Supreme Court Data Codebook

Policy Agendas Project 2014

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Overview of the Dataset

The U.S. Supreme Court dataset tracks the policy agenda of the Court over time. It includes only cases granted on certiorari or on appeal and argued before the court, regardless of whether or not a specific judge is mentioned as having an opinion.

To establish the dataset, we initially referenced "The Original U.S. Supreme Court Judicial Database" (nickname: ALL COURT) created by Harold J. Spaeth, which is currently the most comprehensive source of electronic U.S. Supreme Court information available. Spaeth's dataset is intended primarily for legal (and policy scholars) researching the *decision-making* processes of the U.S. Supreme Court (i.e. determining what, when, and how cases are decided). The Spaeth dataset includes all cases (granted or denied) where any justice is mentioned as having an opinion or dissent, regardless of whether or not the details of that opinion or dissent are published in *U.S. Reports*. Although most of the case citations from Spaeth were retrieved electronically via LexisNexis, we were unable to retrieve those cases that were granted on certiorari or on appeal, but were ruled with a per curiam decision (i.e. an opinion from the Court having no specific justice mentioned as author). Since our primary focus is the policy agenda of the Court, we required that *all* cases were granted certiorari or on appeal. This required reference to the hard copies of *U.S. Reports* to find remaining cases. Currently, the dataset does *not* include all cases which were ruled with a per curium decision, only those which were included in the Spaeth dataset. Users are cautioned to consider this in any analyses.

Note that we have excluded motions and miscellaneous orders from our dataset because these case types are inherently technical and/or legal in nature, and are not relevant to policy analysis. Their inclusion would simply overpopulate the Law, Crime, and Family (1200) policy code category. However, if they are required by users, motion and miscellaneous orders denied cases are organized by date in the "Orders" section in the back of each volume of *U.S. Reports* and may be integrated into analysis if desired. In addition, we provide an outline and glossary of terms in the appendices of this codebook.

Content Coding

We have coded each entry by policy content, along with other variables of interest. We employed the standard Policy Agendas Project topic scheme in our policy content coding, and each entry was assigned one and only one content code. This allows researchers to trace activity on a particular topic across the period. The full description of our content categories may be found in the major topics codebook can be found on <u>www.comparativeagendas.net/US</u>.

Note that cases are coded according to the substantive policy content of each case's summary as cited in *U.S. Reports*. However, we also are careful to pay special attention to those policy areas unique to the Court (see Appendix A: U.S. Supreme Court Coding Guidelines for more information on this topic).

Variable Names and Descriptions

The following is a brief description of each data column in the dataset. Each section of this description explains the coding rules for the data collected. Each section title is followed by the abbreviation of the variable as it appears at the top of the spreadsheet.

ID (''KeyID'')

This column records the unique identifier for each observation. It has no substantive application.

Case Citation ("case_citation")

This is the citation of the case and corresponds to the source and will be deleted at some point.

Case Name ("case_name")

This is the name of the case and corresponds to the description and will be deleted at some point.

Docket Number (''docket_num")

Each case successfully filed with the Court assigned a docket number and that number placed in this column. See below when for how to handle additional docket numbers. The docket numbers consists of the year and consecutive case number (e.g. 97-3 is the third case filed in the 1997 term). In forma pauperis cases contain the year and begin with the number 5001 (e.g. 97-5003 is the third case filed in the 1997 term). Where no docket number is listed, a "0" is placed in the column as a placeholder.

Additional Docket Numbers ("docket_x_N")

When looking up a given case number in *U.S. Reports*, some cases have multiple docket numbers. These (similar) cases have been grouped together and a single Court decision made for all of them. The subsequent docket numbers are place in Column in those columns titled "docket x". The case names for these subsequent cases are not (at this time) included in the dataset. Furthermore, we added rows to match the number of docket numbers for those cases with multiple docket numbers with all information from the original row (case #, description, topic code, dates, terms, case type, status) pasted into the subsequent rows. This allowed us to have a total count of all cases assigned a docket number. (When looking at decision-making processes in which multiple cases (i.e. multiple docket numbers) are grouped together under one ruling, this would not be necessary).

Note: If no docket number is presented (for either the original docket number or for subsequent cases grouped under one ruling), a "0" is used as a place holder.

Summary ("summary")

A comprehensive description or summary of the case was acquired in order to code each case according to the Policy Agendas Project coding scheme and allow for future isolation of as many potential variables as possible (case type [habeas corpus], policy issue, federal agencies mentioned, etc. In most instances, this information was obtained

by searching LexisNexis and taking the "Summary" or the more detailed "Syllabus" of the case if no "Summary" section is present. For the purposes of public policy research, we felt the "Summary" section would suffice. However, if more detailed legal terminology is needed beyond a summary (e.g. detailed reasoning for bringing a given case forward and precedent cases cited), it may be necessary to consult of the "Syllabus" of each case and isolate variables accordingly.

In some instances, little codable information is provided in this basic LexisNexis search, particularly for cases where certiorari was denied or cased decided per curiam. When this occurred, the following options were considered:

• Scroll down to the bottom of the case's main information page and click on the "Go to oral arguments in transcript" link and obtain further information here.

OR

- Look up lower court case (e.g. 198 F.2d 536). If the lower court case is not found on the main information page in LexisNexis, then search for the case in an online citatory, which tracks a case from beginning to end. Users may do this by performing the following steps:
- Click on the Shepards® link on the top right hand corner of the case description page

OR

- From LexisNexis Academic click the "Legal Research" link on the left side of the page.
- Click *Shepards*® for U.S. Supreme Court
- Type in the U.S. Supreme Court citation for the case you want to find, ensuring that the default "*Shepards*® for Research (FULL)" is selected
- From here, you will be provided with all lower court cases

OR

• Search for case by case name or case number in Google, www.law.com, www.findlaw.com, etc.

Note: Summary information for cert-denied cases is usually obtained by looking up the lower court decisions.

Unfortunately, coding solely on the basis of the content of each case summary provided in LexisNexis may not capture the *intent* of the justices for taking on a particular case. For example, a justice may elect to hear a case for the purpose of setting precedent in a given policy area (e.g. commerce), however the actual content of the case may reflect an entirely different policy area (e.g. civil rights). Because the factors involved in determining a justices' intent for granting/denying certiorari, motions, etc. are far too numerous for our dataset to isolate if not explicitly stated in LexisNexis (See Appendix C: U.S. Supreme Court Procedures), we coded simply for the content/issue before the court (i.e. civil rights in this example), regardless of the court's reasons for taking the case. Any further analysis as to "why" a given case is brought before the court (for the purpose of setting precedent or otherwise) is left to the researcher to determine.

Ruling ("ruling")

This column only applies those cases where a formal ruling was present and lists how each judge voted in a given case (decision, concurring, dissenting opinions.) In most instances, this data was found in the second paragraph of the "Summary" or in the more detailed "Opinion" sections for a given case in LexisNexis. For the purposes of public policy research, the ruling paragraph of the "Summary" section is often sufficient. (In most cases this section begins in the second paragraph of the "Summary" with such phrases as "On certiorari..." or "On Appeal..." and includes all subsequent paragraphs to the of the section). However, if more detailed legal terminology is needed (e.g. detailed reasoning of the court and specific precedent cases cited in the ruling), it may be necessary to consult of the "Opinion" of each case.

Additional information on current court rulings (and archives organized by topic, author, etc.) can be found at Legal Information Institute.

Special considerations:

- How this paragraph begins (e.g. "On certiorari...", "On [direct] appeal...", "On certiorari case was vacated and remanded", etc.) can be a helpful indication of how to identify the case type (see below).
- Additional useful information that may/may not be included in the description (e.g. habeas corpus, in forma pauperis, etc. as well as other case content) can sometimes be found in the "ruling."

Case Type ("type")

From the ruling, each case type is categorized according to *U.S. Reports* which correspond to the following abbreviations:

- CERT = certiorari
- APPL = appeal
- MOT = motion (ONLY those where an a justice is mentioned as having an opinion)
- MISC = misc. orders (exclusively for stays, habeas corpus, decrees, etc. and ONLY those where a justice is mention as having an opinion)

See Types of Cases before the Court in Appendix C: U.S. Supreme Court Procedures

Vacated and Dismissed ("vac" and "dis")

Those cases granted certiorari, on appeal, motion, or misc. orders but then later vacated or dismissed are organized in the "Orders" section at the back of *U.S. Reports*. For organizational purposes with this dataset, we treat vacated and dismissed cases as a type of ruling. Therefore, there are separate columns for each within the dataset ("vac" and "dis", respectively). Cases are coded "1" if ANY part of the case is vacated or dismissed (in full or in part) and "0" if they are not under their respective columns.

Granted/Denied ("gd")

Each of the cases types are coded either "0" or "1" for granted or denied, respectively according to whether or not the case passed the "rule of four" and came before the court for a formal decision to be rendered. For example, any case granted certiorari, appeal, motion, or misc. order is coded as "0" and any case denied certiorari, appeal, motion, or misc. order would be coded as

Oral ("oral")

This is the date the Court began hearing the case. In those instances where no date was provided in this category, we used the "decision" date in order to determine the term/year the case was heard.

Decision ("decision")

This is the date the case was decided upon.

Term A ("term_a")

This is the Term in which the case was heard and not necessarily decided upon. Each Court term lasts between October of a given year and June of the following year. Therefore, even if the Court began hearing arguments for the case on May 2, 1966, it still falls under the 1965 term (e.g. October 1965-June 1966 > 1965).

Term B ("term_b")

In order to answer our agenda-setting question and make the Court dataset consistent with the Most Important Problem (MIP) and New York Times (NYT) datasets, we adjusted the court terms to *calendar year* rather than the actual October to June terms. In this way, cases heard from January 1-December 31 of a given year were grouped together (e.g. January 1, 1966-December 31, 1966 > 1966).

Year

The year of the oral argument date, or of the decision date if no oral arguments were heard.

Pap_MajorTopic/Pap_SubTopic

The policy content of each case as identified and coded according to the major and subtopics of the Policy Agendas standard topic scheme, paying special attention to those policy areas unique to the Court (See Appendix A below).

Note that because the dataset examines agenda setting, cases were coded according to the issue brought before the court and not the issue ultimately decided upon. For example, a case brought before the court as discrimination-related case, but later ruled as a commerce case is coded as a discrimination. In this regard, adjustments to the coding scheme will need to be made for the purposes of analyzing decision-making policy trends of the court.

MajorTopic

This column records the Comparative Agendas Project's major topic code that corresponds to the existing Policy Agendas Project topic code. Please visit the Comparative Policy Agenda's website (www.comparativeagendas.net) for more information.

SubTopicCode

This column records the Comparative Agendas Project's subtopic topic code that corresponds to the existing Policy Agendas Project topic code. Please visit the Comparative Policy Agenda's website (<u>www.comparativeagendas.net</u>) for more information.

"1".

Source

The case citation. Most of the case citations (as well as dates of oral arguments and decisions) were taken from Spaeth's "ALL COURT" data set. The number corresponds to the volume and page number of *U.S. Reports* in which the case is listed. For example, 347/0403 à 347 U.S. 403 and can be found in volume 347, page 403 of *U.S. Reports*. See Appendix B for various case citation formats.

Description

The case name (e.g. United States v. Gilman).

Congress

This column denotes the corresponding session of Congress.

Appendix A: Coding Guidelines

Listed below are some basic issues that are unique to U.S. Supreme Court coding and are used in conjunction with the standard Policy Agendas Project Topics Codebook available mentioned above.

BY CODE

1200's: Law, Crime, Family Issues

Note that all cases use legal jargon and therefore do not fall solely into one of the 1200 subtopics. This is to say, code according to the *issue* before the court and not necessarily the facts of the case (i.e. although a given case may be about drug trafficking, the actual issue before the U.S. Supreme court may be double jeopardy).

1204: Court Administration

Examples: All motions as well as misc. orders (e.g. stays, habeas corpeas, in forma pauperis, degrees, etc.) *with no issue content*, budgeting, court jurisdiction, class-action (classification), jury issues, attorney's fees.

1210: Legal Issues

Examples: Miranda rights, double jeopardy, statute of limitations, search and seizure, due process, warnings, counsel, disbarment, sentencing, sexual assault (other than prevention), self-incrimination/involuntary confession/refusal to testify, habeas corpus reform.

1211: Riots and Crime Prevention

Examples: sexual assault (prevention).

207: Freedom of Speech & Religion

Examples: Public protest/picket (at school or elsewhere), American flag abuse.

501: Worker Safety and Protection, Occupational and Safety Health Administration (OSHA)

Examples: Jones Act, worker safety incidents on railways or ships.

504: Employee Relations and Labor Unions vs. 505: Fair Labor Standards

Note: Be sure to determine whether the case is dealing with unions (504) or just *mentioning* unions and actually pertains to a fair labor standards issue (505).

1520: Corporate Mergers, Antitrust Regulation, and Corporate Management Issues Examples: Anti-trust cases (e.g. Sherman Act).

1706: Telephone and Telecommunication Regulation

Examples: Telephone interception.

2009: IRS Administration

Examples: Tax fraud/evasion, Hobbs Act.

2015: Relief of Claims Against the U.S. Government

Examples: (Little) Tucker Act.

2103: Natural Resources, Public Lands, and Forest Management

Examples: Border dispute cases between states and submerged lands (usually in the form of supplemental degrees).

BY ISSUE

"Obscene Material" cases and other censorship issues

- Protecting children: 1207
- Television/Film industry: 1707
- Literature: 207
- Mail: 2003

Electronic Surveillance

- Police wiretapping: 208
- Other search and seizure: 1210

Employee termination

- Employment discrimination: 200
- All others: 599

Employee Oath:

- All Anti-Government/Loyalty Issues (including federal employees): 209
- Non-Federal Employees: 599
- Teachers: 699
- Other Federal Employees: 2004

Reapportionment

- Racial gerrymandering: 201
- Census only: 2013
- Legislative only: 2011

Transportation

- Related to Interstate Commerce Commission (ICC) regulation/Interstate Commerce Act, transportation safety, rates, etc.: 1000's
- Interstate Commerce (e.g. shipping of goods): 1500
- Bankruptcy/Re-organization: 1507
- Related to workers: 500's

Taxes

- Tax policy/reform, sales tax: 107
- Tax Fraud: 1202

- IRS, tax collection, tax return filing, tax deductions, tax refunds: 2009
- Specific tax changes: based upon the *substantive issue focus* (e.g. deductions for mortgages: 1504; tax incentives to promote childcare: 508).

Appendix B: Lower Court Case Citation Formats

Federal

100 F.2d 1 134 F.3d 817 19 F Supp. 2d 104 789 F. Supp. 320 139 L. Ed. 2d 25 118 S Ct. 62 514 U.S. 673 65 U.S.L.W. 3204

State

246 AD 2d 682 19 Cal 4th 142 23 Fla. Law W. D 733 344 Ill. App. 266 344 Mich. 624 230 N.J. Super. 182 23 N.Y.S.2d 2 84 Ohio St. 3d 1457 2000 PA Super 2 150 Tex. 39

Regional

LEXIS® Cites

1999 cal ag lexis 1 1999 cal lexis 64 1998 ny tax lexis 85 1995 us app lexis 33494 1995 us dist lexis 17641 1999 us lexis 15

Patents

patno 5482742 patno d 379556 patno re 35521

Tax Documents (Document Format)

Action on Decision and 1997-004 AFTR2d 75 AFTR2d 2719 Board of Tax Appeals 43 BTA 183 Chief Counsel Advice irs cca 199939001 Claims Court 20 CL CT 308 Court of Claims 156 CT CL 680 Cumulative Bulletin 1985-1 cb 550 Field Service Advice irs fsa 200015024 General Counsel Memoranda gcm 39884 Internal Revenue Bulletin 1990-8 irb 18 IRS Notices notice 2000-22 notice 99-60 IRS Announcements announcement 2000-35 announcement 99-116 Private Letter Ruling plr 199905024 * Revenue Ruling rev rul 2000-1** rev rul 74-56 Revenue Procedure rev proc 2000-9 ** rev proc 86-22 RIA Federal Tax Coordinator riaftc b 3500 Service Center Advice sca 1997009 Tax Court 88 TC 1405 Tax Court by number 104 TC NO 31 Tax Court Memoranda TC MEMO 1995-234 69 TCM 2746 Tax Notes Today 1999 tnt 20-8 Technical Advice Memorandum tam 199934002 * Treasury Decision td 8167 United States Tax Cases 95-1 USTC p50,296

* Use the two-digit year format to retrieve Private Letter Rulings (PLR) and Technical Advice Memoranda (TAM) dated before 1999. For example, enter a 1995 PLR as: plr 9526007
For recently issued Private Letter Rulings, search Tax Analysts Tax Notes Today.
** Use the two-digit year format to retrieve Revenue Rulings and Revenue Procedures dated before 2000.

APPENDIX C: U.S. Supreme Court Procedures

*All words highlighted in **red bold** can be found in the *Glossary of Terms*.

The Court

The **U.S. Supreme Court** is the highest court in the United States, which has the ultimate power to decide constitutional questions and other appeals based on the jurisdiction granted by the Constitution. The court is made up of nine members appointed for life by the President of the United States, with confirmation required by the Senate. One of the nine is the Chief Justice (appointed by the President if there is a vacancy), and the others are Associate Justices.

Jurisdiction

The Court has two types of **jurisdiction**:

Original Jurisdiction: Parties involved can bring their case directly to the Supreme Court. In all controversies between states (e.g. boundary disputes), the Supreme Court has original and exclusive jurisdiction meaning only the Supreme Court has the authority to hear the case). Alternatively, the Supreme Court has original but not exclusive jurisdiction in all cases involving ambassadors or other public ministers and councils; all controversies between the United States and a state; and all actions or proceedings by aliens or a state against the citizens of another state.

Appellate Jurisdiction: The authority to hear cases brought on appeal from lower federal courts and from state courts when the issue concerning federal law or the U.S. Constitution is involved. More widely exercised than original jurisdiction.

Such cases reach U.S. Supreme Court either through the Federal Court or State Court.

FEDERAL COURT

- 1. Case is tried a U.S. district court
- 2. Loser takes his/her case to the appropriate U.S. Court of Appeals
- 3. Loser takes his/her case to the highest state court
- 4. Loser takes his/her case to the U.S. Supreme Court

STATE COURT

- 1. Case brought in state trial court
- 2. Loser takes his/her case to an intermediate state appeals court
- 3. Loser takes his/her case to the highest state court
- 4. Loser takes his/her case to the U.S. Supreme Court

Types of Cases before the Court

After passing through either the Federal or State court systems, a case come before the U.S. Supreme Court in one of four ways:

1. A petition for a writ of certiorari (CERT): Most Common. This allows the loser in a lower court to as the U.S. Supreme Court to review their case. Most cases, however, are denied cert. If denied, the loser may petition for a rehearing under specific grounds.

2. An appeal (APPL): Common. Most cases are decided with no oral arguments heard and no formal opinions given. Rather, the losing party from the **lower court** must file briefs citing legal reasons for over-turning the ruling, and show how those reasons (usually other appeal decisions called "precedents") relate to the facts in the case. These cases are decided in conference and the released decisions are labeled **per curiam** ("by the Court") and not by any particular justice.

3. A request for certification (MOT): Occurs when a lower court feels it needs the insight of the U.S. Supreme Court to decide a given issue. The Court may give the lower court instructions (which must then be followed) or decide that the entire case record (all briefs, motions, etc.) be brought before the Court for argument).

4. A petition for an extraordinary writ (MISC): Rare. Written at the Court's discretion and must show that exceptional circumstances are warranted and that one cannot get adequate relief in any other way or from any other court (e.g. petition for writ of habeas corpus, land decrees, etc.).

The process by which a petition for certiorari is as follows:

- i. Petition is sent to clerk of the Court for examination
- ii. Upon okay of the clerk, (1) the fee is paid (The U.S. government and people who are indigent and filing in the manner of a pauper (in forma pauperis) are excused from paying this fee) and (2) the petition is numbered and placed on the **docket**.
- iii. Justices have the duty to look at all cases on the docket. However, when the case load is too great, they may assign their clerks to review and sort through those which seem of greatest importance.
- iv. The chief justice creates a discussion list of all those cases he thinks should be looked at by the court. This list is sent to the associate justices and then discussed in conference. Most cases brought on appeal make the list, but few brought on cert. ever do. If a case does not make the discussion list, it will never be reviewed by the Court.
- v. At the conference the justices decide whether to grant or deny review. This process is never revealed to the public as no outsiders are present and no minutes taken. However, the unwritten "**rule of four**" say that it takes four yes votes in order for a case to be scheduled to be heard. A justice who feels strongly about a case that's been turned down for review can lobby the other justices to gain the necessary four votes at the next conference.
- vi. In deciding to review a case, the justices either:
 - a. Review a case on the basis of written material alone (no oral arguments). Such decisions are made per curiam. All justices agree and no opinion is handed down.
 - b. Review a case on the basis of written and oral arguments and give a complete decision with **concurring** and **dissenting opinions**
- vii. The results of the conference are listed on a certified orders list which is released to the public. The Court rarely gives explanations for denying a case for review;

however a justice whose case failed to get the necessary four votes may publish a dissent.

- viii. Oral arguments are scheduled by the clerk with most cases coming before the Court in the order in which they were reviewed.
- ix. Counsel for both sides submit their briefs which must be consistent with all regulations laid down by the Court.
- x. The justices review the briefs and records that they have received from council and may check citations and research material with the help of their clerks.
- xi. Oral arguments are heard. Attorneys must assume that the justices have read their briefs (although in fact they may not have) and therefore emphasize and clarify these written arguments, not restate them. The petitioner begins by presenting his complete argument and both sides have thirty minutes for its argument (unless otherwise stated). The justices may interrupt at for questions or remarks, which is then deducted from that side's thirty minutes. Also, only one attorney is heard from each side, however anyone who as filed an **amicus curiae** ("friend of the court") brief my argue for his/her party with it's consent and this time with be deducted from that sides thirty minutes as well.
- xii. Oral arguments are taped and transcribed both by the Court and by a private company the Court contracts with to do this job. Something can only be omitted by the chief or presiding justice and the letter Q is substituted for the name of any justice who asks a question. At the end of each term, the tapes are sent from the Court marshal to the National Archives and Records Administration (NARA).
- xiii. The justices meet in secrecy to decide the cases whose oral arguments they've heard. With the chief justice leading, each just speaks in the order of seniority. A vote is taken and the majority wins. At least six justices (**a quorum**) must be participating for a vote to be taken. In the case of a tie, the lower court's decision stands.
- xiv. Once the case has been decided, either the chief or senior associate justice whoever voted with the majority—is the person who decides which justice will draft the majority opinion. Assigning the task may be a punishment or reward and include: a justice's interest or expertise in the topic, current workload, commitment to the issue at hand, lack of an extreme view, etc. In an important case, the assigning justice may wish to assign himself to the job and may even change his vote to put himself in the majority in order to do so (!).
- xv. The justices now focus on the written opinion. Research is begun by the clerks and legal arguments constructed. As the justice assigned to write the majority opinion works on a draft the he hopes will reflect the Court's consensus, justices who agree with his opinion may send memos with suggestions. A justice who agrees with the majority, but for different reasons, may decide to write his own concurring opinion. Any justice who is adamantly opposed to the majority's view may draft a dissenting opinion.
- xvi. Drafts of the majority concurring, and dissenting opinions are circulated among the justices.
- xvii. Changes to the drafts are made and negotiations taken place. At times, the author of the minority opinion will attract other justices to his cause and what started out as a minority dissent can end up as a majority opinion.

- xviii. In the end, the Court may decide to: (1) affirm (to approve) the lower court's decision; (2) remand (send the case back for further deliberation) its decision; or (3) reverse the lower court's decision. When it does the latter, it generally sends the case back for a new trial that takes into account the reasoning behind the Supreme Court's decision. The court may also vacate or dismiss the case altogether.
- xix. The reporter of decisions add a **syllabus** (a headnote) summarizing the decision at the beginning of the opinion. At the end of the syllabus is the "lineup", which shows how each justice voted. This is then printed, sent to the lower courts, and published in the *U.S. Court Reports*, the official record of U.S. Supreme Court decisions.
- xx. Opinions are announced on Tuesdays and Wednesdays during the weeks the Court is hearing oral arguments; in other weeks they are announced on Mondays along with the **Orders List**.
- xxi. If a case brought on a writ of certiorari is lost, there is some recourse. One must file for a rehearing within twenty-five days after the Court's decision and a justice who concurred in the decision must bring the matter up before the Court. At a rehearing, oral arguments will not be heard, and the majority vote of the Court is needed in order to have the petition granted.

APPENDIX D: Glossary of Common U.S. Supreme Court Terms

affirm

v. what an appeals court does if it agrees with and confirms a lower court's decision.

amicus curiae

n. Latin for "friend of the court," a party or an organization interested in an issue which files a brief or participates in the argument in a case in which that party or organization is not one of the litigants. Usually the court must give permission for the brief to be filed and arguments may only be made with the agreement of the party the amicus curiae is supporting, and that argument comes out of the time allowed for that party's presentation to the court. For example, the American Civil Liberties Union often files briefs on behalf of a party who contends his constitutional rights have been violated, even though the claimant has his own attorney.

appeal

1) v. to ask a higher court to reverse the decision of a trial court after final judgment or other legal ruling. After the lower court judgment is entered into the record, the losing party (appellant) must file a notice of appeal, request transcripts or other records of the trial court (or agree with the other party on an "agreed-upon statement"), file briefs with the appeals court citing legal reasons for over-turning the ruling, and show how those reasons (usually other appeal decisions called "precedents") relate to the facts in the case. No new evidence is admitted on appeal, for it is strictly a legal argument. The other party (Respondent or appellee) usually files a responsive brief countering these arguments. The appellant then can counter that response with a final brief. If desired by either party, they will then argue the case before the appeals court, which may sustain the original ruling, reverse it, send it back to the trial court, or reverse in part and confirm in part. For state cases there are Supreme Courts (called Courts of Appeal in New York and Maryland) which are the highest appeals courts of Appeal in ten different "circuits," and above them is the Supreme Court, which selectively hears only a few appeals at the highest level. 2) n. the name for the process of appealing, as in "he has filed an appeal."

appellate jurisdiction

n. given by statute to appeals courts to hear appeals about the judgment of the lower court that tried a case, and to order reversal or other correction if error is found. State appeals are under the jurisdiction of the state appellate courts, while appeals from federal district courts are within the jurisdiction of the courts of appeal and eventually the Supreme Court.

brief

1) n. a written legal argument, usually in a format prescribed by the courts, stating the legal reasons for the suit based on statutes, regulations, case precedents, legal texts, and reasoning applied to facts in the particular situation. A brief is submitted to lay out the argument for various petitions and motions before the court (sometimes called "points and authorities"), to counter the arguments of opposing lawyers, and to provide the judge or judges with reasons to rule in favor of the party represented by the brief writer. Occasionally on minor or follow-up legal issues, the

judge will specify that a letter or memorandum brief will be sufficient. On appeals and certain other major arguments, the brief is bound with color-coded covers stipulated in state and/or federal court rules. Ironically, although the term was originally intended to mean a brief or summary argument (shorter than an oral presentation), legal briefs are quite often notoriously long. 2) v. to summarize a precedent case or lay out in writing a legal argument. Attentive law students "brief" each case in their casebooks, which means extracting the rule of law, the reasoning (rationale), the essential facts, and the outcome. 3) v. to give a summary of important information to another person.

certiorari

(sersh-oh-rare-ee) n. a writ (order) of a higher court to a lower court to send all the documents in a case to it so the higher court can review the lower court's decision. Certiorari is most commonly used by the U.S. Supreme Court, which is selective about which cases it will hear on appeal. To appeal to the Supreme Court one applies to the Supreme Court for a writ of certiorari, which it grants at its discretion and only when at least three members believe that the case involves a sufficiently significant federal question in the public interest. By denying such a writ the Supreme Court says it will let the lower court decision stand, particularly if it conforms to accepted precedents (previously decided cases).

decree

n. in general, synonymous with judgment. However, in some areas of the law, the term decree is either more common or preferred as in probates of estates, domestic relations (divorce), admiralty law and in equity (court rulings ordering or prohibiting certain acts). Thus, there may be references to a final or interlocutory decree of divorce, final decree of distribution of a dead person's estate, etc.

dictum (or "dicta" pl.)

n. Latin for "remark," a comment by a judge in a decision or ruling which is not required to reach the decision, but may state a related legal principle as the judge understands it. While it may be cited in legal argument, it does not have the full force of a precedent (previous court decisions or interpretations) since the comment was not part of the legal basis for judgment. The standard counter argument is: "it is only dictum (or dicta)."

dismiss

v. the ruling by a judge that all or a portion (one or more of the causes of action) of the plaintiff's lawsuit is terminated (thrown out) at that point without further evidence or testimony. This judgment may be made before, during or at the end of a trial, when the judge becomes convinced that the plaintiff has not and cannot prove his/her/its case. This can be based on the complaint failing to allege a cause of action, on a motion for summary judgment, plaintiff's opening statement of what will be proved, or on some development in the evidence by either side which bars judgment for the plaintiff. The judge may dismiss on his own or upon motion by the defendant. The plaintiff may voluntarily dismiss a cause of action before or during trial if the case is settled, if it is not provable or trial strategy dictates getting rid of a weak claim. A defendant may be "dismissed" from a lawsuit, meaning the suit is dropped against that party. (See also: *dismissal*)

dismissal

n. 1) the act of voluntarily terminating a criminal prosecution or a lawsuit or one of its causes of action by one of the parties. 2) a judge's ruling that a lawsuit or criminal charge is terminated. 3) an appeals court's act of dismissing an appeal, letting the lower court decision stand. 4) the act of a plaintiff dismissing a lawsuit upon settling the case. Such a dismissal may be dismissal with prejudice, meaning it can never be filed again, or dismissal without prejudice, leaving open the possibility of bringing the suit again if the defendant does not follow through on the terms of the settlement. (See also: *dismiss*)

dissent

n. the opinion of a judge of a court of appeals, including the U.S. Supreme Court, which disagrees with the majority opinion. Sometimes a dissent may eventually prevail as the law or society evolves.

docket

n. the cases on a court calendar.

habeas corpus

(hay-bee-us core-puss) n. Latin for "you have the body," it is a writ (court order) which directs the law enforcement officials (prison administrators, police or sheriff) who have custody of a prisoner to appear in court with the prisoner to help the judge determine whether the prisoner is lawfully in prison or jail. The writ is obtained by petition to a judge in the county or district where the prisoner is incarcerated, and the judge sets a hearing on whether there is a legal basis for holding the prisoner. Habeas corpus is a protection against illegal confinement, such as holding a person without charges, when due process obviously has been denied, bail is excessive, parole has been granted, an accused has been improperly surrendered by the bail bondsman or probation has been summarily terminated without cause. It may also be used as a means to contest child custody and deportation proceedings in court.

holding

n. any ruling or decision of a court.

in forma pauperis

(in form-ah paw-purr-iss) adj. or adv. Latin for "in the form of a pauper," referring to a party to a lawsuit who gets filing fees waived by filing a declaration of lack of funds (has no money to pay). These declarations are most often found in divorces by young marrieds or poor defendants who have been sued.

jurisdiction

n. the authority given by law to a court to try cases and rule on legal matters within a particular geographic area and/or over certain types of legal cases. It is vital to determine before a lawsuit is filed which court has jurisdiction. Jurisdiction is not to be confused with "venue," which means the best place to try a case. Thus, any state court may have jurisdiction over a matter, but the "venue" is in a particular county.

lower court

n. 1) any court of lesser rank, such as municipal or justice court below a superior or county court, a superior or county court below an appeals court, or a federal District Court of Appeals below the U.S. Supreme Court. 2) a reference in an appeal to the trial court which originally heard the case. Typical language in an appeals decision: "In the lower court, the judge ruled Defendant had no basis for...."

mandamus (mandate)

(man-dame-us) n. Latin for "we order," a writ (more modernly called a "writ of mandate") which orders a public agency or governmental body (including another court) to perform an act required by law when it has neglected or refused to do so (i.e. to follow the law by correcting its prior actions or ceasing illegal acts)

Examples: After petitions were filed with sufficient valid signatures to qualify a proposition for the ballot, the city refuses to call the election, claiming it has a legal opinion that the proposal is unconstitutional. The backers of the proposition file a petition for a writ ordering the city to hold the election. The court will order a hearing on the writ and afterwards either issue the writ or deny the petition. Or a state agency refuses to release public information, a school district charges fees to a student in violation of state law, or a judge will not permit reporters entry at a public trial. All of these can be subject of petitions for a writ of mandamus.

motion

n. a formal request made to a judge for an order or judgment. Motions are made in court all the time for many purposes: to continue (postpone) a trial to a later date, to get a modification of an order, for temporary child support, for a judgment, for dismissal of the opposing party's case, for a rehearing, for sanctions (payment of the moving party's costs or attorney's fees), or for dozens of other purposes. Most motions require a written petition, a written brief of legal reasons for granting the motion (often called "points and authorities"), written notice to the attorney for the opposing party and a hearing before a judge. However, during a trial or a hearing, an oral motion may be permitted.

original jurisdiction

n. the authority of a court to hold a trial, as distinguished from appellate jurisdiction to hear appeals from trial judgments.

per curiam

adj. Latin for "by the court," defining a decision of an appeals court as a whole in which no judge is identified as the specific author.

petition

1) n. a formal written request to a court for an order of the court. It is distinguished from a complaint in a lawsuit which asks for damages and/or performance by the opposing party. Petitions include demands for writs, orders to show cause, modifications of prior orders, continuances, dismissal of a case, reduction of bail in criminal cases, a decree of distribution of an estate, appointment of a guardian, and a host of other matters arising in legal actions. 2) n. a general term for a writing signed by a number of people asking for a particular result from a private governing body (such as a homeowners association, a political party, or a club). 3) in

public law, a writing signed by a number of people which is required to place a proposition or ordinance on the ballot, nominate a person for public office, or demand a recall election. Such petitions for official action must be signed by a specified number of registered voters (such as five percent). 4) v. to make a formal request of a court; to present a written request to an organization's governing body signed by one or more members. 5) n. a suit for divorce in some states, in which the parties are called petitioner and respondent.

precedent

1) n. a prior reported opinion of an appeals court which establishes the legal rule (authority) in the future on the same legal question decided in the prior judgment. Thus, "the rule in Fishbeck v. Gladfelter is precedent for the issue before the court in this case." The doctrine that a lower court must follow a precedent is called **stare decisis** 2) adj. before, as in the term "condition precedent," which is a situation which must exist before a party to a contract has to perform.

quorum

n. the number of people required to be present before a meeting can conduct business. Unless stated differently in bylaws, articles, regulations or other rules established by the organization, a quorum is usually a majority of members.

remand

v. to send back. A court appeals, including the U.S. Supreme Court may remand a case to a lower court for further action if it reverses the judgment of the lower court, or after a preliminary hearing a judge may remand into custody a person accused of a crime if the judge finds that a there is reason to hold the accused for trial.

stare decisis

(stah-ree duh-sigh-sis) n. Latin for "to stand by a decision," the doctrine that a trial court is bound by appellate court decisions (precedents) on a legal question which is raised in the lower court. Reliance on such precedents is required of trial courts until such time as an appellate court changes the rule, for the trial court cannot ignore the precedent (even when the trial judge believes it is "bad law").

stay

n. a court-ordered short-term delay in judicial proceedings to give a losing defendant time to arrange for payment of the judgment or move out of the premises in an unlawful detainer case.

stay of execution

n. a court-ordered delay in inflicting the death penalty.

United States Supreme Court

n. the highest court in the United States, which has the ultimate power to decide constitutional questions and other appeals based on the jurisdiction granted by the Constitution, including cases based on federal statutes, between citizens of different states, and when the federal government is a party. The court is made up of nine members appointed for life by the President of the United States, with confirmation required by the Senate. One of the nine is the Chief Justice (appointed by the President if there is a vacancy), and the others are Associate Justices.

vacate

v. for a judge to set aside or annul an order or judgment which he/she finds was improper.

writ

n. a written order of a judge requiring specific action by the person or entity to whom the writ is directed.

APPENDIX E: Additional Resources

Official U.S. Supreme Court website <u>http://www.supremecourtus.gov/</u>

Pending cases and current opinions of the U.S. Supreme Court http://supct.law.cornell.edu/supct/

Resumes of Supreme Court Justices http://supct.law.cornell.edu/supct/justices/fullcourt.html