

**The Burger Court Opinion Writing Database**

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# Data Description

## The Burger Court Opinion Writing Database

These data contain information on the 48,524 memoranda and opinion drafts that justices circulated to their colleagues on the U.S. Supreme Court between the 1969 OT and the 1985 OT. The original documents were found in the personal papers of justices who served during the Burger Court. We acquired and coded all documents found in the papers of former justices Hugo L. Black (Library of Congress), William O. Douglas (Library of Congress), John M. Harlan (Princeton University), William J. Brennan, Jr. (Library of Congress), Thurgood Marshall (Library of Congress), Harry A. Blackmun (Library of Congress), Lewis F. Powell (Washington & Lee University), and William H. Rehnquist (Stanford University).

The unit of analysis is the document. Each observation catalogs a single document. On occasion, a justice would send a single memo pertaining to several distinct cases (e.g., a memo joining several opinions written by a colleague). Even then, when the document related to several cases, the data contains a single entry for that document. In other instances, albeit not often, a justice would not apparently circulate any documents pertaining to a case. This might be due to a handwritten response on an opinion draft returned to a justice whose papers are not yet available (i.e., Warren E. Burger, Potter Stewart, Byron R. White, William H. Rehnquist [1975 OT to 1985 OT], John Paul Stevens, or Sandra Day O'Connor). It is worth noting that when a justice did not have a document in a case, that means that none of the justices' personal papers included such a document.

We include documents from any case in which the justices have a case file. These may include cases that were not orally argued or even accepted for review (e.g., draft dissents from denial of certiorari). We then coded every document in the file that a justice sent to another justice, including handwritten notes. Some of the files included draft letters or draft opinions that may not have been circulated to other justices. If there was evidence that a document was uncirculated, we excluded that document from these data (e.g., handwritten note saying "Cancelled" or "Not Circulated"). In a few instances, when it was not clear whether a justice circulated a document, we have a remark field that reflects that assessment.

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## **Document Identification Variables**

### ***Document Identification Number (ID)***

This variable contains a unique number 1-48524 for each document. It is ordered by the document's term, docket number, authoring justice, circulation date, and action.

### ***Term (TERM)***

This records the Supreme Court October Term in which the document was produced, not necessarily the term when the Court announced its decision in that case. Cases occasionally span terms with some documents circulated in one term and more documents circulated in a second term. This most frequently happens when a case was restored to the calendar for reargument, but could also occur when post-publication changes are made to the opinion or when a justice drafts a dissent from denial of certiorari before the Court grants cert.

The assigned term is a function of the date on which the document was circulated. Although the Supreme Court's October Term begins on the first Monday of October, the justices begin circulating documents on pending cases at the end of the summer. For our purposes, then, we designate August 1 as the beginning of the term. The data contain 57 documents circulated in August and 161 documents circulated in September.

### ***Docket Number (DOCKET1-DOCKET10)***

These variables record the docket numbers that are the subject of the document. We obtained the docket number from the subject line of the memorandum or from the header information on an opinion draft (see the attached sample documents). The docket numbers are listed in the order found on the subject line or opinion header (the first listed docket number is recorded in docket1, the second listed docket number is docket2, and so on). There are three exceptions to the rule of using docket numbers from a memo's subject line. First, justices occasionally circulated memos without a subject line. For those documents, we located the docket numbers in the body of the document. Second, when the Court held cases pending its decision in another case, justices might reference the held cases on the subject line. Instead of listing the docket numbers of the held cases, we assigned the docket number of the case decided by the Court. Third, the justices sometimes do not refer to a docket number, but reference a type of case where several like cases have been consolidated (e.g., Capital Cases, Abortion Cases). Here, we list the docket numbers in the order found on other documents in the case files.

We should note that justices occasionally change the order of docket numbers from one document to the next. If you are interested in finding all documents bearing on a particular case, you should search all docket fields for that number.

### ***Alternate Term and Docket Number (ALT\_TERM, ALT\_DOCKET1-ALT\_DOCKET7)***

Before the 1971 OT, the Supreme Court's docket numbers did not include the term in which the case was filed as is now the practice. If a case was restored to the calendar for reargument in the subsequent term, the Court assigned the case a new docket number. Thus, if one wants to track all circulations in a case held over for reargument between 1969 and 1971, you must know the docket number assigned to the case in the other term.

The alternate term variable indicates the Supreme Court October Term to which the alternate docket number applies. The alternate docket number variable contains the docket number assigned to this case in the alternate term. So, for example, *Dutton v. Evans* (1970)<sup>1</sup> was considered in the 1969 OT as docket number 21 before being decided in the 1970 OT as docket number 10. The observations for documents circulated in 1969 OT indicate an alternate term of 1970 and alternate docket 10, while the observations for documents circulated in 1970 OT indicate the alternate term of 1969 and an alternate docket number of 21.

The alternate docket number is also used to reference the docket number assigned to applications (e.g., for stays) when the Court took the case on the merits and assigned it a regular docket number. The Court assigns a unique number to each application; for example, in *Buckley v. Valeo* (1976),<sup>2</sup> an application (A-550) was filed to enjoin certification of some candidates for campaign financing payments. The alternate docket number, which contains a regular docket number, is only given when the document references the application.

### ***United States Reports Citation (US)***

The U.S. Reports variable indicates the eventual report citation of the Court's disposition of this case. These data were derived, where possible, from the U.S. Supreme Court Judicial Database.<sup>3</sup> In other cases, we obtained the U.S. Reports citation from Lexis-Nexis or Westlaw by searching for the case name or docket number. In some instances (most frequently with original jurisdiction cases) it was necessary to compare the published decision with the opinion draft in our database to confirm the U.S. Reports citation. The format of this alpha-numeric variable is VVV/PPPP where V is the volume number and P is the page number.

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<sup>1</sup> 400 U.S. 74 (1970)

<sup>2</sup> 424 U.S. 1 (1976)

<sup>3</sup> Harold J. Spaeth. 2009. *The Original United States Supreme Court Judicial Database, 1953-2007 Terms*. February 24. <http://www.cas.sc.edu/poli/juri/sctdata.htm> (July 6, 2009).

### ***Authoring Justice (JUSTICE)***

The justice variable reveals the identity of the justice who authored and circulated the document. These data were indicated by the letterhead of the memo, the signature on the memo, opinion header information, or the stamp placed on opinion drafts with the circulation information. In the rare instance of joint authorship of a memo or opinion draft, we rely on these sources to identify the principal author. Also, justices who wrote the memo may have copies of the document in their case file without a signature or letterhead. Some justices (e.g., Lewis Powell) place their initials in the lower left hand portion of the document (along with their secretary's initials), but others do not (e.g., William Rehnquist). Without a signature or initials, we assume that unsigned memos were written by the justice in whose papers the document was found.

The following are the codes assigned to each justice (the number of observations is indicated in parentheses):

1	Warren E. Burger (5,713)	8	Thurgood Marshall (4,371)
2	Hugo L. Black (449)	9	Harry A. Blackmun (5,049)
3	William O. Douglas (2,279)	10	Lewis F. Powell (5,618)
4	John M. Harlan (572)	11	William H. Rehnquist (4,614)
5	William J. Brennan, Jr. (5,875)	12	John Paul Stevens (3,807)
6	Potter Stewart (3,335)	13	Sandra Day O'Connor (1,913)
7	Byron R. White (4,919)	.	Missing Authorship – Unsigned (10)

### ***Document Circulation Date (DATE)***

The date variable corresponds with the date on which the document was circulated to other justices. The format of the date is YYYYMMDD. Virtually all memoranda have dates typed at the top. The custom on the Court for opinion drafts is to place a stamp on the opinion draft with circulating information including the date. Dates may be missing from handwritten notes passed among the justices. This includes the practice, especially prevalent among the more senior justices early in the Burger Court, to write a note on an opinion draft expressing a justice's agreement and sending them back to the opinion author. On these documents, we impute the draft date as the date on which the response was made.

***Receiving Justices (RECIPIENT, CJRECD, BLRECD, WDRECD, JHRECD, WBRECD, PSRECD, BWRECD, TMRECD, HBRECD, LPRECD, WRRECD, JSRECD, SORECD, CONFRECD)***

These variables reflect whether a justice was the addressed recipient (not simply copied) of the document. Most memos clearly indicated the addressee in the salutation, e.g., “Dear Byron.” Other memos would have a header stating that it was sent to the entire conference, e.g., “Memorandum to the Conference.” Opinion drafts were most frequently sent to the entire Conference, but occasionally justices would write a note at the top indicating that a draft had limited circulation, e.g., “Circulated to Douglas only.” See the Sample Coding Documents in the Appendix for an example of how this information was ascertained.

The RECIPIENT variable is an alpha-numeric variable that contains a list of justices to whom a document was specifically addressed. The justices are identified by initials (see the table below). If multiple justices are addressed (but not the Conference), the justices’ initials are separated by a comma.

CJ Warren E. Burger	PS Potter Stewart	WR William H. Rehnquist
BL Hugo L. Black	BW Byron R. White	JS John Paul Stevens
WD William O. Douglas	TM Thurgood Marshall	SO Sandra Day O’Connor
JH John M. Harlan	HB Harry Blackmun	Conf Conference
WB William J. Brennan, Jr.	LP Lewis Powell	

Also, we present this information in an alternate form: a series of dichotomous variables that indicate whether a particular justice was a designated recipient of a document (1 if the justice was a recipient, 0 otherwise). These variables, which share the suffix RECD, are labeled with the initials that correspond to each justice. CONFRECD refers to documents addressed to the Conference.

CJRECD (4,145)	PSRECD (2,033)	WRRECD (3,010)
BLRECD (237)	BWRECD (3,370)	JSRECD (2,234)
WDRECD (946)	TMRECD (2,859)	SORECD (1,077)
JHRECD (245)	HBRECD (2,806)	CONFRECD (19,660)
WBRECD (3,482)	LPRECD (3,334)	

***Copied Justices (COPY, CJCOPY, BLCOPY, WDCOPY, JHCOPY, WBCOPY, PSCOPY, BWCOPY, TMCOPY, HBCOPY, LPCOPY, WRCOPY, JSCOPY, SOCOPY, CONFCOPY)***

These variables reflect whether a justice was copied on a document. Most memos clearly indicated the justices who are copied on the lower left hand portion of the page. Memoranda might state, for example, “Copies to the Conference” or “CC: Lewis Powell.” It might go without saying that a document addressed to the entire conference is not copied to another justice. Also, justices send documents to single justices without copying the Court or another justice. See the Sample Coding Documents in the Appendix for an example of how this information was ascertained.

The COPY variable is an alpha-numeric variable that contains a list of justices to whom a document was specifically copied. The justices are identified by initials (see the table in the description of RECIPIENT). If multiple justices are copied (but not the Conference), the justices’ initials are separated by a comma.

Like with the receiving justices, we present this information in an alternate form: a series of dichotomous variables indicating whether a particular justice was copied on a document (1 if the justice was copied, 0 otherwise). These variables, which share the suffix COPY, are labeled with the initials that correspond to each justice. CONFCOPY refers to documents copied to the Conference. The following table shows the list of variables and their frequency:

CJCOPY (103)	PSCOPY (132)	WRCOPY (198)
BLCOPY (3)	BWCOPY (144)	JSCOPY (149)
WDCOPY (8)	TMCOPY (259)	SOCOPY (99)
JHCOPY (2)	HBCOPY (187)	CONFCOPY (24,209)
WBCOPY (83)	LPCOPY (205)	

## **Content of the Document**

### ***Information Contained in Document (ACTION1-ACTION5)***

The justices circulate memos and opinion drafts to communicate information to their colleagues on the bench. The ACTION variables contain codes for this information. We coded each sentence in the memoranda and we coded the header information on opinion drafts. Every document (48,524 observations) had at least one action, but fewer documents had multiple actions (ACTION2 is recorded in 4,168 observations (8.6%), ACTION3 is recorded in 524 observations (1.1%); ACTION4 is recorded in 58 observations (0.1%); and ACTION5 is recorded in 2 observations (0.004%).

## Opinions

- 100 Majority Opinion: This refers to a majority opinion draft
- 101 Per Curiam Opinion: This refers to a draft per curiam opinion
- 102 Decree: This refers to a draft decree
- 103 Order: This refers to a draft order
- 104 Memorandum Opinion: This refers to a memorandum opinion draft
- 110 Concurring Opinion: This refers to a concurring opinion draft
- 111 Concur in Judgment: This refers to an opinion draft that concurs in the judgment or result
- 112 Concur in Part: This refers to a concurring opinion draft that concurs in part of the majority
- 113 Concur in Judgment in Part: This refers to an opinion that concurs in part with the judgment or result or that concurs in the judgment and concur in part
- 120 Dissenting Opinion: This refers to a dissenting opinion draft, including dissents from denial of certiorari if in opinion form
- 121 Dissent in Part: This refers to a dissenting opinion draft that applies to part of the majority
- 130 Concur in Part and Dissent in Part: This refers to an opinion draft that concurs in part and dissents in part, including opinions that concur in judgment and dissent (or dissent in part), concur in judgment in part and dissent (or dissent in part), or dissent in one docket and concurs in another docket
- 140 Unlabeled Opinion: This refers to an opinion draft that is not labeled as a dissent, concurrence, or memorandum
- 150 Concur at Foot: This refers to a letter where a justice asks that a concurrence (or a concurrence in part) be noted at the foot of an opinion
- 151 Concur in Judgment at Foot: This refers to a letter where a justice asks that a concurrence in judgment or the result be noted at the foot of an opinion, including a concur in judgment or result in part at foot
- 160 Dissent at Foot: This refers to a letter where a justice asks that a dissent (or a dissent in part) be noted at the foot of an opinion; it also includes at foot opinions that indicates the justice wants the Court to hear arguments and decide rather than dismiss or decide summarily

## Will Write

- 200 Will Circulate Majority Opinion: A memo where a justice states that he or she will circulate a majority opinion draft, including that an opinion will be out soon or that the author will revise majority opinion without stating the changes
- 201 Will Write Memorandum Opinion: A memo where a justice states that he or she will circulate a memorandum opinion draft, including that a memorandum opinion will be out soon or that a revised draft of the memorandum opinion will be circulated
- 202 Will Write Concurring Opinion: A memo where a justice states that he or she will circulate a concurring opinion draft, including that a concurring opinion will be out soon or that a revised draft of the concurring opinion will be circulated; this may also apply to opinions that concur in part or concur in the judgment or result
- 203 Will Write Dissenting Opinion: A memo where a justice states that he or she will circulate a dissenting opinion draft, including that a dissenting opinion will be out soon or that a revised draft of the dissenting opinion will be circulated; this also applies to statements responding to dissent assignments like will be glad to write dissent, self-assignment of dissent (e.g., we are in dissent and I will write it), or requesting permission to write dissent (e.g., is it ok if I write a dissent)
- 204 Will Write Concur in Part and Dissent in Part: A memo where a justice states that he or she will write and circulate an opinion that concurs in part and dissents in part; the concurrence could be in the judgment or result
- 205 Will Write "Separate Opinion": A memo where a justice states that he or she will circulate a "separate opinion" draft, including that a "separate opinion" will be out soon or that a revised draft of the "separate opinion" will be circulated
- 210 May Write Memorandum Opinion: A memo where a justice states that he or she may (or will likely) write a memorandum opinion
- 211 May Write Concurring Opinion: A memo where a justice states that he or she may (or will likely) write a concurring opinion; this also applies to opinions that concur in part, concurrences in judgment, or concurrences at foot.
- 212 May Write Dissenting Opinion: A memo where a justice states that he or she may (or will likely) write a dissenting opinion (e.g., considering a dissent, expects to write dissent, will probably write dissent, may write dissent in part, inclined to dissent, shall likely be in dissent, may not write dissent, and hope not to write dissent)
- 213 May Write "Separate Opinion": A memo where a justice states that he or she may (or will probably) write a "separate opinion"

- 214 May Write Concur in Part and Dissent in Part: A memo where a justice states that he or she may (or will likely) write an opinion that concurs in part and dissents in part
- 220 Will Not Write Concurring Opinion: A memo where a justice states that he or she will not write a concurring opinion or an opinion that concurs in part
- 221 Will Not Write Dissent: A memo where a justice states that he or she will not write a dissenting opinion or an opinion that dissents in part
- 222 Will Not Write "Separate Opinion": A memo where a justice states that he or she will not write a "separate opinion"
- 223 Will Not Write Dissent in Part and Concur in Part: A memo where a justice states that he or she will not write an opinion that dissents in part and concurs in part
- 230 Will Not Modify Majority Opinion: A memo where a justice states that he or she will not change the majority opinion or will not circulate another draft of the majority opinion. This is not in response to a justice's suggestion, which is coded 806.
- 231 Will Not Modify Separate Opinion: A memo where a justice states that he or she will not change a separate opinion, which includes all concurring, dissenting, or hybrid opinions

## Join

- 300 Join Majority Opinion: Memos where a justice joins the majority opinion includes please join me; I agree; I am still with you; I acquiesce; I will go along; I dissent but will be silent; graveyard join or dissent. This code includes join of memorandum opinions if it is written by the assigned author, orders if it disposes of case, decrees, per curiam opinions. It also includes statements that the justice joins, but subject to what others might write.
- 301 Join Part of Majority Opinion: Memos where a justice joins part of a majority opinion or where a justice joins all but part "X" of the majority opinion
- 302 Join Judgment of Court: Memos where a justice states that they join the judgment or result of the Court or where they join part of the judgment
- 303 Join Order: Memos where a justice joins an order if order is not on merits of case. If an order disposes of a case, a joinder is coded 300.
- 304 Join Memorandum Opinion (written by non-assigned author): Memos where a justice states that he or she joins a memorandum opinion that is written by a non-assigned author.
- 310 Join Concurrence: Memos where a justice states that they join a concurring opinion, including joining a concurrence in part, joining a concurrence in judgment or result, or joining a

- concurrence at foot. The identity of the concurring opinion author who receives the join is located in the JOINED variable.
- 311 Join Dissent: Memos where a justice states that they join a dissenting opinion, including joining the dissent in part, joining a dissent from denial of cert, or joining a dissent at foot. The identity of the dissenting opinion author who receives the join is located in the JOINED variable.
- 312 Join “Separate Opinion”: Memos where a justice joins an unlabeled opinion or a “separate opinion”; this does not include joinder of dissent or concurring opinions
- 313 Join Concur in Part and Dissent in Part: Memos where justices state that they join an opinion that concurs in part and dissents in part; alternatively, the opinion that is joined might concur in judgment and dissent. The identity of the opinion author who receives the join is located in the JOINED variable.
- 320 May Join Majority Opinion: Memos where a justice states the intent to join the majority opinion later (e.g., may join majority; will probably join majority; could join majority; agree tentatively; inclined to join; close to joining; agrees generally; agree with most of opinion; in basic agreement; intend to join; am prepared to join; expect to join; expect to join part of majority opinion; join unless someone else dissents; will join majority opinion if no majority exists; join unless someone else persuades me
- 321 May Join Judgment: Memos where a justice states the inclination to join a judgment of the Court
- 322 May Join Memorandum Opinion (Author is Assigned Justice): Memo stating that the justice agrees, but does not join, the memorandum opinion drafted by the assigned opinion author (e.g., could go along with memorandum opinion; agrees generally with memorandum opinion; agree tentatively with memorandum opinion; will join memorandum opinion if it becomes majority opinion)
- 323 May Join Memorandum Opinion (Author is not Assigned Justice): Memo stating that the justice agrees, but does not join, the memorandum opinion (or per curiam opinion) written by a justice who was not assigned the opinion (e.g., agree and will join if it becomes opinion; agree with suggested order). The identity of the justice whose opinion is endorsed is located in the JOINED variable.
- 324 May Join Concurrence: Memos where a justice expresses the inclination to join a concurring opinion, including a concurrence in the judgment or result.
- 325 May Join Dissent: Memos where a justice expresses the inclination to join a dissenting opinion, including joining the dissent in part; memos may also state a justice’s intention to join a dissent if another justice writes or circulates one; memos may also state that a justice expects to join or tentatively joins a dissent

330 Will Not Join Separate Opinion: Memos where a justice refuses to join a separate opinion, including concurring, dissenting, or any other separate opinion.

## Suggestion

- 400 Suggestion to Majority Opinion: This includes memo with broad statements including that a justice cannot join the opinion, cannot join a part of the opinion, does not agree with the opinion, or has continuing doubts with the opinion; memos that indicate that the author's change is not enough; memos that make suggestions for specific changes to majority opinion or that express reservations about some aspect of the majority opinion; this code is also given for suggestions to memorandum opinions by an assigned author
- 401 Suggestion to Order: This includes memos with suggestions for changes in an order that does not dispose of the case. The identity of the justice who proposed the order is located in the JOINED variable.
- 402 Suggestion to Memorandum Opinion (Author is not Assigned Justice): This includes memos with suggestions and specific or general reservations to a memorandum opinion (or per curiam) not written by assigned opinion author; memos expressing agreement with another justice's suggestion to the memorandum opinion; statements that justice disagrees with a memorandum opinion. The identity of the memorandum opinion author who receives suggestion is located in the JOINED variable.
- 403 Will Make Suggestion: Memo states that a justice will make a suggestion to the majority opinion, including statements that a justice will postpone making a suggestion for now or that the justice may make suggestion
- 410 Join Majority If. . . : Justice sends memo to majority opinion author that states that the conditions under which the justice can or will not join the majority opinion; this includes memos with language like will join if..., will join the majority opinion if author makes changes suggested by another justice, or will join part of majority opinion if...; these memos may also state that a justice cannot join majority opinion if. . ., or could not join an opinion with a particular point, will withdraw join if. . .
- 411 Will Concur If. . . : Justice states conditions for a concurrence, including a concurrence in part or concurrence in judgment; memo may also state conditions for withdrawing a concurring opinion
- 412 Will Dissent If. . . : Justice states conditions for a dissent, including a dissent in part; memo may also state conditions for withdrawing a dissenting opinion
- 413 Will Join Dissent If: Justice states conditions for joining a dissent, including a dissent in part. The identity of the dissenting opinion author who receives this suggestion is located in the JOINED variable.

- 414 Will Write Separately If. . . : Justice states conditions for writing a separate opinion; memo may also state conditions for withdrawing a separate opinion
- 420 Suggestion to Separate Opinion: Memo states includes a justice's suggestion for a separate opinion (e.g., don't agree with reasoning of separate opinion; comment on separate opinion; will join separate opinion if; cannot join separate opinion; will be making suggestion to separate opinion). The identity of the separate opinion author who receives suggestion is located in the JOINED variable.
- 430 Endorse Another Justice's Suggestion: Memos where a justice states agreement with another justice's suggestion to the majority opinion author (e.g., I am about where Justice X is, agree with Justice X's letter to you, I have no problem with Justice X's suggestion, agree with another justice's comment, is Justice X's suggestion ok with you). The identity of the justice whose suggestion is endorsed is located in the JOINED variable.
- 431 Disagree with Another Justice's Suggestion: Memo states that the justice disagrees with another justice's suggestion to the majority opinion author. The identity of the justice whose suggestion is countered is located in the JOINED variable.
- 432 Endorse Separate Opinion: Memo states that justice endorses a separate opinion, but without joining it (e.g., in general agreement with separate opinion, likely to join separate opinion if you write it; this code applies to any type of separate opinion. The identity of the justice whose opinion is endorsed is located in the JOINED variable.
- 440 Agree with Opinion Author: Memo expresses justice's agreement with a majority opinion author's proposal, footnote, or proposed change; justice might state that he or she is open to the change
- 441 Change is Acceptable: Memo indicating that a change to majority opinion is acceptable to a justice (e.g., suggested change is ok with me; like changes in majority opinion).
- 442 Disagrees with Opinion Author: Memo expresses a justice's disagreement with an opinion author's letter, proposal, or footnote
- 450 Thank You Notes: Justices circulate memos thanking another justice for making a change to an opinion or thanking an author for considering a justice's suggestions
- 460 Suggestion before Majority Opinion Circulated: Justice makes a suggestion or lays out position in the case before the majority opinion is circulated; discussion of issues before an opinion has been drafted; memo laying out other justice's position or describing how other justices' have voted so far in the case; lays out position without directing it at a circulating opinion

## Wait

- 500 Await Majority Opinion: Justice says they await writing of majority opinion

- 501 Await Concurrence: Justice awaits a concurring opinion, including an opinion that concurs in part or that concurs in judgment
- 502 Await Dissent: Justice indicates that he or she awaits a dissenting opinion, including opinions that dissent in part
- 503 Await Others: Justice states that he or she awaits further developments without specificity, including comments like await other's views, await developments, wait for more writing, await separate opinion, await other circulations
- 504 Await Opinion in Another Case
- 510 Undecided: Justice states that he or she is undecided, including phrases like not ready to commit, need more time, not at rest, or to consider further

## **Administrative**

- 600 Case Should be Reargued: Includes statement that maybe case should be reargued
- 601 Case Should Not be Reargued: Includes statement that case will not be argued
- 610 Not Participating: These memos inform the Court whether a justice is "out" for a case; the memo may ask the opinion author to note the justice took no part in consideration of a case; memos may inform the Court that a justice is participating (e.g., not out; not recuse); memos may concern whether a justice should recuse himself or herself (e.g., may recuse self; have not decided whether to participate; do not think I should recuse); memos written by other justices about a colleague's recusal
- 620 Majority Opinion Assignment: This may be an assignment of either the majority opinion or a memorandum opinion; memo may state that a justice has agreed to undertake the opinion of the Court; memo reassigns the case
- 621 Memo About Opinion Assignment: This excludes memos that assign the opinion (see Code 606), but includes memos where a justice expresses the view that a case should be reassigned or a response to a majority opinion assignment; justice may request that majority opinion not be assigned to that justice; a justice may question why the opinion was not assigned; a justice (perhaps the Chief Justice) may tell a justice to assign the opinion; a memo may discuss not assigning the opinion to any justice
- 622 Dissent Opinion Assignment: The memo may ask another justice to write a dissent; a justice may indicate that the dissent will not be assigned right now; memo responding to a dissent assignment (but not accepting assignment, which would be Code 204)

- 630 Issue Signed Opinion: Justices expresses view that there is opinion should be signed; wants a majority opinion instead of a per curiam decision or an order; does not want summary disposition on the merits
- 631 Need a Majority Opinion?: Memo that questions whether the Court needs to issue a majority opinion
- 640 Attached Material Relevant to a Case: This may include memos about maps or pictures that will be incorporated in opinion; cover memo to circulation of some relevant non-case material for an opinion (e.g., newspaper article, related lower court opinion); memos may mention extra-court material that might be relevant (e.g., congressional hearings, a statute, other opinions that are somehow (perhaps tangentially) related to case at hand); circulation of clerk's memo about case
- 641 Memo about Supplemental or Amicus Briefs: Justice may express views on need for additional briefs (e.g., no need for supplemental briefs); justices may discuss proposed questions for supplemental briefs; justices may discuss oral arguments, reargument, or parties' briefs (e.g., date, length, exact questions that should be presented at orals or in briefs); justices may discuss asking litigants for additional information
- 642 Memo Regarding Meeting Time, Place or Agenda: Memo may suggest that the justice talk or discuss an issue at conference; memo may maintain that no further conference discussion is needed; memo may state that a justice will be away
- 650 Announcements of Opinion: This includes memos about the timing of a decision announcement (e.g., can we hold this case for a week; opinion should be handed down tomorrow; opinion not ready for case to come down; take as much time as you need); memos about the pace of opinion writing (e.g., a justice's delay in a case or apologizing for a delay or holding up another justice); memo requesting that a justice make an announcement regarding an opinion
- 651 Vote Line-Up: This includes a copy of the suggested vote line-up in case (for final vote coalitions in case); this does not include memos about opinion writing, but only refers to how the vote will be reported on the final opinion
- 652 Headnotes: This includes memos about the headnotes for an opinion
- 660 Proposes Disposition of Held Cases: Memo lists cases held for an opinion and gives cert votes or votes on the merits for the held cases; justice may state that held cases should be discussed at conference
- 661 Hold Case: Justice would hold case for another case; proposes holding this case for another case; suggests an opinion be held over for the next term (e.g., maybe we should hold over); memo about consolidating cases

- 670 Post-Announcement Opinion Changes: This refers to memos about changing an opinion that has been announced; it may be from the opinion author or another justice
- 680 Appointing Lawyers or Special Masters
- 690 Miscellaneous Personal: This includes such memos that, e.g., requests an autographed copy of the opinion

### **Withdraw Joins or Opinions**

- 700 Withdraw Join of Majority Opinion: This includes withdrawing joins of a per curiam opinion written by the assigned opinion author and withdrawing joins of part of a majority opinion
- 701 Withdraw Join of Part of Majority Opinion
- 702 Withdraw Join of Separate Opinion: This includes withdrawing joins of dissents and concurrences and withdrawing joins of part of a separate opinion. The identity of the separate opinion author whose opinion had previously been joined is located in the JOINED variable.
- 710 Withdraw Concurring Opinion: This includes withdrawn concurrences in part, concurrence in judgment, and concurrence at foot
- 711 Withdraw Dissenting Opinion: This includes withdrawn dissents in part and dissents at foot
- 712 Withdraw Other "Separate Opinion"
- 713 Withdraw Opinion that Concurs in Part and Dissent in Part

### **Author Responses** (not in opinions; in letters, including cover letters to opinions)

- 800 Majority Opinion Author's Response: May be response to a suggestion, reservation, or a separate opinion; may also say that author will respond to another opinion; may state majority opinion author's change to opinion that was not prompted by another justice; may indicate that the opinion is different from the conference discussion; may be a circulation of a portion of the opinion (a footnote, multiple pages without circulating the whole opinion); may be a suggestion from the majority opinion author regarding several options for changing majority opinion; may be a suggestion from the author for a change that could be made to opinion
- 801 Memorandum Opinion Author's Response (not assigned author)
- 802 Concurring Opinion Author's Response: May be response to a suggestion, the majority opinion, another separate opinion; it may say the author made changes and see the attached opinion; it may indicate the opinion has been changed although not prompted by someone else
- 803 Dissenting Opinion Author's Response: May be a response to a suggestion, majority opinion, or another separate opinion; it may say the author made changes and see the attached opinion; it may indicate the opinion has been changed although not prompted by someone else

- 804 Separate Opinion Author's Response: Circulation of Change to Separate Opinion (e.g., footnote, portion of opinion, adding paragraph); this occurs in a memo, not on a draft opinion; circulation of change to unlabeled opinion
- 810 Cover Memo to Majority Opinion or Per Curiam Opinion: This includes a cover memo to memorandum opinion if written by the assigned author; cover memo to changes to majority opinion
- 811 Cover Memo to Memorandum Opinion or Per Curiam Opinion (not assigned author)
- 812 Cover Memo to Application for Order: This indicates a memo that informs the Court that an application (e.g., stay, injunction) will be circulated soon; memo about an order
- 813 Cover Memo to Order: This indicates a cover memo to a draft order that does not dispose of the case on its merits and does not dismiss the case
- 814 Cover Memo to Separate Opinion: This indicates a cover memo to any separate opinion, including concurring, dissenting, or any other type of separate opinion

## **Votes**

- 900 Propose Disposition in Case (Vote in a Case): DIG (dismiss cert as improvidently granted); want to reach merits instead of DIG; would not DIG; affirm; reverse; remand; vacate; moot; court lacks jurisdiction; conference vote; withhold vote for now; defer vote; adhere to conference vote; initial vote in case; change conference vote; memo asking how others' vote on disposition
- 910 Memos about Cert Votes: a justice's cert vote (grant, deny, or note probable jurisdiction, join three); suggest they grant cert for specific issue; discussion of which questions cert grant should be limited to; adhere to cert vote; memo about cert petition (e.g., listing it on the conference list (special order list)); case should be relisted; make suggestions to proposed questions in case; any memo about listing or relisting a case
- 920 Vote on a Motion (e.g., to vacate stay order, to deny an injunction): would deny stay; retain stay; suggest they not act on a motion or order; should vacate order; comment on when they should vote on the motion

## ***Draft Number on Opinion (DRAFT)***

Draft indicates the draft number corresponding with the circulated opinion draft. The norm on the Court is to print a number on each opinion draft, which is typeset and produced by the Court's print shop. Occasionally, a justice circulates an opinion draft before the print shop produces the typeset draft and that draft is simply typed. In other occasions, the justice circulates a draft, usually a recirculated typeset draft, that omits the draft number. This variable most frequently gives a number, but may take other values:

T	Typed Draft
U	Unnumbered Typeset Draft
C	Chamber Draft
F	Final Draft
M	Proposed Modified Draft
R	Revised Proposed Draft or Revised Draft

If a justice wrote, for example, 2<sup>nd</sup> Typed Draft, we code this T2.

1 (5,510)	8 (66)	15 (1)	M (1)
2 (4,343)	9 (31)	16 (2)	R (2)
3 (2,351)	10 (20)	17 (2)	T (1,394)
4 (1,084)	11 (13)	18 (1)	T1 (6)
5 (495)	12 (8)	C (3)	T2 (20)
6 (247)	13 (5)	C2 (1)	T3 (7)
7 (110)	14 (2)	F (1)	U (333)

### ***Justice Joined (JOINED1-JOINED4)***

The joined variable indicates the justice whose separate or memorandum opinion is joined, whose suggestion is endorsed, whose separate opinion receives a suggestion or comment. In particular, we recorded joined data if the action code was one of the following: 310, 311, 313, 323, 326, 401, 402, 413, 420, 430, 431, or 702.

The joined codes that correspond to each justice are:

1=Warren E. Burger	6=Potter Stewart	11=William H. Rehnquist
2=Hugo L. Black	7=Byron R. White	12=John Paul Stevens
3=William O. Douglas	8=Thurgood Marshall	13=Sandra Day O'Connor
4=John M. Harlan	9=Harry A. Blackmun	
5=William J. Brennan, Jr.	10=Lewis F. Powell	

### ***Action Categories (OPINION, WILLWRITE, JOIN, SUGGEST, WAIT, ADMINISTRATIVE, WITHDRAW, AUTHOR, VOTES, MISSING)***

We group the action codes into groupings based on the type of action taken by the justice. For instance, any opinion (majority, per curiam, concurring, dissenting, or memorandum) is indicated in the OPINION variable. We created a series of variables that correspond to the grouping in the action codes recorded above. If ACTION1, ACTION2, ACTION3, ACTION4, or ACTION5 contain the relevant code, that variable equals one.

OPINION (Action coded 100-160)  
 WILLWRITE (Action coded 200-231)  
 JOIN (Action coded 300-330)  
 SUGGEST (Action coded 400-460)  
 WAIT (Action coded 500-510)  
 ADMIN (Action coded 600-690)  
 WITHDRAW (Action coded 700-713)  
 AUTHOR (Action coded 800-814)  
 VOTES (Action coded 901-920)

### ***Coding Comments (REMARK, REMARK2)***

The remark variables indicate additional information about the document. These variables reveal, for instance, that a document was handwritten, had a private postscript, was undated, and so on. These variables are derived from comment written about a document by the coder, but these data were not systematically collected.

#### Comments on Document

101 - Handwritten Note  
 102 - Handwritten Response on Draft Opinion or Memo  
 103 - Undated Handwritten Note  
 104 - Private Postscript  
 105 - Jointly Written/Co-authored

#### Comments on Actions

201 - Different Actions in multiple dockets (e.g., join majority in one docket, while joining dissent in another docket)  
 202 - Different Actions for non-listed case (docket number not on subject line)

#### Memo missing information

301 - Missing information on which justices a person "joins" (agrees/disagrees/endorsees)  
 302 - Missing Date  
 303 - Missing Copy Information (but apparently copied)  
 304 - Missing Docket Number  
 305 - Missing Recipients

306 - Missing Authorship (unsigned)  
399 - Date on memo, but can't read it

#### Error in memo

401 - Wrong Date  
402 - Wrong Docket Number  
403 - Sent mistaken memo  
404 - Circulated?  
405 - Memo was wrong  
406 - Memo was circulated to Conference, but not so marked

#### Attachments

501 – Document has an attachment  
502 – This document was attached to another document

## Appendix

### *Data Sources*

We identified each document, as we noted above, using the papers of eight former justices: Hugo L. Black, William O. Douglas, John M. Harlan, William J. Brennan, Jr., Thurgood Marshall, Harry A. Blackmun, Lewis F. Powell, and William H. Rehnquist. Below is a table that indicates the number of documents that were found in each source, although one should understand that many documents were found in multiple sources.

<b>Justice's Personal Papers</b>	<b>Location of Collection</b>	<b>Number of Documents Found in Justice's Collection (Percent of all Documents)</b>	<b>Number of Documents Circulated During a Justice's Tenure (Percent of Possible Documents Found in Collection)</b>
Hugo L. Black	Library of Congress	1,225 (2.5)	4,303 (28.5)
William O. Douglas	Library of Congress	11,653 (24.0)	15,204 (76.6)
John M. Harlan	Princeton University	3,686 (7.6)	4,303 (85.7)
William J. Brennan, Jr.	Library of Congress	39,623 (81.6)	48,524 (81.7)
Thurgood Marshall	Library of Congress	39,156 (80.7)	48,524 (80.7)
Harry A. Blackmun	Library of Congress	34,565 (71.2)	46,610 (74.2)
Lewis F. Powell	Washington & Lee University	27,321 (56.3)	44,221 (61.8)
William H. Rehnquist	Stanford University	8,345 (17.2)	11,014 (75.8)
<b>All Collections</b>		<b>48,524 (100.0)</b>	<b>48,524 (100.0)</b>

Note: The papers of William H. Rehnquist are available for only a portion of this period: 1971 OT – 1974 OT.

## ***Data Reliability***

To assess the reliability of our coding, a second coder recorded data from 894 documents independently. A sample of this size would give us precision of close to  $\pm 3\%$  with 95% confidence.<sup>4</sup> We created a stratified sample of documents, ensuring that each action category was equally represented in the sample. If simply drew observations randomly for the intercoder analysis, the sample would be skewed toward majority opinion drafts and memos joining the majority opinion since those two codes constitute 41.4% of all documents. Consequently, the second coder examined a higher percentage of other types of memos than seen in the data.

Each variable was deemed reliable using the kappa statistic.<sup>5</sup> There was perfect or nearly perfect agreement between coders on most of the variables. The variables that are less reliable are the second and third action variables. Disagreement may have been introduced in two ways: 1) disagreement among coders on the number of actions found in a document; 2) disagreement among coders on the nature of each action. Our two coders agreed on whether there was a second action in a majority of the instances when they recorded at least two actions, but a substantial amount of the disagreement between the coders can be attributed to a difference in the number of actions recorded. However, over 90% of all documents have a single action and almost 99% of all documents have one or two actions; in our reliability sample, over 44% have at least two actions and 8% have at least three actions. So, our sample serves to magnify this source of disagreement, while the overall reliability of the data is only marginally affected by this source of disagreement. The second source of disagreement is related directly to the coding of the document's content. However, it is worth noting that reliability rates increase when we aggregate to the category level (e.g., opinions, joins). This suggests that the coders did not have marked disagreements about the type of document (an opinion v. a memo joining an opinion), but the disagreements (to the extent they existed) were within a document category.

<b>Variable</b>	<b>Agreement (%)</b>	<b>Expected Agreement</b>	<b>Kappa</b>	<b>Standard Error</b>	<b>Probability</b>
<b>TERM</b>	100.0	6.2	1.0000	.0085	0.0000
<b>DOCKET1</b>	100.0	0.2	1.0000	.0015	0.0000
<b>DOCKET2</b>	100.0	4.5	1.0000	.0072	0.0000
<b>DOCKET3</b>	100.0	6.6	1.0000	.0088	0.0000
<b>DOCKET4</b>	100.0	14.9	1.0000	.0134	0.0000
<b>DOCKET5</b>	100.0	21.0	1.0000	.0169	0.0000
<b>DOCKET6</b>	100.0	38.3	1.0000	.0242	0.0000
<b>DOCKET7</b>	*				
<b>DOCKET8</b>	*				
<b>DOCKET9</b>	*				
<b>DOCKET10</b>	*				

<sup>4</sup> Taro Yamane, *Elementary Sampling Theory* (Englewood Cliffs, NJ: Prentice-Hall, 1967)

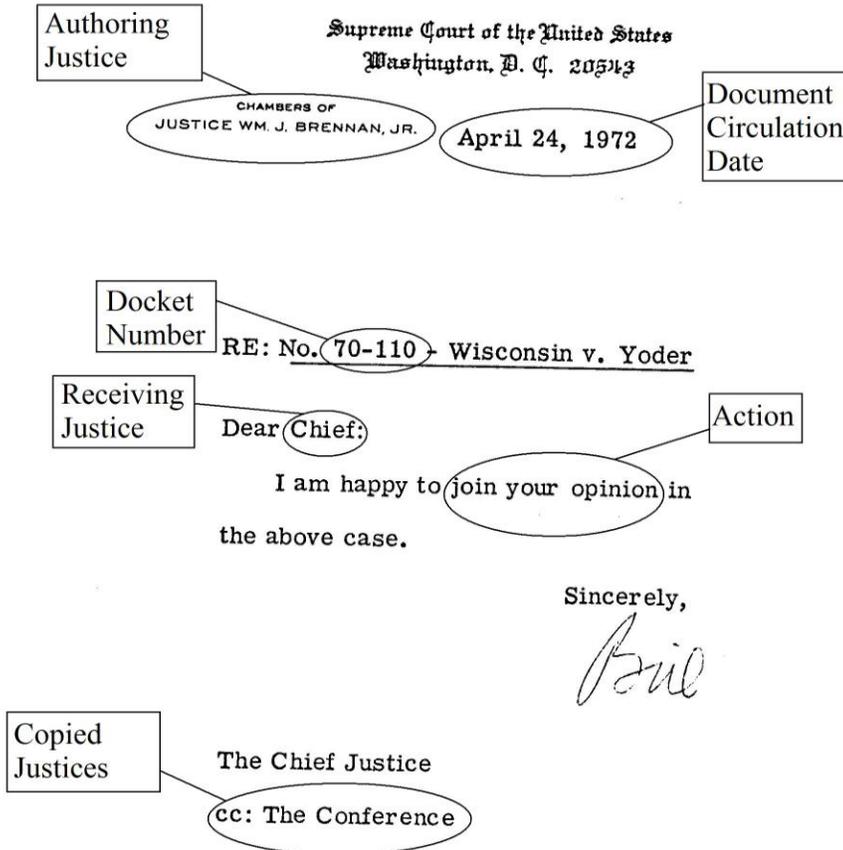
<sup>5</sup> The kappa statistics were calculated using the kap command in Stata 10.1.

JUSTICE	100.0	10.2	1.0000	.0111	0.0000
DATE	99.9	0.2	.9989	.0013	0.0000
CJRECD	100.0	75.8	1.0000	.0334	0.0000
BLRECD	100.0	75.5	1.0000	.1140	0.0000
WDRECD	99.3	81.5	.9615	.0597	0.0000
JHRECD	100.0	90.2	1.0000	.1140	0.0000
WBRECD	99.8	82.1	.9875	.0334	0.0000
PSRECD	99.7	85.2	.9773	.0409	0.0000
BWRECD	99.9	84.2	.9929	.0334	0.0000
TMRECD	99.7	88.2	.9717	.0334	0.0000
HBRECD	100.0	85.4	1.0000	.0342	0.0000
LPRECD	100.0	81.4	1.0000	.0350	0.0000
WRRECD	100.0	86.0	1.0000	.0350	0.0000
JSRECD	100.0	83.9	1.0000	.0404	0.0000
SORECD	99.0	83.1	.9399	.0581	0.0000
CONFRECD	99.9	68.5	.9965	.0334	0.0000
CJCOPY	100.0	98.9	1.0000	.0334	0.0000
BLCOPY	**				
WDCOPY	100.0	99.3	1.0000	.0597	0.0000
JHCOPY	**				
WBCOPY	99.9	98.8	.9085	.0333	0.0000
PSCOPY	100.0	98.0	1.0000	.0409	0.0000
BWCOPY	100.0	98.5	1.0000	.0334	0.0000
TMCOPY	99.9	98.6	.9225	.0333	0.0000
HBCOPY	100.0	99.1	1.0000	.0342	0.0000
LPCOPY	100.0	98.1	1.0000	.0350	0.0000
WRCOPY	100.0	99.0	1.0000	.0350	0.0000
JSCOPY	100.0	98.1	1.0000	.0404	0.0000
SOCOPY	100.0	97.3	1.0000	.0581	0.0000
CONFCOPY	99.4	52.5	.9882	.0334	0.0000
DRAFT	100.0	28.9	1.0000	.0837	0.0000
JOINED1	95.7	10.4	.9515	.0311	0.0000
JOINED2	100.0	30.0	1.0000	.1629	0.0000
JOINED3	**				
JOINED4	**				
ACTION1	75.2	2.4	.7460	.0052	0.0000
ACTION2	61.1	4.4	.5931	.0137	0.0000
ACTION3	37.0	6.6	.3299	.0448	0.0000
ACTION4	**				
ACTION5	**				
OPINION	98.3	82.9	.8984	.0340	0.0000
WILLWRITE	91.8	74.1	.6825	.0336	0.0000
JOIN	91.3	58.8	.7891	.0340	0.0000
SUGGEST	88.2	65.2	.6600	.0339	0.0000
WILLWAIT	96.8	78.8	.8470	.0339	0.0000
ADMIN	95.0	77.1	.7821	.0339	0.0000
WITHDRAW	98.2	81.5	.8998	.0339	0.0000

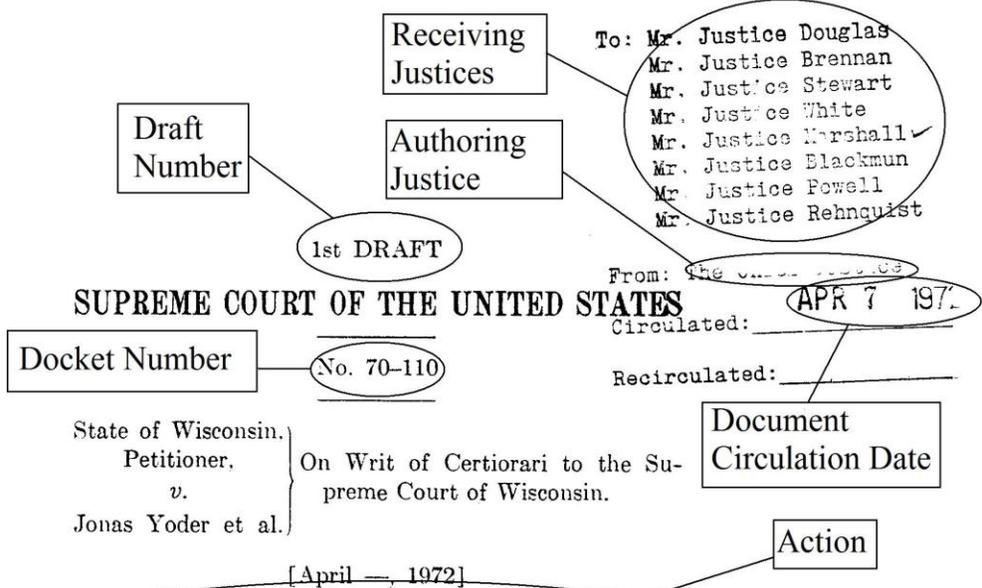
<b>AUTHOR</b>	93.6	75.8	.7370	.0338	0.0000
<b>VOTE</b>	91.9	77.0	.6061	.0334	0.0000

Note: \* = unobserved in sample; \*\*=insufficient number of observations for calculation

# Sample Coding Documents



7/11



**SUPREME COURT OF THE UNITED STATES**

State of Wisconsin, }  
 Petitioner, }  
 v. } On Writ of Certiorari to the Su-  
 Jonas Yoder et al. } preme Court of Wisconsin.

[April —, 1972]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

On petition of the State of Wisconsin, we granted the writ in this case to review a decision of the Wisconsin Supreme Court holding that respondents' convictions for violating the State's compulsory school attendance law were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution. For the reasons hereafter stated we affirm the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Adin Yutzy are members of the Old Order Amish Religion, and respondent Wallace Miller is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after completing the eighth grade.<sup>1</sup> The children were not enrolled in any private school, or within any recognized

<sup>1</sup> The children, Frieda Yoder, aged 15, Barbara Miller, aged 15, and Vernon Yutzy, aged 14, were all graduates of the eighth grade of public school.