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COMMUNICATION OF STATUS AND SOLIDARITY AS A FACTOR IN JUDGE-ATTORNEY INTERACTION

by

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ABSTRACT

COMMUNICATION OF STATUS AND SOLIDARITY AS A FACTOR IN JUDGE-ATTORNEY INTERACTION

This study uncovers social-psychological mechanisms which block the rise of women and ethnic minorities in professional settings despite their increasing numbers in these institutions. The problem is examined through status and communication patterns between judges and attorneys in an appellate court. The setting, with its rituals and clear hierarchical structure, provided an ideal natural laboratory for this analysis of social power and symbolic interaction.

Observational techniques were employed to test the hypothesis that judges treat attorneys in ways that vary as a function of status attributes like age and sex. Trained observers recorded judicial behavior during 60 oral arguments on a scale which assigned all communications to status or solidarity norms. A highly significant factor analysis of the observational data revealed that social interaction in the court is strikingly patterned. Analysis of variance and mean comparisons confirmed decisively that

differential treatment is present when judges interact with older males, younger males and females. A dramatic difference was found with women attorneys who received one-third the interaction men received from the bench. In addition, women were excluded from valuable aspects of interaction which normally serve to inform them (feedback) about the quality of their performance. This reduced pattern of interaction for women is termed polite inattention and is shown to have serious consequences for women which affect their abilities, motivation and levels of aspiration. Content analysis of interviews with nine appellate justices indicate that lack of perceived similarity or identification with women accounts, in large part, for this effect.

The findings have important implications for marginal group mobility in general and, affirmative action, equal opportunity and integration in particular. Until all groups represented at the lower levels of our institutions are well represented at the highest levels, subtle, out-of-awareness communication patterns are present which make the desired goal of equal opportunity very difficult to achieve. Specific strategies for overcoming these subtle barriers to professional advancement are explored; these include strategies for change at the social policy and individual levels.

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TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

INTRODUCTION

Interest in problems of social power has grown among social scientists in recent years. Until the 1950's, power was virtually neglected in social-psychology. Cartwright (1959) notes that it was not generally accepted until that time that all aspects of social interaction have a power dimension which should be acknowledged and studied.

Despite a proliferation of research in the last twenty years, the field continues to lack a viable theory of applied social power. Our current systematic knowledge cannot answer some of the most interesting questions about power networks and social change. For example, why is it that women and some ethnic minorities rarely reach the highest levels of organizations despite having gained access to these systems at middle levels?

The global approach to the subject may be one reason explanations remain elusive. Power is not a unitary concept and few social scientists agree even on how to define it. Given this, it seems fruitful to specify aspects of power which can be defined with some precision and study these in natural or laboratory settings.

One such approach explores status and communication

patterns in hierarchical groups. This kind of investigation seems appropriate for social psychology as it recognizes that power may be conceptualized as a relational variable located, empirically, in behavior. The research presented in the following pages positions social power in this way. It explores status and communication in a setting which might be described as ideal, given the formal nature of its power structure. The setting is a state appellate court and the inquiry focuses on three groups of attorneys: older men (defined as those over fifty-five), younger men (those under fifty-five) and women.

The design of the study is twofold: First, it tests the hypothesis that judges treat attorneys differently as a function of their age and sex. Second, it explores through interviews why these patterns may occur by examining the assumptions judges hold about those with whom they interact.

The study centers on judicial behavior while recognizing that any two individuals interacting will shape each other's performance. Judges are emphasized because research suggests that the tone of an interaction is generally set by the higher status member of a dyad. Brown (1965), for example, reports studies which show the following relationship in social interaction:

1. When A has greater value than B, A feels superior and B feels inferior.
2. When A has greater value than B, A asserts

influence and B is influenced.

In the court-room, this effect is probably very strong since judges have greater control over attorneys than most high status individuals have over those in lower status positions. An attorney, for instance, may not speak without permission; is limited to specific kinds of verbal statements and confined to strict spatial and gestural boundaries. Given this, it seems fair to conclude that judges control, to a great extent, the amount and kind of interaction which occurs.

In addition, the court-room is an excellent place to study status and communication due to the formal, almost ritualistic, nature of interaction and the clear lines of authority which are present. Judges are the very embodiment of status and power. Generally, when we speak of power we are speaking of behavior which is essentially juridical in nature. An individual who is powerful is usually one who engages in moral, social or political decisions which affect large numbers of people.

To return, then, to the question posed at the outset of this discussion, a study of status and communication emphasizing judge-attorney interaction in the court-room, may explain, in part, the mechanisms that determine advancement in hierarchical systems.

CHAPTER I

STATUS AND COMMUNICATION

The Study of Status and Communication

In general, status and communication have been studied in the laboratory. Researchers have designated some subjects as having higher status than others and recorded the direction, amount and content of subsequent communications during a problem-solving task (see, for example, Thibaut, 1959; Beck et al., 1950; Kelley, 1961 or Cohen, 1958). A study of this kind has two major deficiencies. First, it does not recognize the fact that people enter a situation with a number of existing statuses from the larger society. For example, an attorney occupies a particular status in a professional network. This status is modified, however, by the fact that the attorney is a man, a woman or a member of an ethnic minority. Second, it does not locate individuals on any dimension other than status.

Though status norms (rules governing the behavior of individuals according to their social rank) are pervasive in social life, solidarity norms (rules governing

the behavior of individuals according to their degree of identification with each other) are present as well. These related social positions cannot be studied in isolation from each other. The present study is an attempt to provide a fuller analysis of status and communication patterns by framing judicial behavior toward attorneys in relation to both status and solidarity norms.

The Concept of Similarity

In addition to status and solidarity norms, this research stresses a variable called "similarity" taken from the literature on interpersonal attraction (Berscheid and Walster, 1969). It constitutes an essential feature of solidarity relations, in general, and may play an important role in patterns of status and communication. Put simply, this study suggests that a lack of similar visible attributes, professional histories and future professional options produces a pattern of communication which might be termed polite inattention. This pattern refers to a civil but disengaged stance on the part of a higher-status individual (in this case, a judge) toward a lower-status individual (in this case, an attorney). Communications are reduced to those which are necessary for interaction to proceed smoothly and the recipient of such behavior is excluded from the natural variety and richness of interaction.

Polite Inattention and Women in the Courts

The problem of polite inattention may exist for any marginal individuals as they enter an institution while still occupying a lower status in the larger society. This study concerns women because they represent an ideal group for analysis in the court at the present time. Their number has been steadily increasing in the legal profession since the early 1900's. In 1948, women represented only 1.8% of the practicing attorneys in the United States. By 1975, they constituted 6% of this population (Sachs and Wilson, 1978). In urban centers, their numbers are even greater. At the present time, women comprise almost 25% of the attorneys seen in the appellate court used in this study. This makes women not only a marginal group but one which exists in large enough numbers to be statistically analyzed.

Problematical communication patterns undoubtedly exist for other marginal groups as well. For instance, black attorneys probably receive unique patterns of judicial communications but this remains to be investigated. Black attorneys appear too infrequently in appellate courts at this time to be included in this analysis.

CHAPTER II

THE AMERICAN JUDICIARY

The American judicial system is so complex, it is not surprising that the public finds it confusing. For this reason, some guidelines to the system will be helpful in setting a frame of reference for the particular justices who are the focus of this research.

Historically, legal authority has been divided among the Federal government, states, counties and municipalities creating what Jackson (1974) calls a "residue of courts and jurisdictions which is incomprehensible to all but the best travelled lawyers." No two states have precisely the same court structure and courts with the same name often have completely disparate responsibilities in different areas.

State Courts

Broadly, there are four levels of state courts. The lowest level is comprised of justices of the peace and magistrates who deal with minor infractions of the law such as traffic violations. These may or may not be lawyers and may or may not have the power to commit offenders to jail.

The second level involves misdemeanor crimes and civil cases in which the amount of money involved does not exceed some specified amount, for example, $5,000.

These are usually called "lower" or "special" courts and most of the judges sitting at this level are laywers and work full time. Lower courts deal with offenses like drunken driving, marijuana possession and divorce and are a central arena for plea-bargaining. The quality of the court at this level is determined, almost exclusively, by the quality of the judge who presides in it.

The third level of the state system includes civil and criminal trial courts. These courts, too, are known by a variety of names ranging from "superior" to "district" courts. In New York, the higher trial courts are called "supreme" courts and the judges are referred to as "justices." Felonies are tried at this level and the consequences of decisions made in these courts can be quite serious. For example, in some states an offender can be sentenced to death or life imprisonment. Judges in these courts make complex legal decisions and their rulings on matters involving admission of evidence are critical to the outcome of the trials. Important civil conflicts involving large amounts of money are also heard at this level and some jurisdictions cross providing a choice of legal arena. Decisions are usually made in writing and generate "opinions" which are later scrutinized by lawyers and appellate justices.

The Appellate Division

The fourth level of state court and the one with which this study is concerned is called the "supreme court" in most states but is designated the "appellate court" in New York. These courts are high in judicial authority and the justices who sit in these tribunals make decisions with broad and important consequences for law in general. There are no trials, witnesses or juries involved in these proceedings. A group of four or five justices provide a quorum. Opinions are issued based on briefs and oral arguments.

The maintainance of an appellate system (Meador, 1974) rests on society's view that it is undesirable for the resolution of at least some controversies to be the final response of a single tribunal. An appeal, by definition, is a phase of litigation which takes place after a case has been brought to some conclusion in a lower court. The concept of an appeal is simply that another forum will scrutinize a case and subject the first court's action to a second look.

Appellate Justices

Theoretically, the role of the appellate justice is to correct error in trial proceedings and insure the litigants justice under the law. Additionally, their purpose is to enunciate and harmonize the decisional law

of the jurisdiction. Broadly viewed, these corrective and interpretive roles subsume all the roles and functions of the appellate courts in general. Decisions are made subsequent to oral argument. It is not known, precisely, how various factors affect the decision process at this level. The actual decisions are made behind "closed doors." Occasionally, cases heard in appellate courts are transferred to Federal courts depending on the nature of the issue.

In addition, there are various levels of appellate courts with the highest level in New York called the "court of appeals." In general, this study concerns a middle level "higher court." The effects of the decisions issued by this court are extensive and affect the way in which law becomes elaborated throughout the land. These justices are well-trained legally and occupy a position of prestige within their profession.

CHAPTER III

RESEARCH ON THE JUDICIARY

Most of the existing research on courts and the judiciary has taken place in the federal trial courts and centers on defendants, juries and judicial decisions as a function of defendant characteristics (see for example, Nagel, 1962; Forslund, 1969; Grossman, 1956; Rosberg, 1948; Lemert and Jacob, 1962; Green, 1961, 1964, 1968; Hagan, 1975; Winick, Gerver and Blumberg, 1964 and Snuggs, 1979). Fontaine and Emily (1980) analyzed verbal statements by judges in a municipal court utilizing an attribution model concerned with logical versus stereotypic attributions about the defendants. They found a trend ($p < .10$) in judicial statements in which judges gave sentencing reasons which were based on assessments of the "characters" of women but the "crimes" of men. Relevant to this study, age and race were also found to be important variables in judicial reasoning with regard to sentencing decisions.

There has been no research undertaken to clarify aspects of social interaction in the court-room and little research involving the judiciary at appellate levels.

CHAPTER IV

SYMBOLIC INTERACTION:
A THEORETICAL POINT OF VIEW

For a study of judicial behavior to be meaningful, it must be grounded in some theory of social structure. Symbolic interaction theory provides a useful framework for this kind of analysis rooted, as it is, in the social construction of reality. These theorists address, among other things, the "meaning" of behavior for the actor and suggest in fairly explicit terms how individuals are affected by the actions of others. The essential elements of the theory relevant to this study are a) the social context, b) the definition of the situation, c) the self concept and d) the generalized other.

The Social Context

Symbolic interaction theory suggests that judges do not act or interact apart from the social context in which they function. Individuals live in a symbolic as well as physical environment and, in this sense, the social context is the product of physical, social and

individual factors. Ultimately, the stability of a social setting depends upon each individual involved accepting and acting out the demands of that setting (Goffman, 1963; Meltzer, 1972; Blumer, 1972).

According to Mead (1934), the significant distinction between animal and human communities is this extensive use of symbols. Individuals are active agents in their environments. They define, refine and interpret their worlds symbolically. This does not mean that experience is completely subjective. It suggests that while the world is "out there," it is structured by individuals through perception and conception. True communication between people involves "significant symbols" and the ability to empathize or "take the role" of others (Mead, 1934). Individuals must be able to interpret their own actions as well as the actions of others on a symbolic level. This constitutes an "anticipatory" ability which enables interaction to be smooth. Relevant to this research, then, judicial behavior toward attorneys is understood to be the product of the social and symbolic context in which it occurs as much as it is a product of individual attitudes and experiences.

The Definition of the Situation

An important feature of any social setting is the "definition of the situation" (McHugh, 1968). The

maintenance of social order requires the generation of consensually agreed upon behaviors. One of the first needs, then, of a person entering a situation is to define it. Situations have varying degrees of structure and freedom with regard to definitions (Goffman, 1959). Central to this research is the proposition that "definitions of the situation" actually guide behavior. If judges treat groups of attorneys differently, it follows theoretically that subtle, unrecognized differences in the "definition of the situation" exist when each group interacts with the bench.

The Self Concept

Symbolic interaction theory further suggests that one's self concept is, to a great extent, the product of interaction with others. If this is true, differential behavior toward attorneys shapes how attorneys define themselves. To the extent that actors incorporate their sense of self in line with the expectations and definitions of others, self concepts may become essentially negative or self-limiting. If some attorneys, for example, are expected to be less able, they will come to see themselves in this way. Evidence exists which suggests that attorneys in the court-room are particularly vulnerable to these effects specifically because of their professional relationship to the judiciary. Quarantelli and

Cooper (1966) have shown that one's self concept is affected by the attitudes and behavior of others, especially if these "others" are important to the individual in question. Further, Kinch (1968), Gergan (1962), Hans and Naeher (1965) and Mehr et al. (1962) have studied the specific conditions under which others have an effect on or actually change an actor's self concept. These authors found that, a) the frequency of responses during interaction, b) the perceived importance of these contacts, c) the temporal proximity and, d) the consistency of responses during interaction make individuals particularly vulnerable to the internalization of the attitudes and actions of others. All these conditions are met during oral argument in the appellate court. Attorneys who try cases in higher courts generally do so on a regular basis resulting in a temporally extended interactive context with serious professional consequences for the participants. Status inconsistency problems can arise as well. If, for example, a female attorney occupies a low status position in the culture but a high status position in the court, she may be reacted to inconsistently on the basis of this status-combination. In consequence, a sense of self may develop that is fragmented making interaction difficult or producing reduced interaction.

The Generalized Other

A final concept in symbolic interaction theory

relevant to this research is the "Generalized Other." If attorneys are treated differently by judges on the basis of group characteristics such as sex or race, they will tend to see themselves from a limited number of perspectives which embody these characteristics. The theory then predicts that a generalized other develops (Mead, 1934). Actors come to define themselves on the basis of these often stereotypic group attributes (see for example, Shutz, 1970).

Some Guiding Assumptions

Taking symbolic interaction as a theoretical frame of reference, then, certain basic assumptions guide this research:

1. Behavior is the product of situational as well as individual factors.
2. When variation in behaviors is observed, differential "definitions of the situation" are present and guide these behaviors.
3. The behaviors and expectations of others affect one's self concept in positive or negative ways.
4. When individuals are treated as representative of a group, intensified identification with that group occurs and a tendency to lose one's sense of uniqueness results.

CHAPTER V

ORGANIZING SOCIAL INTERACTION

Social interaction must be organized or "framed" before it can be investigated. There are many ways to do this. Behaviors could, for example, be conceptualized along active/passive, verbal/non-verbal or dependent/independent dimensions. This study frames behavior along status and solidarity dimensions for two reasons. First, such an approach is consistent with the fact that this is an inquiry into status and communication patterns in hierarchical settings. Second, as Brown (1965) notes, status and solidarity are pervasive in every kind of interpersonal situation.

Naturally, any two-dimensional analysis will be less complex than life. Some behaviors, for instance, possess both status and solidarity components with one disclaiming or modifying the other. Despite this, it is possible to assign a great proportion of the behaviors displayed in the court-room to one norm or the other. The approach provides the potential for a quantitative analysis which while oversimplified has the advantage

of not distorting social process as it occurs.

Status and Solidarity as Dimensions of Social Order

Norms and Normative Behavior

Much of human behavior is guided by norms. A norm is simply a standard or rule which is accepted in a given community. Norms generally indicate rules about how to behave under specific conditions. A status norm is one which guides or prescribes behavior for people according to their social rank. It indicates the appropriate way to interact with those above, below or equal to another on some accepted social scale. A solidarity norm indicates the appropriate way to interact when individuals share values, attitudes, sentiments and experiences to a greater or lesser degree. Solidarity norm guides behavior according to the degree of identification or social accord individuals experience.

Despite variation, status and solidarity norms appear to govern much of our everyday activity (Brown, 1965). They lie behind the regularities of behavior, with status conferring power and privilege; with solidarity providing social cohesion among actors. Taken together, they appear to be significant instruments of social control and social concern. Norms make clear to actors their rights and obligations with respect to each other.

Status and solidarity norms may be especially important in the court-room where interaction often involves strangers and where social fluidity is essential. Much of the ritual in the court-room serves specifically to set parameters of acceptable behavior for various groups. John Hazard (1977) has noted the strict regulation of rights and privileges reflected in the furniture arrangements in courts throughout the world. Judges, for example, always sit on raised platforms as an index of their authority. In the appellate court in which this study took place, judicial privilege is maintained even at the elevator, with a special button marked "judge" ensuring a high priority for elevator service.

Definitions

Though status and solidarity are, to a great extent, common sense terms, research requires precision in their use. Status Norm reflects the fact that all societies have some conception of differential social value. Status accrues to an individual to the extent that he or she possesses characteristics valued by the society. These may be attributes of a situation such as role; of a performance such as competence; of a person such as sex, age or race. Status norm is usually understood as a non-reciprocal, assymetrical rule which prescribes one thing for one member of a dyad and another for the second member.

In the court, when expressed by a judge, it generally reflects the judge's power.

Solidarity Norm reflects the fact that all societies have some conception of differential social accord. Accord generally exists between individuals to the extent that they share attributes such as role, sex or age. Solidarity norm is usually understood as a reciprocal, symmetrical rule which prescribes the same behavior for actors. When it occurs between people of unequal status, it tends to make rank less salient and create a greater sense of identity between actors. In the court, when expressed by a judge, it generally reflects his preference or favor.

Status and Solidarity as System

Combining status and solidarity norms make a two-dimensional system which provides special forms of address, spatial relationships, verbal and non-verbal behavior. In the court-room, these norms are elaborated in the proper way to address a judge or attorney, where individuals sit or stand, the amount of emotion and the range of response available to the actors.

Status Behaviors

For the purpose of this research, a status behavior expressed by a judge will be one which meets the

following criteria:

1. A judge engages in this behavior by virtue of his rank and authority over the attorney with whom he interacts.
2. He would not engage in this behavior toward other judges.
3. The behavior implies a degree of power over the person to whom it is expressed. It has a dominance component.
4. An attorney may not engage in this behavior toward a judge without disrupting interaction.
5. The behavior makes salient difference in rank between the judge and the attorney. It increases "psychological distance."

Examples of status behaviors expressed by judges in the court-room are:

a) interrupting

b) criticizing

c) rejecting material

d) invoking judicial privilege

Solidarity Behaviors

For the purpose of this research, a solidarity behavior expressed by a judge will be one which meets the following criteria:

1. A judge does not engage in this behavior by virtue of his rank or authority over the attorney with whom he interacts.
2. He would engage in this behavior toward another judge.
3. The behavior implies a degree of unity or agreement with the person to whom it is expressed. It has a respect and liking component.
4. An attorney could engage in this behavior toward a judge without disrupting interaction.
5. The behavior makes less salient the difference in rank between the judge and attorney. It decreases "psychological distance."

Examples of solidarity behaviors expressed by judges in the court-room are:

a) praising

b) offering helpful material

c) agreeing

d) thanking

Finally, it should be noted that status behaviors are not conceptualized in this setting as negative or undesirable. Status and solidarity are informative displays with status indicating a possibly weak performance or reminder of rank; with solidarity indicating an acceptable performance or agreement.

The preceding discussion should clarify the concepts of status and solidarity as they are used in this research. The general point is that norms guiding behavior along status and solidarity dimensions are pervasive in social life and may be particularly important in understanding interaction in the court-room.

Status and Solidarity as Dimensions of Interaction in the Court

Similarity and Social Interaction

Contrary to conventional wisdom, opposites do not attract. Existing literature (Newcomb, 1960; Kahl and Davis, 1958; Hollinghead, 1940; Brown, 1965) suggests that similarity is the critical variable of interpersonal attraction. Newcomb (1960) argues that two major clusters of behavior appear in social interaction. These can be summarized as follows:

1. When A and B are similar, they tend to like each other, seek each other's company and interact frequently.
2. When A and B are dissimilar, they tend not to like each other, not to seek each other's company and not to interact frequently.

This simple finding may have important implications for professionals in some institutional settings,

particularly those which involve impersonal (stranger-to-stranger) interaction. In most situations, similarity can be defined by actors in many ways. Values, for instance, may underlie the extent to which one person identifies with another. In the court-room, however, criteria for similarity may be limited to the visible attributes of the actors and the meanings these attributes evoke in others. An attorney's race, sex or age may be the most accessible characteristic with which a judge can identify during oral argument.

Kahl and Davis (1958) and Hollingshead (1940) have shown that similarity not only affects the sheer quantity of interaction between people but its quality as well. They found that as similarity increases between actors, solidarity emerges. Brown (1965) describes this phenomena as a relationship among status, solidarity and sentiment. The more a high status person is able to identify with a lower status person, the less assymetrical and in conflict sentiments between the two will be.

In general, this group of findings suggests that sameness and difference as a justice perceives them will affect the quantity and quality of judicial behavior toward an attorney. With this in mind, it is possible to make some specific predictions about judicial behavior in the appellate court.

Justices and Older Male Attorneys

First, it is proposed that the greater the similarity between justice and attorney in age and sex, the greater the interaction and the more solidarity behaviors the justice will exhibit. More specifically, older male attorneys (over fifty-five) will receive the greatest number of judicial communications and these will consist primarily of solidarity behaviors. No status inconsistency should exist for the judges when interacting with this group.

Justices and Younger Male Attorneys

Young male attorneys (under fifty-five) should present a somewhat mixed picture of interaction along status and solidarity dimensions. They are less like the justices in age and professional status, but like them in sex and professional options. Justices may see themselves as models for young men; at other times, they may represent a challenge to the bench professionally and personally. Young male attorneys, then, should be treated to a great deal of interaction; less than older males but more than females. Communications should consist of both status and solidarity behaviors with an emphasis on status. In this context, status behaviors serve a tutorial function, keep the young attorney "in his place" and prepare the way for his entry into the "club". Some, but little, status

inconsistency should exist for the justices when interacting with this group.

Justices and Female Attorneys

Female attorneys should receive the least amount of interaction with the justices as they are least like them in every respect. Their pattern of interaction is difficult to predict. There is little basis for status behaviors as a response to challenge or for solidarity behaviors as a response to similarity. A pilot study, however, suggested that women attorneys would receive communications consisting primarily of solidarity behaviors.

CHAPTER VI

HYPOTHESES

Given the preceding discussion, the following hypotheses were generated:

Quantity

Hypothesis I: The three groups of attorneys will receive significantly different amounts of judicial communications or behaviors.

Ia: Younger male attorneys will receive a significantly greater number of communications than female attorneys but significantly fewer communications than older male attorneys.

Ib: Older male attorneys will receive a significcantly greater number of judicial communications than younger male or female attorneys.

Ic: Female attorneys will receive significantly fewer judicial communications than all male attorneys.

Quality

Hypothesis II: The three groups of attorneys will receive significantly different kinds of judicial communications.

IIa: Younger male attorneys will receive a significantly greater number of status behaviors than female or older male attorneys.

IIb: Older male attorneys will receive a significantly greater number of solidarity behaviors than female or younger male attorneys.

IIc: Female attorneys will receive a significantly greater number of solidarity than status behaviors.

CHAPTER VII

METHOD AND PROCEDURES

Studying behavior in complex, naturally occurring settings always entails problems. A degree of control is inevitably sacrificed in order to acknowledge complexity and achieve ecological validity. Consequently, the method has been designed to reduce sources of error.

Many researchers propose the use of convergent methods in compensating for method weaknesses in natural settings. (See, for example, Denizen, 1970 and 1972; Gurman and Bass, 1961; Stebbins, 1967 and 1972.) Blumer (1963) has specifically stressed the importance of including interviews in observational studies which attempt to describe social process. Errors of inference are thought to be less likely since the researcher can explore further his or her assumptions about the findings. With this in mind, interviews were included with nine justices of the appellate court.

Second, Becker and Geer (1960) argue that the overall reliability of a study is increased when activity makes

up a large proportion of the data and when such activity occurs publicly. These authors further argue that statements are more reliable when they are volunteered rather than directed. For this reason, interviews were kept as open-ended as possible.

The overall reliability of this study, then, is increased through: 1) the use of convergent methods, 2) the high proportion of activity rather than statements comprising the data, 3) the fact that this activity occurs in public, and 4) the open-ended nature of the interviews.

The Observational Study of Judge-Attorney Interaction

The Observational Design

The observational part of this study can be described as follows: two naive, trained observers recorded judicial behavior in an appellate court on an inductively developed "behavior scale." The scale was based on category rules derived from Brown's (1965) discussion of status and solidarity norms. Observers recorded units of judicial behavior expressed toward attorneys during their oral arguments. They noted, among other variables, the sex and apparent age of each attorney. When 20 arguments in each of three pre-determined categories had been recorded, the collection of data was regarded as complete. The data were then analyzed to determine if significant differences exist

in the quantity and quality of judicial interactions with older male, younger male and female attorneys. The naturalness of the setting was preserved; no intrusion or manipulation of the setting was preserved; no intrusion or manipulation on the part of the observer was necessary. Observations took place in a setting where the actors are already accustomed to a degree of observation by non-participants.

In general, the observational part of this research attempts to make inferences about status and communication patterns by identifying specific characteristics of messages and their targets.

The Setting and Unit of Analysis

This study took place in an appellate court in a large, metropolitan city. The setting is formal and evokes a sense that important issues are at stake. One enters the building to find an ante-room filled with leather chairs, inlaid ceilings and marble walls. Double wooden doors with carved lion's heads lead to the court-room itself.

In the court-room, the ceilings are gold and stained-glass. Doric columns support the ceiling and the walls are marble interspersed with paintings of the symbolic representation of justice as a woman. The judicial bench is large and places the judges well above eye-level. Three court officers and a court clerk are seated

or stand at various positions throughout the court-room during the proceedings.

Four to five justices preside at a given time and once the calendar has been set for the day, the attorney approaches the bench by stepping up to a lectern in the center of the room. From this position, attorneys deliver their arguments. Though four to five justices sit at a given time, only three are required to render a decision. Three justices constitute a quorum.

Generally, arguments last from 10 to 15 minutes. Time is requested by the lawyer and granted by the bench at the outset of each session. The appellant, at the end of the respondent's argument, has the right to rebuttal.

The unit of analysis in this study is one complete oral argument. Rebuttals have been excluded from consideration as these are brief and do not occur with regularity. The argument, though a naturally occurring event, offers a precise unit with a beginning, middle and end over a pre-determined period of time. Due to the formal structure of the court, only one attorney interacts with the bench during a specific time period. As a rule, no more than two people are fully engaged in interaction at one time. A number of writers (Heyns and Lippitt, 1954; Weick, 1968; Sjoberg and Nett, 1968) suggest that control is enhanced when the unit of study is specified and clearly defined in this way. Units of analysis with

well defined actors, time periods and behavior are rarely available outside the laboratory and make data collection more precise than it tends to be in many natural settings.

Justices as Groups

It is important to note that individual justices are treated in this analysis as a unit. The behavior of all the judges is recorded without distinction as to their individuality. It is as if each judge embodies aspects of "judging." Attention to individual differences and small group processes which are present and should be interesting to explore, are beyond the scope of this inquiry.

Scheduling

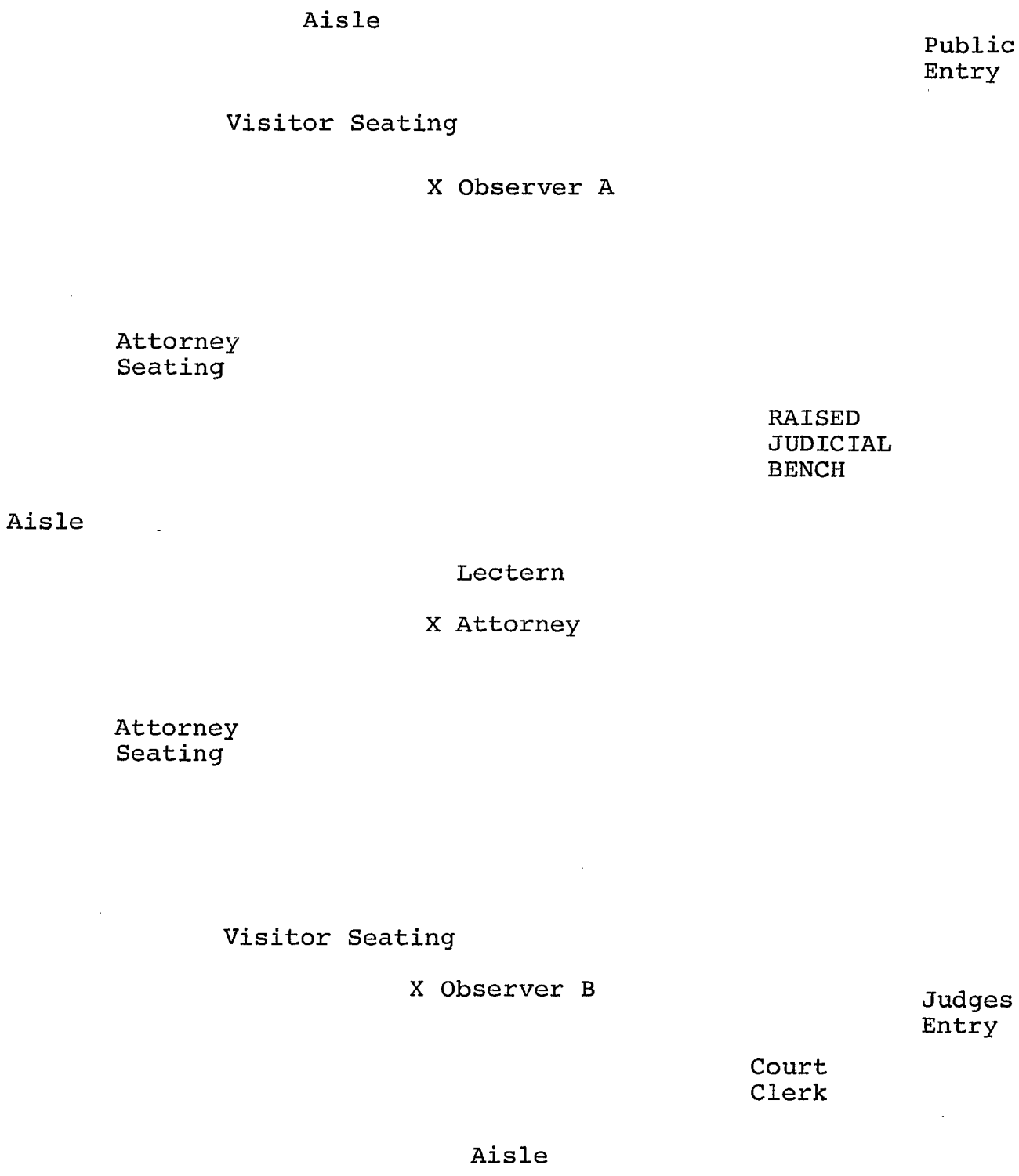
Observations occurred in the afternoons on Tuesdays and Thursdays over a nine-week period. On the average 4-6 arguments were recorded during a given session.

Procedure

It was not possible to ensure that the first 60 arguments observed would include the appropriate attorney groups. Hence, observers were instructed to continue collection until the 20 arguments in each of three categories had been achieved. The first twenty attorneys from each category who appeared in the court were

FIGURE 1

THE PHYSICAL SETTING



THE APPELLATE COURT

included in the analysis.

The Justices

The appellate court is comprised of seven permanent justices and a group of rotating judges drawn from a state-wide pool. The seven permanent justices form the core of both the observational and interview parts of this research.

Nine justices including every permanent judge and two "rotaters" participated in the interviews. All were white, between the age of 49 and 74 and have extensive judicial and litigation experience. Table 1 summarizes the personal data collected about these subjects.

As Table 1 indicates, the "typical" justice in this court is a white, married male around 64 years of age who is likely to be Catholic or Jewish and has been in the court an average of four years.

The Attorneys

Ninety-eight arguments were observed. Of these, 60 arguments formed the ase units of analysis with 20 attorneys in each group. Observers judged whether the attorneys fell within the age category above or below fifty-five.

Arguments were included on the basis of order of appearance in the court-room. The first 20 arguments observed from each group were included in the sample.

TABLE 1

JUSTICE PROFILES

Sex	Age	Race	Religion	Marital Status	Years in Court	Immediate Prof. History
Male	52	White	Catholic	Married	9	Supreme Court
Male	74	White	Jewish	Married	11	Civil Court
Male	69	White	Jewish	Widower	2	Supreme Court
Male	70	White	Jewish	Married	2	Supreme Court
Male	65	White	Jewish	Married	4	Law Firm
Male	49	White	Catholic	Married	2	Civil Court
Male	70	White	Jewish	Married	3	Supreme Court
Male	52	White	Jewish	Married	1	Supreme Court
Male	71	White	None	Married	3	Supreme Court

It was possible to do this in systematic fashion with the exception of two cases. In one, the observers disagreed about the age of the attorney and in the second, one observer arrived late during a court session and did not record the entire argument. These were discarded.

Thirteen "uncodable" interactions occurred during data collection. The age and sex of the attorney were noted when this occurred. The distribution of cases is summarized in Table 2.

TABLE 2

THE ATTORNEYS

Group	N	Discards	Uncodable	Retained
Older male attorneys	24	3	1	20
Younger male attorneys	51	22	9	20
Female attorneys	23	0	3	20
	93	25	13	60

The Observers

Behaviors were recorded by two undergraduates majoring in the social sciences who were naive to the hypotheses. They received 22 hours of training over a three-week period during which they were familiarized with

court procedure and the measurement instrument; observed the court in session and discussed what they had seen; and engaged in pre-trial recording until an acceptable level of accuracy and correlation between their records was achieved. Again, discussion sessions followed pre-trial recording in which feedback and clarification about what had occurred was exchanged between this researcher and the observers. Discussion always too place immediately following recording so that the material was fresh.

One observer was male and one female to minimize observer bias as a function of sex. Observers were seated on opposite sides of the court-room in order to limit the possibility of mutual influence in data recording.

Recording Behavior

The recording instrument or scale employed in this study was developed inductively. That is, it was not derived theoretically or adapated from existing research. It was created by this researcher during a three-week observation period. Every behavior a justice exhibited was noted until the general range and functional types of behaviors present in the court had been recorded. The behaviors were assigned to Status, Solidarity or Neutral categories using the criteria described above. The scale contains a frequency count of 15 status behaviors, 11 solidarity behaviors and 2 neutral behaviors. The record

yields the following:

Status Index	Number of status behaviors exhibited by justices toward an attorney.
Solidarity Index	Number of solidarity behaviors exhibited by justices toward an attorney.
Neutral Index	Number of neutral behaviors exhibited by justices toward an attorney.
Total Interaction	Number of behaviors exhibited by justices regardless of category.

The measure instrument itself can be found in Appendix A.

Instrument Validation

Once the data were collected, factor analysis was employed to determine whether the measurement instrument differentiated behaviors in the predicted ways. This technique (Rommell, 1970) delivers the minimum number of independent factors necessary to account for variation in the data and the degree of relationship between these factors and specific behaviors.

Following standard practice, behaviors with a mean of less than .2000 indicating that they occurred less than nine times in the entire study were removed from analysis. This was necessary because infrequently appearing behaviors tend to cause spurious correlations. The discarded

data constitute 3% of the observed behaviors. The remaining 97% were included in the factor analysis and all subsequent analyses.

The data were factor analyzed using a RAO-type, oblique, rotated solution called oblimin. Three factors were found which correlated in the expected ways with status, solidarity and neutral categories. These factors did not correlate highly with each other. Table 3 presents the rotated, factor matrix; Table 4 indicates the degree of correlation between the three factors.

An unexpected negative correlation (-.4376) was found between thanking an attorney at the end of an argument and neutral behaviors. Neutral, in this study, is a term indicating that essentially instrumental behaviors have occurred. It is possible to speculate, given this negative correlation, that high instrumentality on the part of the bench occurs when an attorney performance is weak. Lack of clarity and information may evoke a high number of neutral behaviors. As a consequence, an attorney is rarely thanked at the end of this kind of performance. Thanking is a gesture which apparently indicates judicial approval and may be inconsistent with a weak attorney performance.

Finally, the matrix seems to confirm that social interaction in the court is highly patterned and possesses a grammar similar to language. These "grammatical rules"

TABLE 3

VALIDATION OF THE MEASUREMENT INSTRUMENT

Factor Matrix

	Factor 1 (Solidarity)	Factor 2 (Status)	Factor 3 (Neutral)
Talks to other judges	-.06	.33	-.02
Interrupts attorney	-.16	.22	.17
Disagrees with attorney	.01	.83	.24
Criticizes the attorney	.11	.86	-.11
Jokes with the attorney	.75	.01	-.16
Offers relevant point	.58	.07	.09
Shakes head yes	.85	-.02	.03
Elaborates a point	.53	-.14	.14
Laughs at attorney's joke	.87	-.01	-.05
Thanks attorney	.44	.00	-.44
Asks for more clarification	.11	.08	.83
Asks for clarification	.03	-.02	.60

TABLE 4

CORRELATION BETWEEN FACTORS

	Factor 1	Factor 2	Factor 3
Factor 1	1.00	-.31	-.17
Factor 2	-.31	1.00	.23
Factor 3	-.16	.23	1.00

are probably no more in-awareness for an actor than syntax for a speaker.

Inter-Rater Reliability

To assess inter-rater reliability, Pearson correlation co-efficients were determined for each behavior in the scale. Agreement between the two observers on specific behaviors ranged from 72 to 100%. Most fell between 85 and 99%. Once specific correlations between the observers had been determined, a composite reliability was computed (Holsti, 1969). The average inter-rater agreement for the entire study was .9460 or 95%. Table 5 summarizes inter-rater reliability for each behavior in the study; agreement on major variables; total interaction and the composite reliability stated above.

It should be noted that 95% agreement between observers in a field study is high and suggests the adequacy of coding rules as well as rater skills. For the final analysis, records of observer A and B were statistically averaged.

Controlling for Extraneous Variables

Table 6 summarizes the data included for analysis. One-way analysis of variance revealed no significant differences between groups as a function of the number of justices presiding; the day of the week the argument occurred; the order in which the argument took place; or

TABLE 5

INTER-RATER RELIABILITY

Pearson Correlation Coefficients

Behavior	r
Talks to other judges during argument	.68
Interrupts attorney	.56
Disagrees with attorney	.96
Criticizes attorney's style	.97
Jokes with the attorney	.52
Offers additional point of law	.86
Shakes head yes during argument	.95
Elaborates attorney's point	.83
Laughs at attorney's joke	.94
Thanks attorney at end of argument	.83
Asks for more information	.87
Asks for clarification	.74

Major Variables	r	% agreement
Status	.99	99%
Solidarity	.97	98%
Neutral	.99	99%
Total Interaction	.99	99%
Composite Reliability	.89	95%

TABLE 6
DATA SUMMARY

Judicial Behavior	Older Males		Younger Males		Females		Total	
Status	X	SD	X	SD	X	SD	X	SD
Talks to other judges	1.20	1.47	2.90	2.63	1.15	1.76	1.75	2.12
Interrupts attorney	5.20	10.70	10.50	4.59	1.70	1.56	5.80	7.61
Hurries attorney	0.05	0.22	0.15	0.48	0.00	0.00	0.07	0.31
Disagrees with attorney	0.10	0.31	1.45	1.39	0.10	0.31	0.55	1.05
Invokes judicial privilege	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shakes head no	0.05	0.22	0.05	0.22	0.05	0.22	0.05	0.22
Jokes with other judges	0.25	0.55	0.75	2.24	0.05	0.22	0.35	1.35
Criticizes attorney	0.00	0.00	0.70	1.17	0.00	0.00	0.23	0.74
Leaves room	0.05	0.22	0.05	0.22	0.15	0.49	0.08	0.33
Refuses additional time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Asks if in brief	0.00	0.00	0.15	0.37	0.05	0.22	0.07	0.25
Rejects inclusion of material	0.10	0.31	0.00	0.00	0.05	0.22	0.05	0.22
Delays decision on addition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
No response to attorney's joke	0.05	0.22	0.00	0.00	0.00	0.00	0.02	0.13
Solidarity								
Jokes with attorney	3.40	1.93	0.95	1.14	0.40	0.94	1.58	1.90
Offers additional point	1.05	0.76	0.55	0.83	0.25	0.64	0.62	0.80
Shakes head yes	3.30	1.90	0.70	1.08	0.45	0.99	1.50	1.90
Makes personal reference	0.25	0.44	0.00	0.00	0.20	0.52	0.15	0.40
Elaborates attorney's point	1.15	0.93	0.45	0.76	0.05	0.22	0.08	0.33
Grants additional time	0.20	0.52	0.00	0.00	0.05	0.22	0.08	0.33
Laughs at attorney's joke	1.05	0.88	0.00	0.00	0.00	0.00	0.35	0.71
Offers relevant case	0.25	0.44	0.05	0.22	0.00	0.00	0.10	0.30
Praises attorney	0.10	0.30	0.00	0.00	0.00	0.00	0.03	0.18
Thanks attorney	0.95	0.39	0.30	0.47	0.45	0.51	0.57	0.53
Neutral								
Asks for more information	0.65	0.75	1.20	1.32	0.45	0.76	0.76	1.01
Asks for clarification	0.90	0.97	1.90	2.25	0.55	1.19	1.10	1.64
Major Dependent Variables								
Status	4.80	2.61	16.30	7.22	3.30	2.98	8.00	7.26
Solidarity	11.70	5.14	3.00	2.05	1.75	1.89	5.45	4.52
Neutral	1.50	1.32	3.10	2.78	1.00	1.65	1.82	2.18
Total Interaction	18.00	4.10	22.00	7.03	6.00	4.54	15.42	8.73

the number of cases heard on a given day. Differences in length of argument, however, approached significance ($F = 3.35$, $p < .05$) and will be discussed in the following pages. For specific parameters of the sample, see Appendix B.

The Interviews with the Justices

As stated, symbolic interaction theory suggests that an important part of any social situation is its "definition." These theorists argue that behavior is guided by definitions or the meanings attached to actors and events. According to this theory, if judges define attorneys similarly, their behavior toward them will not vary. On the oher hand, observed differences in judicial behavior should reflect differences in the way these groups are perceived and expected to perform. Additionally, since interaction in the court is smooth and highly patterned, these definitions should be consensual. One way to explore these propositions is to elicit definitions of various groups from the justices themselves.

The purpose of the interviews, then, is two-fold. First, to test as far as possible, this basic tenet of symbolic interaction theory that systematic differences in the definition of the situation underlie systematic differences in behavior. Second, if definitions exist, to understand how these may affect marginal groups. Interviews were analyzed along three specific dimensions:

type of reasoning, level of complexity and degree of identification.[1]

Type of Reasoning

The major theoretical support for the concept of the definition of the situation is provided by McHugh (1968). He created a laboratory situation in which subjects built definitions and were faced with challenges to them. He posited two formal parameters of the definition of the situation in his work. These are relationships in time and space and constitute a process oriented view.

Temporal aspects he called "Emergence" and consist of an actor's search for theme and a temporal sequence to define what he or she is experiencing. For example, making sense out of a statement by examining what preceded it and what is likely to follow is an Emergent reasoning process. On a macro-level, this would seem to involve asking where an individual has been and where that individual is going to determine the quality and meaning of current behavior.

Spatial aspects, McHugh called "Relativity" and consist of a search for typicality. This involves "taking the role of the other" or asking, "What would I do if I were in his shoes?"

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[1]See Appendix D for the interview schedule.

McHugh's Study

McHugh's procedure consisted of telling a group of subjects that they were participating in a therapy study. They were asked to think about certain problems and to ask questions which could be answered "yes" or "no." The subjects recorded what they thought the "therapist" was telling them over an intercom and summarized what they felt they had learned. The intercom delivered random yes or no answers to each question. His major findings were that Emergence or temporal connectedness was the most important aspect of defining a situation. This property was present in 89% of the interactions he studied. Spatial connectedness (taking the role of the Other) was often present but not essential to social order. Relativity became important only when a definition was challenged or broke down.

Judicial Definitions and Social Order

McHugh's findings are relevant to judge-attorney interaction in a number of ways. First, he concludes that an individual only takes the role of another (sees the situation from another's perspective) when the definition of the situation is challenged. This suggests that only when an attorney "breaks the rules" or disrupts interaction will a justice stop to consider what is happening from the attorney's point of view. Second, if McHugh is correct,

when individuals enter a situation and define it, they generally draw on the following:

a) Past experience with similar situations

b) Where they feel the "other" has been

c) Where they feel the "other" is going

Though McHugh deals strictly with micro-units or temporal connectedness in the sense of stringing statements together, it seemed possible that larger units of this type are used in social interaction as well. In other words, justices may define attorneys by drawing on their past professional experience and future possibilities in the legal system. If so, these assumptions undoubtedly interact with assumptions about where men and women "have been" and "are going" in the larger culture as well. The interviews were analyzed to determine whether Emergent or Relative reasoning was employed in the construction of definitions of each attorney group.

Level of Complexity

A series of unpublished studies of "solo status" by Taylor and others reported by Gallagan (1980) showed that solos in groups are perceived less complexly, more stereotypically and evaluated more extremely than other group members. Though not solos, women were expected to be defined by judges in ways that mirror "solo perception" due to their low numbers in the court. Definitions of female

attorneys were expected to be less complex (contain fewer elements), more stereotypic and more extreme.

Degree of Identification

In addition to type of reasoning and level of complexity, similarity and common fate were believed to be relevant to judicial definitions. Strong identification was expected to be present when a justice defined a group with a high interaction profile. When a justice defined a low interaction group, reference to similarity and common fate were expected to be absent.

In sum, three dimensions of interest were sought in the interview material. These are: a) Emergent versus Relative reasoning, b) the level of complexity, and c) the presence of identification with each group. Only those "definitions" were reported which appeared regularly in the material reflecting a consensual point of view.

Interview Procedure

At the request of the justices, each interview was limited to one hour. The questionnaire in Appendix C had been pre-tested to ensure that it fell within the required time limit. Appointments were arranged at the justices' convenience. Interviews were conducted in judicial chambers and justices were naive to the hypotheses.

Questionnaires were not read but used as guidelines to ensure the uniformity of data. Tape recording was

expressly prohibited requiring written notes.

The interviews were conducted by this researcher. It is recognized that the interviewer's sex may have influenced the interaction. However, the conduct of this study rested on the trust engendered in the justices over a period of months. Understandably, the justices were somewhat hesitant to be scrutinized in the ways implied by the research and the use of many interviewers was not feasible. Also, it should be noted that there was no way to control the degree of communication among the justices during the months of interviewing. It is possible that discussion about the interviews could have followed the completion of a given interview. If such was the case, the findings could reflect an unconscious if not stated agreement among the judges as to the "correct" answer to a given question.

However, "consensual definitions" are central to the interview analysis and, hence, a generalized "judicial response" is quite acceptable. Indeed, this process would mirror the appellate decision-making process itself.

Research Access

Justices were enlisted as subjects through a letter to the presiding justice of the court requesting their participation (Appendix D). They were told the researcher was a doctoral student engaged in a study of the appellate

process. The usual human subjects protection procedures were followed. Specific hypotheses were not discussed. The justices were subsequently debriefed and asked if they would like to receive a copy of the results.

CHAPTER VIII

RESULTS AND DISCUSSION

The results and discussion will be presented in two sections: 1) the observational study of judge-attorney interaction, and 2) the interviews with the justices.

The Observational Study of Judge-Attorney Interaction

One-way analysis of variance confirms the hypothesis which predicted that each of the three groups of attorneys would receive a significantly different number of communications from the bench ($F = 35.68$, $p < .001$).

Comparison of means reveals that older males received a significantly greater number of communications than females ($t = 6.50$, $p < .001$) but fewer than younger males ($t = 2.51$, $p < .02$). This difference is not significant at the .01 level. Older male attorneys then, did not receive the greatest overall number of communications, as predicted.

However, older male attorneys gave shorter arguments ($\bar{X}$ = 11 minutes) than younger males ($\bar{X}$ = 15 minutes) or females ($\bar{X}$ = 14 minutes). On computing a Rate of Interaction

per minute, it was found that older males ($\bar{X}$ = 2.36) did receive a greater number of "per minute" communications than younger males ($\bar{X}$ = 1.57) or females ($\bar{X}$ = .38). One-way analysis of variance conformed that these differences were significant ($F = 10.43$, $p < .001$). When length of argument, then, was held constant, support was achieved for the prediction that older male attorneys would receive the greatest number of judicial communications.

Polite Inattention and Feedback

The most dramatic finding was the confirmation of the prediction that women would receive significantly fewer communications than would all the men. Table 7 indicates the magnitude of this difference, with men receiving three times the number of communications women receive.

This relatively infrequent interaction with women which has been termed polite inattention, can be conceptualized as a social analogue to a "poor feedback" situation in any open system. Research suggests that poor feedback in physical, biological and social systems disrupts performance (Hilgard and Bower, 1975; Feather, 1966; Deci, 1975 and McClelland, 1961). Learning theorists have shown that lack of feedback affects both motivation and the ability to learn in lower animals (see, for example, Hilgard and Bower, 1975). Similar effects have been noted in humans in studies of persistence (Feather, 1966) and intrinsic motivation (Deci, 1975). Research in achievement

motivation (McClelland, 1961) has shown that achievement-oriented individuals need immediate and ongoing feedback to function optimally. Women attorneys probably fall into this high-achievement group.

There is little evidence of research interest in the effects of feedback in professional settings. Yet there is a wealth of theoretical literature which supports the assumption that feedback is important to effective professional performance. It is a basic tenet of general systems theory (Bertalanffy, 1968) and cybernetics (Weiner, 1975) that feedback is essential to motivation and competence. It can be understood, according to these theorists, as the basic currency in organized systems and parallels the notion of energy exchange in physical fields (Bertalanffy, 1968). Feedback, these authors posit, enables a system to be self-regulatory and guarantees stability of action. Without proper feedback, self-correcting mechanisms are not possible; equilibrium cannot be accomplished and goal-directed activity is interrupted. So many systems in technology and nature have been shown to follow this basic pattern that cybernetic theorists conclude that feedback forms the basis of purposeful behavior (Weiner, 1961).

Poor feedback, then, may make it difficult for marginal groups to acquire the skills needed to excel in some settings. Poor feedback may make it difficult

for women to acquire the skills needed to excel in the court-room. It could have a negative effect on self-esteem, motivation and level of aspiration. This is consistent with the symbolic interaction point of view that one's self-concept is, to a great extent, determined by others. Finally, knowledge of positive outcome (solidarity communications) may be important to a sense of accomplishment and involvement. Knowledge of negative outcome (status communications) may be needed to provide self-correcting mechanisms and avoid further errors. Poor feedback is likely to disrupt an attorney's performance and limit her contribution to the system as a whole. Given this, women who receive very little information about their performance from the bench, are at a distinct disadvantage.

In sum, significant differences in total interaction for the three groups of interest were found to exist in the court.[2] Younger male attorneys received the greatest number of overall communications though this appears to be caused by the fact that they give longer arguments than older males. Older males received the greatest number

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[2]It is important to note that inclusion of "uncodable arguments would not have "washed out" but would have enhanced these effects. Of the 13 cases in which there were too many communications to be accurately recorded, 6 occurred with young males, 4 with older males, and 3 with females.

of per-minute communications of all three groups. Women received the least interaction. These findings are summarized in Table 7.

TABLE 7

DIFFERENCES BETWEEN GROUPS IN TOTAL INTERACTION

t* (significance)

	Older Males $\bar{X}$ = 17.40	Younger Males $\bar{X}$ = 20.90
Younger Males $\bar{X}$ = 20.90	2.51 (n.s.)	
Females $\bar{X}$ = 5.82	6.50 ($<$.001)	9.28 ($<$.001)

*Two-tailed test.

Analysis of variance further confirms that the three groups of attorneys received significantly different kinds of communications from the bench (Table 8).

TABLE 8

DIFFERENCES BETWEEN GROUPS ON MAJOR VARIABLES

Variable	F	Significance
Status	15.97	$<$.001
Solidarity	47.41	$<$.001
Neutral	4.75	n.s.

Mean comparisons (Table 9) indicate that older male attorneys, as predicted, received a significantly greater number of solidarity behaviors than younger males ($t = 6.62$, $p < .001$) or females ($t = 8.24$, $p < .001$). There is little difference on this variable between younger men and women. Thus, older male attorneys not only received a pattern of communication which consisted primarily of solidarity behaviors but the pattern was unique to this group.

Younger male attorneys, as hypothesized, received a greater number of status communications than older males ($t = 3.30$, $p < .001$) or females ($t = 8.19$, $p < .001$). As Table 9 indicates, despite the low interaction profile for women, women and older men were not significantly different from each other on this variable.

There were no significant differences between the three groups in neutral behaviors. This suggests that status and solidarity are the important dimensions which determine the quality of interaction in each group.

Finally, it was atheoretically predicted based on a pilot study, that women attorneys would receive primarily solidarity behaviors. This hypothesis was not confirmed. Women received the most balanced pattern of communication of the three groups. Within-group analysis revealed no significant differences for women between status and solidarity behaviors ($t = 1.84$, n.s.). This may reflect

TABLE 9

DIFFERENCES BETWEEN GROUPS IN THE QUALITY OF INTERACTION

(t, * significance)

	STATUS			SOLIDARITY			NEUTRAL		
	OM ($\bar{X}$=6.55)	YM ($\bar{X}$=15.00)	Fem. ($\bar{X}$=2.95)	OM ($\bar{X}$=10.10)	YM ($\bar{X}$=2.81)	Fem. ($\bar{X}$=3.34)	OM ($\bar{X}$=1.50)	YM ($\bar{X}$=3.10)	Fem. ($\bar{X}$=1.00)
OM		3.30 <.01	1.45 n.s.		6.62 <.001	8.24 <.001		2.05 n.s.	.99 n.s.
YM		8.19 <.001				1.96 n.s.			2.62 n.s.

*two-tailed test

a general confusion on the part of the bench as to how this group of attorneys should be treated. Lacking, as they do, a similar professional history, future and visible characteristics like sex, there seems to be a somewhat random response on the part of judges toward them.

In sum, the three groups of attorneys received significantly different kinds of judicial communications. Older male attorneys received primarily solidarity communications; younger male attorneys, status communications and women an equal number of each. Table 9 summarizes these findings.

Patterns of Status and Solidarity

In view of these results, a question arises which should be addressed. How do such distinct patterns of interaction occur without the awareness of those involved? First, many of these communications are subtle, apparently out-of-awareness displays of attention and intention which are not likely to be noticed during argument. Nodding in response to an attorney probably occurs without any conscious thought about the action. Leaving the room is a discreet piece of behavior which cannot escape notice but which occurs rarely and only with certain groups.

Second, status and solidarity patterns are part of the background information of all social interaction and

do not require consideration to be expressed or understood. In the court-room, so much behavior is ritualistic that once an attorney has entered the system, patterns of interaction are probably expected and accepted within a very short time.

Behavior is a language and the rules involved are as natural to actors as grammatic rules are to speakers. That these rules follow status and solidarity norms is not suprising. Age and sex, in any culture, are important organizing principles of behavior. In the court, young men are reminded of their place and socialized to accept the values and traditions of the institution. Older men receive respect, even deference. In higher courts, where experienced lawyers are often distinguished, powerful and affluent men from major law firms, solidarity patterns are to be expected.

The Interviews with the Justices

To review briefly, interviews were analyzed along three dimensions: a) type of reasoning, b) level of complexity, and c) degree of identification.

Age of Attorney

Unlike McHugh's (1968) findings, definitions of older male attorneys were constructed along spatial lines. Relative reasoning (seeing the situation from another's

perspective) was employed by the justices when describing this group. Specific attributes and abilities were described. Typically, older male attorneys were defined by the justices in the interviews as follows:

> An [older male] attorney tends to be less emotionally involved. Reading gets easier because there is a greater familiarity with the law and it takes less time and effort to select a fact pattern. Older lawyers, too, are good at casing the judges. This comes with experience. They don't waste time bringing to appeal errors in a trial that are simply not reversible.

In this kind of definition, specifics are given; abilities described; legal skills noted and the attorney-judge relationship mentioned in a positive way. Compared to other groups, this view was the most complex, grounded in realistic particulars.

Identification with older attorneys was present in every interview as well as recognition of a "common fate" usually expressed as "success" in the profession. For example,

> The shaping behavior that goes on in the court while you're a young attorney is very strong. You must be able to go along, step out of a particular context and not be emotionally involved. Unless you're very stupid, as a young man, you learn very quickly when you're doing well and when you're doing poorly. If you are too emotional or uninformed, the judges will let you have it. It's okay, we've all been there. It's just part of the profession.

The preceding description is characteristic of judicial definitions of young male attorneys and has several elements

which appeared in every interview. First, recognition that the young attorney-judge relationship is tutorial. Second, the presence of identification in the statement, "We've all been there." Third, reference to emotionalism and lack of preparedness. Again, Relative rather than Emergent reasoning seemed to underlie perception of this group. Definitions were constructed with a present-orientation, stressing elements of "sameness and difference" and real and potential abilities. The presence of identification probably accounts, in part, for the high interaction pattern found with this group. The recognition of difference and the felt obligation to shape the behavior of young attorneys probably account for the strong emphasis on status behaviors young males experience.

Sex of Attorney

Two themes emerged in the interview material concerning female attorneys. In the first, and most pervasive, judges defined women as unique in professional history and future limitations in the legal system. In the second, women were perceived as pressing for special attention in inappropriate ways.

Theme 1: Emergent Definitions

Consistent with McHugh's (1965) findings, the characteristic definition of women as attorneys was constructed along temporal dimensions. Judges sought a

theme and temporal sequence which consisted of asking where an attorney "had been" and where she was likely "to be going." Specifically, the typical structure of the judicial view of female attorneys contained first, a statement of difference in temporal/historical terms and second, justification of continued professional limitation:

a) "Women are mostly coming from the DA's Office or legal aid. It's a problem because it means they have different training."

b) "They never get to try certain kinds of cases, so they won't be prepared to step into certain legal areas, ever."

This point of view emerged in all but one of the interviews. It should be noted that one justice did not define men and women differently. This is important because it confirms that distinctions were not imposed by the interview.

The perception that women are less qualified than men because they are found primarily in the public sphere is interesting since three of the nine judges mentioned that their own legal careers originated in the district attorney's office. None felt that this had limited their professional options. All agreed that it had been a valuable experience.

A striking lack of complexity was demonstrated in the perception of this group. Women were consistently defined as coming from a "different place," consequently limited in training and expertise and unable to advance

in the system. While offering this unidimensional definition, judges usually stated that the women they personally encountered in the court were not typical of women lawyers as a group. This appeared to be a way of maintaining a specific definition of women as being less able despite personal experience to the contrary. It enables an "in-group" to discount the abilities of an "out-group" without discounting the ability of a specific individual who has violated the stereotype. Typically, discounting appeared in the following way:

> On the whole, they [women] are not as well equipped as men. You know, don't perform as well. I think, though, the women who end up in this court are better than the average woman who, as I said, is not as well equipped.

Sharp distinctions were made by the judiciary between men and women in broad "historical" terms. As expected, women's history as women interacted with women's history as attorneys. Most justices felt that women were best suited to family law since their "experience" lay in this area. Men, apparently were seen to gain experience in professional contexts; women in family life. Judges saw thelmselves as part of a "masculine" tradition sharing in a general historical expertise. Women were viewed as "outsiders" and defined accordingly.

> You can't take a woman out of the house and put her in the market place and expect her to compete with men. She has no real history [in the profession]. None at all.

As predicted, statements of "similarity" and "common fate" were absent from definitions of women despite certain shared experiences with men. Women have, for example, graduated from law school, passed the bar, entered the legal profession and become litigators in the appellate court. The absence of identification in the judicial perception of this group may account, in part, for the lack of interaction women experience in the court-room.

Theme 2: Relative Definitions

A second, less prevalent, theme which emerged concerning women was constructed spatially (the situation was seen from the other's perspective). In this view, women were seen as pressing for special attention and treatment.

> Women expect special treatment as though we should respond to them in a special way or take more care. If you're going to compete with men you have to do it like a man. They feel the door should be open to them just because they are women. There can't be special short-cuts to the top.

This view was present, in identical form, in one third of the interviews. It is not clear how universal this perception is among the judiciary. To the extent, however, that judges feel women press for special advantage, there is bound to be resentment. This, then, may contribute to reduced interaction with female attorneys as well.

Discussion

Taking the interview material as a whole while recognizing the inherent limitations in such an analysis, some tentative conclusions may be drawn. First, consistent with symbolic interaction theory, judges do appear to define attorneys differently as a function of their sex and age. These definitions may underlie observed variation in judicial communication toward the three groups.

Second, lack of interaction for women seems to reflect a general perception that women are "outsiders." This view of women as marginal seems based on the perception that women lack similar professional experience and future professional possibilities.

Third, how definitions are constructed in interaction may be a more complicated process than McHugh's findings suggest. These interviews indicate that Relative definitions tend to emerge when one interacts with someone perceived to be "similar." Temporal or Emergent definitions are constructed when the other is seen as very different, even out of place in a situation. Further research to explore this distinction is indicated.

Fourth, findings with regard to solo-status in the laboratory are confirmed here. When judges defined women, who are not solos but constitute a small portion of the population, their constructions were less complex and more stereotypic than those of others groups.

Lastly, variables like "similarity" and "common fate," as predicted, appear to be important determinants of the quantity and quality of interaction in the courtroom. Only when these elements were present in judicial definitions, indicating a high degree of identification, were groups defined who actually received a great deal of interaction. Table 10 summarizes the interview results.

TABLE 10

JUDICIAL "DEFINITIONS OF THE SITUATION" BY ATTORNEY GROUP

Group	Major Elements of Definition Present	Level of Complexity	Relations in Time & Space	Aspects of Identification
Older (male) Attorneys	Specific legal skills Self-confidence level Attorney-judge relationship Social acuity Objectivity Performance style Common fate Similarity	High	Relative Definition (Takes role of the 'other')	Present
Younger (male) Attorneys	Emotionality Level of information Level of training Potential competence Attorney-judge relationship Common fate	Medium	Relative Definition (Takes role of the 'other')	Present
Female Attorneys	Professional history Future possibilities Level of training	Low	Emergent Definition (Temporally strung together)	Absent

CHAPTER IX

CONCLUSIONS AND IMPLICATIONS

That meaning guides behavior is a central assumption of this research. Individuals define, refine and interpret their own experiences and the actions of others in every social encounter. Research itself is a form of social encounter to which meaning is attached and a frame of reference imposed by the researcher. For this reason, various implications and conclusions might be drawn from any given body of data. Findings are inevitably set in a context which is consistent with the values of the experimenter. These values should be made explicit.

The conclusions and implications presented here are guided by the belief that any institution is better served when it allows complete participation by all its members. This creates a setting which is responsive to the special interests, talents and contributions of every individual. With this "bias" in mind, these findings suggest a number of things about social power and social change in institutions.

Advancing in a System

The results of this research suggest that a strong pressure is created in institutions for individuals to adopt the attitudes and values of those above in order to advance in the system. This pressure is created through patterns of communication from the top that reward some members, shape the behaviors of others and exclude yet others from valuable interactions. Patterns of communication actually block the rise of those whose values, experiences and visible attributes differ from those in power. In this way, the system socializes its members and controls their behavior, eliminating threats to the existing traditions and rules.

Those who reach "judgeship," for example, must first aspire to this position; then acquire specific skills essential to the role; and ultimately utilize a network of "like-minded" colleagues and mentors who will support their rise in the system. The findings suggest that such aspirations, abilities and networks are determined by an individual's real and potential similarity to those in power. Attorneys who lack shared characteristics with the bench receive little interaction and consequent information about their abilities and performance. They are less likely to acquire the skills and support necessary to succeed at the highest levels.

System socialization, then, can be understood as a

conservative process tending to weed out reformers and cultivate the status quo. Given this, the failure of women and other marginal groups to be fully integrated into professional spheres should be seen as a structural result of the system at least as often as it is seen as a personality-based limitation of the group. This has not hisotrically been the case (see, for a review, Riger and Gallagan, 1980). More attention should be paid to system-based explanations of poorly integrated institutions.

Equalizing the System

Behavioral exclusion or polite inattention as it has been termed, raises questions about the kind of affirmative action programs which currently exist. There seems little disagreement that current approaches have not been effective in fully integrating professional systems. Such programs have been exclusively directed against entry and middle levels of organizations. This study suggests that unless affirmative action is instituted at every level of a system, subtle out-of-awareness social patterns inhibit the upward movement of certain groups. Equality of opportunity seems possible only when the highest levels of institutions are composed of individuals from every group represented at lower levels. Until, for example, women and blacks are well represented on the bench, they will not be able to acquire the skills and self-esteem needed to contribute fully.

Polite inattention is probably present in institutions other than the judicial. Some support for this exists. Kanter (1975) found similar dynamics of exclusion in corporations. In these settings, she found that women's opportunities tend to be blocked; they have little power in the organizational hierarchy and are surrounded by male colleagues who do not share verbally or behaviorally. In addition, she found that women are expected to conform to stereotypes and strong pressures exist moving them in this direction. Kanter attributed these effects to numbers rather than gender. It is the view here that numbers are precisely what determines these patterns in the court-room. Studies of institutions which have traditionally been dominated by women, for instance, social work and nursing, would provide an opportunity to confirm that numbers are the determining factor.

The implications of this study, as a whole, seem discouraging for marginal groups who wish to participate more fully in the professions. On a structural level, there are parallels which can be drawn between behavioral exclusion in the court and economic and political exclusion in the larger society. In this sense, the court-room is a microcosm which reflects the values and economic self-interest of those in power. Following a symbolic interaction perspective, the perception of women and minorities as "outsiders" can be understood as the internalized

psychological consequence of the culture's devaluation of the abilities and contributions of certain of its members.

At the same time, it should be recognized that on the individual level, polite inattention is experienced as the tendency to enjoy interaction with those who share similar values and world view. There is no reason to assume, for instance, that judicial behavior reflects an intention on the part of judges to exclude women. Rather, psychologically, it reflects a satisfying inclusion of those with whom they identify. With this in mind, specific strategies to overcome polite inattention can be developed.

Strategies for Change

The first step in developing strategies for overcoming polite inattention is to specify those institutions most vulnerable to this effect. Such institutions are:
a) characterized by strongly hierarchical structures,
b) represent centers of economic and social power, and
c) are controlled by one class of individuals at the top while serviced by others at lower levels. These include, among others, law, medicine, finance, the corporate world and politics.

At the social policy level, affirmative action programs could be modified to guarantee the upward movement of qualified and competent individuals regardless of race, sex or ethnic background. On the institutional level,

policy-makers could be made aware of the problem through professional journals and such organizations as the American Bar Association and the American Medical Association. Curricula could be developed in professional schools which clarify these interactions early in training and make the system as a whole less vulnerable to out-of-awareness barriers to professional integration.

At the individual level, workshops for marginal groups could make clear the fact that a high degree of interaction with superiors is critical to performance, motivation and self-esteem and that such interaction can be actively elicited. Young professionals need to understand that certain behaviors on their part reduce psychological distance and create a sense of identification and solidarity. Other behaviors produce status or negative feedback but are equally desirable. Humor is an excellent mechanism for generating interaction and can be used effectively to overcome inattention. In less formal interactions, areas of shared experience with colleagues and superiors could be emphasized. Such specifics can and should be part of a training program for marginal groups in a number of professions.

Once individuals and society, as a whole, understand the nature of the interaction effect demonstrated in this study, the desired goal of equal opportunity is more likely to be achieved.

APPENDIX A:

The Recording Instrument

Case _____ Appellant _____ Respondent _____ Sex ___ Race ___ Age _____

Judges ___ Length _____ Day _____ Date ____ Issue ___ Calendar No. _____

Status	1 2 3 4 5 6 7 8 9 1 2 3 4 5 6 7 8 9 1 2 3 4 5 6 7
Talks to other judges	
Interrupts attorney	
Hurries Attorney	
Disagrees w/Attorney	
Invokes J Privilege	
Shakes Head No	
Jokes w/J-exc. A.	
Criticizes Style	
Leaves Room	
Refuses add. Time	
Asks if in Brief	
Rejects Add. Material	
Delays Add. Material	
No response to a Joke	

Solidarity	1 2 3 4 5 6 7 8 9 1 2 3 4 5 6 7 8 9 1 2 3 4 5 6 7
Jokes w/Attorney	
Offers Point of Law	
Shakes Head Yes	
Makes Personal Reference	
Elaborates a Point	
Grants Additional Time	
Grants Add. Material	
Laughs at a Joke	
Offers Relevant Case	
Praises a Style	
Thanks Attorney	

Neutral	1 2 3 4 5 6 7 8 9 1 2 3 4 5 6 7 8 9 1 2 3 4 5 6 7
Asks more Information	
Asks Clarification	

Status _____ Solidarity _____ Total Interaction _____ S/S Ratio _____

Neutral _____ Observer Signature _____

APPENDIX B:

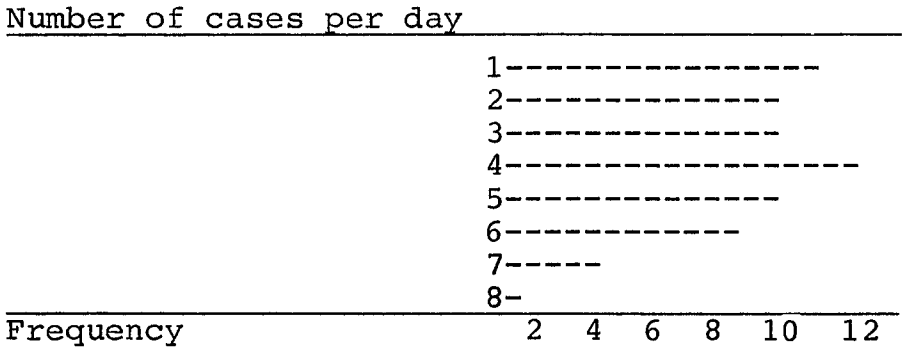
Parameters of the Sample

Number of Cases Heard per Day

On the average, 4 to 5 cases were included for analysis on any given day during which recording occurred. The minimum number of arguments heard on any day was 1; the maximum 8. Mean cases heard per day was 3.65.

Appendix Figure 1

Cases Included Per Day



Appellant/Respondent Breakdown

Women tended to be respondents more often than men. This means that they are not initiating appeals as often and may reflect their presence in the public sphere more

often than private. It is not, however, possible to interpret with any assurance from these data whether this is the case.

Appendix Table 1

Appellant/Respondent Breakdown (frequencies)

	Older Males	Females	Younger Males
Appellant	11	6	14
Respondent	9	14	6

Day of the Week Case was Heard

Of cases included for analysis, 40% were heard on Tuesday; 60% on Thursday.

Appendix Table 2

Day Case was Heard

Day	# Cases	% Arguments
Tuesday	24	40
Thursday	36	60
	60	100

Order of Appearance in the Court

Cases were rather evenly distributed according to their order of appearance in the court. Few cases were the seventh or eighth heard during a session simply because it is rare for judges to sit for more than five to six arguments a day.

Appendix Table 3

Order of Appearance

Order	Absolute Frequency
1	10
2	9
3	9
4	11
5	10
6	8
7	2
8	1
	60

Length of Argument

The average length of argument, for all three groups was 14 minutes. Younger male and female attorneys gave longer arguments than older male attorneys.

Appendix Table 4

Length of Oral Argument

Minutes	Absolute Frequency	% Arguments
5	6	10.0
10	14	23.0
15	31	51.7
20	6	10.0
25	1	1.7
30	2	3.3
	60	100.0

Appendix Table 5

Length of Oral Argument by Group

Group	Mean Length	SD
Older Males	11.75	5.68
Younger Males	15.75	5.44
Females	14.50	3.59

APPENDIX C:

The Interview Schedule

The Interview

Note: To be used as a "guide" not to be strictly read or to limit judicial response. Information to be recorded in written form (at judges request) on separate sheet of paper.

Name _____ Code # _____

Sex _____ Age _____ Race _____ Religion_____

Marital Status_____ Years in Court _____

Previous Professional History _____

Future Professional Goals _____

Date _____ Place of Interview _____

Time Begin _____ Time End _____

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1. What role does the oral argument play in the decision process in this court, in your opinion?

2. Are you affected by an attorney's performance? How? What are the factors which affect your decision with regard to what occurs during the argument itself?

3. Do you have contact with these attorneys outside the court? In what way?

4. Do you often know the attorney personally? Is that a problem of any kind?

5. What makes an effective attorney performance? A poor one? Can you imagine a specific attorney you know whose work you feel is very good and describe him to me? What kinds of qualities does he have? Can you think of a real attorney you know who argues poorly and describe his characteristics?

6. Where did you learn "judgeship"? How does this happen, really? Is it a difficult process?

7. What makes a good judge? What are the really important qualities? Can you describe one you know and believe to be exceptional? How about an historical figure? Is there someone you admire greatly? Why?

8. What makes a judge bad or incompetent? Can you, again, think of someone you feel really shouldn't be on the bench in some court and describe him or her to me? An historical figure?

9. Why is there sometimes a great deal of interaction between the judges and an attorney and at other times almost none? Does it depend on the issue? The attorney? The judge?

10. I once saw an attorney actually break down in tears during his argument. It was all very emotional. How does that affect you sitting on the bench? What do you feel about that kind of situation?

11. How, if at all, do outside pressures affect you? Some theorists have suggested, for example, that political pressures or even the type of court in which a case is heard affect judicial decisions. What do you think about that? Are there extra-legal factors that make presiding harder on a given day? How about easier? How do you compensate if you've a bad headache or something?

12. There's a great deal written about "overload" in the courts these days. Is there excessive volume? Is it a problem in this court? How is it handled? How does it affect you, personally?

13. Is there a difference between the performance of an experienced attorney and a young one? I assume, as in any profession, one picks up skills over time. What exactly are these? Can you think of a good, example of an experienced attorney?

14. How does a case generally arise? How does it move through the court system?

15. How are attorneys assigned specific cases? Do attorneys tend to specialize?

16. I've noticed quite a few women in the court. It seems about a quarter of the attorneys are women, does that seem about right? Are they capable? Do they bring special or different abilities to the profession than men? Do you find working with them any different than working with men? Again, can you think of a woman you feel is exceptionally good and describe her to me?

17. Has the presence of women changed the court system at all? Do you think it will?

18. Did you always aspire to be a judge? Was that part of your professional plan from the beginning? What were you doing prior to coming to this bench? Had you argued as an appellate lawyer? Done other kinds of litigation?

19. Are there special problems for an attorney arguing before a number of judges? What are they?

20. Is it more difficult to render a decision when there are a number of judges? Is it psychologically very different from trial work? Do you feel less responsibility for the decision? More?

21. Are other courts very different? How?

22. Is our appellate system a good one? What are its strengths? Its weaknesses?

23. What is the most dramatic aspect of judgeship in the appellate process? Is it an exciting profession? Stimulating intellectually? Tedious?

24. Why are some arguments delivered so emotionally? How do you feel about argumentative attorneys?

25. Is there too much ritual in the court? To little? Is it changing? How?

26. Has being a judge lived up to your expectations? Do you enjoy the job? What is the best thing about it? The worst?

27. Do you think there will be women judges in this court soon? When? Will that change anything? How? How about a black judge?

28. Why are there so few black attorneys in the court? Should they be encouraged more?

29. Are you satisfied with our appellate process in general? Would you change it in any way? How?

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APPENDIX D:

Letter to the Presiding Justice of the Court

As a doctoral student at the Graduate Center of the City University of New York, I am studying the appellate system. I would like to include the views of those who are part of the system itself. For this reason, I am requesting the opportunity to interview the Presiding Justice and Associate Justices of the Appellate Division. Each interview would last for approximately one hour and be arranged at the convenience of each justice. The interview would include a series of questions concerning the appellate court, attorneys and judges. For example, "What distinguishes a good oral argument from a poor one?" or "What factors contribute to judicial decisions?"

No specific reference to any court or individual justice will be made in my dissertation or any subsequent articles published using this material.

Research in the legal system is important but must be as complete as possible. I cannot overemphasize what an important contribution to my study interviews with justices in the appellate system would be. I hope that something can be arranged and want to assure you that my time and the structure of the interviews are completely flexible. I look forward to hearing from you.

Sincerely,

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