

"The Rise of Conservative
Interest Group Litigation"

by

Karen O'Connor
Lee Epstein

Emory University

Paper prepared for delivery at the annual meeting of the Midwest Political
Science Association, April 28-May 1, 1982.

Introduction

Since the 1950's, scholars have studied the use of the courts by politically disadvantaged groups. According to Richard C. Cortner, disadvantaged groups lobby the Court because they are unable to obtain redress of their grievances in the legislative forum (1968: 287). This assertion has been buttressed by studies of interest group litigation conducted before and after 1968 (Barker, 1967; Belton, 1978; Birkby and Murphy, 1964; Cortner, 1975, 1980; Shattuck and Norgren, 1979; Sorauf, 1976; Vose, 1959, 1972).

While disadvantaged groups continue to litigate to attain their goals, scholarly emphasis on this phenomenon has led researchers to ignore "advantaged" groups' reliance on litigation (see contra, Hakman, 1966; Puro, 1971). Conservative groups including the Chamber of Commerce and the National Association of Manufacturers long have resorted to litigation (Bonnet: 1922). Additionally, the decade of the seventies saw the creation of what some term business-oriented legal foundations (BOLFs)^{<1>} including the Pacific and Mountain States Legal Foundations (Rubin and Jordan, 1981: 255-264) as well as myriad more socially-oriented groups including Right to Life and Citizens for Decency Through Law.

Given the increasing media and scholarly attention to the rise of conservative interest groups, an examination of their litigation activities is long overdue. Generally, we propose to add to conventional wisdom concerning group use of the courts. Specifically, we examine the frequency, the strategies, and the types of conservative groups that have resorted to litigation during the Burger Court era.

Disadvantaged Groups and the Court

Political scientists traditionally have concentrated their research

efforts on disadvantaged groups' use of the courts to obtain rights unavailable in other forums. Three reasons can be offered for this phenomenon: first, initial studies of interest group litigation focused on disadvantaged groups (Yale Comment, 1949; Harper and Etherington, 1952; and Robison, 1951). Even though David Truman noted that business interests used litigation to protect their legislative victories, (1951: chap. XV), later studies focused almost exclusively on disadvantaged groups. For example, Clement E. Vose (1955, 1959), Robert H. Birkby and Walter Murphy (1963), and Lucius Barker (1967), all examined the National Association for the Advancement of Colored People's (NAACP) use of litigation to achieve racial equality. These studies, David Manwaring's (1962) examination of the Jehovah's Witnesses' litigation activities, and as his own work, led Cortner to formulate a theory of interest group use of the courts. Cortner found that disadvantaged groups, including the NAACP and the Jehovah's Witnesses'

are highly dependent upon the judicial process as a means of pursuing their policy interests, usually because they are temporarily, or even permanently, disadvantaged in terms of their abilities to attain successfully their goals in the electoral process, within the elected political institutions or in the bureaucracy. If they are to succeed at all in the pursuit of their goals they are almost compelled to resort to litigation (Cortner, 1969:287).

Studies done subsequently to Cortner's have relied on his framework. Generally they have examined "strategies and tactics" of disadvantaged litigators who seek liberal interpretations of the Constitution.

This concern with constitutional litigation provides a second explanation for scholarly attention to disadvantaged groups. Most judicial scholars, as well as those who focus exclusively on interest group litigation, have preferred to examine the Court's non-commercial caseload. Areas

including religious freedom (Morgan,1969; Sorauf,1976), and gender (Cowan,1976; O'Connor,1980) and race discrimination, (Vose,1959; Meltsner,1973; Wasby,1981) not only have been the focus of extensive scholarly attention, but represent the issues that attract considerable disadvantaged group activity (O'Connor and Epstein,1982).

A third reason for scholarly attention to disadvantaged group litigation is that these litigators develop strategies to influence the Court in highly salient issue areas (Cortner,1969; O'Connor,1980). Disadvantaged groups not only sponsor test cases but they also file amicus curiae briefs to convince the Court to adopt liberal positions (Krislov,1963; Puro,1971). Utilization of both of these tactics has made this kind of litigation particularly interesting for analysis.

Finally, whether disadvantaged groups participate as direct sponsors or amici, case studies indicate that their litigation efforts are very successful. For example, examinations of the NAACP Legal Defense Fund's restrictive covenant (Vose,1959), school desegregation (Kluger,1976), housing (Wasby,1981), and employment discrimination litigation strategies (Belton,1978; O'Connor and Epstein,1981) have made it and other liberal organizations attractive for study. Thus, for these reasons, political scientists have focused almost exclusively on disadvantaged groups.

While political scientists have concentrated on disadvantaged groups, some social scientists and lawyers have applied economic models to study the role of organized business interests in the judicial process (Weisbrod,1978; Jordan and Rubin,1981; Aranson,1981). They have discovered that recognition of the success of disadvantaged group litigation has prompted the creation of several conservative public interest law firms, or BOLF's. In fact, the Pacific Legal Foundation was modeled after the NAACP Legal Defense and

Education Fund (LDF).

The rise of BOLF's and the regular amicus appearances of groups including the Chamber of Commerce and the National Association of Manufacturers necessitates a reexamination of Cortner's thesis and a thorough study of the extent, nature, and consequences of litigation by groups that generally have been considered to be politically, socially, and/or economically advantaged. This is particularly timely given the fact that since 1980, socially conservative groups including the Moral Majority and Stop ERA have formed legal defense funds to advance their respective interests. An additional factor necessitates examination of these interest groups. While the Ford Foundation, which funds liberal groups is dramatically cutting back on its support for litigation, the coffers of all types of conservative interest group litigators are growing at a phenomenal rate (Singer, 1979: 2052-2056). Thus, in this paper we address the following questions:

1. To what extent do advantaged groups litigate before the United States Supreme Court?
2. Do particular areas of the law evidence disproportionate amounts of advantaged group litigation?
3. Do advantaged groups develop strategies to lobby the Supreme Court?
4. Which advantaged groups regularly resort to litigation?

Definitions and Methods

Data for this study were obtained from the records of the United States Supreme Court. All of the 1,370 full opinion cases decided by the Burger Court (1969 to 1980 Terms) were included. Each case was categorized into one

of five areas: (1)criminal; (2)economic liberalism; (3)civil liberties; (4)taxes; and, (5)court authority .<2>

The briefs of both the direct sponsors and amicus curiae (if any) were read to identify participating groups. These groups were classified either as advantaged or as disadvantaged. This distinction was based on the socio-political status of their clientele group as well as on the group's professed ideological stance. For example, disadvantaged, or "liberal" groups were those that regularly represented the interests of minorities, criminal defendants or consumers. Groups that represented those who claimed civil liberties or civil rights abridgements also were included in this category. In contrast, advantaged groups were those that, for example, represented the interests of employers and business. Groups that espoused socially conservative or law and order causes also were included in this category. Only groups that revealed a consistent ideological pattern were included. Thus, for example, the AFL-CIO and other unions were excluded from this study because they did not consistently advocate a liberal or a conservative position (O'Connor and Epstein,1981).

Findings

1.Participation Rates

Either a liberal and/or conservative interest group participated in 49.3 percent (n=676) of the 1,370 cases decided by the Burger Court during its 1969 to 1980 Terms. At least one liberal interest group participated either as a direct sponsor or as an amicus curiae in 40.3 percent (n=552) of the cases, while at least one conservative group appeared in 19 percent (n=261).<3> Thus, over the twelve year period, liberal interest groups participated to a significantly greater extent than conservative interest groups. However, as

indicated by Figure 1 below, the overall percentage rate obscures the increase in conservative participation over time.

(Figure 1 about here)

While liberal interest group participation has remained relatively stable, conservative groups' appearances before the Court have increased. During the Court's 1969 Term, conservative interest groups participated in only 9 percent (n=7) of the total cases. By the 1980 Term, their participation rate tripled and in fact, conservative groups appeared in over 50 percent of the cases in which an interest group was present.

Low interest group participation rates during the 1969 Term support Cortner's observations about advantaged groups' use of the Court. However, by the 1980 Term, conservative interest groups were appearing before the Court on a regular basis. And while there still is some disparity between the participation rates of advantaged and disadvantaged groups, conservative interest groups can no longer be ignored as participants in the judicial process. Thus these findings parallel those of other studies concluding that conservative interest group activity is increasing in other forums. For example, just as conservative groups have formed political action committees (PAC's) to finance the campaigns of their preferred candidates, they have also used litigation to support their preferred causes.

2. Strategies

Examinations of disadvantaged interest groups' activities reveal that many of these groups adopt one of two tactics. While groups like the NAACP LDF prefer to sponsor cases, (Westin,1975) others including the American Civil Liberties Union generally rely on amicus curiae briefs to lobby the Court

(O'Connor, 1980; Yale Comment, 1949).

As indicated by Figure 2 below, advantaged and disadvantaged groups generally adopt different strategies.

(Figure 2 about here)

Conservative interest groups' preference for an amicus curiae strategy is clearly evident. Of the 261 cases in which they participated, conservative groups sponsored only 2 percent (n=7). In contrast, liberal groups sponsored 39 percent (n=265) of the 679 cases in which they appeared.

Conservative interest group reliance on an amicus curiae strategy has several implications: first, sponsorship affords greater control over the course of litigation. Even though it is difficult to assess the relative merits of the direct sponsorship versus the amicus curiae strategy, control at the trial court level is generally assumed to have a positive impact on the outcome of interest group litigation (Belton, 1978; Vose, 1959; Greenberg, 1977). Thus, conservative group reliance on the amicus curiae strategy may have some adverse consequences, but these groups believe that the benefits of participating in already docketed cases far outweigh the risks. Second, control also may not be critical because as advantaged litigators, conservative interest groups often have access to other political forums. For example, anti-abortion groups, after their losses in Roe v. Wade (1973) and Doe v. Bolton (1973), were able to persuade several state legislatures to enact laws restricting abortion rights (Epstein, 1982). Consequently, these groups and other conservative interests' stake in the outcome of litigation may not be as great as those who rely more heavily on the judicial forum. Finally, Cortner noted that while disadvantaged groups were important because they sponsored test cases, advantaged groups did not "reveal any peculiar

characteristics which (were) helpful in classifying them as particular kinds of participants in the judicial process" (Cortner, 1968: 288). However, this is no longer the case. Today advantaged interest groups can be characterized by their exclusive reliance on an amicus curiae strategy.

3. Issue Concentration

Scholars examining disadvantaged groups have concluded that these groups litigate to expand constitutional guarantees. In contrast, studies by economists point to conservative group involvement in litigation in which economic issues are at stake. Specifically, they claim that conservative interest groups litigate to limit the expansion of government involvement in the private sector.

Both of these assertions are supported by our data as revealed in Figure 3 below.

(Figure 3 about here)

Conservative interest groups appeared most frequently in cases involving economic liberalism claims, while liberal groups appeared most regularly in cases involving civil liberties. For example, of the cases decided during the 1969 to the 1980 Terms in which liberal (n=552) or conservative (n=261) interest groups participated, liberal groups devoted 58.9 percent (n=325) of their efforts to cases involving civil liberties. These claims represented 36 percent (n=94) of conservative groups' rates. This relatively high conservative involvement in civil liberties can be attributed to increasing conservative interest in this area over time as revealed in Figure 4 below.

(Figure 4 about here)

Within the civil liberties category, areas including abortion, obscenity, and employment discrimination have attracted considerable conservative attention. And, in those areas conservative interests have been primarily represented by single issue groups - Americans United for Life, Citizens for Decency Through Law, and the Equal Employment Advisory Council, respectively. In contrast, cases involving issues of economic liberalism represented only 13 percent (n=72) of liberal groups' total participation compared with 42.9 percent (n=112) of conservative interest groups' participation. In this area, the Chamber of Commerce and BOLF's regularly represented the conservative viewpoint.

Interestingly, criminal issues were of lesser importance both to conservative and to liberal groups. This area represented only 14.6 percent (n=38) and 24.3 percent (n=134) of the conservative and liberal interest groups' respective caseloads. Of the thirty-eight cases with conservative interest group participation, Americans for Effective Law Enforcement (AELE) participated in twenty-five.

Thus, as expected, conservative and liberal interest groups concentrated in different areas. Over the past twelve years, liberal groups have consistently focused their energies on civil liberties cases. In contrast, economic liberalism cases constituted the largest share of conservative interest group litigation efforts. Their involvement in civil liberties issues, however, has increased since 1976.

4. Conservative Interest Groups

As indicated in Figure 3, civil liberties, economic liberalism and criminal cases represented 93.5 percent of the cases with conservative or liberal interest group participation. Here we examine three groups that have

contributed to the rise of the conservative presence in the Court. Contrary to conventional wisdom, these groups rely almost exclusively on an amicus curiae strategy to further their policy goals.

Civil Liberties

The Equal Employment Advisory Council (EEAC) was founded in 1976 by several large business interests. It was formed specifically to monitor the litigation of the Equal Employment Opportunity Commission and to file amicus curiae briefs in precedent-setting cases (EEAC,1982:1). These briefs provide the Court with the EEAC's interpretation of the proper use and limits of statistical information in employment discrimination cases.

Thus, the EEAC typifies the profile drawn in this study of conservative interest group litigators. It was established to participate as an amicus curiae, and in fact, it has stated that it will not sponsor cases. Its leadership does not feel that sponsorship is well-suited to its goals because the cost of sponsorship outweighs its benefits. For example, the EEAC believes that selective participation in cases already docketed is a more effective strategy than bringing test cases to the Court.

The EEAC claims that this strategy has resulted in an overall success rate of 66 percent in the federal courts and before federal agencies (EEAC,1982: 6). The EEAC's involvement in a wide range of employment discrimination cases in which civil liberties issues were present, however, was less successful. In the twenty-six cases included in this study in which the EEAC participated, the Court adopted its position in 46.1 percent (n=12). While this is lower than its overall rate, the EEAC is a relatively new organization still in the process of establishing its reputation with the Court. Thus, the EEAC may emerge as a more successful litigator given the

increasing complexity of employment discrimination (Belton,1978) and the growing conservatism of the Court.

Economic Liberties

Since the mid-1970's, individuals and groups concerned with increasing number of government regulations have formed business-oriented legal foundations (BOLFs). While there are numerous regional BOLFs including the Southeast, Northeast, and Mountain States Legal Foundations, most were modeled after the Pacific Legal Foundation, which was created in 1973. Founders of the Pacific Legal Foundation (PLF) saw the initial "phenomenal" success of traditional, disadvantaged, public interest law firms and wanted to see if they could use litigation to a similar advantage (Momboisse,1980).

The PLF and subsequently founded BOLFs were established to correct what conservatives perceived as an imbalance in public interest law. Since 1973, for example, the

PLF has pioneered a new form of (public interest law); suits supporting conservative, business-oriented positions against government regulation. Or as one detractor calls it, the Anti-Nader's Raiders (Quinn,1980: n.p.).

To achieve this goal, the PLF sponsors selected test cases at the trial court level. However, it has generally limited its United States Supreme Court activity to participation as amicus curiae.<4> In that capacity, it has won 40.9 percent (n=9) of the cases in which it has participated.

In selecting cases for its amicus participation, the PLF not only "seeks precedent setting cases" but claims to involve itself in cases that will "benefit the public"(PLF,1980-81: 2). Unlike the EEAC, the PLF represents conservative interests in a wide range of economic liberalism areas including the environment, property rights and zoning regulations. Thus, it is more

similar to liberal public interest law firms that also take an expansive view of the public interest.

Criminal

While criminal cases have not attracted a significant level of interest group activity, (O'Connor and Epstein, 1982), at least one group, the Americans for Effective Law Enforcement (AELE) has chosen to concentrate its efforts in this area. The AELE was founded in 1966 as "an 'organized voice' for the law-abiding citizens regarding this country's crime problem and to lend support to professional law enforcement" (AELE pamphlet, u.d.).

The AELE's first project was participation as amicus curiae in Terry v. Ohio (1968). Since that time AELE has established an Amicus Curiae Brief Program to further its goals. Like the EEAC, AELE is a single issue organization that prefers to participate as an amicus curiae rather than as a direct sponsor. Its belief in the utility by this strategy is reflected in a statement of its founder, Professor Fred Inbau, who explained:

We can't choose what cases to take to the high court: the Justices do. We can only hope appropriate cases get up there. We can only select our cases from those the Court has agreed to consider. We can't continually repeat a "We told you so" response and file a rubber stamp brief. We seek to retain the Court's interest and hope to systematically lead a majority of Justices to the point where the cumulative body of case law favors our positions (AELE, (a):2).

By pursuing an amicus curiae strategy, AELE has been very successful. Of the 25 cases included in this analysis in which AELE participated, it submitted briefs on the winning side in 68 percent (n=17).<5> Thus, while the EEAC and the AELE are similar in nature, i.e. both use an amicus curiae strategy in a single issue area, AELE's greater success may be attributable to

two factors; first, AELE has established its expertise and credibility with the Court. It has participated in several major criminal cases since 1969. Second, unlike the EEAC, which generally prepares and files amicus curiae briefs alone, AELE writes briefs on behalf of other organizations as well as for states. For example, many AELE briefs are jointly filed with the International Association of Police Chiefs and/or the National District Attorney's Association. In addition, AELE frequently appears in cooperation with one or more states on behalf of the law and order position. Cooperation of this nature has been pointed to by several scholars as important to interest group success (Sorauf, 1976; Berger, 1978; Wasby, 1981).

Finally, AELE uses an amicus curiae strategy for the same reasons that disadvantaged organizations adopt the direct sponsorship approach. In the past, groups such as the NAACP LDF have brought test cases to the Court to whittle away negative precedents (Vose, 1959; Greenberg, 1976). Similarly, AELE views the law as a

block of marble that eventually becomes a beautiful statue. You chip away, bit-by-bit, until you carve the figure and features (AELE, (a): 2).

Thus, it sees its amicus curiae activity as an effective way to change constitutional doctrine.

Conclusion

In this analysis we addressed several questions concerning conservative interest group participation in United States Supreme Court litigation. First, we found that conservative groups not only participated but that their involvement has increased over time. This increase may be due to several factors. With the addition of conservative Justices Rhenquist and Powell,

conservative interest groups saw the Court as a more receptive forum than it had been during the Warren Court era. In fact, both the EEAC and several BOLF's were formed shortly after these Justices were appointed to the Court. Additionally, conservative interest groups, learning from their liberal counterparts, saw litigation as a means of furthering their policies interests and thus attempted to model themselves after disadvantaged litigators. Also, during the late 1970's and early 1980's, the increasing awareness and acceptance of conservatism in the United States has given added life to conservative interest groups. The Reagan administration, in fact, numbers among its cabinet members, a former head of the Mountain States Legal Foundation, James Watt. Thus, for these reasons, advantaged groups view litigation as an integral part of their lobbying activities.

A second question addressed in this study was whether conservative groups developed strategies to lobby the Court. The data indicate that conservative interest groups rely heavily on an amicus curiae strategy. Vose has criticized reliance on amicus curiae activity as an indicator of interest group involvement in litigation (1981: 10). This study, however, reveals that particularly when studying conservative groups, amicus curiae activity cannot be ignored. In fact, the groups themselves claim that they file amicus curiae briefs to affect the Court.

Finally, we examined the issue areas where conservative groups participated. As expected, conservative groups allotted the largest proportion of their efforts to cases involving economic liberalism. However, their involvement in civil liberties cases is increasing. Many of the groups participating in this area, in fact, are relatively new and anticipate allotting additional resources to this area of litigation. Increased participation will allow these groups to build expertise and establish

themselves as "repeat players" with the Court (Galanter,1974). These factors, when coupled with the conservative bent of the Court, could have an adverse impact on liberal groups.

Based on these findings, we conclude that both advantaged and disadvantaged groups view the Court as a political forum. Each sees the importance of lobbying the judiciary to achieve its goals. Writing in 1968, Cortner saw no pattern to advantaged group litigation. Since 1968, however, the growth of conservative interest group litigation necessitates a revision of that theory and recognition of the growing utilization of an amicus curiae strategy.

Notes

1. The acronym "BOLF" is probably too restrictive in definition. Bolfs involve themselves in a wide variety of cases. Most, but not all of them, however, involve issues of economic liberalism.
2. These categories closely parallel the scales used earlier by Glendon Schubert (1962). Our economic liberalism, however, also includes cases that would fall into his F scale (monetary conflicts). And, our judicial activism category includes all the cases included in his A, N and J scales.
3. The total of these percents exceed 49.3 percent because in many cases, both a conservative and liberal group appeared.
4. The PLF, however, is beginning to attempt to sponsor appropriate "test cases" if its leaders believe the case is a possible vehicle for furthering their philosophies.
5. As the "score card" below indicates, the AELE is very proud of its high success rate.

AELE AMICUS CURIAE SCOREBOARD						
Court	AELE On 'Winning' Side	AELE 'Losing' Side	Disposition On Other Grounds	Cases Still Pending	Total Cases Briefed	AELE's Win/Loss Ratio
U.S. Supreme Court	23	10	1	1	35	70%
Other Courts	18	9	2	2	31	67%
Total All	41	19	3	3	66	68%

Source: AELE (a): 2.

BIBLIOGRAPHY

- Alberta Case Comment (1977) "The Lawyer as Lobbyist," Alberta Law Review 15-400-412.
- Americans for Effective Law Enforcement, (undated) pamphlet.
 _____ (1973) "Criminal Justice IMPACT."
 _____ a. (undated) "Impact."
- Aranson, Peter H. (1981) American Government: Strategy and Choice. Cambridge, Mass.: Winthrop Publishers.
- Barker, Lucius (1967) "Third Parties in Litigation: A Systematic View of Judicial Function," Journal of Politics 29:41-69.
- Belton, Robert (1978) "A Comparative Review of Public and Private Enforcement of Title VII of the Civil Rights Act of 1964," Vanderbilt Law Review 31:905-961.
- Bentley, Arthur (1908) The Process of Government. University of Chicago Press.
- Berger, Margaret A. (1979) "Litigation on Behalf of Women: An Assessment," Ford Foundation Report, mimeo.
- Berlin, Edward, et al. (1970) "Public Interest Law," George Washington Law Review 38:675-693.
- Berry, Jeffrey M. (1977) Lobbying for the People. Princeton University Press.
- Birkby, Robert H. and Walter Murphy (1964) "Interest Group Conflict in the Judicial Arena," Texas Law Review 42:1018-1048.
- Brown, Elliot A. (1975) "Case Histories, Interest Group Litigation and Mr. Justice Holmes," (book review) Emory Law Journal 24:1037-1074.
- Burke, Susan Olson (1980) "The Political Evolution of Interest Group Litigation," Paper presented to the American Political Science Association, Washington, D.C.
- Cahn, Edgar S. and Cahn, Jean Camper (1970) "Power to the People or the Profession?--The Public Interest in Public Interest Law," 79 Yale Law Journal:1005-1048.
- Casper, Jonathan D. (1972) Lawyers Before the Warren Court. University of Illinois Press.
- Clark, Timothy B. (1980) "After a Decade of Doing Battle, Public Interest Groups Show Their Age," National Journal:1136-1141.
- Cohen, Richard E. (1976) "Public Interest Lawyers Start Looking Out for Their Own Interests," National Journal:860-863.

- Cook, Constance Ewing (1980) Nuclear Power and Legal Advocacy: The Environmentalists and the Courts. Lexington, Mass.: Lexington Books.
- Cortner, Richard C. (1964) The Wagner Act Cases. University of Tennessee Press.
- _____ (1968) "Strategies and Tactics of Litigants in Constitutional Cases," Journal of Public Law 17:287-307.
- _____ (1970a) The Jones and Laughlin Case. New York: Alfred Knopf.
- _____ (1970b) The Apportionment Cases. University of Tennessee Press.
- _____ (1975) The Supreme Court and Civil Liberties Policy. Palo Alto, California: Mayfield.
- _____ (1980) The Supreme Court and the Second Bill of Rights. University of Wisconsin Press.
- Comment (1976) "Quasi-Party in the Guise of Amicus Curiae," Cumberland Law Review 7:293-305.
- Council for Public Interest Law (1976) Balancing the Scales of Justice: Financing Public Interest Law in America. The Council for Public Interest Law.
- Cowan, Ruth B. (1976) "Women's Rights Through Litigation: An Examination of the American Civil Liberties Union Women's Rights Project, 1971-1976," Columbia Human Rights Law Review 8:373-412.
- Danelski, David. J. (1968) "Public Law: The Field," International Encyclopedia of Social Sciences.
- Denvir, John (1976) "Towards a Political Theory of Public Interest Litigation," North Carolina Law Review 34:1133-1160.
- Dorsen, Norman (1968) Frontiers of Civil Liberties. Pantheon Books.
- Epstein, Lee (1982) "Interest Groups, Controversy and the Court: An Analysis of Abortion Litigation." unpublished M.A. Thesis, Emory University.
- Equal Employment Advisory Council (1982) Annual Report.
- Galanter, Marc (1974) "Why the 'Haves' Come Out Ahead: Speculation on the Limits of Legal Change," Law and Society Review 9:95-160.
- Gambitta, Richard A. L., Marlynn L. May and James Foster (eds.) (1981) Governing Through Courts. Beverly Hills, Calif.: Sage Publications.
- Ginger, Ann Fagan (1963) "Litigation as a Form of Political Action," Wayne Law Review 9:458-483.

Greenberg, Jack (1975) "Litigation for Social Change: Methods, Limits and Role in Democracy," Record of the New York City Bar Association 29:9-63.

_____ (1976) "The Death Penalty: Where do we go from here?" NLADA Briefcase 34-55-57.

_____ (1977) Judicial Process and Social Change: Constitutional Litigation. St. Paul, Minn.: West Publishing Co.

Greenwald, Carol S. (1975) "The Use of Litigation by Common Cause: A Study of the Development of Campaign Finance Reform Legislation," Paper presented to the American Political Science Association; San Francisco, California.

_____ (1977) Group Power: Lobbying and Public Policy. Praeger Publishers.

Grossman, Joel B. and Joseph Tanenhaus (1969) Frontiers of Judicial Research. Wiley.

Hahn, Jeanne (1973) "The NAACP Legal Defense and Educational Fund: Its Judicial Strategy and Tactics," in American Government and Politics by Stephen L. Wasby. New York: Charles Scribner. pp. 387-400.

Hakman, Nathan (October 1966) "Lobbying the Supreme Court: An Appraisal of Political Science 'Folklore'," Fordham Law Review 35:15-50.

_____ (1969) "The Supreme Court's Political Environment: The Processing of Noncommercial Litigation," in Frontiers of Judicial Research by Joel B. Grossman and Joseph Tananhaus. New York: Wiley, pp. 199-253.

_____ (1971) "Old and New Left Activity in the Legal Order: An Interpretation," Journal of Social Issues 27:105-121.

Halpern, Charles R. and John M. Cunningham (1971) "Reflections on the New Public Interest Law: Theory and Practice at the Center for Law and Social Policy," The Georgetown Law Journal 59-1095-1121.

Halpern, Stephen C. (1976) "Assessing the Litigative Role of ACLU Chapters," in Civil Liberties: Policy and Policy Making by Stephen L. Wasby. Lexington, Mass.: Lexington Books. pp. 159-168.

Handler, Joel (1978a) Social Movements and the Legal System. New York: Academic Press.

_____ (1978b) "Public Interest Law and Employment Discrimination," in Public Interest Law: An Economic and Institutional Analysis by Burton A. Weisbrod. University of California Press.

Harper, Fowler V. and Edwin D. Etherington (1952) "Lobbyists Before the Court," University of Pennsylvania Law Review 101:1172-1177.

Horn, Robert A. (1956) Groups and the Constitution. Stanford University Press.

- Hull, Kent (1978) "Advocates as Amicus Curiae: Friends of the Court Effect Change," Amicus 3:27-30.
- Ippolito, Dennis S. and Thomas A. Walker (1980) Political Parties, Interest Groups, and Public Policy: Group Influence in American Politics. Englewood Cliffs, N.J.: Prentice-Hall.
- Jacquency, Theodore (1973) "Washington Pressures/Nader Network Switches Focus to Legal Action, Congressional Lobbying," National Journal: 840-849.
- Jordan, Ellen R. and Paul H. Rubin (1981) "Government Regulation and Economic Efficiency: The Role of Conservative Legal Foundations" in A Blueprint for Judicial Reform by Patrick B. McGuigan and Randall R. Rader. Washington, D.C.: Free Congress Research and Education Foundation.
- Joyce, John M. and Margaret Wagner (1972) "NLADA Technical Assistance," NLADA Briefcase 31:262-265.
- Katz, Ellis (1967) "The Supreme Court in the Web of Government: The ACLU, the Supreme Court and the Bible," Ph.D. dissertation, Columbia University.
- Key, V. O. (1964) Politics, Pressures, Parties and Pressure Groups. New York: Thomas Y. Crowell & Co.
- Kluger, Richard (1976) Simple Justice: The History of Brown v. Board of Education and Black Americans Struggle for Equality. New York: Alfred Knopf.
- Krislov, Samuel (1963) "The Amicus Curiae Brief: From Friendship to Advocacy," Yale Law Journal 72:694-721.
- Luberow, Gerald C. (1972) "The Action Lawyers," Saturday Review, August 26.
- MacKerron, Conrad (1981) "Legal Services Corp. Supporters Fear It May Be 'Block Granted' to Death," National Journal:358-360.
- Manwaring, David (1962) Render Unto Caesar. University of Chicago Press.
- Marshall, Thurgood (1969) "Group Action in the Pursuit of Justice," New York University Law Review 44:661-672.
- Melone, Albert P. (1979) Lawyers, Public Policy and Interest Group Politics. Washington, D.C.: University Press of America.
- Meltsner, Michael (1973) Cruel and Unusual: The Supreme Court and Capital Punishment. New York: Random House.
- _____ and Peter Schrag (1974) Public Interest Advocacy: Materials for Clinical Legal Education. Boston: Little Brown.
- Miller, Loren (1966) The Petitioner: The Study of the Supreme Court of the United States and the Negro. Cleveland: World Publishing.

- Momboisse, Raymond M. (1980) "Public Interest Law--Plague or Panacea," paper delivered at the University of Wisconsin Law School.
- Morgan, Richard E. (1968) The Politics of Religious Conflict: Church and State in America. New York: Pegasus.
- Murphy, Walter F. (1959) "The South Counter-Attacks: The Anti-NAACP Law," Western Political Quarterly 12:371-390.
- _____ and C. Herman Pritchett (1979) "Interest Groups and Litigation," in Courts, Judges and Politics by Walter F. Murphy and C. Herman Pritchett. New York: Random House. pp. 260-269.
- Neier, Aryeh (1979) Defending My Enemy. New York: E. P. Dutton.
- O'Connor, Karen (1980) Women's Organizations' Use of the Courts. Lexington, Mass.: Lexington Books.
- _____ and Lee Epstein (1981) "An Overview of Interest Group Participation in Gender- and Racially-Based Employment Discrimination Litigation," Paper presented to the Law and Society Association; Amherst, Mass.:
- _____ and Lee Epstein (1982) "Research Note: An Appraisal of Hakman's 'Folklore'," Law and Society Review 16:701-711.
- O'Neill, Timothy J. (1980) "Advocacy Politics in Bakke: The Lawyer as Organizational Leader," Paper presented to the Northeast Political Science Association; New Haven, Conn.
- Ornstein, Norman J. and Shirley Elder (1978) Interest Group Lobbying and Policy Making, Washington, D.C.: Congressional Quarterly Press.
- Orren, Karen (1976) "Standing to Sue: Interest Group Conflict in the Federal Courts," American Political Science Review 70:723-741.
- Osbourne, George (1963) "The NAACP in Alabama," in The Third Branch of Government by C. Herman Pritchett and Alan Westin. New York: Harcourt, Brace and World.
- Pacific Legal Foundation (1979-1980) Annual Report.
 _____ (1980-1981) Eighth Annual Report.
 _____ (1980) Fact Sheet.
 _____ (1980-1981) The Reporter (bi-monthly newsletter).
- Peltason, Jack (1955) Federal Courts in the Political Process. New York: Random House.
- Pfeffer, Leo (1981) "Amici in Church-State Litigation," Law and Contemporary Problems 44:83-110.
- Pritchett, C. Herman and Westin, Alan F., eds. (1963) The Third Branch of Government: Eight Cases in Constitutional Politics. New York: Harcourt, Brace and World.

- Puro, Steven (1971) "The Role of Amicus Curiae in the United States Supreme Court: 1920-1966," Ph.D. dissertation at the State University of New York at Buffalo.
- Quinn, Tony (1980) "Practicing Public Interest Law the Conservative Way," Western Law Journal (reprinted by Pacific Legal Foundation)
- Rabin, Robert L. (1976) "Lawyers for Social Change: Perspectives in Public Interest Law," Stanford Law Review 28:207-261.
- Rheingold, Paul D. (1965) "Mass Litigation Affecting Many Persons," Trial:29.
- Robinson, Joseph B. (1951) "Organizations Promoting Civil Rights and Liberties," Annals of the American Academy of Political and Social Science 275:18-26.
- Rothstein, Lawrence E. (1974) "The Myth of Sisyphus: Legal Service Efforts on Behalf of the Poor," University of Michigan Journal of Law Reform 7:493-515.
- Kubin, Eva R. (1982) Abortion, Politics and the Courts. Westport, Conn.: Greenwood Press.
- Scheingold, Stuart (1974) The Politics of Rights. Yale University Press.
- Schubert, Glendon (1962) "The 1960 Term of the Warren Court: A Psychological Analysis," American Political Science Review 56:90-107.
- Shattuck, Petra T. and Jill Norgren (1979) "Political Use of the Legal Process by Black and American Indian Minorities," Howard Law Journal 22:1.
- Shields, Geoffrey and Sanford Spector (1972) "Opening Up the Suburbs: Notes on a Movement for Social Change," Yale Review of Law and Social Action 2:330-333.
- Singer, James W. (1979) "Liberal Public Interest Law Firms Face Budgetary, Ideological Challenges," National Journal: 2052-2056.
- _____ (1977) "A Brief in Detail," National Journal:1538.

- 7
- Sorauf, Frank J. (1976) The Wall of Separation: The Constitutional Politics of Church and State. Princeton University Press.
- Stein, Barbara A. (1976) "Public Interest Law: The Balancing Act," Trial 12:12-14.
- Stewart, Joseph Jr. and Edward Heck (1981) "Lawyers, Interest Groups, and the Attack on Civil Wrongs," Paper presented to the American Political Science Association; New York City.
- Tenofsky, Elliot (1980) "Interest Groups and Litigation: The Commission on Law and Social Action of the American Jewish Congress," Ph.D. dissertation, Brandeis University.
- Terris, Bruce J. (1974) "Hard Times Ahead for Public Interest Law," Juris Doctor 4:22-29.
- Truman, David B. (1951) The Governmental Process. New York: Alfred Knopf.
- Tushnet, Mark (1980) "The Sociology of Article Three: A Response to Professor Bilmeyer," Harvard Law Review 93:1698-1726.
- Ulmer, S. Sidney (1978) "Selecting Cases for Supreme Court Review: An Underdog Model," American Political Science Review 78:902-924.
- Vose, Clement E. (1955) "NAACP Strategy in the Restrictive Covenant Cases," Western Reserve Law Review 6:101-145.
- _____ (1957) "National Consumers' League and the Brandeis Brief," Midwest Journal of Political Science 1:178-190.
- _____ (1958) "Litigation as a Form of Pressure Group Activity," The Annals of the American Academy of Political and Social Science 319:20-31.
- _____ (1959) Caucasians Only. University of California Press.
- _____ (1966) "Interest Groups, Judicial Review, and Local Government," Western Political Quarterly 19:85-100.
- _____ (1972) Constitutional Change. Lexington, Mass.: Lexington Books.
- _____ (1981) "Interest Groups and Litigation," Paper presented to the American Political Science Association; New York City.
- Wasby, Stephen L. (1978) The Supreme Court in the Federal Judicial System. New York: Holt, Rinehart and Winston.
- _____ (1981) "Interest Group Litigation in An Age of Complexity," Paper presented to the Midwest Political Science Association, Cincinnati, Ohio.
- _____ (1982) "Interest Group Litigation in An Age of Complexity," forthcoming in Policy Studies Journal.

- Weisbrod, Burton A. (1978) Public Interest Law: An Economic and Institutional Analysis. University of California Press.
- Westin, Alan (1975) "Someone Has to Translate Rights into Realities," Civil Liberties Review 2:104-128.
- Wood, Stephen B. (1967) Constitutional Politics in the Progressive Era: Child Labor and the Law. University of Chicago Press.
- Yale Comment (1949) "Private Attorneys-General: Action in the Fight for Civil Liberties," Yale Law Journal 58:574-598.
- _____ (1963) "The South's Amended Barratry Laws: An Attempt to End Group Pressure Through the Courts," Yale Law Journal 72:1613-1645.
- _____ (1981-1972) "GI Justice in Viet Nam: An Interview with the Lawyer's Military Defense Committee," Yale Review of Law & Social Action 2:25-40.
- Zeigler, L. Harmon and G. Wayne Peak (1972) Interest Groups in American Society. Englewood Cliffs, New Jersey: Prentice-Hall.

FIGURE 1

OVERALL CONSERVATIVE & LIBERAL PARTICIPATION IN SUPREME COURT CASES
1969-1980 TERMS

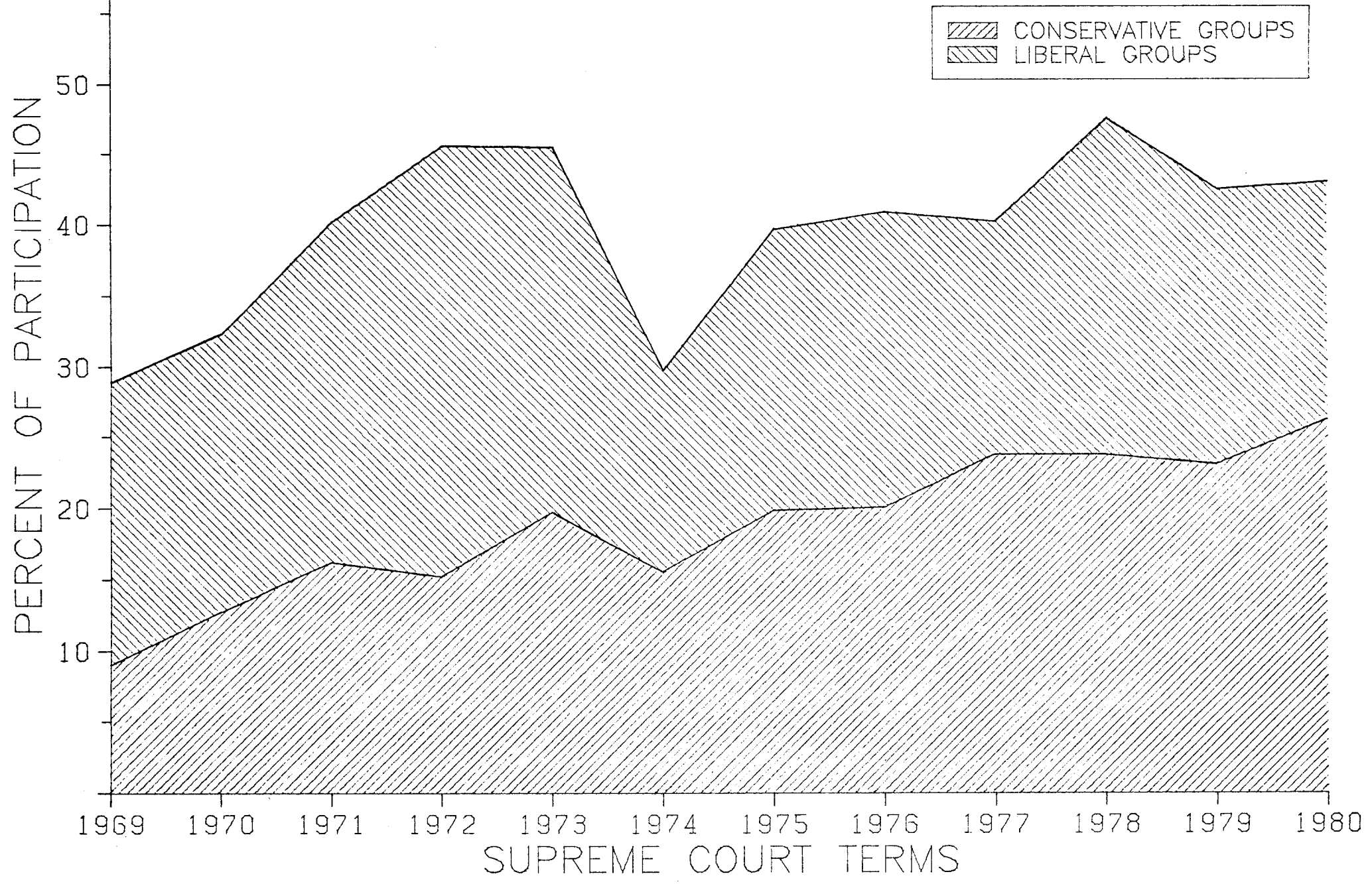


FIGURE 2
CONSERVATIVE & LIBERAL STRATEGIES

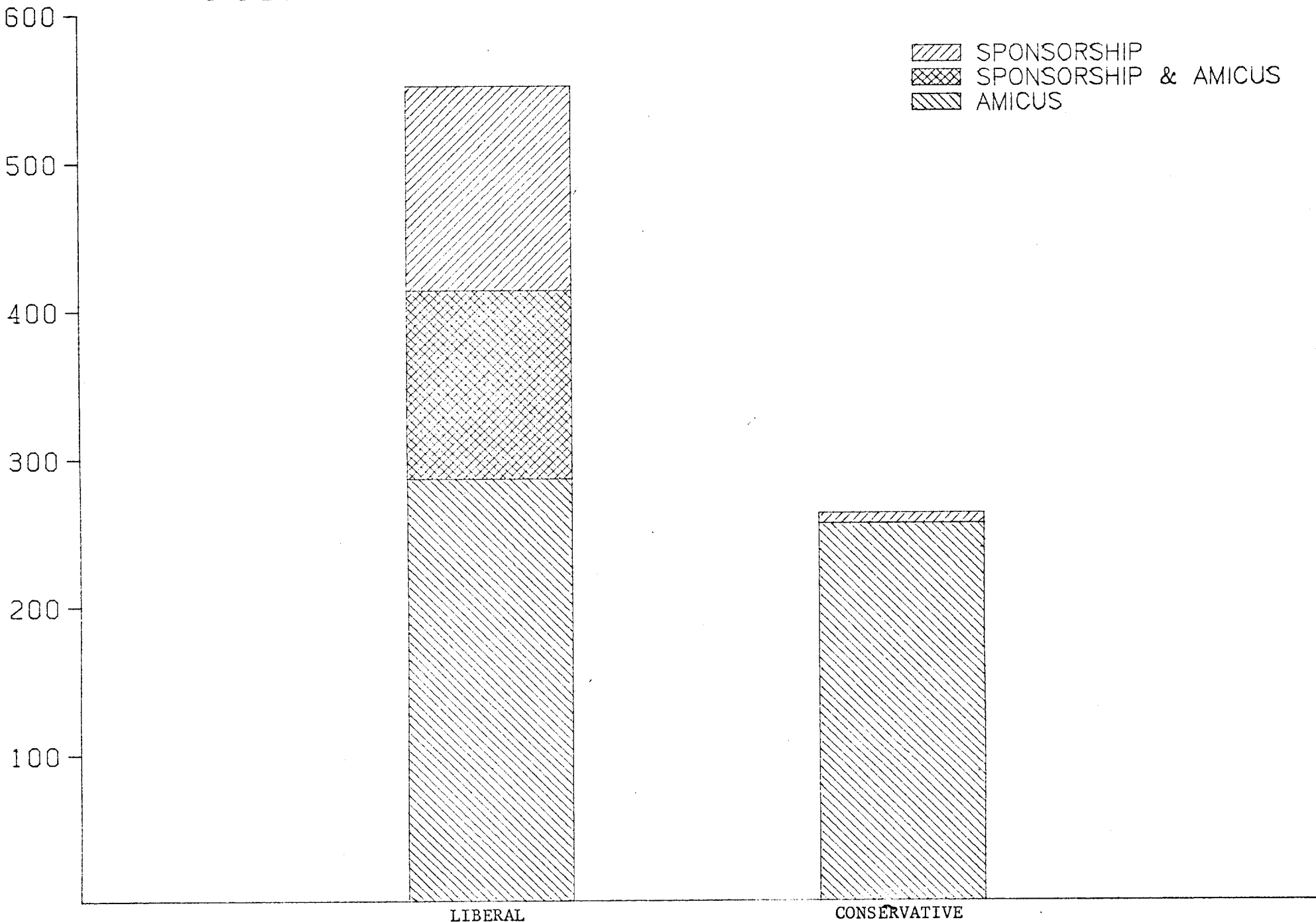
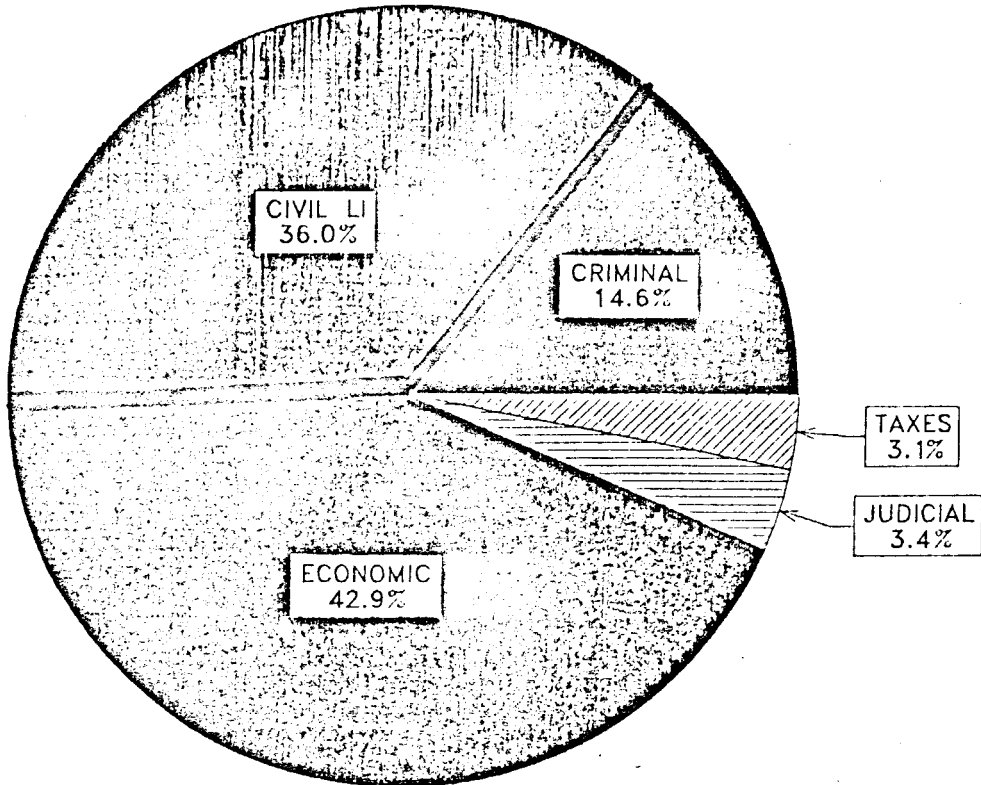


FIGURE 3
AREAS OF CONCENTRATION

CONSERVATIVE



LIBERAL

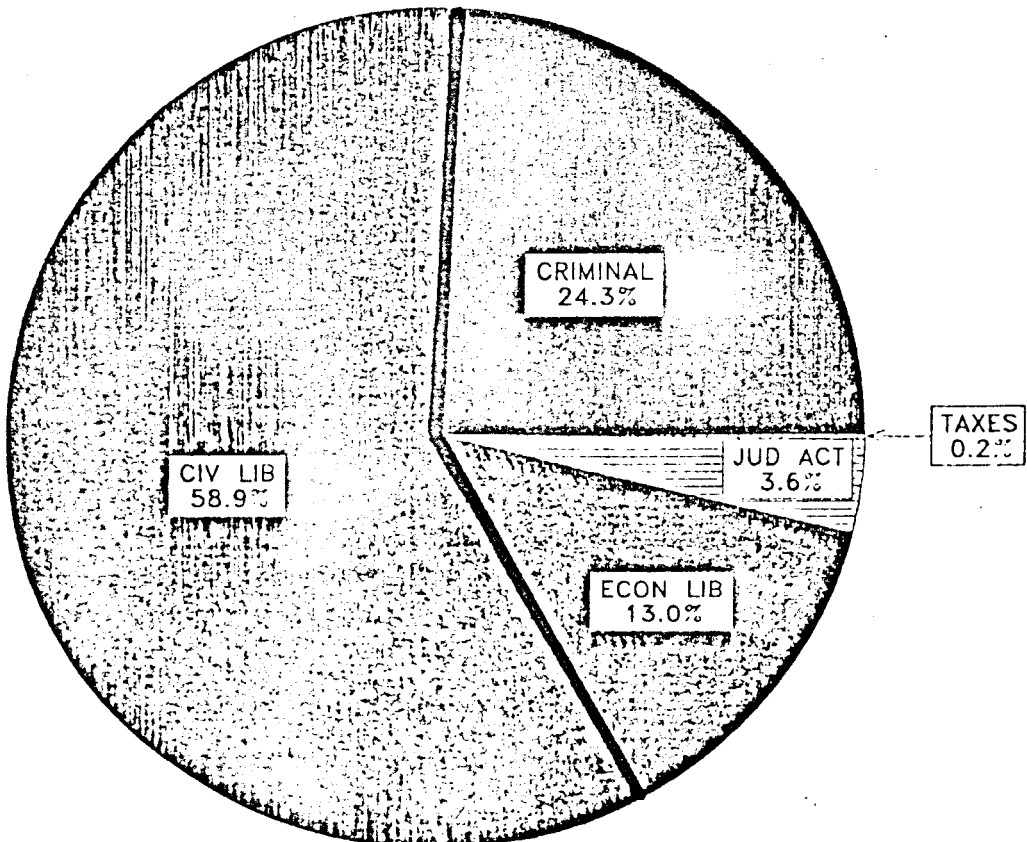


FIGURE 4
CONSERVATIVE PARTICIPATION IN CIVIL LIBERTIES
INTEREST GROUP CASES

