

## APPENDIX A: Ideology Scores for Judicial Appointees

For a very long time, a judge's own partisan affiliation<sup>1</sup> has been employed as a useful surrogate of ideology (Segal & Spaeth 1990). The approach treats every democratic judge as essentially identical to every other democratic judge. Scholars have sometimes chosen to ignore the ideology of the judge, and infer his or her ideology from that of the appointing president. Tate and Handberg (1991) proposed an ordinal measure of the ideology of the appointing president: -1 for ideologically conservative and presidents, 0 for nonideological presidents, and 1 for ideologically liberal presidents. This measure may be attributed to every federal judge, but the data range is not much better - only 3 possible values of ideology. Segal and Howard (1999) improved on the Tate/Handberg ranking of presidential ideology by surveying presidential scholars and establishing an interval scale for each president since FDR. Segal/Howard economic liberalism scores range from 17.6 (Reagan, the most conservative president) to 82.5 (FDR, the most liberal president).<sup>2</sup> They recommend attributing these scores to each judge. Using this approach, the data range for judge ideology is at least theoretically better, but no rankings are available for presidents (and their appointees) prior to FDR, and all judges appointed by the same president receive the same score.

Songer has constructed a more differentiated measure of appellate judicial ideology based on a logit analysis of judicial voting in economic cases, with a North/South dummy and the Tate/Handberg measure of appointing president's ideology as predictors (Humphries and Songer 1999). The scores range from 0 (conservative) to 1 (liberal), and can be computed for every appeals judge to have ever served on the modern circuit bench.<sup>3</sup> In practice, judges are assigned only one of 6 possible scores, and no scores have been developed by this technique for district judges.

Giles et al.(2001) go two steps beyond any previous scholar in attributing Poole's common-space score (Poole 1998)<sup>4</sup> for a judge's appointing president as an indicator of the judge's own ideology, and by substituting the common space score of the judge's home state senator, when a senatorial courtesy is extended. This approach provides significantly greater variation in judicial scores, as well as establishing scores in the same metric as an existing measure of legislator and presidential ideology. Poole's common space scores are comparable across time and chambers, and tend to range from -.5 (liberal) to +.5 (conservative). However, because Poole's point estimates for presidential ideology are extreme, relative to those for almost all Senators, and because senatorial courtesy does not apply in a significant portion of appointment circumstances, many federal judges are depicted by the Giles data as both ideologically extreme and perfect reflections of the president's ideal policy. The implicit assumptions in the Giles et al. measurement technique is that presidents without a same-party senator representing a district or circuit are completely unconstrained in their appointment choices, and that presidents with a same-party senator representing a district or circuit are completely irrelevant in the appointment selection. A more detailed critique of the Giles et al scores, some of which apply to the scores advocated in this paper, is available in Sisk & Heise, 2005 (pages 47-9).

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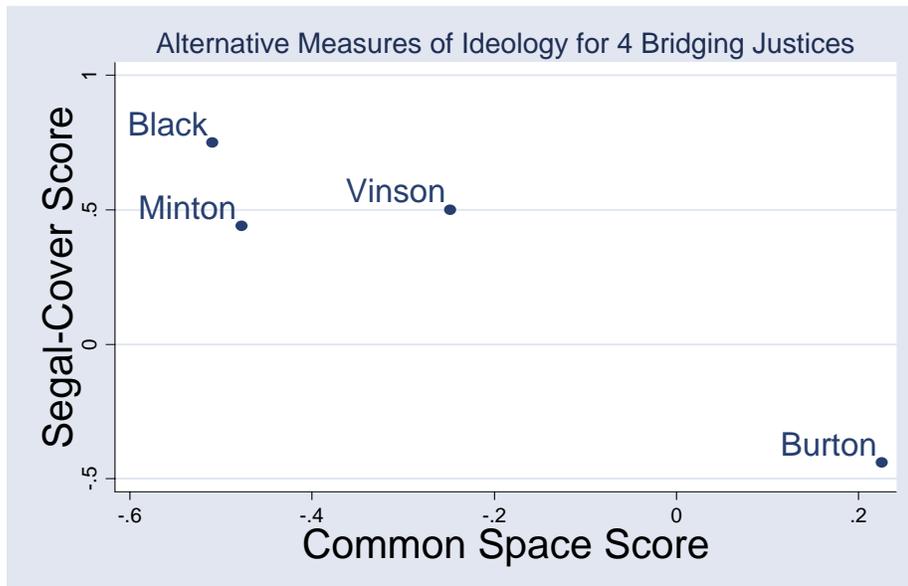
<sup>1</sup> The party of each judge to have served on one of the modern circuits is available in the Appellate Biographical Database (Zuk, Barrow, & Gryski 1997).

<sup>2</sup> Segal and Howard also constructed a social liberalism score (see Segal & Howard 1999).

<sup>3</sup> Songer constructed a civil liberties ideology score, as well (see Songer et al 1994)

<sup>4</sup> Poole's common-space W-nominate scores range from -1 (liberal) to +1 (conservative), and are comparable across institutions and time. That is, it is legitimate to claim that a Representative serving in 1942 with a score of .20 is more conservative than a Senator serving in 1969 with a score of .19, and that a President serving in 1972 with a score of .43 is substantially more conservative than either the Representative and Senator. The usefulness of being able to make the same comparisons with federal judges is obvious.

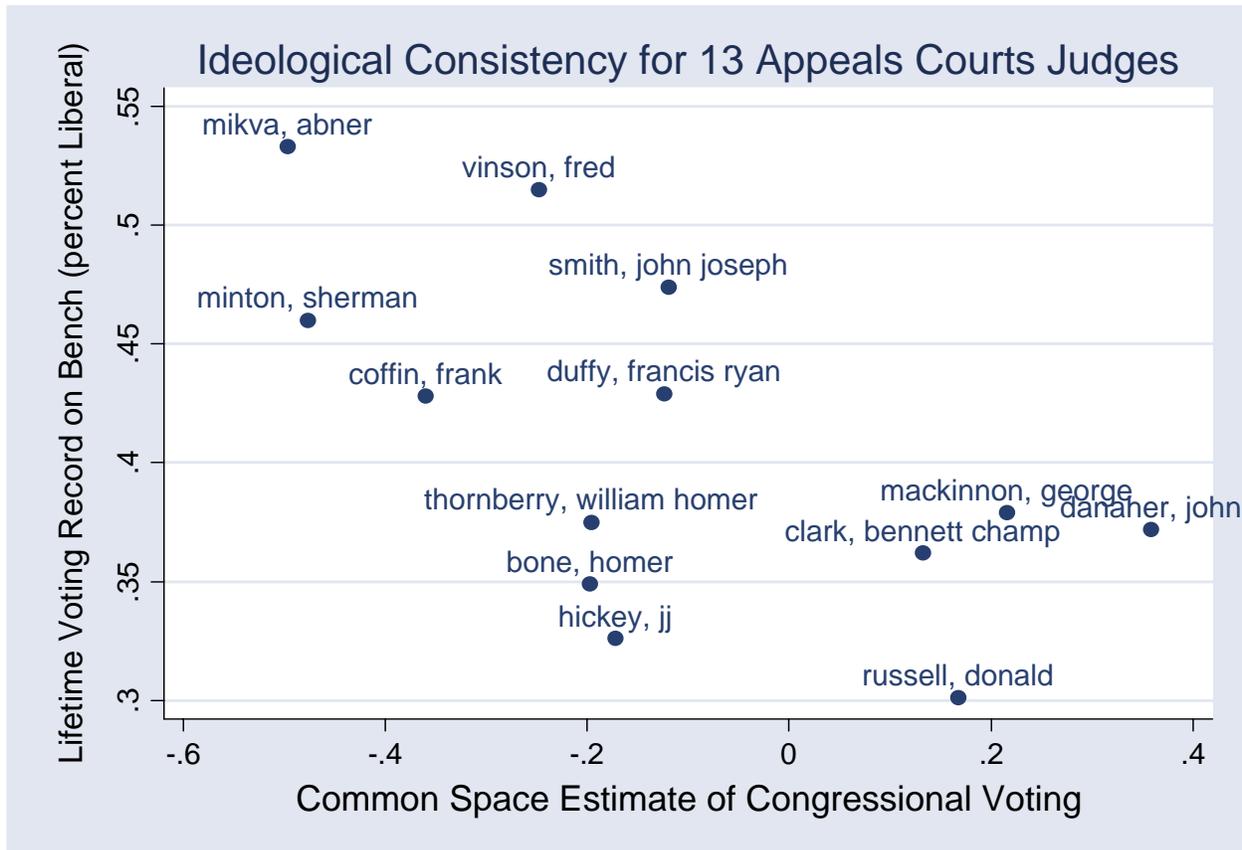
To provide more realistic estimates of judicial ideology that have the potential to reflect actual appointment practices, it seems useful to look to a particular collection of federal judges - **those who have previously served in Congress**. For 63 district and appellate judges and justices who have served in Congress since 1937,<sup>5</sup> common space scores are available as reflections of their floor voting behavior. Figures 1 and 2 illustrate that employment of legislative floor voting as indicators of judicial preference has facial validity. While the number of Supreme Court justices with prior congressional experience is limited (4), the correlation between their floor voting and Segal-Cover's widely accepted ideology indicator is excellent (pearson=-.946\*\*\*).



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<sup>5</sup> 1937 is the lowest limit for congressional service in this data collection, because common space scores are unavailable prior to that year.

Among the thirteen circuit court judges for whom a legislative career exists, the correlation between their floor voting and bench behavior (based on Songer's Appeals Courts Database) is also excellent (pearson=-.621\*\*\*).



Among the larger set of judges and justices with prior congressional experience, the primary determinants of a judge's ideology are senatorial courtesy and strategic Separation of Powers (SOP) determinants of appointee ideology, as indicated in Table 1. For a more detailed justification for the specification, see Nixon (2004).

Independent Variables	Coefficients
Constant	.357
SOP Constraint (ideology of the pivotal veto-override legislator at the time of appointment)	.964***
Presidential Approval*	-.001
Unified Government*	.065
Wartime Appointment	-.159

Years From Appointment Until Next Presidential Inauguration*	.019
Senatorial Courtesy (difference between pivotal veto override legislator and aver ideology of courtesy-relevant Senators)	.398***
lambda (sample selection adjustment)	-.127
n	63
R <sup>2</sup>	.541
Breusch-Pagan heterogeneity test	1.23

\* in positive values for Republican presidents, negative values for Democratic presidents

To rule out some potentially important technical problems, the analysis of Table 1 incorporates two methodological checks:

(a) the collection of judges with prior congressional service may be unrepresentative of all federal judges in ways that systematically bias the results. Thus, Table 1 reports a 2-stage Heckman selection estimation that incorporates the 2065 other federal judges appointed during this time interval. The insignificance of the sample selection adjustment shows that no sample selection effects are present.

(b) the conflation of justices, appeals judges, and district judges in the same estimation allows for the possibility of heteroscedastic residuals. A Breusch-Pagan test is refutes that possibility.

Two important findings in Table 1 are worth noting. First, **courtesy senators have a significant, but only partial impact in determining the ideology of judges** (the coefficient is .398, not 1.0). Second, aside from the impact of senatorial courtesy (or when it is irrelevant), **preferences of presidents and other legislative players have a significant and also only partial impact in determining the ideology of judges**. The coefficient for SOP constraint in Table 1 suggests that, after controlling for the effect of senatorial courtesy, the ideology of appointed federal judges is very closely predicted by the ideology of the pivotal veto override member of Congress, not exclusively by the ideology of the president. Nixon (2004) shows that even executive branch appointments are constrained by the ideological balance in Congress, so it seems even more likely that presidential appointments will be constrained by Congress, even if senatorial courtesy is not specifically applicable. These two findings suggest that the Giles et al measurements of judicial ideology are flawed. They lie too close to the senators for whom a courtesy was extended. They lie too close to the president when a senatorial courtesy was not relevant.

A predictive approach laid out in Table 2 provides superior fit among the data ( $R^2=.75$  using a predictive model, versus  $R^2=.541$  using the explanatory model of Table 1), and is based on variables available for any federal judge or justice. Among the same 63 judges, common space scores are predicted very well by the linear equation implied by Table 2. Once some additional variables are included, the two primary determinants of judicial ideology identified in Table 1 (SOP determinants and senatorial courtesy) make no significant contribution to the model ( $F_{2,54}=2.8$ , n.s.). This occurs because some of the independent variables likely serve as surrogates for SOP determinants (partisanship of judge and president), while the remaining serve as surrogates for senatorial courtesy (southern democrat and northeastern republican dummies, and state ideology<sup>6</sup>).

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<sup>6</sup> State ideology is based on unweighted scores computed by Wright, Erikson, & McIver 1985.

<b>Table 2: OLS Model of Judicial Ideology</b> Dependent Variable: Poole's common space scores Sample: 63 federal judges who have served in one of the 75 <sup>th</sup> - 105 <sup>th</sup> Congresses	
Independent Variables	Coefficients
Constant	-.0306
Judge's own party (-1 democrat, 0 independent, +1 republican)	.2371
Appointing President's Party (-1 democrat, +1 republican)	.0448
Unified Government Appointment (0-n, 1-y)*	.0249
Wartime Appointment	.0694
Southern Democrat (0 - no, 1 - yes)	.1285
Northeastern Republican (0 - no, 1 - yes)	-.0151
Wright/Erikson/McIver State Ideology	.3999
n	63
R <sup>2</sup>	.750

\* in positive values for Republican presidents, negative values for Democratic presidents (see Nixon 2004)

One may extrapolate from the predictive model in Table 2 to the full universe of judicial appointees. Such scores provide substantial differentiation between judges. More importantly, the estimated judicial ideology scores are scaled in the same issue space and on the same metric as common space nominate scores, and do not suffer the drawbacks associated with Giles' common space scoring for federal judges. Specifically these scores implicitly incorporate constraints on the president's appointment power, such that estimated ideology for federal judges deviates from the president's ideal, as one would expect in most circumstances.

The scores implied by the equation of Table 2 are a significant improvement over the Humphries-Songer measure of economic liberalism. For the 308 federal appeals courts judges available for a comparison, the lifetime liberalism<sup>7</sup> of a federal judge is predicted far better by my scores (pearson=-.251, p<.01) than by Songer's<sup>8</sup> (pearson correlation=-.098, p<.01). Because my scores are very highly correlated with the Giles et al. common space scores (pearson=.768), Giles' scores do not predict lifetime liberalism of federal judges significantly better or worse than my own scores (pearson correlation=-.278, p<.01)

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<sup>7</sup> Constructed from Songer's Appeals Courts Database as the percentage of liberal votes divided by the total number of liberal and conservative votes cast (excludes the small number of "moderate" votes).

<sup>8</sup> Humphries-Songer scores and Giles et al. scores for the 395 judges appointed to the US Courts of Appeals between 1954 and 2000 were generously provided by Don Songer and Mike Giles.

To see where the Giles et al. technique falls short, consider the federal judges appointed in the absence of senatorial courtesy. By custom, if no senators in a region covered by a judgeship share the same party as the president, the president does not need “clearance” from the opposing party senators. Giles et al. put this view of appointment into practice in the following way: the appointed judge’s ideology is assumed identical to the president’s. But because the point estimates for presidential common space scores are relatively extreme (see Clinton et al. 2004), this assumption has the effect of defining this collection of judges as politically out of the mainstream and very distinctive from the rest of the judges on the bench. The assumption is a significant one, because senatorial courtesy was absent in 99 out of 395 appointments to the U.S. Circuit Courts of Appeals (about 1 in 4 judges).

Table 3 shows that Giles et al. ideology scores are significantly more extreme when senatorial courtesy did not constrain the appointment, but that the voting behavior of judges does not support such a scenario. Judges appointed by Republican presidents exhibit only a slightly more conservative voting record when their appointment was unconstrained by senatorial courtesy, and the difference is not statistically significant by a 1-tailed test. Judges appointed by Democratic presidents exhibit only a slightly more liberal voting record when their appointment was unconstrained by senatorial courtesy, and the difference is not statistically significant. By comparison, Table 3 also compares my own ideology scores between the two appointment scenarios, and shows that the pattern much more closely matches observed voting behavior of judges. My common space scores exhibit slight extremity in the president’s direction, when the president’s nomination is unconstrained by senatorial courtesy, and the difference is only marginally significant.

<b>Table 3: t-tests for Extremity of Appointees Unconstrained by Senatorial Courtesy</b>				
	Senatorial Courtesy Constrained the Appointment	No Senatorial Courtesy	Difference of Means t-test	Probability of No Difference between Constrained and Unconstrained Appointees
Appointments by Republican Presidents				
ave Giles score (n=217)	.216	.414	6.86	<b>.000</b>
ave lifetime liberalism (n=189)	.394	.355	-1.62	.053
ave Nixon score (n=217)	.285	.289	0.299	.383
Appointments by Democratic Presidents				
ave Giles score (n=178)	-.273	-.465	-6.31	<b>.000</b>
ave lifetime liberalism (n=119)	.439	.488	1.63	.053
ave Nixon score (n=178)	-.142	-.180	-1.36	.088

Further work needs to be done in scrutinizing and perhaps even refining the scores advocated in this paper, but they have been shown to be superior to all the alternatives in key respects.

### Sources

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