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An Analysis of Power and Influence Patterns on the Michigan Supreme Court 1968-1973

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AN ANALYSIS OF POWER AND INFLUENCE
PATTERNS ON THE MICHIGAN SUPREME COURT
1968-1973

by

Thomas R. Radecki

A Thesis
Submitted to the
Faculty of The Graduate College
in partial fulfillment
of the
Degree of Master of Arts

Western Michigan University
Kalamazoo, Michigan
December 1974

ACKNOWLEDGEMENTS

I wish to express my sincere thanks to Dr. Peter Renstrom, my thesis committee chairman, for his time, advice, and assistance during the months of preparation of this thesis. I wish also to thank Dr. Helenan Lewis and Dr. Robert Kaufman, the other members of my committee, for their help and suggestions.

I want also to express my appreciation to Jamie Cole for her time and effort in typing this manuscript.

Thomas R. Radecki

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Western Michigan University, M.A., 1974
Political Science, general

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CHAPTER I INTRODUCTION

This study will attempt to bring together ideas from three areas of research; small group research, research on power and influence, and research on judicial behavior. The focus of the study will be the Michigan Supreme Court, which will be viewed as a small group. Taken from this perspective, small group theory generates general ideas about behavior which can be applied to the Court's behavior and investigated. The specific phenomena we will be focusing upon is power and influence. Studies of power and influence will form the theoretical background from which we will draw concepts and perspectives which will then be applied to judicial behavior. Specifically, the aim of this study is to analyze power and influence patterns and relationships in the Michigan Supreme Court, viewed as a small group.

Studies of Judicial Behavior

Studies of judicial behavior are of relatively recent origin. The first important work in this area was Pritchett's study of the Roosevelt Court in 1948.¹ While

¹C. Herman Pritchett. The Roosevelt Court: A Study in Judicial Politics and Values, 1937-1947. (New York: MacMillan, 1948.)

research of judicial behavior has increased greatly since 1948, the greatest proportion of these studies focus upon the U.S. Supreme Court, while other courts have been somewhat neglected. A few recent studies focus upon the U.S. appellate courts, and others have been concerned with the trial courts. Even fewer studies have been concerned with the state courts, even their supreme courts. In addition to this restricted area of focus, there are a great many aspects of behavior that have not been examined, or examined only briefly. One of these aspects is the power and influence relations between court members and the general court pattern of power and influence. This study will attempt to explore this aspect of behavior that has received little attention. The Michigan Supreme Court will be the small group which will be investigated, and it has not been extensively studied.

An analysis of judicial behavior literature would reveal that most studies fall into one of four general categories. These are: 1.) the relationship of background factors to judicial decision-making, 2.) the relationship of attitudes to judicial decision-making, 3.) the prediction of judicial decisions and 4.) the analysis of bloc patterns, subgroup formation, and interaction on collegial courts.

The first category consists of studies in which an

attempt is made to find a relationship between background characteristics of the judge and his decision-making or voting tendencies. Some of the factors investigated have been political party, social background, social class, father's occupation, educational background, religious affiliation, and ethnic background. Studies by Schmidhauser² and Nagel³ are typical of this type of investigation. The assumption here is that the various background factors are determinative, to some degree, of the decision-making tendencies and voting of the judges. The second category consists of studies which attempt to relate attitudes of the justice to his voting record or decision-making tendencies. Attitude is measured either from a questionnaire or interview of the judge or, where that is not possible, from the voting pattern itself, by scaling techniques. Studies by Schubert,⁴ Pritchett,⁵

²John R. Schmidhauser. "The Justices of the Supreme Court: A Collective Portrait," in Midwest Journal of Political Science, 3, (1959). pp. 2-49.

³Stuart S. Nagel. "Testing Relations Between Judicial Characteristics and Judicial Decision-Making," Western Political Quarterly, 15, (1962). pp. 425-437.

⁴Glendon Schubert. The Judicial Mind: The Attitudes and Ideologies of Supreme Court Justices, 1946-1957. (Evanston: Northwestern University Press, 1965).

⁵C. Herman Pritchett. "Divisions of Opinion Among Justices of the U.S. Supreme Court, 1939-1953," APSR, 35, (1941). pp. 890-898.

and Spaeth⁶ are typical of studies in this category. Recently, more sophisticated statistical techniques such as factor analysis have been used in this type of investigation. Many of the ideas and techniques used in studies of this type are drawn from social psychology and its research on attitudes. The major assumption here is the determining factor of attitudes in voting behavior. The third category consists of studies, many of a mathematical nature, which attempt to predict decision-making on the basis of some factor or model drawn from attitudes, background characteristics, or previous decision-making tendencies. Studies by Schubert,⁷ Nagel,⁸ and Kort⁹ are typical of studies in this area. The fourth category consists of studies which attempt to investigate behavior patterns of the court such as bloc formation, leadership, subgroup formation, and interaction patterns between judges and their interpersonal relationships. The present

⁶Harold J. Spaeth. "An Analysis of Judicial Attitudes in the Labor Relations Decisions of the Warren Court," in Journal of Politics, 25, (1963). pp. 290-311.

⁷Glendon Schubert, "Prediction From a Psychometric Model," in Judicial Behavior, ed. by Glendon Schubert. (Chicago: Rand, McNally & Co., 1964).

⁸Stuart Nagel. "Testing Empirical Generalizations in Legal Research," in Journal of Legal Education, 15, no. 4, (1963), pp. 265-381.

⁹Fred Kort. "Simultaneous Equations and Boolean Algebra in the Analysis of Judicial Decisions," Jurimetrics, 28, no. 1, (Winter, 1963). pp. 143-163.

study falls within this fourth category. It is probably the least researched area and the most recent to receive attention. Some of the more recent studies have begun to use the small group perspective in analysis, ie., they have looked upon the court as a small group and investigated various implications suggested from this body of research that has been growing tremendously in the last two decades. Ulmer, Danelski, and Snyder have been the leading researchers in this tradition. Snyder has investigated the U.S. Supreme Court as a small group.¹⁰ She has focused especially on how subgroups or cliques are formed and the manner in which new justices are assimilated into the group. Danelski has focused upon the role of the chief justice in the group interaction process, again in the U.S. Supreme Court.¹¹ In a number of articles, Ulmer has used the small group approach in analyzing subgroup formation and behavior patterns on the U.S. Supreme Court.¹² In one study, he does focus on the Michigan Sup-

¹⁰Eloise C. Snyder. "The Supreme Court as a Small Group," in Social Forces, Vol. 36, (March, 1958). pp. 232-238.

¹¹David Danelski. "The Influence of the Chief Justice in the Decisional Process of the Supreme Court," in The Federal Judicial System, ed. by Sheldon Goldman and Thomas Jahnige. (New York: Holt, Rinehart and Winston, 1968).

¹²Sidney Ulmer. "The Analysis of Behavior Patterns in the U.S. Supreme Court," in Journal of Politics, 22, (1960). pp. 629-653.

reme Court, but limits the study to the investigation of leadership patterns discerned strictly from opinion behavior rather than voting behavior. In fact, there are only three major studies of the Michigan Supreme Court, only one of which investigates interaction in the court as a small group.¹³ A more extensive review of these major studies will be included later in this paper.

The goal of the present study, then, will be to provide the first piece of research on power and influence relations among the justices of the Michigan Supreme Court in recent terms.

Power, Influence, and Small Group Theory

The small group approach has generated a large body of theoretical and empirical studies of human behavior. The body of small group theory and research has been growing greatly, especially in the last two decades, and involves nearly every conceivable aspect of human behavior in the group. A number of methods have been used in the accumulation of this body of small group research. Field studies of natural groups, as well as experimental studies of both artificial and natural groups have been utilized. Measurement of the specific phenomenon under investigation

¹³Sidney Ulmer. "Leadership in the Michigan Supreme Court," in Judicial Decision-Making, ed. by Glendon Schubert, (Glencoe: The Free Press, 1963).

have included both observation and questionnaire techniques. Some of the broad areas which this research has explored are: the characteristics of group members, characteristics of the group, interpersonal relations in the group, task performance of the group members, task performance of the group, leadership, and the relation of personality factors to performance.¹⁴ Examples of some of the specific phenomena which have been studied include social facilitation, group cohesion, interpersonal attraction, conformity, interaction and communication, and power and influence. We shall here be concerned with the power and influence aspects of small group theory.

One might classify research findings concerning power and influence into three broad categories: overall power and influence structure of the group, the behavior of, and effects upon, persons having power, and the behavior of, and effects upon, persons subject to power.¹⁵ Research findings indicate that small group members are generally aware of their position within the group and act accordingly. A power structure generally exists in most small groups, al-

¹⁴Joseph McGrath and Irwin Altman. Small Group Research. (New York: Holt, Rinehart and Winston, Inc., 1966). pp. 55-66.

¹⁵Darwin Cartwright and Alvin Zander, ed., Group Dynamics. (New York: Harper & Row, Publishers, 1968). pp. 215-232.

though the structure can change over time.¹⁶ Also, different structures of power and influence can exist for different group tasks due to the competence factor of certain individuals as a source of power.¹⁷ Research also includes a positive relationship between the possession of power and the tendency to use it, i.e., make influence attempts.¹⁸ A study by Hurwitz, Zander, and Hymnovitch¹⁹ indicates that those with high power tend to be more liked than those with low power; more attempts will be made to communicate with them, and there will be a greater desire to be liked by them. Those with high power also tend to like other highs and communicate mainly with them. In addition, high power members communicate and interact more frequently than low power members, and tend to receive more support for their behavior. Those persons subjected to power, or low in power, tend to generally interact and communicate less, and be liked less than high power members. Their communication is also likely to be mainly with highs and be of a sup-

¹⁶Robert Golembieski, The Small Group. (Chicago: The University of Chicago Press, 1962). pp. 100-101.

¹⁷Harold Guetzkow, (ed.), Groups, Leadership and Men. (New York: Russel & Russel, 1963). p. 145.

¹⁸Cartwright and Zander, Group Dynamics, op. cit., p. 218.

¹⁹Hurwitz, J.; Zander, A.; and Hymnovitch, B., "Some Effects of Power on the Relations Among Group Members," in Group Dynamics, ed. by Darwin Cartwright and Alvin Zander. (New York: Harper & Row, Publishers, 1960).

portive or deferential nature.²⁰ Additionally, group members with power tend to have more favorable attitudes toward the group; higher satisfaction and involvement in it.²¹ Studies also suggest that there is a tendency for less powerful members to make attempts to change the power structure of the group to a more favorable pattern. This can be accomplished by coalition or bloc formation.²² In addition, the group itself exerts a great deal of influence upon the individual member. Group discussion tends to generate pressures toward uniformity and conformity with the group majority. Individual judgements and opinions tend to shift and conform to majority viewpoints.²³

Application:
The Court as a Small Group

Viewing the court as a small group provides a fresh perspective from which to view the judicial process. Theoretically it is rich, but methodologically it presents many difficulties. We shall discuss later the methodological aspects, but, theoretically, the large body of literature in small group theory provides many insights and ideas which can be investigated in relation to judicial behavior.

²⁰Cartwright and Zander, Group Dynamics, op. cit., pp.291-297.

²¹McGrath and Altman, op. cit., p. 58.

²²Cartwright and Zander, Group Dynamics, op. cit., p. 231.

²³Dalmas Taylor, Small Groups. (Chicago: Markham pub. Co., 1971). p. 120.

Bales defines the small group as

"Any number of persons engaged in interaction with each other in a single face-to-face meeting or a series of meetings, in which each member receives some impression or perception of each other member distinct enough so that he can, either at the time or in later questioning, give some reaction to each of the others as an individual person, even though it be only to recall that the other person was present."²⁴

Defined in this way, it is clear that the Michigan Supreme Court, as well as other collegial bodies, can be considered small groups. Ulmer,²⁵ Danelski,²⁶ Snyder,²⁷ and others doing research in the area of judicial behavior have found many of the findings drawn from small group literature to be applicable to the collegial bodies they have investigated. We should expect to find in a court, as in any small group, differences in power and influence between members. It is a major assumption of this study that the decision a judge makes in a case is a product not only of the many background factors, or his attitudes he brings to the case, but of the influence and power of other justices and the interpersonal relationships of justices on the court. In conferences before decisions are made, the justices discuss and argue the many aspects of the case, attempting, one

²⁴Robert Bales, Interaction Process Analysis. (Reading, Mass.: Addison, Wesley, 1950). p. 33.

²⁵Ulmer, "Leadership." op. cit.

²⁶Danelski, "The Chief Justice." op. cit.

²⁷Snyder, "The Supreme Court as a Small Group." op. cit.

can assume, to influence and convince others of the reasoning he used and the principle applicable. Certainly, the more powerful or influential justice will be more successful in these discussions and influence the group in the direction of his thinking. A justice who is able to convince enough other justices of the court to agree with him is able to transform his opinion into law. Essentially, he is able to control the environment. This indeed is power. We may assume it is something all justices seek. Since a justice's vote and his opinion is his greatest resource and represents his final position, it should be possible from voting and opinion patterns to get some ideas of the existing patterns of power and influence. It is important, therefore, to discover the overall patterns of power and influence on a court. It is also important to determine who are the most powerful and influential justices and to determine whether subgroups, coalitions, or blocs are present. This is one problem with which this study will be concerned.

This study will also focus upon the dynamic aspects of power and influence of an individual member. Does a justice gain in power or influence or lose it as time passes? Small group theory would seem to suggest that a member should gain in influence in time. Snyder has suggested, however, that a justice might tend to lose power and become less in-

fluent as time passes.²⁸ This problem will also be examined in this study.

It has been suggested by Ulmer²⁹ that stability is present in court interaction, and small group theory would also suggest that interaction patterns tend to stabilize over time. However, it is possible that a number of different, though stable, patterns exist for different types of cases presented as stimuli to the court. Thus, certain justices might possess more expert power in relation to certain classes of cases and might therefore be more influential in these areas. Different patterns of influence might be present. This paper will attempt to discover whether patterns of influence and power, and the patterns of subgroups or blocs, is the same for different case areas.

Most research on power and influence have made distinction between these two concepts. Power is often considered to be a special case of influence. Lasswell and Kaplan define influence as the ability to affect the behavior of others. Power would then be influence with the ability to provide sanctions for nonconformity. Many studies, however, do not make a real distinction between power and

²⁸Snyder, "The Supreme Court as a Small Group." op. cit.

²⁹Sidney Ulmer. "Homeostasis in the Supreme Court," in Judicial Behavior, ed. by Glendon Schubert. (Chicago: Rand McNally, 1964).

influence and consider them nearly synonymous. In this study, there shall be no significant distinction made between the two concepts except for the measurement of power by the Shpley-Shubik Power Index. This index really is a measure of voting strength. Generally, power and influence will be considered as synonymous in this paper, and no complex theoretical distinction will be made.

Statement of Problem

The goal of the present study is to investigate aspects of power and influence among justices of the Michigan Supreme Court from the small group perspective. Specifically, this study will focus on and investigate four areas or problems:

- 1) Using voting behavior, the existence of blocs or subgroups and the general overall power and influence structure will be investigated. This essentially will be a bloc analysis.
- 2) Using the Shapley-Shubik Power Index, which involves voting behavior, the Inter Individual Solidarity Index, which involves opinion behavior, and other simpler measures, such as percent of time in majority, an appraisal of each justice's power and influence standings will be made.
- 3) Using the same measures described above, each new justice in the period in question will be examined to see

if his power and influence increased or decreased over time. The tendency of justices to join subgroups or blocs will be examined.

4) The patterns of power and influence, as well as the existence of blocs and subgroups, will be related to two substantive areas, in order to discern whether different patterns are present for different areas. The possible variation of a justice's influence in relation to certain classes of cases will also be examined.



CHAPTER II REVIEW OF THE LITERATURE

In one of the earliest attempts to study the Court from a small group perspective, Snyder, in her article, "The Supreme Court as a Small Group,"¹ focuses on the group processes and patterns of behavior that are present as the Court solves problems that are presented to it. Her data consists of the voting behavior of the justices in nonunanimous cases of the U.S. Supreme Court over the 33-year period from 1921 to 1953. She investigated the formation of subgroups or cliques on the Court, and changes that occur in them over time. Her study was also concerned with the process in which new members are ingested into the Court, and how they find a position within it. Snyder found that the Court tended to have both liberal and conservative cliques or subgroups, and a pivotal clique or subgroup somewhere between the two. She noted a tendency for new justices to align themselves initially with the pivotal group, and later to move into one of the polar subgroups. She found movement in the justices' position in time from the liberal to the pivotal to the conservative clique, but no movement in the other direction. She also noted a tendency for the justices

¹Snyder, op. cit.

to move to the right as time passes.

Sidney Ulmer has written a number of articles concerned with the Court as a small group. In his study, "The Analysis of Behavior Patterns in the U.S. Supreme Court,"² Ulmer attempts to analyze behavior patterns and interpersonal relations on the Court. He uses as his data both voting and opinion behavior. Through the use of the Shapely-Shubik Power Index, Bales Solidarity Index, and correlation matrices, Ulmer locates grouping patterns or blocs on the Court. In "Toward a Theory of Sub-Group Formation in the U.S. Supreme Court,"³ Ulmer continues where the first descriptive study left off and attempts to get into more dynamic aspects. As he states in the study; "while the identification and observation of bloc behavior in the U.S. Supreme Court is important, more attention should now be given to understanding the dynamics of such grouping."⁴ He distinguishes between coalitions and cliques, suggesting that subgroup formation in the Court is clique, rather than coalition, formation. The study suggests that power is not an important variable in decision-making and subgroup formation (power as a moti-

²Ulmer, op. cit.

³Sidney Ulmer. "Toward a Theory of Sub-Group Formation in the U.S. Supreme Court," in Journal of Politics, 27, (1965). pp. 132-153.

⁴loc. cit., p. 152.

vating force). Ulmer investigates three of Snyder's propositions regarding the Court, finding strong support for only one of them. In his article, "Homeostasis in the Supreme Court,"⁵ Ulmer investigated whether particular patterns of interaction on the Court tend to be stable. He suggests, and finds support for, stability of power relations on the Court. He again makes use of the Shapley-Shubik Power Index. In addition to the stability of power relations and their tendency toward homeostasis, Ulmer suggests that the Chief Justice may play an important part in promoting stability in the power patterns.

Danelski's study, "The Influence of the Chief Justice in the Decisional Process,"⁶ differs from other judicial behavior studies from a small group perspective in that it attempts to use data other than voting or opinion behavior of the justices. Danelski was interested in examining whether "the activity of the Chief Justice can be very significant in the judicial process."⁷ In his attempt to gain access to the interaction and interpersonal relations between justices, he uses data consisting of verbal reports. His data essentially consists of essays, books, letters, and papers of the chief jus-

⁵Ulmer, "Homeostasis," op. cit.

⁶Danelski, op. cit.

⁷loc. cit., p. 308.

tices, their assistants, and clerks. From this data, Danelski attempts to determine the effect the leadership activity of the Chief Justice has upon the Court productivity, cohesion, conflict, and satisfaction. The study makes use of Bales distinction between task and social leadership. Danelski found that the ability of the Chief Justice to provide the task or social leadership was related significantly to these variables. For example, he found that the Stone Court was low in productivity, satisfaction, and cohesion, while high in conflict because, as the study suggests, Stone did not provide either task or social leadership. On the other hand, the Taft Court exhibited good cohesion and satisfaction, due to Taft's ability as a social leader. The shortcomings of a study of this type is that it is unsystematic and non-quantitative, and the data may be unreliable or biased. Its importance is that it does get at the actual interaction processes between justices, although in a second-hand fashion.

Krislov, in his article, "Power and Coalition in a Nine-Man Body,"⁸ investigated the use of the Shapley-Shubik Index as a means of studying coalition formation in small groups. Krislov used the index to examine the effects of organization and coalition formation on the

⁸Samuel Krislov, "Power and Coalition in a Nine-Man Body." American Behavioral Scientist, 6, 8, (April, 1963), pp. 24-26.

power distribution within the group. According to Krislov, the "application of the index confirms the pronounced effect of organization, and is in accordance with the expectation that increasing coalition size disproportionately increases effectiveness."⁹ Krislov examines the changes in the patterns of power that occur with the various possible combinations of members into coalitions. He discusses the dynamics of individual affiliation and counter-organization. He notes that the maximum payoff for any group in a nine-man body is when a five member bloc dominates, while the maximum payoff situation for an individual is in a 4, 4, 1 pattern. Krislov suggests that the conclusions drawn from this theoretical study of a nine-man body are consistent with observations of real groups such as the U.S. Supreme Court, and, therefore, may have great relevance to empirical small group studies.

Schubert, in an extension of Krislov's work, also made use of the Shapley-Shubik index as a means of measuring power in his article, "The Power of Organized Minorities in a Small Group."¹⁰ Schubert examined, in the article, the power relationships between coalitions and individuals in a nine-man body under various possible combinations of members. The article is primarily con-

⁹loc. cit., p. 25.

¹⁰Glendon Schubert, "The Power of Organized Minorities in a Small Group," Administrative Science Quarterly, 9 (September, 1964), pp. 133-153.

cerned with dynamic aspects of coalition formation. Schubert discusses a number of possible strategies for individuals and coalitions in various power situations. Using the Shapely-Shubik Index as a measure, he examines the changes in the power of coalitions under the many possible shifting patterns. He points out a number of limitations in the use of the index as a basis for analysis of this type. Among the most serious limitations are the index's failure to take into account external power relationships and ideology, as well as socio-psychological variables, such as members attitudes toward one another. The article also suggests that coalitions might tend to increase in size only to the point of insuring control and dominance. This idea is in contrast to the widely held notion that coalitions tend toward maximization of size.

There are few studies in the literature that deal specifically with the Michigan Supreme Court. Schubert's study, "The 'Packing' of the Michigan Supreme Court,"¹¹ deals with Governor Williams' appointments to the Court during the four years from 1954 to 1957, which significantly altered the composition of the Court. Schubert's study essentially uses bloc analysis and illustrates how

¹¹Glendon Schubert, "The 'Packing' of the Michigan Supreme Court," in Judicial Behavior, ed. by Schubert. (Glencoe: The Free Press, 1959).

the new justices realigned the patterns of interaction on the Court. Ulmer's study, "The Political Party Variable in the Michigan Supreme Court,"¹² focuses on the effect that political party has upon the decision of the justices on the Court. Ulmer uses the voting behavior of the justices and relates this to their political party in certain case areas. (Workman's Compensation; Employment Compensation.) By examining the voting patterns in these certain case areas, Ulmer concluded that the political party of the justice is an almost perfect indicator of his position in regard to these types of cases. Thus, he finds that Democratic justices are more favorable to employment and workman's compensation than Republicans, to an extreme degree. Ulmer's article, "Leadership in the Michigan Supreme Court,"¹³ is the one Michigan Supreme Court study that deals with it from the small group perspective. Ulmer is concerned in this study with the phenomenon of leadership and influence, as related to leadership. His data is opinion behavior of the justices during this period by using primarily, Bales' Inter-Individual Solidarity Index and a "dominance matrix."¹⁴ He also examines influence ranking in relation to political party,

¹²Ulmer, "The Political Party Variable," op. cit.

¹³Ulmer, "Leadership in the Michigan Supreme Court," op. cit.

¹⁴loc. cit., p. 21.

finding that this factor is not completely determinative of influence position. Ulmer also suggests that the Court might have a preference for a chief justice possessing a modicum of leadership qualities.

The studies just reviewed, while providing important ideas and background, differ from the present study in a number of ways. First, with the exception of Ulmer's article on the Michigan Supreme Court, all deal with the U.S. Supreme Court. Secondly, none of these studies are of recent terms of the Court. Thirdly, none deal specifically with power and influence patterns and relationships in an empirical manner. Krislov's and Schubert's articles are theoretical in nature. The one study that does touch upon influence, Ulmer's Michigan Supreme Court study, uses only opinion behavior, while the present study uses as its primary data, voting behavior, as well as opinion behavior. Also, Ulmer's study does not deal specifically with power, and also does not concern itself with dynamic aspects of power or influence nor does it relate the ranking to substantive areas. In addition, none except Ulmer's article deals with the Michigan Supreme Court from a small group perspective. Thus, as before stated, this paper will provide the first piece of research combining the various aspects mentioned.

CHAPTER III METHODOLOGY

The phenomenon with which this study is concerned is power and influence, specifically, as it is present in a small group, the Michigan Supreme Court. While theorists have been concerned with power and influence for many centuries, it was primarily from a philosophical or speculative view; it has been only recently that the phenomenon has been studied experimentally. Particularly in the last two decades, the topic of social power and influence has become a major topic of empirical research in the social sciences. It is now realized that power and influence considerations are vital in any study of human interaction; especially important in intragroup behavior. It is impossible to adequately study and understand behavior in the small group without considering aspects of power and influence.

Two of the major problems involved in the study of power and influence, especially on the small group level, are its definition and measurement. There are numerous definitions of the phenomenon in the literature. In some studies, social power is distinguished from influence, while in others, they are considered synonymous. Power and influence are confused with other concepts such as leadership, status and authority. For the purposes of this study,

we shall consider power and influence as essentially synonymous, and define it in the broadest fashion. Thus, power and influence will be considered to be the affecting of the behavior of others. Thus, A will be considered to have power or influence if he, by his behavior, is able to affect the behavior of B. Of course, all individuals do possess some degree of power and influence; it is not an all or none situation, but one of differing degrees of power and influence. In the Michigan Supreme Court, the justices all have equal status and power "a priori", ie., there is no built in organizational differences in power; all the justices have votes equal in weight. But certain justices, perhaps due to their expertise, status, ability in persuasion, personality traits, etc., might possess more influence in affecting decisions than others. It is the aim of this study to determine the influential individual justices and influential blocs or groups, and their behavior patterns.

An even more difficult problem is the measurement of power and influence. There are a number of ways of measuring power and influence in the small group, as March discussed in his 1956 article.¹ Most measurement of power and influence, however, involves the observation of the group in interaction, or in some cases, the ques-

¹James March, "Influence Measurement in Experimental and Semi-Experimental Groups," Sociometry, Vol.19, (1956), pp. 251-261.

tioning of the participants themselves, concerning the influence of various members of the group. These methods are not possible, of course, with a small group like a Court. In the case of the Michigan Supreme Court, as with the U.S. Supreme Court and most other courts, there is no access to the interaction of the individual members; the interaction process is not open to observation. This secrecy is, of course, deliberate. Ulmer has stated:

"The 'purple curtain' that hides much of the doings of courts of law is no accident. By design, great care is taken to safeguard deliberations leading to decisions, and the conference room of the collegial court especially is considered inviolate. Such practices are neither arbitrary nor superfluous, since an important function of obscuring decisional processes is to sustain the myth of judicial objectivity which permeates the American judicial system."²

Thus, it is impossible to use the many techniques of analysis discovered by small group researchers. One must rely upon the only real hard data available; opinions and voting behavior. This fact has lead to criticism by writers such as Becker,³ who claims that so-called small group studies of courts are not really small group studies, but voting or bloc analysis. However, it is the view of this study that the influence and power patterns can

²Ulmer, "Leadership in the Michigan Supreme Court," op. cit., p. 14.

³Theodore Becker. Political Behavioralism and Modern Jurisprudence. (Chicago: Rand McNally & Co., 1964).

be discerned from voting and opinion behavior. The opinion and the vote of the justice is his major and final expression, representing his final position after the interaction process. Also, it is his vote and opinion -- his decision -- which is the very purpose of the Court itself, a decision-making group. Therefore, it should be possible to detect influence and power patterns by studying the patterns of voting and opinions.

Data Collection

The data for this study consists of nonunanimous cases of the Michigan Supreme Court from the 1967 through the 1973 terms. Specifically, the cases included are those reported from 380 Michigan Reports 14 through 390 Michigan Reports 739. Court orders were excluded, thus resulting in a total of 227 cases. The vote of each justice in each case was recorded as well as whether the justice wrote an opinion, either majority, minority, or concurring, or expressed agreement with another justices' opinion, either in total or in result only. Thus, both voting behavior and opinion behavior were considered.

Statistics - Measures

One of the major measuring devices used in this study will be the Shapley-Shubik Power Index.⁴ There are

⁴L.S. Shapley and Martin Shubik, "A Method for Evaluating the Distribution of Power in a Committee System," in APSR, 48, (Sept., 1954). pp. 787-792.

essentially two forms of the index, a theoretical and an empirical. The theoretical is an index which measures in an "a priori" fashion the voting strength of members of a committee or small group. Both indices are mathematical methods developed by L.S. Shapley and Martin Shubik, a mathematician and game theorist respectively, which essentially measures the ability of a member of a committee or group to cast the deciding vote on an issue. According to Shapley and Shubik, the "definition of power of and individual member depends on the chance he has of being critical to the success of a winning coalition."⁵ The computation of the empirical index is arrived at by assigning the probability of his having been the deciding vote in a decision in which he was in the majority. Thus, for example, in a 5-2 decision of the Court, a justice in the majority would be assigned a power rating of $1/5$, or .2, while a justice in the minority would get a zero rating. A justices' power ratings for the cases in which he participates is summed and divided by that number of cases. The justices' theoretical index is simply the "a priori" chance of being in the majority. Thus, in a seven-man Court, the theoretical power of each member will be .143; in an eight-man Court, it will be .125. Shapley and Shubik make a strong assertion to support

⁵loc. cit., p. 142.

the validity of their index. They claim that "any scheme for computing power among the members of a committee system either yields the power index defined above or leads to a logical inconsistency."⁶ Since its development, the index has been used in a number of studies of power, some concerned with courts. Schubert used it in his study of power of organized minorities in a small group⁷ and Ulmer used it in his study of behavior patterns on the U.S. Supreme Court.⁸ Also, Krislov has used it in his study of power and coalition in a nine-man body.⁹ We will use the index in this study because it provides a concise quantitative measure of the power of justices on the Court, taking into account both the tendency to be in the majority and the tendency to be pivotal in the decision of an issue. These two factors appear essentially to get close to our notion of what "power" and "influence" is.

Another major measuring device employed in this study will be Bales' Inter-Individual Solidarity Index.

⁶loc. cit., p. 145.

⁷Glendon Schubert, "The Power of Organized Minorities in a Small Group," Administrative Science Quarterly, 9, (Sept., 1964). pp. 133-153.

⁸Ulmer, "The Analysis of Behavior," op. cit.

⁹Samuel Krislov, "Power and Coalition in a Nine-Man Body," American Behavioral Scientist, 6,8, (April, 1963). pp. 24-26.

This is a measure devised by Bales in his study of small groups and their interaction.¹⁰ Essentially, it is a ratio of supportive acts to the total of both supportive and non-supportive acts originated by an individual (the initiator) and directed toward another (the target). Bales used the index to measure the solidarity, or one might say, supportiveness, of one individual with another within a small group. We use the measure here, in order to shed further light on the influence process, ie., to supplement the simple matrix of interagreement between justices. It is impossible to tell, from the fact that two justices agree, who is influencing whom. The Inter-Individual Solidarity Index can help to indicate the direction of influence by distinguishing the supportiveness of one member of the pair from the other. The index has been used by Ulmer in his study of the Michigan Supreme Court for the same purposes for which we use it here. As Ulmer states in his study,

The solidarity index not only furnishes valuable information about the relationships between pairs of justices but also enables us to speculate concerning influence structure in the court. The ISI entry for each of our judges can be viewed as a rating assigned by the judges to each other. In some respects, the rating is similar to a sociometric choice or a generalization of such choices. By comparing these ratings we may infer something about influence structure in the group.¹¹

¹⁰Bales, op. cit..

¹¹Ulmer, "Leadership," op. cit., p. 18.

In addition to the above two major indices, this study will also employ a number of other simple measures. In order to further clarify the power and influence process we will use the measures of number and percent of times in the majority, number and percent of dissents, and the number and percent of dissenting opinions. Some of these measures will be used in the bloc analysis of the Court. A simple bloc analysis will be done in order to discern the subgroups or coalitions present on the Court. This will help determine what patterns of power relationships are present and what, if any, subgroups hold the greatest power. The bloc analysis will be similar to the bloc analysis done by Schubert in his studies of the U.S. Supreme Court.¹²

The measures and indices used in this study were selected because they appear to be able to reveal power and influence, at least as we have defined it for this study. When confined to the data of voting and opinion behavior, as this study is, there are few indices available for measuring influence and power. This is because very little research has been done concerning power and influence on courts, where the interaction process is unobservable. While there are a few others, the ones chosen

¹²Schubert, "Quantitative Analysis," op. cit..

are the most widely used and most reliable. Ulmer used a dominance matrix in his Michigan Supreme Court study, but this is merely a derivation of the Inter-Individual Solidarity Index. Indices of Cohesion and Factor Analysis are other methodological techniques, but these are not directly applicable to the study of power and influence as defined here. In any decision-making group, such as a court, we would expect that the opinions of the more powerful and influential justices would carry more weight, and their arguments to be more persuasive. From small group theory, we also know that more powerful group members tend to be given more support than they give. This is essentially what the Bales Inter-Individual Solidarity Index measures. We would also expect the more influential group members to be in the majority more, and that over time they would be pivotal in more cases. This is essentially what the Shapley-Shubik Index measures. Therefore, the measures used are consistent with our conception of power and influence and with the ideas drawn from small group theory.

CHAPTER IV ANALYSIS OF DATA

The Michigan Supreme Court is the highest court in the new five-tiered state judicial system. It is the state's highest appellate court, and, like the U.S. Supreme Court, it largely determines what cases it will hear. In addition to its appellate function, it also functions to supervise and control all other state courts, ("superintending control") as well as makes rules to serve as guides for the state courts ("rulemaking power"). The new 1963 Michigan State Constitution also gives it power to issue advisory opinions. According to the old 1908 Michigan Constitution, the Supreme Court consisted of eight justices -- the Chief Justice and seven Associate Justices. The new constitution reduced the number to seven. The reduction to seven justices, however, was allowed to await the first vacancy by death, resignation, or retirement. This occurred in 1968 with the departure of Justices O'Hara and Souris. Therefore, beginning in the 1969 term, the Supreme Court consisted of seven justices. Two justices are elected every two years in the November election for a term of eight years, which begins the January following the election. The justices are elected on a separate non-partisan ballot, although they are nominated by their political parties at the state

convention. The justices of the Supreme Court themselves select the justice to serve as Chief Justice every two years.¹

The procedures used by the Michigan Supreme Court differ in some ways from the U.S. Supreme Court. In the U.S. Supreme Court, the writing of the opinion of the Court is by assignment. In the Michigan Supreme Court, the writing of an opinion for a case is assigned to justices by rotation, using a numbering system. On the day set for argument, the justice assigned the case presents the case to his colleagues. Later, arguments follow, but no vote is taken. The justice writes an opinion for the case assigned to him. Any other justice may also write an opinion on the case. On the day of the decisional conference, the justices examine all opinions written on the case. The opinions are then circulated for signatures, if no compromise can be reached for a unanimous opinion. The majority opinion is simply the opinion that receives a majority of the signatures. No formal vote precedes the writing or signing. Thus, the author of any opinion does not know until the final conference whether his opinion will be a majority, dissenting, or concurring one.²

¹Albert L. Sturm and Margaret Whitaker, Implementing a New Constitution: The Michigan Experience. (Ann Arbor, Michigan: Institute of Public Administration, University of Michigan, 1968). pp. 136-138.

²Ulmer, "Leadership in the Michigan Supreme Court," op. cit., pp. 16-17.

In the six terms of the Michigan Supreme Court with which this study is concerned, 1968 through 1973, there were 13 justices and essentially four different courts. In the 1968 term, the Court consisted of eight justices, seven Associate Justices and Chief Justice John R. Dethmers, who was also Chief Justice in 1967 and from 1956 to 1962. Dethmers was first appointed to the Court in 1946, and later elected in 1947 and reelected in 1953 and 1961. He is a former prosecuting attorney, State Attorney General, and Chairman of the American Judicature Society. Harry F. Kelly was elected to the Supreme Court in 1953 and reelected in 1961. He was decorated with the Purple Heart for service in World War I and served as the Secretary of State of Michigan from 1939 to 1942. He was the Democratic Governor of Michigan from 1943 to 1947. Paul L. Adams was appointed to the Supreme Court in 1962 and elected in 1963. He had previously been the State Attorney General from 1958 to 1962, and served on the Board of Regents of the University of Michigan from 1956 to 1957. Eugene Black was elected to the Supreme Court in 1955 and reelected in 1963. He had previously been Attorney General of Michigan, 1947-48, and circuit judge from 1954 to 1955. Michael D. O'Hara had previously been a practicing attorney in Michigan and served in the U.S. Marine Corps. He was elected to the Supreme Court in 1962. Theodore Souris practiced law in Detroit from 1949 to

1959 and was appointed to Circuit Court of Wayne County. He was appointed to the Supreme Court in January of 1960 and elected later that year. Thomas E. Brennen was elected to the Supreme Court in 1966. He had previously been a practicing lawyer and a Circuit Judge in Wayne County from 1963 to 1965. The final member of the Court, Thomas M. Kavanagh, was a former Chief Justice of the Michigan Supreme Court, 1964-66. He was first elected to the Supreme Court in 1957 and reelected in 1966. He had previously been elected as State Attorney General in 1954 and 1956.³

Between the 1969 and 1970 terms, and the 1971 and 1972 terms, there were no changes in personnel. Thus, the 1969 and 1970 terms can be combined and considered as one court, as can be the 1971 and 1972 terms. For some aspects of the following analysis, therefore, we shall refer to four courts, 1968, 1969-70, 1971-72, and 1973, rather than to the six yearly terms. Between 1968 and 1973, the six years covered by this analysis, there were five new justices appointed. Thomas G. Kavanagh was elected to the Supreme Court in 1968, thus replacing O'Hara and Souris, whose terms had expired before the 1969 term. This resulted in the present seven member court, which was

³Michigan Department of Administration. Michigan Manual, 1967-1968, pp. 152-154.

required by the 1963 Constitution. Kavanagh had been a Judge on the Michigan Court of Appeals since 1964. Two former Democratic Governors of Michigan were elected to the Supreme Court in 1970, G. Mennen Williams and John B. Swainson, taking the places of Kelly and Dethmers, whose terms expired in January of 1971. Williams had served as Governor of Michigan from 1949 to 1960. He was appointed Assistant Secretary of State for African Affairs, 1961-1966. He was the United States Ambassador to the Phillipines from 1968 to 1969. Swainson was Governor of Michigan from 1961 to 1962 and Lieutenant Governor from 1959 to 1960. He is a veteran of World War II and received the Purple Heart. He also served as Circuit Court Judge from 1965 to 1970 and served in the state senate from 1954 to 1958. Two new justices, Mary S. Coleman and Charles L. Levin, were elected in 1972 to replace Black and Adams, whose terms expired in January of 1973. Coleman had served as the Calhoun County Probate and Juvenile Court Judge from 1961 to 1973. She is a former president of the Michigan Probate and Juvenile Court Judges Association and a member of the Governors Commission of Law Enforcement and Criminal Justice, and chairman of the Task Force on Delinquency. Levin has been a justice on the Court of Appeals, 1st District, from 1966 until his

election to the Supreme Court.⁴ In addition to these five justices, we shall also consider Brennan in the group of new justices, since he began his justiceship in 1967, just a year before the term of analysis, and can therefore be justifiably considered as a "new" justice for our purposes.

We shall, in this research, investigate four areas concerned with the pattern and structure of power and influence on the Michigan Supreme Court. We will first make an overall examination of the general interaction patterns on the four courts. This will essentially be a simplified bloc analysis, similar to that done by Pritchett and Schubert. We will be concerned here essentially with power and influence groupings, ie., blocs or groups of justices controlling power. Next, we will focus on the power and influence rankings of the individual justices on the four courts. We will use a number of different measures here to try to discern which justices are most influential and also to determine interaction patterns among the justices. Next, we will examine the patterns of change in power and influence over time of the justices. Finally, we will examine the power and influence structure in relation to two substantive areas,

⁴Michigan Department of Administration. Michigan Manual, 1973-1974. pp. 168-170.

unemployment compensation and criminal procedure cases, seeking to determine whether the patterns and rankings existing in these areas differ from the general overall influence structure. By using a number of methodological tools in the investigation of the above four areas, we shall hope to shed light on the power and influence structure of the Michigan Supreme Court during the 1968-1973 period.

Bloc Analysis

The bloc analysis which will be used here is a simple type, based upon one measure: the voting interagreement of the various pairs of justices in nonunanimous cases. The measure is a proportion computed by dividing the number of voting agreements by the total number of joint participations. The index of interagreement, as used by Schubert, is simply the average of the proportions so computed of the various pairs. An index of .70 or above is considered high; .60-.70, moderate, and below .60 is low. Following Schubert, we will consider a bloc to be at least three justices; two justices will be called a pair. The purpose of the bloc analysis is to discern broad patterns of interagreement, ie., to identify blocs of justices which possess power as well as to discover the overall distribution of power in the court as a whole. The focus here, then, is upon power and influence groups rather than individuals. Table 1 shows the bloc structure of the four courts. It is clear that in each of the four courts there was a clear cut dominant power bloc. A right-oriented bloc dominated the court from 1968 to 1971. With the addition of Swainson and Williams to the court, in 1971, a left-oriented bloc became dominant. This shift constituted the major change in the court during the six years covered in this analysis. The terms

right or left are used in reference to the general conservative-liberal dimension. We shall later provide the justification for labelling the blocs as right and left in the section below, which considers specific substantive areas. As Table 1 indicates, in none of the four courts considered is there evidence of a dissenting bloc or a center bloc. All four courts consist of a major power bloc of four or five justices and a dissenting pair of justices or two pairs centered around one justice. In 1968, the Court consisted of a strong four-judge right bloc, Dethmers, Black, Kelly, and Brennan, with a high index of interagreement (.75). O'Hara was in a somewhat central position, although leaning more towards the power bloc. Souris and Adams had somewhat high indices of interagreement with Kavanagh (.70, .69) but not with each other (.49). Thus, Kavanagh was a kind of bridge between the two, forming a somewhat loose dissenting group in relation to the power bloc.

The same four justices of the right (Brennan, Kelly, Dethmers, and Black) controlled power in the 1969-70 Court. The Court was a seven-justice Court with T.G. Kavanagh replacing Souris and O'Hara. The same general pattern persisted, however, as existed in 1968. Both Adams and T.G. Kavanagh had high indices of interagreement (.82 and .77) with T.M. Kavanagh but not with each other (.58). The index of interagreement of the entire power bloc was not

as high as in 1968; it was only .68.

In 1971, the structure changed dramatically. Two new justices, Williams and Swainson, replaced Dethmers and Kelly, shifting the power to the left and forming a new five-member left power bloc consisting of Williams, Swainson, T.G. Kavanagh, T.M. Kavanagh, and Adams. This five-justice bloc had a high index of interagreement (.74). This addition of new justices left Black and Brennan, both formerly of the power bloc, in a position of dissent. They did not form a strong dissenting pair, however, their index of interagreement being low (.57).

In the 1973 Court, two new justices, Levin and Coleman, replaced Black and Adams. The five-member power bloc of the previous court was reduced to four, Williams, Swainson, T.M. Kavanagh, and T.G. Kavanagh. Their index of interagreement was quite high (.74). Levin showed a perfect interagreement with T.G. Kavanagh, but only moderate agreement (.63) with the rest of the bloc, thus not justifying his inclusion in the bloc but indicating a close leaning toward it. Coleman took a position of strong agreement with Brennan with a high index of interagreement (.81), thus forming with him a strong dissenting pair.

Table 1
Interagreement in Nonunanimous
Decisions (In Percentages)
Michigan Supreme Court
(1968 Term)

	Souris	Kavanagh	Adams	O'Hara	Black	Brennen	Kelly	Dethmers
Souris								
T.M. Kavanagh	70							
Adams	49	69						
O'Hara	35	33	50					
Black	51	55	53	56				
Brennen	25	35	43	59	66			
Kelly	35	40	46	59	78	80		
Dethmers	39	35	44	68	73	70	83	

Indices of Interagreement

Right----- .75 (high)

T.M. Kavanagh-Souris----- .70 (high)

T.M. Kavanagh-Adams----- .69 (moderate)

Kelly-Dethmers----- .83 (high)

Table 1 (cont.)

(1969-70 Terms)

	T.G. Kavanagh	T.M. Kavanagh	Adams	Brennen	Black	Kelly	Dethmers
T.G. Kavanagh							
T.M. Kavanagh	77						
Adams	58	82					
Brennen	52	42	40				
Black	38	38	38	67			
Kelly	22	28	39	65	61		
Dethmers	26	34	38	64	73	76	

Indices of Interagreement

Right-----,68 (moderate)
 T.M. Kavanagh-T.G. Kavanagh-----,82 (high)
 T.M. Kavanagh-Adams-----,77 (high)
 Kelly-Dethmers-----,76 (high)

Table 1 (cont.)

(1971-72 Terms)

	T.M. Kavanagh	Williams	Swainson	T.G. Kavanagh	Adams	Black	Brennen
T.M. Kavanagh							
Williams	77						
Swainson	82	86					
T.G. Kavanagh	77	67	70				
Adams	76	71	69	63			
Black	38	44	43	31	40		
Brennen	31	35	31	35	31	57	

Indices of Interagreement

Left-----,74 (high)

Swainson-Williams-----,86 (high)

Black-Brennen-----,57 (low)

Table 1 (cont.)

(1973 Term)

	T.M. Kavanagh	Williams	Swainson	T.G. Kavanagh	Levin	Coleman	Brennen
T.M. Kavanagh							
Williams	90						
Swainson	73	77					
T.G. Kavanagh	73	70	67				
Levin	63	63	63	1.00			
Coleman	22	26	44	26	26		
Brennen	17	20	43	30	37	81	

Indices of Interagreement

Left----- .74 (high)
 Brennen-Coleman----- .81 (high)
 Levin-T.G. Kavanagh----- 1.00 (high)
 Williams-T.M. Kavanagh----- .90 (high)

Power and Influence Ranking

The focus of the analysis now shifts from a consideration of groups or blocs and their interaction and overall patterns of power and influence to one concerned with individual justices possessing power and influence. We will here make use of a number of measures to arrive at some conception of the power and influence structure of the courts. The major measures used will be the Shapley-Shubik Index and the Inter-Individual Solidarity Index. Table 2 indicates three measures of the justices in the 1968 through 1973 Courts. The theoretical value of the Shapley-Shubik Index for an eight-man group is .125 and, for a seven-man group is .143. Therefore, any score in excess of these would indicate the justice is above average in influence and power. The percent of times in majority refers simply to percent of votes, while the percent of opinions that have become majority is simply the percent of the justices' total opinions that have become majority opinions of the Court. This measure indicates to some degree the support his opinions received. As can be seen for the 1968 Court, Kelly and Black have the highest ranking on the Shapley-Shubik Index (.162) and also have been in the majority the greatest percent of the time (84%), followed closely by Dethmers with 80%. Also, Dethmers and Brennan follow closely behind Black and

Table 2
Power and Influence Measures
for Individual Justices
Michigan Supreme Court
(1968-73)

1968 Court								
	Kelly	Petlmers	Black	Brennen	O'Hara	Adams	T.M. Ravansh	Couris
Shapley-Shubik Index	.162	.159	.162	.152	.128	.110	.104	.077
% of Times in Majority	84	80	84	77	65	57	53	43
% of Majority Opinions	71	80	12.5	39	40	24	31	21
1969-70 Court								
	Brennen	Petlmers	Kelly	Black	T.C. Ravansh	T.M. Ravansh	Adams	
Shapley-Shubik Index	.190	.169	.168	.150	.134	.133	.127	
% of Times in Majority	82	74	72	69	61	60	58	
% of Majority Opinions	50	59	44	37.5	38	58	30	

Table 2 (cont.)
Power and Influence Measures
for Individual Justices

1971-72 Court							
	W. J. Brennan	Williams	Warren	Adams	W. J. Brennan	Black	Brennen
Shapley-Shubik Index	.182	.182	.178	.157	.147	.094	.083
% of Times in Majority	88	89	88	76	73	47	39
% of Majority Opinions	64	63	72	61	37	12	17
1973 Court							
	W. J. Brennan	Levin	Wallace	Williams	W. J. Brennan	Brennen	Coleman
Shapley-Shubik Index	.202	.175	.173	.168	.159	.104	.081
% of Times in Majority	87	84	80	77	73	43	41
% of Majority Opinions	78	50	67	44	33	14	25

Kelly in regard to percent of times in the majority and Shaplry-Shubik Index ranking. Brennen and Black, however, have a curiously low percent of opinions that have become majority opinions. This indicates perhaps that, while they tended to vote with the power bloc, their opinions were not supported highly by the other justices on the Court. To further investigate this aspect, we will make use of the Inter-Individual Solidarity Index, which is a measure that gives some idea of the support given to a justice's opinions by the other court members. It is essentially a rating of each justice by each other justice and is similar to a sociometric choice. Table 3 presents the ISI ratios for all the possible pairs of justices in the 1968 Court. We can see by the table that both Brennen and Black received less support than they gave to Kelly and Dethmers and, in general, received much less support for their opinions from the Court as a whole. Table 3 also clearly illustrates the relative support given to each of the justices by each other justice. This is accomplished by rank ordering the column entries and then summing. According to this technique used by Ulmer, summing the rows should give an indication of the relative support of each judge in the group as a whole.⁵

⁵Ulmer, "Leadership in the Michigan Supreme Court," op. cit., pp. 18-19.

Table 3
Inter-Individual Solidarity Index and Ranks
Michigan Supreme Court
1968

Initiators	Targets							
	Dethmers	Brennen	Kelly	Black	Kavanagh	Adams	O'Hara	Souris
Dethmers		29(3)	86(1)	25(4)	17(6)	05(7)	50(2)	17(5)
Brennen	80(1)		64(2)	19(6)	23(4)	19(5)	47(3)	08(7)
Kelly	75(1)	50(2)		375(4)	33(5)	10(6)	44(3)	04(7)
Black	60(1)	11(6)	57(2)		38(3)	05(7)	33(4)	13(5)
Kavanagh	40(3)	06(6)	14(5)	19(4)		48(2)	05(7)	54(1)
Adams	75(1)	00(7)	14(5.5)	14(5.5)	36(2)		21(4)	35(3)
O'Hara	80(1)	33(2)	29(3)	125(6)	08(7)	20(5)		21(4)
Souris	00(7)	17(2)	10(5)	08(6)	56(1)	11(4)	14(3)	
Rows	15	28	23.5	35.5	28	36	26	32
Average Ranks	1	4.5	2	7	4.5	8	3	6

It is clear from this table that Kelly and Dethmers were much more supported by the Court as a whole than Brennan and Black, who ranked in lower position, even after O'Hara. O'Hara, in fact, had a greater percent of opinions becoming majority than either Brennan or Black and was next in line after the power bloc of four justices in the other two measures. Souris, Kavanagh and Adams were the lowest ranking justices on both the Shapley-Shubik Index, percent of times in majority, and in percent of opinions becoming majority, with the exception of Black's extremely low ranking (12.5).

We would conclude from this analysis of the 1968 Court that the three measures, and the ISI ranking, confirm the bloc analysis finding of a four-member controlling power bloc on the Court. Within this bloc, however, Kelly and Chief Justice Dethmers are clearly the most powerful members of the whole 1968 Court. Souris and Adams were probably the weakest and least influential members, taking all measures into consideration. O'Hara, with his position just outside the power bloc was quite influential, since he received moderate support from both sides of the Court.

Examining in a similar manner the 1969 and 1970 terms considered as one Court, Table 2 again reveals that Brennan, who has become Chief Justice, was in the majority the greatest percent of the time and also had the highest

Shapley-Shubik Index score. Dethmers and Kelly had nearly identical values in percent of times in majority in the Shapley-Shubik Index, ranking second and third behind Brennan in each of those values. Black had the lowest score on the two measures among the four right power bloc justices of the Court. Dethmers has the highest value in percent of opinions becoming majority, while Black had the lowest of the four justices. Table 4 indicates the ISI ratios for the 1969-70 Court. It also shows the derived ranking based on the percentages in the columns. It is clear by looking at Table 4 that the support given the four right power bloc justices did not differ much, with the highest support, by a small margin, given to Dethmers and Black. It is difficult to identify the most powerful justice in this Court since all four right bloc justices were so nearly equal in power and influence on the various measures. Dethmers should probably be considered the most influential, due to his high ranking on the ISI index and percent of opinions becoming majority. Also, summing the scores in Table 4, reveals that Dethmers received the highest percentage of support for his opinions, 42%, compared to 36% for Brennan, and 34% for Black and Kelly. Looking again at Table 2 indicates that T.M. Kavanagh, T.G. Kavanagh, and Adams were clearly the three weakest justices on the Court. Their Shapley-Shubik Index values and percent of times in majority

Table 4
Inter-Individual Solidarity Index and Ranks
Michigan Supreme Court
1969-70

Initiators		Targets					
	Brennen	Dethmers	Kelly	Black	T.M. Kavanagh	Adams	T.G. Kavanagh
Brennen		53(2)	56(1)	375(4)	42(3)	35(5)	28(6)
Dethmers	40(3)		67(1)	53(2)	32(5)	32(4)	056(6)
Kelly	67(2)	75(1)		40(3)	25(5)	28(4)	12(6)
Black	50(2.5)	76(1)	50(2.5)		35(4)	16(5)	059(6)
T.M. Kavanagh	10(5)	06(6)	11(4)	25(3)		55(2)	67(1)
Adams	10(6)	18(4)	11(5)	19(3)	68(1)		50(2)
T.G. Kavanagh	29(2)	18(5)	00(6)	22(3)	67(1)	20(4)	
Rows	20.5	19	19.5	18	19	24	27
Average Ranks	5	2.5	4	1	2.5	6	7

are nearly identical, and are the three lowest on the Court. T.M. Kavanagh, however, had an extremely high percent of opinions that became majority and high ranking on the ISI in Table 4 (3rd). T.M. Kavanagh thus clearly emerges as the most powerful and influential member of the non-power bloc segment of the Court. Although he did not vote any more frequently than T.G. Kavanagh or Adams with the majority, his opinions were supported much more by the entire Court than were the opinions of the other two justices. His opinions were especially supported by the two weaker justices. This confirms the bloc analysis finding that T.M. Kavanagh was a powerful link between T.G. Kavanagh and Adams, getting high agreement and support from each, although they did not have a high agreement rate with each other.

The introduction of two new justices in 1971 radically altered the power balance of the Court. As the bloc analysis indicated, the two new justices caused a shift in power from right to left. Looking at Table 3 again shows the values of the seven justices of the 1971-72 Court on the three measures of influence and power. It can be seen that T.M. Kavanagh, Swainson, and Williams have been in the voting majority the greatest percent of the time, and have nearly identical values (88% and 89%). The three justices also have the highest ranking on the Shapley-Shubik Power Index, far above the theoretical

index of .143, and the highest percent of opinions becoming majority opinions. Swainson had the highest value here with a high 72%, followed by T.M. Kavanagh with 64% and Williams with 67%, both very high figures. The other two justices making up the five-member power bloc, T.G. Kavanagh and Adams, have lower rankings on all three measures, with Adams the higher of the two on all three, yet the three justices have much higher ranking than the non-power bloc justices, Black and Brennan. Black and Brennan are clearly the weakest Court members, Black having the higher Shapley-Shubik Index value and being in the voting majority slightly more often, while Brennan had a slightly higher percentage of his opinions becoming majority (17% to 12%), perhaps indicating a slightly higher degree of influence among other Court members. Table 5 shows the ISI values and derived rankings of the seven justices in the 1971-72 Court. It confirms the previous implication that Black was slightly less supported than Brennan, in fact, the least supported member of the Court, with Brennan only slightly ahead. According to the table, Swainson was the most influential or supported member of the Court. The surprising finding is the high ranking accorded Adams in the ISI index. It appears that this ranking is due to the extremely high support for his opinions accorded by Williams and Swainson. Swainson supported Adams' opinion 64% of the time, giving

Table 5
Inter-Individual Solidarity Index and Ranks
Michigan Supreme Court
1971-72

Initiators		Targets					
	T.F. Kavanagh	Black	Adams	Brennen	T.G. Kavanagh	Swainson	Williams
T.M. Kavanagh		04(6)	54(2)	13(5)	49(4)	72(1)	52(3)
Black	27(2)		24(3)	31(1)	07(5)	06(6)	12(4)
Adams	64(1)	12(6)		17(5)	26(4)	53(2)	37(3)
Brennen	09(6)	30(2)	18(4)		11(5)	33(1)	22(3)
T.G. Kavanagh	64(1)	04(6)	37(3.5)	23(5)		61(2)	37(3.5)
Swainson	55(3)	12(5)	64(1)	06(6)	33(4)		63(2)
Williams	45(3)	06(6)	54(2)	14(5)	30(4)	61(1)	
Rows	16	31	15.5	27	26	13	18.5
Average Ranks	3	7	2	6	5	1	4

him more support than any other justice. Williams supported Adams opinions 54% of the time, the second highest support that he gave. T.M. Kavanagh and Williams ranked in third and fourth positions on the ISI Index (no surprise) and consistent with the indication of the other three measures. Again, as in the previous court, there is no clear cut dominating individual justice; Chief Justice T.M. Kavanagh, Williams, and Swainson are clearly the three most powerful and influential, but they are very nearly equal in power. A slight edge might be accorded to Swainson, but it is very slight indeed. It is also clear that Brennan and Black are the two least powerful and influential Court members, but the difference between them is very slight.

The 1973 Court, the final one considered in this analysis, was characterized, as was already discussed, by the formation of a strong dissenting pair of justices, Brennan and Coleman, and the weakening of the five-member power bloc of the previous Court caused by the replacement of Adams by Levin, who did not align himself strongly with the bloc, but took a close position to it. Looking at Table 2 again shows the ranking and values of the 1973 Court justices on the three measures. T.G. Kavanagh ranked higher on all three measures, being in the majority the highest percentage of the time (87%) and also had the highest Shapley-Shubik Index value (.202)

and the greatest percent of his opinions becoming majority (78%). Levin, as a new justice not in the power bloc in this analysis, had a curiously high ranking in all three measures, having the second highest Shapley-Shubik Index score and being in the majority the second highest percentage of the time. The other three power bloc members, T.M. Kavanagh, Williams, and Swainson, ranked in the next three positions on all three measures. Predictably, Coleman and Brennan ranked lowest on the three measures, being clearly the two weakest and least influential members of the Court. Table 6, showing the ISI values and ranking, might help to clarify the high position of both T.G. Kavanagh and Levin. Table 6 confirms the high ranking accorded T.G. Kavanagh on the other three measures, indicating that he has clearly emerged as the most powerful and influential member on the 1973 Court. While his high position is partly due to the high support of new justice Levin, he is given high support by the other members of the power bloc, and moderate support by Coleman and Brennan, thus his support is across the Court. Swainson and Williams follow in second and third positions, followed by the other power bloc member, T.M. Kavanagh, who appears to be losing power and influence slightly from previous Courts. Again, predictably, Coleman and Brennan are in the lowest positions, getting little support from the other Court mem-

Table 6
Inter-Individual Solidarity Index and Ranks
Michigan Supreme Court
1973

Initiators		Targets					
	T.M. Kavanagh	Coleman	T.G. Kavanagh	Levin	Swainson	Williams	Brennen
T.M. Kavanagh		18(5)	56(2)	50(3.5)	50(3.5)	75(1)	00(6)
Coleman	33(2.5)		25(4)	125(6)	33(2.5)	14(5)	64(1)
T.G. Kavanagh	33(3)	08(6)		875(1)	50(2)	31(4)	14(5)
Levin	33(3.5)	00(5.5)	100(1)		50(2)	33(3.5)	00(5.5)
Swainson	00(6)	33(4)	56(1)	50(2.5)		50(2.5)	17(5)
Williams	67(1)	08(5)	56(2)	375(3)	33(4)		00(6)
Brennen	00(6)	58(1)	22(4)	25(3)	33(2)	125(5)	
Rows	22	26.5	14	22	16	21	28.5
Average Ranks	4.5	5	1	4.5	2	3	6

bers for their opinions although each gave their highest support for each other. Levin ranked in a tie with T.M. Kavanagh for fourth and fifth positions. However, summing the percentages shows that Levin was less supported by the Court, 44% of the time, while Kavanagh was supported 66% of the time, clearly indicating that Levin was less influential. It appears that Levin's surprisingly high ranking on the other three measures was due primarily to his tendency to align himself with T.G. Kavanagh in all cases. In summary, then, the 1973 Court appears to have the lines of power and influence more clearly drawn, with T.G. Kavanagh the most powerful and influential justice, and a clear four-member power bloc and a strong dissenting pair.

Changes in Power and Influence

We now focus our attention on the more dynamic aspects of power and influence on the Michigan Supreme Court in the 1968-73 period. There have been a number of suggestions, especially by Snyder, Ulmer, and Schubert regarding some of the possible changes that might occur over time in a justice's power and influence. Ulmer, for example, noted a tendency for justices to move downward on power indices through time. Other views suggest that a justice might gain in power influence as his experience on the Court increases. There have been a number of suggestions regarding the tendencies of new or freshman justices. We will here be interested in discerning from our limited data whether or not any consistent patterns or tendencies are evident which might add credence to, or cast further light on, these hypotheses. It will be impossible to make any conclusive statements on these dynamic aspects since our data covers only six terms. However, it may provide some further ideas and clues. We will here be interested in each individual term of the Court, in order to get a finer breakdown of changes in power and influence aspects. Of the 13 justices included in our data, we will be able to investigate only nine for most purposes, because Souris and O'Hara were on the Court only in the first term covered in this analysis, ie.,

1968, while Coleman and Levin were on the Court for only the last term considered, ie., 1973. Of the nine justices, four began their careers on the bench during the period of this analysis, T.G. Kavanagh, Swainson, Williams, and Brennan, who began in 1967, will also be considered a "new" justice. Of the nine justices considered, five justices ended their careers on the bench during the six year period of analysis, Dethmers, Black, Kelly, and Adams, while Brennan ended his career after the 1973 term.

Table 7 shows the progressive changes in the power and influence measures, through the six terms for the nine justices. (Shapley-Shubik Index, Percent of Times in the Majority, and Number of Opinions Becoming Majority.)

There appears to be no clear trend in any of the three measures. Brennan increased in power according to the Shapley-Shubik Index quickly after one term, then began a rapid decline to a low index value in 1972 and 1973. T.M. Kavanagh also showed a trend toward increasing to a high of .191 in 1971, then decreasing. Black decreased steadily from 1968 to 1972, while Swainson, Williams, and Kelly remained about the same during their three years. Dethmers and T.G. Kavanagh show no particular trend, Dethmers first increasing, then decreasing, and T.G. Kavanagh decreasing, then increasing to a high in 1973.

One of the suggestions put forth by Ulmer, was that the "power of the judge tapers off in the twilight of

Table 7
Changes in Power and Influence Measures
Michigan Supreme Court
1968-73

Shapley-Shubik Index						
	1968	1969	1970	1971	1972	1973
Dethmers	.159	.188	.151			
Brennen	.152	.201	.179	.088	.079	.104
Kelly	.162	.160	.177			
Black	.162	.137	.164	.098	.092	
T.M. Kavanagh	.104	.129	.137	.191	.176	.159
Adams	.110	.127	.127	.151	.160	
T.G. Kavanagh		.202	.107	.151	.144	.202
Swainson				.181	.177	.173
Williams				.174	.187	.168
Percent of Opinions Becoming Majority						
	1968	1969	1970	1971	1972	1973
Dethmers	80	56	62.5			
Brennen	39	50	50	23	12.5	14

(cont.)

Table 7 (cont.)

	1968	1969	1970	1971	1972	1973
Kelly	71	33	50			
Black	12.5	37.5	37.5	6	15	
T.M. Kavanagh	31	45	75	75	57	33
Adams	24	42	12.5	50	67	
T.G. Kavanagh		75	29	58	26	78
Swainson				67	72	44
Williams				44	72	44

Percent of Times in Majority

	1968	1969	1970	1971	1972	1973
Dethmers	80	80	68			
Brennen	77	84	80	43	37	43
Kelly	84	67	77			
Black	84	63	75	50	44	
T.M. Kavanagh	53	56	64	92	86	73
Adams	57	56	60	73	79	

(cont.)

Table 7 (cont.)

	1968	1969	1970	1971	1972	1973
T.G. Kavnagh		89	50	75	72	87
Swainson				91	86	80
Williams				88	89	77

his career as a result of age, infirmity, and declining interest in social problems."⁶ We shall look again at Table 7 to see whether there is any support for this idea in our limited data in the cases of the five justices who ended their careers between 1968 and 1973: Dethmers, Kelly, Black, Adams, and Brennan. It is clear from the table that the power of Brennan and Black, according to the Shapley-Shubik Index, tapered off, reaching its lowest value in their final term. Dethmers also had his lowest power index value in his final term, although he had his highest in the preceding year. In the cases of Kelly and Adams, however, we see a general increase in power, with their highest power index values in their final term on the Court. From this very limited data, then, we can find no consistent support for Ulmer's suggestion.

We shall now briefly focus on some tendencies of the freshman or new justices on the Court. Including Brennan, there are six justices who began their career on the Court between 1968 and 1973: T.G. Kavanagh, Swainson, Williams, Coleman, and Levin. Schubert has questioned whether freshman justices might tend to dissent more than older justices or that, due to timidity, might tend to at first join the majority position or at least gravitate

⁶Ulmer, "Homeostasis," op. cit., p. 168.

toward it. The percent of times in the majority would give us some idea of a justice's tendency to either dissent or join in with the majority. Looking at Table 7 again, we can see that in their first term, T.G. Kavanagh voted with the majority 89% of the time, Swainson 91%, Williams 88%, and Brennan, really in his second year, 77%. From a previous table (Table 2) Coleman voted with the majority 41% of the time and Levin 84% of the time in their first terms. In the case of the four justices for which we have further data, Swainson, Williams, T.G. Kavanagh, and Brennan, these figures represent either their highest or one of their highest percent of times that they were in the majority. The average for the six justices in their first year on the Court is 78% of time in the majority, certainly a much higher figure than average. It appears from these findings there might be a tendency for a freshman justice to vote with the majority at first rather than to assume a dissenting role.

The Chief Justice of the Michigan Supreme Court is selected by the other justices of the Court at the beginning of each term. This differs considerably from the U.S. Supreme Court, where the Chief Justice is nominated by the President. Due to this selection process, we would expect that the Chief Justice of the Michigan Supreme Court would be a justice of somewhat moderate views, although certainly a member of the power bloc; a justice

having a high power index, although not necessarily the most powerful justice on the Court. We shall here focus on the power and influence of the Chief Justice, seeking to discern any consistent patterns or tendencies. Dethmers in 1968, Brennan in both 1969 and 1970, and T.M. Kavanagh in 1971-1973 were among the most powerful justices on the Court and all members of the controlling power bloc, though not necessarily the most powerful justice. It appears that the Chief Justices were among the most influential in terms of support. Dethmers had his highest percent of opinions becoming majority and the highest on the Court, (80%) during his year as Chief Justice. Brennan also had his two highest percentages of opinions becoming majority during his two years as Chief Justice (50%) and the third highest on the Court in each of those two years. T.M. Kavanagh had higher percentages of opinions becoming majority in his three years as Chief Justice, and in his first year as Chief Justice had the highest on the Court (75%). Looking at the percent of times in the voting majority section of Table 7 is also revealing. Dethmers, in 1968, while Chief Justice, had the second highest figure on the Court and his highest figure for any of his years in our analysis (80%). Brennan, in 1969 and 1970, while he was Chief Justice, had the highest percentage in the majority on the Court (84% and 80%) with the exception of T.G. Kavanagh (89% in

1969. These values were also his highest for any of the six terms covered by this analysis. T.M. Kavanagh had his three highest rankings in percent of times in majority during the three years he was Chief Justice and had one of the highest figures on the Court in each of those three years. It appears from these findings that there is a tendency for Chief Justices to be in the majority and to be influential, ie., to receive high support for their opinions. Chief Justices also tend to be among the most powerful justices on the Court. This is consistent with what we have earlier suggested might be the case due to the way the position of Chief Justice on the Michigan Supreme Court is achieved.

Patterns of Power and Influence
in
Unemployment Compensation and Criminal Cases

We will now examine the power and influence structure of the Court in two substantive areas, criminal procedure and unemployment compensation. It was suggested earlier that patterns of influence in certain substantive areas differ from the overall pattern. This might be due to certain justices' influence within certain areas due to particular expertise, experience, etc. We will here be interested in discussing whether the basic patterns found earlier will hold within these areas. We have selected workman' compensation and criminal procedure cases because they constitute two of the most important types of cases coming before the Michigan Supreme Court. Cases of these two areas constituted nearly half (92 cases) of the nonunanimous cases decided by the Michigan Supreme Court in the 1968-73 period. Additionally, especially in the cases concerning criminal defendants, they offer a clue to the political philosophy of the justices. Justices tending to side with or against criminal defendants in certain criminal procedure cases has been often used within the field as a means of evaluating a justice's position along a liberal-conservative continuum. This information concerning judges' attitudes, while not a main focus of this study, can, as a by-pro-

duct of the analysis, shed further light on the interaction patterns and also provide some justification for the positioning of blocs in left or right positions in the bloc analysis.

Table 8 shows the justices' values on the Shapley-Shubik Index, the percent of times in majority, and the percent of votes in favor of both unemployment compensation or criminal defender cases in the four courts under analysis. It is clear from the table that in the 1968 Court, the general power and influence structure discovered previously for all cases, is still evident and holds within the two substantive areas. The four right power bloc justices, Black, Brennan, Dethmers, and Kelly, have the highest Shapley-Shubik Indices and the highest percent in the majority. The two most powerful justices on the Court, identified earlier, Dethmers and Kelly, continue to evidence the greatest power and influence within the two areas, with both being in the majority 100% of the time in each area and having the highest Shapley-Shubik Indices, (.193 and .213 for Kelly; .157 and .211 for Dethmers), far above the theoretical average .125. Souris, Adams, and Kavanagh, the three justices identified earlier as the weakest and least influential, are still in that same relative position, with the lowest values on the Court on each measure. The table also indicates vast differences in percent of times favoring

Table 8

Analysis of Selected Areas;
Workman's Compensation and Criminal Cases
Michigan Supreme Court
1968

	Criminal Cases			Workman's Compensation Cases		
	% of time in favor	% of time in majority	Shapley- Shubik Index	% of time in favor	% of time in majority	Shapley- Shubik Index
Dethmers	17	100	.157	17	100	.211
Brennen	0	86	.193	17	100	.211
Kelly	0	100	.193	20	100	.213
Black	0	100	.193	17	67	.136
T.M. Kavanagh	86	29	.076	83	33	.067
Adams	50	57	.119	67	50	.095
O'Hara	0	86	.157	33	50	.103
Souris	100	0	.100	100	0	.000
Entire Court -- 14% in Favor			Entire Court -- 17% in Favor			

Table 8 (cont.)

1969-70 Court

	% of time in favor	% of time in majority	Shapley- Public Index	% of time in favor	% of time in majority	Shapley- Public Index
Brennen	29	82	.177	40	60	.150
Dethmers	24	76	.166	20	40	.083
Kelly	31	81	.181	20	40	.083
Black	6	59	.125	40	60	.133
T.M. Kavanagh	94	59	.132	100	80	.183
Adams	59	76	.169	100	80	.183
T.G. Kavanagh	100	36	.077	100	100	.229
Entire Court -- 47% in Favor				Entire Court -- 80% in Favor		

Table 8 (cont.)

1971-72 Court

Criminal Cases				Workman's Compensation Cases		
	% of Time in Favor	% of Time in Majority	Shapley- Shubik Index	% of Time in Favor	% of Time in Majority	Shapley- Shubik Index
T.M. Kavanagh	92	90	.183	77	67	.122
Black	9	26	.051	100	100	.233
Adams	69	82	.167	50	33	.067
Brennen	17	33	.069	33	33	.056
T.G. Kavanagh	97	79	.161	67	67	.122
Swainson	90	90	.183	100	100	.233
Williams	78	95	.198	77	67	.167
Entire Court -- 82% in Favor				Entire Court -- 100% in Favor		

Table 8 (cont.)

1973 Court

Criminal Cases				Workman's Compensation Cases		
	% of Time in Favor	% of Time in Majority	Chapley- Chubik Index	% of Time in Favor	% of Time in Majority	Chapley- Chubik Index
T.M. Kavanagh	83	75	.172	100	67	.139
Coleman	11	11	.028	17	33	.111
Levin	67	100	.219	100	100	.208
T.G. Kavanagh	83	100	.256	100	67	.139
Swainson	79	75	.172	50	67	.167
Williams	83	75	.172	100	67	.139
Brennen	17	33	.097	50	100	.250
Entire Court -- 83% in Favor				Entire Court -- 67% in Favor		

either the workman's claims or the criminal defendants in the two types of cases. Souris, for example, voted in favor of the criminal defendant 100% of the time while Brennan, Kelly, Black, and O'Hara never voted in his favor. Using this measure as a rough indicator of position on a conservative-liberal continuum, ie., right or left leaning, it is clear from the table that the four power bloc justices and O'Hara are clearly on the right, while Kavanagh and Souris are clearly left. Adams would hold a position somewhat in the center, or middle of the road. The Court as a whole, being dominated by the right, voted in favor of criminal defendants only 14% of the time and in favor of the workman's claims in workman's compensation cases 17% of the time.

In the 1969-70 Court, the table indicates that the general overall power and influence patterns holds for criminal cases. Adams and T.M. Kavanagh have somewhat higher values on the two measures than might be expected, probably due to their growing influence and power on the Court, the support of T.G. Kavanagh, and the absence of O'Hara's support for the power bloc on a now seven-man Court. This is reflected in the greater support from the Court as a whole, for criminal defendants (47%). In the workman's compensation cases, suprisingly, the three most powerful justices indicated by the table are T.G. Kavanagh, Adams, and T.M. Kavanagh, the three weakest

justices in the Court overall for all cases. This is probably due to the fact that they were an extremely cohesive unit in these cases, all three voting 100% of the time in favor of the workman's claim. Also, the new dynamics of the change to a seven-man Court would necessitate only one vote from the other power bloc justices, who were not a cohesive unit in these cases, in order to make a majority. Thus, the Court as a whole voted in favor of workman's claims in these cases 80% of the time. These results are also questionable due to the extremely small amount of nonunanimous workman's compensation cases in this term, only five cases.

In the 1971-72 Court, it is clear from the table that the general power and influence patterns described previously for all cases holds within the criminal defendant cases area. The five left power bloc justices had the highest Shapley-Shubik Indices and were in the majority the greatest percent of the time. Black and Brennan, identified as the two weakest Court members, have the same position for these cases, with Shapley-Shubik Indices of .051 and .069, respectively. The shift to the left previously described is evident from the table. The new five-member left power bloc led the Court as a whole to vote in favor of the criminal defendant in 82% of all cases, and 100% of the time for the workman in workman's compensation cases. Individually, T.G. Kavanagh

appears to be the most left justice, with 97% in favor of criminal defendants. The extreme right position of Black and Brennan is evident from their low percentages in favor of criminal defendants, 9% and 17%, respectively. Adams can be seen from these figures as the most central justice in terms of left and right positioning, with 69% in favor of criminal defendants.

The patterns of power and influence within criminal defendant cases in the 1973 Court again reflected the general overall pattern for all cases. The four left power bloc justices, identified previously, T.M. Kavanagh, Swainson, Williams, and T.G. Kavanagh, have the highest Shapley-Shubik Indices and percentages in the majority within the criminal case area. Coleman and Levin, identified as the two weakest justices, continue to hold that position within the area. The Court as a whole voted in favor of criminal defendants 83% of the time, due to the strong, five-member left power bloc which controlled the Court. The table indicates that Coleman is in an even farther right position than Brennan, supporting criminal defendants only 11% of the time compared to Brennan's low 17%. Levin appears to be the most central justice from these figures with a support for criminal defendants of 67%. The table also reinforces the previous finding that T.G. Kavanagh has emerged as the Court's most powerful justice. In criminal cases he has the highest Shapley-

Shubik Index, an extremely high .265. He was also in the majority 100% of the time. He also is in one of the farthest left positions according to these figures. The number of workman's compensation cases were too few to make any reliable statements. There were only three non-unanimous cases in the 1973 term.

CHAPTER V SUMMARY AND CONCLUSIONS

This study has examined patterns of power and influence on the Michigan Supreme Court between 1968 and 1973 from the small group perspective. It has briefly reviewed some of the findings and ideas of small group theory, with respect to power and influence, and a number of studies of judicial behavior. This material has provided a fund of ideas from which to draw, and the necessary background for the present research. We have discerned the problems and difficulties of penetrating the Court's "purple curtain", ie., of discerning aspects of the interaction process which is closed to observation. It was the position of this study that patterns of power and influence can be discerned, however, from voting and opinion behavior. Using this voting and opinion behavior as the basic data, we have attempted to discern the overall power and influence structure, and power and influence patterns and relationships. This study has utilized bloc analysis to determine broad patterns of overall grouping, and a number of measures, primarily the Shapley-Shubik Power Index and Bales Solidarity Index, to determine the power and influence positions of individual justices. It has also focused on the changes in power and influence of the justices over

time, as well as the power and influence of justices in relation to two substantive areas, unemployment compensation and criminal procedure cases.

With regard to the overall structure, the bloc analysis indicated that there existed a major dominating bloc controlling power on each distinct "court" analyzed. In 1968 through 1970, the bloc was right oriented, while in 1971-1973, it was a left oriented bloc. In none of the courts investigated was there a distinct cohesive dissenting bloc, generally only a dissenting pair. Members of these blocs and the extent of their interagreement was indicated.

The various measures of individual power and influence revealed that there was clear differences between the power and influence of court members.

The power and influence rankings of the justices resulting from the application of these measures was consistent with the power relationships and groupings indicated by the bloc analysis. The power or influence positions of the justices was generally consistent across the various measures used. The position of each justice on each "court" with regard to amount of power and influence was able to be determined. These positions of power and influence were generally found to hold constant within specific substantive areas, ie., criminal procedure and unemployment compensation cases. Thus,

the study found no unique patterns with regard to specific areas.

The analysis of the changes in the power and influence of the justices revealed no consistent patterns. Some of the justices showed a steady increase in power over time, while others decreased. In other cases, the justices' power fluctuated over time. There was no pattern revealed in this analysis of the power of justices near the end of their career on the court. An examination of the behavior of freshman justices indicated that the six justices examined joined the majority an unusually high percent of the time, far above the court average. Thus, in this case, some support was indicated for the idea that there is a tendency for freshman justices to join the majority. A review of the power and influence of the three Chief Justices revealed that they were among the most powerful court members and a member of the power bloc and were in the majority a great amount of the time. They also received a high amount of support for their opinions.

This research also revealed that there was a great amount of stability and consistency on the Michigan Supreme Court between 1968 and 1973. Changes in the court structure were largely due to changes in personnel rather than to changes of individual members. The power and influence positions of the new members of the court appears

to be a product of the relationship of his beliefs, opinions, attitudes, characteristics, etc., with those of the other members of the court. These relationships should determine whether a new justice joins the majority or takes a dissenting role. Later interaction could alter this pattern and a justice's personal persuasiveness and influence might have an impact over time on the court patterns.

This study, with its basic approach and methods, does provide a good deal of information about power and influence on the Michigan Supreme Court from 1968 to 1973. This, however, is information about a specific court during a specific period. It may also be suggestive of questions and other lines of approach for further research, and might also imply the existence of some basic behavioral principles or tendencies applicable to other courts. However, it is impossible to confidently generalize from the specific findings to such principles or tendencies. This is due to a number of factors, among which are the limited number of terms and cases investigated, and perhaps the unique nature of the Michigan Supreme Court. More importantly, it is partly due to the relational nature of the phenomenon investigated, ie., the existence, type, and amount of power and influence is due to characteristics of the relationship between two entities, either two individuals, two groups,

or an individual and a group. The needs and wants of each, and the ability to provide satisfaction for them, is the key consideration. Thus, one individual might possess a great deal of power and influence in one group and not in another, or over one individual and not over another. This aspect was evident in the change in power and influence of individual justices on the Michigan Supreme Court. The changes occurred primarily when the group membership of the court changed. Justice Brennan, for example, possessed a great deal of power and influence on the right-dominated 1968-1970 Court, but little power and influence on the left-dominated 1971-1972 Court, which had a different membership. The change in Brennan's power and influence was not due to a change in Brennan himself, but to a change in the relationship, and the interaction, between him and the Court. The behavior of court members in relation to the power and influence dimension appears to be primarily a result of the unique interaction of the members of the court, rather than of individual characteristics or attributes of power or influence.

Studies of the judicial behavior of specific courts using the small group perspective such as this one, and ones even more extensive, are perhaps less valuable in generating general behavioral principles than basic small group research using experimental groups. It would pro-

bably not be so if it were possible to observe and study the interaction process of courts, but because the interaction is not observable, it is difficult to identify from the basic data of voting and opinions, behavioral tendencies and processes which might be true of courts and judges in general. The greatest value of such studies might be in determining whether or not the behavioral tendencies and processes suggested by small group theory are evident in the resulting behavior of judges and courts, as discerned through voting and opinion behavior, as well as from any information that is available regarding the interaction of judges on a court. With the accumulation of a large body of such research on the different behavioral aspects of a great many different courts, it could be determined whether courts operate and function as small groups or whether they are a unique type of group. If indeed courts function as small groups, as we would expect, we could then be better able to make inferences about the interaction which is hidden, and relate these processes to the data of votes and opinions and provide explanations of such data. We would also be more confident that the processes and interaction which are hidden from observation are those which are identified in small group theory.

In regard to the present study, I would suggest that, in further research, in order to more adequately

investigate the dynamics of the changes in power and influence, a longer period of time be examined. Also, a greater number of cases would better provide a comparison between the behavior patterns within specific areas and the overall behavior patterns. A comparison between patterns of power and influence of different courts would also be valuable. I would suggest, with regard to methodology, that further studies concerning power and influence patterns on a court focus primarily on inter-agreement matrices in relation to the Inter-Individual Solidarity Index and its derived measures. The Shapley-Shubik Index, while measuring a judges tendency to be in the majority, fails to adequately distinguish between justices with real power and influence, and those simply following the majority of the court and voting with it. The ISI gets at the important factor of support for ones opinions that is vital to power and influence, and which the Shapley-Shubik Index does not measure. It better distinguishes between a judge who is truly influential and one who is merely voting with another powerful judge.

In summary, the value of the present study and ones like it, done from a small group perspective, lie primarily in providing specific information and insight regarding specific courts during a specific period. In addition to this limited purpose, a study of this kind

adds to the body of research of judicial behavior. This body of research covering many courts over many different periods can then be related to small group theory. It is in this way that behavioral tendencies and processes with broader application to courts and judges in general can be found and lead to a clearer understanding of court behavior.

BIBLIOGRAPHY

Anderson, Lee F., Legislative Roll Call Analysis. Evanston: Northwestern University Press, 1966.

Bales, Robert F., Interaction Process Analysis: A Method for the Study of Small Groups. Reading, Mass.: Addison, Wesley, 1950.

Becker, Theodore, Political Behavioralism and Modern Jurisprudence. Chicago: Rand McNally & Co., 1964.

Bierstedt, Robert, "An Analysis of Social Power." ASR, Vol. XV, 6, 730-738.

Cartwright, Darwin and Zander, Alvin, Group Dynamics. New York: Harper and Row, Pub., 1968.

Cartwright, Darwin, (ed.), Studies in Social Power. Ann Arbor: University of Michigan, 1959.

Collins, Barry E. and Guetzkow, Harold, A Social Psychology of Group Process for Decision-Making. New York: John Wiley and Sons, Inc., 1964.

Criswell, Joan; Solomon, Herbert; Suppes, Patrick, (ed.), Mathematical Methods in Small Group Processes. Stanford, Calif.: Stanford University Press, 1962.

Dahl, Robert A., "The Concept of Power." Behavioral Science, 2 (July, 1957), 201-215.

Danelski, David J., "The Influence of the Chief Justice in the Decisional Process of the Supreme Court." The Federal Judicial System, ed. by Sheldon Goldman and Thomas P. Jahnige. New York: Holt, Rinehart and Winston, Inc., 1968.

Emerson, Richard M., "Power-Dependence Relations." ASR, Vol. 27 (February, 1962), 31-41.

French, J.R.P., Jr., "A Formal Theory of Social Power." Psychological Review, 63 (May, 1956), 181-194.

Goldman, Sheldon and Jahnige, Thomas, (ed.), The Federal Judicial System. New York: Holt, Rinehart and Winston, Inc., 1968.

Goldman, Sheldon, "Voting Behavior on the U.S. Court of Appeals." APSR, LX (1966), 374-383.

Golembieski, Robert T., The Small Group. Chicago: The University of Chicago Press, 1962.

Guetzkow, Harold, (ed.), Groups, Leadership, and Men. New York: Russel & Russel, 1963.

Hare, Paul A., Handbook of Small Group Research. Glencoe: The Free Press, 1962.

Hurwitz, Jacob; Zander, Alvin; Hymnovitch, Bernard, "Some Effects of Power on the Relations Among Group Members." Group Dynamics, ed. by Darwin Cartwright and Alvin Zander. New York: Harper and Row, Pub., 1960.

Kort, Fred, "Simultaneous Equations and Boolean Algebra in the Analysis of Judicial Decisions." Jurimetrics, 28, No. 1 (Winter, 1963), 143-163.

Krislov, Samuel, "Power and Coalition in a Nine-Man Body." American Behavioral Scientist, 6,8 (April, 1963), 24-26.

Lasswell, Harold and Kaplan, Abraham, Power and Society. New Haven: Yale University Press, 1950.

Lippitt, R.; Polansky, N.; Redd, F.; Rosen, S., "The Dynamics of Power." Human Relations, 5 (1952), 37-64.

March, James, "An Introduction to the Theory and Measurement of Influence." APSR, XLIX (June, 1955), 431-451.

_____, "Influence Measurement in Experimental and Semi-Experimental Groups." Sociometry, Vol. 19 (1956), 251-261.

_____, "Measurement Concepts in the Theory of Influence." Journal of Politics, Vol. 19 (May, 1957), 202-226.

McGrath, Joseph and Altman, Irwin, Small Group Research. New York: Holt, Rinehart and Winston, Inc., 1966.

Michigan Department of Administration, Michigan Manual. 1967-1968.

Michigan Department of Administration, Michigan Manual. 1973-1974.

Michigan Reports, Vol. 380-390. St. Paul, Minn.: West Publishing Co., 1968-1974.

Mills, Theodore M., "Power Relations in Three-Person Groups." American Sociological Review, 18 (1953), 351-357.

Murphy, Walter F., "Marshalling the Court: Leadership, Bargaining, and the Judicial Process." The University of Chicago Law Review, 29 (1962), 640-672.

Murphy, Walter F. and Pritchett, C. Herman, Courts, Judges, and Politics. New York: Random House, 1961.

Nagel, Stuart S., "Testing Empirical Generalizations in Legal Research." Journal of Legal Education, 15, No. 4 (1963), 265-381.

_____, "Testing Relations Between Judicial Characteristics and Judicial Decision-Making." Western Political Quarterly, 15 (1962), 425-437.

Pritchett, C. Herman, "Divisions of Opinion Among Justices of the U.S. Supreme Court, 1939-1953." APSR, 35 (1941), 890-898.

_____, The Roosevelt Court: A Study in Judicial Politics and Values, 1937-1947. New York: MacMillan, 1948.

Rosenfeld, Lawrence B., Human Interaction in the Small Group Setting. Columbus: Charles E. Merrill Pub. Co., 1973.

Schmidhauser, John R., "The Justices of the Supreme Court: A Collective Portrait." Midwest Journal of Political Science, 3 (1959), 2-49.

Schubert, Glendon, (ed.), Judicial Behavior. Chicago: Rand McNally & Co., 1964.

_____, Judicial Decision-Making. Glencoe: The Free Press, 1963.

Schubert, Glendon, Judicial Policy Making. Glencoe: Scott Foresman & Co., 1965.

_____, The Judicial Mind: The Attitudes and Ideologies of Supreme Court Justices, 1946-1963. Evanston, Ill.: Northwestern Illinois Press, 1965.

_____, "The 'Packing' of the Michigan Supreme Court." Judicial Behavior, ed. by Glendon Schubert. Glencoe: The Free Press, 1959, 129-141.

"The Power of Organized Minorities in a Small Group." Administrative Science Quarterly, 9 (September, 1964), 133-153.

"Prediction From a Psychometric Model." Judicial Behavior, ed. by Glendon Schubert. Chicago: Rand, McNally & Co., 1964.

Quantitative Analysis of Judicial Behavior. Glencoe: The Free Press, 1959.

Shapley, L.S. and Shubik, Martin, "A Method for Evaluating the Distribution of Power in a Committee System." The American Political Science Review, 48 (September, 1954), 787-792.

Shubik, Martin, (ed.), Game Theory and Related Approaches to Social Behavior. New York: John Wiley & Sons, 1964.

Simon, Herbert, "Notes on the Observation and Measurement of Power." Journal of Politics, Vol. 15 (1953), 500-516.

Snyder, Eloise C., "The Supreme Court as a Small Group." Social Forces, Vol. 36 (March, 1958), 232-238.

Spaeth, Harold, J., "An Analysis of Judicial Attitudes in the Labor Relations Decisions of the Warren Court." Journal of Politics, 25 (1963), 290-311.

An Introduction to Supreme Court Decision Making. San Francisco: Chandler Publishing Co., 1965.

Sprague, John D., Voting Patterns of the U.S. Supreme Court. Indianapolis: The Bobbs Merrill Co., Inc., 1968.

Starm, Albert L. and Whitaker, Margaret, Implementing a New Constitution: The Michigan Experience. Ann Arbor, Mi.: Institute of Public Administration, University of Michigan, 1968.

Taylor, Dalmar, Small Groups. Chicago: Markham Pub. Co., 1971.

Ulmer, Sidney, "The Analysis of Behavior Patterns in the U.S. Supreme Court." Journal of Politics, 22 (1960), 629-653.

"Homeostasis in the Supreme Court." Judicial Behavior, ed. by Glendon Schubert. Chicago: Rand McNally & Co., 1964.

_____. "Leadership in the Michigan Supreme Court." Judicial Decision-Making, ed. by Glendon Schubert, Glencoe: The Free Press, 1963.

_____. "Toward a Theory of Subgroup Formation in the U.S. Supreme Court." Journal of Politics, 27 (1965), 132-153.

Verba, Sidney, Small Groups and Political Behavior. Princeton: Princeton University Press, 1964.

Wrong, Dennis, "Some Problems in Defining Social Power." AJS, Vol. 73, No. 6 (May, 1968), 673-681.

Ziller, Robert C., "The Newcomer in Open and Closed Groups." Journal of Applied Psychology, XLV (1961), 55-58.