--Reed, Burton, and Clark--loaded positively on terminal Factor 1. The early liberals--Black and Douglas--loaded negatively. Later conservatives Frankfurter, Burton, Harlan, and Whittaker loaded positively on Factor 2. Later liberals Brennan and Warren defined Factor 3. Jackson alone defined Factor 4.

Figure 5-9 shows axes representing Factor 1 (conservatism) and Factor 4 (Jacksonianism). It is used here because it is a good illustration of a court era's justices plotted along a single continuum--Factor 1 axis. At the negative extreme are Black and Douglas. Near the center, but on the left, are Warren and Brennan, two justices Eisenhower thought would be more conservative than they later turned out to be but started their tenures only moderately liberal. Moving toward the positive pole, Clark, Harlan, Burton, and Minton are plotted.

Table 5-9 contains three rankings of the C Early Warren Court that are nearly identical. Douglas and Black are the extreme liberals.

Brennan and Warren follow. Frankfurter is fifth. The most conservative is Reed, followed by Burton, Minton, Clark, Harlan, Whittaker and Jackson.

TABLE 5-9
C EARLY WARREN RANKING OF LIBERALISM*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Douglas(98)	Douglas(-80)	Douglas(-95)
2.	Black(93)	Black(-80)	Black(-89)
3.	Brennan(78)	Brennan(-21)	Brennan(-53)
4.	Warren(68)	Frankfurter(-18)	Warren(-41)
5.	Frankfurter(57)	Warren(-16)	Frankfurter(-04)
6.	Jackson(40)	Whittaker(04)	Jackson(16)
7.	Harlan(40)	Jackson(09)	Whittaker(35)
8.	Whittaker(33)	Clark(29)	Harlan(35)
9.	Burton(17)	Harlan(30)	Clark(63)
10.	Clark(17)	Burton(56)	Minton(67)
11.	Minton(15)	Minton(84)	Burton(74)
12.	Reed(07)	Reed(96)	Reed(82)

*The left column is a scale of liberalism. The two right columns are scales of anti-conservatism because in both cases the first factors were conservatism factors.

**All loadings are two-place decimals.

C Middle Warren Court

The C Middle Warren Court decided 329 nonunanimous C-cases. It heard a high of 76 cases in 1963 and a low of 34 cases in 1959. About 29 percent of the cases were decided by one vote or tie votes. Of the 329 cases, 212 were decided liberally and 117 were decided conservatively.

Pairs of justices with high and positive G indexes included Black and Douglas (.655), Black and Warren (.608), Black and Brennan (.542), Black and Goldberg (.502), Frankfurter and Clark (.519), Frankfurter and Harlan (.788), Frankfurter and Whittaker (.600), Frankfurter and Stewart (.458), Douglas and Warren (.731), Douglas and Brennan (.663), Douglas and Goldberg (.792), Clark and Whittaker (.635), Warren and Brennan (.820), Warren and Goldberg (.792), Clark and Whittaker (.635), Warren and Brennan (.820), Harlan and Whittaker (.595), Brennan and Goldberg (.830), and Whittaker and Stewart (.525).

Pairs with high and negative G indexes were Black and Frankfurter (-.563), Black and Clark (-.412), Clark and Harlan (-.537), Frankfurter and Douglas (-.647), Douglas and Harlan (-.732), Douglas and Whittaker (-.583), Warren and Harlan (-.534), Harlan and Brennan (-.424), and Harlan and Goldberg (-.631).

Two factors--the only court era with so few--accounted for 70.2 percent of the variance.

Loading highly and positively on initial Factor 1 were Black, Douglas, Warren, Brennan, Goldberg, and, to a lesser extent, White.

Loading highly and negatively were Frankfurter, Clark, Harlan, Whittaker, and, to a lesser extent, Stewart.

The same justices loaded with the same signs on terminal Factor 1. Factor 2 was loaded in the same ways as Factor 1 except the signs were reversed.

Figure 5-10 depicts axes representing Factor 1 (liberalism) and Factor 2 (conservatism). Goldberg, Warren, and Brennan are clustered near the positive pole of Factor 1. Black and Douglas are plotted further into the reaches of the lower right quadrant. Showing some moderation between the two axes are Stewart and White, with conservative and liberal tendencies, respectively. Clustered near the positive pole of the conservatism axis are Frankfurter, Clark, and Whittaker. Extended out into the upper left quadrant is Harlan, whose attitudes are the antitheses of those of Douglas and Black.

Table 5-10 includes the three rankings of the C Middle Warren Court. Douglas, Warren, Black, Brennan, and Goldberg make up a strong liberal bloc. White is moderately liberal on all scales. Harlan, Frankfurter, Whittaker, and Clark constitute a conservative minority. Stewart is also moderately conservative.

C Late Warren Court

The C Late Warren Court decided 278 nonunanimous C-cases. It heard a high of 92 cases in 1967 and a low of 47 cases in 1965. Only 16 percent of the cases were decided by one vote or tie votes. Of the 278 C-cases, 202 were decided liberally and 76 were decided conservatively.

TABLE 5-10

C MIDDLE WARREN RANKING OF LIBERALISM

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS* Justice>Loading)	UNROTATED LOADINGS* Justice>Loading)
1.	Douglas(97)	Goldberg(92)	Douglas(93)
2.	Goldberg(89)	Brennan(90)	Warren(84)
3.	Warren(86)	Warren(88)	Black(78)
4.	Black(85)	Douglas(74)	Brennan(75)
5.	Brennan(82)	Black(67)	Goldberg(74)
6.	White(57)	White(57)	White(31)
7.	Stewart(43)	Stewart(30)	Stewart(-16)
8.	Clark(26)	Clark(-11)	Clark(-51)
9.	Whittaker(22)	Whittaker(-12)	Whittaker(-60)
10.	Frankfurter(15)	Frankfurter(-24)	Frankfurter(-70)
11.	Harlan(13)	Harlan(-55)	Harlan(-83)

*All loadings are two-place decimals.

Pairs of justices with high and positive G indexes were Douglas and Warren (.544), Douglas and Brennan (.617), Douglas and Fortas (.692), Douglas and Marshall (.621), Warren and Brennan (.824), Warren and Fortas (.754), Warren and Marshall (.890), Brennan and Fortas (.757), Brennan and Marshall (.906), Stewart and Marshall (.547), and Fortas and Marshall (.814). The only pair with a high and negative G index was Douglas and Harlan (-.435).

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) LATE WARREN

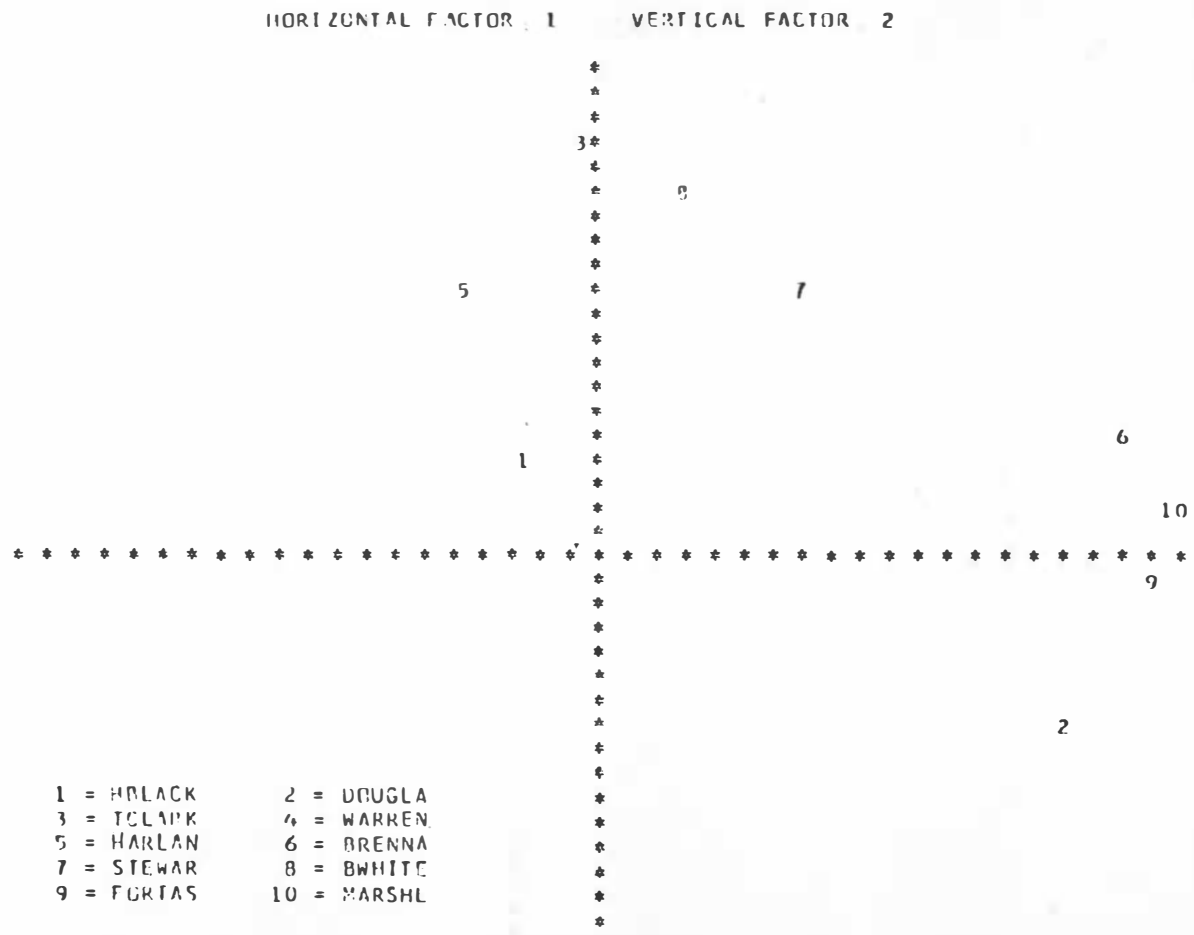


Figure 5-11. C Late Warren first and second dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) LATE WARREN

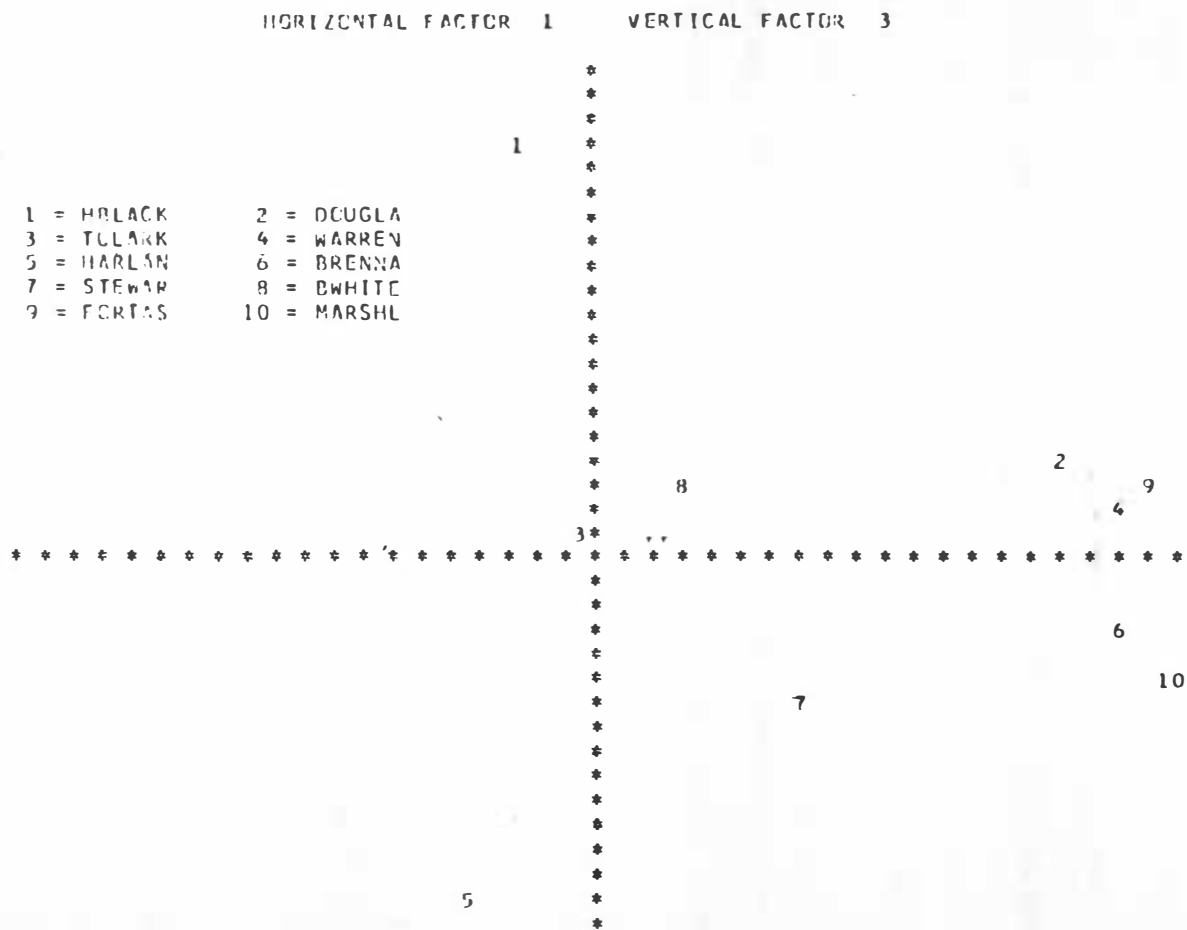


Figure 5-12. C Late Warren first and third dimensions.

the Black axis. A ninth is nearly at the intersection. Neither Black nor Harlan are very distant from the dividing point.

Table 5-11 represents the percentage and loading rankings of the Late Warren Court. Of note are the deviations among the rankings of Douglas, who, as discussed above, continued to vote more liberally than any other justice but not in the vein of the new liberals who had taken over the court. Douglas had little to do with defining the new liberalism. Again it should be pointed out that the Black rankings are representative only of his attitude toward liberalism and are not representative of any reversion to conservatism as his ninth ranking in the right column might suggest.

Marshall, Brennan, Warren, Fortas, Douglas, and, to lesser extents, Stewart and White make up the new liberal majority. Clark and Black vote independently. Harlan is the lone conservative.

C Burger Court

The C Burger Court addressed 199 nonunanimous C-cases. It decided a high of 61 cases in 1972 and a low of 28 cases (excluding the 12 cases in the partial 1973 term) in 1969. About 26 percent of the cases were decided by one vote or tie votes. Of the 199 cases, 80 were decided liberally and 199 were decided conservatively.

Pairs of justices with high and positive G indexes included Douglas and Brennan (.605), Douglas and Marshall (.650), Harlan and Stewart (.574), Harlan and White (.424), Harlan and Burger (.500). Brennan and Marshall (.798), White and Powell (.626), White and

TABLE 5-11

C LATE WARREN RANKING OF LIBERALISM

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS* Justice>Loading)	UNROTATED LOADINGS* Justice>Loading)
1.	Douglas(97)	Marshall(1.13)	Marshall(97)
2.	Marshall(82)	White(82)	Brennan(92)
3.	Warren(77)	Stewart(82)	Warren(91)
4.	Brennan(77)	Brennan(76)	Fortas(89)
5.	Fortas(75)	Warren(61)	Douglas(72)
6.	Black(50)	Fortas(59)	Stewart(42)
7.	Stewart(50)	Douglas(57)	White(26)
8.	White(45)	Black(47)	Clark(12)
9.	Clark(35)	Clark(07)	Black(-11)
10.	Harlan(26)	Harlan(-34)	Harlan(-14)

*All loadings are two-place decimals except Marshall's in the middle column.

Rehnquist (.419), Burger and Blackmun (.764), Burger and Powell (.650), Burger and Rehnquist (.702), Blackmun and Powell (.650), Blackmun and Rehnquist (.544), and Powell and Rehnquist (.500). Pairs with high and negative G indexes were Douglas and Burger (-.683), Douglas and Blackmun (-.604), Douglas and Powell (-.494), Douglas and Rehnquist (-.940), Brennan and Burger (-.427), Brennan and Rehnquist (-.940), Brennan and Burger (-.427), Brennan and Rehnquist (-.702), Marshall and Burger (-.500), and Marshall and Rehnquist (-.836).

Four factors accounted for 84.3 percent of the variance.

Initial Factor 1 was loaded highly and positively by White, Burger, Blackmun, Powell, Rehnquist, and, to a lesser extent, Harlan. It was loaded highly and negatively by Douglas, Brennan, and Marshall. Black and Stewart loaded negatively.

Terminal Factor 1 was loaded highly and positively by liberals Douglas, Brennan, and Marshall. It was loaded highly and negatively by Burger, Blackmun, Powell, Rehnquist, and, to lesser extents, Harlan and White. Factor 2 included Stewart, White, Burger, Blackmun, Powell, and Rehnquist. Douglas loaded negatively. Harlan, who did not serve with Powell and Rehnquist, defined Factor 3. Stewart, who did serve with Harlan, also loaded on Factor 3. Factor 4 was defined by Black.

Figure 5-13 represents the liberalism and conservatism factors as axes. Douglas, Brennan, and Marshall cluster around the positive pole of the liberalism axis. Stewart, in the middle of the upper right quadrant, and Harlan, in the upper left quadrant, are in their customary positions.

Except for Black, who is nearly at the intersection of the axes, the rest of the justices are in the upper left quadrant. They are strung out from Rehnquist, who is dichotomous to Douglas and at the negative pole of the liberalism axis, through Burger, Blackmun, and Powell to White, who, ironically, is the most modest conservative and yet defines the conservatism axis.

Figure 5-14 is included to take advantage of Black's neutralism factor and to show a very nearly linear relationship among the rest of the justices along the horizontal (liberalism) axis.

C FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/26/77) BURGER COURT

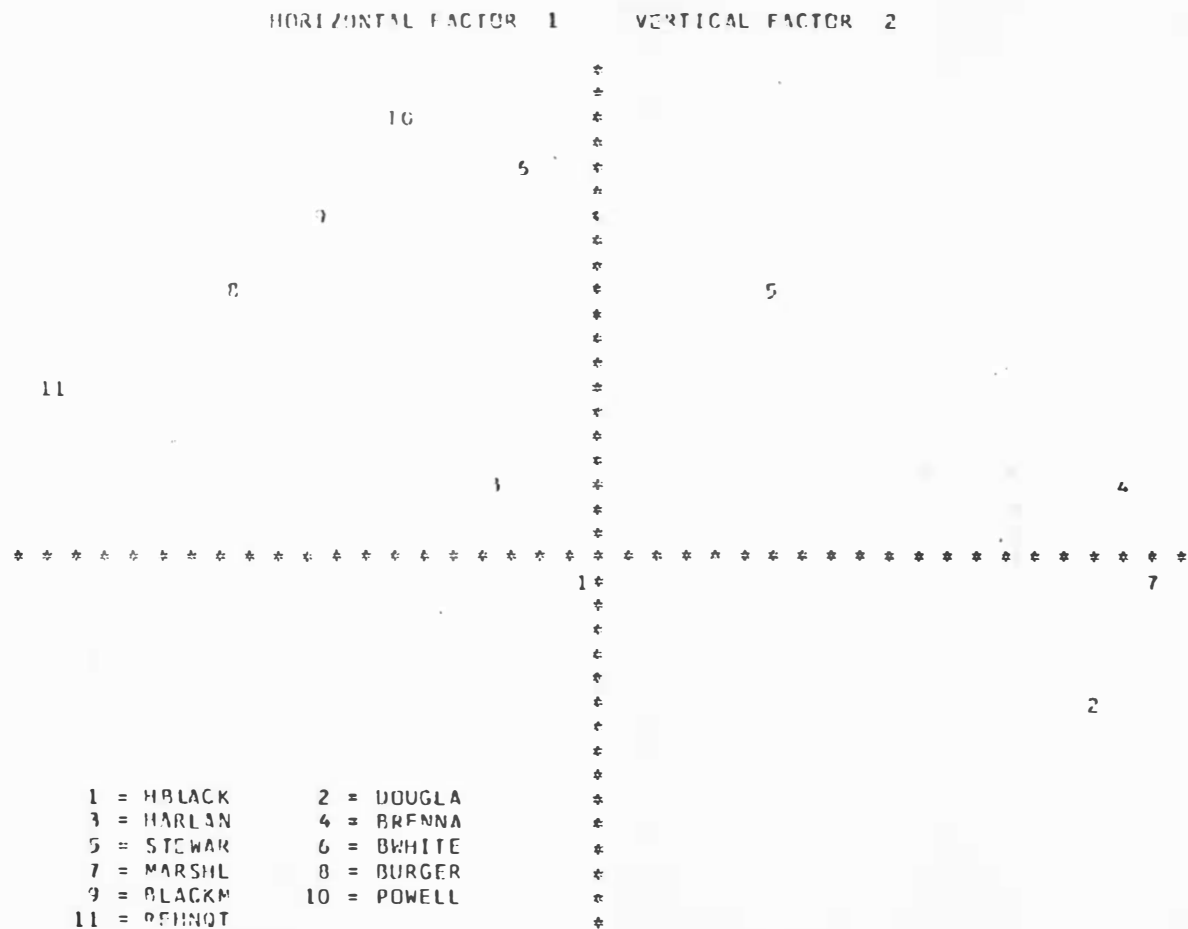


Figure 5-13. C Burger Court first and second dimensions.

5 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/26/77) BURGER COURT

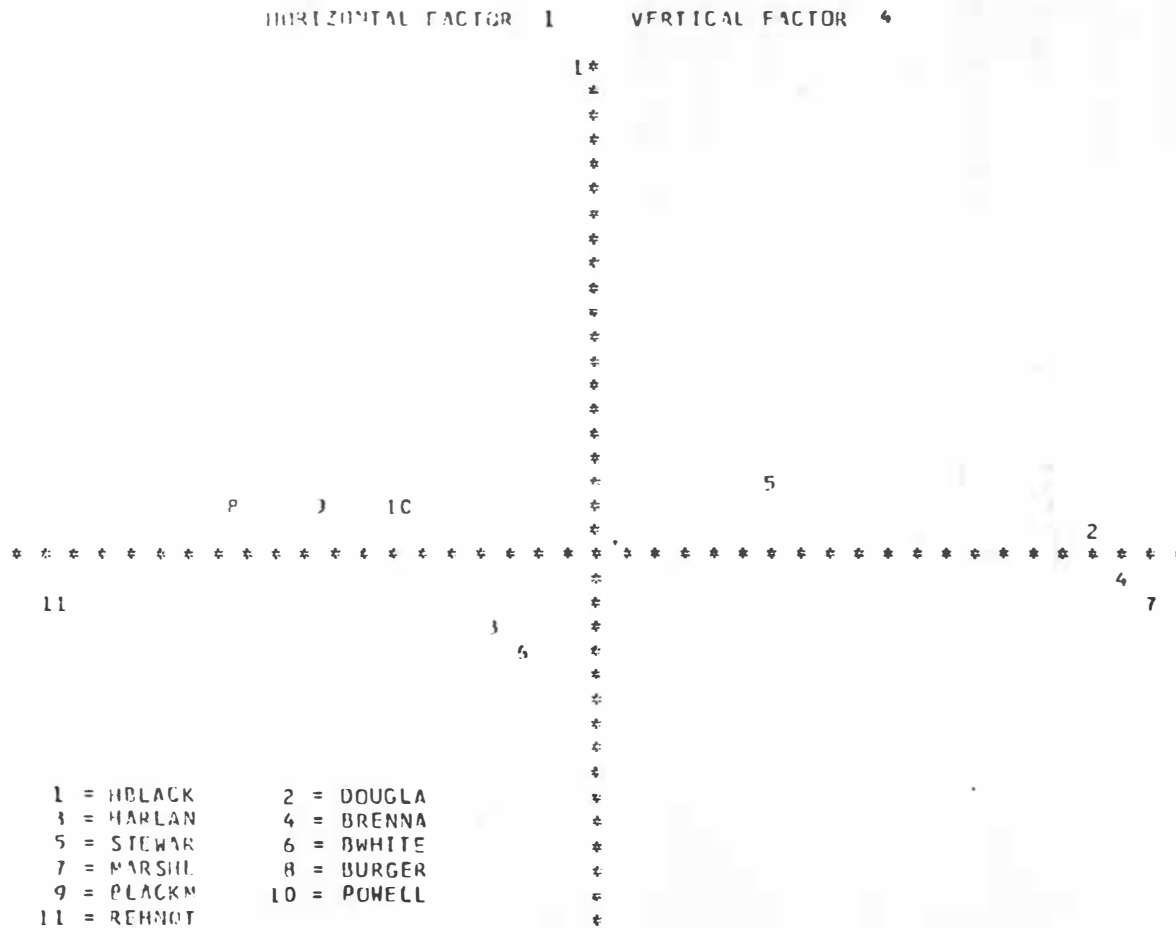


Figure 5-14. C Burger Court first and fourth dimensions.

Observations

A number of observations can be made after a review of the factor analyses of the C samples.

1. Justices tend to vote in blocs. The blocs normally can be described as liberal, moderate, independent, or conservative.
2. The views of the early conservatives are more pronounced in C issues than in G issues. Reed, Minton, Vinson, Burton, and Clark are more cohesive in voting in the C sample analysis than in the G sample analysis. The same can be said of middle conservatives Harlan, Clark, Whittaker, Jackson, Frankfurter, and Stewart and late conservatives White, Burger, Blackmun, Powell, and Rehnquist.
3. Early, middle, and modern liberals are also more cohesive in C analysis than in G analysis. Murphy, Rutledge, Douglas, and Black made up an early liberal bloc. The strong Warren Court liberals included Douglas, Brennan, Marshall, Warren, Goldberg, Fortas, and, at times, Black, Stewart, and White. Marshall, Douglas, Brennan, and, to a lesser extent, Stewart have made up a late liberal minority.
4. Many of the same justices who changed blocs or became independent from era to era in the G sample showed the same behavior in the C sample progression. Black, Clark, White, Stewart, Harlan, Frankfurter, and Jackson showed signs of developing ideologies.
5. Many of the same pairs of justices that exhibited high interagreement in the G sample analysis showed high interagreement in the C sample analysis. Among them were Black and Douglas, Black and Goldberg, Reed and Vinson, Reed and Minton, Frankfurter and Whittaker,

Frankfurter and Harlan, Douglas and Warren, Douglas and Brennan, Douglas and Goldberg, Douglas and Fortas, Douglas and Marshall, Murphy and Rutledge, Burton and Vinson, Burton and Whittaker, Vinson and Clark, Vinson and Minton, Whittaker and Clark, Warren and Brennan, Warren and Goldberg, Warren and Fortas, Warren and Marshall, Harlan and Whittaker, Brennan and Goldberg, Brennan and Fortas, Brennan and Marshall, White and Powell, Fortas and Marshall, and the Nixon appointees among themselves.

6. Except for the Early Warren Court, which decided 86 cases conservatively and 84 cases liberally, the C court eras were of the same ideological domination as the corresponding G court eras. The Early Warren Court could be described as generally liberal in economic areas but moderate in civil liberties areas. The Burger Court is not the most conservative era although it has the most conservative justices. Of the 199 C-cases, just 60 percent have been decided conservatively. During the most conservative era, the Vinson Court decided 70 percent of its cases conservatively. The Late Warren Court was the most liberal era. It decided 73 percent of its cases liberally.

P Factor Analyses

Introduction

A number of limitations impeded the analysis of the P sample. A primary limitation was the size of the sample. Although the sample appears to be representative of the court eras and kinds of freedom of the press cases, it actually is highly dependent on the activism of the

the essential question would seem to be the same. In this sense, then, the sample is representative of the population and statistically as well as semantically valid for a study of this sort.

It was noted in the introduction to the last section that in order to discover the justices' attitudes toward particular areas of law, the G sample had to be reduced to those cases relevant to the area needing examination. With the extraction of 92 P-cases, the analysis of P attitudes begins.

P Total Court

Of the 91 nonunanimous P-cases the P Total Court addressed, about 29 percent were decided by one vote or tie votes. Fair trial-free press cases totaled 11, privacy-reputation 7, community order-national interest 14, community morality (obscenity) 49, and national security 11. The court decided 40 cases unfavorably and 52 cases favorably.

Justices with high and positive G indexes included Black and Douglas (.736), Reed and Clark (.600), Frankfurter and Clark (.684), Douglas and Marshall (.585), Jackson and Clark (.600), Burton and Harlan (.714), Vinson and Clark (.600), Clark and Harlan (.568), Warren and Brennan (.537), Warren and Marshall (1.00), Harlan and Burger (.554), Harlan and Blackmun (.554), Brennan and Marshall (.866), Goldberg and Douglas (1.00), Goldberg and Black (.500), Goldberg and Brennan (.554), Stewart and Fortas (.575), Stewart and Marshall (.532), White and Fortas (.562), White and Powell (1.00), White and Rehnquist

(.856), Burger and Blackmun (1.00), Burger and Powell (1.00), Burger and Powell (.714), Burger and Rehnquist (.856), Blackmun and Powell (.714), Blackmun and Rehnquist (.856), and Powell and Rehnquist (.856).

Justices with high and negative G indexes were Black and Frankfurter (- .500), Black and Burton (- .529), Black and Clark (- .714), Black and Harlan (- .544), Black and Whittaker (- .600), Frankfurter and Douglas (- .583), Douglas and Jackson (- .600), Douglas and Vinson (- .554), Douglas and Clark (- .642), Douglas and Harlan (- .500), Douglas and Whittaker (- .600), Douglas and Burger (- .635), Douglas and Powell (- .714), Douglas and Rehnquist (- .856), Goldberg and Clark (- .500), Harlan and Goldberg (- .500), Harlan and Fortas (- .500), Brennan and Burger (- .564), Brennan and Blackmun (- .564), Brennan and Powell (- .714), Brennan and Rehnquist (- .856), Stewart and Rehnquist (- .570), Marshall and Burger (- .738), Marshall and Blackmun (- .738), Marshall and Powell (- .714), and Marshall and Rehnquist (- .856).

Nine factors accounted for over 100 percent of the variance.

Loading highly and positively on initial Factor 1 were Frankfurter, Jackson, Burton, Vinson, Clark, Harlan, Whittaker, Burger, Blackmun, Powell, and Rehnquist. Loading negatively were Black, Douglas, Murphy, Rutledge, Warren, Brennan, Stewart, Goldberg, Fortas, and Marshall. Reed, Minton, and White had insignificant loadings on the factor.

Terminal Factor 1 was loaded highly and positively by Nixon appointees Burger, Blackmun, Powell, and Rehnquist, and, to a lesser degree, White. Loading highly and negatively were Burger Court libertarians Douglas, Brennan, and Marshall. Loading on Factor 2 was Vinson Court justices who voted favorably in P-cases--Black, Reed, Murphy, and Rutledge.

Factor 3 represented early First Amendment balancers Burton, Minton, and Warren. Factor 4 was defined by Warren Court judicial modests Frankfurter, Minton, and Whittaker. Warren Court libertarians Black, Stewart, White, Fortas, and Marshall loaded on Factor 5. Middle Warren Court libertarians Black, Douglas, Goldberg, and Brennan loaded on Factor 6. Harlan defined Factor 7. Jackson and Vinson defined Factor 8. Reed, to a limited extent, defined Factor 9.

Figure 5-15 depicts axes representing Factor 1 (modern balancers) and Factor 2 (early press favorableness) for the P Total Court. Because of the extremely strong bipolarism among the loadings, the figure is much more vivid than the G and C Total Court factorial space graphs.

At the positive pole of the Factor 1 axis are a cluster of modern balancers--White, Burger, Blackmun, Powell, and Rehnquist. Plotted at the other extreme are modern libertarians Brennan, Marshall, and Douglas. On the negative side, although closer to the intersection, are Stewart and Warren. At the intersection is a cluster representing justices who had little or no interaction with all of the axes' definers--Marshall and Rehnquist on the Factor 1 axis and Murphy

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/12/77) TOTAL COURT

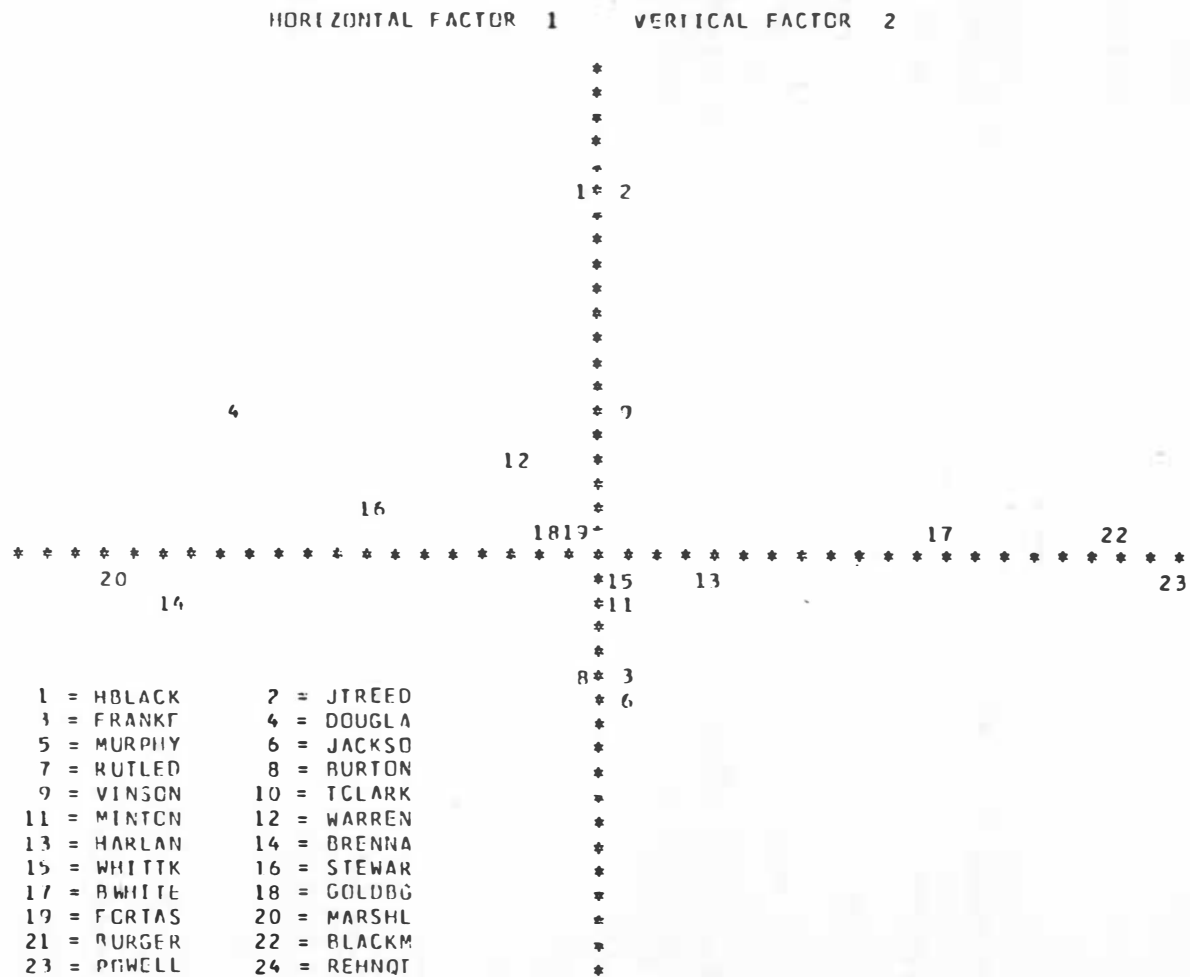


Figure 5-15. P Total Court first and second dimensions.

and Rutledge on the Factor 2 axis. These justices include Goldberg, Fortas, Clark, Minton, Harlan, and Whittaker.

Murphy and Rutledge are at the extreme positive pole of early press favorableness. Black and Reed are also very close to the axis. Vinson is also on the favorable side of the axis. Jackson, Frankfurter, and Burton form a small cluster of early balancers below the intersection.

Table 5-13 contains the three rankings of press favorableness. Douglas, Marshall, Black, Goldberg, Stewart, Fortas, Warren, Murphy, and Rutledge are at the top of the scales. Rehnquist, Burger, Blackmun, Powell, Harlan, Clark, Whittaker, Frankfurter, Jackson, and Burton are at the other end. In the moderate zone are Vinson, White, Minton, and Reed.

P Vinson Court

The P Vinson Court decided 10 nonunanimous P-cases. It decided one case in each of the 1946 and 1948 terms and two cases in each of the 1947, 1950, 1951, and 1952 terms. Three cases were decided by one vote and one case by a tie vote.

The following types of cases were addressed: Fair trial (two cases), community order (five cases), obscenity (two cases), and national security (one case). Five cases were decided unfavorably and five were decided favorably.

Pairs of justices with high and positive G indexes were Black and Douglas (.777), Frankfurter and Jackson (.554), Frankfurter and Clark (.600), Jackson and Clark (.600), Burton and Minton (1.00), and

Vinson and Clark (.600). Pairs of justices with high and negative G indexes included Black and Frankfurter (-.554), Black and Jackson (-.554), Black and Clark (-1.00), Frankfurter and Douglas (-.777), Douglas and Jackson (-.777), Douglas and Vinson (-.554), and Douglas and Clark (-1.00).

TABLE 5-13

P TOTAL COURT RANKING OF FAVORABLENESS***

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Douglas(89)	Marshall(-82)	Douglas(-1.04)
2.	Black(86)	Brennan(-70)	Marshall(-78)
3.	Marshall(80)	Douglas(-64)	Brennan(-69)
4.	Goldberg(78)	Stewart(-36)	Black(-62)
5.	Fortas(73)	Warren(-14)*	Goldberg(-45)
6.	Stewart(69)	Goldberg(-07)*	Stewart(-39)
7.	Murphy(67)	Fortas(-05)*	Fortas(-28)
8.	Rutledge(67)	Burton(-04)*	Warren(-28)
9.	Brennan(67)	Rutledge(-01)*	Murphy(-27)
10.	Reed(60)	Murphy(-01)*	Rutledge(-27)
11.	White(57)	Black(00)*	Reed(03)
12.	Vinson(56)	Clark(00)*	Minton(16)
13.	Jackson(50)	Vinson(01)*	White(20)
14.	Warren(50)	Reed(01)*	Vinson(23)
15.	Frankfurter(25)	Whittaker(02)*	Burton(32)
16.	Clark(25)	Jackson(02)*	Jackson(33)
17.	Burton(24)	Frankfurter(03)*	Frankfurter(39)
18.	Harlan(23)	Minton(05)*	Whittaker(44)
19.	Whittaker(20)	Harlan(19)*	Clark(53)
20.	Burger(17)	White(56)	Harlan(57)
21.	Blackmun(17)	Blackmun(90)	Powell(69)
22.	Powell(14)	Burger(90)	Blackmun(70)
23.	Minton(14)	Powell(96)	Burger(70)
24.	Rehnquist(7)	Rehnquist(1.00)	Rehnquist(78)

*Justices whose loadings are of such a noncommittal nature that they are indistinguishable.

**All loadings are two-place decimals except Douglas's in the right column.

***The left column is a scale of press favorableness. The two right columns are scales of anti-unfavorableness because in both cases the first two factors were unfavorableness factors.

Four factors accounted for 76.3 percent of the variance.

Initial Factor 1 was loaded highly and positively by Frankfurter, Jackson, Clark, and, to lesser extents, Minton, Vinson, Burton, and Reed. Loading negatively were Black and Douglas. Loading at zero were Rutledge and Murphy.

Terminal Factor 1 was loaded by Black and Douglas, the absolutists. Factor 2 was loaded by Frankfurter, Jackson, Vinson, and Reed, the Vinson Court balancers. Black and Douglas loaded negatively. Factor 3 was loaded by Burton and Minton, whose G index was a perfect 1.00. Factor 4 was defined by Reed.

Figure 5-16 depicts axes representing Factor 1 (press favorableness) and Factor 2 (rule of reason). The various First Amendment factions are clustered in small but very cohesive groups. The absolutists form a two-justice cluster near the positive pole of the press favorableness axis. Black and Douglas are at a short distance from the axis because they react somewhat to Frankfurter and Jackson, who supported legislative discretion in First Amendment matters. At the positive pole of the Factor 2 axis are Vinson and Reed. Clark is at the extreme of the negative pole of the press favorableness axis. His G indexes with Black and Douglas were -1.00. At the intersection of the axes are Rutledge, Murphy, Minton, and Burton, who participated in so few cases that they failed to correlate with either of the factors.

Table 5-14 includes the three types of rankings for the P Vinson Court. Douglas and Black invariably rank at the top of the scales. Clark, who opposed most of the favorable outcomes, and Jackson and

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) VINSON COURT

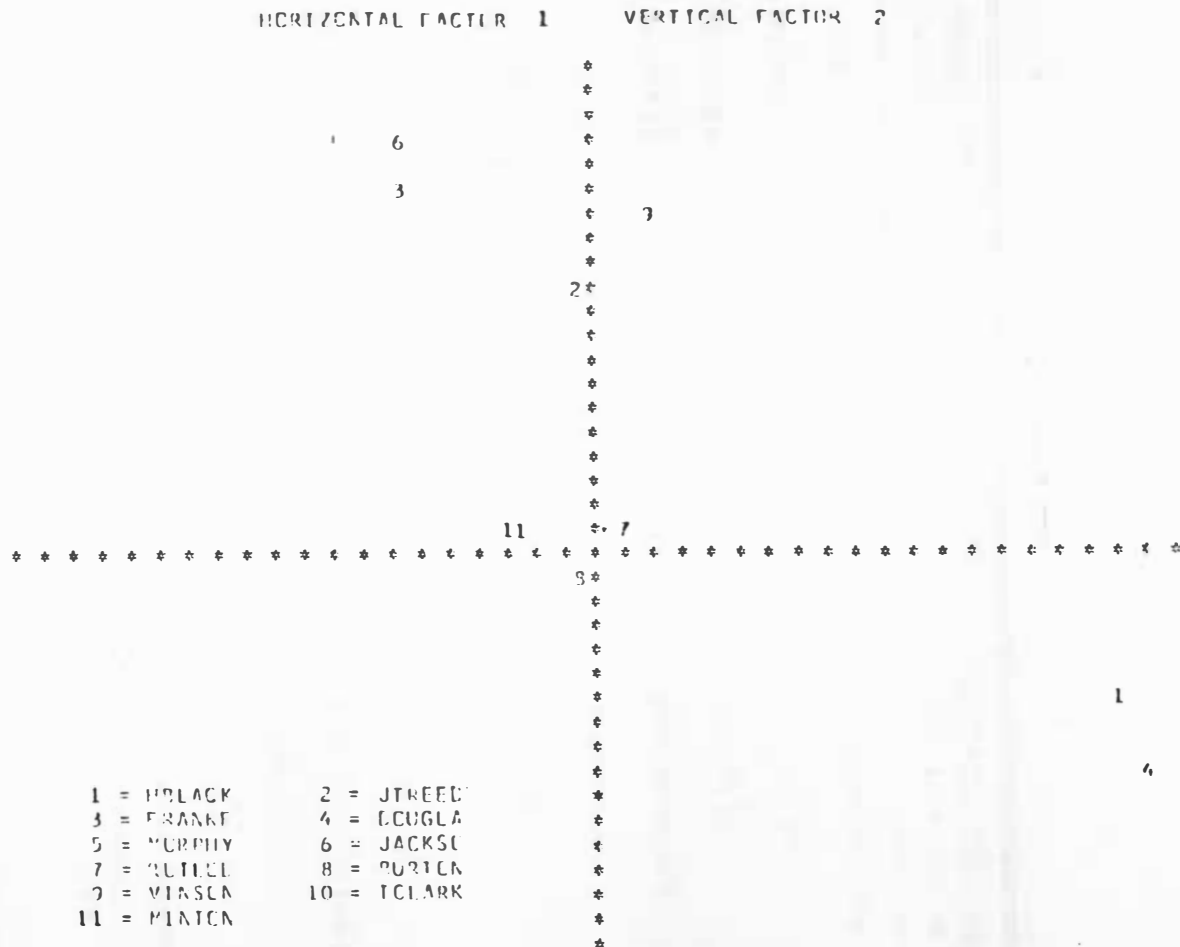


Figure 5-16. P Vinson Court first and second dimensions.

Frankfurter, who would defer First Amendment matters to the legislatures, rank at the bottom. Murphy and Rutledge are ranked near the top but have statistically insignificant loadings. Burton, Reed, Vinson, and Minton, at various times, embraced the rule of reason.

TABLE 5-14

P VINSON COURT RANKING OF FAVORABLENESS*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Douglas(67)	Douglas(94)	Douglas(-1.00)
2.	Murphy(67)	Black(90)	Black(-94)
3.	Rutledge(67)	Vinson(05)	Murphy(00)
4.	Reed(67)	Murphy(00)	Rutledge(00)
5.	Clark(60)	Rutledge(00)	Burton(24)
6.	Black(56)	Reed(-01)	Reed(31)
7.	Vinson(56)	Burton(-03)	Vinson(32)
8.	Jackson(44)	Minton(-13)	Minton(32)
9.	Burton(33)	Jackson(-31)	Frankfurter(66)
10.	Frankfurter(22)	Frankfurter(-34)	Clark(72)
11.	Minton(17)	Clark(-1.03)	Jackson(72)

*The two left columns are scales of press favorableness. The right column is a scale of anti-unfavorableness because the first factor in the terminal solution was an unfavorableness factor.

**All loadings are two-place decimals except Clark in the middle column and Douglas in the right column.

P Early Warren Court

The P Early Warren Court decided eight nonunanimous P-cases. One was addressed in 1953. The other seven were heard in 1956. Only one case was decided by one vote. Two cases dealt with community order, three with obscenity, and three with national security. Five cases were decided unfavorably.

Pairs of justices with high and positive G indexes included Black and Douglas (1.00), Clark and Frankfurter (.427), Frankfurter and Brennan (.500), Burton and Clark (.714), Burton and Harlan (.714), Burton and Brennan (.500), and Warren and Brennan (.500). Pairs with high and negative G indexes were Black and Frankfurter (-.500), Black and Burton (-.749), Black and Clark (-1.00), Black and Harlan (-.427), Black and Brennan (-.500), Frankfurter and Douglas (-1.00), Douglas and Burton (-.749), Douglas and Clark (-1.00), Douglas and Harlan (-.427), and Douglas and Brennan (-.500).

Two factors accounted for 43.7 percent of the variance. Factors 3 through 8 each accounted for one eigenvalue.

Clark and Brennan loaded highly and positively on initial Factor 1. Frankfurter and Harlan also loaded significantly. Black and Douglas loaded highly and negatively. Reed, Jackson, Minton, Warren, Brennan, and Whittaker did not load significantly because they voted in very few of the cases and did not account for any significant amount of the variance expressed in the matrixes.

Terminal Factor 1 (unfavorableness) was loaded highly and positively by Burton, Clark, and, to a lesser extent, Frankfurter and

negatively by Black and Douglas. Factor 2 (independent conservatism) is positively loaded by Burton and Harlan and negatively by Frankfurter.

Figure 5-17 shows axes representing Factor 1 (negative unfavorableness) and Factor 2 (unfavorableness). In this unique graph, Black and Douglas's negative loadings define Factor 1. Clark and Harlan, a pair of justices with a reasonably high G index (.427), define the extremes of press unfavorableness. Burton associates with both the Harlan and Clark axes. Frankfurter, plotted in the lower right quadrant, is to the unfavorable side of the favorableness axis but is almost diametrically opposed to Harlan. But this configuration is misleading. The Factor 2 axis virtually represents the same ideology as the right half of the Factor 1 axis. All four justices oppose, with nearly equal intensity, the absolutists' position.

Table 5-15 ranks the voting percentages, initial solutions, and terminal solutions of the justices in the P Early Warren Court. Black and Douglas stand alone at the top of the scales and Clark, Burton, Frankfurter, and Harlan oppose them.

P Middle Warren Court

The P Middle Warren Court addressed 18 P-cases. It heard three in each of the 1958, 1961, 1963, and 1964 terms and two cases in each of the 1959, 1960, and 1962 terms. Of the 18 P-cases, seven were decided by one vote or tie votes. Five cases dealt with fair trial, one with privacy, two with community order, six with obscenity, and four with national security. Eleven cases were decided favorably and seven unfavorably.

3 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) EARLY WARREN

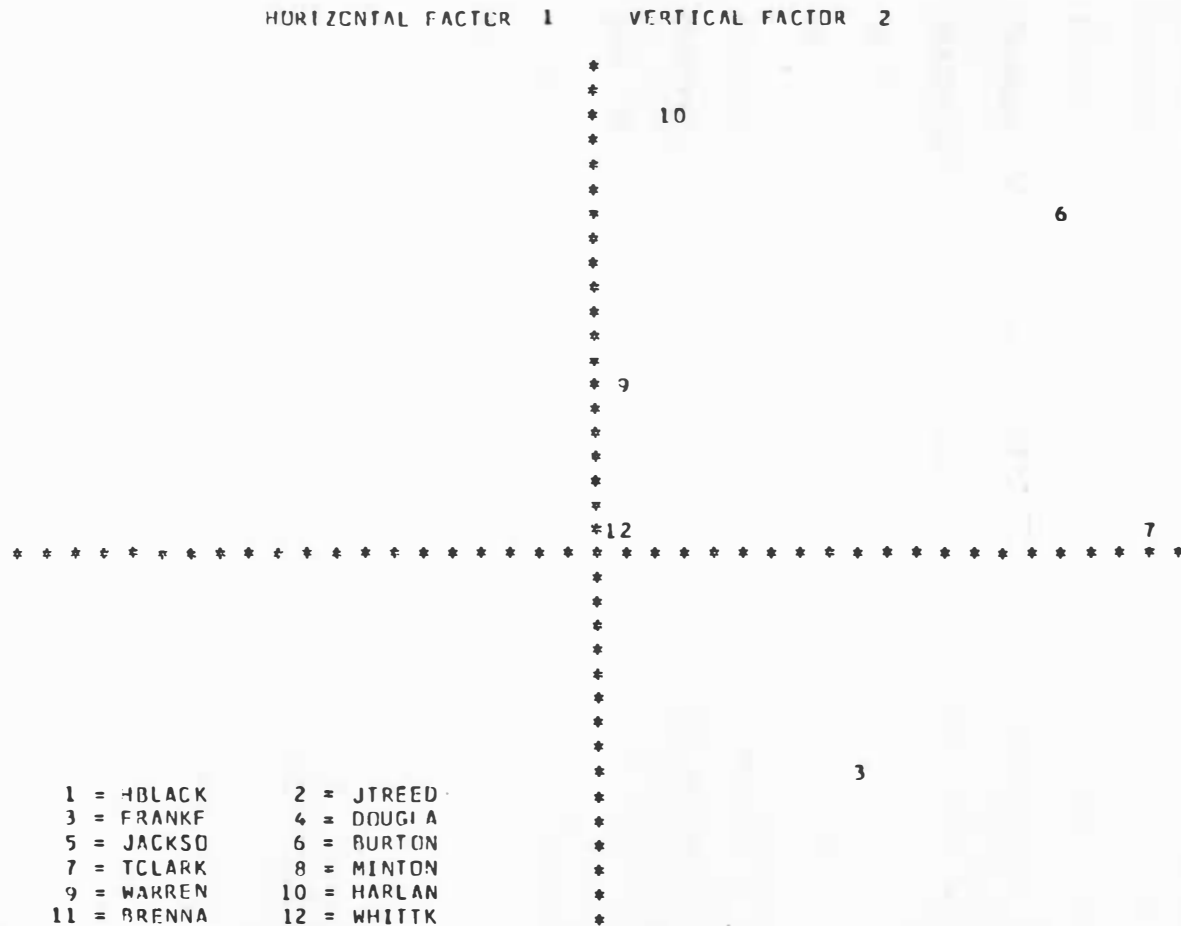


Figure 5-17. P Early Warren first and second dimensions.

TABLE 5-15

P EARLY WARREN RANKING OF FAVORABLENESS*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Douglas(100)	Douglas(-1.01)	Black(-1.00)
2.	Black(100)	Black(-1.01)	Douglas(-1.00)
3.	Jackson(100)	Whittaker(00)	Brennan(00)
4.	Warren(38)	Brennan(00)	Reed(00)
5.	Harlan(29)	Minton(00)	Whittaker(00)
6.	Brennan(25)	Jackson(00)	Minton(00)
7.	Frankfurter(25)	Reed(00)	Jackson(00)
8.	Burton(13)	Warren(04)	Warren(00)
9.	Reed(00)	Harlan(12)	Harlan(22)
10.	Clark(00)	Frankfurter(40)	Frankfurter(36)
11.	Minton(00)	Burton(78)	Burton(85)
12.	Whittaker(00)	Clark(94)	Clark(94)

*The left column is a scale of favorableness. The two right columns are scales of anti-unfavorableness because in both cases the first factors were unfavorableness factors.

**All loadings are two-place decimals except Douglas and Black's.

Pairs of justices with high and positive G indexes were Black and Douglas (.554), Black and Warren (.443), Black and Goldberg (.500), Frankfurter and Clark (1.00), Frankfurter and Harlan (.427), Frankfurter and Whittaker (1.00), Frankfurter and Stewart (.427), Douglas and Warren (.666), Douglas and Brennan (.666), Douglas and Goldberg (1.00), Clark and Harlan (.666), Clark and Whittaker (1.00), Harlan and Whittaker (.427), Brennan and White (.500), Brennan and Goldberg (.500), Whittaker and Stewart (.427), and Stewart and White (.500).

Pairs with high and negative G indexes included Black and Frankfurter (- .427), Black and Clark (- .777), Black and Harlan (- .666), Black and Whittaker (- .427), Frankfurter and Douglas (- .427), Frankfurter and Brennan (- .427), Douglas and Clark (- .554), Douglas and Harlan (- .443), Douglas and Whittaker (- .427), Clark and Brennan (- .443), Clark and Goldberg (- .500), Harlan and Goldberg (- .500), Brennan and Whittaker (- .427).

Four factors accounted for 90.6 percent of the variance.

Initial Factor 1 was loaded highly and positively by Black, Douglas, Warren, Brennan, and Goldberg. It was loaded highly and negatively by Frankfurter, Clark, Harlan, and Whittaker. Loading negligibly were Stewart and White.

Terminal Factor 1 was loaded highly and positively by Frankfurter, Clark, Whittaker, and, to lesser extents, Harlan and Stewart. It was loaded negatively by Black, Douglas, and Brennan. Factor 2 was loaded by Black, Douglas, Warren, and Goldberg. Factor 3

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) MIDDLE WARREN

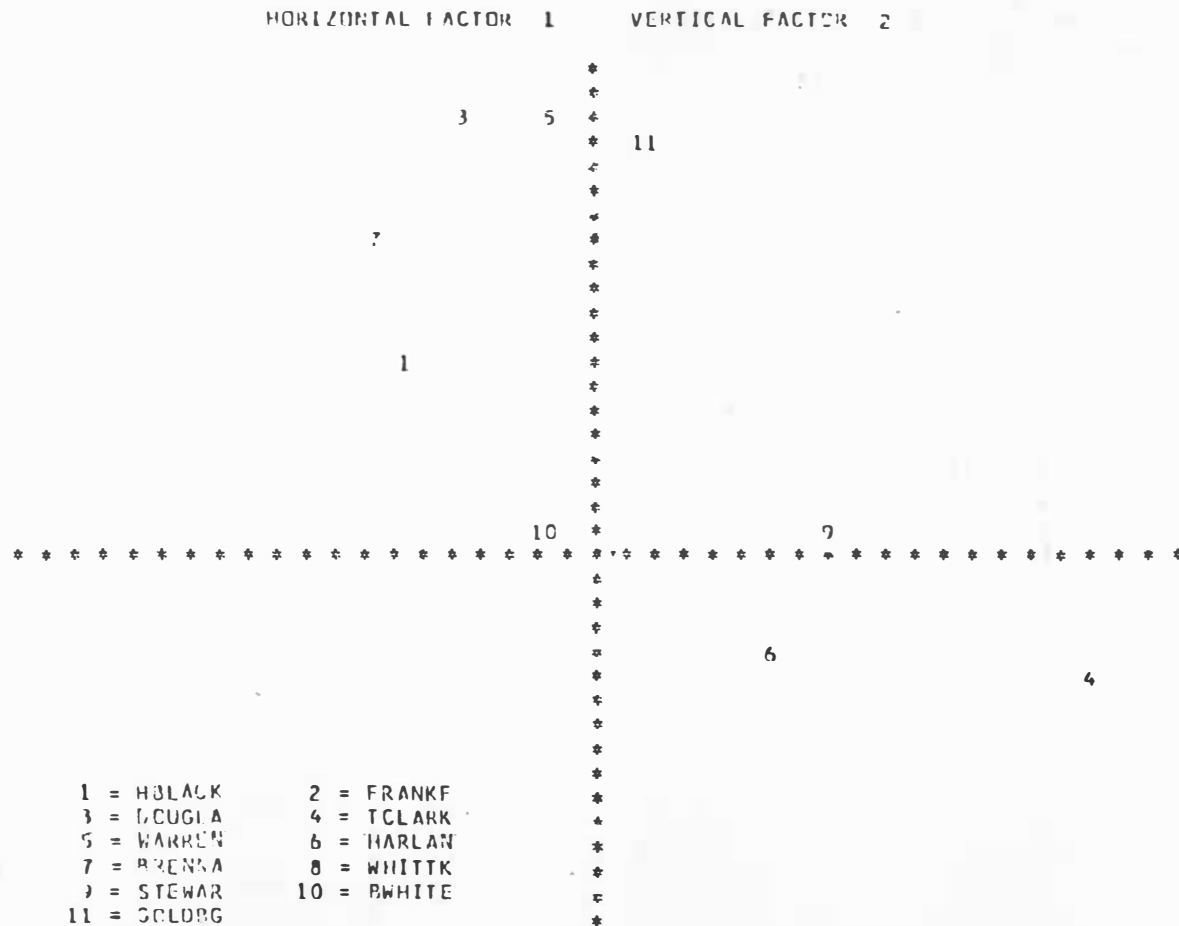


Figure 5-18. P Middle Warren first and second dimensions.

Most of the other justices--liberal or conservative--agreed as often as they disagreed with Black, Goldberg, Harlan, and Clark.

Along the Factor 3 axis the absolutists--Goldberg, Douglas, and Black--are clustered at the negative pole and Clark and Harlan at the positive pole. Frankfurter, Warren, and Whittaker are plotted midway between the intersection and the Harlan-Clark extreme. Plotted near the positive pole of the Factor 4 axis are libertarians Warren, Brennan, and White.

Table 5-16 contains the three rankings of P Middle Warren Court justices. Douglas, Black, Brennan, Goldberg, and Warren vote favorably in P-cases. Clark, Whittaker, Frankfurter, and Harlan vote unfavorably. Ranked in the middle, as they were in the C and G Middle Warren Court rankings, are Stewart and White.

P Late Warren Court

The P Late Warren Court heard 33 P-cases--6 in 1965, 20 in 1966, and 7 in 1967. Seven of the cases were decided by one vote. The sample included 1 fair trial case, 1 community order case, 5 privacy cases, and 26 community morality cases. Six cases were decided unfavorably and 27 cases were decided favorably.

Pairs of justices with high and positive G indexes included Black and Stewart (.578), Black and White (.500), Black and Marshall (.427), Black and Douglas (.817), Douglas and Stewart (.514), Warren and Brennan (.532), Warren and Marshall (1.00), Brennan and White (.500), Brennan and Marshall (1.00), Stewart and White (.749), Stewart

TABLE 5-16
P MIDDLE WARREN COURT RANKING OF FAVORABLENESS*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Black(83)	Brennan(-36)	Douglas(88)
2.	Brennan(78)	Black(-33)	Black(79)
3.	Goldberg(75)	Douglas(-24)	Brennan(71)
4.	Douglas(72)	Warren(-09)	Goldberg(66)
5.	Warren(67)	White(-07)	Warren(53)
6.	Stewart(50)	Goldberg(10)	White(09)
7.	White(50)	Harlan(30)	Stewart(00)
8.	Harlan(33)	Stewart(37)	Harlan(-69)
9.	Frankfurter(29)	Clark(80)	Whittaker(-76)
10.	Whittaker(29)	Whittaker(1.00)	Frankfurter(-76)
11.	Clark(28)	Frankfurter(1.00)	Clark(-94)

*The left and right columns are scales of favorableness. The middle column is a scale of anti-unfavorableness because the initial first factor was an unfavorableness factor.

**All loadings are two-place decimals except Whittaker and Frankfurter's in the middle column.

and Fortas (.575), Stewart and Marshall (1.00), and Fortas and Marshall (.427). Pairs with high and negative G indexes were Black and Clark (-.537), Black and Harlan (-.562), and Harlan and Fortas (-.500).

Two factors accounted for 75.2 percent of the variance.

Initial Factor 1 was loaded highly and positively by Black, Douglas, Warren, Brennan, Stewart, White, Fortas, and Marshall. Clark and Harlan loaded negatively.

Terminal Factor 1 was loaded highly by the same libertarians, negatively by Harlan, and insignificantly by Clark. Factor 2 was loaded highly and positively by Clark, Warren, and Harlan and negatively by Black, Douglas, and, to lesser extents, Fortas, Stewart, and White.

Figure 5-20 depicts axes representing Factor 1 (favorableness) and Factor 2 (unfavorableness). It also is an excellent illustration of other studies that have concluded that no firm First Amendment policy had been set forth during the Warren Court era despite the libertarian domination because of the diversity of the justices' viewpoints. In other words, the configuration seems to indicate that while the majority of justices favored press litigants, they had distinctly different views about why they did so.⁴¹⁹

Clustered around the positive pole of the Factor 1 axis are Stewart (who, for the first time, "belongs" with a libertarian cluster), White, Fortas, and Marshall. In the lower right quadrant are the somewhat distinct absolutists--Douglas and Black. Separated somewhat from the favorableness axis in the direction of the unfavorableness axis in the upper right quadrant are Warren and Brennan, who, during this era,

419 Birkby, "Supreme Court Libertarians," pp. 586-594.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) LATE WARREN

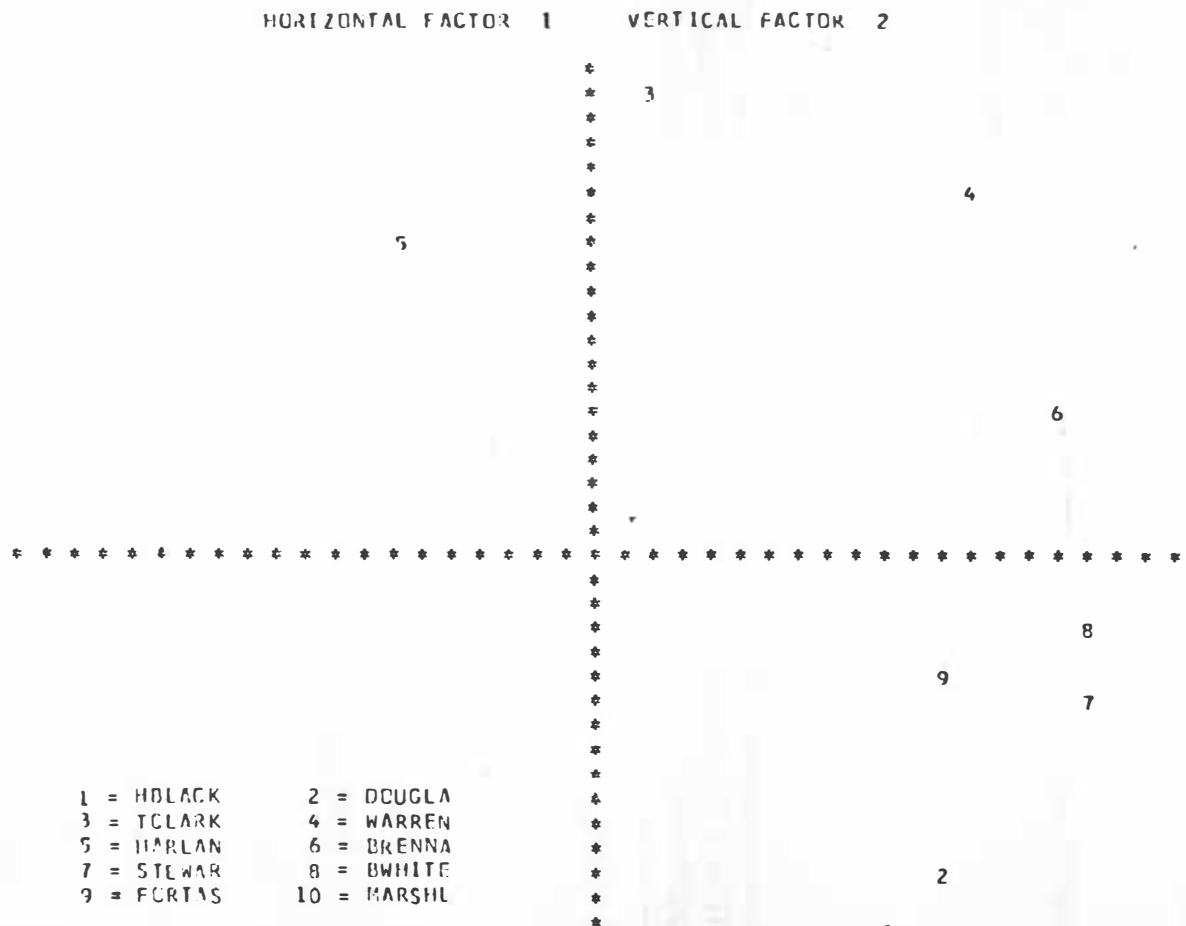


Figure 5-20. P Late Warren first and second dimensions.

articulated several obscenity decisions that separated them from the other libertarians. Opposing all libertarians along the Factor 2 axis are Clark and Harlan.

Table 5-17 represents the loading and percentage rankings of the P Late Warren Court. The period was definitely a favorable one for litigants representing press interests. Eight of the 10 justices loaded significantly in favor of the press. Only Clark and Harlan opposed First Amendment "preferred freedom" policies.

TABLE 5-17

P LATE WARREN RANKING OF FAVORABLENESS

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS* Justice>Loading)	UNROTATED LOADINGS* Justice>Loading)
1.	Black(74)	Marshall(1.13)	Marshall(1.04)
2.	Douglas(94)	White(82)	Stewart(85)
3.	Marshall(86)	Stewart(82)	White(82)
4.	Stewart(82)	Brennan(76)	Douglas(75)
5.	White(75)	Warren(61)	Black(69)
6.	Fortas(73)	Fortas(59)	Brennan(65)
7.	Brennan(58)	Douglas(57)	Fortas(63)
8.	Warren(43)	Black(47)	Warren(36)
9.	Clark(23)	Clark(07)	Clark(-20)
10.	Harlan(22)	Harlan(-34)	Harlan(-52)

*All loadings are two-place decimals except Marshall's.

P Burger Court

The P Burger Court addressed 23 P-cases. It heard nine cases during each of the 1970 and 1972 terms and five cases during the 1971 term. Eight cases were decided by one vote. Three cases dealt with fair trial issues, one with privacy, four with community order, twelve with obscenity, and three with national security.

Pairs of justices with high and positive G indexes included Black and Douglas (.500), Douglas and Brennan (.544), Harlan and Blackmun (.554), Brennan and Marshall (.825), White and Burger (.477), White and Blackmun (.477), White and Powell (1.00), White and Rehnquist (.856), Burger and Blackmun (1.00), Burger and Powell (.714), Burger and Rehnquist (.856), and Powell and Rehnquist (.856).

Pairs with high and negative G indexes were Douglas and Harlan (-1.00), Burger and Douglas (-.635), Blackmun and Douglas (-.635), Powell and Douglas (-.714), Rehnquist and Douglas (-.856), Burger and Brennan (-.564), Blackmun and Brennan (-.564), Powell and Brennan (-.714), Rehnquist and Brennan (-.856), Stewart and Powell (-.427), Stewart and Rehnquist (-.570), Marshall and Burger (-.738), Blackmun and Marshall (-.738), Marshall and Powell (-.714), and Marshall and Rehnquist (-.856).

Four factors accounted for 98.8 percent of the variance.

Initial and terminal Factors 1 were loaded highly and positively by the Nixon appointees and, to lesser extents, Harlan and White. Brennan, Douglas, Stewart, and Marshall loaded highly and negatively.

Terminal Factor 3 was loaded by Harlan and Stewart. Factor 4 was defined by White.

Figure 5-21 depicts axes representing Factor 1 (unfavorableness) and Factor 2 (absolutism). The Nixon appointees cluster around the positive pole of the Factor 1 axis. White is about half way between the pole and the intersection. Harlan is plotted in the middle of the unfavorableness-anti-abolutist quadrant. At the extreme positive pole of the Factor 2 axis is Black. Douglas is also plotted high on the absolutist axis but just as much along the negative half of the unfavorableness axis. Stewart, in a direct line between Harlan and Douglas, is less extreme in his views than is Douglas. Brennan and Marshall are clustered at the extreme of the negative pole of the unfavorableness axis.

Table 5-18 contains the rankings of the P Burger Court justices. Marshall, Douglas, Brennan, and Stewart have favorable attitudes toward the press. The Nixon appointees, Harlan, and White have unfavorable attitudes. Black, who had medium rankings in all three scales, has an independent--not a moderate--attitude toward press issues.

Observations

A number of observations can be made after a review of the factor analyses of the P sample.

1. Justices tend to vote in blocs. The blocs can normally be described as favorable, neutral, or unfavorable.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/22/77) BURGER COURT

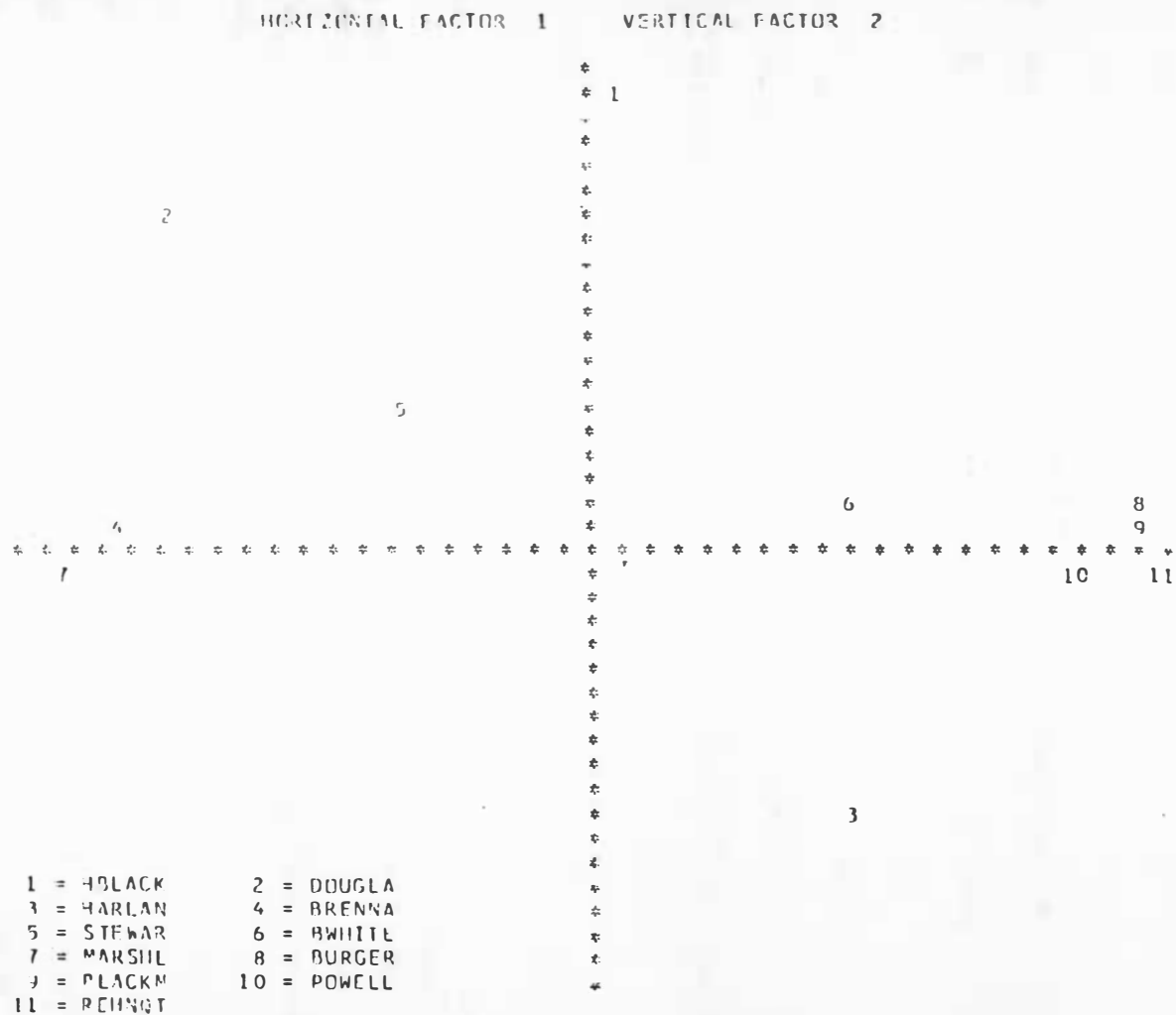


Figure 5-21. P Burger Court first and second dimensions.

TABLE 5-18

P BURGER COURT RANKING OF FAVORABLENESS*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice>Loading)	UNROTATED LOADINGS** Justice>Loading)
1.	Douglas(100)	Marshall(-91)	Marshall(-85)
2.	Brennan(78)	Brennan(-85)	Douglas(-85)
3.	Marshall(78)	Douglas(-75)	Brennan(-78)
4.	Black(67)	Stewart(-33)	Stewart(-41)
5.	Brennan(65)	Black(00)	Black(-14)
6.	White(35)	Harlan(43)	Harlan(41)
7.	Burger(17)	White(44)	White(59)
8.	Blackmun(17)	Powell(82)	Burger(88)
9.	Powell(14)	Blackmun(90)	Blackmun(89)
10.	Rehnquist(7)	Burger(92)	Powell(91)
11.	Harlan(0)	Rehnquist(96)	Rehnquist(1.00)

*The left column is a scale of favorableness. The two right columns are scales of anti-unfavorableness because in each case the first factors were unfavorableness factors.

**All loadings are two-place decimals except Rehnquist's in the right column.

2. Each of the three major attitudes toward freedom of the press clause consists of a number of sub-attitudes. The blocs are much less cohesive and much more numerous than those in the G and C analyses.

3. The major factions of justices with favorable attitudes include libertarians, such as Marshall, Goldberg, Stewart, and Fortas; absolutists, including Black and Douglas; and two justices generally favorable to the press but opposed to obscenity: Warren and Brennan.

4. The major factions of justices with unfavorable attitudes include justices who would defer First Amendment issues to the legislatures--Frankfurter, Jackson, Clark, and Whittaker; early and middle balancers of interests--Vinson, Burton, Minton, Reed, and Harlan; and modern balancers, including the Nixon appointees and White.

5. Several of the justices observed in the G and C analyses have changed blocs or become more independent as the study progressed were observed to make similar shifts in the P analysis. Black, Brennan, White, and Clark appeared to have changed their attitudes about some aspects of press issues.

6. Many of the same pairs of justices which exhibited high inter-agreement and close proximate plottings in the G and C analyses showed similar tendencies in the P analysis. These included Black and Douglas, Murphy and Rutledge, Reed and Clark, Frankfurter and Clark, Frankfurter and Whittaker, Goldberg and Black, Goldberg and Douglas, Marshall and Douglas, Jackson and Clark, Burton and Clark, Burton and Minton, Burton and Whittaker, Clark and Vinson, Clark and Harlan, Warren and Brennan, Warren and Goldberg, Warren and Marshall, Harlan and Burger, White and Blackmun, Fortas and Marshall, and among the Nixon appointees.

7. All P court eras, except the Early Warren Court, were dominated by favorable voting when they were dominated by liberal voting in the G and C analyses. The Early Warren Court generally voted unfavorably in P-cases, conservatively in C-cases, and liberally in G-cases. The least favorable era was the Burger Court. The most favorable was the Late Warren Court.

CHAPTER VI

CONCLUSION

Problem

Supreme Court justices base their decisions, at least in part, on their basic predilections toward issues with which they are presented. Although traditional jurists argue that the courts should and do strictly rely on determined facts, precedents, and the constitutions for their opinions, legal realists have attempted to demonstrate that stare decisis is also a doctrine of rationalization used to buttress the justices' own desired ends. Realists also encourage "a fusion of constitutional law and moral theory."⁴²⁰

Two modern schools of legal realism have produced a great quantity of evidence indicating that justices have disguised personal and political intentions with a "pretty array" of "correct cases."⁴²¹

Political jurists recognize the Supreme Court as an "integral part of the political process"⁴²² and no different, in that sense, from "the city council of Omaha."⁴²³

⁴²⁰ Anthony Morley, "A Judicial Standard of Rights," Minneapolis Tribune, 17 July 1977, p. 9A.

⁴²¹ Cohen, "Transcendental Nonsense," p. 64.

⁴²² Eisenstein, Politics, p. 351.

⁴²³ Shapiro, "Political Jurisprudence," p. 202.

Judicial behavioralists, borrowing models from sociology and psychology, have attempted to penetrate the judicial mind so there could be established "an empirical inventory" of "continuities, communalities, and differences in the policy choices" of justices.⁴²⁴

Both schools have done a little research in the area of First Amendment adjudication.⁴²⁵ But the issues created by a system of free expression provide a strong foundation for extensive work in political jurisprudence and judicial behavioralism. More of this work should be done by mass communication law scholars who are concerned with "predictability" in First Amendment cases that is, as Supreme Court analyst Lyle Denniston assessed it, "nearly there" (Denniston emphasis).⁴²⁶

Judicial behavioralists have suggested that through the use of such a tool as factor analysis, the great volumes of literature concerning all facets of Supreme Court decision-making can be reduced to the votes of the individual justices and the combinations of agreement and disagreement among the justices. By so doing, distinct voting "blocs" of justices have been detected and identified, usually by such labels as "conservative," "liberal," and "moderate."

The behavioralists' suggestion, in turn, suggested that the same operation could be performed on a subsample of cases dealing with First Amendment matters. The problem proposed in this study involved the

424 Schubert, Judicial Mind Revisited, p. x.

425 See Chaps. 2 and 3, supra.

426 Denniston, "Today's Godfathers," p. 33.

detection and identification of the voting blocs of Supreme Court justices in First Amendment cases.

Objectives

The objectives of the study were: (1) to replicate tests⁴²⁷ showing that there are basic attitudes held by Supreme Court justices in all cases, (2) to replicate tests⁴²⁸ showing that there are basic attitudes held by Supreme Court justices in civil liberties cases, and (3) to discover and identify basic attitudes held by Supreme Court justices in cases affecting freedom of the press.

Design

The methodology was adapted from the pioneer work of Schubert.⁴²⁹ G indexes of agreement were calculated from fourfold frequency tables, employed as correlation coefficients, and input for principle component factor analysis.

Factor analysis was performed on 18 samples representing five detailed court eras between 1946 and 1974, the entire court period under study, and three different sample types--all nonunanimous cases, all nonunanimous civil liberties cases, and 92 nonunanimous cases involving freedom of the press.

427 Schubert, Judicial Mind, Judicial Mind Revisited.

428 Ibid.

429 Ibid.

Major Findings

Methodology

1. The G index of agreement was preferable as a measurement of justices' interagreement to the phi correlation coefficient used by Schubert.⁴³⁰
2. Principle component factoring without iteration was the most expedient method of factor analysis. Others, e.g., principle component factoring with iteration and centroid factor analysis, probably would have produced very similar results.⁴³¹
3. Orthogonal rotation of the axes was selected over oblique rotation to simplify the procedure. The effort was frequently rewarded with clearly uncorrelated (orthogonal) factors.
4. Justices could be ranked on the bases of their loadings (correlations) with the underlying dimensions the factors represented.
5. In most of the detailed court era analyses, each of between two and four factors accounted for at least as much variance as one variable could account for.

Objective One

G Total Court

1. Seven factors accounted for 85.2 percent of the variance.

430 Schubert, "1961 Term," pp. 559-560.

431 Schubert concluded that, for the most part, there was little difference among three types of factor analysis he applied to Supreme Court voting behavior. Schubert, Judicial Mind Revisited, p. 138.

2. The factors were identified as middle and modern liberalism, modern conservatism, early conservatism, early liberalism, middle conservatism, Goldbergianism, and Whittakerianism.

3. Douglas, Brennan, Marshall, Warren, Black, Murphy, Rutledge, Fortas, and Goldberg were highly and positively correlated with the liberalism dimension. Rehnquist, Burger, Blackmun, Harlan, Burton, Powell, Jackson, Frankfurter, Reed, Vinson, and Minton were highly and negatively correlated.

G Vinson Court

1. Four factors accounted for 87.5 percent of the variance.
2. The factors were identified as conservatism, liberalism, and Frankfurterianism. The fourth factor was not interpretable.
3. Burton, Vinson, Clark, Minton, Reed, Jackson, and, to a lesser degree, Frankfurter were highly and positively correlated with the conservatism dimension. Black, Rutledge, and Douglas were highly and negatively correlated. Murphy was negligibly correlated with the dimension although he was identified as a liberal.

G Early Warren Court

1. Five factors accounted for 84.9 percent of the variance.
2. The factors were identified as early conservatism, liberalism, middle conservatism, Brennanianism, and Frankfurterianism.
3. Burton, Jackson, Whittaker, Reed, Harlan, Frankfurter, Minton, and Clark were highly and positively correlated with the conservatism dimension. Douglas, Black, and Warren were highly negatively correlated. Brennan was negligibly correlated.

G Middle Warren Court

1. Two factors accounted for 64 percent of the variance.
2. The factors were identified as liberalism and conservatism.
3. Douglas, Warren, Black, Brennan, Goldberg, and White were highly and positively correlated with the liberalism dimension. Harlan, Frankfurter, and Whittaker were highly and negatively correlated. Clark and Stewart were negligibly correlated.

G Late Warren Court

1. Three factors accounted for 74 percent of the variance.
2. The factors were identified as liberalism, conservatism, and neutralism-moderation-independence.
3. Brennan, Marshall, Warren, Fortas, Douglas, and, to lesser extents, White, Stewart, and Clark correlated highly and positively with the liberalism dimension. Harlan correlated negatively. Black correlated negligibly.

G Burger Court

1. Three factors accounted for 72.7 percent of the variance.
2. The factors were identified as liberalism, conservatism, and middle conservatism.
3. Rehnquist, Burger, Blackmun, Powell, White, and to a lesser extent, Harlan correlated highly and positively with the conservatism dimension. Douglas, Marshall, and Brennan correlated highly and negatively. Black and Stewart correlated negligibly.

Objective Two

C Total Court

1. Seven factors accounted for 87.8 percent of the variance.
2. The factors were identified as middle and modern liberalism, modern conservatism, early conservatism, middle conservatism, independent liberalism, early liberalism, and Jacksonianism.
3. Harlan, Reed, Rehnquist, Burton, Burger, Clark, Vinson, Blackmun, Minton, Powell, Whittaker, Jackson, and, to a lesser extent, Frankfurter correlated highly and positively with the conservatism dimension. Douglas, Brennan, Marshall, Warren, Goldberg, Fortas, Black, Murphy, and Rutledge correlated highly and negatively. Stewart and White correlated negligibly.

C Vinson Court

1. Four factors accounted for 85.4 percent of the variance.
2. The factors were identified as conservatism, liberalism, Frankfurterianism, and independent conservatism.
3. Vinson, Reed, Burton, Clark, Minton, and Jackson correlated highly and positively with the conservatism dimension. Murphy, Rutledge, Black, and Douglas correlated highly and negatively. Frankfurter correlated negligibly.

C Early Warren Court

1. Four factors accounted for 81.5 percent of the variance.
2. The factors were identified as early conservatism, early liberalism, middle conservatism, and late liberalism.

3. Reed, Burton, Minton, Clark, Harlan, and Whittaker correlated highly and positively with the conservatism dimension. Black, Brennan, Warren, and Douglas correlated highly and negatively. Frankfurter correlated negligibly.

C Middle Warren Court

1. Two factors accounted for 70.2 percent of the variance.
2. The factors were identified as liberalism and conservatism.
3. Douglas, Warren, Black, Brennan, Goldberg, and, to a lesser degree, White correlated highly and positively with the liberalism dimension. Harlan, Frankfurter, Whittaker, and Clark correlated negatively. Stewart correlated negligibly.

C Late Warren Court

1. Three factors accounted for 75.2 percent of the variance.
2. The factors were identified as liberalism, conservatism, and Blackianism.
3. Marshall, Brennan, Warren, Fortas, Douglas, and, to lesser degrees, White and Stewart correlated highly and positively with the liberalism dimension. Clark, Black, and Harlan correlated negligibly.

C Burger Court

1. Four factors accounted for 84.3 percent of the variance.
2. The factors were identified as liberalism, conservatism, Harlanianism, and Blackianism.
3. Rehnquist, Burger, Blackmun, Powell, White, and Harlan correlated highly and positively with the conservatism dimension. Douglas,

Marshall, and Brennan correlated highly and negatively. Black and Stewart correlated negligibly.

Objective Three

P Total Court

1. Nine factors accounted for over 100 percent of the variance.
2. The factors were identified as modern unfavorableness, modern favorableness, early favorableness, early unfavorableness, middle unfavorableness, middle favorableness, Harlanianism, Jacksonianism, and Reedianism.
3. Rehnquist, Burger, Blackmun, Powell, Harlan, Clark, Whittaker, Frankfurter, Jackson, and Burton correlated highly and positively with the unfavorableness dimension. Douglas, Marshall, Brennan, Black, Goldberg, Stewart, and, to lesser degrees, Fortas, Warren, Murphy, and Rutledge correlated highly and negatively. Reed, Minton, White, and Vinson correlated negligibly.

P Vinson Court

1. Four factors accounted for 76.3 percent of the variance.
2. The factors were identified as favorableness, unfavorableness, Burtonianism, and Reedianism.
3. Jackson, Clark, Frankfurter, Minton, Vinson, Reed, and, to a lesser extent, Burton, correlated highly and positively with the unfavorableness dimension. Douglas and Black correlated highly and negatively. Murphy and Rutledge correlated negligibly because of

statistically insignificant interagreement relationships with the other justices.

P Early Warren Court

1. Two factors accounted for 43.7 percent of the variance. Factors 3 through 8 each accounted for one eigenvalue.
2. The factors were identified as unfavorableness and negative unfavorableness.
3. Clark, Burton, Frankfurter, and, to a lesser extent, Harlan correlated highly and positively with the unfavorableness dimension. Black and Douglas correlated highly and negatively. Brennan, Reed, Whittaker, Minton, Jackson, and Warren correlated negligibly because of statistically insignificant interagreement relationships with the other justices.

P Middle Warren Court

1. Four factors accounted for 90.6 percent of the variance.
2. The factors were identified as unfavorableness, favorableness, anti-absolutism, and libertarianism.
3. Douglas, Black, Brennan, Goldberg, and Warren correlated highly and positively with the favorableness dimension. Clark, Frankfurter, Whittaker, and Harlan correlated highly and negatively. White and Stewart correlated negligibly.

P Late Warren Court

1. Two factors accounted for 75.2 percent of the variance.

2. The factors were identified as favorableness and unfavorableness.

3. Black, Brennan, Fortas, Douglas, White, Stewart, Marshall, and, to a lesser extent, Warren correlated highly and positively with the favorableness dimension. Harlan and, to a lesser degree, Clark correlated highly and negatively.

P Burger Court

1. Four factors accounted for 98.8 percent of the variance.

2. The factors were identified as unfavorableness, absolutism, Harlanianism, and Whiteianism.

3. Rehnquist, Powell, Blackmun, Burger, White, and Harlan correlated highly and positively with the unfavorableness dimension. Marshall, Douglas, Brennan, and Stewart correlated highly and negatively. Black correlated negligibly.

Conclusions

The findings in this study suggest that:

1. Supreme Court justices tend to form in blocs.

2. In all cases and in civil liberties cases, these blocs can be identified as liberalism, conservatism, moderation, neutralism, and independence.

3. In cases affecting freedom of the press, these blocs normally can be identified as favorableness, unfavorableness, and neutralism.

Implications

The conclusions suggest certain implications for the study of mass communication law:

1. The establishment of the existence of distinct voting blocs in First Amendment cases can facilitate study of Supreme Court justices' attitudes toward a system of free expression.

2. Since justices do vote in blocs in First Amendment cases, mass communication law researchers can have more confidence in describing the attributes of the blocs and in explaining First Amendment freedoms.

3. Explication of Supreme Court bloc arrangements in such areas as economic and civil liberties adjudication is well developed. Comparisons between those arrangements and First Amendment bloc arrangements could be worthwhile.

Recommendations

1. Factor analysis is only one method of empirically determining Supreme Court justices' basic attitudes toward First Amendment freedoms. Guttman scalogram analysis and bloc analysis are other techniques employed by judicial behavioralists. Other social scientific methodologies probably could and should be applied either independently of or in conjunction with factor analysis.

2. Manipulation of the study samples could provide new and different interpretations of Supreme Court justices' attitudes toward the First Amendment. Certainly larger samples are in order. A sample

of all cases involving First Amendment freedoms would give a future investigator more reliable results.

3. More development of the area of rank ordering of the justices in relationship to the First Amendment dimensions is needed. Improved confidence in ranking could prompt application of rank correlation tests among total, civil liberties, and press samples.

4. The APSA package allows for testing the samples through a variety of units of measurement not attempted in this study. Full utilization of these units as independent variables would provide more complete findings.

5. The present study involved only Supreme Court litigation between 1946 and 1974. Little Supreme Court litigation prior to 1946 would be very helpful to First Amendment study, but investigation of Supreme Court First Amendment activity since 1974 would add much to an understanding of the present court with which modern First Amendment scholars are concerned.

BIBLIOGRAPHY

Books

Freedom of Expression

- Berns, Walter. Freedom, Virtue and the First Amendment. New York: Greenwood Press, 1969.
- Chafee, Zechariah, Jr. Free Speech in the United States. Cambridge, Mass.: Harvard University Press, 1954.
- _____. Freedom of Speech. Cambridge, Mass.: Harvard University Press, 1920.
- _____. Government and Mass Communication, 2 vols. Chicago: University of Chicago Press, 1947.
- Commission on Freedom of the Press. The Problems and Principles of Freedom and Responsibility. Chicago: University of Chicago Press, 1947.
- Devol, Kenneth S. Mass Media Law and the Supreme Court; The Legacy of the Warren Years. New York: Hastings House, 1971.
- Emerson, Thomas I. The System of Freedom of Expression. New York: Vintage Books, 1970.
- Francois, William E. Mass Media Law and Regulation. Columbus, Ohio: Grid, Inc., 1975.
- Franklin, Marc A. The First Amendment and the Fourth Estate; Communications Law for Undergraduates. Mineola, N. Y.: Foundation Press, 1977.
- Gillmor, Donald M. Free Press and Fair Trial. Washington, D.C.: Public Affairs Press, 1966.
- Gillmor, Donald M., and Barron, Jerome A. Mass Communication Law; Cases and Comment, 2nd ed. St. Paul: West Publishing Co., 1974.
- Gordon, William I. Nine Men Plus; Supreme Court Opinions on Free Speech and Free Press; An Academic Game Simulation. Dubuque, Iowa: William C. Brown Co., 1971.
- Hachten, William A. The Supreme Court on Freedom of the Press; Decisions and Dissents. Ames, Iowa: Iowa State University Press, 1968.

Levy, Leonard, ed. Freedom of the Press from Zenger to Jefferson. New York: Bobbs-Merrill, 1966.

_____. Legacy of Suppression. Cambridge, Mass.: Harvard University Press, 1960.

Mill, John Stuart. On Liberty. New York: Doubleday, Doran & Co., 1935.

Milton, John. Aeropagitica, ed. John W. Hales. Oxford: Clarendon Press, 1886.

Nelson, Harold L. Freedom of the Press from Hamilton to the Warren Court. Indianapolis: Bobbs-Merrill, 1967.

Nelson, Harold L., and Teeter, Dwight L., Jr. Law of Mass Communication; Freedom and Control of Print and Broadcast Media. Mineola, N. Y.: Foundation Press, 1973.

Siebert, Fred S.; Peterson, Theodore; and Schramm, Wilbur. Four Theories of the Press. Urbana: University of Illinois Press, 1956.

Siebert, Frederick S. Freedom of the Press in England, 1476-1776. Urbana: University of Illinois Press, 1956.

Shapiro, Martin. Freedom of Speech. Englewood Cliffs, N. J.: Prentice-Hall, 1966.

Judicial Behavioralism

Lasswell, Harold N. Power and Personality. New York: W. W. Norton & Co., 1948.

Nagel, Stuart. The Legal Process from a Behavioral Perspective. Homewood, Ill.: Dorsey Press, 1969.

Pritchett, C. Herman. The Roosevelt Court: A Study of Judicial Politics and Values, 1937-1947. New York: Macmillan, 1948.

Schmidhauser, John R. The Supreme Court: Its Politics, Personalities and Procedures. New York: Holt, Rinehart & Winston, 1960.

Schubert, Glendon, ed. Judicial Behavior: A Reader in Theory and Research. Chicago: Rand McNally, 1964.

_____. The Judicial Mind; The Attitudes and Ideologies of Supreme Court Justices, 1946-1963. Evanston, Ill.: Northwestern University Press, 1965.

- _____. The Judicial Mind Revisited; Psychometric Analysis of Supreme Court Ideology. New York: Oxford University Press, 1974.
- _____. Quantitative Analysis of Judicial Behavior. Glencoe, Ill.: Free Press, 1959.
- Sprague, John D. Voting Patterns of the United States Supreme Court: Cases in Federalism, 1889-1959. Indianapolis: Bobbs-Merrill, 1968.
- Ulmer, S. Sidney, ed. Introductory Readings in Political Behavior. Chicago: Rand McNally, 1961.

Judicial Systems

- Bentley, Arthur F. The Process of Government; A Study of Social Pressures, ed. Peter H. Odegard. Cambridge, Mass.: Belknap Press, 1935.
- Cahill, Fred V., Jr. Judicial Legislation; A Study in American Legal Theory. New York: Ronald Press, 1953.
- Cardozo, Benjamin. The Nature of the Judicial Process. New York: Yale University Press, 1921.
- Eisenstein, James. Politics and the Legal Process. New York: Harper and Row, 1973.
- Frank, Jerome. Courts on Trial: Myth and Reality in American Justice. Princeton, N. J.: Princeton University Press, 1950.
- _____. Law and the Modern Mind. New York: Coward-McCann, 1930.
- Goldman, Sheldon, and Jahnige, Thomas P. The Federal Courts as a Political System. New York: Harper and Row, 1971.
- Henson, Ray D., ed. Landmarks of Law: Highlights of Legal Opinion. New York: Harper & Brothers, 1960.
- North, Arthur A. The Supreme Court; Judicial Process and Judicial Politics. New York: Appleton-Century-Crafts, 1966.
- Schubert, Glendon. Constitutional Politics. New York: Holt, Rinehart & Winston, 1964.
- Shapiro, Martin. Law and Politics in the Supreme Court; New Approaches to Political Jurisprudence. Glencoe: Free Press, 1964.

Simon, Rita James, ed. *Sociology of Law*. San Francisco: Chandler Publishing Co., 1968.

Constitutional Rights

Abernathy, M. Glenn. *Civil Liberties Under the Constitution*, 2nd ed. New York: Dodd, Mead & Co., 1973.

Corwin, Edward S. *The Constitution and What it Means Today*, rev. Harold W. Chase and Craig R. Ducat. Princeton, N. J.: Princeton University Press, 1974.

Emerson, Thomas I.; Haber, David; and Dorsen, Norman. *Political and Civil Rights in the United States*, 2 vols. Boston: Little, Brown and Co., 1967.

Hand, Learned. *The Bill of Rights*. Cambridge, Mass.: Harvard University Press, 1954.

Krislov, Samuel. *The Supreme Court and Political Freedom*. New York: Free Press, 1968.

Pritchett, C. Herman. *The American Constitution*, 2nd ed. New York: McGraw-Hill, 1968.

_____. *Civil Liberties and the Vinson Court*. Chicago: University of Chicago Press, 1966.

Shapiro, Martin M., ed. *The Supreme Court and Constitutional Rights; Readings in Constitutional Law*. Palo Alto, Calif.: Scott, Foresman & Co., 1967.

Shapiro, Martin, and Hobbs, Douglas S. *The Politics of Constitutional Law*. Cambridge, Mass.: Winthrop Publishers, 1974.

Legal Research in Mass Communication

Chafee, Steven, ed. *Political Communication; Issues and Strategies for Research*. Beverly Hills, Calif.: Sage Publications, 1975. See Donald M. Gillmor and Everette E. Dennis, "Legal Research and Judicial Communication," p. 279.

Nafziger, Ralph O., and Wilkerson, Marcus M., eds. *An Introduction to Journalism Research*. Baton Rouge: Louisiana State University Press, 1949. See Fred S. Siebert, "Research in Legal Problems of Communication," p. 26.

Methodology

- Ferguson, George A. *Statistical Analysis in Psychology and Education*, 4th ed. New York: McGraw-Hill, 1976.
- Guilford, J. P., and Fruchter, Benjamin. *Fundamental Statistics in Psychology and Education*, 5th ed. New York: McGraw-Hill, 1973.
- Kerlinger, Fred N. *Foundations of Behavioral Research*, 2nd ed. New York: Holt, Rinehart & Winston, 1973.
- Nie, Norman H.; Hull, Hadlai; Jenkins, Jean G.; Steinbrenner, Karen; and Bent, Dale H. *SPSS; Statistical Package for the Social Sciences*, 2nd ed. New York: McGraw-Hill, 1975.
- Runyon, Richard P., and Haber, Audrey. *Fundamentals of Behavioral Statistics*, 2nd ed. Reading, Mass.: Addison-Wesley Publishing Co., 1972.
- Ryan, John Paul, and Tate, C. Neal. *The Supreme Court in American Politics: Policy Through Law*. Washington, D.C.: American Political Science Association, 1975.

Journal Articles

Freedom of Expression

- Anderson, H. Al. "An Empirical Investigation of What SR Theory Means." *Journalism Quarterly* 55 (1977):33.
- Birkby, Robert H. "Supreme Court Libertarians and the First Amendment; An Analysis of Voting and Opinion Agreement, 1956-1964," *Southwestern Social Science Quarterly* 48 (1968):586.
- Dyson, Richard B. "Looking Glass Law: An Analysis of the Ginzburg Case." *University of Pittsburgh Law Review* 28 (1966):1.
- Emerson, Thomas I. "Toward a General Theory of the First Amendment." *Yale Law Journal* 72 (1963):877.
- Frantz, Laurent B. "The First Amendment in the Balance." *Yale Law Journal* 71 (1962):1424.
- _____. "Is the First Amendment Law? A Reply to Professor Mendelson." *California Law Review* 51 (1963):729.
- Gerald, J. Edward. "Press-Bar Relationships; Progress Since Sheppard and Reardon." *Journalism Quarterly* 47 (1970):227.

- Hyneman, Charles S. "Free Speech: At What Price?" *American Political Science Review* 56 (1962):847.
- Kalven, Harry Jr. "'Uninhibited, Robust, and Wide Open'--A Note on Free Speech and the Warren Court." *Michigan Law Review* 67 (1968):289.
- Meiklejohn, Alexander M. "The First Amendment is an Absolute." *Supreme Court Review* 48 (1961):253.
- Mendelson, Wallace. "The First Amendment and the Judicial Process: A Reply to Mr. Frantz." *Vanderbilt Law Review* 17 (1964):n.p.
- _____. "On the Meaning of the First Amendment." *California Law Review* 50 (1962):840.
- Merin, Jerome Lawrence. "Libel and the Supreme Court." *William and Mary Law Review* 2 (1969):371.
- Robbins, J. C. "Deciding First Amendment Cases: Part I," *Journalism Quarterly* 49 (1972):263.
- Rucker, Bryce. "What Solutions Do People Endorse in the Free Press-Fair Trial Dilemma?" *Journalism Quarterly* 44 (1967):240.
- Simon, Rita James. "Use of Semantic Differential in Research on the Jury." *Journalism Quarterly* 45 (1968):670.
- Simon, Rita James, and Eimermann, Thomas. "The Jury Finds Not Guilty: Another Look at Media Influences on the Jury." *Journalism Quarterly* 48 (1971):343.
- Tams, Mary Dee, and Chafee, Steven H. "Pretrial Publicity and Jury Prejudice." *Journalism Quarterly* 43 (1966):647.

Judicial Behavioralism

- Baum, Lawrence. "Policy Goals in Judicial Gatekeeping: A Proximity Model of Discretionary Jurisdiction." *American Journal of Political Science* 21 (1977):13.
- Becker, Theodore L. "Inquiry into a School of Thought in the Judicial Behavior Movement." *Midwest Journal of Political Science* 7 (1963):259.
- _____. "Judicial Structure and its Political Functioning in Society: New Approaches to Teaching and Research in Public Law." *Journal of Politics* 29 (1967):302.

- Bernard, Jessie. "Dimensions and Axes of Supreme Court Decisions: A Study in the Sociology of Conflict." *Social Forces* 34 (1955):27.
- Flango, Victor Eugene; Wenner, Lettie McSpadden; and Wenner, Manfred W. "The Concept of Judicial Role: A Methodological Note." *American Journal of Political Science* 19 (1975):277.
- Grossman, Joel B. "Social Backgrounds and Judicial Decisions: Notes on a Theory." *Journal of Politics* 29 (1967):335.
- Kort, Fred. "Predicting Supreme Court Decisions Mathematically: A Quantitative Analysis of the 'Right to Counsel' Cases." *American Political Science Review* 51 (1957):1.
- Krislov, Samuel. "Power and Coalition in a Nine-Man Body." *American Behavioral Scientist* 6 (1963):24.
- Lawlor, Reed C. "What Computers Can Do: Analysis and Prediction of Judicial Decisions." *American Bar Association Journal* 49 (1963):337.
- McLauchlan, William P. "Research Note: Ideology and Conflict in Supreme Court Opinion Assignment, 1946-1962." *Western Political Quarterly* 25 (1972):18.
- Mendelson, Wallace. "The Neo-Behavioral Approach to the Judicial Process: A Critique." *American Political Science Review* 57 (1963):596.
- _____. "The Untroubled World of Jurimetrics." *Journal of Politics* 26 (1964):914.
- Peltason, Jack W. "A Political Science of Public Law." *Social Science Quarterly* 34 (1953):51.
- Pritchett, C. Herman. "Divisions of Opinion Among Justices in the United States Supreme Court, 1939-1941." *American Political Science Review* 35 (1941):890.
- Schubert, Glendon. "Bibliographical Essay; Behavioral Research in Public Law." *American Political Science Review* 57 (1963):433.
- _____. "Ideologies and Attitudes, Academic and Judicial." *Journal of Politics* 29 (1967):3.
- _____. "Judicial Attitudes and Voting Behavior: The 1961 Term of the United States Supreme Court." *Jurimetrics* 28 (1963):100.
- _____. "The 1960 Term of the Supreme Court: A Psychological Analysis." *American Political Science Review* 56 (1962):90.

- Spaeth, Harold. "Judicial Power as a Variable Motivating Supreme Court Behavior." *Midwest Journal of Political Science* 5 (1962):165.
- Tannenhaus, Joseph. "Supreme Court Attitudes Toward Federal Administrative Agencies, 1947-1956--An Application of Social Science Methods to the Study of the Judicial Process." *Vanderbilt Law Review* 14 (1961):473.
- Thurstone, Louis L., and Degan, J. W. "A Factorial Study of the Supreme Court." *Proceedings of National Academy of Science* 37 (1951):628.
- Ulmer, S. Sidney. "The Analysis of Behavior Patterns on the United States Supreme Court." *Journal of Politics* 22 (1960):630.
- _____. "The Dimensionality of Judicial Voting Behavior." *Midwest Journal of Political Science* 13 (1969):471.
- _____. "A Note on Attitudinal Consistency in the United States Supreme Court." *Indian Journal of Political Science* 22 (1961):195.
- _____. "Quantitative Analysis of Judicial Processes: Some Practical and Theoretical Applications." *Jurimetrics* 28 (1963):165.
- _____. "Scaling Judicial Cases: A Methodological Note." *American Behavioral Scientist* 8 (1961):31.
- _____. "The Supreme Court and Civil Liberties." *Western Political Quarterly* 13 (1960):288.

Judicial Systems

- Angell, Robert C. "The Value of Sociology of Law." *Michigan Law Review* 31 (1953):516.
- Cohen, Felix S. "Transcendental Nonsense and the Functional Approach." *Columbia Law Review* 35 (1935):809.
- Green, Justin J. "Judicial Policy-Making, 1973-74." *Western Political Quarterly* 28 (1975):172.
- Haines, Charles G. "General Observations on the Effects of Personal, Political and Economic Influences in the Decisions of Judges." *Illinois Law Review* 17 (1922):96.
- Harris, Rorert J. "Judicial Review: Vagaries and Varieties." *Journal of Politics* 38 (1976):190.

- Holmes, Oliver Wendell. "The Path of the Law." *Harvard Law Review* 10 (1897):457.
- Lewis, Anthony. "The Supreme Court and Its Critics." *Minnesota Law Review* 45 (1960-1961):305.
- Llewelyn, Karl N. "Some Realism About Realism." *Harvard Law Review* 44 (1931):1222.
- Loevinger, Lee. "Jurimetrics: The Next Step Forward." *Minnesota Law Review* 33 (1949):455.
- McElwain, Edwin. "The Business of the Supreme Court as Conducted by Chief Justice Hughes." *Harvard Law Review* 63 (1949):6.
- Mendelson, Wallace. "Mr. Justice Douglas and Government by the Judiciary." *Journal of Politics* 38 (1976):918.
- Moore, Underhill, and Sussman, Gilbert. "The Lawyer's Law." *Yale Law Journal* 41 (1932):566.
- Mott, Rodney L.; Albright, Spencer D.; and Semmerling, Helen R. "Political Socialization." *Annals of the American Academy of Political and Social Science* 167 (1933):143.
- Newland, Chester A. "Legal Periodicals and the United States Supreme Court." *Midwest Journal of Political Science* 3 (1959):65.
- Pound, Roscoe. "Mechanical Jurisprudence." *Columbia Law Review* 8 (1908):605.
- _____. "The Need of a Sociological Jurisprudence." *The Green Bag* 19 (1907):607.
- Schmidhauser, John R. "The Justices of the Supreme Court: A Collective Portrait." *Midwest Journal of Political Science* 3 (1959):23.
- Shapiro, Martin. "Political Jurisprudence." *Kentucky Law Journal* 52 (1964):294.
- Snyder, Eloise. "Political Power and the Ability to Win Supreme Court Decisions." *Social Forces* 39 (1960):36.
- Timasheff, Nicholas. "What is 'Sociology of Law'?" *American Journal of Sociology* 43 (1937):225.

Constitutional Rights

Devine, Francis Edward. "Absolute Democracy or Indefeasible Right: Hobbes Versus Locke." *Journal of Politics* 37 (1975):736.

Williamson, Rene de Visme. "Political Process of Judicial Process: The Bill of Rights and the Framers of the Constitution." *Journal of Politics* 23 (1961):207.

Methodology

Holley, J. W., and Guilford, J. P. "A Note on the G Index of Agreement." *Educational and Psychological Measurement* 24 (1964):749.

Magazine Articles

"The Burger Court; A Trend Toward Conservatism, But--," *U. S. News and World Report*, 16 July 1973, p. 29.

"Changing Supreme Court--New Faces, New Philosophy," *U. S. News and World Report*, 4 October 1971, p. 15.

Denniston, Lyle. "Today's Godfathers," *Quill*, September, 1976, p. 33.

Footlick, Jerrold K. "Too Much Law?" *Newsweek*, 10 January 1977, p. 42.

Graham, Fred. "Missing the Boat on the Bill of Rights," *Student Lawyer*, March, 1977, p. 42.

Kauper, Paul G. "The Role of the Press in a Democratic Society," *Editor & Publisher*, 16 February 1974, p. 7.

"Kennedy's Antitrust Group Watching Media Takeovers," *Editor & Publisher*, 28 May 1977, p. 10.

MacKenzie, John P. "Dark Doings Among the Judges," *Saturday Review*, 28 May 1977, p. 18.

"Midterm Report: The Conservative Pattern Emerges," *Congressional Quarterly*, 23 February 1974, p. 499.

"The Nixon Court: A Further Tilt to Conservatism," *U. S. News and World Report*, 15 July 1974, p. 33.

"Some Surprises in High Court's Conservative Trend," *U. S. News and World Report*, 11 July 1977, p. 20.

Stewart, Potter. "Press Function Upheld," Editor & Publisher, 9 November 1974, p. 7.

"Udall Re-Enters Anti-Group Bill with 25 Co-Sponsors," Editor & Publisher, 11 June 1977, p. 12.

"What Kind of Court Now? Who Really Lost? After the Carswell Defeat--Nixon's New Strategy," U. S. News and World Report, 20 April 1970, p. 19.

Witt, Elder. "Term Review: Four Justices Voice Views of the Supreme Court," Congressional Quarterly, 26 July 1975, p. 1602.

Dissertations

Pullen, Ricky D. "A Comparison and Contrast of the Libertarian and Social Responsibility Theories of the Press Based on United States Supreme Court Decisions," (Ph.D. Thesis, Southern Illinois University, 1973).

Kim, Holim. "Free Press and Fair Trial: An Attitudinal Study of Lawyers and Journalists in a Conflict Between Two Professions," (Ph.D. Thesis, Southern Illinois University, 1972).

Reports

Tyler, John. "Government Regulation of Broadcasting." Freedom of Information Center Report No. 368 (Columbia, Mo.: Freedom of Information Center, March, 1977).

Newspaper Articles

Kohlmeier, Louis M. "Ideology and the Supreme Court," Wall Street Journal, 11 November 1971, p. 8.

Morley, Anthony. "A Judicial Standard of Rights," Minneapolis Tribune, 17 July 1977, p. 9A.

Supreme Court Decisions

A Quantity of Books v. Kansas, 378 U. S. 205 (1964)

Abrams v. United States, 250 U. S. 616 (1919)

Aptheker v. Secretary of State, 370 U. S. 500 (1964)

Bantam Books v. Sullivan, 372 U. S. 58 (1963)

Barenblatt v. United States, 390 U. S. 109 (1959)

Beauharnais v. Illinois, 343 U. S. 250 (1952)

Breard v. New Hampshire, 341 U. S. 622 (1951)

Bridges v. California, 314 U. S. 252 (1941)

Burstyn v. Wilson, 343 U. S. 495 (1952)

Dennis v. United States, 341 U. S. 494 (1951)

Estes v. Texas, 381 U. S. 532 (1965)

Feiner v. New York, 340 U. S. 315 (1951)

Gelling v. Texas, 343 U. S. 960 (1952)

Gertz v. Robert Welch, 418 U. S. 323 (1974)

Ginzburg v. United States, 383 U. S. 463 (1966)

Gitlow v. New York, 268 U. S. 652 (1925)

Griswold v. Connecticut, 381 U. S. 479 (1965)

Jacobellis v. Ohio, 378 U. S. 184 (1964)

Kovacs v. Cooper, 336 U. S. 77 (1949)

Kunz v. New York, 340 U. S. 290 (1951)

Maryland v. Baltimore Radio Show, 338 U. S. 912, cert. den. (1950)

Miami Herald v. Tornillo, 418 U. S. 241 (1974)

New York Times v. Sullivan, 376 U. S. 254 (1964)

Niemotko v. Maryland, 340 U. S. 268 (1951)

Poulos v. New Hampshire, 345 U. S. 395 (1953)

Roth v. United States, 345 U. S. 476 (1957)

Saia v. New York, 334 U. S. 558 (1948)

Schenck v. United States, 249 U. S. 47 (1919)

Sheppard v. Ohio, 352 U. S. 910, cert den. (1956)

Terminiello v. Chicago, 372 U. S. 229 (1963)

Time, Inc. v. Firestone, 424 U. S. 448 (1976)

United States v. Carolene Products Co., 304 U. S. 144 (1938)

United States v. Paramount Pictures, 334 U. S. 131 (1948)

United Public Workers v. Mitchell, 330 U. S. 75 (1947)

Zemel v. Rusk, 381 U. S. 1 (1965)

APPENDIX A

CODEBOOK I
 NON-UNANIMOUS SUPREME COURT DECISIONS,
 OCTOBER, 1946-FEBRUARY, 1974

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS
V1	1-6		CASE ID—US VOL + PAGE ¹
V2	7-8		COURT TERM YEAR ²
V3	9-10		CASE VOTING DIVISION
		235	1. VOTE 8 1
		127	2. VOTE 7 1
		47	3. VOTE 6 1
		6	4. VOTE 5 1
		279	5. VOTE 7 2
		153	6. VOTE 6 2
		68	7. VOTE 5 2
		5	8. VOTE 4 2
		441	9. VOTE 6 3
		144	10. VOTE 5 3
		33	11. VOTE 4 3
		396	12. VOTE 5 4
		51	13. VOTE 4 4

¹ Case identification number. The first two digits are the second and third digits of the U.S. REPORTS Volume number, the last four digits are the U.S. REPORTS page number, *except* for the most recent cases. For these (i.e., those reported in Vols. 93 and after of the SUPREME COURT REPORTER) U.S. REPORTS Volume and page numbers were not available. Consequently, these cases have been assigned arbitrary, non-overlapping "U.S. REPORTS volume numbers" as follows:

"20" = SUPREME COURT REPORTER, Vol. 93.

"21" = SUPREME COURT REPORTER, Vol. 94, etc.

The page numbers for these cases are the SUPREME COURT REPORTER page numbers.

² COURT TERM year frequencies are:

Term Year	N	Term Year	N	Term Year	N	Term Year	N
46	74	53	50	60	77	67	131
47	68	54	36	61	69	68	93
48	73	55	58	62	90	69	37
49	51	56	90	63	112	70	58
50	57	57	94	64	73	71	61
51	59	58	73	65	77	72	66
52	69	59	71	66	112	73	13

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS	VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS
		3	14 VOTE 3 3			121	2 LIBERAL
		4	15 VOTE 4 1			1634	3 NO VOTE
V4	11		VOTE OF BLACK, J.	V15	22		VOTE OF WARREN, C J.
		387	1. CONSERVATIVE			247	1 CONSERVATIVE
		1397	2 LIBERAL			1006	2. LIBERAL
		208	3 NO VOTE			739	3. NO VOTE
V5	12		VOTE OF REED, J.	V16	23		VOTE OF HARLAN, J
		418	1. CONSERVATIVE			976	1. CONSERVATIVE
		169	2 LIBERAL			296	2. LIBERAL
		1405	3 NO VOTE			720	3. NO VOTE
V6	13		VOTE OF FRANKFURTER, J	V17	24		VOTE OF BRENNAN, J
		617	1. CONSERVATIVE			292	1. CONSERVATIVE
		322	2 LIBERAL			1065	2 LIBERAL
		1053	3 NO VOTE			635	3. NO VOTE
V7	14		VOTE OF DOUGLAS, J	V18	25		VOTE OF WHITTAKER, J
		203	1 CONSERVATIVE			284	1 CONSERVATIVE
		1668	2 LIBERAL			80	2. LIBERAL
		121	3 NO VOTE			1628	3. NO VOTE
V8	15		VOTE OF MURPHY, J	V19	26		VOTE OF STEWART, J
		9	1 CONSERVATIVE			671	1 CONSERVATIVE
		188	2 LIBERAL			497	2 LIBERAL
		1795	3 NO VOTE			824	3 NO VOTE
V9	16		VOTE OF JACKSON, J	V20	27		VOTE OF WHITE, J.
		317	1 CONSERVATIVE			452	1. CONSERVATIVE
		109	2 LIBERAL			443	2 LIBERAL
		1566	3 NO VOTE			1097	3 NO VOTE
V10	17		VOTE OF RUTLEDGE, J	V21	28		VOTE OF GOLDBERG, J
		21	1 CONSERVATIVE			52	1. CONSERVATIVE
		181	2 LIBERAL			215	2 LIBERAL
		1790	3 NO VOTE			1725	3. NO VOTE
V11	18		VOTE OF BURTON J	V22	29		VOTE OF FORTAS, J.
		552	1 CONSERVATIVE			72	1 CONSERVATIVE
		188	2 LIBERAL			278	2 LIBERAL
		1252	3 NO VOTE			1642	3. NO VOTE
V12	19		VOTE OF VINSON, C J	V23	30		VOTE OF MARSHALL, J.
		299	1 CONSERVATIVE			76	1 CONSERVATIVE
		126	2 LIBERAL			314	2. LIBERAL
		1567	3 NO VOTE			1602	3. NO VOTE
V13	20		VOTE OF CLARK, J.	V24	31		VOTE OF BURGER, C J.
		697	1 CONSERVATIVE			205	1 CONSERVATIVE
		520	2 LIBERAL			30	2 LIBERAL
		775	3 NO VOTE			1757	3 NO VOTE
V14	21		VOTE OF MINTON, J	V25	32		VOTE OF BLACKMUN, J
		237	1 CONSERVATIVE			154	1. CONSERVATIVE

78

79

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS	VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS
		43	2 LIBERAL			183	3. 56-58 TO STEWART
		1795	3 NO VOTE			248	4. 58-61 TO WHITE
V26	33		VOTE OF POWELL, J.			316	5. 1961-64 TERMS
		85	1. CONSERVATIVE			189	6. 1965-66 TERMS
		29	2. LIBERAL			224	7. 1967-68 TERMS
		1878	3 NO VOTE			95	8. 1969-70 TERMS
V27	34		VOTE OF REHNQUIST, J.			140	9. 1971-73 TERMS
		111	1. CONSERVATIVE	V34	79-80	1992	DATA SET ID NUMBER
		4	2. LIBERAL				51. for all cases
		1877	3. NO VOTE				
V28	35		GENERAL SUBJECT AREA				
		1201	1. CIVIL LIBERTIES				
		791	2. ECONOMICS				
V29	36		CASE OUTCOME DIRECTION				
		848	1. CONSERVATIVE				
		1144	2. LIBERAL				
V30	37		COURT ERA				
		451	1. VINSON COURT				
		1306	2. WARREN COURT				
		235	3. BURGER COURT				
V31	38		DETAILED COURT ERA				
		451	1. VINSON COURT				
		329	2. EARLY WARREN				
		564	3. MIDDLE WARREN				
		413	4. LATE WARREN				
		235	5. BURGER COURT				
V32	39-40		COURT NUMBER				
		215	1. 1946-48 TERMS				
		236	2. 1949-52 TERMS				
		66	3. 53-54 TO HARLAN				
		80	4. 54-56 TO BRENNAN				
		24	5. 1956 TO WHITTAKER				
		159	6. 56-58 TO STEWART				
		248	7. 58-61 TO WHITE				
		316	8. 1961-64 TERMS				
		189	9. 1965-66 TERMS				
		224	10. 1967-68 TERMS				
		38	11. 69-70 TO BLACKMUN				
		74	12. 70-71 TO POWELL				
		123	13. 1971-73 TERMS				
V33	41		SIMPLIFIED COURT NUMBER				
		215	0. 1946-48 TERMS				
		236	1. 1949-52 TERMS				
		146	2. 53-56 TO BRENNAN				

APPENDIX B

The following cases comprise the sample for this study:

FREE PRESS-FAIR TRIAL (P₁-cases)

Craig v. Harney, 331 U. S. 364 (1947)
 Stroble v. California, 343 U. S. 181 (1952)
 Marshall v. United States, 360 U. S. 310 (1959)
 Beck v. Washington, 369 U. S. 541 (1962)
 Wood v. Georgia, 370 U. S. 375 (1962)
 Rideau v. Louisiana, 373 U. S. 723 (1963)
 Estes v. Texas, 381 U. S. 532 (1965)
 Sheppard v. Maxwell, 384 U. S. 333 (1966)
 United States v. Caldwell, 408 U. S. 665 (1972)
 Branzburg v. Hayes, 408 U. S. 665 (1972)
 In the Matter of Pappas, 408 U. S. 665 (1972)

FREE PRESS-PRIVACY/REPUTATION (P₂-cases)

Barr v. Matteo, 360 U. S. 564 (1959)
 Linn v. United Plant Guard Workers, 383 U. S. 53 (1966)
 Rosenblatt v. Baer, 383 U. S. 53 (1966)
 Time, Inc. v. Hill, 385 U. S. 374 (1967)
 Curtis Publishing Co. v. Butts, 388 U. S. 130 (1967)
 St. Amant v. Thompson, 390 U. S. 727 (1968)
 Rosenbloom v. Metromedia, 403 U. S. 29 (1971)

FREE PRESS-COMMUNITY ORDER/NATIONAL INTEREST (P₃-cases)

Donaldson v. Read Magazine, Inc., 333 U. S. 178 (1948)
 Breard v. Alexandria, 341 U. S. 622 (1951)
 Beauharnais v. Illinois, 343 U. S. 250 (1952)
 Talley v. California, 362 U. S. 60 (1960)
 Griswold v. Connecticut, 381 U. S. 479 (1965)
 Amalgamated Food Employees Union v. Logan Valley Plaza, Inc., 391 U. S.
 308 (1968)
 Organization for a Better Austin v. Keefe, 402 U. S. 415 (1971)
 Lloyd Corporation v. Tanner, 407 U. S. 551 (1972)
 United States v. Times-Picayne Publishing Co., 345 U. S. 594 (1953)
 Times-Picayne Publishing Co. v. United States, 345 U. S. 594 (1953)
 United States v. Hariss, 347 U. S. 612 (1954)
 United States v. IUUAAA IWA 352 U. S. 567 (1957)
 CBS v. Democratic National Committee, 412 U. S. 94 (1973)
 Pittsburgh Press Company v. Pittsburgh Commission on Human Relations,
 413 U. S. 376 (1973)

FREE PRESS-COMMUNITY MORALITY (P₄-cases)

Winters v. New York, 333 U. S. 507 (1948)
Doubleday & Co. v. New York, 335 U. S. 848 (1948)
Kingsley Books, Inc. v. Brown, 354 U. S. 436 (1957)
Roth v. United States, 354 U. S. 476 (1957)
Alberts v. California, 354 U. S. 476 (1957)
Smith v. California, 361 U. S. 147 (1959)
Times Film Corp. v. Chicago, 365 U. S. 43 (1961)
Manual Enterprises, Inc. v. Day, 370 U. S. 478 (1962)
Bantam Books, Inc. v. Sullivan, 372 U. S. 58 (1963)
Jacobellis v. Ohio, 378 U. S. 184 (1964)
A Quantity of Books v. Kansas, 378 U. S. 205 (1964)
Memoirs v. Massachusetts, 383 U. S. 463 (1966)
Redrup v. New York, 386 U. S. 767 (1967)
Austin v. Kentucky, 386 U. S. 767 (1967)
Gent v. Arkansas, 386 U. S. 767 (1967)
Jacobs v. New York, 388 U. S. 431 (1967)
Tannenbaum v. New York, 388 U. S. 439 (1967)
Keney v. New York, 388 U. S. 440 (1967)
Friedman v. New York, 388 U. S. 441 (1967)
Ratner v. California, 388 U. S. 442 (1967)
Cobert v. New York, 388 U. S. 443 (1967)
Sheperd v. New York, 388 U. S. 444 (1967)
Avansino v. New York, 388 U. S. 446 (1967)
Aday v. United States, 388 U. S. 447 (1967)
Corinth Publications v. Wesberry, 388 U. S. 448 (1967)
Books, Inc. v. United States, 388 U. S. 449 (1967)
Rosenbloom v. Virginia, 388 U. S. 450 (1967)
A Quantity of Books v. Kansas, 388 U. S. 452 (1967)
Mazes v. Ohio, 388 U. S. 453 (1967)
Schackman v. California, 388 U. S. 454 (1967)
Ginsburg v. New York, 390 U. S. 629 (1968)
Interstate Circuit, Inc. v. Dallas, 390 U. S. 676 (1968)
United Artists Corp. v. Dallas, 390 U. S. 676 (1968)
Rabeck v. New York, 391 U. S. 462 (1968)
Lee Art Theater, Inc. v. Virginia, 392 U. S. 636 (1968)
Perez v. Stein, 401 U. S. 82 (1971)
Dyson v. Stein, 401 U. S. 200 (1971)
Byrne v. Karalexix, 401 U. S. 216 (1971)
United States v. Reidel, 402 U. S. 351 (1971)
United States v. Thirty-Seven Photographs, 402 U. S. 363 (1971)
California v. LaRue, 409 U. S. 109 (1972)
Papish v. University of Missouri, 410 U. S. 667 (1973)
Miller v. California, 413 U. S. 15 (1973)
Paris Adult Theatre I v. Slaton, 413 U. S. 49 (1973)
Kaplan v. California, 413 U. S. 115 (1973)
United States v. Twelve 200-foot Reels, 413 U. S. 123 (1973)
United States v. Orito, 413 U. S. 139 (1973)

FREE PRESS-NATIONAL SECURITY (P₅-cases)

Dennis v. United States, 341 U. S. 494 (1951)
Yates v. United States, 354 U. S. 298 (1957)
Schneiderman v. United States, 354 U. S. 298 (1957)
Richmond v. United States, 354 U. S. 298 (1957)
Barenblatt v. United States, 360 U. S. 109 (1959)
Communist Party v. Subversive Activities Control Board, 367 U. S. 1
(1961)
Aptheker v. Secretary of State, 378 U. S. 500 (1964)
Zemel v. Rusk, 381 U. S. 1 (1965)
New York Times Co. v. United States, 403 U. S. 713 (1971)
United States v. Washington Post, 403 U. S. 413 (1971)
Kleindienst v. Mandel, 408 U. S. 753 (1972)

APPENDIX C

PRESS PACKAGE CODEBOOK

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
V1	1-6		CASE I.D.--Same as Appendix A
V2	7-8		COURT TERM YEAR--Same as Appendix A
V3	9-10		CASE VOTING DIVISION
		17	1. Vote 8-1
		0	2. Vote 7-1
		3	3. Vote 6-1
		0	4. Vote 5-1
		10	5. Vote 7-2
		5	6. Vote 6-2
		3	7. Vote 5-2
		0	8. Vote 4-2
		24	9. Vote 6-3
		4	10. Vote 5-3
		1	11. Vote 4-3
		25	12. Vote 5-4
		1	13. Vote 4-4
		0	14. Vote 3-3
		0	15. Vote 4-1
V4	11		VOTE OF BLACK
		11	1. Unfavorable
		66	2. Favorable

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
		15	3. No vote
V5	12		VOTE OF REED
		4	1. Unfavorable
		6	2. Favorable
		82	3. No Vote
V6	13		VOTE OF FRANKFURTER
		18	1. Unfavorable
		6	2. Favorable
		68	3. No Vote
V7	14		VOTE OF DOUGLAS
		10	1. Unfavorable
		80	2. Favorable
		2	3. No Vote
V8	15		VOTE OF MURPHY
		1	1. Unfavorable
		2	2. Favorable
		89	3. No Vote
V9	16		VOTE OF JACKSON
		5	1. Unfavorable
		5	2. Favorable
		82	3. No Vote
V10	17		VOTE OF RUTLEDGE
		1	1. Unfavorable
		2	2. Favorable

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
		89	3. No Vote
V11	18		VOTE OF BURTON
		13	1. Unfavorable
		4	2. Favorable
		75	3. No Vote
V12	19		VOTE OF VINSON
		4	1. Unfavorable
		5	2. Favorable
		83	3. No Vote
V13	20		VOTE OF CLARK
		42	1. Unfavorable
		14	2. Favorable
		36	3. No Vote
V14	21		VOTE OF MINTON
		6	1. Unfavorable
		1	2. Favorable
		85	3. No Vote
V15	22		VOTE OF WARREN
		28	1. Unfavorable
		28	2. Favorable
		36	3. No Vote
V16	23		VOTE OF HARLAN
		51	1. Unfavorable

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
		15	2. Favorable
		26	3. No Vote
V17	24		VOTE OF BRENNAN
		26	1. Unfavorable
		52	2. Favorable
		14	3. No Vote
V18	25		VOTE OF WHITTAKER
		8	1. Unfavorable
		2	2. Favorable
		82	3. No Vote
V19	26		VOTE OF STEWART
		23	1. Unfavorable
		51	2. Favorable
		18	3. No Vote
V20	27		VOTE OF WHITE
		27	1. Unfavorable
		36	2. Favorable
		29	3. No Vote
V21	28		VOTE OF GOLDBERG
		2	1. Unfavorable
		7	2. Favorable
		83	3. No Vote

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
V22	29		VOTE OF FORTAS
		9	1. Unfavorable
		24	2. Favorable
		59	3. No Vote
V23	30		VOTE OF MARSHALL
		6	1. Unfavorable
		24	2. Favorable
		62	3. No Vote
V24	31		VOTE OF BURGER
		19	1. Unfavorable
		4	2. Favorable
		69	3. No Vote
V25	32		VOTE OF BLACKMUN
		19	1. Unfavorable
		4	2. Favorable
		69	3. No Vote
V26	33		VOTE OF POWELL
		12	1. Unfavorable
		2	2. Favorable
		78	3. No Vote
V27	34		VOTE OF REHNQUIST
		13	1. Unfavorable
		1	2. Favorable
		78	3. No Vote

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
V28	34		PRESS CASE AREA
		11	1. Fair Trial
		7	2. Privacy-Reputation
		14	3. Community Order-National Interest
		49	4. Community Morality
		11	5. National Security
V29	36		CASE OUTCOME DIRECTION
		40	1. Unfavorable
		52	2. Favorable
V30	37		COURT ERA
		13	1. Vinson
		56	2. Warren
		23	3. Burger
V31	38		DETAILED COURT ERA
		10	1. Vinson
		8	2. Early Warren
		18	3. Middle Warren
		33	4. Late Warren
		23	5. Burger Court
V32	39-40		COURT NUMBER
		4	1. 1946-48 Terms
		6	2. 1949-52 Terms
		1	3. 1953-54 to Harlan

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
		0	4. 1954-56 to Brennan
		1	5. 1956 to Whittaker
		6	6. 1956-58 to Stewart
		7	7. 1958-61 to White
		11	8. 1961-64 Terms
		26	9. 1965-66 Terms
		7	10. 1967-68 Terms
		0	11. 1969-70 to Blackmun
		9	12. 1970-71 to Powell
		14	13. 1971-73 Terms
V33	41		APSA DIRECTION
		45	1. Conservative
		47	2. Liberal

APPENDIX D
DATA COMPILATION

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/12/77) TOTAL COURT

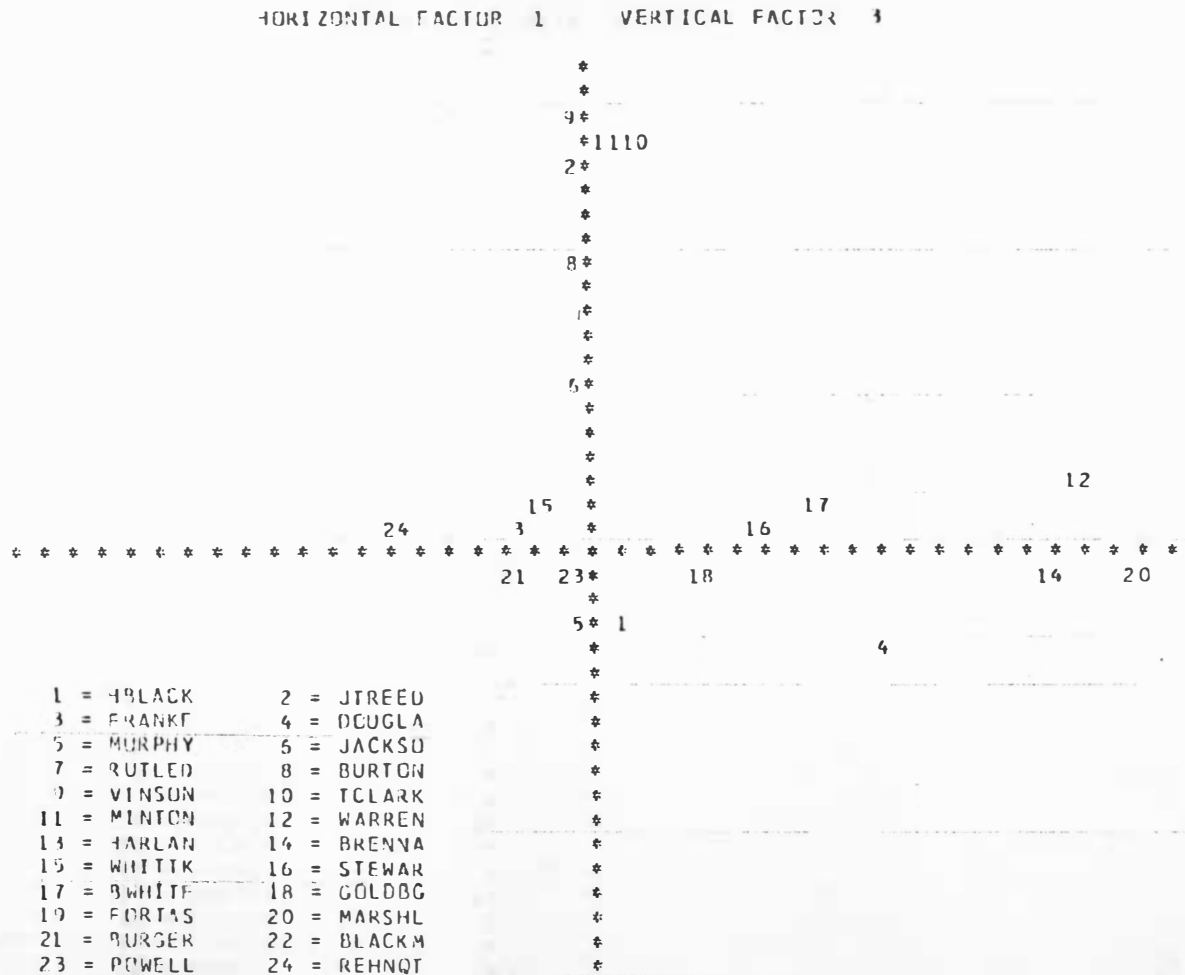


Figure D-1. G Total Court first and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/12/77) TOTAL COURT

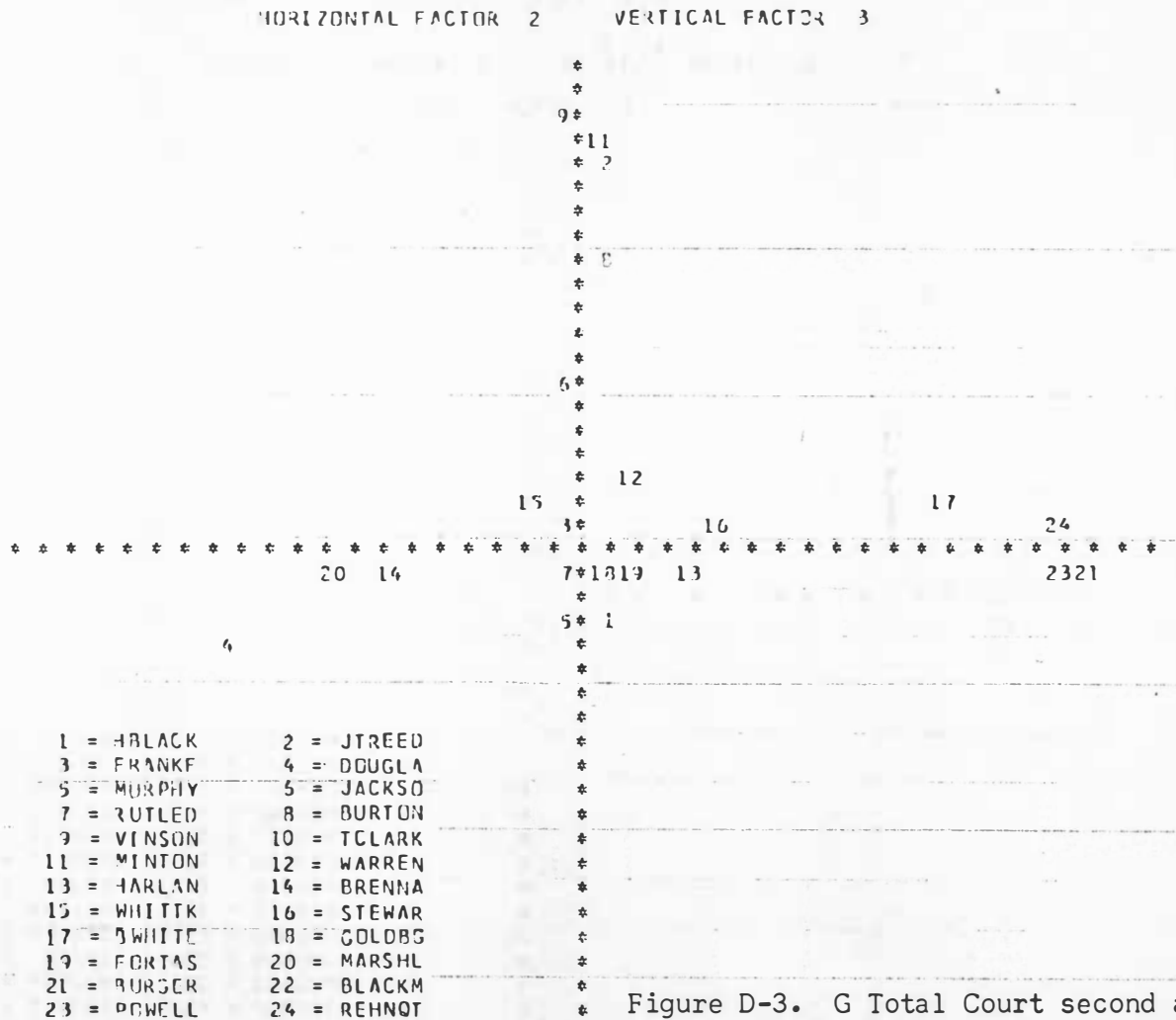


Figure D-3. G Total Court second and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE 5 (CREATION DATE = 07/12/77) TOTAL COURT

HORIZONTAL FACTOR 2 VERTICAL FACTOR 4

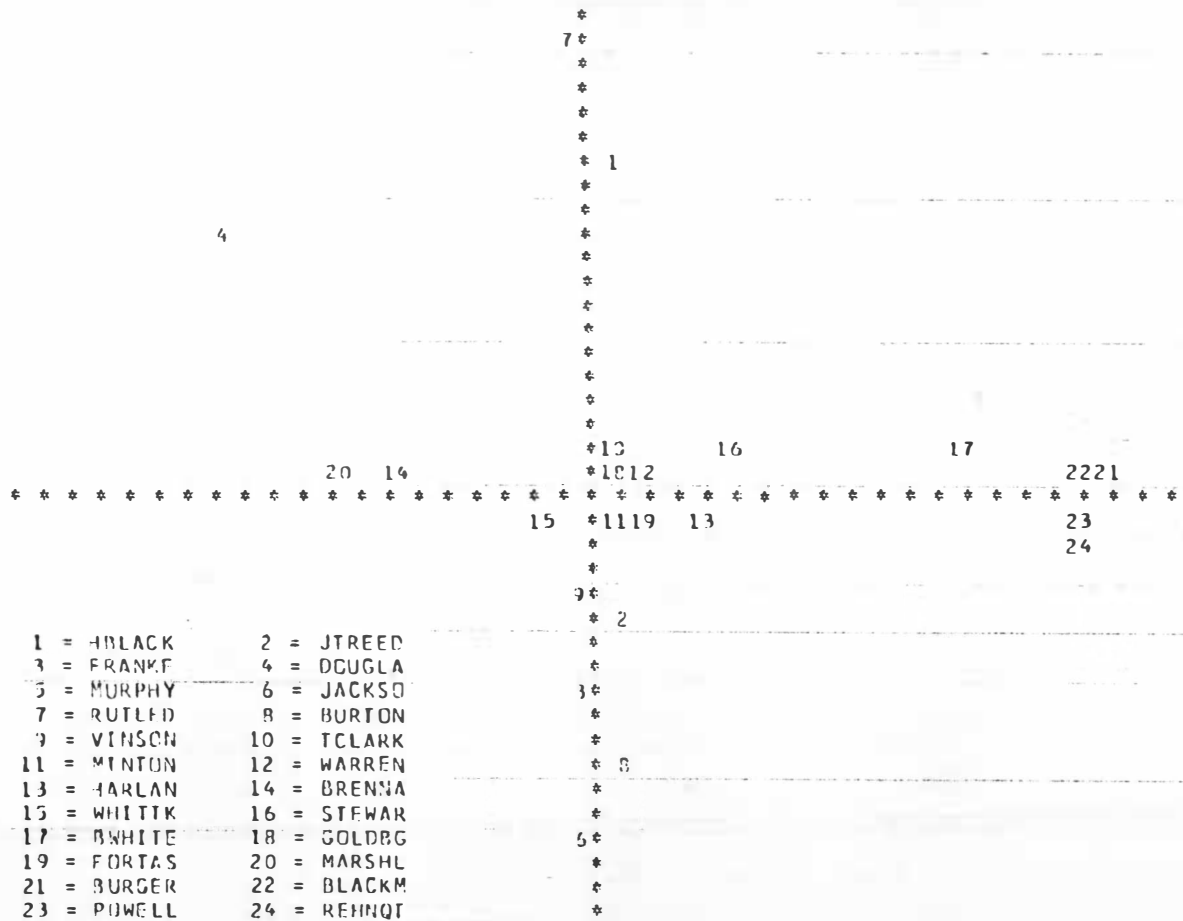


Figure D-4. G Total Court second and fourth dimensions.

TABLE D-1

G VINSON COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	JTREED	FRANKF	DOUGLA	MURPHY	JACKSO	RUTLED	BURTON	VINSON	TCLARK	MINTON
HBLACK	--	42 11 252 116	34 17 217 140	18 34 62 255	6 28 3 156	36 16 249 83	8 26 13 151	46 7 270 98	47 7 247 118	14 6 102 57	13 6 128 66
JTREED	-248	--	180 109 75 48	68 203 12 89	9 128 0 60	218 65 68 34	21 120 0 61	257 43 63 61	256 42 40 84	99 25 17 37	119 30 22 41
FRANKF	-144	104	--	46 191 32 93	7 132 2 56	210 25 69 67	17 127 4 54	208 46 106 51	188 65 105 51	68 25 44 30	64 40 69 27
DOUGLA	479	-154	-230	--	2 38 6 134	39 39 222 45	14 27 7 137	67 13 217 76	67 13 206 86	21 10 85 40	22 16 105 37
MURPHY	678	-298	-359	510	--	8 1 132 35	5 4 16 171	8 1 161 27	8 1 134 53		
JACKSO	-379	308	492	-512	-510	--	9 131 12 24	221 65 65 33	209 76 63 34	90 30 19 28	100 42 33 25
RUTLED	605	-187	-296	631	795	-624	--	21 0 152 29	20 1 126 54		
BURTON	-314	500	258	-232	-644	322	-503	--	259 61 40 62	103 18 15 43	115 22 28 47
VINSON	-212	610	167	-176	376	272	-262	520	--	108 12 9 48	120 23 22 46
TCLARK	-204	527	173	-216		412		630	762	--	92 19 20 41
MINTON	-256	508	-089	-343		248		528	572	545	--

TABLE D-2

G VINSON COURT INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) VINSON COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.58979	0.57050	-0.06173	-0.13599
JTREED	0.62825	0.25471	-0.26772	0.64351
FRANKF	0.37868	-0.26610	0.48045	0.15519
DOUGLA	-0.37112	0.57497	0.43399	0.42443
MURPHY	-0.05662	0.37004	0.20703	-0.47701
JACKSU	0.56529	0.27269	0.31179	0.15377
RUTLED	-0.54651	0.70987	-0.42512	0.27184
BURTON	0.79294	0.30225	0.07059	-0.43234
VINSON	0.77832	0.33700	-0.18465	-0.37170
TCLARK	0.77771	0.27436	-0.21996	0.08300
MINTON	0.67608	0.17293	-0.44820	-0.01505

VARIABLE	COMMUNALITY
HBLACK	0.69572
JTREED	0.74701
FRANKF	0.46713
DOUGLA	1.01637
MURPHY	1.25895
JACKSU	1.07689
RUTLED	1.05721
BURTON	0.91200
VINSON	0.75798
TCLARK	0.73494
MINTON	0.69541

TABLE D-3

G VINSON COURT TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) VINSON COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.25577	0.75285	-0.22223	-0.11893
JTREED	0.69114	-0.01530	0.12528	0.37483
FRANKF	0.04692	-0.37434	0.56977	0.04620
DOUGLA	-0.23491	0.78959	0.44369	0.37534
MURPHY	0.26137	0.74250	0.16661	-0.57402
JACKSO	0.29918	0.05792	0.79128	-0.03739
RUTLED	-0.06314	0.85659	-0.43997	0.35483
BURTON	0.79393	-0.04150	0.27177	-0.45399
VINSON	0.86312	-0.00564	0.11273	-0.04745
TCLARK	0.84081	-0.06351	0.10666	0.11212
MINTON	0.80726	-0.10775	-0.16563	0.06850

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
FACTOR 1	0.35457	-0.39662	0.33490	-0.01541
FACTOR 2	0.38421	0.91713	0.10507	-0.01478
FACTOR 3	-0.34477	0.03637	0.91295	-0.21524
FACTOR 4	-0.05670	0.01564	0.20915	0.97633

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	5.94588	35.9	35.9
2	2.79409	25.4	61.3
3	1.66742	15.2	76.4
4	1.21826	11.1	87.5
5	0.88159	8.0	95.5
6	0.49957	4.5	100.0
7	0.45214	4.1	104.1
8	0.34329	3.1	107.2
9	0.26512	2.4	109.6
10	-0.11632	-1.1	108.6
11	-0.74108	-6.6	100.0

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) VINSON COURT

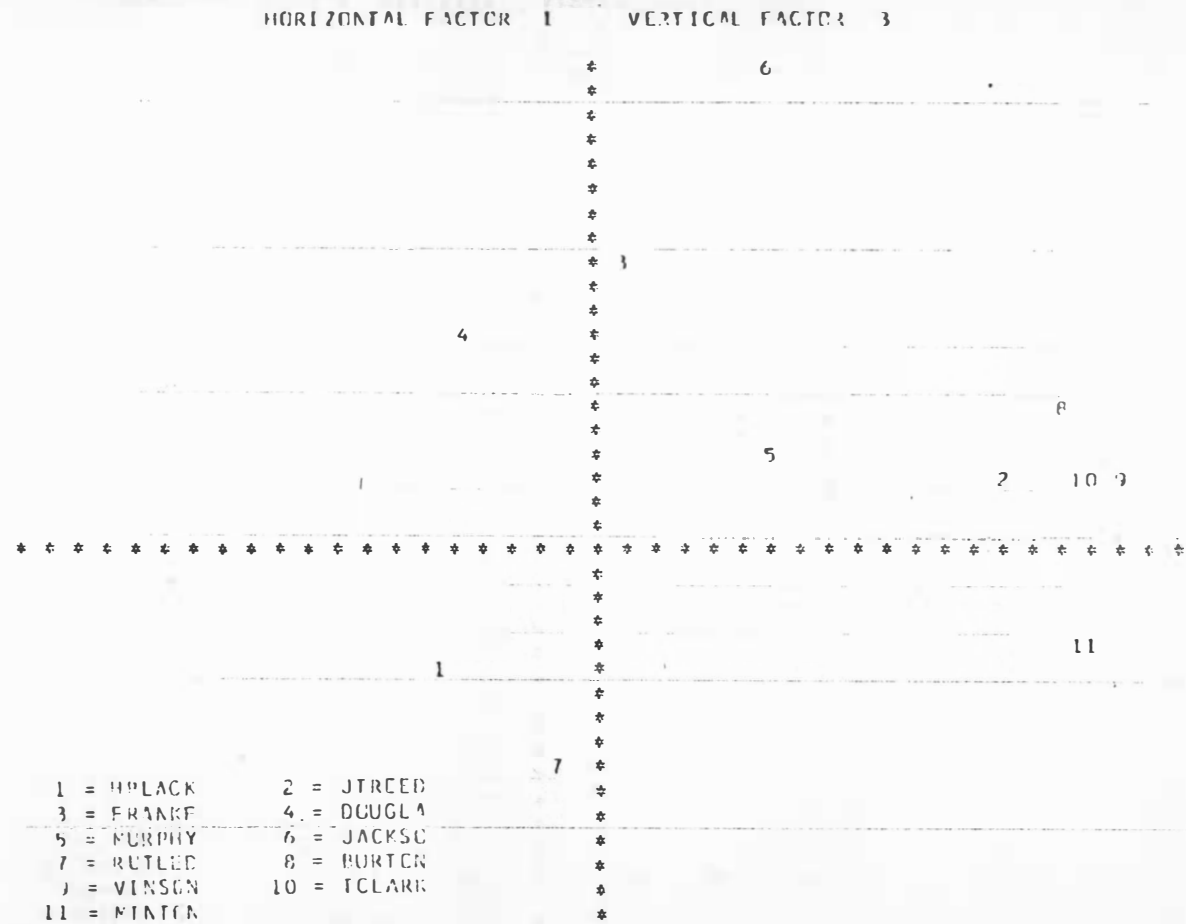


Figure D-5. G Vinson Court first and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) VINSON COURT

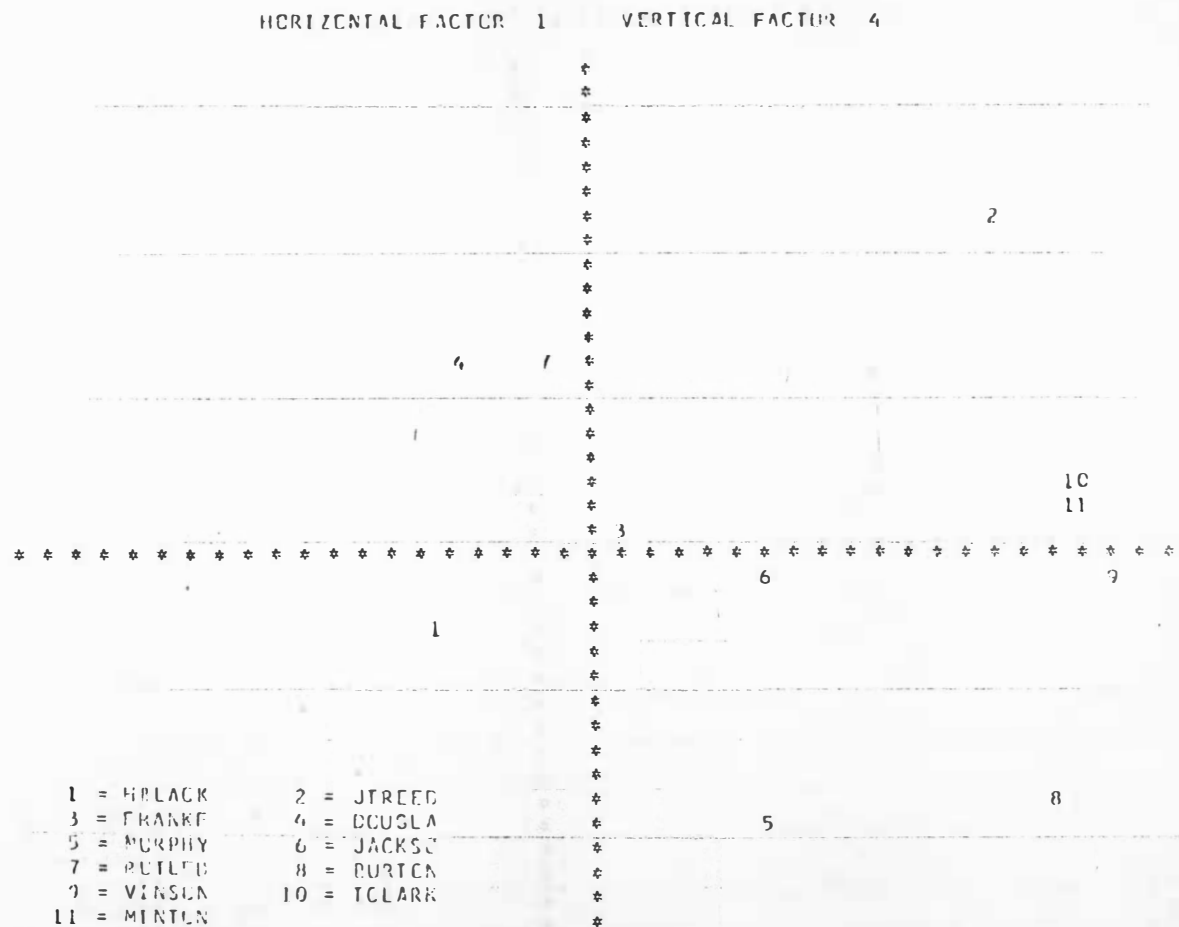


Figure D-6. G Vinson Court first and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) VINSON COURT

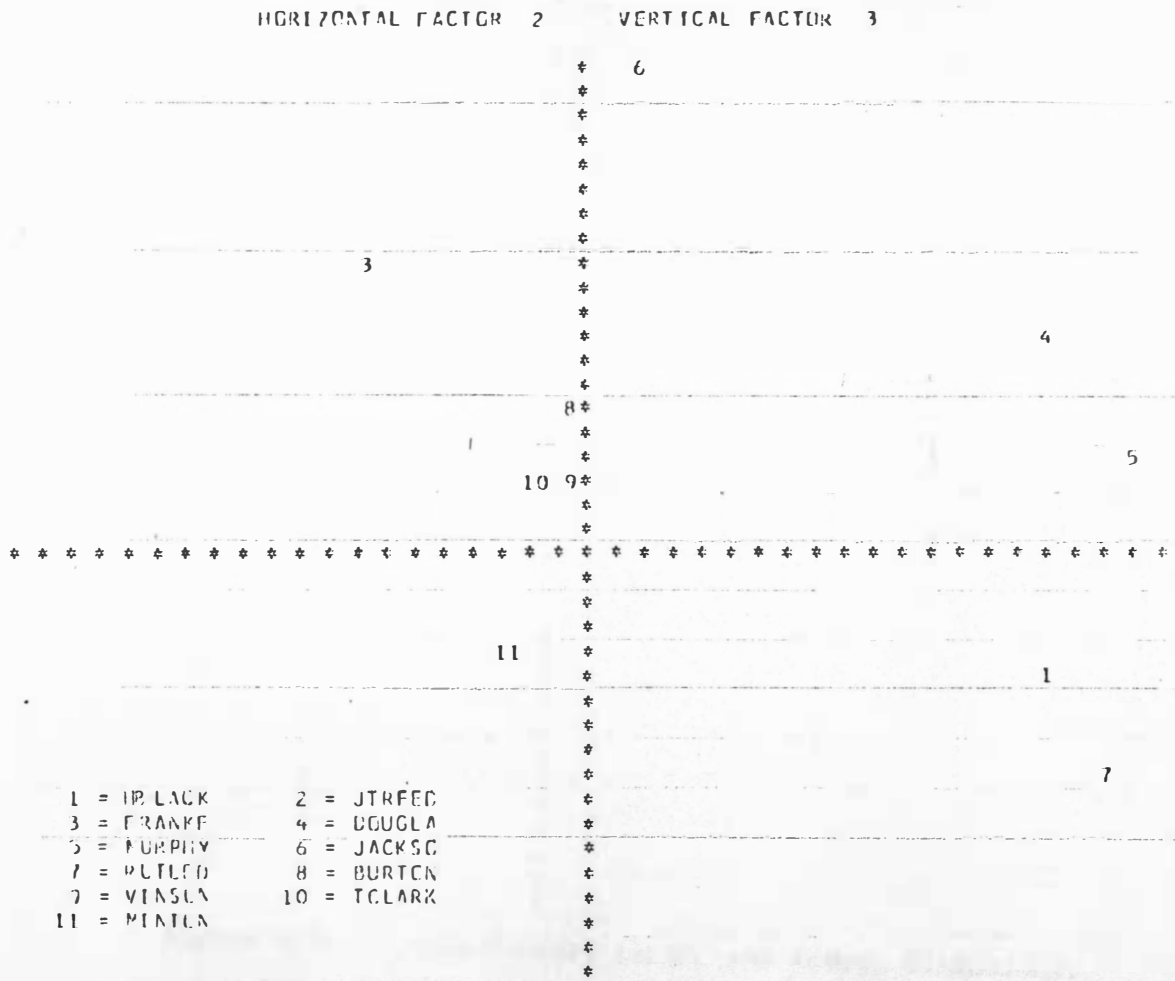


Figure D-7. G Vinson Court first and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE 5

(CREATION DATE = 07/11/77)

VINSON COURT

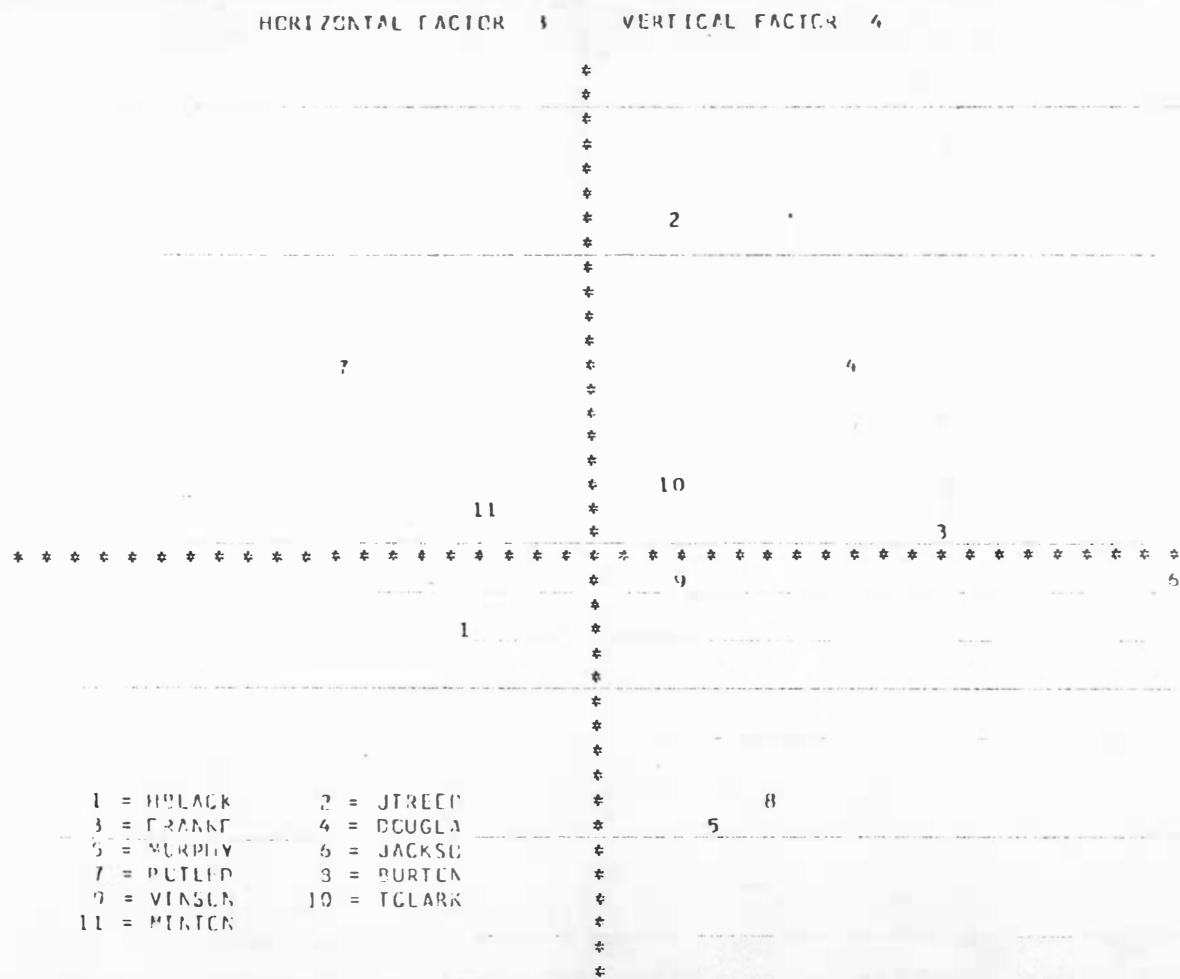


Figure D-9. G Vinson Court third and fourth dimensions.

TABLE D-4

G EARLY WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	JTREED	FRANKF	DOUGLA	JACKSO	BURTON	TCLARK	MINTON	WARREN	HARLAN	BURGER	WHITTK
HBLACK	--	4 1 113 40	9 10 164 111	5 14 13 278	1 0 28 10	14 5 213 72	14 4 165 120	6 0 88 49	17 2 55 226	9 6 153 64	4 9 34 114	8 1 82 36
JTREED	-442	--	57 56 30 12	5 111 6 36	21 8 6 2	100 17 19 23	67 45 6 35	82 21 11 26	43 72 2 39	35 21 25 3	5 10 1 2	
FRANKF	-181	-109	--	4 173 14 109	22 3 7 7	145 34 78 38	108 64 72 49	51 28 42 20	47 128 25 90	120 12 31 60	37 56 3 57	61 18 19 22
DOUGLA	825	-480	-244	--	1 2 27 8	10 8 218 75	8 8 172 122	7 4 85 45	7 9 63 228	2 7 163 69	0 7 40 123	1 3 91 38
JACKSO	-435	242	486	-526	--	26 3 8 2	21 8 5 3	22 7 5 5	19 9 6 4			
BURTON	-433	546	238	-452	435	--	150 73 25 56	78 30 16 18	65 159 7 70	123 39 42 30	38 78 2 45	76 15 15 21
TCLARK	-114	333	070	-161	296	354	--	54 13 35 35	66 106 4 125	90 44 72 32	37 72 2 56	
MINTON	-230	542	000	-260	383	350	298	--	38 53 7 41	25 15 19 5		
WARREN	619	044	-054	530	209	-100	268	134	--	25 8 138 61	17 8 23 115	17 0 74 34
HARLAN	-370	-094	614	-409		306	000	-054	-256	--	38 77 2 52	79 15 13 26
BRENNA	464	-221	228	446		000	109		618	063	--	28 2 61 39
WHITTK	-306		382	-413		527	225		-181	578	000	--

TABLE D-5

G EARLY WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) EARLY WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5
HBLACK	-0.81994	0.32644	0.35729	0.18493	-0.03174
JTREFD	0.54660	0.40660	-0.54243	0.10703	-0.17512
FRANKF	0.46217	-0.09604	0.64792	-0.14873	0.47353
DOUGLA	-0.85941	0.05476	-0.06137	0.41633	0.45637
JACKSO	0.58500	0.41968	0.02565	-0.43407	0.48887
BURTON	0.75440	0.20389	-0.01034	0.33006	-0.01920
TCLARK	0.36014	0.54194	0.01577	0.40940	0.03278
MINTON	0.44330	0.51531	-0.27857	0.02143	0.04033
WARREN	-0.35707	0.82131	0.34158	0.10926	0.10586
HARLAN	0.53695	-0.40639	0.52175	0.17265	0.03404
BRENNA	-0.05527	0.46785	0.71464	-0.29864	-0.51778
WHITTK	0.56445	-0.26352	0.40602	0.52701	-0.11912

VARIABLE COMMUNALITY

HBLACK	0.94173
JTREFD	0.90045
FRANKF	0.88899
DOUGLA	1.12695
JACKSO	0.94642
BURTON	0.72011
TCLARK	0.59233
MINTON	0.54175
WARREN	0.74188
HARLAN	0.75665
BRENNA	1.08992
WHITTK	0.84483

TABLE D-6

G EARLY WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) EARLY WARREN

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5
HBLACK	-0.36440	0.32396	-0.20571	0.20708	-0.21176
JFREED	0.83389	-0.26868	-0.14208	-0.04648	-0.10269
FRANKF	-0.08923	0.00265	0.57742	0.08836	0.73471
DOUGLA	-0.38305	0.77907	-0.25377	-0.52486	-0.17410
JACKSO	0.46711	-0.12904	-0.06381	0.05710	0.83919
BURTON	0.68556	-0.15453	0.46891	-0.01375	0.07728
TCLARK	0.67339	0.30259	0.21524	0.02752	0.01609
MINTON	0.70773	-0.03458	-0.11484	0.02302	0.16107
WARREN	0.21352	0.84810	-0.19554	0.34060	0.15092
HARLAN	-0.08176	-0.23458	0.81040	0.06534	0.18415
BRENNA	-0.03552	0.27468	0.38275	1.00071	0.07033
WHITTK	0.17626	-0.09841	0.88939	0.00767	-0.11402

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5
FACTOR 1	0.60809	-0.53580	0.49420	0.05074	0.31036
FACTOR 2	0.64808	0.55225	-0.34439	0.35519	0.17393
FACTOR 3	-0.36309	0.36730	0.60287	0.52756	0.29895
FACTOR 4	0.27147	0.44296	0.52313	-0.41624	-0.53214
FACTOR 5	-0.06845	0.27715	0.00660	-0.64620	0.70773

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	3.89834	32.5	32.5
2	2.18909	18.2	50.7
3	1.98851	16.6	67.3
4	1.11521	9.3	76.6
5	1.00089	8.3	84.9
6	0.71607	6.0	90.9
7	0.55683	4.6	95.5
8	0.39765	3.3	98.9
9	0.28437	2.4	101.2
10	0.23521	2.0	103.2
11	0.00843	0.1	103.3
12	-0.39069	-3.3	100.0

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) EARLY WARREN

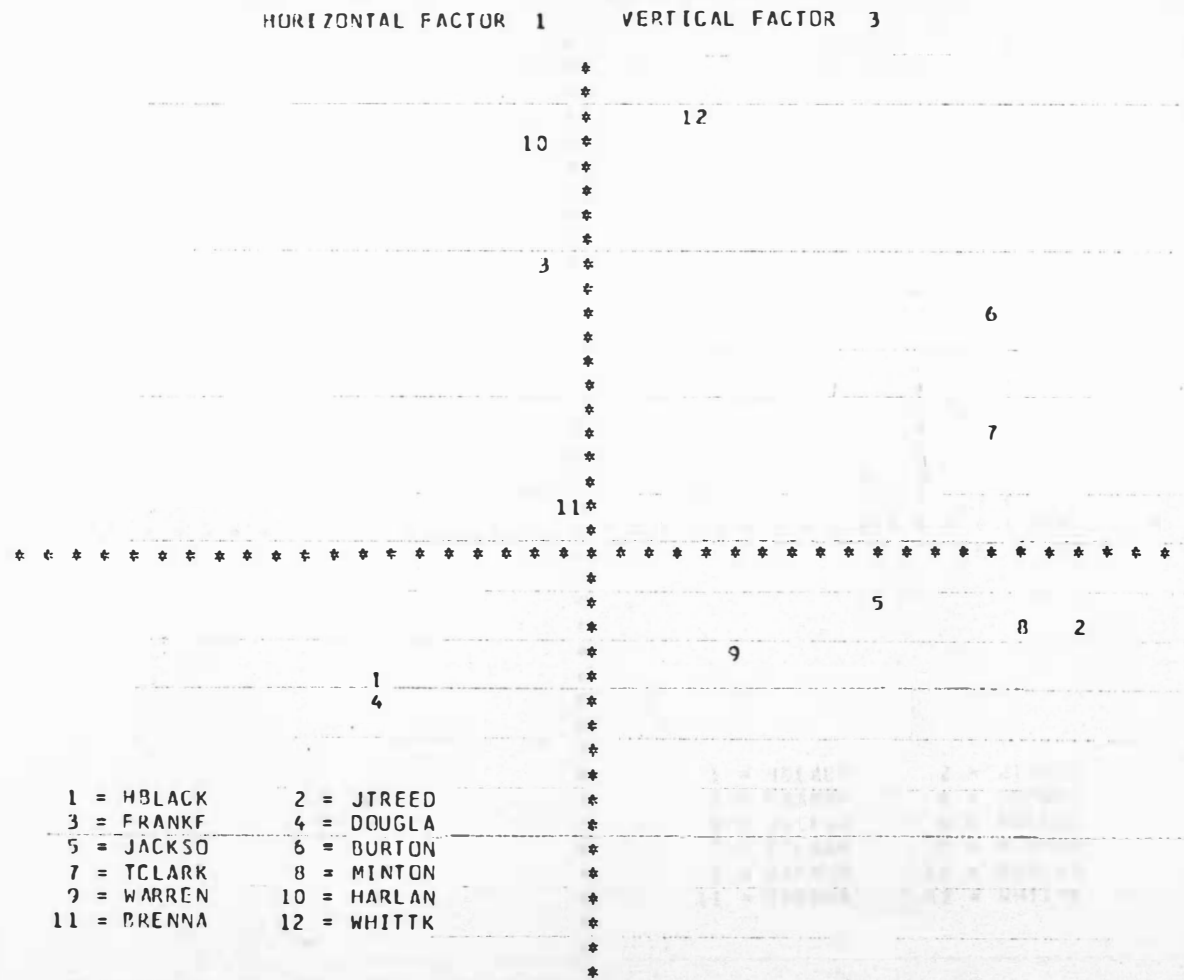


Figure D-10. G Early Warren first and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE 6 (CREATION DATE = 07/11/77) EARLY WARREN

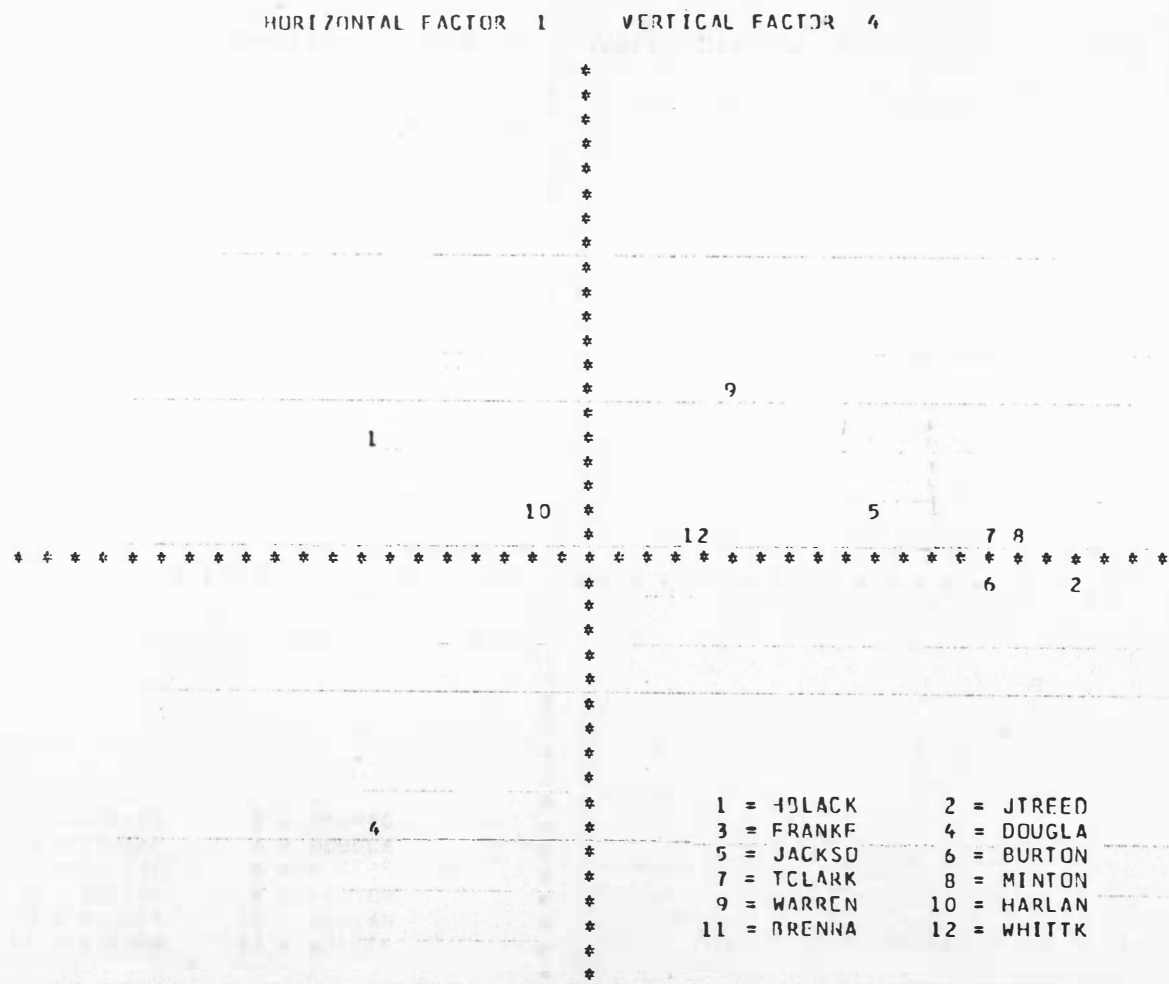


Figure D-11. G Early Warren first and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE 6 (CREATION DATE = 07/11/77) EARLY WARREN

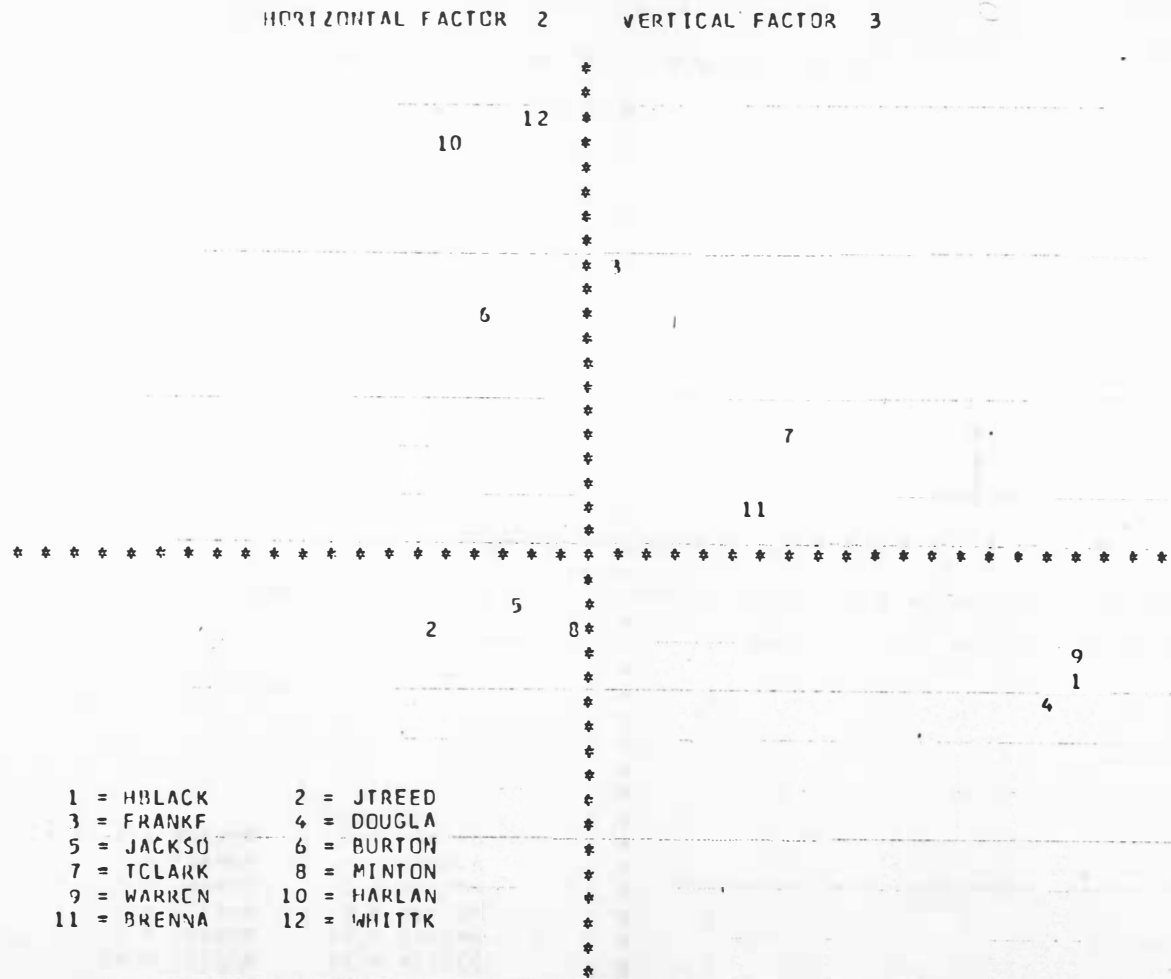


Figure D-12. G Early Warren second and third dimensions.

TABLE D-7
G MIDDLE WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	FRANKF	DOUGLA	TCLARK	WARREN	HARLAN	BRENNA	WHITTK	STEWAR	BWHITE	GOLDBG
HBLACK	--	19 7 162 32	13 60 48 420	43 30 262 203	23 51 60 404	50 20 390 72	27 48 89 378	22 4 167 35	45 28 274 179	33 14 80 145	9 38 43 176
FRANKF	-535	--	11 171 2 38	119 58 19 22	32 149 5 35	157 20 12 29	52 130 3 38	150 25 27 12	126 46 14 24		
DOUGLA	600	-557	--	38 22 268 210	27 33 56 423	40 19 399 76	29 30 86 397	8 4 183 35	39 20 279 187	28 16 85 142	18 25 33 187
TCLARK	-083	293	-077	--	77 228 4 226	265 38 174 57	100 204 11 224	124 16 63 23	204 96 109 113	77 63 33 97	28 107 21 108
WARREN	586	-392	669	130	--	71 7 365 86	72 10 43 414	33 4 156 34	75 8 240 200	39 2 72 156	26 16 26 196
HARLAN	-541	706	-564	204	-406	--	104 334 5 90	148 25 39 14	277 152 34 54	102 130 6 28	44 183 3 28
BRENNA	493	-192	571	200	803	-272	--	52 2 140 37	111 4 208 203	50 3 60 157	33 19 19 193
WHITTK	-500	513	-625	300	-408	433	-228	--	127 53 15 20		
STEWAR	-144	427	-137	214	044	277	192	367	--	89 70 23 86	51 107 0 104
BWHITE	308		252	288	449	000	532		304	--	37 73 12 136
GOLDBG	389		558	000	681	-441	712		181	340	--

TABLE D-8

G MIDDLE WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) MIDDLE WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2
HBLACK	0.79243	-0.09613
FRANKF	-0.63869	0.57377
DOUGLA	0.86825	-0.03740
TCLARK	-0.04734	0.58314
WARREN	0.85490	0.29461
HARLAN	-0.70825	0.37169
BRENNA	0.74895	0.50322
WHITTK	-0.60682	0.49164
STEWAR	-0.14455	0.70922
BWHITE	0.39612	0.60792
GOLDBG	0.65431	0.45430

VARIABLE	COMMUNALITY
HBLACK	0.63719
FRANKF	0.73712
DOUGLA	0.75526
TCLARK	0.34229
WARREN	0.31765
HARLAN	0.63779
BRENNA	0.31415
WHITTK	0.60794
STEWAR	0.52388
BWHITE	0.52648
GOLDBG	0.63451

TABLE D-9

G MIDDLE WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) MIDDLE WARREN

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2
HBLACK	0.58085	-0.54753
FRANKF	-0.17370	0.84086
DJUGLA	0.67673	-0.54523
TCLARK	0.30787	0.49750
WARREN	0.86297	-0.27006
HARLAN	-0.34961	0.71942
BRENNA	0.90145	-0.03928
WHITTK	-0.19678	0.75579
STEWAR	0.30442	0.65666
BWHITE	0.67955	0.25434
GOLDBU	0.79624	-0.02250

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2
FACTOR 1	0.80499	-0.57331
FACTOR 2	0.59331	0.80498

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.55953	41.5	41.5
2	2.47874	22.5	64.0
3	0.93653	8.5	72.5
4	0.74908	6.8	79.3
5	0.63104	5.7	85.0
6	0.53663	4.9	89.9
7	0.39048	3.5	93.5
8	0.35524	3.2	96.7
9	0.22630	2.1	98.8
10	0.17074	1.6	100.3
11	-0.03433	-0.3	100.0

TABLE D-10

G LATE WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	TCLARK	WARREN	HARLAN	BRENNA	STEWAR	BWHITE	FORTAS	MARSHL
HBLACK	--	18 167 17 195	42 20 47 72	48 139 43 170	118 69 184 27	49 140 43 175	100 88 126 88	93 87 91 116	33 135 39 142	12 72 22 55
DOUGLA	070	--	12 8 77 84	12 23 79 277	22 13 271 84	16 19 72 291	25 10 197 161	13 22 171 176	8 14 62 260	6 6 27 121
TCLARK	258	054	--	40 45 0 91	81 8 78 14	38 51 2 90	70 19 56 35	55 32 18 67	20 63 12 63	
WARREN	089	477	487	--	75 12 222 83	74 17 17 293	69 20 156 151	68 20 114 179	50 33 22 239	27 9 7 119
HARLAN	-270	-456	044	-192	--	79 223 9 88	197 103 76 71	150 135 30 66	62 202 6 73	76 77 3 48
BRENNA	100	542	413	830	-161	--	81 9 146 167	75 10 110 193	46 29 26 249	29 5 5 123
STEWAR	-063	-044	164	109	349	230	--	128 86 54 116	62 128 8 148	30 37 2 89
BWHITE	077	000	418	294	130	380	270	--	54 115 16 154	31 57 2 69
FORTAS	000	557	044	679	-212	685	212	225	--	18 5 10 101
MARSHL	-167	587		801	-031	876	505	256	775	--

TABLE D-11

G LATE WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) LATE WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3
HBLACK	0.07431	-0.23595	0.70935
DOUGLA	0.66020	-0.51095	-0.12397
TCLARK	0.36513	0.32582	0.72978
WARREN	0.89534	-0.02969	0.13755
HARLAN	-0.21486	0.80903	-0.20742
BRENNA	0.93572	0.02940	0.07354
STEWAR	0.32726	0.66948	-0.21402
BWHITE	0.40706	0.50431	0.36398
FORTAS	0.82498	-0.13343	-0.23188
MARSHL	0.91528	0.10113	-0.39675

VARIABLE COMMUNALITY

HBLACK	0.56436
DOUGLA	0.71231
TCLARK	0.77205
WARREN	0.82143
HARLAN	0.72932
BRENNA	0.88184
STEWAR	0.60111
BWHITE	0.55691
FORTAS	0.75217
MARSHL	1.00536

TABLE D-12

G LATE WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) LATE WARREN

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3
HBLACK	-0.04854	-0.46070	0.59141
DCUGLA	0.73571	-0.19820	-0.11170
TCLARK	0.15026	0.07560	0.36242
WARREN	0.83982	-0.02344	0.33999
HARLAN	-0.27384	0.80881	0.01260
BRENNA	0.88446	0.05627	0.31048
STEWAR	0.26963	0.71995	0.10029
BWHITE	0.24369	0.36839	0.60115
FORTAS	0.86592	0.00225	-0.04840
MARSHL	0.95625	-0.28399	-0.10151

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3
FACTOR 1	0.96654	0.05770	0.24993
FACTOR 2	-0.13865	0.73729	0.31980
FACTOR 3	-0.21580	-0.34375	0.91393

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.08920	40.9	40.9
2	1.79535	18.0	58.8
3	1.51233	15.1	74.0
4	0.78333	7.8	81.8
5	0.62351	6.2	88.0
6	0.49163	4.9	93.0
7	0.38368	3.8	96.8
8	0.27596	2.8	99.6
9	0.13494	1.3	100.9
10	-0.09000	-0.9	100.0

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) LATE WARREN

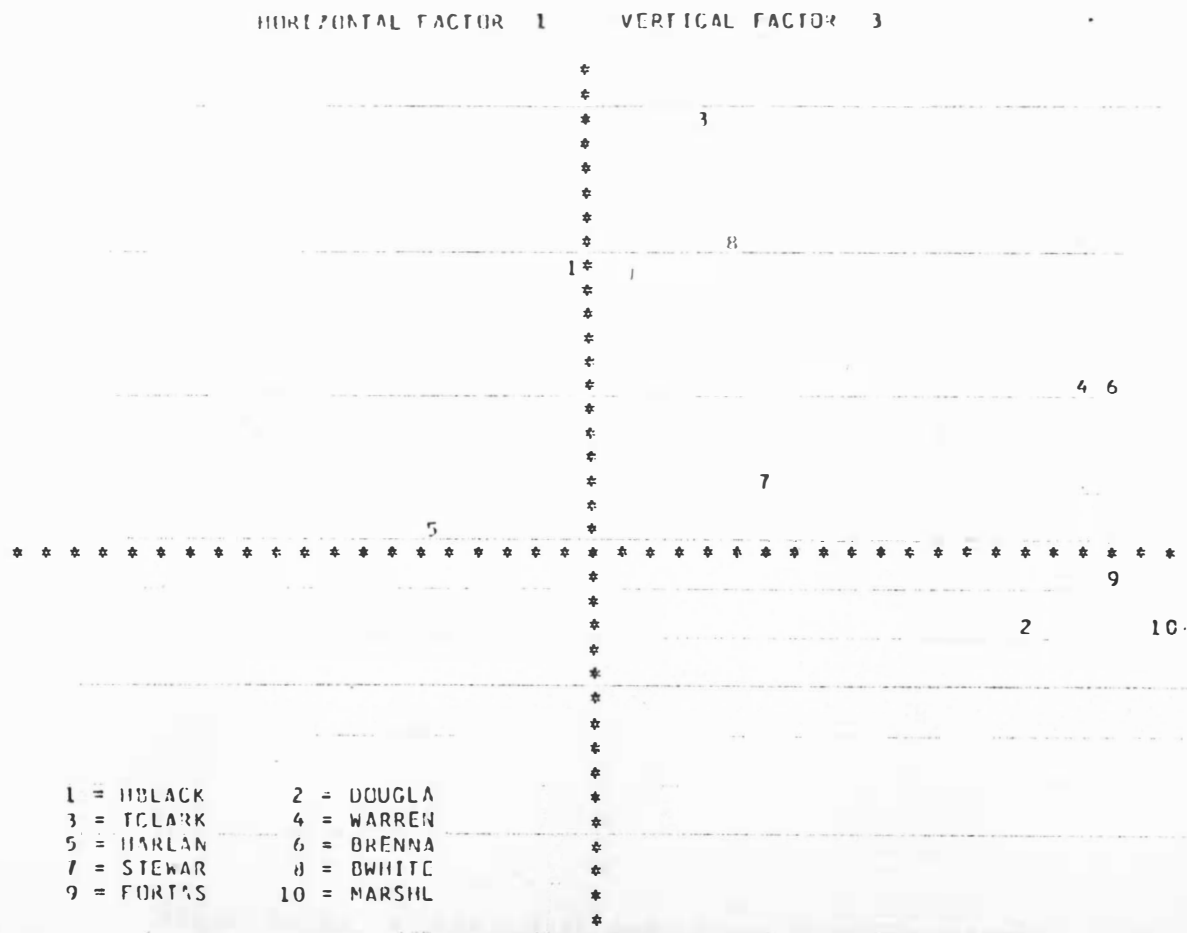


Figure D-15. G Late Warren first and third dimensions.

TABLE D-13

G BURGER COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	HARLAN	BRENNA	STEWAR	BWHITE	MARSHL	BURGER	BLACKM	POWELL	REHNQT
HBLACK	--	3 44 2 43	31 19 36 9	10 40 12 33	31 19 33 12	28 22 31 14	10 37 15 29	45 5 40 5	26 5 23 3		
DOUGLA	000	--	5 0 60 27	3 6 39 181	3 6 117 106	5 4 147 75	3 5 39 178	7 2 195 28	2 3 150 39	1 2 84 27	2 1 109 3
HARLAN	-154	-303	--	18 49 4 24	54 13 10 18	47 20 12 16	23 42 2 24	63 4 22 6	35 5 14 3		
BRENNA	-089	606	-114	--	34 9 86 103	39 4 112 76	29 14 13 169	39 4 163 26	28 4 123 39	14 2 68 27	17 1 94 3
STEWAR	-089	-054	515	178	--	101 22 53 58	37 83 5 103	117 6 88 24	90 7 64 36	46 1 39 28	47 0 64 4
BWHITE	-114	-306	325	000	357	--	36 113 6 72	144 10 61 19	118 14 36 28	69 10 15 19	77 2 33 2
MARSHL	-141	608	031	759	228	-044	--	37 5 162 24	24 5 126 38	8 1 74 28	10 1 93 3
BURGER	044	-697	451	-439	200	392	-464	--	149 20 5 23	81 14 4 15	44 2 17 2
BLACKM	000	-577	333	-308	277	488	-356	745	--	73 10 12 19	83 1 28 3
POWELL		-507		-260	296	556	-350	684	614	--	80 2 27 2
REHNQT		-912		-651	-109	384	-767	669	494	476	--

TABLE D-14

G BURGER COURT INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) BURGER COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3
HBLACK	0.01914	-0.28279	0.42271
DJUGLA	-0.88385	0.13489	0.16437
HARLAN	0.32729	0.59578	-0.62387
BRENNA	-0.65610	0.49994	0.30787
STEWAR	0.16811	0.79028	-0.05337
BWHITE	0.51367	0.53761	0.29935
MARSHL	-0.69930	0.55985	0.08848
BURGER	0.87322	0.16554	-0.00736
BLACKM	0.77286	0.28799	0.12821
PJWELL	0.71825	0.22498	0.50588
REHNOT	0.87166	-0.33106	0.00710

VARIABLE	COMMUNALITY
HBLACK	0.25902
DJUGLA	0.82641
HARLAN	0.85128
BRENNA	0.77519
STEWAR	0.65565
BWHITE	0.64249
MARSHL	0.81029
BURGER	0.79001
BLACKM	0.69668
PJWELL	0.82741
REHNOT	0.86945

TABLE D-15

G BURGER COURT TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) BURGER COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3
HBLACK	-0.05196	0.03730	-0.50490
DJUGLA	0.82989	-0.34388	-0.13937
HARLAN	-0.11781	0.26659	0.87540
BRENNA	0.87453	0.09545	-0.03583
STEWAR	0.26364	0.58250	0.49682
BWHITE	-0.05539	0.79393	0.09536
MARSHL	0.88295	0.00059	0.17516
BURGER	-0.62300	0.60886	0.17654
BLACKM	-0.44125	0.69799	0.12163
PJWELL	-0.33027	0.81245	-0.23074
REHQT	-0.87748	0.29473	-0.11233

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3
FACTOR 1	-0.80991	0.57988	0.08828
FACTOR 2	0.52373	0.64715	0.55398
FACTOR 3	0.26411	0.49491	-0.82783

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.73577	43.1	43.1
2	2.20061	20.0	63.1
3	1.06248	9.7	72.7
4	0.97462	8.9	81.6
5	0.54216	4.9	86.5
6	0.51283	4.7	91.2
7	0.38640	3.5	94.7
8	0.29697	2.7	97.4
9	0.22281	2.0	99.4
10	0.12456	1.1	100.5
11	-0.05927	-0.5	100.0

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE G (CREATION DATE = 07/11/77) BURGER COURT

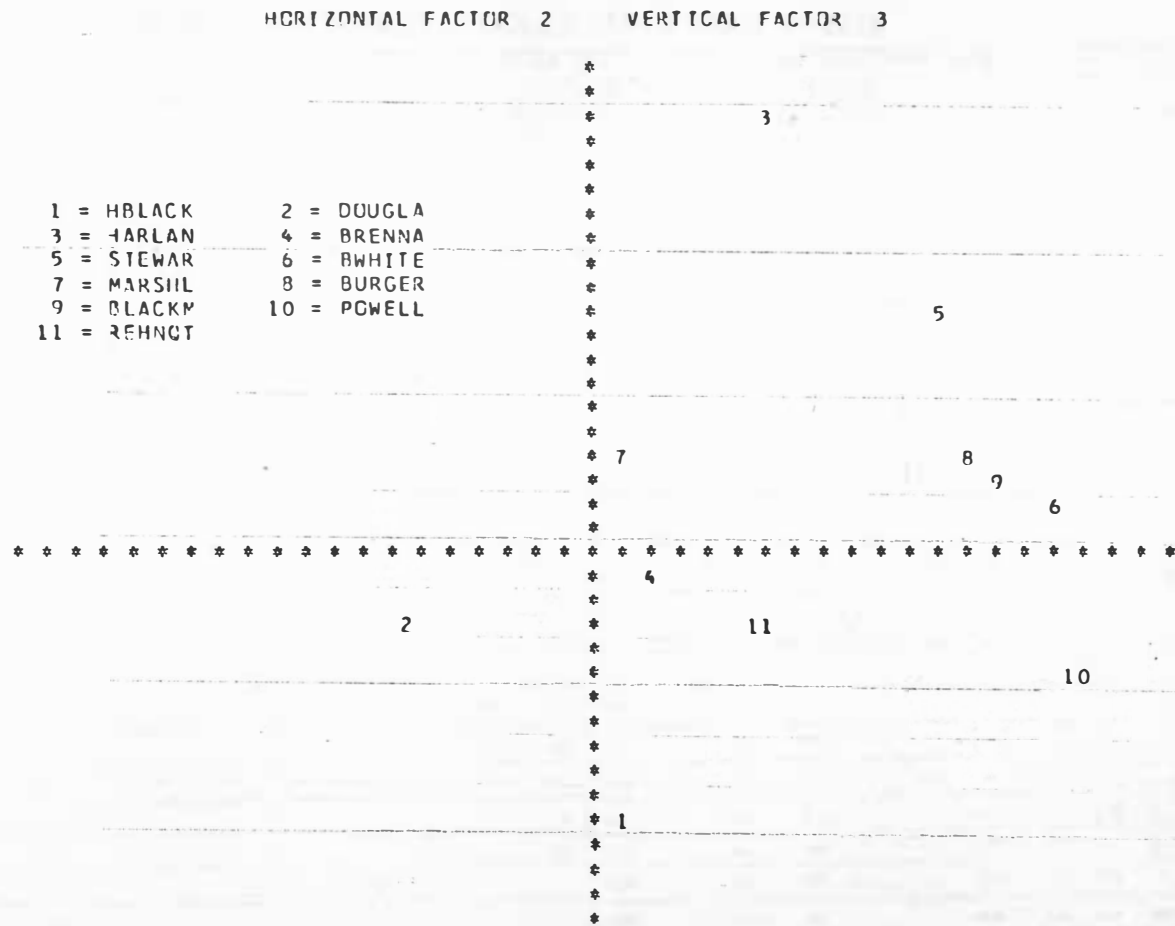


Figure D-17. G Burger Court second and third dimensions.

TABLE D-16

C TOTAL COURT FOURFOLD TABLES AND G INDEX MATRIX

	BLACK	JTFRED	FRANKE	DOUGLA	MIRNHY	JACKSO	RUTLED	BURTON	VINSON	TCLARK	MINTON	WARREN	HARLAN	BRENNA	WHITIK	STEWAR	BWHITE	GOLDDG	FORTAS	MARSIL	BURGER	BLACKM	FOWELL	REINQT
BLACK	--	39 2 38 23 22 245	4 25 28 10	5 24 46 3 35 2	81 29 11 0	50 148 155 80 57 180	21 1	127 101 126 78	5 28 17 106	17 93	37 5 23 5													
JTFRED	-526	--	100 144 44 188	5 73 122 65	17 63 211 40 163 19	106 33 137 20	28 38 24 13 2 6																	
FRANKE	000	-130	--	23 234	3 52 77 13	13 44 145 9 76 6	179 18 44 5 49 125	150 9 46 101	119 22 76 27															
DOUGLA	420	-454	-122	--	2 24 16 27	12 15 43 5 39 5	29 2 13 6 12 8	15 8 16 11	2 3 16 9 17 4 3 3 3 2 4 7 5 2 1 3 1 2 2 1															
MIRNHY	304	-677	-240	371	--	4 1 3 2 4 1 4 1	55 27 14 68 73 9 74 8																	
JACKSO	-069	268	336	-423	-286	--	5 54 115 23 109 17	55 9 70 7 9 2																
RUTLED	181	-414	-077	544	631	-516	--	17 0 16 1																
BURTON	-357	623	144	-372	-700	264	-392	--	147 14 163 26 117 16	46 78 168	30 20 50	46 10												
VINSON	-339	738	000	-286	-723	298	-460	624	--	62 5 80 7														
TCLARK	-340	521	230	-415	479	554	840	--	92 12 121 30 9 343	73 106 291	136 40	206 102 104 78 17 90 18 54												
MINTON	-554	617	-228	-618	391	435	627	412	--	24 30 17 9														
WARREN	314	-114	-054	593	154	-100	-070	-109	--	104 21 99 25 33 2	82 22 67 13 13 8 34 25 22 6													
HARLAN	-350	281	709	-514		366	333	333	-316	--	137 447 124 23 330 197 224 177	16 132 30 154 35 99 54 4 31 5												
BRENNA	256	-333	000	620		-189	-122	809	-225	--	41 3 138 17 110 7 15 11 30 21 46 17 32 4 23 3 13 2 14 1													
WHITIK	-273	520	-491		641	504	-181	572	-077	--	73 20 8 17													
STEWAR	-031	458	-044		284	126	284	236	525	--	234 90 18 71 31 87 48 101 100 5 79 3 43 0 40 0													
BWHITE	130		-077		242	244	137	212	339	--	117 186 0 75 6 121 4 163 71 23 55 33 33 27 59 2													
GOLDDG	502		792		-094	841	-631	830	130	311	--													
FORTAS	031		692		000	754	-316	757	238	094	--	14 4 6 84												
MARSIL	-170		638			890	-031	842	334	000	814	--	26 5 17 3 7 1 7 1											
BURGER	044		-683			500	-427	234	443	-500	--	129 15 72 14 84 0												
BLACKM	000		-604			333	-328	316	490	-397	764	--	68 10 76 0											
FOWELL			-494				-238	359	626	-339	650	650	--	73 0										
REINQT			-940				-702	-167	419	-836	702	544	500	--										

TABLE D-17

C TOTAL COURT COMMUNALITY AND EIGENVALUE TABLE

3 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) TOTAL COURT

VARIABLE	COMMUNALITY	FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
HBLACK	0.80700	1	6.15585	25.6	25.6
JTREEO	0.84424	2	4.36344	18.2	43.8
FRANKF	0.80589	3	3.38978	14.1	58.0
DOUGLA	1.21414	4	2.64647	11.0	69.0
MURPHY	1.01203	5	1.91213	7.6	76.5
JACKSO	0.93127	6	1.54685	6.4	83.0
RUTLED	0.80641	7	1.16111	4.8	87.8
BURTON	0.84111	8	0.78835	4.1	91.9
VINSON	0.88419	9	0.85098	3.5	95.5
TCLARK	0.87206	10	0.76832	3.2	98.7
MINTON	0.87851	11	0.56610	2.4	101.0
WARREN	0.97202	12	0.52980	2.2	103.2
HARLAN	0.88910	13	0.40662	1.7	104.9
BRENNA	0.95785	14	0.37307	1.6	106.5
WHITTK	0.91336	15	0.28948	1.2	107.7
STEWAR	0.67761	16	0.23756	1.0	108.7
BWHITE	0.64530	17	0.19678	0.8	109.5
GOLDPG	1.04609	18	0.13781	0.6	110.1
FORTAS	0.77154	19	0.01073	0.0	110.1
MARSHL	1.11599	20	-0.24503	-1.0	109.1
BURGER	0.83857	21	-0.31202	-1.3	107.8
BLACKM	0.76906	22	-0.38391	-1.6	106.2
POWELL	0.70889	23	-0.51963	-2.2	104.0
REHNQT	0.86155	24	-0.97100	-4.0	100.0

TABLE D-18

C TOTAL COURT INITIAL FACTOR MATRIX

G FACTOR ANALYSIS FROM CORRELATION MATRIX

07/11/77

FILE C (CREATION DATE = 07/11/77) TOTAL COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5	FACTOR 6	FACTOR 7
HBLACK	-0.45975	-0.39657	0.24946	0.06896	-0.55064	0.26920	0.05944
JTREED	0.56002	0.60743	-0.05488	-0.30043	0.11887	0.06090	-0.22620
FRANKF	0.19464	0.14176	0.22577	0.67632	-0.39508	-0.22929	0.17570
DJUGLA	-1.06267	0.13305	-0.03512	0.02902	0.00521	0.09716	-0.23287
MURPHY	-0.39266	-0.55208	-0.02533	0.30767	0.37192	0.44522	0.34816
JACKSO	0.30598	0.40985	0.11461	-0.12759	-0.25718	-0.06430	0.75497
RUTLED	-0.33832	-0.40999	-0.03650	0.29895	0.42311	0.48343	-0.14290
BURTON	0.54341	0.61376	0.05477	0.05394	-0.21191	0.11821	-0.32306
VINSON	0.47287	0.69847	0.04786	-0.33223	-0.01929	0.21179	-0.12180
TCLARK	0.49112	0.51315	0.17273	0.21323	0.11163	0.51558	0.11910
MINTON	0.45085	0.45530	-0.03052	-0.17290	0.46252	0.39317	0.26194
WARREN	-0.59388	0.31927	0.65855	-0.24268	0.01108	-0.04537	0.15038
HARLAN	0.57768	0.05472	0.09265	0.69505	0.21145	-0.12640	0.00083
BRENNA	-0.74753	0.47275	0.42365	0.02054	0.00510	0.00842	0.08693
WHITTK	0.31480	0.16609	0.22775	0.73305	-0.33708	0.25680	-0.13366
STFWAR	0.06524	0.13142	0.60611	0.51193	0.08665	-0.07048	-0.11900
BWHITE	0.12843	-0.15652	0.74442	-0.11849	0.10388	0.12250	-0.10156
GJLUBG	-0.49547	0.13727	0.51824	-0.33912	-0.44211	0.44095	-0.09104
FORTAS	-0.46912	0.35886	0.48424	-0.04213	0.33112	-0.27643	0.01908
MARSHL	-0.61486	0.64578	0.21084	0.22699	0.37669	-0.28699	0.02620
BURGER	0.51917	-0.47957	0.54856	-0.10295	0.11942	-0.11419	-0.01530
BLACKM	0.45592	-0.42566	0.57037	-0.10247	0.15312	-0.12731	-0.05949
PJWELL	0.37393	-0.39073	0.59221	-0.18084	0.12589	-0.07547	-0.10675
REHNQT	0.55860	-0.55081	0.31865	-0.35532	-0.07911	0.03405	0.10447

TABLE D-19

C TOTAL COURT TERMINAL FACTOR MATRIX

S FACTOR ANALYSIS FROM CORRELATION MATRIX

07/11/77

FILE C (CREATION DATE = 07/11/77) TOTAL COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5	FACTOR 6	FACTOR 7
HBLACK	-0.02262	0.01616	-0.49025	0.12400	0.71910	0.17762	0.04313
JTREED	-0.05916	0.02554	0.78958	-0.07590	-0.16130	-0.42612	-0.06410
FRANKF	0.01283	-0.02307	-0.15676	0.82159	-0.04582	-0.17862	0.26760
DJUGLA	0.61748	-0.56486	-0.37414	-0.20276	0.39150	0.20875	-0.36858
MURPHY	-0.00944	-0.00372	-0.30401	-0.03303	0.03848	0.95652	0.04469
JACKSD	0.03623	-0.01086	0.29072	0.09373	0.02828	-0.20814	0.89017
RUTLED	0.00562	-0.02327	-0.12189	-0.00069	0.04532	0.78863	-0.40864
BURTON	-0.11117	-0.04207	0.67280	0.36041	0.04565	-0.47757	-0.11943
VINSON	0.01119	-0.01521	0.84635	-0.04377	0.07069	-0.39663	0.05745
TCLARK	-0.03172	0.02737	0.81347	0.39738	0.04445	0.15556	0.15650
MINTON	0.00309	0.04071	0.84156	-0.12369	-0.21921	0.21643	0.24170
WARREN	0.86288	0.11234	-0.04522	-0.12093	0.41292	-0.03190	0.16320
HARLAN	-0.14836	0.18714	0.18929	0.71199	-0.53157	0.08171	-0.00757
BRENNA	0.87603	-0.25541	-0.05054	0.03182	0.35857	0.04253	0.05686
WHITTK	-0.15346	-0.01133	0.18313	0.70741	0.16290	0.02934	-0.07314
STEWAR	0.37788	0.31051	0.04369	0.63571	-0.03572	0.05128	-0.11378
BWHITE	0.26238	0.69575	0.10944	0.09665	0.24291	0.07753	-0.07780
GJLORG	0.36946	0.05432	0.03452	-0.10286	0.94537	-0.02408	-0.02361
FURTAS	0.87202	0.05961	-0.02347	-0.05054	-0.05711	-0.03131	-0.01447
MARSHL	0.95601	-0.39317	0.03487	0.09734	-0.20547	0.00229	-0.04370
BURGER	-0.14869	0.99366	-0.03485	0.08443	-0.09385	0.00015	0.02629
BLACKM	-0.06370	0.86502	-0.02534	0.07679	-0.09290	-0.00879	-0.02240
POWELL	-0.01313	0.83890	-0.00664	0.01184	0.00923	-0.02281	-0.06456
REHNQT	-0.42725	0.78597	-0.01167	-0.15000	0.08169	-0.03255	0.17576

3 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) TOTAL COURT

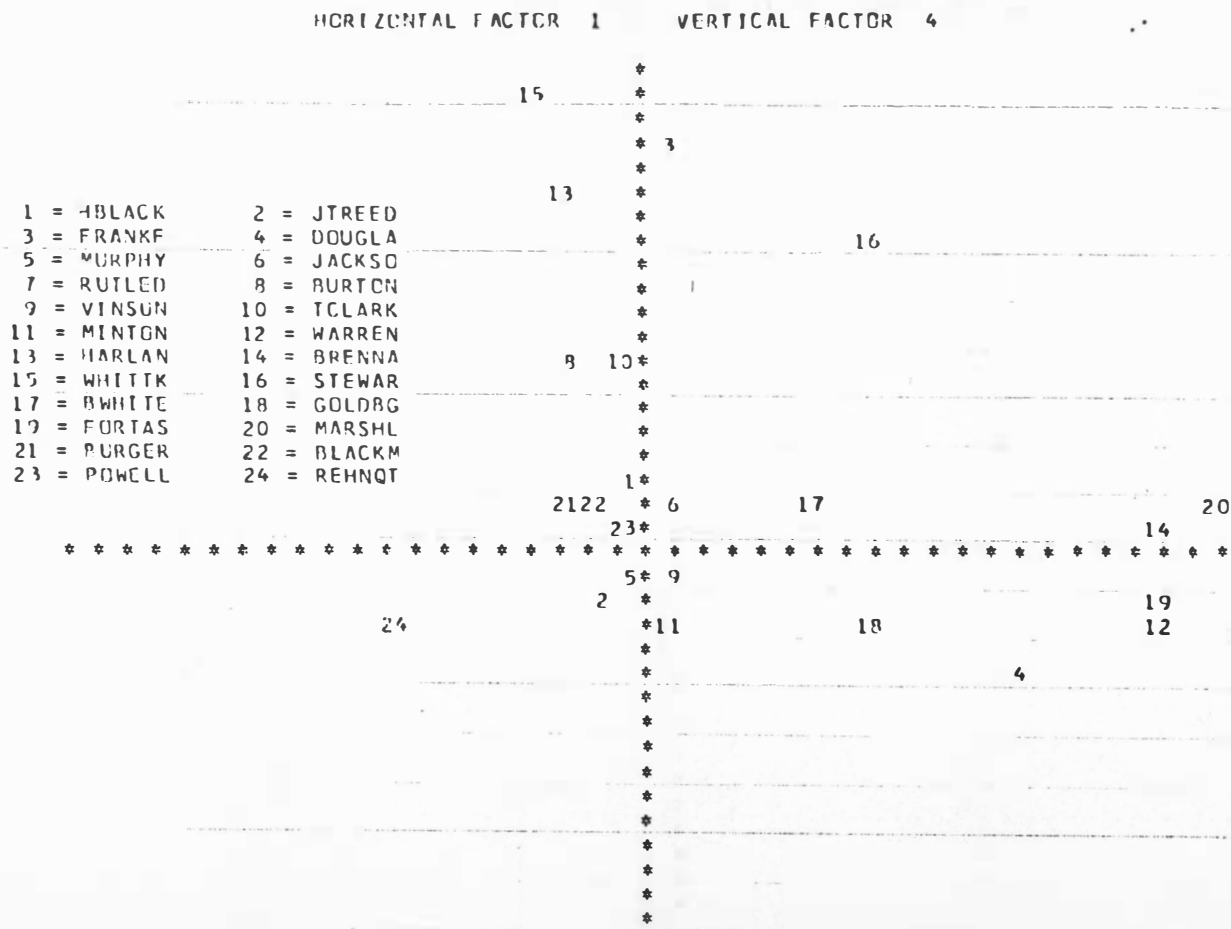


Figure D-19. C Total Court first and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) TOTAL COURT

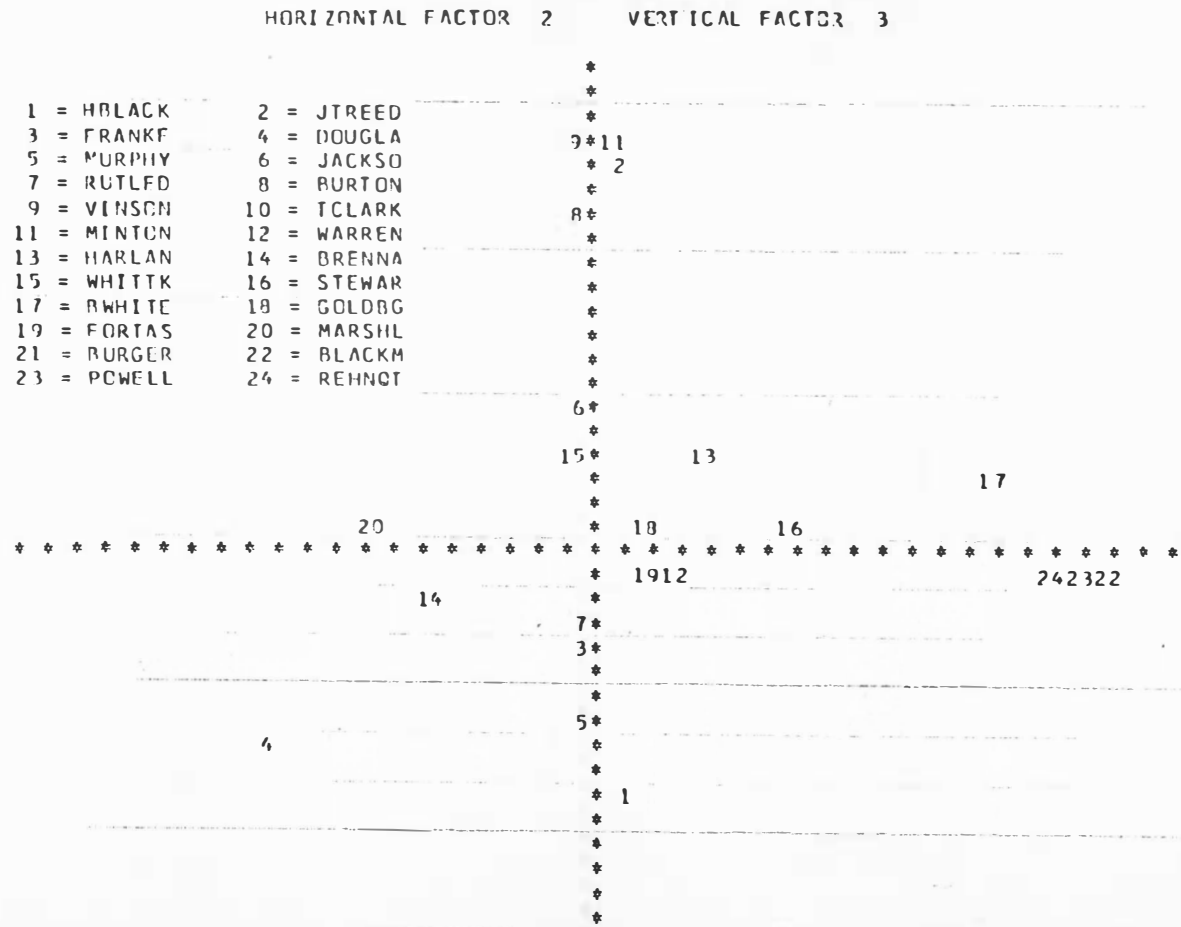


Figure D-20. C Total Court second and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) TOTAL COURT

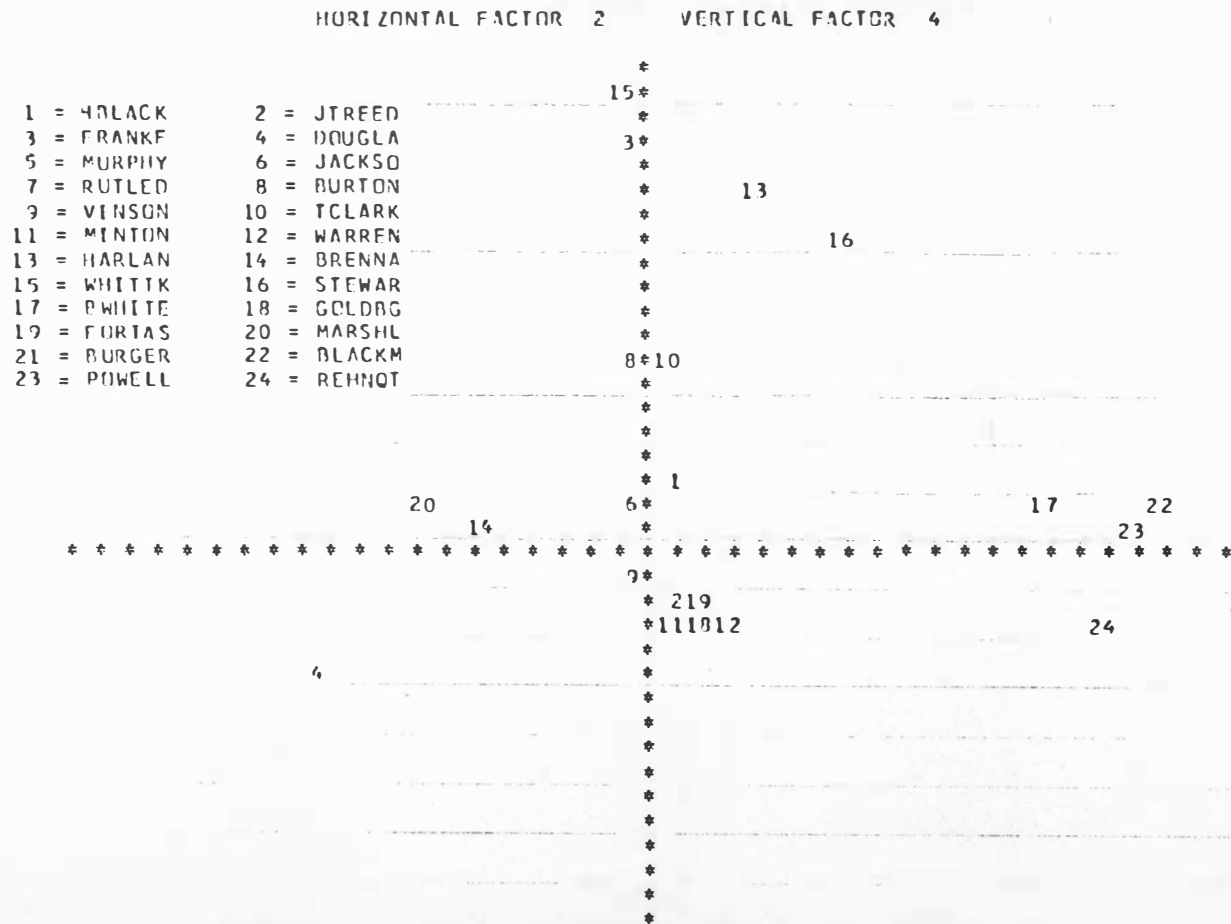


Figure D-21. C Total Court second and fourth dimensions.

TABLE D-20

C VINSON COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	JTREED	FRANKF	DOUGLA	MURPHY	JACKSO	RUTLED	BURTON	VINSON	TCLARK	MINTON
HBLACK	--	35 2 145 24	21 14 59 103	14 21 30 122	4 25 1 56	27 10 97 62	5 24 12 47	34 3 126 44	35 2 136 33	8 0 56 24	7 0 87 19
JTREED	-426	--	74 101 8 15	42 122 2 22	5 73 0 9	115 57 11 15	17 63 0 9	153 29 9 17	163 19 8 17	62 11 3 12	84 12 11 6
FRANKF	258	-100	--	18 62 24 75	3 52 2 30	70 10 51 57	13 24 4 28	75 7 82 35	76 6 92 24	20 0 41 19	21 2 66 15
DOUGLA	453	-317	031	--	2 24 3 57	16 27 102 33	12 15 5 56	39 5 107 38	39 5 116 28	12 2 46 19	11 6 72 8
MURPHY	394	-677	-240	371	--	4 1 55 27	3 2 14 68	4 1 73 9	4 1 74 8		
JACKSO	-089	313	350	-448	-286	--	5 54 12 16	105 21 49 23	109 17 52 19	45 7 14 16	59 6 28 12
RUTLED	181	-414	-077	544	631	-516	--	17 0 62 10	16 1 64 8		
BURTON	-244	634	104	-184	-700	291	-392	--	147 14 25 22	57 5 8 19	71 7 24 12
VINSON	-399	738	000	-286	-723	298	-460	624	--	62 5 2 19	80 7 14 12
TCLARK	-272	681	000	-214		486		707	840	--	57 6 12 11
MINTON	-539	592	-306	-607		352		456	627	581	--

TABLE D-21

C VINSON COURT INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) VINSON COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.53671	-0.12834	0.61616	-0.11100
JTREED	0.87714	0.12783	-0.04653	-0.10535
FRANKF	0.02310	-0.43012	0.75822	-0.10674
DOUGLA	-0.42377	0.71606	0.37882	-0.45593
MURPHY	-0.72508	0.44547	0.06260	0.55044
JACKSO	0.55832	-0.25421	0.41352	0.51821
RUTLED	-0.58129	0.57485	0.08373	0.08086
BURTON	0.80431	0.05930	0.17430	-0.24528
VINSON	0.30465	0.13686	0.05172	-0.10731
TCLARK	0.73822	0.40464	0.25659	0.41315
MINTON	0.56252	0.81974	0.06077	-0.02423

VARIABLE COMMUNALITY

HBLACK	0.69651
JTREED	0.80613
FRANKF	0.77193
DOUGLA	1.04372
MURPHY	1.03202
JACKSO	0.81598
RUTLED	0.68191
BURTON	0.74847
VINSON	0.85176
TCLARK	0.94938
MINTON	0.99307

TABLE D-22

C VINSON COURT TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) VINSON COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.44394	0.23307	0.66466	-0.32279
JTFRED	0.87062	-0.09753	-0.13618	0.06309
FRANKF	0.05685	-0.11561	0.86687	0.05211
DOUCLA	-0.14759	0.97566	0.17495	-0.19853
MURPHY	-0.76424	0.42623	-0.17505	0.48536
JACKSO	0.39531	-0.37609	0.31652	0.64651
RUTLED	-0.48467	0.64419	-0.12858	0.12443
BURTON	0.85456	-0.00963	0.13443	0.06506
VINSON	0.31235	-0.04903	-0.05970	0.11579
TCLARK	0.67185	0.13694	-0.09318	0.68727
MINTON	0.66246	0.50825	-0.31864	0.28759

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
FACTOR 1	0.95021	-0.23890	-0.03063	0.12309
FACTOR 2	0.14166	0.87421	-0.40514	0.22707
FACTOR 3	0.08939	0.31027	0.86651	0.33143
FACTOR 4	-0.26276	-0.29709	-0.20847	0.39726

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.73978	43.1	43.1
2	2.19243	19.8	62.9
3	1.40031	12.7	75.7
4	1.06830	9.7	85.4
5	0.80553	7.3	92.7
6	0.65731	6.0	98.7
7	0.37343	3.4	102.1
8	0.27642	2.5	104.6
9	0.14684	1.3	105.9
10	-0.20465	-1.9	104.1
11	-0.44574	-4.1	100.0

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) VINSON COURT

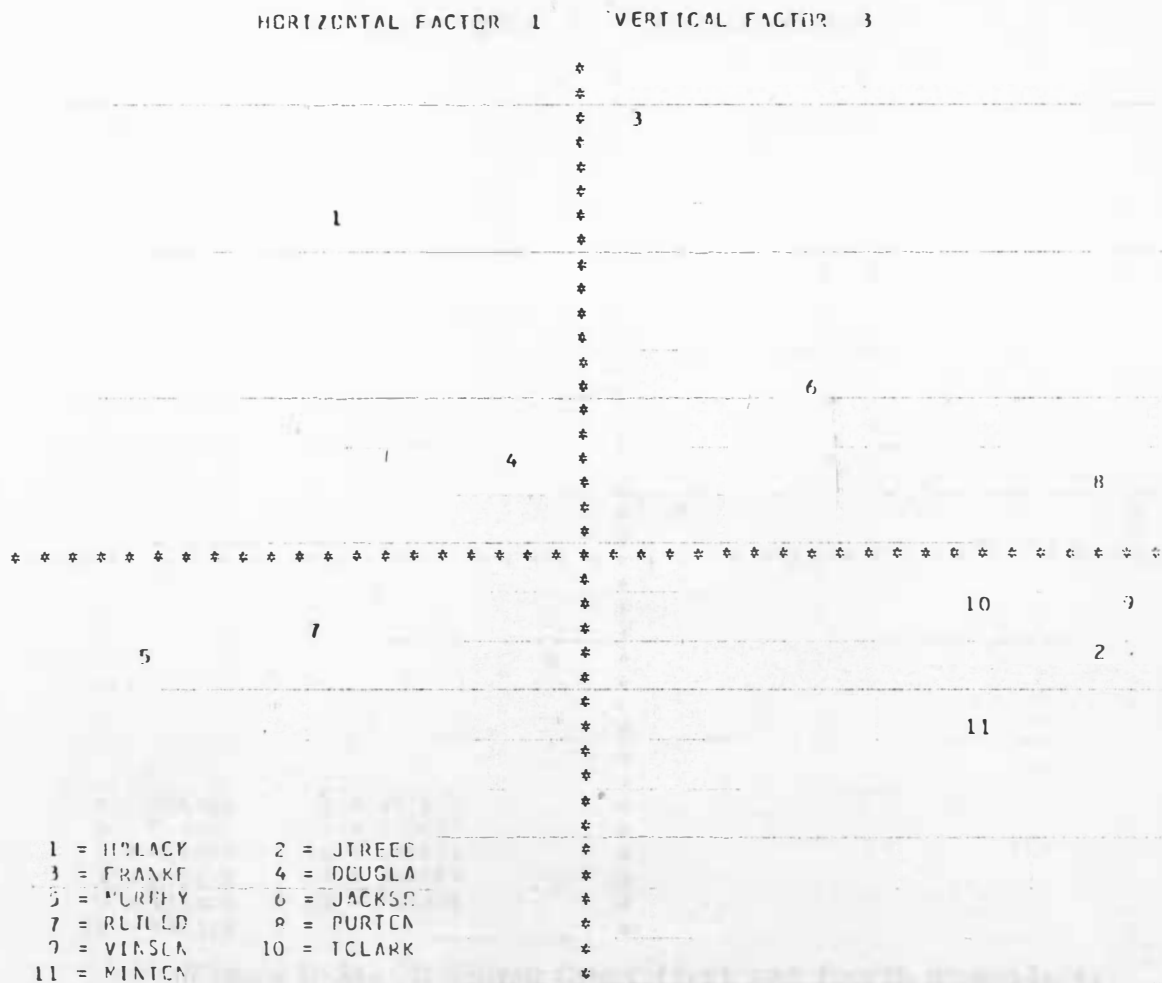


Figure D-23. C Vinson Court first and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) VINSON COURT

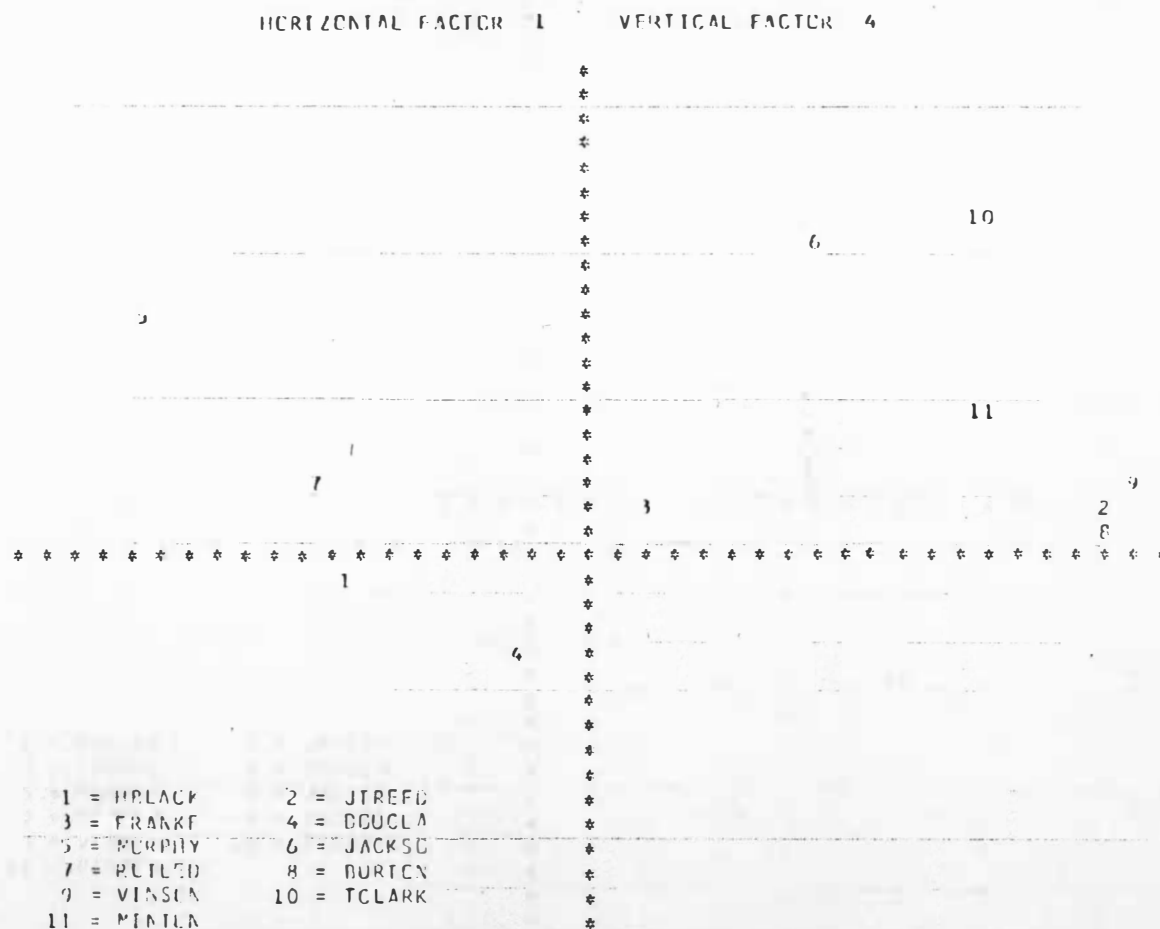


Figure D-24. C Vinson Court first and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) VINSON COURT

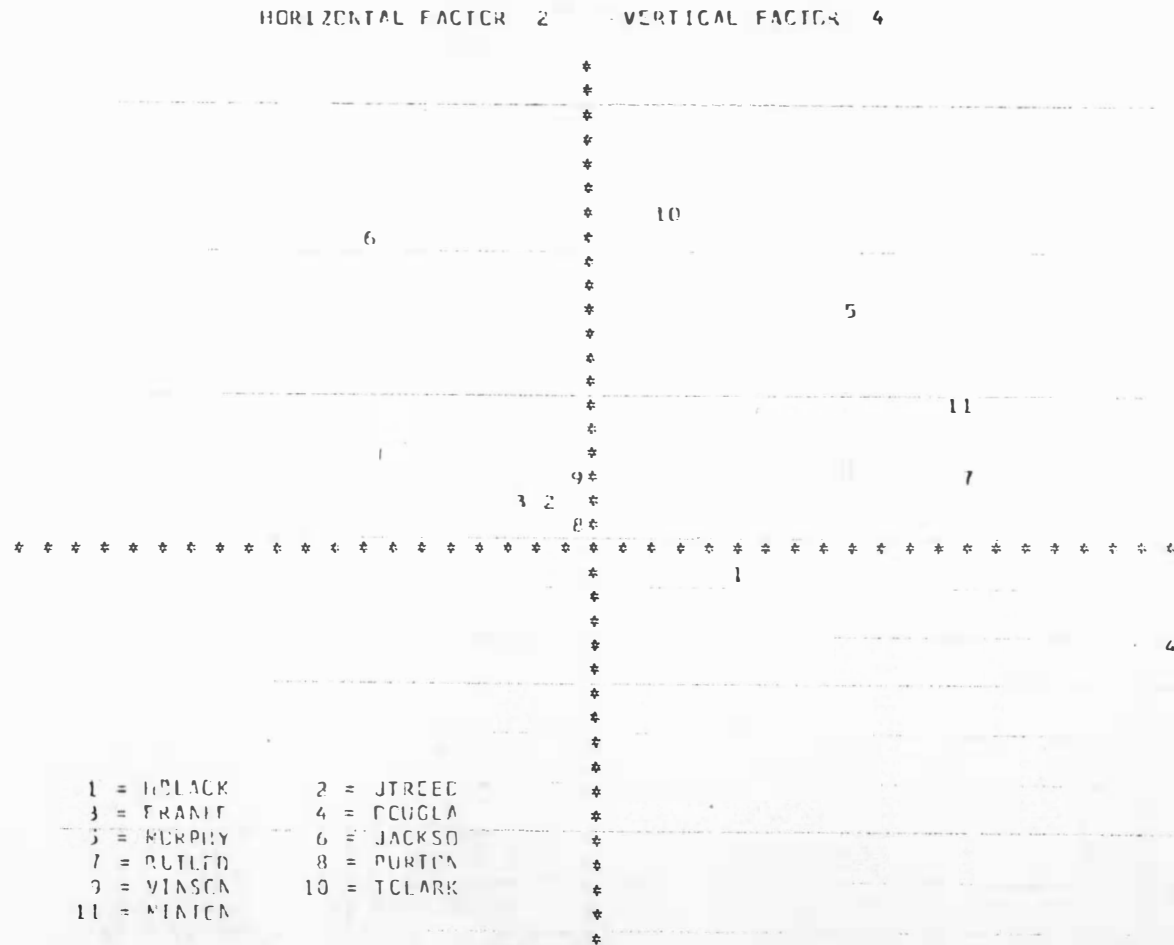


Figure D-26. C Vinson Court second and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) VINSON COURT

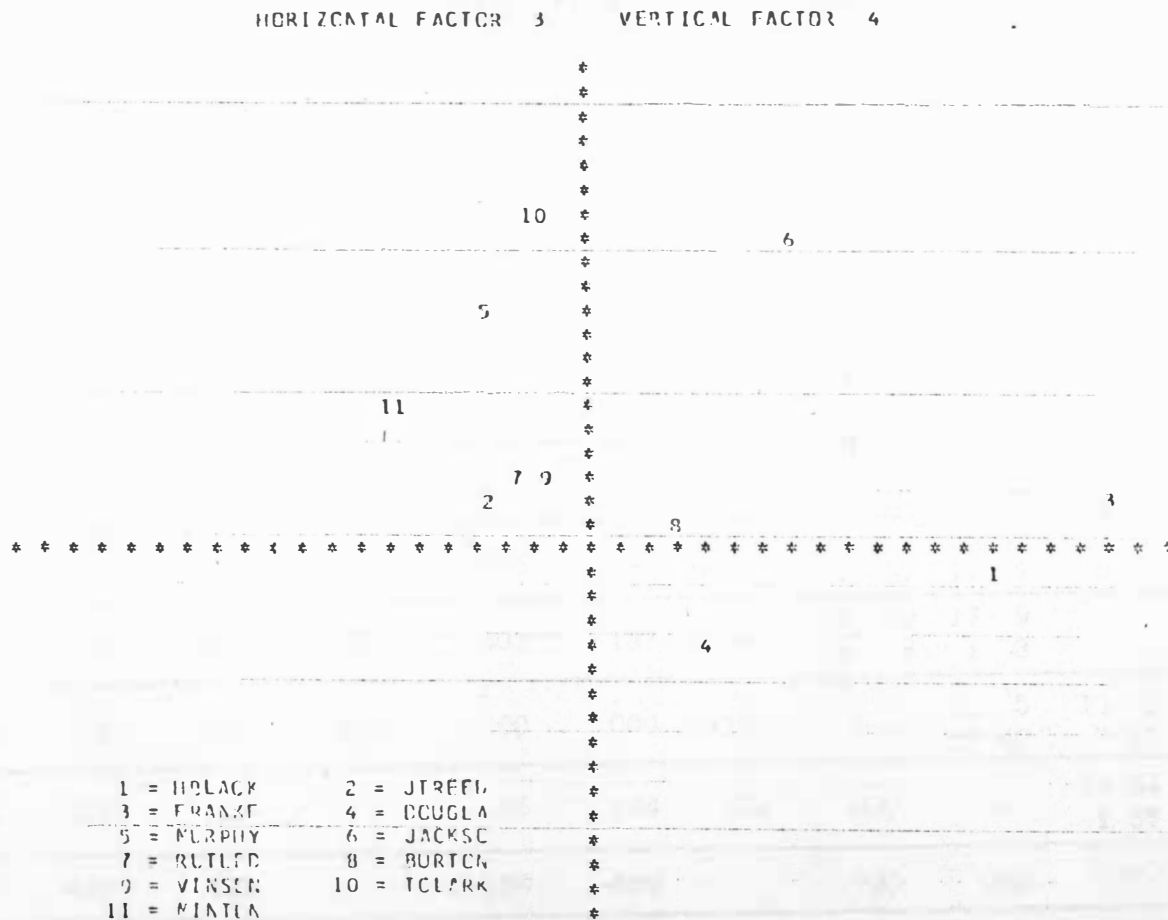


Figure D-27. C Vinson Court third and fourth dimensions.

TABLE D-23
C EARLY WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	JTREED	FRANKF	DOUGLA	JACKSO	BURTON	TCLARK	MINTON	WARREN	HARLAN	BRENNA	WHITTK
HBLACK	--	3 0 66 4	6 6 66 82	1 11 3 146	1 0 11 8	12 0 117 26	12 0 120 27	4 0 53 10	11 1 38 102	6 3 70 46	3 5 17 64	8 0 41 24
JTREED	-808	--	26 43 2 3	2 66 0 5	7 8 3 0	58 11 4 1	44 22 2 3	53 8 3 1	28 38 1 3	24 13 1 1	2 6 0 1	
FRANKF	100	-214	--	1 70 3 87	7 3 5 5	70 2 60 23	67 4 65 23	23 3 34 7	30 39 19 64	53 2 21 49	18 23 2 46	32 6 16 18
DOUGLA	825	-808	089	--	12 8 0 0	4 0 125 27	4 0 128 28	2 0 54 10	2 0 46 105	0 2 76 49	0 2 20 69	1 1 48 23
JACKSO	-100	-221	200	-200	--	10 2 8 0	10 2 5 1	11 1 3 5	9 2 6 2			
BURTON	-508	594	200	-602	000	--	106 21 20 7	46 9 11 1	48 78 3 20	68 30 8 14	20 50 0 14	46 10 2 9
TCLARK	-508	322	130	-600	221	466	--	35 6 20 3	47 77 1 27	65 42 11 9	20 66 0 5	47 24 2 0
MINTON	-581	661	-100	-635	600	402	187	--	24 30 5 4	17 9 1 3		
WARREN	486	-114	236	397	154	-100	000	-109	--	20 5 55 40	13 5 7 61	15 0 33 19
HARLAN	-167	281	631	-228		366	164	333	000	--	19 34 1 37	39 7 10 17
BRENNA	504	-333	438	515		-189	-449		720	230	--	15 1 31 23
WHITTK	-122		388	-342		641	286		000	533	083	--

TABLE D-24

C EARLY WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G. FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/13/77) EARLY WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.89411	0.19176	-0.04068	-0.06149
JTREEO	0.82264	-0.12249	0.05895	0.55545
FRANKF	-0.03520	0.92822	-0.10412	-0.20055
DDUGLA	-0.95155	0.06456	-0.04407	0.03725
JACKSO	0.16368	0.21144	0.77138	-0.56911
BURTON	0.73585	0.35454	-0.23441	0.07180
TCLARK	0.62674	0.11075	-0.06397	-0.46262
MINTON	0.67269	0.10321	0.67244	0.20128
WARREN	-0.40585	0.50863	0.35460	0.20010
HARLAN	0.35473	0.72177	-0.15077	0.19364
BRENNA	-0.52565	0.65082	0.26052	0.39304
WHITTK	0.34924	0.63263	-0.45050	-0.19180

VARIABLE COMMUNALITY

HBLACK	0.84178
JTREEO	1.00465
FRANKF	0.73725
DDUGLA	0.91225
JACKSO	0.78928
BURTON	0.72729
TCLARK	0.62316
MINTON	0.95585
WARREN	0.58923
HARLAN	0.70335
BRENNA	0.72700
WHITTK	0.76198

TABLE D-25

C EARLY WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/13/77) EARLY WARREN

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.79927	-0.08427	0.43312	-0.05497
JTREEO	0.96609	0.00486	-0.08441	-0.25372
FRANKE	-0.18403	0.75823	0.30545	0.19015
DOBULA	-0.79866	-0.22621	0.44886	-0.14782
JACKSO	0.09784	0.01503	0.07166	0.08709
BURTON	0.56840	0.50111	-0.19177	-0.07811
TCLARK	0.29406	0.40941	-0.50016	0.34494
MINTON	0.84787	-0.04214	0.17955	0.44667
WARREN	-0.16682	0.09907	0.72383	0.16608
HARLAN	0.30854	0.72692	0.27313	-0.07171
BRENN	-0.21067	0.17435	0.42307	-0.01212
WHITTE	0.04933	0.86153	-0.11824	-0.05766

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
FACTOR 1	0.84079	0.30495	-0.43372	0.10932
FACTOR 2	-0.03984	0.92227	0.54292	0.16523
FACTOR 3	0.29321	-0.42940	0.44956	0.72531
FACTOR 4	0.45333	-0.21561	0.56136	-0.65794

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.48545	37.4	37.4
2	2.53874	21.2	58.5
3	1.54829	12.9	71.4
4	1.20250	10.0	81.5
5	0.74267	7.7	89.3
6	0.55702	5.5	94.8
7	0.33701	2.8	97.6
8	0.25765	2.1	99.7
9	0.15257	1.3	101.0
10	0.09748	0.8	101.8
11	-0.06597	-0.5	101.3
12	-0.15372	-1.3	100.0

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C CREATION DATE = 07/13/77) EARLY WARREN

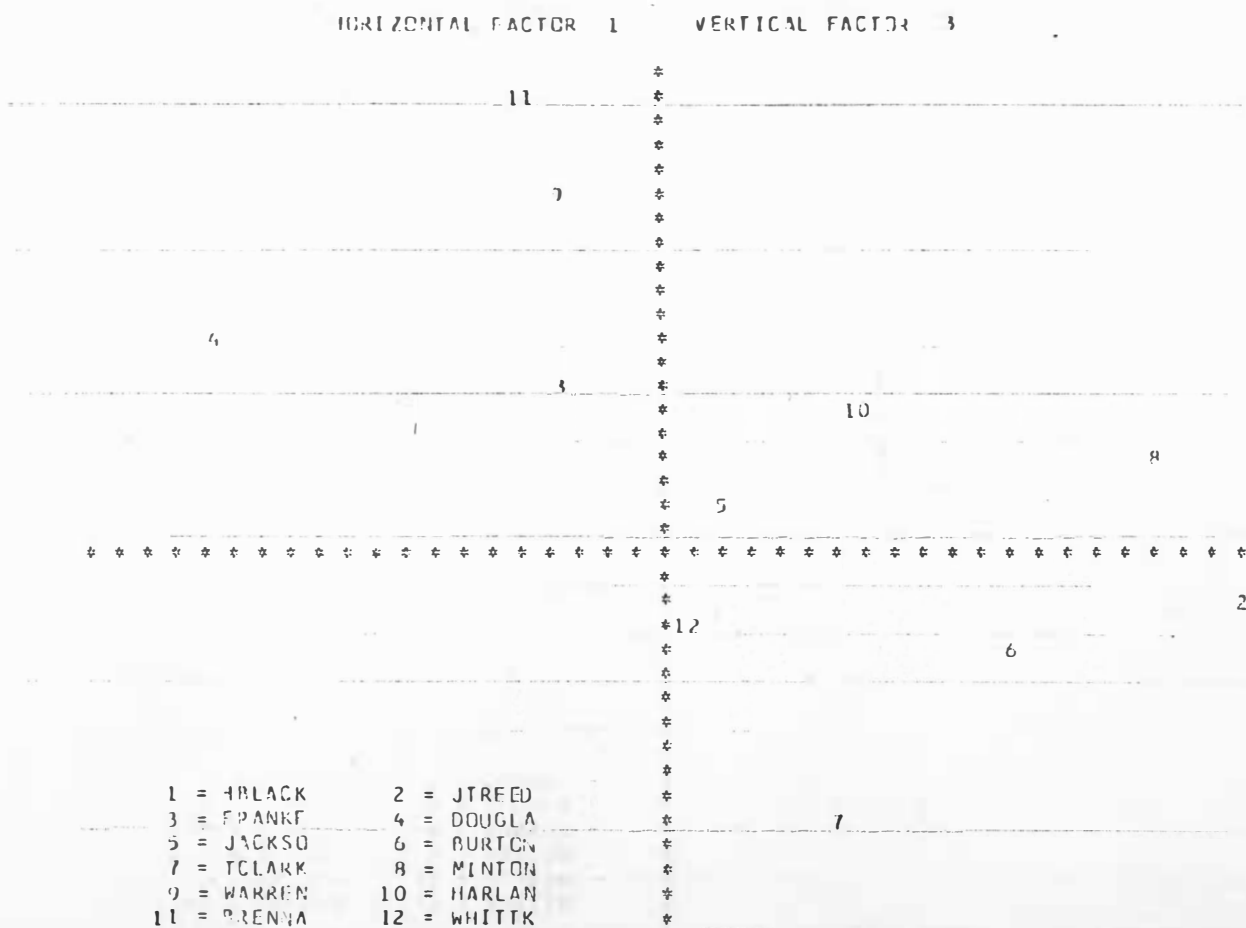


Figure D-29. C Early Warren first and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/13/77) EARLY WARREN

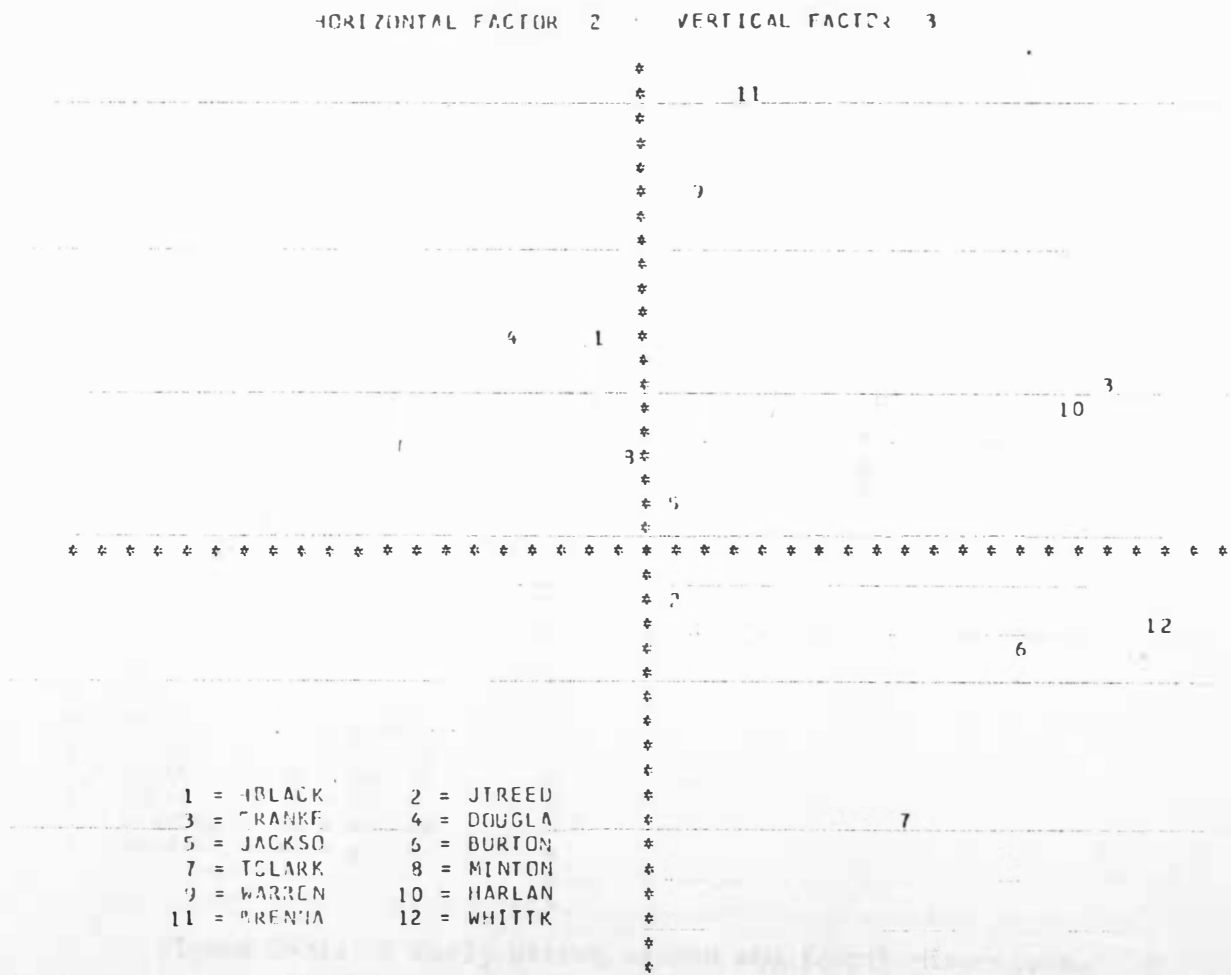


Figure D-30. C Early Warren second and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/13/77) EARLY WARREN

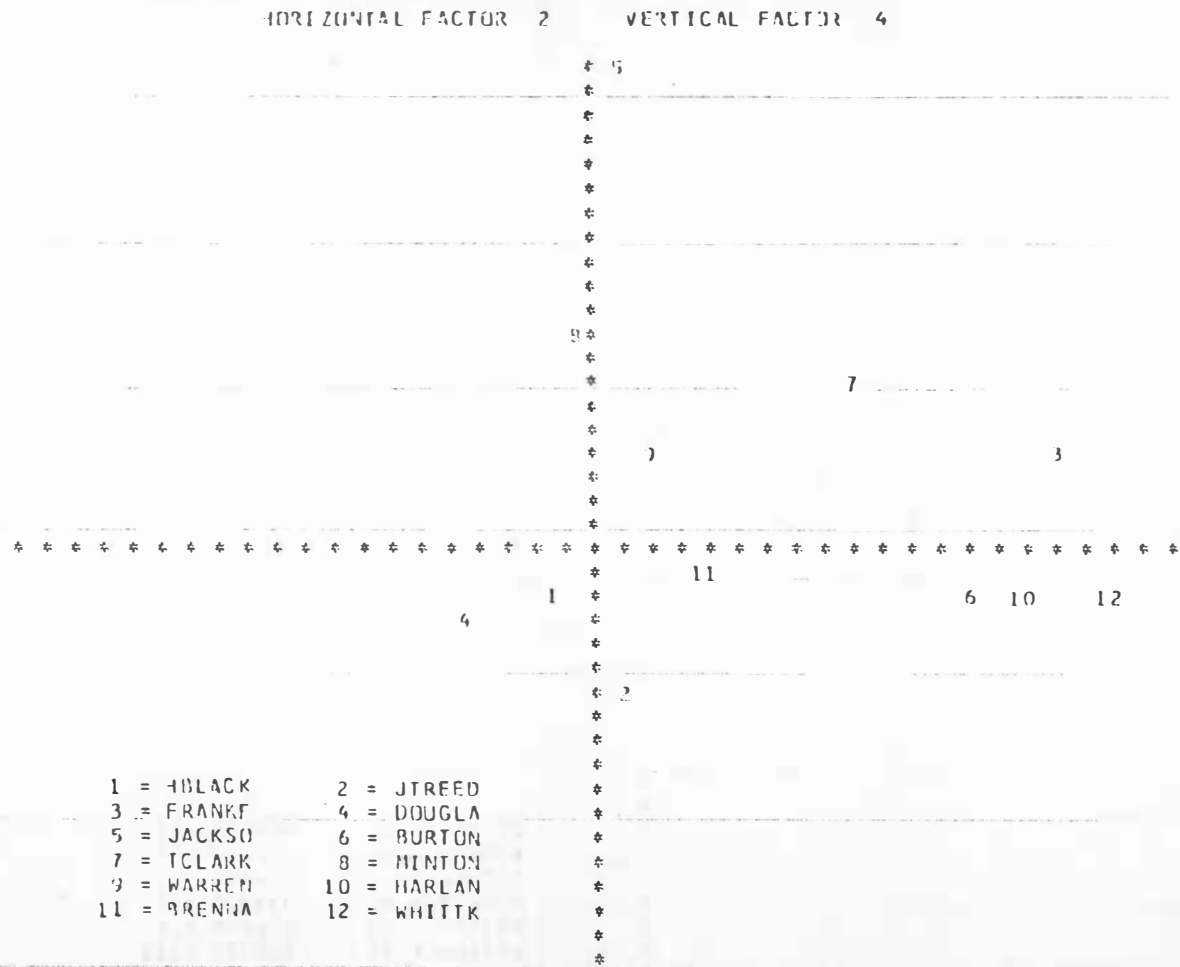


Figure D-31. C Early Warren second and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/13/77) EARLY WARREN

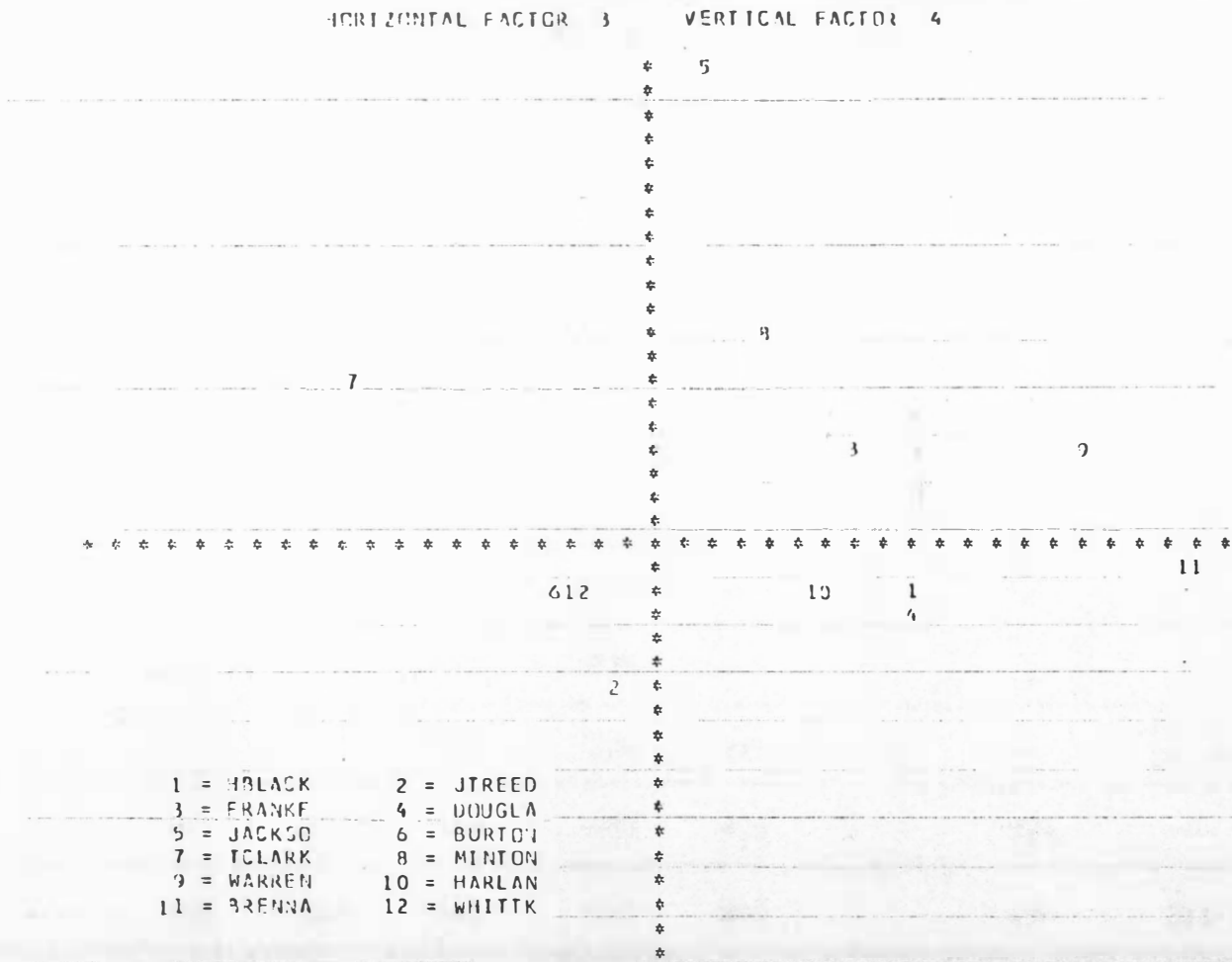


Figure D-32. C Early Warren third and fourth dimensions.

TABLE D-26

C MIDDLE WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	FRANKF	DOUGLA	TCLARK	WARREN	HARLAN	BRENNA	WHITTK	STEWAR	BWHITE	GOLDBG
HBLACK	--	11 3 94 16	1 45 9 259	30 18 206 63	14 33 28 237	40 7 233 32	17 31 41 226	13 1 81 25	33 15 145 120	27 5 46 92	5 28 13 119
FRANKF	-563	--	4 102 0 18	92 14 16 3	19 86 2 16	97 7 6 13	28 78 1 18	87 16 8 9	76 27 6 13		
DOUGLA	655	-647	--	10 0 227 80	5 5 37 266	6 4 268 36	7 3 50 255	1 2 93 24	6 4 172 130	4 2 69 96	3 3 14 144
TCLARK	-412	519	-431	--	43 193 0 79	208 27 67 13	58 179 1 80	89 16 6 10	151 83 29 52	55 55 18 43	17 90 1 58
WARREN	608	-430	731	-223	--	37 4 234 35	36 7 21 249	18 2 75 24	36 6 139 128	19 1 52 96	13 8 5 138
HARLAN	-537	788	-732	402	-534	--	53 226 3 37	85 16 8 10	162 108 15 25	67 87 5 11	16 132 1 14
BRENNA	542	-262	663	-130	820	-424	--	26 2 69 24	56 3 124 130	26 0 46 98	15 11 3 136
WHITTK	-366	600	-583	635	-293	595	-173	--	73 20 8 17		
STEWAR	000	458	-126	228	063	204	187	525	--	53 37 20 59	18 71 0 75
BWHITE	400		167	144	368	-077	458		324	--	16 55 1 91
GOLDBG	502		792	-094	841	-631	830		130	311	--

TABLE D-27

C MIDDLE WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) MIDDLE WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2
HBLACK	0.78180	0.08070
FRANKF	-0.70104	0.53947
DOUGLA	0.92925	-0.00739
TCLARK	-0.51022	0.51537
WARREN	0.83867	0.34812
HARLAN	-0.83209	0.21310
BRENNA	0.75052	0.50439
WHITTK	-0.59991	0.62226
STEWAR	-0.15465	0.72793
BWHITE	0.30663	0.56258
GOLDBS	0.73789	0.54848

VARIABLE	COMMUNALITY
HBLACK	0.61773
FRANKF	0.78249
DOUGLA	0.86356
TCLARK	0.52593
WARREN	0.82456
HARLAN	0.73779
BRENNA	0.81320
WHITTK	0.74713
STEWAR	0.55365
BWHITE	0.41052
GOLDBS	0.84531

TABLE D-28

C MIDDLE WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

3 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) MIDDLE WARREN

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2
HBLACK	0.67857	-0.39657
FRANKF	-0.24715	0.84936
DOUGLA	0.74553	-0.55474
TCLARK	-0.10739	0.71721
WARREN	0.88237	-0.21436
HARLAN	-0.54565	0.66337
BRENNA	0.90383	-0.03578
WHITTK	-0.11663	0.85646
STEWAR	0.30503	0.67868
BWHITE	0.57963	0.27292
SOLOBS	0.91933	0.00635

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2
FACTOR 1	0.80697	-0.57055
FACTOR 2	0.57056	0.80699

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	5.20787	47.3	47.3
2	2.51902	22.9	70.2
3	0.91507	8.3	78.6
4	0.72094	6.6	85.1
5	0.56111	5.1	90.2
6	0.42196	3.8	94.1
7	0.33542	3.0	97.1
8	0.23493	2.1	99.2
9	0.16433	1.5	100.7
10	0.14597	1.3	102.1
11	-0.22667	-2.1	100.0

TABLE D-29

C LATE WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	TCLARK	WARREN	HARLAN	BRENNA	STEWAR	BWHITE	FORTAS	MARSHL
HBLACK	--	4 131 4 132	31 11 43 28	25 114 38 95	82 55 118 52	28 111 34 103	65 73 71 63	74 56 70 62	17 106 22 102	8 63 15 41
DOUGLA	000	--	3 0 71 39	5 3 58 202	6 2 189 69	7 1 51 213	7 1 126 134	8 0 137 117	3 2 36 206	2 3 21 101
TCLARK	031	-254	--	31 39 0 39	70 4 34 5	28 46 1 38	55 19 22 17	49 23 9 26	18 54 0 37	47 12 149 59
WARREN	-114	544	282	--	47 12 149 59	50 13 11 199	45 16 91 117	48 12 96 103	34 25 5 181	22 6 1 99
HARLAN	-281	-435	327	-204	--	49 151 9 62	119 80 16 55	113 76 28 42	30 154 6 53	16 62 3 41
BRENNA	-044	617	167	824	-178	--	52 8 85 128	50 5 95 113	30 21 9 188	22 5 1 100
STEWAR	-054	044	273	202	288	317	--	91 38 51 80	31 87 6 121	20 27 1 76
BWHITE	031	-044	401	319	194	238	314	--	30 101 7 101	22 54 0 49
FORTAS	-031	692	000	754	-316	757	238	094	--	14 4 6 84
MARSHL	-228	621		890	-063	906	547	134	814	--

TABLE D-30

C LATE WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) LATE WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3
HBLACK	-0.11393	-0.19475	0.82306
DOUGLA	0.72101	-0.50427	-0.00620
TCLARK	0.12413	0.71314	0.37323
WARREN	0.91162	0.04070	0.12313
HARLAN	-0.13546	0.77684	-0.38887
BRENNA	0.91741	0.13313	-0.04994
STEWAR	0.41531	0.54020	-0.06155
BWHITE	0.26235	0.59457	0.41715
FOR T AS	0.88591	-0.22948	0.04829
MARSHL	0.96962	0.02431	-0.19993

VARIABLE COMMUNALITY

HBLACK	0.72833
DOUGLA	0.77417
TCLARK	0.66333
WARREN	0.94787
HARLAN	0.77105
BRENNA	0.86186
STEWAR	0.46908
BWHITE	0.58457
FOR T AS	0.83936
MARSHL	0.98073

TABLE D-31

C LATE WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) LATE WARREN

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3
HBLACK	-0.11050	0.15010	0.83281
DOUGLA	0.79395	-0.33443	0.17881
TCLARK	-0.00986	0.81355	0.03722
WARREN	0.82731	0.23806	0.06227
HARLAN	-0.24716	0.50999	-0.67221
BRENNA	0.88415	0.24950	-0.13367
STEWAR	0.32264	0.52573	-0.27596
BWHITE	0.14695	0.73970	0.12579
FJRTAS	0.90905	-0.03800	0.10743
MARSHL	0.95907	0.09832	-0.22639

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3
FACTOR 1	0.98566	0.16494	-0.03576
FACTOR 2	-0.16471	0.99390	-0.41690
FACTOR 3	-0.03680	0.41681	0.90825

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.20560	42.1	42.1
2	2.11004	21.1	63.2
3	1.20574	12.1	75.2
4	0.81575	8.2	83.4
5	0.65138	6.5	89.9
6	0.56701	5.7	95.6
7	0.31208	3.1	98.7
8	0.20518	2.1	100.7
9	-0.00720	-0.1	100.7
10	-0.06634	-0.7	100.0

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/11/77) LATE WARREN

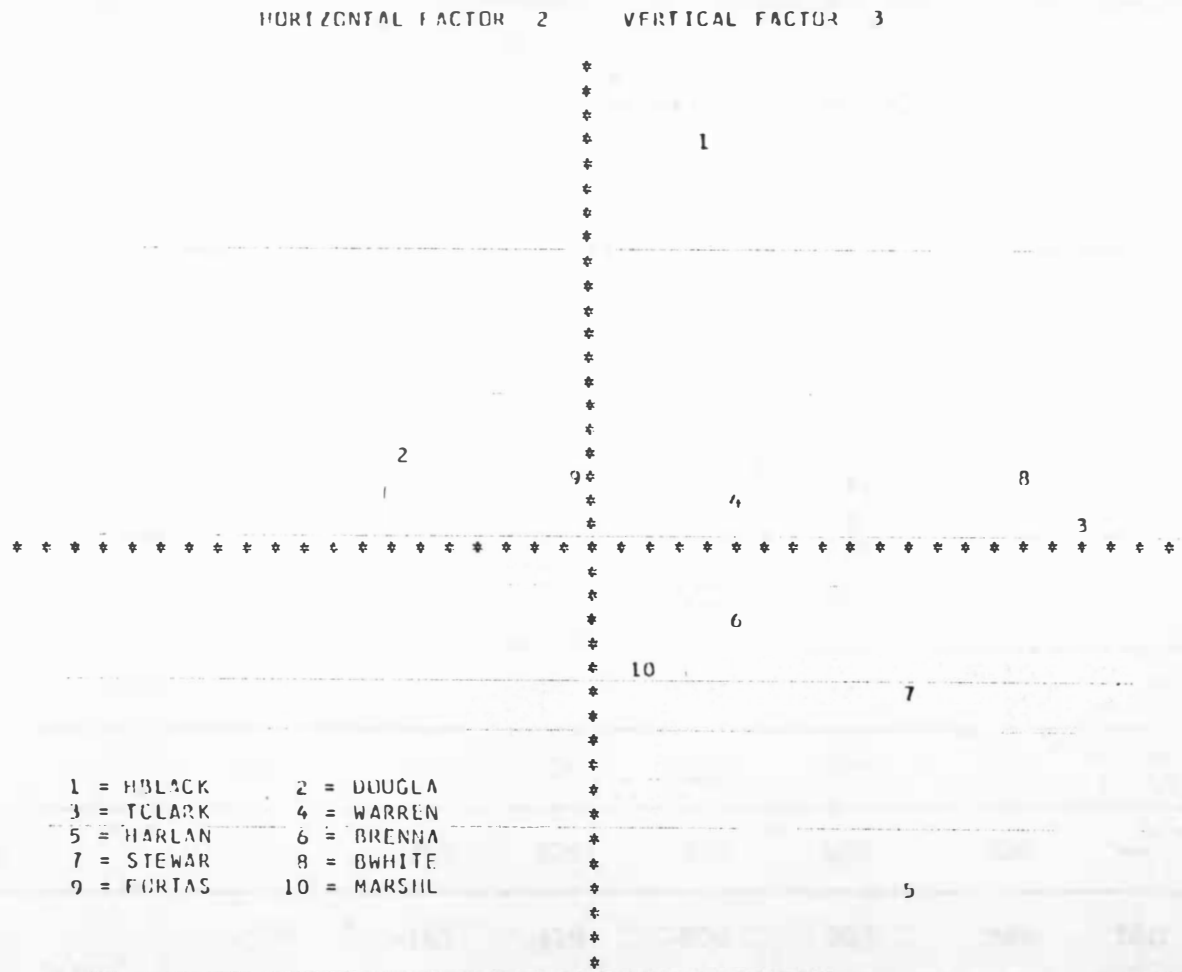


Figure D-33. C Late Warren second and third dimensions.

TABLE D-34

C BURGER COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	HARLAN	BRENNA	STEWAR	BWHITE	MARSHL	BURGER	BLACKM	POWELL	REHNQT
HBLACK	--	2 37 1 37	27 15 31 17	9 33 10 28	29 13 28 10	25 17 28 10	9 30 11 26	37 5 33 5	23 5 20 3		
DOUGLA	000	--	3 0 53 21	2 5 33 153	3 4 99 90	5 2 129 59	2 4 29 154	5 2 163 26	1 3 131 32	1 2 75 25	2 1 97 1
HARLAN	-148	-375	--	16 42 3 19	49 9 8 14	44 14 9 13	19 37 1 19	54 4 16 6	31 5 12 3		
BRENNA	-070	605	-122	--	30 6 72 88	34 2 99 60	24 12 7 146	32 4 136 24	23 3 108 33	13 2 60 25	14 1 85 1
STEWAR	000	-044	574	202	--	90 15 46 47	28 74 3 87	100 5 71 23	79 3 55 33	43 0 33 27	40 0 59 2
BWHITE	-122	-343	424	-031	383	--	29 102 2 58	126 10 45 17	104 13 30 22	66 10 9 17	71 2 27 0
MARSHL	-077	650	000	798	197	-083	--	26 5 139 22	17 3 113 33	7 1 66 26	7 1 89 1
BURGER	044	-683	500	-427	234	443	-500	--	129 15 5 21	72 14 4 13	84 0 15 2
BLACKM	000	-604	333	-328	316	490	-397	764	--	68 10 8 17	76 0 23 2
POWELL		-494		-238	359	626	-339	650	650	--	73 0 25 2
REHNQT		-940		-702	-167	419	-836	702	544	500	--

TABLE D-33

C BURGER COURT INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 01/26/77) BURGER COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	0.00412	-0.17907	0.51476	0.79235
DOUGLA	-0.98705	0.14785	0.15315	-0.23541
HARLAN	0.37284	0.61069	-0.60716	0.32147
BRENNA	-0.65617	0.52412	0.24322	-0.15435
STEWAR	0.11153	0.91956	0.32151	0.24443
BWHITE	0.56318	0.53732	0.17759	-0.27944
MARSHL	-0.72699	0.52639	0.07917	-0.05547
BURGER	0.96577	0.17635	-0.03403	0.13050
BLACKM	0.73301	0.26070	0.14927	0.00621
POWELL	0.70184	0.75537	0.52756	-0.25281
REHNQT	0.99416	-0.19521	0.02467	-0.14104

VARIABLE	COMMUNALITY
HBLACK	0.75723
DOUGLA	0.83659
HARLAN	0.98189
BRENNA	0.78826
STEWAR	0.76858
BWHITE	0.71550
MARSHL	0.73541
BURGER	0.79543
BLACKM	0.72063
POWELL	0.90002
REHNQT	0.96341

TABLE D-34

C BURGER COURT TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

3. FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE 2 (CREATION DATE = 07/26/77) BURGER COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.04025	-0.04580	-0.05254	0.97460
DOUGLA	0.84400	-0.20620	-0.18454	0.04408
HARLAN	-0.12114	0.13302	0.26258	-0.12757
ARENA	0.87911	0.12347	-0.01153	-0.04249
STEWAR	0.25148	0.51632	0.54848	0.13497
BWHITE	-0.11947	0.79163	0.20057	-0.18526
MARSHL	0.06292	-0.01216	0.13379	-0.05359
BURGER	-0.64340	0.70760	0.34444	0.07197
BLACKM	-0.48382	0.55844	0.22171	0.06122
POWELL	-0.30499	0.29457	-0.14574	0.05748
REHNQT	-0.01620	0.31582	-0.15725	-0.06720

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
FACTOR 1	-0.82075	0.54067	0.12351	-0.00141
FACTOR 2	0.51931	0.57569	0.52327	-0.09517
FACTOR 3	0.22026	0.53817	-0.52600	0.55175
FACTOR 4	-0.08947	-0.20232	0.47192	0.82711

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.91064	44.6	44.6
2	2.26972	20.6	65.3
3	1.08145	9.8	75.1
4	1.00717	9.2	84.3
5	0.52453	4.8	89.1
6	0.48627	4.4	93.5
7	0.32742	3.0	96.4
8	0.22404	2.0	98.5
9	0.20120	1.8	100.3
10	0.07188	0.8	101.1
11	-0.12543	-1.1	100.0

3 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/25/77) BURGER COURT

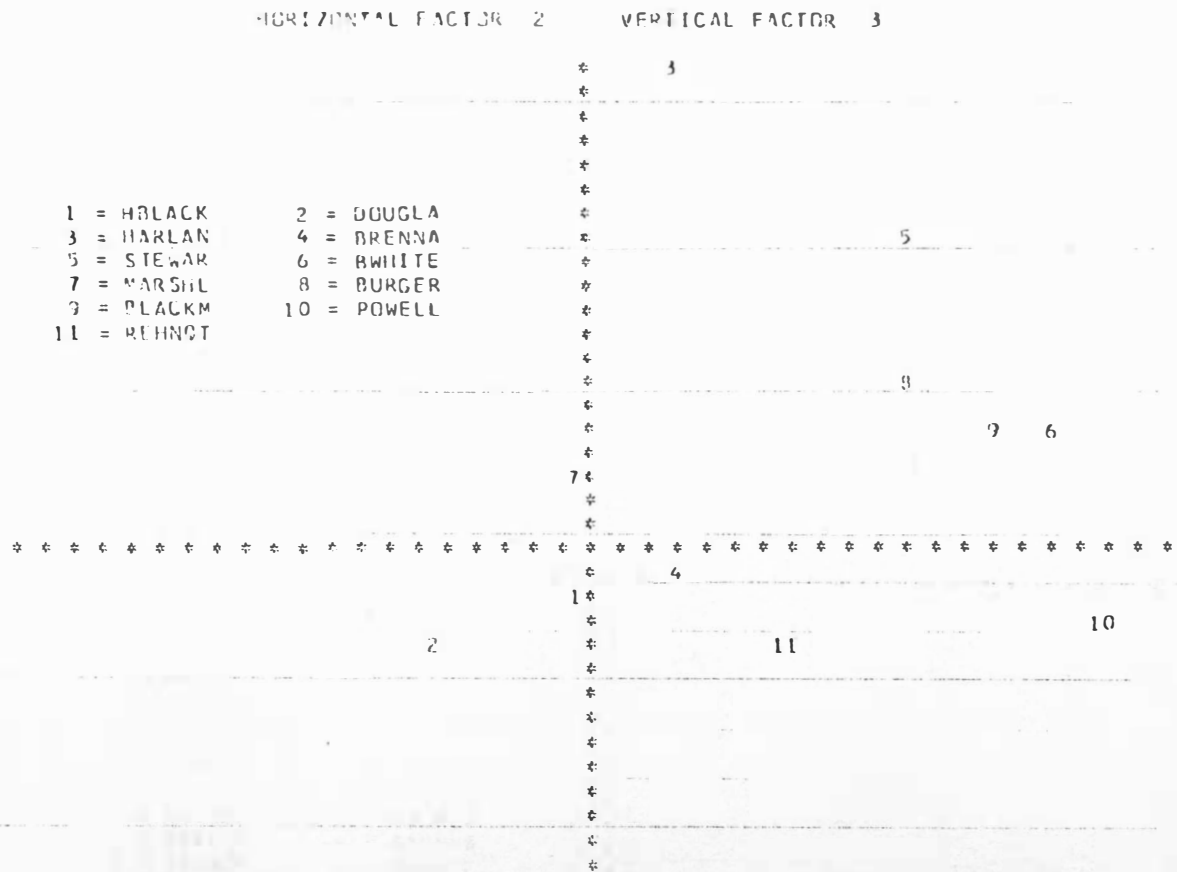


Figure D-35. C Burger Court second and third dimensions.

5 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C (CREATION DATE = 07/26/77) BURGER COURT

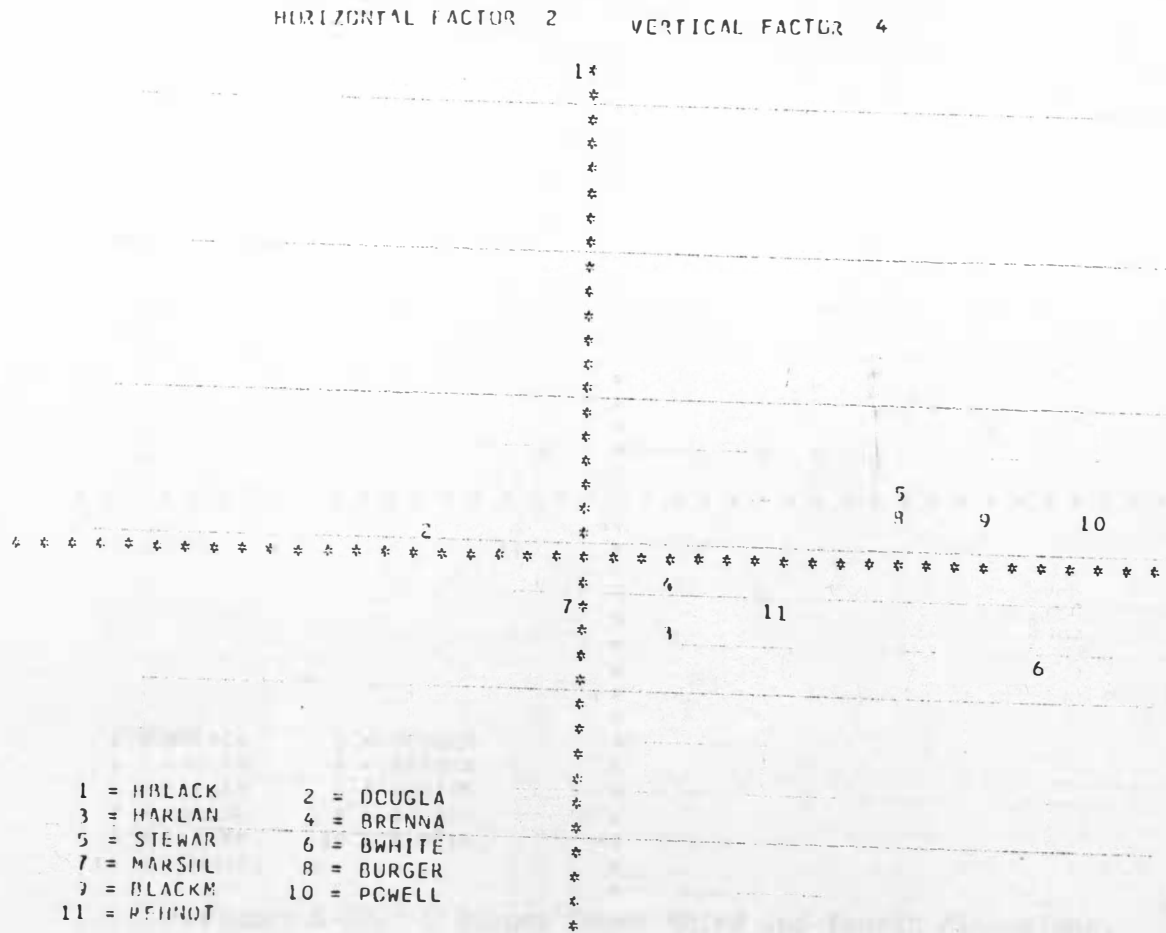


Figure D-36. C Burger Court second and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE C

(CREATION DATE = 07/26/77)

BURGER COURT

HORIZONTAL FACTOR 3

VERTICAL FACTOR 4

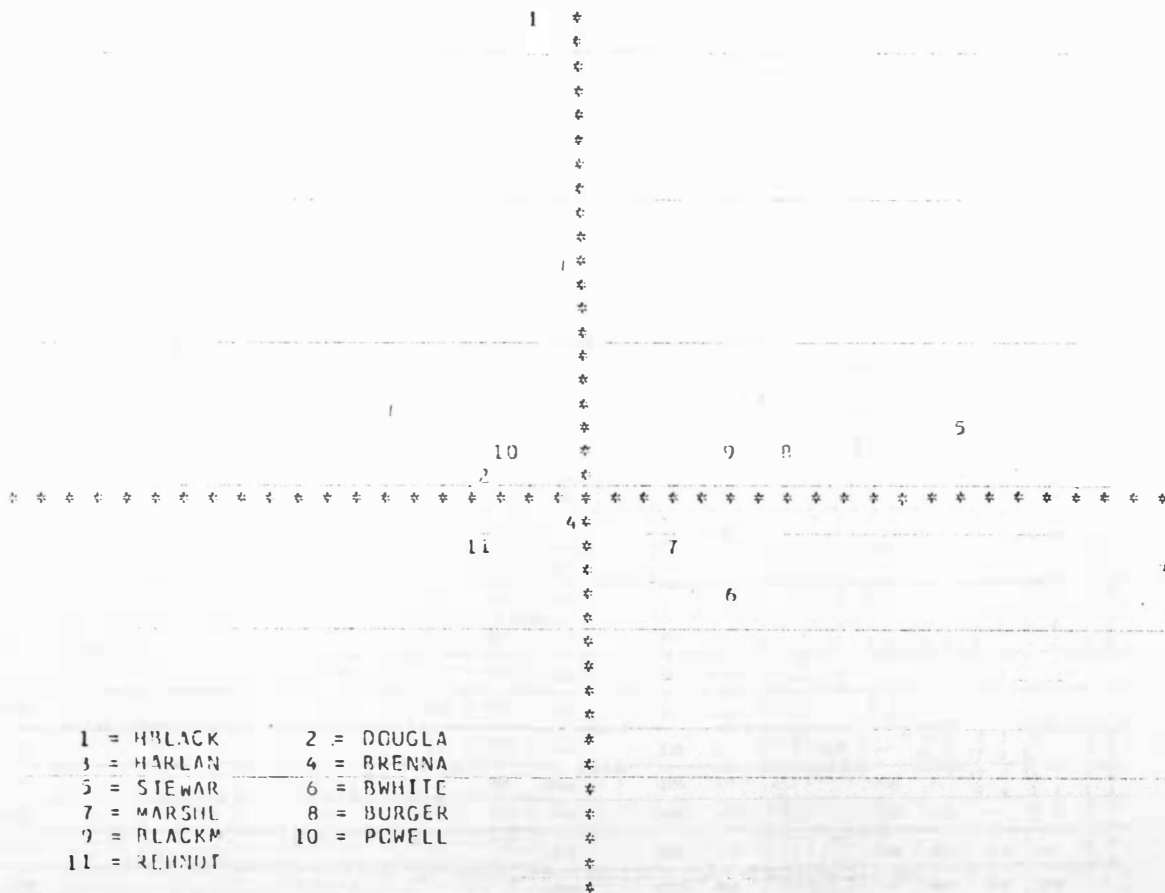


Figure D-37. C Burger Court third and fourth dimensions.

TABLE D-35

P TOTAL COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	JTREED	FRANKF	DOUGLA	MURPHY	JACKSO	RUTLED	BURTON	VINSON	TCLARK	MINTON	WARREN	HARLAN	BREHNA	WHITIK	STEWAR	BWHITE	GOLDBG	FORTAS	MARSHL	BURGER	BLACKM	POWELL	REHNQT
HBLACK	--	1 3 3 3	2 2 16 4	5 5 6 1	1 0 0 2	1 3 4 2	1 0 0 2	2 2 11 2	1 3 3 2	0 6 4 2	2 1 2 2	2 2 3 3	4 8 12	2 2 3 3	2 5 2 2	0 0 16 3 7	5 2 13 3 1	1 1 0 1	1 1 0 1	1 3 3 0	3 0 3 0	3 0 4 2	4 2	
JTREED	-200	--	4 0 4 2	0 4 3 3	1 0 0 2	3 1 2 4	1 0 0 2	3 1 4 2	2 1 2 4	1 0 1 3	3 0 1 0	1 0 0 0												
FRANKF	-500	200	--	2 16 3 3	1 2 0 0	5 3 0 0	1 2 0 0	9 4 0 0	4 3 2 4	12 1 2 4	4 1 2 0	4 7 3 1	7 3 1 1	4 5 8 0										
DOUGLA	736	-200	-583	--	0 0 1 2	0 3 5 2	0 0 1 2	2 1 11 3	0 3 4 2	3 3 3 9	7 2 4 0	2 1 2 2	6 1 17 4 7	3 4 21 4 9	5 2 7 1	1 1 19 4 7	1 3 26 3 2	2 0 0 7	0 2 9 2 2	0 0 6 2 3	0 0 18 4 18	0 0 4 12	0 0 2 13	0 0 1 1
MURPHY	1.0	1.0	-331	331	--	1 0 2 0	1 0 0 2	0 1 1 1	0 1 1 1															
JACKSO	-400	400	400	-600	-331	--	1 2 0 0	3 2 4 1	3 2 1 3	1 0 3 4	2 0 1 1	0 0 1 0												
RUTLED	1.0	1.0	-331	331	1.0	-331	--	0 1 1 1	1 0 1 1															
BURTON	-529	000	054	-411	-331	-200	-331	--	2 4 2 1	8 2 1 1	6 0 0 1	5 2 0 1	5 1 0 1	3 1 3 0	0 0 0 0									
VINSON	-333	333	333	-554	331	333	331	-333	--	1 0 1 3	2 0 3 1													
TCLARK	-714	600	684	-642	600	500	600	--	2 0 2 1	23 14 3 8	33 7 4 7	16 21 4 7	8 0 0 2	11 22 3 8	10 16 1 7	1 5 1 1	7 13							
MINTON	-427	141	141	-427	-141	1.0	000	200	--	1 0 0 0														
WARREN	000	1.0	-200	176	-1.0	500	291	1.0	--	20 7 19 8	17 8 4 23	3 0 5 2	8 15 7 18	8 13 4 12	2 2 0 4	7 10 2 11	1 0 0 6							
HARLAN	-544	141	-500	714	568	031	--	17 32 7 7	6 1 2 1	18 28 3 10	13 27 2 7	1 5 1 1	5 20 4 3	4 10 0 1	7 2 0 0	7 2 0 0								
BREHNA	154	089	402	500	-031	537	-236	--	3 1 5 1	12 11 11 40	13 8 14 28	1 1 1 6	5 9 4 15	5 1 1 23	16 2 16 2	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	
WHITIK	-600	1.0	-600	1.0	1.0	000	400	-200	--	4 1 1 1														
STEWAR	400	427	368	-134	077	-044	404	427	--	13 5 14 31	1 3 1 4	4 2 5 22	4 5 2 19	7 1 12 3	7 1 12 3	10 2 11 1	2 0 2 0							
BWHITE	346	063	000	077	-181	300	396	--	1 4 1 3	5 3 4 20	4 12 2 11	14 1 5 3	14 1 5 3	12 0 2 1	12 0 2 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	1 1 1 1	
GOLDBG	500	1.0	-500	554	109	-109	--																	
FORTAS	393	333	-070	200	-500	209	575	562	--	0 1 1 5														
MARSHL	248	585	1.0	-333	866	532	031	427	--	2 3 17 1	2 3 17 1	1 1 11 1	1 1 11 1	1 1 12 0	1 1 12 0	1 1 12 0	1 1 12 0							
BURGER	109	-635	554	-564	-126	477	-738	--	19 0 0 4	11 1 11 1	12 0 1 1	12 0 1 1	12 0 1 1	12 0 1 1	12 0 1 1	12 0 1 1	12 0 1 1							
BLACKM	109	-635	554	-564	-126	477	-738	1.0	--	11 1 11 1	12 0 1 1	12 0 1 1	12 0 1 1	12 0 1 1	12 0 1 1	12 0 1 1	12 0 1 1							
POWELL	-714	-714	1.0	-714	714	714	--	12 0 1 1																
REHNQT	-856	-856	-570	856	-856	856	856	--																

TABLE D-36
P TOTAL COURT INPUT CORRELATION MATRIX

HOLACK	JTREEU	FRANKF	DOUGLA	MURPHY	JACKSO	RUTLED	BURTON	VINSON	TCLARK	MINTON	WARREN
1.00000	-0.20000	-0.50000	0.73600	1.00000	-0.40000	1.00000	-0.52900	-0.33300	-0.71400	-0.42700	0.0
-0.20000	1.50000	0.20000	-0.20000	1.00000	0.40000	1.00000	0.0	0.33300	0.69000	0.14100	1.00000
-0.50000	0.20000	1.00000	-0.58300	-0.33100	-0.40000	-0.33100	0.08400	0.33300	0.60000	0.14100	-0.20000
0.71600	-0.20000	-0.58300	1.00000	0.31100	-0.60000	0.31100	-0.41100	-0.55400	-0.64200	0.42700	0.17600
1.00000	0.40000	-0.33100	0.31100	1.00000	-0.33100	1.00000	-0.33100	0.33100	0.0	0.0	0.0
-0.40000	0.40000	0.40000	-0.60000	-0.33100	0.33100	-0.33100	-0.20000	0.33300	0.60000	-0.14100	-1.00000
1.00000	1.50000	-0.33100	0.31100	1.00000	-0.33100	1.00000	-0.33100	0.33300	0.0	0.0	0.0
-0.33100	0.33100	0.33100	-0.54400	-0.33100	-0.33100	-0.33100	1.00000	0.33300	0.50000	1.00000	0.50000
-0.71400	0.60000	0.68400	-0.64200	0.33100	0.33300	0.33100	0.0	0.33300	0.60000	0.0	0.0
-0.42700	0.14100	0.14100	-0.42700	0.0	-0.14100	0.0	1.00000	0.60000	1.00000	0.0	0.0
1.00000	1.00000	-0.20000	0.17600	0.0	0.0	0.0	0.50000	0.0	0.20000	0.20000	0.29100
0.0	0.0	0.0	-0.50000	0.0	0.0	0.0	0.71400	0.0	0.29100	1.00000	1.00000
0.15400	0.0	-0.08700	0.40200	0.0	0.0	0.0	0.50000	0.0	0.56800	1.00000	1.00000
-0.60000	0.0	1.00000	-0.60000	0.0	0.0	0.0	1.00000	0.0	-0.03100	0.0	0.0
0.40000	0.0	0.42700	0.36800	0.0	0.0	0.0	0.0	0.0	1.00000	0.0	0.53700
0.34500	0.0	0.0	1.00000	0.0	0.0	0.0	0.0	0.0	-0.13400	0.0	0.0
0.50000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.07700
0.39100	0.0	0.0	0.33300	0.0	0.0	0.0	0.0	0.0	0.50000	0.0	0.07700
0.74800	0.0	0.0	-0.50200	0.0	0.0	0.0	0.0	0.0	0.07000	0.0	0.50000
0.10700	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.20000
0.10900	0.0	0.0	-0.63500	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.00000
0.0	0.0	0.0	-0.63500	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.00000
0.0	0.0	0.0	-0.71400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	-0.95600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
HANLAN	BRENNA	WHITK	STEWAR	BWHITE	GOLORG	FORTAS	MARSHL	BURGER	BLACKM	POMELL	REHNOT
-0.54400	0.15400	-0.60000	0.40000	0.34600	0.50000	0.39300	0.24800	0.10900	0.10900	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.14100	-0.08700	1.00000	0.42700	0.06300	0.0	0.0	0.0	0.0	0.0	0.0	0.0
-0.50000	0.40200	-0.60000	0.36800	0.0	-1.00000	0.33300	0.58500	-0.63500	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-0.71400	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.71400	0.50000	1.00000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.54800	-0.01100	1.00000	-0.13400	0.0	-0.50000	-0.07000	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.33100	0.51700	0.0	0.07700	0.07700	0.50000	0.20000	1.00000	0.0	0.0	0.0	0.0
1.00000	-0.23600	0.40000	-0.04400	-0.18100	-0.50000	-0.50000	-0.33300	0.55400	0.0	0.0	0.0
-0.23600	1.00000	-0.20000	0.40400	0.30000	0.55400	0.20900	-0.86600	-0.56400	0.55400	0.0	0.0
0.40000	0.20000	1.00000	0.42700	0.0	0.0	0.0	0.0	0.0	0.56400	0.0	0.0
-0.04400	0.40400	0.42700	1.00000	0.39600	0.0	0.57500	0.53200	0.0	-0.56400	-0.71400	0.0
-0.18100	0.30000	0.0	0.39600	1.00000	-0.10900	0.56200	0.03100	-0.12600	0.0	0.0	0.0
-0.50000	0.55400	0.0	0.10900	-0.10900	1.00000	0.0	0.0	-0.12600	-0.12600	-0.42700	-0.57000
-0.50000	0.20900	0.0	0.57500	0.56200	0.0	1.00000	0.0	0.0	0.47700	1.00000	0.85600
-0.33100	0.86600	0.0	0.53200	0.03100	0.0	0.42700	0.0	0.0	0.0	0.0	0.0
0.55400	-0.56400	0.0	-0.53200	0.01100	-0.0	0.42700	-1.00000	0.0	-0.73100	0.0	0.0
0.55400	-0.56400	0.0	-0.12600	0.47700	0.0	-0.73900	-0.73900	1.00000	1.00000	-0.71400	-0.85600
0.0	-0.71400	0.0	-0.12600	0.47700	0.0	0.0	-0.73900	1.00000	1.00000	0.71400	0.85600
0.0	-0.71400	0.0	-0.42700	1.00000	0.0	0.0	-0.71400	0.71400	1.00000	0.71400	0.85600
0.0	-0.85600	0.0	-0.57000	0.85600	0.0	0.0	-0.85600	0.85600	0.85600	0.85600	1.00000

TABLE D-37

P TOTAL COURT COMMUNALITY AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

07/12/77

FILE P (CREATION DATE = 07/12/77) TOTAL COURT

VARIABLE	EST COMMUNALITY	FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
HDLACK	1.00000	1	6.54290	27.3	27.3
JTREED	1.00000	2	5.04553	21.0	48.3
FRANKF	1.00000	3	3.79327	15.8	64.1
DDUGLA	1.00000	4	3.08555	12.9	76.9
MURPHY	1.00000	5	2.60569	10.9	87.8
JACKSO	1.00000	6	1.81015	7.5	95.3
RUTLED	1.00000	7	1.39717	5.8	101.2
BURTON	1.00000	8	1.15758	4.8	106.0
VINSUN	1.00000	9	1.00710	4.2	110.2
TCLARK	1.00000	10	0.93009	3.5	113.6
MINTON	1.00000	11	0.62959	2.6	116.3
WARREN	1.00000	12	0.49603	2.1	118.3
HARLAN	1.00000	13	0.29191	1.2	119.6
BRENNA	1.00000	14	0.11823	0.5	120.0
WHITTK	1.00000	15	0.02300	0.1	120.1
STEWAR	1.00000	16	0.00002	0.0	120.1
BWHITE	1.00000	17	0.00000	0.0	120.1
GOLDBG	1.00000	18	-0.01759	-0.1	120.1
FURTAS	1.00000	19	-0.17476	-0.7	119.3
MARSHL	1.00000	20	-0.36446	-1.5	117.8
URGER	1.00000	21	-0.57061	-2.4	115.4
JLACKH	1.00000	22	-0.89793	-3.7	111.7
PDWELL	1.00000	23	-1.22915	-5.1	106.6
REHNOT	1.00000	24	-1.57955	-6.6	100.0

TABLE D-38

P TOTAL COURT INITIAL FACTOR MATRIX

G FACTOR ANALYSIS FROM CORRELATION MATRIX

07/12/77

FILE P (CREATION DATE = 07/12/77) TOTAL COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5	FACTOR 6	FACTOR 7	FACTOR 8	FACTOR 9	COMMUNALITY
HBLACK	-0.62339	-0.76190	0.33949	-0.05966	0.22048	0.28725	0.00952	0.04698	-0.13281	1.23997
JFREED	0.02741	0.15068	0.87265	-0.50806	-0.03048	-0.32232	0.07506	-0.03743	0.33611	1.30421
KRANKF	0.39302	0.56150	-0.02696	-0.12292	0.54586	0.10610	0.33334	-0.30949	0.16691	1.02953
DJUBLA	-1.04240	-0.24329	-0.05720	0.09884	-0.02900	0.19335	0.20848	-0.00847	0.06303	1.24458
MUMPHY	-0.26567	-0.36035	0.74092	-0.58120	-0.04307	0.19192	-0.02300	-0.02482	-0.15555	1.15121
JACKSON	0.32476	0.23577	-0.31726	-0.46234	0.49279	-0.44716	0.13025	0.36202	0.10590	1.07750
RUTLED	-0.26567	-0.36035	0.74092	-0.58120	-0.04307	0.19192	-0.02300	-0.02482	-0.15555	1.15121
BURTON	0.31630	0.70792	0.31812	0.48469	-0.23643	0.23147	0.05569	0.20327	-0.43587	1.28119
VINSON	0.23073	0.27938	0.32208	-0.39046	0.17836	-0.30696	0.09714	0.29856	-0.37372	0.75228
TOLARK	0.52709	0.71488	0.34037	-0.32004	0.19212	-0.04864	-0.04238	0.00287	0.05568	1.05133
MINTON	0.15746	0.41752	0.45022	0.45916	-0.39047	-0.22155	-0.02401	-0.15130	-0.16289	0.86420
WARREN	-0.27353	0.34133	0.82515	0.57746	-0.35041	-0.22860	-0.00283	-0.11128	0.33781	1.50763
HARLAN	0.56828	0.29682	0.10152	-0.06868	-0.31476	0.58929	-0.19595	0.41676	0.21241	1.12377
BRENNA	-0.68676	0.44840	0.14260	0.26791	0.15225	-0.10463	0.04286	0.51323	-0.11141	1.07767
WHITIK	0.43951	0.67128	0.18891	0.00558	0.32448	0.54479	0.23844	-0.32200	-0.14360	1.26276
STEWAR	-0.38486	0.24179	0.12517	0.17531	0.68085	0.43109	-0.08005	0.02731	0.14792	0.93140
BWHITE	0.20406	-0.39773	0.34320	0.51637	0.65435	-0.13673	-0.21160	0.11985	-0.13186	1.10764
SOLDBS	-0.44801	-0.15722	0.12866	-0.31859	0.03400	-0.05396	0.92915	0.15113	0.04275	1.23554
FORTAS	-0.27794	-0.07006	0.20484	0.33783	0.64175	-0.08833	-0.28796	-0.11126	-0.05463	0.75729
MARSHL	-0.78149	0.49856	0.17027	0.17675	0.20747	-0.14296	-0.30894	0.01717	0.20065	1.11901
BURGER	0.70009	-0.49545	0.22244	0.23323	0.04953	0.19668	0.05437	0.25791	0.25315	1.01417
BLACKM	0.59949	-0.47436	0.22267	0.23352	0.04993	0.19628	0.05326	0.25799	0.25414	1.01337
POWELL	0.69086	-0.54823	0.21449	0.28717	0.16065	-0.20891	0.03223	-0.12211	-0.12519	1.00738
REHNQT	0.78164	-0.59268	0.20341	0.24957	0.06949	-0.19597	0.08440	-0.14384	-0.06930	1.14174

TABLE D-39

P TOTAL COURT TERMINAL FACTOR MATRIX

G FACTOR ANALYSIS FROM CORRELATION MATRIX

07/12/77

FILE P (CREATION DATE = 07/12/77) TOTAL COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5	FACTOR 6	FACTOR 7	FACTOR 8	FACTOR 9
HBLACK	-0.00145	0.72157	-0.31161	-0.40362	0.43978	0.31792	-0.07872	-0.36803	-0.14889
JTRED	0.01059	0.72210	0.33645	0.17180	-0.07506	-0.01413	-0.02450	0.41879	0.67611
FRANKF	0.02745	-0.21625	-0.09801	0.33807	0.07827	0.04432	-0.07556	0.22411	0.16873
DJUGLA	-0.63857	0.25653	-0.17918	-0.37064	0.20845	0.53192	-0.13804	-0.50562	-0.02035
MURPHY	-0.00749	1.06897	-0.02996	-0.07320	0.00135	-0.00317	0.00229	0.04072	0.02269
JACKSO	0.01589	-0.29315	-0.47963	0.17267	-0.01154	-0.01878	-0.02580	0.82386	0.22702
RUTLED	-0.00749	1.06897	-0.02996	-0.07320	0.00135	-0.00317	0.00229	0.04072	0.02269
BURTON	-0.03778	-0.20157	0.92707	0.36208	-0.01527	0.02659	0.38729	0.18917	-0.48705
VINSON	0.01186	0.25349	0.11524	0.14889	-0.03216	-0.02671	-0.02485	0.79631	-0.12631
TCLARK	-0.00007	0.04117	0.26549	0.68337	-0.07548	-0.31338	0.20113	0.57433	0.17477
MINTON	0.04572	-0.08334	0.91460	0.07663	-0.06803	-0.05035	-0.06357	0.03361	-0.02128
WARREN	-0.14264	0.15846	1.04349	-0.06019	0.20666	0.20532	0.04759	-0.19163	0.49579
HARLAN	0.19257	-0.02834	0.12737	0.24675	-0.29045	-0.26800	0.92198	0.01727	-0.04733
BRENN	-0.70231	-0.06900	0.28817	-0.20792	0.43314	0.39222	0.19186	0.26126	-0.08294
WHITK	0.01654	-0.01750	0.19452	1.06332	0.03738	-0.04904	0.17756	0.02075	-0.24064
STEWAR	-0.36056	0.05962	-0.15589	0.38549	0.73027	0.13590	0.21413	-0.16468	0.01402
BWHITE	0.56913	0.00679	0.08090	-0.09771	0.86303	0.03274	-0.06829	0.10379	-0.07662
GOLDBG	-0.07311	0.04431	0.08261	-0.05229	0.02236	1.08893	-0.15456	-0.09021	0.01902
FORTAS	-0.04932	0.02833	0.02402	0.01204	0.83713	-0.04866	-0.21812	-0.04738	0.01869
MARSHL	-0.82417	-0.01753	0.27032	-0.07299	0.52413	-0.02080	-0.03521	-0.03544	0.29878
BURGER	0.89572	0.01241	-0.03545	-0.01955	0.06883	0.07718	0.43063	-0.04792	0.10786
BLACKM	0.89502	0.01215	-0.03520	-0.01983	0.06978	0.07653	0.43087	-0.04800	0.10895
POWELL	0.96427	-0.01241	0.08746	-0.03654	0.14823	-0.04263	-0.19536	0.06138	-0.05197
REHNQT	1.04968	-0.00875	0.07634	-0.02753	0.02219	-0.03632	-0.17403	0.03270	-0.00915

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/12/77) TOTAL COURT

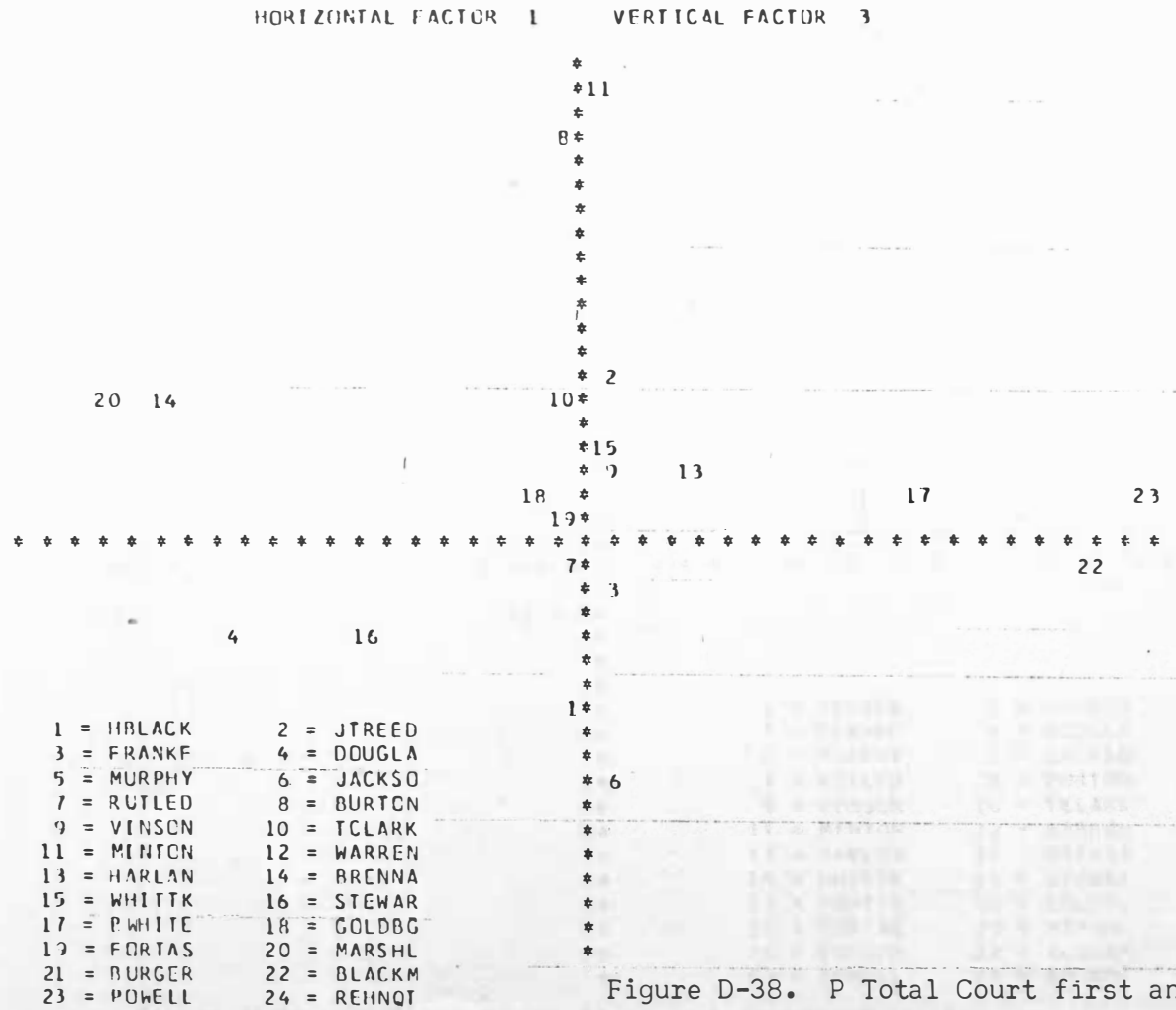


Figure D-38. P Total Court first and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/12/77) TOTAL COURT

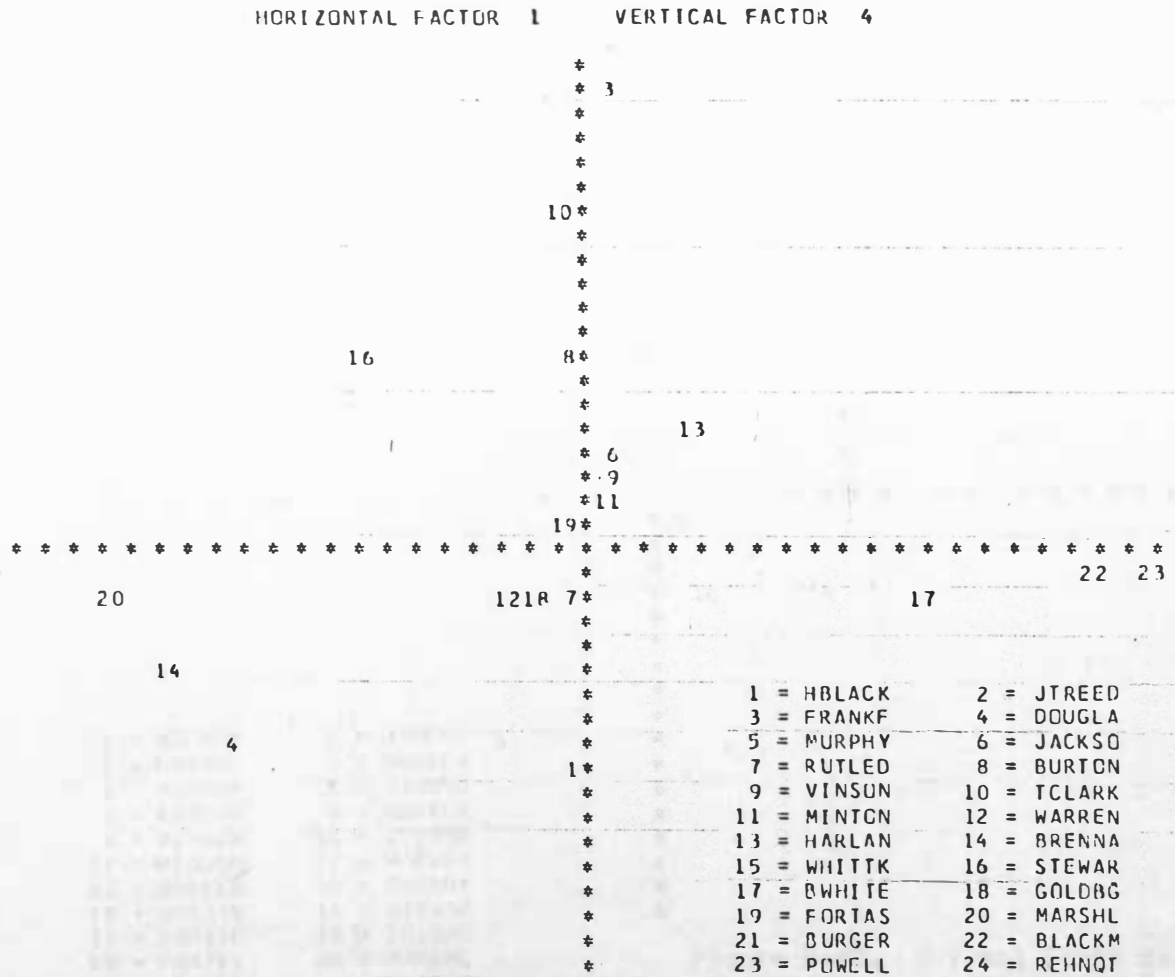


Figure D-39. P Total Court first and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/12/77) TOTAL COURT

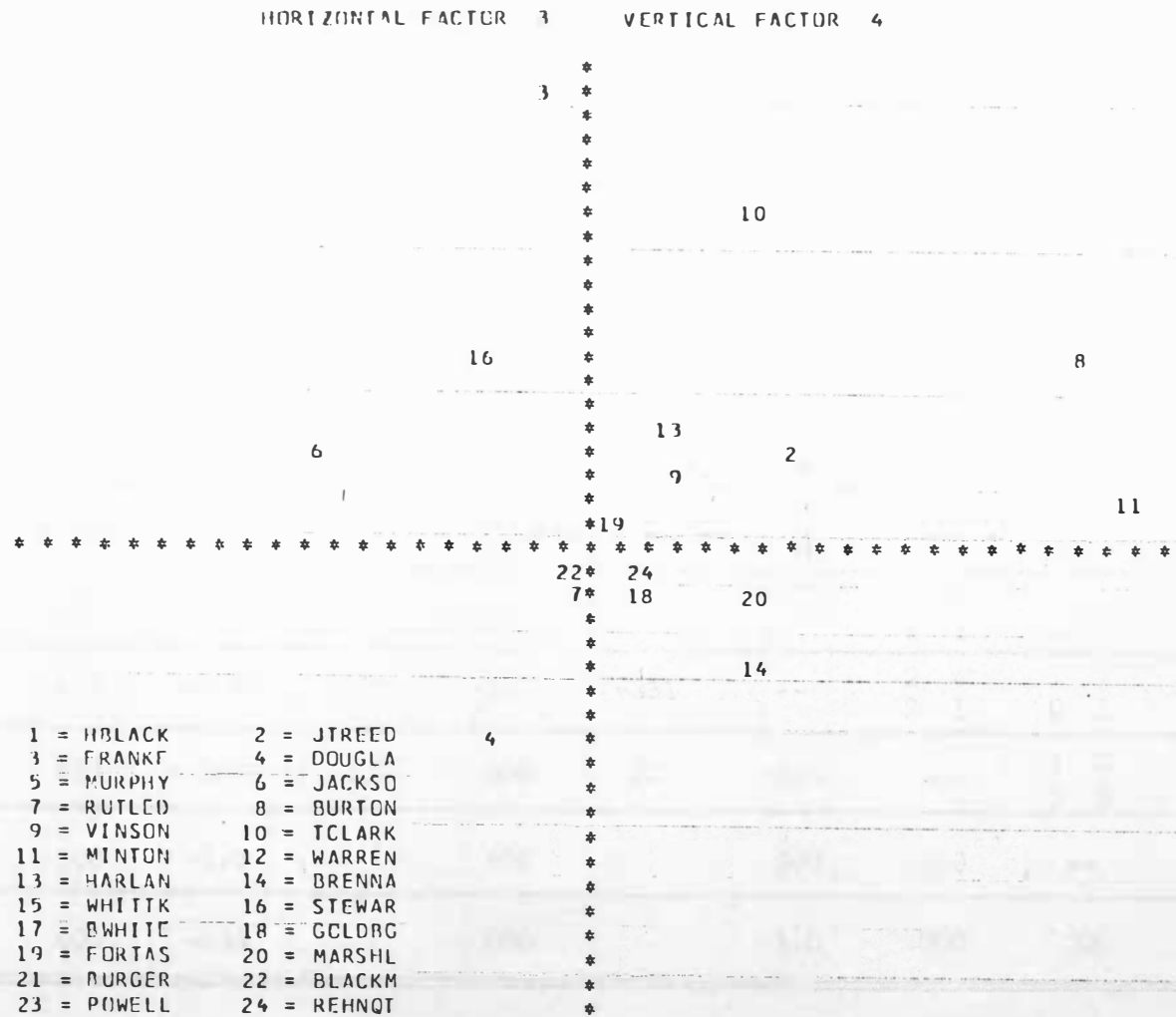


Figure D-42. P Total Court third and fourth dimensions.

TABLE D-40

P VINSON COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	JTREED	FRANKF	DOUGLA	MURPHY	JACKSO	RUTLED	BURTON	VINSON	TCLARK	MINTON
HBLACK	--	1 3 1 3	2 2 5 0	3 1 0 5	1 0 0 2	1 3 4 1	1 0 0 2	2 2 4 1	1 3 3 2	0 3 2 0	2 1 3 0
JTREED	-109	--	3 0 4 2	0 3 3 3	1 0 0 2	3 0 2 4	1 0 0 2	2 1 4 2	2 1 2 4	1 0 1 3	2 0 3 1
FRANKF	-554	109	--	1 6 2 0	1 2 0 0	5 2 0 2	1 2 0 0	4 3 2 0	4 3 0 2	2 1 0 2	3 1 2 0
DOUGLA	777	-333	-777	--	0 0 1 2	0 3 5 1	0 0 1 2	2 1 4 2	0 3 4 2	0 3 2 0	2 1 3 0
MURPHY	1.0	1.0	-331	-331	--	1 0 2 0	1 0 0 2	0 1 1 1	1 0 1 1		
JACKSO	-554	554	554	-777	-331	--	1 2 0 0	3 2 1 1	3 2 1 3	1 0 1 3	2 0 3 1
RUTLED	1.0	1.0	-331	331	1.0	-331	--	0 1 1 1	1 0 1 1		
BURTON	-333	-109	-109	-109	-331	-109	-331	--	2 4 2 1	2 2 0 1	5 0 0 1
VINSON	-333	333	333	-554	333	333	331	-333	--	1 0 1 3	2 0 3 1
TCLARK	-1.0	600	600	-1.0		600		200	600	--	2 0 2 1
MINTON	-333	000	000	-333		000		1.0	000	200	--

TABLE D-41

P VINSON COURT INITIAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) VINSON COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, 10 ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.93983	-0.15919	0.24440	0.09021
JTREED	0.30860	-0.30257	0.55527	0.48621
FRANKF	0.66426	-0.25862	0.19132	-0.63941
DOUGLA	-1.00429	0.09560	0.20982	-0.09224
MURPHY	0.00000	-0.00000	0.00000	-0.00002
JACKSO	0.71657	-0.36372	0.45157	0.03747
RUTLED	0.00000	-0.00000	0.00000	0.00201
BURTON	0.23458	0.71657	0.33415	-0.00047
VINSON	0.32216	-0.24493	0.50574	-0.14336
TCLARK	0.71537	0.05109	-0.72320	0.79751
MINTON	0.32453	0.90097	0.29124	0.03004

VARIABLE COMMUNALITY

HBLACK	0.97549
JTREED	0.96599
FRANKF	0.95229
DOUGLA	1.07027
MURPHY	0.00000
JACKSO	0.85117
RUTLED	0.00000
BURTON	1.00678
VINSON	0.44027
TCLARK	1.12718
MINTON	1.00279

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	3.71763	33.8	33.8
2	2.04020	18.6	52.3
3	1.52799	14.0	67.1
4	1.00691	9.2	76.3
5	1.00000	9.1	85.4
6	0.99999	9.1	94.5
7	0.99979	8.1	102.6
8	0.28591	2.6	105.2
9	0.10002	0.9	106.1
10	-0.11654	-1.1	105.0
11	-0.55237	-5.0	100.0

TABLE D-42

P VINSON COURT TERMINAL FACTOR MATRIX

3 FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) VINSON COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
BLACK	0.89781	-0.29151	-0.25415	0.14439
JTREED	-0.01094	0.53949	-0.01673	0.32130
FRANKF	-0.34354	0.73227	-0.02628	-0.54531
DOUGLA	0.94413	-0.41540	-0.04695	-0.06330
MURPHY	0.00000	0.00000	0.00000	-0.00002
JACKSO	-0.31908	0.84626	-0.02155	0.18092
RUTLED	0.00000	0.00000	0.00000	0.00001
BURTUN	-0.03449	-0.00426	1.00278	-0.00117
VINSON	0.05104	0.86110	0.02460	-0.00006
TCLARK	-1.03113	-0.21046	-0.05418	0.12732
MINTON	-0.13524	0.01407	0.99189	0.02124

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
FACTOR 1	-0.81380	0.54239	0.20826	0.01287
FACTOR 2	-0.03597	-0.40169	0.91079	-0.08640
FACTOR 3	0.56656	0.70802	0.35598	0.22583
FACTOR 4	-0.12428	-0.20776	-0.00447	0.07024

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) VINSON COURT

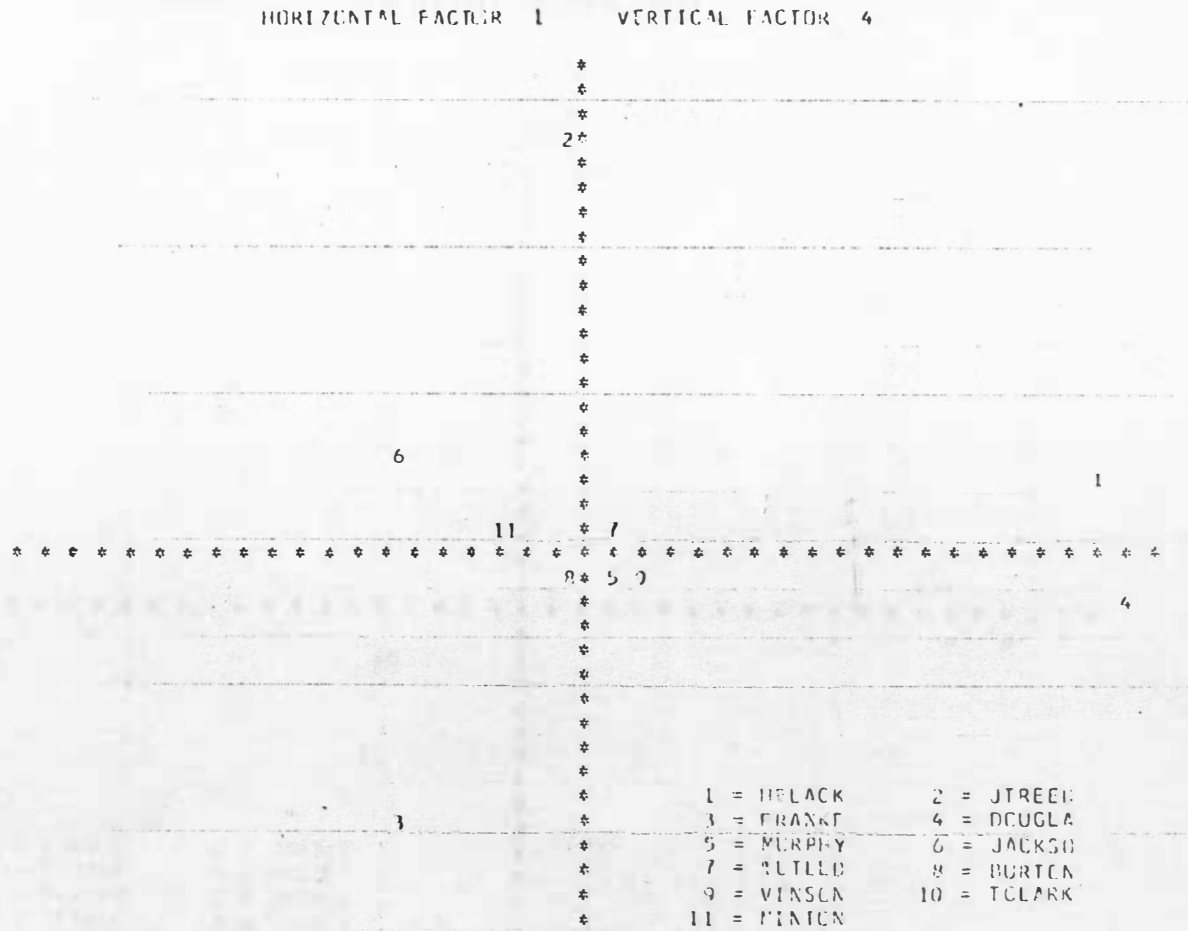


Figure D-44. P Vinson Court first and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) VINSON COURT

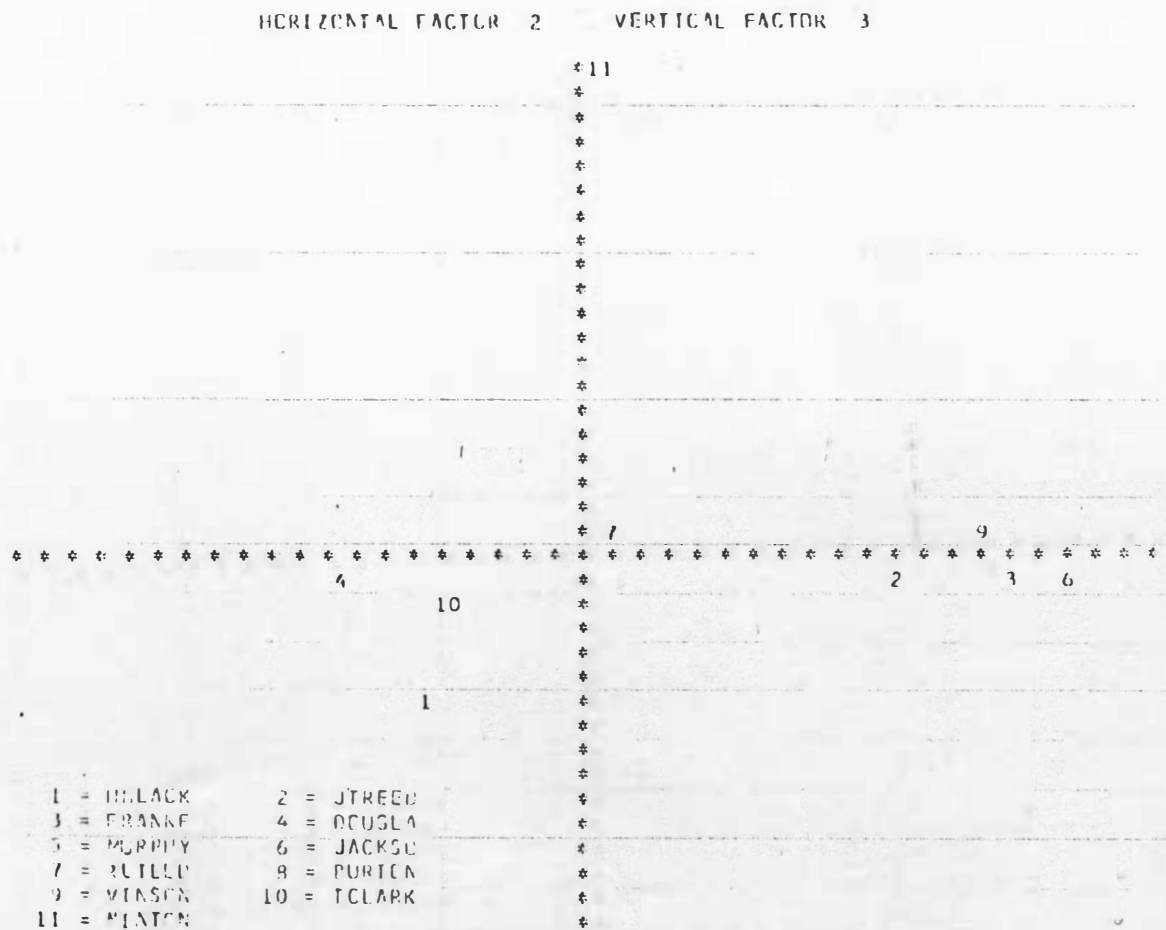


Figure D-45. P Vinson Court second and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) VINSON COURT

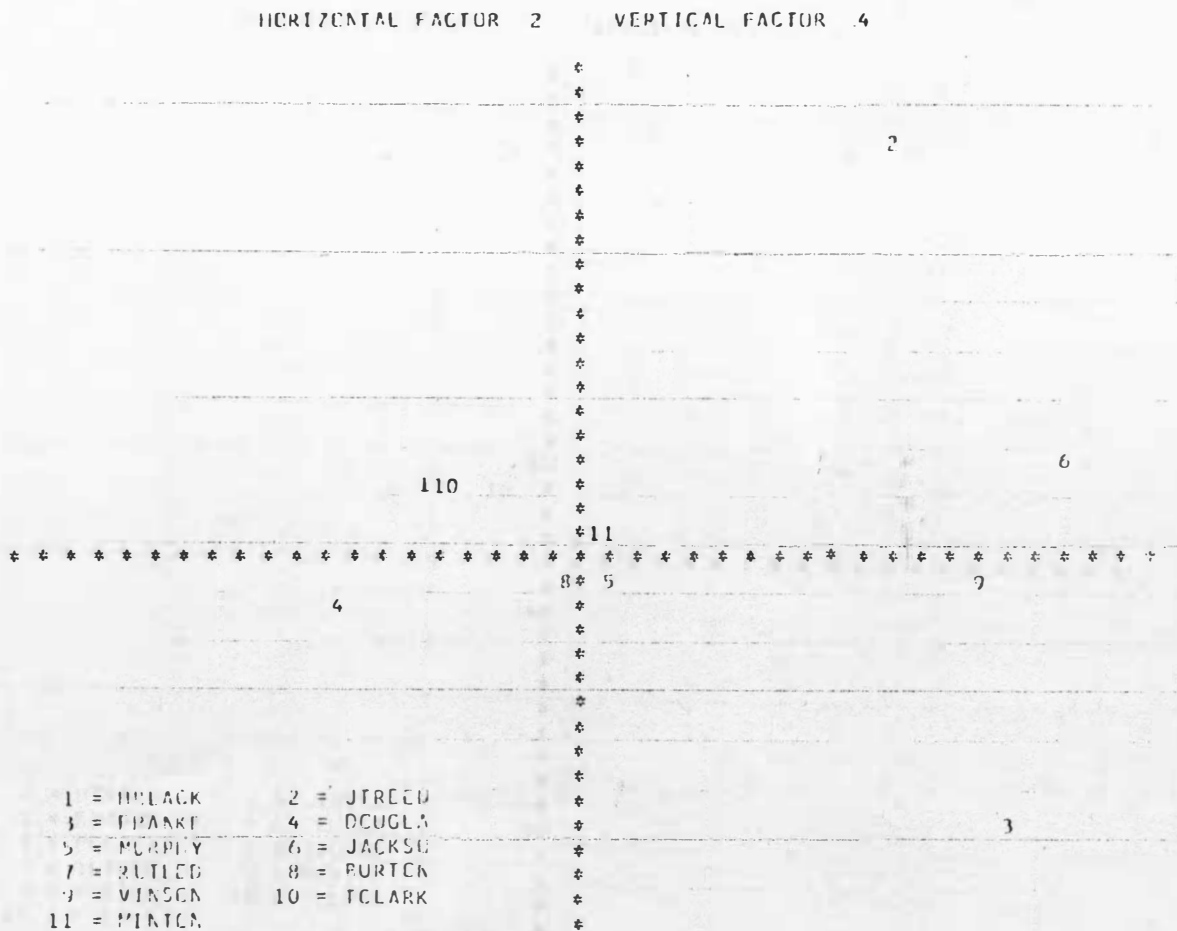


Figure D-46. P Vinson Court second and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) VINSON COURT

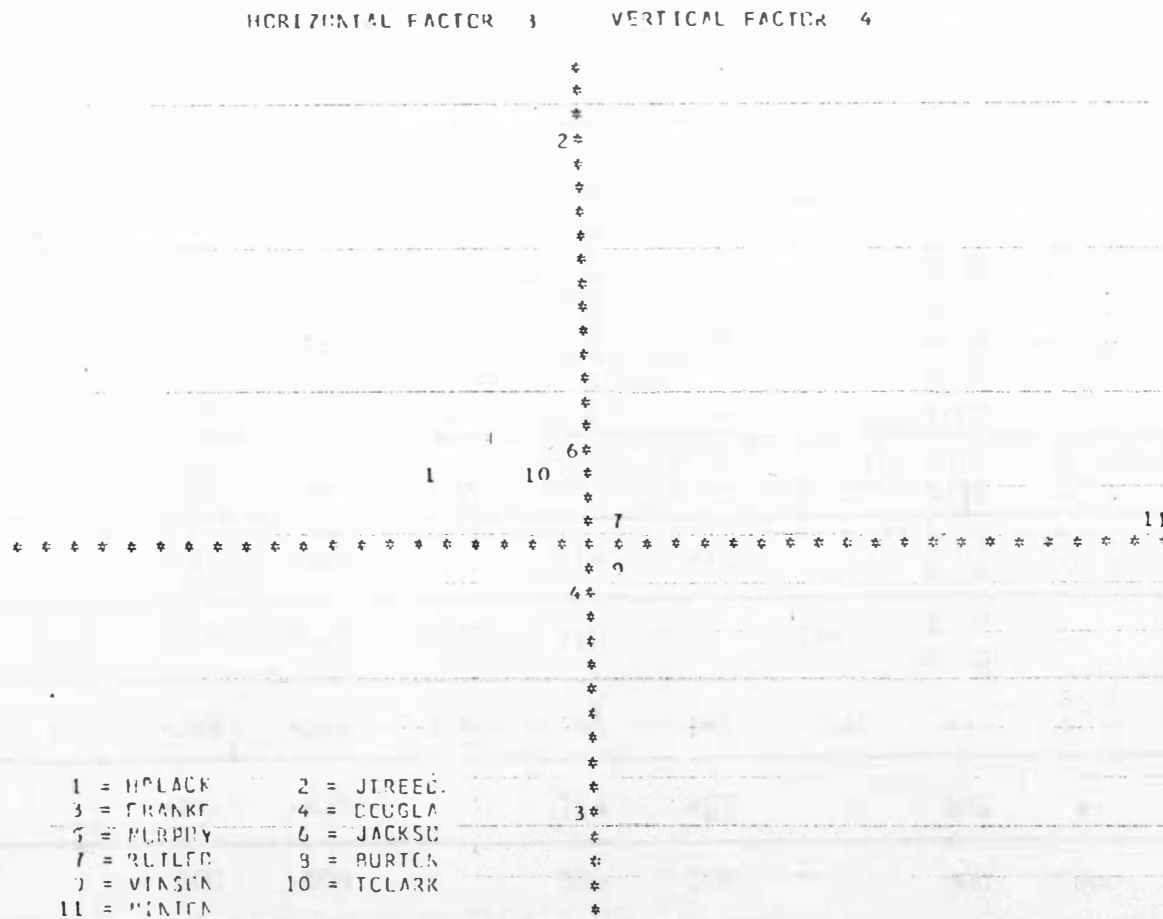


Figure D-47. P Vinson Court third and fourth dimensions.

TABLE D-43

P EARLY WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	JTREED	FRANKF	DOUGLA	JACKSO	BURTON	TCLARK	MINTON	WARREN	HARLAN	BRENNA	WHITTK
HBLACK	--	0 0 1 0	0 0 6 2	0 0 0 8	0 0 0 1	0 0 7 1	0 0 7 0	0 0 1 0	0 0 5 3	0 0 5 2	0 0 3 1	0 0 3 0
JTREED	1.0	--	1 0 0 0	0 1 0 0	0 1 0 0	1 0 0 0		1 0 0 0	1 0 0 0			
FRANKF	-500	1.0	--	0 6 0 2	0 1 0 0	5 1 2 0	5 0 2 0	1 0 0 0	3 3 2 0	3 2 2 0	3 1 0 0	3 0 0 0
DOUGLA	1.0	-1.0	-500	--	0 0 0 1	0 0 7 1	0 0 7 0	0 0 1 0	0 0 5 3	0 0 5 2	0 0 3 1	0 0 3 0
JACKSO	1.0	-1.0	1.0	1.0	--	0 0 1 0		0 0 1 0	0 0 1 0			
BURTON	-749	1.0	248	-749	-1.0	--	6 0 1 0	1 0 0 0	5 2 0 1	5 1 0 1	3 1 0 0	3 0 0 0
TCLARK	-1.0		427	-1.0		714	--		4 3 0 0	5 2 0 0	3 1 0 0	3 0 0 0
MINTON	-1.0	1.0	1.0	-1.0	-1.0	1.0		--	1 0 0 0			
WARREN	-248	1.0	-248	-248	-1.0	248	141	1.0	--	3 1 2 1	2 0 1 1	2 0 1 0
HARLAN	-427		-141	-427		714	427		141	--	2 1 1 0	2 0 1 0
BRENNA	-500		500	-500		500	500		500	000	--	2 0 1 0
WHITTK	-1.0		1.0	-1.0		1.0	1.0		331	331	331	--

TABLE D-44

P EARLY WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) EARLY WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2
HBLACK	-0.99508	0.22781
JTREED	0.0	0.0
FRANKF	0.36031	-0.46889
DDUGLA	-0.99508	0.22781
JACKSO	0.00000	-0.00000
BURTON	0.84595	0.58115
TCLARK	0.93932	-0.08371
MINTON	0.00000	0.00000
WARREN	0.07596	0.29664
HARLAN	0.21370	0.85407
BRENNA	0.0	0.0
WHITTK	0.0	0.0

VARIABLE	COMMUNALITY
HBLACK	1.04208
JTREED	0.0
FRANKF	0.34968
DDUGLA	1.04208
JACKSO	0.00000
BURTON	1.05337
TCLARK	0.88933
MINTON	0.00000
WARREN	0.07377
HARLAN	0.77727
BRENNA	0.0
WHITTK	0.0

TABLE D-45

P EARLY WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

FILE P (CREATION DATE = 07/11/77) EARLY WARREN

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2
HBLACK	-1.01410	0.11699
JTREED	0.0	0.0
FRANKF	0.40967	-0.42642
DJUGLA	-1.01410	0.11699
JACKSC	0.00000	-0.00000
BURTON	0.77690	0.67065
TCLARK	0.94283	0.02010
MINTON	0.00000	0.00000
WARREN	0.04288	0.10320
HARLAN	0.12345	0.37294
BRENNA	0.0	0.0
WHITK	0.0	0.0

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	3.76174	31.3	31.3
2	1.48584	12.4	43.7
3	1.00000	8.3	52.1
4	1.00000	8.3	60.4
5	1.00000	8.3	68.7
6	1.00000	8.3	77.1
7	1.00000	8.3	85.4
8	1.00000	8.3	93.7
9	0.79999	8.3	102.1
10	0.00000	0.0	102.1
11	-0.03155	-0.3	101.8
12	-0.21605	-1.8	100.0

TABLE D-46

P MIDDLE WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	FRANKF	DOUGLA	TCLARK	WARREN	HARLAN	BRENNA	WHITTK	STEWAR	BWHITE	GOLDBG
HBLACK	--	0 0 5 2	2 1 3 12	0 3 13 2	2 1 4 11	0 3 12 3	1 2 3 12	0 0 5 2	2 1 7 8	1 1 3 3	1 1 1 5
FRANKF	-427	--	1 4 1 1	5 0 0 2	1 4 0 2	4 1 1 1	1 4 1 1	5 0 0 2	4 1 1 1		
DOUGLA	554	-427	--	2 3 11 2	4 1 2 11	2 3 10 3	3 2 1 12	1 1 4 1	3 2 6 7	1 1 3 3	2 0 0 6
TCLARK	-777	1.0	-554	--	4 9 2 3	11 2 1 4	2 11 2 3	5 0 0 2	6 7 3 2	3 3 1 1	1 5 1 1
WARREN	443	-141	666	-221	--	4 2 8 4	3 3 1 11	1 0 4 2	3 3 6 6	2 2 2 2	2 2 0 4
HARLAN	-666	427	-443	666	-109	--	2 10 2 4	4 1 1 1	6 6 3 3	1 3 1 1	1 5 1 1
BRENNA	443	-427	666	-443	554	-333	--	1 1 4 1	4 0 5 9	2 0 2 4	1 1 1 5
WHITTK	-427	1.0	-427	1.0	-141	427	-427	--	4 1 1 1		
STEWAR	109	427	109	-109	000	000	443	427	--	3 1 1 3	1 3 1 3
BWHITE	000		000	000	000	000	500		500	--	1 3 1 3
GOLDBG	500		1.0	-500	500	-500	500		000	000	--

TABLE D-47

P MIDDLE WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) MIDDLE WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	0.78535	0.07933	0.06328	-0.34147
FRANKF	-0.75742	0.61405	0.24680	-0.20078
DOUGLA	0.83761	0.35287	0.32520	0.15603
TCLARK	-0.94121	0.29780	0.19956	0.19050
WARREN	0.52506	0.39587	0.35045	0.48350
HARLAN	-0.68975	0.05586	-0.03715	0.57239
BRENNA	0.70754	0.45990	-0.33805	0.29742
WHITTK	-0.75742	0.61404	0.24680	-0.20078
STEWAR	-0.00255	0.73248	-0.50787	-0.28997
BWHITE	0.08715	0.49100	-0.74273	0.14450
GOLDBS	0.65819	0.48686	0.49932	-0.11050

VARIABLE	COMMUNALITY
HBLACK	0.74435
FRANKF	1.05196
DOUGLA	0.95621
TCLARK	1.05071
WARREN	0.79385
HARLAN	0.80789
BRENNA	0.91465
WHITTK	1.05195
STEWAR	0.87797
BWHITE	0.78353
GOLDBS	0.93178

TABLE D-48

P MIDDLE WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) MIDDLE WARREN

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.32743	0.39309	-0.67083	0.07329
FRANKF	1.00942	-0.10036	0.13901	0.00253
DOUGLA	-0.23467	0.39089	-0.32553	0.03849
TCLARK	0.80059	-0.23027	0.59982	-0.07421
WARREN	-0.09317	0.87910	0.11028	0.01370
HARLAN	0.29951	-0.15622	0.83292	-0.00519
BRENNA	-0.35792	0.62332	-0.02611	0.52514
WHITTK	1.00942	-0.10036	0.13801	0.06253
STENAR	0.36555	0.02210	-0.24686	0.22638
BWHITE	-0.07195	0.00276	0.12233	0.37372
GOLUBS	0.07863	0.82298	-0.49205	-0.05136

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
FACTOR 1	-0.63185	0.58993	-0.48955	0.11439
FACTOR 2	0.63213	0.51586	-0.05993	0.57501
FACTOR 3	0.35273	0.45997	-0.09021	-0.30786
FACTOR 4	-0.27693	0.41748	0.36522	0.02012

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	5.04451	45.9	45.9
2	2.32190	21.1	67.0
3	1.56945	14.3	81.2
4	1.02922	9.4	90.6
5	0.59455	5.4	96.0
6	0.46768	4.3	100.2
7	0.26923	2.4	102.7
8	0.12369	1.1	103.8
9	0.00312	0.0	103.8
10	0.00000	0.0	103.8
11	-0.42343	-3.8	100.0

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) MIDDLE WARREN

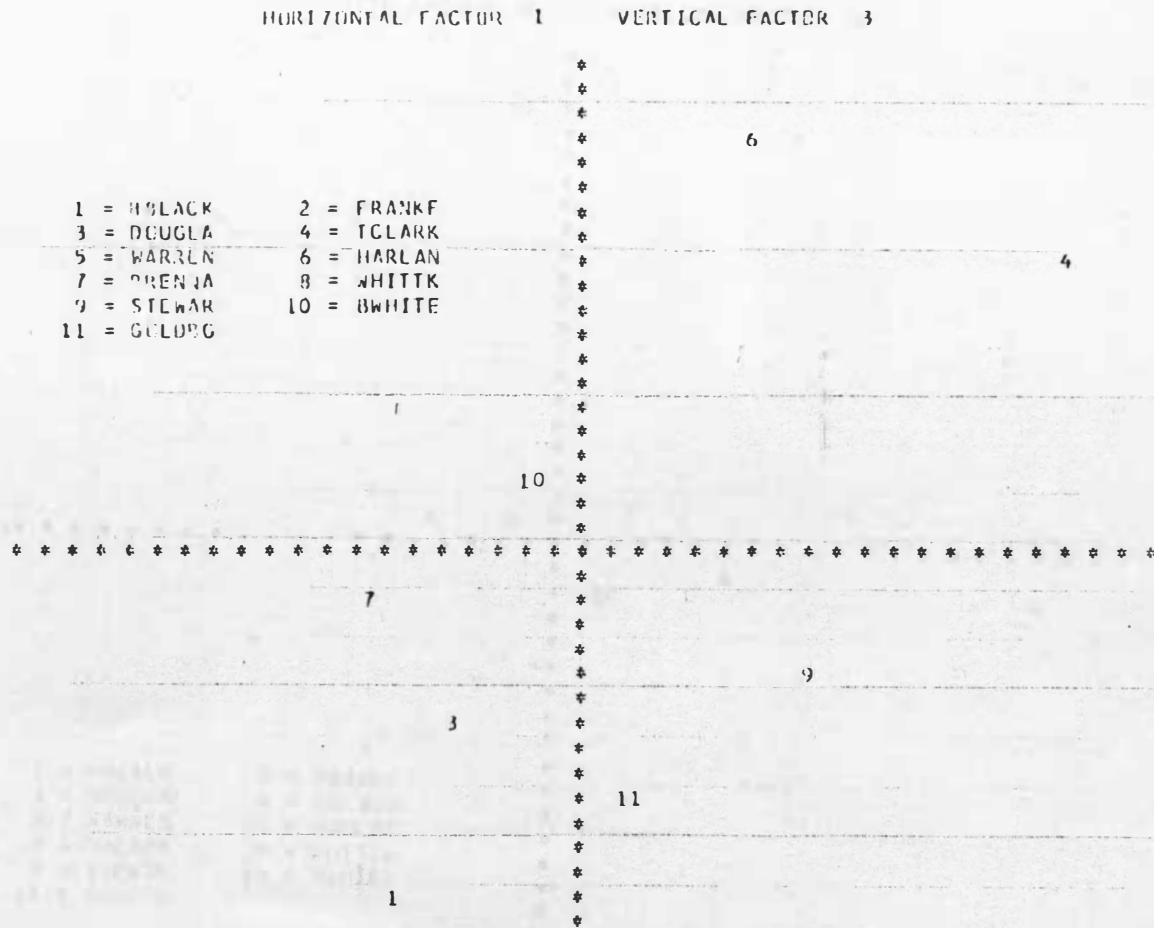


Figure D-48. P Middle Warren first and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) MIDDLE WARREN

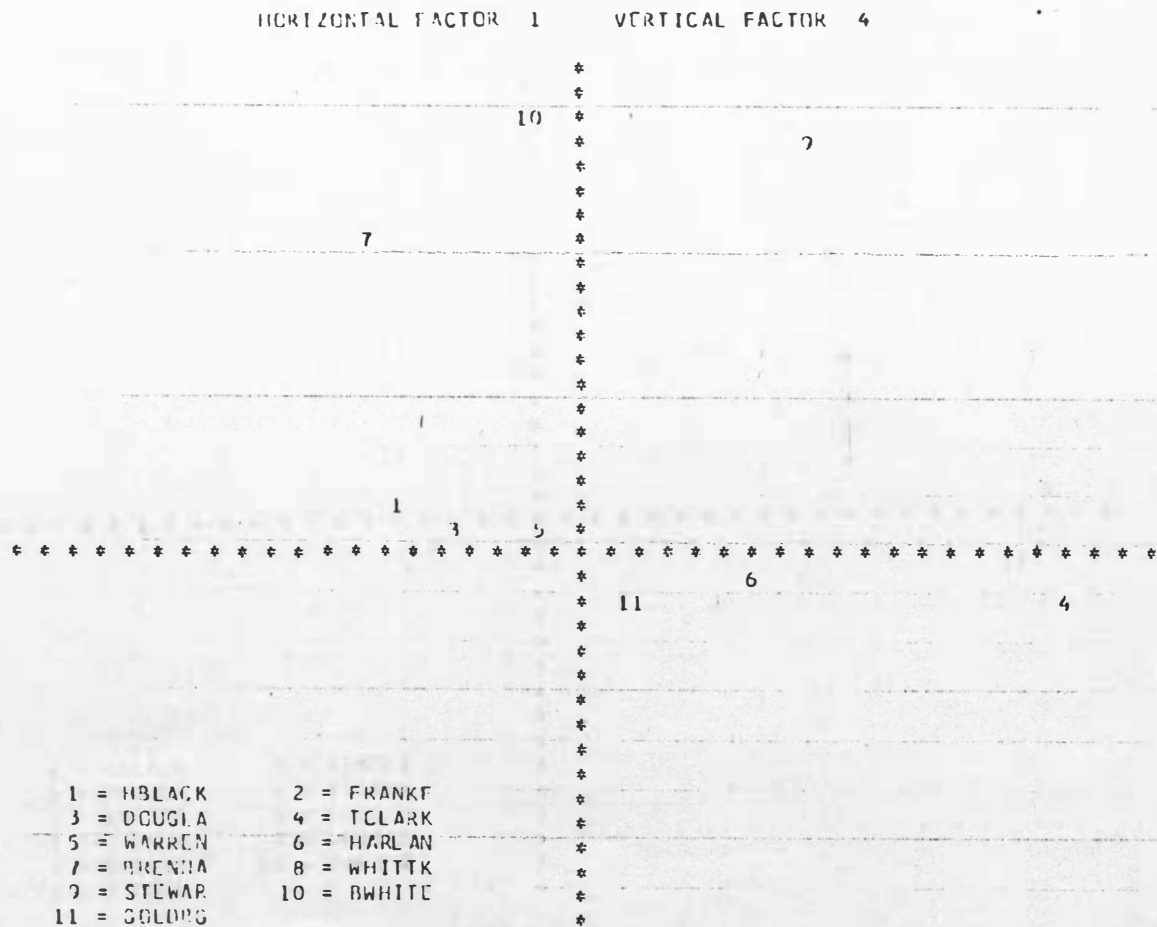


Figure D-49. P Middle Warren first and fourth dimensions.

S FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) MIDDLE WARREN

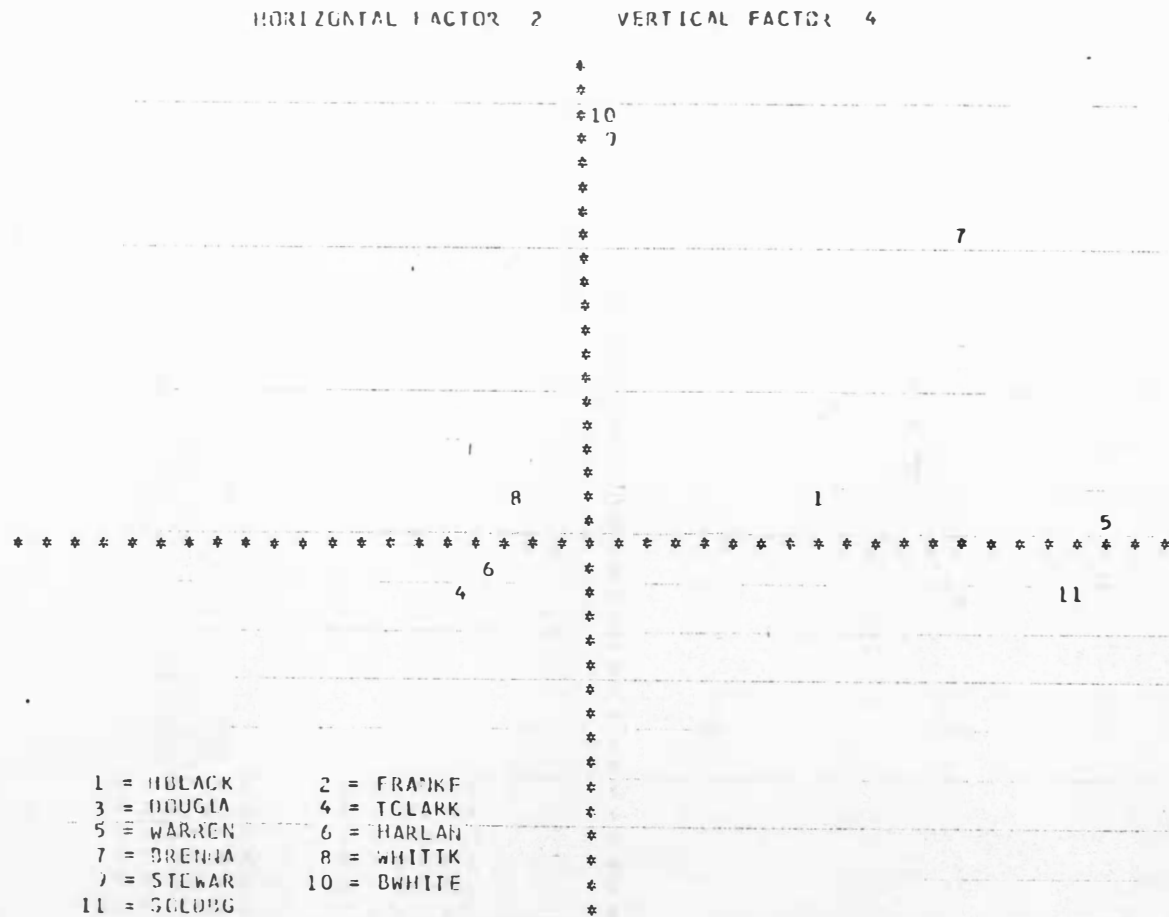


Figure D-50. P Middle Warren second and fourth dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) MIDDLE WARREN

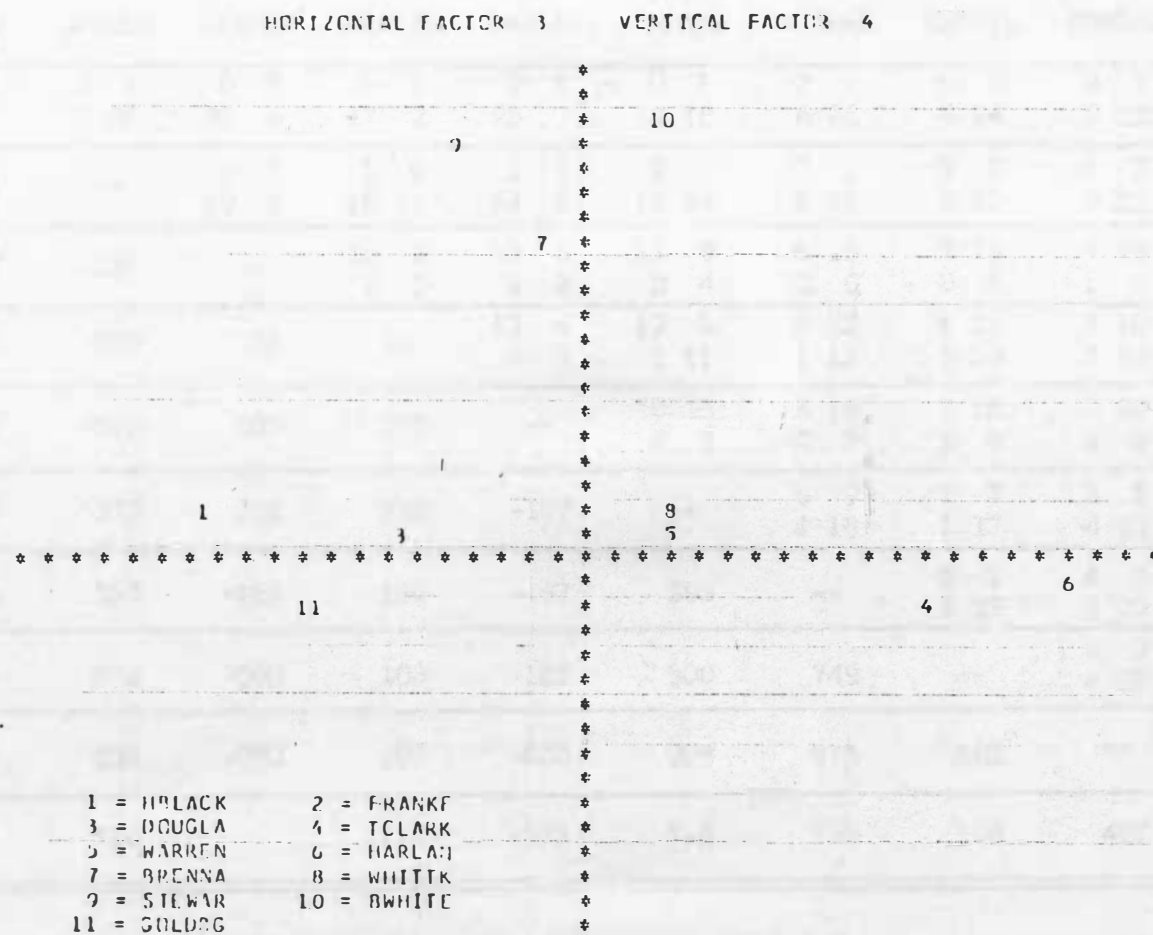


Figure D-51. P Middle Warren third and fourth dimensions.

TABLE D-49
P LATE WARREN FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	TCLARK	WARREN	HARLAN	BRENNA	STEWAR	BWHITE	FORTAS	MARSHL
HBLACK	--	0 1 2 30	0 0 20 6	0 1 17 2	0 0 25 7	0 1 14 18	0 1 6 26	0 0 8 24	0 1 9 23	0 1 1 5
DOUGLA	817	--	1 1 19 5	2 0 15 13	1 1 24 6	2 0 12 19	0 2 6 25	0 2 8 22	0 2 9 22	0 0 1 6
TCLARK	-537	-537	--	15 2 1 5	17 3 3 3	11 9 2 4	5 15 0 6	7 13 0 6	7 13 1 5	
WARREN	-200	000	738	--	13 4 9 3	12 5 2 11	5 12 1 12	6 11 2 10	7 10 2 11	1 0 0 6
HARLAN	-562	-562	537	100	--	10 15 4 3	6 19 0 7	7 18 1 6	5 20 4 3	1 4 0 1
BRENNA	089	272	151	532	-187	--	5 9 1 18	7 7 1 17	5 9 4 15	1 0 0 6
STEWAR	575	514	-151	130	-187	393	--	5 1 3 23	4 2 5 22	1 0 0 6
BWHITE	500	374	000	100	-187	500	749	--	5 3 4 20	1 0 0 5
FORTAS	393	333	-070	200	-500	209	575	562	--	0 1 1 5
MARSHL	427	714		1.0	-333	1.0	1.0	1.0	427	--

TABLE D-50

P LATE WARREN INITIAL FACTOR MATRIX AND COMMUNALITY TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) LATE WARREN

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2
HBLACK	0.68574	-0.57751
DOUGLA	0.75025	-0.43283
TCLARK	-0.20402	0.89021
WARREN	0.36114	0.86940
HARLAN	-0.52202	0.50829
BRENNA	0.64631	0.47372
STEWAR	0.85348	0.01364
BWHITE	0.82325	0.11707
FORTAS	0.62681	-0.01900
MARSHL	1.04454	0.42868

VARIABLE	COMMUNALITY
HBLACK	0.30377
DOUGLA	0.75322
TCLARK	0.31042
WARREN	0.88629
HARLAN	0.53085
BRENNA	0.64212
STEWAR	0.72361
BWHITE	0.69191
FORTAS	0.39325
MARSHL	1.27484

TABLE D-51

P LATE WARREN TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/11/77) LATE WARREN

QUANTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2
HBLACK	0.47377	-0.76112
DOUGLA	0.57982	-0.64345
TCLARK	0.07790	0.90020
WARREN	0.61207	0.71530
HARLAN	-0.33044	0.54470
BRENNA	0.76105	0.25037
STEWAR	0.81594	-0.25071
BWHITE	0.91975	-0.14109
FORTAS	0.57027	-0.21172
MARSHL	1.12583	0.08500

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2
FACTOR 1	0.75108	-0.30895
FACTOR 2	0.30895	0.75108

FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.78551	47.9	47.9
2	2.73279	27.3	75.2
3	0.79106	9.9	85.1
4	0.89982	9.0	94.1
5	0.56184	5.6	99.7
6	0.29546	2.9	102.6
7	0.18722	1.9	104.4
8	0.13564	1.4	105.8
9	0.02445	0.2	106.0
10	-0.60284	-6.0	100.0

TABLE D-52

P BURGER COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	HARLAN	BRENNA	STEWAR	BWHITE	MARSHL	BURGER	BLACKM	POWELL	REHNQT
HBLACK	--	0 2 0 6	3 0 6 0	1 2 2 4	3 0 3 3	1 2 2 4	1 2 2 4	3 0 4 2	3 0 4 2		
DOUGLA	500	--	0 0 8 0	0 0 5 17	0 0 7 15	0 0 15 7	0 0 5 17	0 0 18 4	0 0 18 4	0 0 12 2	0 0 13 1
HARLAN	-333	-1.0	--	3 6 0 0	6 3 0 0	3 6 0 0	3 6 0 0	7 2 0 0	7 2 0 0		
BRENNA	109	554	-333	--	3 2 5 13	4 1 11 7	4 1 1 17	3 2 16 2	3 2 16 2	1 1 11 1	1 1 12 0
STEWAR	333	363	333	391	--	5 3 10 5	3 5 2 13	7 1 12 3	7 1 12 3	2 0 10 2	2 0 11 1
BWHITE	109	-363	-333	-031	-126	--	3 12 2 6	14 1 5 3	14 1 5 3	12 0 0 2	12 0 1 1
MARSHL	109	544	-333	825	391	-216	--	2 3 17 1	2 3 17 1	1 1 11 1	1 1 12 0
BURGER	109	-635	554	-564	-126	477	-738	--	19 0 0 4	11 1 1 1	12 0 1 1
BLACKM	109	-635	554	-564	-126	477	-738	1.0	--	11 1 1 1	12 0 1 1
POWELL		-714		-714	-427	1.0	-714	714	714	--	12 0 1 1
REHNQT		-856		-856	-570	856	-856	856	856	856	--

TABLE D-53

P BURGER COURT INPUT CORRELATION MATRIX

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/22/77) BURGER COURT

CORRELATION COEFFICIENTS..

	HBLACK	DOUGLA	HARLAN	BRENNA	STEWAR
HBLACK	1.00000	0.50000	-0.33300	0.10900	0.33300
DOUGLA	0.50000	1.00000	-1.00000	0.54400	0.36300
HARLAN	-0.33300	-1.00000	1.00000	-0.33300	0.33300
BRENNA	0.10900	0.54400	-0.33300	1.00000	0.39100
STEWAR	0.33300	0.36300	0.33300	0.39100	1.00000
BWHITE	0.10900	-0.36300	-0.33300	-0.03100	-0.12600
MARSHL	0.10900	0.54400	-0.33300	0.92500	0.39100
BURGER	0.10900	-0.63500	0.55400	-0.56400	-0.12600
BLACKM	0.0	-0.63500	0.55400	-0.56400	-0.12600
PCWELL	0.0	-0.71400	0.0	-0.71400	-0.42700
REHNT	0.0	-0.85600	0.0	-0.85600	-0.57000

	BWHITE	MARSHL	BURGER	BLACKM	PCWELL	REHNT
HBLACK	0.10900	0.10900	0.10900	0.0	0.0	0.0
DOUGLA	-0.36300	0.54400	-0.63500	-0.63500	-0.71400	-0.85600
HARLAN	-0.33300	-0.33300	0.55400	0.55400	0.0	0.0
BRENNA	-0.03100	0.92500	-0.56400	-0.56400	-0.71400	-0.85600
STEWAR	-0.12600	0.39100	-0.12600	-0.12600	-0.42700	-0.57000
BWHITE	1.00000	-0.21600	0.47700	0.47700	1.00000	0.85600
MARSHL	-0.21600	1.00000	-0.73800	-0.73800	-0.71400	-0.85600
BURGER	0.47700	-0.73800	1.00000	1.00000	0.71400	0.85600
BLACKM	0.47700	-0.73800	1.00000	1.00000	0.71400	0.85600
PCWELL	1.00000	-0.71400	0.71400	0.71400	1.00000	0.85600
REHNT	0.85600	-0.85600	0.85600	0.85600	0.85600	1.00000

TABLE D-54

P BURGER COURT COMMUNALITY AND EIGENVALUE TABLE

5 FACTOR ANALYSIS FROM CORRELATION MATRIX

07/22/77

FILE P (CREATION DATE = 07/22/77) BURGER COURT

VARIABLE	EST COMMUNALITY	FACTOR	EIGENVALUE	PCT OF VAR	CUM PCT
HBLACK	1.00000	1	6.13367	55.8	55.8
DOUGLA	1.00000	2	2.15207	19.6	75.3
HARLAN	1.00000	3	1.51886	13.8	89.1
BRENNA	1.00000	4	1.07026	9.7	98.8
STEWAR	1.00000	5	0.40773	3.7	102.5
BWHITE	1.00000	6	0.34686	3.2	105.7
MARSHL	1.00000	7	0.12287	1.1	106.8
BURGER	1.00000	8	0.09377	0.9	107.7
BLACKB	1.00000	9	-0.01093	-0.1	107.6
POWELL	1.00000	10	-0.31074	-2.8	104.7
REHNQT	1.00000	11	-0.52028	-4.7	100.0

TABLE D-55

P BURGER COURT INITIAL FACTOR MATRIX

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/22/77) BURGER COURT

FACTOR MATRIX USING PRINCIPAL FACTOR, NO ITERATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	-0.13876	0.46619	0.69644	-0.40313
DOUGLA	-0.34757	0.46284	0.15532	-0.36399
HARLAN	0.40563	-0.05814	0.23608	0.12153
BRENNA	-0.77776	0.10628	0.20060	0.49787
STEWAR	-0.41099	-0.28260	0.78145	0.13244
BWHITE	0.58922	0.66699	0.18960	0.54261
MARSHL	-0.34773	0.06204	0.09018	0.40423
BURGER	0.88357	-0.59135	0.38719	-0.06809
BLACKM	0.88605	-0.11495	0.33777	-0.02703
POWELL	0.90619	0.39846	-0.00267	0.17575
REHNQT	1.00242	0.30156	-0.07423	-0.02513

VARIABLE	COMMUNALITY
HBLACK	0.87029
DOUGLA	1.03921
HARLAN	1.15308
BRENNA	0.90432
STEWAR	0.97699
BWHITE	1.12243
MARSHL	0.89233
BURGER	0.94363
BLACKM	0.91313
POWELL	1.00332
REHNQT	1.10192

TABLE D-56

P BURGER COURT TERMINAL FACTOR MATRIX

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/22/77) BURGER COURT

QUARTIMAX ROTATED FACTOR MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
HBLACK	0.00447	0.01342	0.17554	0.07156
DOUGLA	-0.74591	0.02301	-0.12653	-0.11202
HARLYN	0.43409	-0.53872	0.72580	-0.32235
BRENNA	-0.84703	0.07859	0.27577	0.34151
STEXAR	-0.33342	0.29152	0.82493	-0.01774
BWHITE	0.44105	0.09419	-0.08959	0.75446
MARSHL	-0.90473	-0.00704	0.18206	0.20134
BURGER	0.91543	0.06983	0.29491	0.11760
BLACKM	0.90472	0.00428	0.28046	0.12622
POWELL	0.82123	-0.02571	-0.20604	0.53451
REHNOT	0.95543	-0.02091	-0.27623	0.33516

TRANSFORMATION MATRIX

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
FACTOR 1	0.96890	-0.16214	-0.04536	0.18135
FACTOR 2	-0.04529	0.56799	-0.54824	0.61213
FACTOR 3	0.10385	0.79700	0.78545	0.16645
FACTOR 4	-0.22002	-0.55364	0.29361	0.75142

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 07/22/77) BURGER COURT

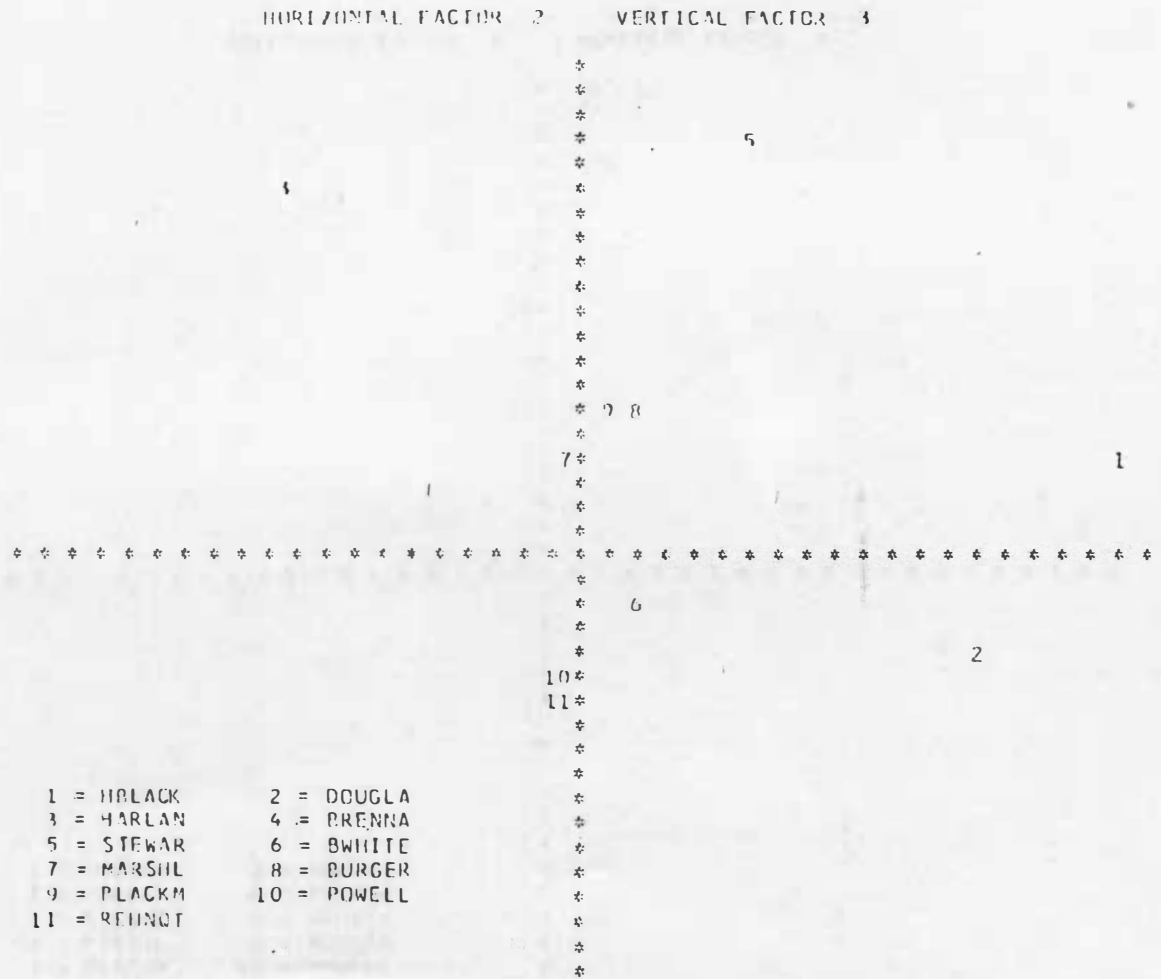


Figure D-54. P Burger Court second and third dimensions.

G FACTOR ANALYSIS FROM CORRELATION MATRIX

FILE P (CREATION DATE = 01/22/77) BURGER COURT

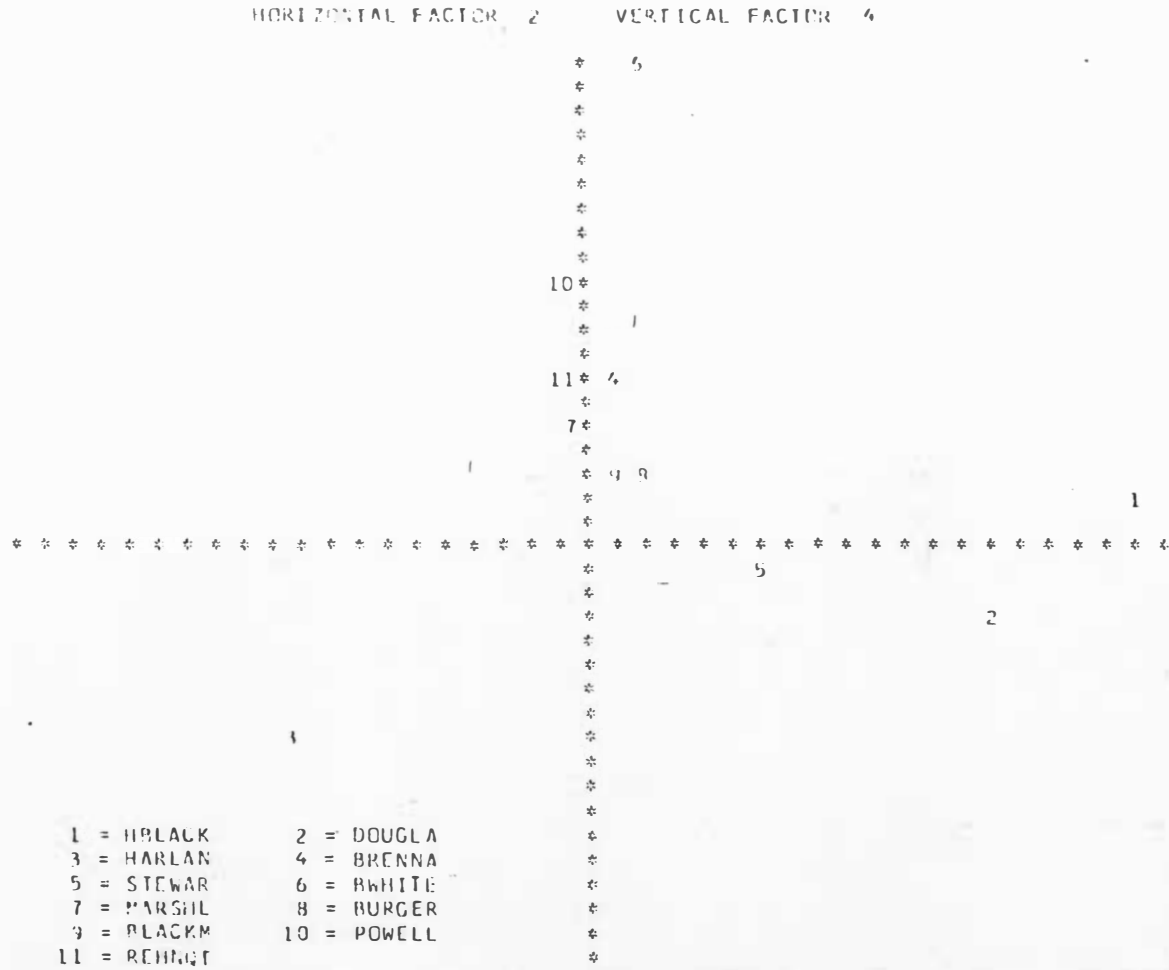


Figure D-55. P Burger Court second and fourth dimensions.