To the full court or 3JX? How does the Supreme Court of the State of New Hampshire sort cases?

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Abstract
This research is designed to develop a model of case selection in the Supreme Court of the State of New Hampshire. Appeals in the state of New Hampshire are heard either by the full court or an expedited panel called the 3JX panel. Data from the 2005 and 2006 State of New Hampshire Supreme Court full court and 3JX panel are sorted into categories first proposed by Burton M. Atkins and Henry R. Glick in their study entitled "Environmental and Structural Variables as Determinants of Issues in State Courts of Last Resort". The sorted data is then analyzed to determine if any cues might in fact cause a case to be sent to the full court or the 3JX panel.

Keywords
Law

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TO THE FULL COURT OR 3JX? HOW DOES THE SUPREME COURT OF THE
STATE OF NEW HAMPSHIRE SORT CASES?

BY

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BA History, University of New Hampshire, 1991

THESIS

Submitted to the University of New Hampshire
in Partial Fulfillment of
the Requirements for the Degree of

Master of Arts

In

Political Science

May, 2008
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TABLE OF CONTENTS

DEDICATION..........................................................................................................................iii
LIST OF TABLES......................................................................................................................iv
ABSTRACT..............................................................................................................................v

CHAPTER PAGE

I. CHAPTER I: INTRODUCTION.................................................................1
II. CHAPTER II: LITERATURE REVIEW AND RATIONALE...............9
III. CHAPTER III: METHODS AND PROCEDURES..........................22
IV. CHAPTER IV: RESULTS..............................................................28
V. CHAPTER V: CONCLUSIONS.........................................................35
REFERENCES..................................................................................38
APPENDICES..................................................................................42
APPENDIX A: STRUCTURE OF NEW HAMPSHIRE COURTS........43
APPENDIX B: IRB APPROVAL LETTER...........................................44
Dedication:

For Mike.
LIST OF TABLES

TABLE: PAGE:

TABLE I: Percentage Comparison of 3JX and Full Court Cases from 2005 and 2006..................................................................................................................................................29
TO THE FULL COURT OR 3JX? HOW DOES THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE SORT CASES?

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Susan Parshley

University of New Hampshire, May, 2008

This research is designed to develop a model of case selection in the Supreme Court of the State of New Hampshire. Appeals in the state of New Hampshire are heard either by the full court or an expedited panel called the 3JX panel. Data from the 2005 and 2006 State of New Hampshire Supreme Court full court and 3JX panel are sorted into categories first proposed by Burton M. Atkins and Henry R. Glick in their study entitled “Environmental and Structural Variables as Determinants of Issues in State Courts of Last Resort”. The sorted data is then analyzed to determine if any cues might in fact cause a case to be sent to the full court or the 3JX panel.
CHAPTER I

INTRODUCTION

Many citizens never have to access the judicial system. The third branch of government is mysterious and poorly understood by the public. A July 2005 survey conducted by the American Bar Association found that only 48% of American citizens could correctly identify the role of the judiciary in the federal government as “determining how existing law applies to the facts of the case” (American Bar Association, 2005). As mentioned above, this lack of knowledge might be attributed to the fact many citizens never have to participate actively or access the judicial system. Part of that lack of knowledge might also be because many judges are appointed either for life or for an extended tenure leaving them purposefully out of the political fray and media spotlight. Thus, citizens are not as connected to them as closely as they are to the members of the other two elected branches.

Perhaps much to the chagrin of Alexander Hamilton, the judicial branch, both state and federal, is not “the least dangerous” (Hamilton, 2007, 505). The judicial branch has had significant impact on the lives of Americans. One needs only to mention cases such as the Dred Scott decision, Roe v. Wade, Brown v. Board of Education or more recently Bush v. Gore as examples of impact. At the state level one might consider the Claremont decision on education funding in the state of New Hampshire which has had significant impact on the citizens of New Hampshire.
One aspect of the judicial system that is invisible to both the general public and students of government is case selection. Judges cannot seek cases; interested parties or litigants must bring cases. Therefore, referring back to Alexander Hamilton, courts are more passive and hence "the least dangerous" branch of government. At the highest level of adjudication in the United States, the Supreme Court, justices have the power to set their agenda through case selection through issuing writs of certiorari. Many state legislatures and state constitutions allow their justices discretion in selecting cases. In an attempt determine the factors that influence case selection, scholars and legal experts have focused much attention on the highest appellate court of the United States, the Supreme Court.

Sidney Ulmer researched case selection. He claimed: “In 1984, the Courts discretion in this area [case selection] is essentially absolute. One must assume that such discretion is not exercised arbitrarily; otherwise the Court could not maintain support of the Bench, the Bar, political leaders and other publics so essential to its effectiveness in the American political system.” There must be some system or criteria judges apply in selecting cases. Sidney Ulmer and many others have attempted to identify that system or criteria. Doris Provine, in her book *Case Selection in the United States Supreme Court* attempted to identify a system of case selection. In *Judicial Decision Making* edited by Glendon Shubert, Joseph Tanenhouse et. al. also put forth criteria for case selection.

Case selection is of grave importance to litigants who are attempting to have their case placed on the agenda of the court. It is challenging to successfully be placed on the Supreme Court’s docket. According to the Supreme Court Historical Society, approximately 7000 petitions [for certiorari] are brought to the Court each year.
However, approximately seventy percent of cases end without a grant of certiorari. If one is granted certiorari, the Court will hear the case. One may see that point further illustrated in the 1999-2000 term in which the Court heard argument on 83 cases and decided 74 cases. Four more cases were subsequently remanded or dismissed. In addition, 50 cases were decided summarily, that is without oral argument. The number of cases decided upon by the court was decidedly lower than the approximately 7000 petitions sent to the court. (Supreme Court Historical Society). Despite approximately 8000 cases brought to the court the number of cases the court decided with signed opinions in 2005-6 was only 69 cases, further evidence that getting on the docket is tough.

If interested parties are able to obtain space on the high court’s agenda they may be able to shape contemporary America and the future course of the nation because decisions made by the Supreme Court can have an impact on citizens. They can provide power, take it away or shift it power among key players (Fleming et al., 1997, 1225).

In the landmark Supreme Court case Marbury v. Madison, which established the courts power of judicial review, Chief Justice John C. Marshall wrote: "It is emphatically the province and duty of the judicial department to say what the law is." That is certainly one actual and perceived role of the courts; to interpret any legislation, administrative regulations and constitutional provisions. These are all part of the function of the judiciary at both state and federal levels.

However, whether judges can be considered active policymakers, not just interpreters of law, is a role that is oft and hotly debated. Some argue judges cannot be policymakers because they have no power over cases that are sent to them. Judges
cannot seek cases. As one researcher notes: "since judges cannot create their own cases, courts are much more dependent upon their social and political contexts to generate demands for policy" (Glick, 1992, 73-4). Therefore judges are only responding to that social and political context and not acting on preconceived plans to shape it. Some claim that judges act differently; once cases arrive, they actively pursue their own policy goals by deciding cases to best fit their own policy ideas. For example, a court may interpret statutes so restrictively they may force the legislature to revise the law (Glick, 1970, 273).

Paul Brace and Melinda Gann Hall have done research into whether judges are actively shaping policy as cases arrive to them. According to their ongoing research into courts, especially state courts, they find that "judges are assumed to be motivated by the desire to achieve case outcomes most proximate to their individual policy preferences" (Brace and Hall, 1993, 916). This perspective of the power and policy making abilities of judges illustrates how powerful justices can be in shaping policy because judges accept and decide on particular cases and refuse to hear others, thereby facilitating their own personal, political or ideological agendas. This, if true appears to enhance the power of the judiciary.

It is important to note, as Brace and Hall did in the previously mentioned article, that individual policy preferences are perhaps not the only motivators for judges. Other motivators might include litigant status, role of the solicitor general in the case, public opinion (especially in states where justices are elected) are some other motivators behind the judge's decisions (Brace and Hall, 1993, 917).
Therefore, if one were to accept the notion that judges can and do shape policy from the bench and/or that they use their power to accept or reject cases based on their own personal or political agendas, the importance of clarifying and understanding case selection is obvious. It is the acceptance or denial of cases that has long been a point of discussion, speculation and analysis the Supreme Court of the United States and the United States Circuit Courts of Appeal.

Attempts have been made to ascertain exactly how Supreme Court Justices of the United States select cases. Joseph Tanenhaus, Marvin Shick, Mathew Muraskin and David Rosens study entitled "The Supreme Court's Certiorari Jurisdiction: Cue Theory" published in 1963 was one of the first attempts to identify specific cues or conditions that must be present for the Court to grant a case certiorari. Parties who wish the Court hear their case must file a "writ of certiorari". Four of the nine justices must deem the case worthy of being heard by the court or "granted cert." Because the Court is inundated by thousands of petitions each term, they cannot hear them all. The sorting process is of great interest to political scientists as well as litigants.

Tanenhaus et al. contend some method must exist to "warn a judge a case deserves scrutiny, if no cue were present...a justice could safely discard a petition" (Tanenhaus et al. 1963, 118). Tanenhaus et al found that three of the four proposed cues had a statistically sufficient correlation to ensure certiorari. Those were: if the federal government sought review, if there was dissension among courts below or between governmental agencies, and if a civil liberty issue were present. The one cue that did not have an impact on the granting of certiorari was a broadly defined economic cue.
Tanenhaus et al’s theories have been tested repeatedly by other researchers. One cue certainly has held up under repeated testing. If the federal government has sought review, a case was more likely to be granted certiorari. According to a study completed by S. Sidney Ulmer et al. the federal government as a petitioning party appears to influence the Court's decision to grant or deny certiorari requests (Ulmer et. al. 1972).

What appears to arise from further test and analysis completed by Sidney Ulmer, Stuart Teger and Douglas Kosinski and Doris Provine is that cues might be evident. With the exception of the federal government’s seeking review, cues tend to change over time. According to Teger and Kosinski: “The implication is clear: the subject cues are effective only to the extent they pick out the issues justices consider salient. Tanenhaus did well to pick issues that were important in the early fifties; some of those issues remain important today. But some of his issues have faded from the public forum, and some new ones have emerged” (Teger and Kosinski, 1980, 845).

Donald R. Songer takes cue theory one step further and considers whether another cue may be evident, that is a cue related to policy outputs. In his 1979 study published in the Journal of Politics entitled "Concerns for Policy Outputs as a Cue for Supreme Court Decisions on Certiori", Songer finds that "when the court below made a decision which the Supreme Court majority presumably would evaluate as an error from a policy perspective after a quick tentative evaluation, certiorari was granted 38.3% of the time, well within the theoretical expectations of Tanenhaus et al (Songer 1979, 1190). Therefore, according to Songer's perspective the Court's desire to shape policy may in fact influence the cases the Court chooses to hear.
Other studies concerning case selection include recent work conducted by Caldera and Songer. They have examined the role of amicus curiae briefs in case selection at both the Supreme Court level and at the state supreme court level. Given one published account of the amount of time spent reviewing cases was at most 9.5 minutes on paid petitions for certiorari and even less time on those filed in forma pauperis (Songer, 1979, 1186). While law clerks may play a role in sorting through all of the papers facing justices, how much time can a judge (or a clerk) give to the reading of such briefs?

Comparable work in state supreme courts while growing is non-existent in relation to the state of New Hampshire. Hence, this study is intended to fill that gap in the literature. This research applies to the Supreme Court of the State of New Hampshire and what cues, if any, justices might look for in sorting cases. The Supreme Court of the State of New Hampshire doesn't just sort which cases to hear and which cases not to hear. They decide which cases are accepted to be heard by the full court and which cases are sent to a non-precedent setting three judge panel called 3JX or the three judge expedited panel consisting of three Supreme Court Justices as opposed to the full contingent of the Chief Justice and four associate justices.

Case selection in this state has not been formally studied in the past. New Hampshire is one of only a handful of states in which its Supreme Court Justices are appointed virtually for life; they must retire at age seventy. Therefore, in that aspect they are much like the federal Supreme Court justices who are appointed for life.

At the end of the study, I hope to provide an analysis of case selection designed to explain which types of cases are more likely to get a full hearing and therefore set precedent and which might be more likely to be heard by the three judge expedited panel.
As mentioned before, case selection is important to litigants and those interested in shaping policy. It is important for those attempting to access the courts to further social and/or political agendas. If they know how to get their case before the “full court” then they are more likely to set precedent and potentially move their agendas forward.

Therefore my research question is: Can a of case selection based on cue theory explain which cases at the State of New Hampshire Supreme Court will be heard by the full court and which ones will be heard by 3JX?.

The potential importance of the proposed research includes the building of a state specific model of case selection based on cue theory. It might be of use to the justices in the State of New Hampshire Supreme Court. Because of the relative newness of the 3JX panel to the state of New Hampshire an objective analysis of the selection process might highlight information they had not previously considered. It also might highlight connections between the legislative, executive and judicial branches that go unnoticed by the public. Even if it serves to affirm a conscious consideration of cases of import or weight to “the people” that affirmation would serve the judiciary well in dispelling the public notion of “activism”. It might reinforce recent findings that cues do exist but they are relative not only to the historical, political and cultural context of a particular state. Lastly, this research might also indicate which types of cases are more likely to be heard more quickly by the three judge expedited panel.
CHAPTER II

LITERATURE REVIEW AND RATIONALE

One of the first attempts to determine the factors affecting the United States Supreme Court's case-selection process was a study conducted by Joseph Tanenhaus, Marvin Shick, Mathew Muraskin and David Rosen. Their chapter entitled "The Supreme Court's Certiorari Jurisdiction: Cue Theory" was published in 1963 in *Judicial Decision-Making* edited by Glendon Schubert. Tanenhaus et al. attempted to identify specific cues or conditions that must be present for the Supreme Court to grant a case certiorari.

Parties who wish their case to be heard before the Supreme Court must petition for a "writ of certiorari". Certiorari at the Supreme Court level is also known as "the rule of four". Four justices of the nine on the bench must deem the case worthy of being heard by the court. Tanenhaus' attempt to identify specific cues that must be present for justices to conclude a case is "cert. worthy" is intriguing and would be useful for citizens wishing to have "their day in court", lawyers, social and civil rights activists. The Court is inundated with thousands of petitions each term, they cannot hear them all. Therefore, the sorting process is of great interest.

Their theory is based on three essential assumptions:

1. Rule 19\(^1\) does not provide a very satisfactory explanation for the Courts exercise of its certiorari jurisdiction.

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\(^1\) According to Tanenhaus et al. "The most important official statement of the standards used by the Court in granting or denying certiorari is Rule 19. This Rule has remained largely unchanged for more than three decades. Its opening sentences state: "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons..."."
2. Judges can only give cursory attention to petitions due to their large caseloads and responsibilities.
3. Some cases are so "frivolous" as to merit no serious attention at all.

Therefore, some method must exist to "warn a judge a case deserves scrutiny. If no cue were present...a justice could safely discard a petition. Careful study by a justice of the petitions containing cues could then be made to determine which should be denied because of jurisdictional defects, inadequacies of the records, lack of ripeness, tactical inadvisability etc. and which should be allotted some of the limited time available for oral arguments, research and preparation of full opinions. Those remaining can be disposed of by denying certiorari or by granting it and summarily affirming or reversing the court below" (Tanenhaus et al. 1963,118).

Tanenhaus hypothesized there were four cues:

1. If the federal government sought review by the Court, the likelihood of certiorari being granted is greater.
2. If dissension indicated among judges of the courts immediately below or between two or more governmental agencies then the likelihood of certiorari is greater.
3. When a civil liberty issue is present, potential for certiorari is greater.
4. When an economic issue is present, the likelihood of review is greater.

The studies results found three of the four hypotheses had a statistically sufficient correlation to ensure a case with a particular cue would be granted certiorari. The last cue, economic issue, did not meet the standard to be considered statistically sufficient.

Tanenhaus' study had its weaknesses. They systematically coded more than 3500 cases from the 1947-58 terms. There were technical difficulties in coding the cases; some recoding had to be done which may have led to errors. Also, there were a number of cases (98 or 7.1% of cases categorized) for which petitions were granted while none of
the above cues were present in the petitions. Therefore, Tanenhaus' suggests further study to investigate those "deviant" cases. When Tanenhaus' study was conducted there wasn't an "insider's perspective" to be had.

The insider's perspective was made available later with the posthumous availability of the papers of Justice Harold H. Burton. Justice Burton was on the court for the 1945-7 terms. He kept detailed records of conference proceedings, including how justices voted on petitions for certiorari.

With the availability of Burton's papers, Sidney Ulmer, William Hintze and Louise Kirklosky decided to retest Tanenhaus' cue theory with the new information. Ulmer retested three Tanenhaus' hypotheses (civil liberties issue, dissension in lower courts, and if the federal government was a party). The findings of which only the last is worthy of note here. While the other two held, he found that: "When the federal government, as party, seeks review, the likelihood of certiorari being granted is greater than when other parties seek review" (Ulmer et al. 1972, 638). Ulmer strongly asserts and others will uphold this assertion that in total, cue theory doesn't hold but despite "assaults against it, cue theory per se may remain viable. A search for and testing of additional cues may now seem in order" (Ulmer et al. 1972, 642).

Stuart Teger and Douglas Kosinski tested cue theory as well. They made the cues more specific. They too rejected cue theory in total except when the federal government is a petitioner. They decided that cue theory appears to need updating, specifically the cues themselves. The authors found that while cue theory still applies it needs to be adjusted for salient issues of the day. Courts respond to different cases depending on the historical time-period. This would of course make sense considering that courts are often
on the cutting edge of social change. Cases brought to and heard by courts vary depending on the time they are being heard; take for example civil rights cases. Civil rights cases in the 1950s predominantly involved race. Many civil rights cases today involve homosexuality. Both are considered civil rights cases, the content differs. Another example might be cases involving technology; courts in 1950 would not have been accepting or denying cases related to the internet which did not exist at the time.

Another interpretation of cue theory can be found in the work of Doris Provine's book entitled *Case Selection in the Supreme Court*. Provine tests Tanenhaus' cue theory utilizing the data from Justice Burton as well. She claims that although case selection described in Burton's papers may be influenced by cues. She also makes an interesting argument that while cues may push justices to accept cases to be heard, there may also be cues that "act like demerits, preventing review in the absence of strong reasons favoring review" (Provine, 1980, 82). She also poses excellent questions about cues. Specifically if cues were so crucial in granting certiorari, then why doesn’t the Court formally adopt them or institutionalize them? She claims that is the Court consistently uses cues they could "hardly be accidental or unimportant, because cues were hypothesized as a means of eliminating large numbers of cases from consideration. Any set of real-life cues would have to be a creature of Supreme Court policy (Provine, 1980, 83).

The consistency found in these studies certainly indicates that a further look at the role of the federal government in case selection is called for. The author of *Deciding to Decide*, H.W Perry, Jr. claims that the "role of the Solicitor General is so important it

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2 It is also important to note the work done by Supreme Court clerks. This is one area understudied. Some scholars are attempting to determine the role they play in sorting cases at the Supreme Court. "The clerks are not Richelieus or Rasputins, but that they play an important role in the certiorari process simply cannot be denied" (Perry, 1991, 69)
could justify a chapter on its own...as a cue, he is universal” (Perry, 1991, 129). The Solicitor General is an arm of the executive branch. He is the government’s lawyer to the Supreme Court. The Solicitor General decides which cases the government will appeal when it loses in any federal or state court. He gives his authorization for anyone representing the federal government or any federal government organization to file amicus curiae briefs in the name of the federal government. He also authorizes petitions for en banc rehearing in a United States Court of Appeals (Perry, 1991, 130). The Solicitor General’s power is further clarified that in a comparison of the acceptance rate for various petitioners, the United States had its cases granted at a rate of 100%\(^3\). In other studies, cases petitioned by the Solicitor General are accepted at a rate of about 75%-90% (Perry, 1991, 135). Cases in which the Solicitor General participates in amicus curiae are also more likely to be granted certiorari as well.

The role of the Solicitor General must be considered carefully. As noted above, he is part of the executive branch. He represents the political and social perspective of his boss, the President of the United States. It seems to follow that a particular Solicitor General will only support cases that will further the President’s agenda if they are upheld or denied. The President may only be in office for only four years and only as long as eight years. Therefore, the Solicitor General’s participation may be a cue but it is an evanescent cue; changing with the President and the will of the people.

It appears quite clear from the literature above that one of Tanenhaus et al.’s cues certainly holds. Cases brought to the court via the Solicitor General or in which the

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3 Perry warns us that “the N’s are sufficiently small in this study so that all that can be done is eye the percentages” (Perry, 1991, 135).
Solicitor General, therefore the federal government, participates are more likely to be granted certiorari.

As indicated cue theory has been tested and retested at the federal level. However, there are other courts that sort cases as well. Those are state supreme courts. State supreme courts, according to Robert A. Kagan et al have greater control over their workload but “more able to concentrate to a greater extent on cases they consider important” (Kagan et al. 1977, 156). They also concluded in their study of state supreme courts between 1870 and 1970 that cases brought to state supreme courts are also increasingly “noncommercial cases-from a concentration on debt collection and property cases to an emphasis on tort, criminal and public law and family law matters. It is interesting that many of the newly popular areas, despite the great cost of appellate litigation, touch on the troubles of people further down the societal and economic scale (Kagan et al. 1977, 156).” State courts appear to be becoming more useful than the federal courts as a place to be heard ordinary citizens and those who might be considered disadvantaged.

In a later study conducted by Kagan et al. entitled “The Evolution of State Supreme Courts” as state courts became busier they needed to be able to gain greater power over which cases they would accept. They claim “Two changes are especially important: grants of power to supreme courts to select their own cases from petitions for review, and the establishment of intermediate appellate courts between the trial courts and appellate courts” (Kagan et al. 1978, 966). Thus, many state supreme courts like the United States Supreme Court are also able to exercise discretion in case selection. However, Kagan et al. also remind us that: "court reform, always a complex process, was
uniquely shaped in every state by intensely local political battles" (Kagen et al. 1978, 962). In this period of court reform, state of New Hampshire allowed the justices greater discretion over cases instead of an addition of an appellate level in the state judicial system. New Hampshire's court reform process has been moving forward in recent years. In fact a recent independent study of the courts system in New Hampshire in 2000 and 2001 found "the pace of change has been exhilarating" (Wentlag and Festag, 2002, 16).

With this greater discretion and decrease in caseload, Kagan et al. also find that state courts were shifting their concept of their role in the judicial process. They found that state supreme courts were considering themselves as "policy makers and, at least in some cases, legal innovators" (Kagan et al. 1978, 983). With this evolution in the perceived role of state supreme courts, the burden was placed not on the courts to hear all cases but on appellants. Referring once again to Kagan et al. "Appellants could not argue that the trial court had committed errors. They had to demonstrate that they had to be heard for special reasons" (Kagan et al. 1978, 984). Thus, how state supreme courts decide which cases they hear or deny becomes more intriguing as the justices have greater discretion over their caseloads.

With their changing role in our culture, greater discretion over caseload and greater ease of accessibility to state court records, state courts have been studied in greater depth in recent history. In one study of state supreme court cases consisting of civil-private cases in which amicus curiae briefs were filed, Paul Brace and Melinda Gann Hall concluded that "the types of issues composing courts' dockets are connected to the social, economic, and political forces surrounding these courts" (Brace and Hall, 2001, 397). They further warn that "dockets are more contextually than court driven and
narrowly looking at a single court would certainly lead one to exaggerate the influence of intracourt factors” (Brace and Hall, 2001, 408). While limited to a specific type of case, this conclusion appears to go hand in hand with subsequent tests of Tanenhaus et. al’s cue theory that found cues exist but also change and adapt to fit the context of the court and cases.

Although state supreme court "powers and roles as courts of last resort vary somewhat they are nevertheless analogous to the United States Supreme Court in terms of their functional relationship within the political system" (Atkins and Glick, 1976, 98) one must consider them also as different from the United States Supreme Court in the types of cases they hear. A study of state supreme courts by Burton M. Atkins and Henry R. Glick published in an article entitled "Environmental and Structural Variables as Determinants of Issues in State Courts of Last Resort" in which they explore the connection between "state socioeconomic and political environment and issues found in decisions of state courts of last resort" (Atkins and Glick, 1976, 97) highlights the differing cases heard by state courts of last resort and the United States Supreme Court. According to Atkins and Glick:

"An important feature of many state supreme courts that distinguishes them from the United States Supreme Court is that they generally decide an enormous variety of issues, many of which hardly ever appear at all in Supreme Court decisions. Besides criminal appeals...economic controversies such as wills, trusts, estates, contract disputes and real estate litigation constitute a large proportion of decisions on the merits. Other issues found frequently in state supreme courts are divorce, motor vehicle accident, and personal injury suits" (Atkins and Glick, 1976, 99).

This distinction is important to acknowledge because it will drive the direction of this particular research. Identifying cues specific to the State of New Hampshire
Supreme Court requires sorting of cases into categories unique to the nature of a state supreme court. Using Tanenhaus' categories of cues or any others specific to the United States Supreme Court would not allow this research to investigate cues that might arise uniquely to state supreme courts. Also, it wouldn't allow research to investigate cues specific to New Hampshire, a court distinct within state supreme courts. Thus, this research will utilize broad categories of state supreme court cases used by Atkins and Glick in their examination of state supreme courts in an attempt to identify cues that would lead the justices to send cases to the three judge expedited panel or to the full court.

After studying the State Supreme Court of New Hampshire in great depth the National Center for State Courts (NCSC) had this to say about the State Supreme Court of New Hampshire: “The Court has a legacy and character of its own, influenced by its members – yes – but far more by the cumulative effect of its actions in clarifying, harmonizing, and developing the laws written by the state’s citizens” (Wentland and Festag, 2002, 2).

In order to more clearly understand this research, a more in depth look at the State of New Hampshire Supreme Court is in order . It is the state’s only appellate court. New Hampshire is only one of eleven states in the United States that does not have an intermediate appellate court.

The court, which sits in Concord, New Hampshire is composed of the Chief Justice and four associate justices. Justices to the State of New Hampshire Supreme Court are nominated by the Governor and approved by the elected Executive Council. Justices are allowed to serve during "good behavior" until retirement or the age of
seventy; only Massachusetts and Puerto Rico do the same. Rhode Island is the only state that has longer tenure; Rhode Island allows their Supreme Court justices to serve for life. All other states limit terms of their justices to between six and fourteen years (15 years in the District of Columbia). There are no state residency requirements, no legal credentials required or minimum age for justices in New Hampshire. The Chief Justice is the head of the judicial branch, that authority is stated by the New Hampshire Constitution, Part 2, Article 73-A.

The Court has discretionary jurisdiction over civil, criminal, and administrative agency appeals. The State of New Hampshire Constitution in Part 2, Article 4 outlines both the relationship between the judicial branch and the legislative branch and the court's jurisdiction:

4. [Power of General Court to Establish Courts.] The general court (except as otherwise provided by Article 72-a of Part 2) shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to beholden, in the name of the state, for the hearing, trying, and determining, all manner of crimes, offenses, pleas, processes, plaints, action, causes, matters and things whatsoever arising or happening within this state, or between or concerning persons inhabiting or residing, or brought, within the same, whether the same be criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real, personal or mixed, and for the awarding and issuing execution thereon. To which courts and judicatories, are hereby given and granted, full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them. It also exercises discretionary jurisdiction over extraordinary writs, guilty pleas, post conviction relief, and sentencing issues. The court has mandatory jurisdiction over death penalty cases.

For a flow chart of the court system in the state of New Hampshire, see the appendix.

The State Supreme Court faced an increase in filings by 31% between 1990 and 1999 (Wentlag and Festag, 2002, 18). The court found itself with a large backlog of
cases. Because the implementation of an intermediate appellate court was not a possibility without the approval the legislative branch, the court instituted what was called the "Second Thursday Docket" to address and reduce the backlog of cases awaiting oral argument. This change was entirely appropriate for the Court to undertake because according to Rule One of the Rules of the State Supreme Court of New Hampshire:

"In the interest of expediting a decision, or for other good cause shown, the supreme court or a single justice thereof may suspend the requirements or provisions of any of these rules in any instance on application of a party or on the court's or a single justice's motion, and may order proceedings in accordance with that direction."

The 3JX panel is patterned after some other states expedited dockets or "rocket dockets". Five Justices are randomly assigned to sit in panels of three instead of en banc (all judges of the court hearing the case). Since its implementation, procedure has been renamed the 3JX docket. The term 3JX meaning "three-judge expedited" docket. This plan was implemented in order "to provide a quicker resolution for cases that did not require a fully reasoned opinion. While the opinions are short, they must reflect a unanimous decision" (Wentlag and Festag, 2002, 20-21). This 3JX panel was integral in reducing the time delay in getting an oral argument before the court which had according to Wentlag and Festag previously stood at an average of eighteen months between filing a petition and oral arguments.

However, there has been some confusion regarding the implementation of the 3JX panel. In 2002 when Wentlag and Festag published their observations, they noted:

"The creation of the 3JX docket has been beneficial to the Court, but it has not been without controversy. First, there is some disagreement over whether the purpose of the docket is to take more cases, to correct lower court errors, or to expedite the backlog. The second area of controversy is that cases heard on the 3JX docket do not have either precedential or
persuasive value... NCSC believes that a clear and public announcement of criteria for assigning cases to the 3JX docket will assist in resolving these controversies...." (Wentlag and Festag, 2002, 21)

As mentioned previously, in 2004 upon the recommendation of a legislative panel and their own desire to allow residents in the Granite State the right of appeal, the court started reviewing all appeals with a few exceptions (which are listed in the definition of “mandatory appeal” in Supreme Court Rule 3). Thus the caseload of the court was expected to increase further and clarification of the 3JX panel seems more crucial.

There are rules that apply to the 3JX panel in the Rules of the Supreme Court of the State of New Hampshire. Only a few seem relevant to mention here. Any party involved in a case may request or consent that a case be set for oral arguments before the 3JX panel. Cases heard by the panel are non-precedent setting and apply only to the case and parties involved in that case. Lastly, any case heard by the panel must be decided by a unanimous order of the three justices. If the panel is not in unanimous agreement the case must be heard by and decided on by the full court.

Just as the Federal Supreme Court's Rule 19 is vague, so are the rules surrounding the 3JX panel. Such criteria allows for discretion on the part of the justices on both courts. According to the Rules of the State of New Hampshire Supreme Court, cases eligible for the 3JX panel:

(5) Criteria for Selection of Cases for 3JX Panel. Cases suitable for oral argument before a 3JX panel include, but are not limited to:
(a) appeals involving claims of error in the application of settled law;
(b) appeals claiming an unsustainable exercise of discretion where the law governing that discretion is settled;
(c) appeals claiming insufficient evidence or a result against the weight of the evidence.
Of great interest in the criteria delineated above is that specific types or categories of cases are not listed in the rules. An example to further clarify might be that the rules do not require that criminal appeals go to the 3JX panel or that cases involving constitutional law must go to the full court. As mentioned earlier, the only cases that are constitutionally required to go to the full court are cases concerning the death penalty.

In short, the New Hampshire Supreme Court is the state's only appellate court, justices are appointed until retirement or age seventy. They have broad discretionary latitude over cases they hear. With the exception of its being the only appellate court of the state, the other conditions make the state of New Hampshire an excellent case study to which to apply Tanenhaus et al.'s concept of cue theory in combination with Atkins and Glick's state court categories.
CHAPTER III

METHODS AND PROCEDURES

As stated earlier, this research consists of a mix of both quantitative and qualitative analysis. The quantitative portion is an analysis of cases heard by the full Supreme Court and 3JX panel in 2005 and 2006 combining cue theory and the categories designed by Atkins and Glick.

Cases to be examined are cases decided by the State of New Hampshire Supreme Court from January of 2005-December of 2006. With a few exceptions (which are listed in the definition of “mandatory appeal” in Supreme Court Rule 3), a timely appeal from a final decision of a trial court is a “mandatory appeal,” meaning that the appeal is automatically accepted by the court. Prior to 2004, the Court did not have as many cases to hear sort through. I’ve chosen this period of time as it is the first two years all cases were heard on appeal by the Supreme Court of the state of New Hampshire and by the 3JX panel. Therefore, my hypothesis is:

Specific cues will lead justices to accept cases to the full court or to send them to the 3JX panel.

A case study is a good choice for this project. This choice is supported by John Gerring’s work entitled “What is a Case Study and What is it Good For?” published in the American Political Science Review in May of 2004. He states: “a case study is best defined as an intensive study of a single unit with an aim to generalize across a larger set
of units” (Gerring 2004, 342). One way Gerring supports case studies with this statement that a case study is useful when “propositional depth is prized over breadth” (Gerring 2004, 352). It is depth that this researcher is attempting to pursue. Also, Gerring states that a case study is useful when “insight into causal mechanisms is more important than insight into causal effects” (Gerring 2004, 352). This researcher is most interested in what causes judges to take a case or send it to 3JX, not necessarily the effects of that decision.

Case studies also have their critics, such as Barbara Geddes. One of the biggest concerns is that when choosing a case to study, political scientists run the risk of selecting on the dependent variable. She claims that “...statistical procedures carried out on the selected cases may indicate that no relationship exists or even that the relationship is the opposite of the true one” (Geddes, p. 93). New Hampshire was chosen because of the nature of the state’s judicial system (judges appointed until age seventy) and access to the researcher, the lack of an appellate court below the State Supreme Court (therefore a large number of appeals go to the State Supreme Court) and the existence of the 3JX panel. Despite its drawbacks, including those mentioned above and the fact case-studies are not generalizable, this researcher still contends it is an excellent way to test and therefore build a theory of case-selection at the Supreme Court level in the State of New Hampshire.

Data collection for the quantitative portion of this study will consist of gathering cases decided by the Supreme Court and 3JX panel between January 2005 and December of 2006. The decisions on these cases are published by the Supreme Court in the New Hampshire Reports. These decisions will be divided into two categories: full court
decisions and 3JX decisions. Those decisions will be further sorted into categories established by Burton M. Atkins and Henry R. Glick in their study and subsequent publication entitled “Environmental and Structural Variables as Determinants of Issues in State Courts of Last Resort”. These categories are appropriate to this work because they are specific to state supreme courts. The categories from Atkins and Glick are as follows:

1. **Criminal appeals** with or without concomitant constitutional claims.

2. **Civil rights cases** defined as cases raising questions under the First and Fourteenth Amendments to the United States Constitution.

3. **Regulation and redistribution of economic resources** including tax appeals or appeals from state regulatory agencies or commissions in which the Court review decisions associated with redistribution of wealth implicitly requiring the court to balance the ethic of governmental intrusion into the business sector against the ethic associated with a free marketplace.

4. **Private non-economic litigation** in which both parties are individuals as opposed to corporations, criminal defendants or state agencies. This includes personal liability, wrongful death malpractice and divorce.

5. **Private economic claims** which include claims over wills, trusts, estates, landlord-tenant disputes, titles and sales.

While the categories designed by Atkins and Glick were quite broad, they did not encompass cases specifically heard by the state of New Hampshire. Two other categories had to be added to address all cases heard by the State of New Hampshire Supreme Court. If these categories had not been added a substantial number of the cases heard by the courts would have been left out:
6. **Zoning cases** which includes disputes between individuals and boards of towns and cities.

7. **Juvenile cases** as defined by the court.

A final category as defined by Atkins and Glick is for cases that do not fit any of the above categories such as hearings on judicial conduct which are internal functions of the court system. The categories will be the independent variables influencing case selection.

The cases to be examined will be drawn from 3JX cases and full court cases decided from January 2005-December 2006. I've chosen this section of cases for a number of reasons. First, since January 2004, the Supreme Court has accepted all appeals from the State's trial courts for review: the family division and the district, probate and superior courts upon recommendation of a legislative panel. With a few exceptions (which are listed in the definition of “mandatory appeal” in Supreme Court Rule 3), a timely appeal from a final decision of a trial court is a “mandatory appeal,” meaning that the appeal is automatically accepted by the court.

A press release from the Supreme Court Communications Office dated January 22, 2003 clarifies reasons for the change in the appeals process:

"As a court, we believe that as a result of improvements and innovations in our case processing system, and elimination of our backlog we are ready and able to take this momentous step," Chief Justice David A. Brock said.

"We want the citizens of New Hampshire to have the opportunity not just to request an appeal, but to present in full every legal argument and supporting fact. This new system will accomplish that," Chief Justice Brock said.

As a result of the significant changes announced today, the existing screening process will be eliminated for most appeals. Under the
new system, the justices will decide each case after considering extensive legal arguments in written briefs, a printed transcript of the lower court proceeding, and in appropriate cases, oral argument.

Thus, after 2004 a need for a clear process of sorting cases would need to be in place to ensure a timely hearing for involved parties. Secondly, at the time of this research and writing, there are only two full years of data available with both the 3JX panel in place and the rule in which the Court hears all appeals. In 2005 there were a total of 931 new filings, in 2006 there were 953 new filings. So while there are few years to compare caseloads, the number of cases between these two years is relatively close.

Because of the unique nature of the State of New Hampshire, the small size of the state and relative accessibility of the justices an interview with State Supreme Court Justices constitutes the quantitative portion of this research. In an interview with three Supreme Court Justices: Senior Associate Justice Linda S. Dalianis, Associate Justice James E. Duggan and Associate Justice Gary E. Hicks they were asked the following questions (and other follow up questions as appropriate during the interview):

1. Once a case is filed, what is the typical process for sorting cases to the 3JX panel or to the full court?

2. As you determine which panel will hear a case what are your primary considerations?

3. Are there any "automatic triggers" that will send a case to one panel or the other?

4. After having reviewed the data collected are there any surprises or does any of the data confirm information you already knew?

5. Is there anything else that I should know about this process?
The potential importance of the proposed research includes the building of a local model of case selection based on cue theory. It might be of use to the justices in the State of New Hampshire Supreme Court. Because of the relative newness of the 3JX panel to the state of New Hampshire an objective analysis of the selection process might highlight information they had not previously considered. It also might highlight connections between the legislative, executive and judicial branches that go unnoticed by the public. Even if it serves to affirm a conscious consideration of cases of import or weight to “the people” that would serve the judiciary well; to dispel notions of “activism”. It might reinforce recent findings that cues do exist but they are relative not only to the historical context but also to the cultural context of a particular state. Lastly, this research might also indicate which types of cases might be heard more quickly by the three judge expedited panel.
CHAPTER IV

RESULTS

The goal of this study is to analyze the types of cases heard by the full court versus those cases heard by the 3JX panel and identify specific cues which might cause a case to be sent to the full court or the 3JX panel.

In comparing the types of cases sent to the full court and those sent to the 3JX panel, one notes distinct differences in percentages in three categories in particular: criminal appeals without constitutional claims, civil rights cases involving the 1st and/or 14th amendments to the Constitution and cases involving regulation and redistribution of economic resources. While the disparities among those types of cases might be interesting, it might be the categories that are closer in number that further understanding of the judicial process in New Hampshire. See the chart on the next page for a comparison of all cases.
Table I: Percentage Comparison 3JX and Full Court Cases from 2005 and 2006

<table>
<thead>
<tr>
<th>Atkins and Glick Categories</th>
<th>Total and as a Percentage of 2005-6 3JX Cases</th>
<th>Total 2005-6 and as a Percentage of Full Court Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Criminal appeals without Constitutional Claim</td>
<td>55/168 33%</td>
<td>67/305 22%</td>
</tr>
<tr>
<td>2. Civil rights cases involving 1st and/or 14th Amendments to the Constitution.</td>
<td>4/168 2%</td>
<td>30/305 10%</td>
</tr>
<tr>
<td>3. Regulation and redistribution of economic resources (includes state regulatory agencies or commissions, insurance disputes)</td>
<td>29/168 17%</td>
<td>82/305 27%</td>
</tr>
<tr>
<td>4. Private non-economic litigation (personal liability, wrongful death, malpractice, divorce)</td>
<td>28/168 17%</td>
<td>44/305 14%</td>
</tr>
<tr>
<td>5. Private economic litigation (e.g: wills, trusts, estates, landlord/tenant, titles, sales)</td>
<td>29/168 17%</td>
<td>35/305 11%</td>
</tr>
<tr>
<td>6. Juvenile cases</td>
<td>5/168 3%</td>
<td>6/305 2%</td>
</tr>
<tr>
<td>7. Not recorded; doesn't fit categories such as judicial conduct.</td>
<td>0</td>
<td>17/305 6%</td>
</tr>
<tr>
<td>8. Zoning disputes</td>
<td>18/168 11%</td>
<td>24/305 8%</td>
</tr>
<tr>
<td>Totals:</td>
<td>168 = 100%</td>
<td>305 = 100%</td>
</tr>
</tbody>
</table>

Overall, 32.9% of cases heard by the 3JX panel and the full court are criminal cases. The large number of criminal cases decided by the full court makes sense when one considers the structure of the courts in New Hampshire. The Superior Court has discretionary jurisdiction over criminal cases. Therefore any criminal appeals go directly to the Supreme Court which may decide to hear the case in full court or send it to the 3JX docket.

That the Supreme Court has to deal with such a large number of criminal appeals
appears to be consistent with appeals across the United States both at the federal and state level. A study conducted by Thomas Davies found that “most of the legal issues raised on appeal relate to trial proceedings, especially the admission of evidence” (Davies, p. 554).

According the data gathered in 2005 and 2006, a majority of the appeals decided by the New Hampshire Supreme Court from the lower courts fit into the category of criminal appeals without any constitutional claim. The Court accepted a total of 122 criminal cases that fit in that category. As noted in the chart on the previous page cases without constitutional claims accounted for 33% of cases decided by the 3JX panel compared with 22% of cases heard by the full court.

The Justices interviewed agreed with this researchers's findings that such a large number of criminal cases would and should be heard by the 3JX panel. They referred to the fact that criminal law is much better developed; precedents have been set based upon numerous cases heard through the court system. The rules of evidence are also more developed in the criminal area than in some other areas.

Prior to his arrival at the State Supreme Court, Justice Duggan was a criminal defender. As a former criminal defender he was initially concerned whether or not the 3JX panel was going to be utilized primarily for criminal cases. However, he perceives the 3JX to operate "as a safety valve" to ensure that criminal and pro se litigants have had their proper hearing. One can also note that criminal cases are still being heard by the full court with 22% of cases in the data collected fit that category. They are not being cast aside to the 3JX panel, as perhaps Justice Duggan may have feared.

The wide disparity in civil rights cases being heard by the 3JX panel or the full court (2% and 10% respectively) appear to be in keeping with the expressed purpose of
the 3JX panel. Cases involving questions of civil rights are more likely to be a case in which the law is being developed as opposed to whether there is a misapplication of settled law. One can refer back to the findings Stuart Teger and Douglas Kosinski who tested cue theory at the Supreme Court level for support of this concept. They found that while cue theory still applied in their study it needed to be adjusted for salient issues of the day (italics mine). As more individuals and groups look to have their rights preserved, different types of civil rights cases will be brought to the courts. As mentioned earlier, civil rights cases in the 1950s predominantly involved race. Many civil rights cases today involve gay rights. These are considered civil rights case but the content differs. Another example might be cases involving technology; courts in 1950s would not have been accepting or denying free speech cases related to the internet which did not exist at the time. Therefore it would make sense that civil rights cases must be heard by the full court because the laws are constantly developing and changing in response to changes in our society.

Cases involving regulation and redistribution of economic resources (including state regulatory agencies or commissions, insurance disputes) had a substantially higher rate of hearing by the full court than the 3JX panel. According to the data collected, 17% of cases heard by the 3JX panel fit this category while 27% of cases heard by the full court fit this category. A substantial difference exists in the percentage of cases heard by each. According to the interview conducted with the Justices not only does complexity matter, but public interest matters as will. According to Justice Duggan, cases that involve land use, local development, cases with high financial stakes (such as insurance cases) which are part of this category tend to go to the regular docket. He claims that is
because "there is a lot at stake". While there may not be error the case might be perceived in the public domain as an important case and therefore go to the full court. Those are the types of cases that would fit into this particular category. The cases that fit in the aforementioned category lead one back to the original "cue theory" proposed by Tanenhaus et al. According to Tanenhaus' theory, if the federal government sought review by the Court, the likelihood of certiorari being granted is greater. In the State of New Hampshire, cases perceived to be "of import to the public" will more likely be sent to the full court for a hearing.

Cases involving private non-economic litigation were close in the percentages heard by the full court and the 3JX panel. While 14% of cases heard by the full court fit this category while 17% were heard by the 3JX panel. One reason why there were so many cases heard by the full court can in part be attributed to the fact divorce cases were part of this category. According to the Justice Dalianis, one of the complaints about the Supreme Court was that they "never took divorce cases". That meant once the Court started accepting all appeals "there were many unanswered questions of law" to be dealt with by the Court. Examples of those unanswered questions of law include questions around the single large payment of child support, how to classify stock options and property distribution beyond facts found in the cases. Therefore many divorce cases were heard by the full court in order to begin establishing precedent in such areas. One can anticipate a shift in divorce cases from the full court to the 3JX panel as over time as more cases are heard by the full court. Eventually precedent will be established and many of those cases will be sent to the 3JX panel for more "automatic" disposal.

Justice Dalianis proposed another possible reason why there were so many
divorce cases brought to the Supreme Court in the first place. She noted that approximately 75% of divorce cases brought to them are self-represented. She claimed that many attorneys would tell litigants at the time of a lower court decision that there was no issue to bring to the only appeals court, the Supreme Court. Yet, despite the advice of attorneys, many parties in divorce cases would appeal anyway whether out of spite, anger, etc. Because most of the divorce cases were pro se that might account for the higher number of cases in the 3JX panel; there was no basis for an appeal. The case only applied to their specific case.

Justice Hicks proposed that a lack of regulation of the quality of divorce attorneys might be contributing factor in the represented litigants pursuing their divorce cases to the Supreme Court level. The poorer quality performance (actual or perceived) of attorneys at the lower court level might send a litigant to the Supreme Court for a "do over" even when an experienced attorney may have known there was no sound basis for appeal.

The category that was most intriguing to the three Justices interviewed for this project is category involving zoning disputes. Zoning disputes were close in their distribution between the 3JX panel and the full court. Justice Duggan had anticipated that more zoning cases would be heard by the full court than by 3JX. Supported by Justice Dalianis, he claimed that that zoning disputes tend to be quite complicated and therefore likely sent to the full court. Also zoning disputes can be those "public interest" type cases as mentioned above. If the case is of great public interest it would more likely be heard by the full court as opposed to the 3JX panel.

In fact, as Americans grapple with concerns related to zoning, laws surrounding
this complex and evolving topic will continue to develop and emerge. For example, state and local officials are attempting to limit sprawl, cap growth, attempt to protect the environment and indirectly tackle growing issues related to obesity in the United States (Schmidt, p. 622). Therefore, laws involving zoning will be challenged as those state and local officials try to exert more power to curb sprawl, growth etc. According to Robert Ashbrook "...zoning regulation and environmental regulation have become important legal weapons used by government to influence or limit private land development." (Ashbrook, p. 1256).
CHAPTER V

CONCLUSIONS

One cue exists in determining which cases will be heard by the full court and which will be heard by the 3JX panel. The direction the case will be sent depends primarily on the judge's perceptions as to whether the law is settled or not. It is a useful way to determine where law is settled in the state and which areas of law are being actively discussed and developed.

One can anticipate shifts in cases from the full court to the 3JX panel as law becomes settled and precedent established in the categories studied. For example, one might anticipate a growing number of civil rights cases involving privacy as technology develops and continues to play a greater role in all of our lives. However, as those laws become "settled" then the cases will shift from the full court to the 3JX. Specific to the state of New Hampshire one can anticipate divorce cases to begin shifting from the full court to the 3JX panel as law becomes settled in that particular area.

As mentioned earlier in this work, many researchers are interested in whether or not judges participate in policy making. This research indicates that there may be indirect policy making at the highest level of the judiciary in New Hampshire. As the justices decide which cases involve law that is "unsettled", they are sending those cases to the full court. When those cases are heard by the full court, the justices are establishing precedent and moving those questions of law into the realm of settled law. Therefore, they are making policy decisions albeit indirectly.
While this is a case study, one can reasonable make the leap that it supports the findings of Teger and Kosinski's testing of cue theory. Just as they retested cue theory and found that only one cue (cases of importance to the federal government were more likely to be heard by the Supreme Court) held up over time it is reasonable to state that one cue is evident here in the state of New Hampshire. Cases in which law is settled will be heard by the 3JX panel.

While New Hampshire's court system is somewhat unique, these findings may be of interest to others researching state courts and case selection. Other states employ expedited panels or "rocket dockets" like the 3JX panel used in New Hampshire. One might attempt to compare the type of cases sorted to their expedited panels versus their full courts using the same categories used in this research. However, many of those other states also have an intermediate appellate level court. It might be even more interesting to compare the cases sent to New Hampshire's 3JX panel to cases heard by other state's appellate level courts. If many of those cases are similar one might be able predict that the 3JX panel is the first step in developing an intermediate appellate level court in the Granite State.

Therefore, one might consider the findings in this research more useful as a predictor of cases that will be heard by the full court or 3JX panel. As new laws are created, one can expect an increase in that type of case in the full court in the State of New Hampshire Supreme Court. An example of that would be new legislation passed in New Hampshire regarding civil unions. In April of 2007 the New Hampshire House and Senate approved civil unions within the state becoming only the fourth US state to provide civil unions. Governor John Lynch signed the bill into law weeks later. When
the law takes effect in January of 2008 one can certainly anticipate cases related to civil unions to percolate to the State Supreme Court; based on this research one can anticipate those cases will go to the full court.


Duggan, James E. 2007. Interview by author. Tape recording, Concord, NH, 7 November.


Hicks, Gary E. 2007. Interview by author. Tape recording. Concord, NH, 7 November.


From the Supreme Court Historical Society:  


Ulmer, Sidney S., William Hintze and Louise Kirklosky. 1972. "The Decision to Grant  
or Deny Certiorari: Further Consideration of Cue Theory." *Law and Society  

Bureau of Justice Statistics.

Hampshire Supreme Court*. Denver, CO: National Center for State Courts  
Consulting Center.
### Supreme Court

**General information:**
- One chief justice and four justices sit en banc
- Non-precedent setting expedited docket available
- Court of last resort/apellate level
- No mandatory jurisdiction except for capital murder with death penalty
- Discretionary jurisdiction in: civil, non-capital criminal, administrative agency, juvenile, disciplinary actions, advisory opinions for state executive and legislative branches, original proceeding, interlocutory decision cases

### Superior Court

**General information:**
- Twenty full-time judges, six full and part-time marital masters
- Jury trials
- Tort, contract, real property, miscellaneous civil cases, exclusive marriage dissolution, paternity, support, custody, exclusive criminal

### Probate Court

**General information:**
- Ten judges (six full time, four part-time)
- Probate estate, mental health, adoption, termination of parental rights

### District Court

**General information:**
- Twenty full time, twenty-four part-time and 23 per diem judges
- Tort, contract, real property (up to $25,000), small claims (up to $5000), miscellaneous, civil, misdemeanor, preliminary hearings, exclusive juvenile, traffic/other violations

### Family Division Court

**General information:**
- Eleven justices, six marital masters
- No jury trials
- Guardianship, domestic relations and juvenile cases
25-Oct-2007

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IRB #: 4095
Study: To 3JX or the Full Court? How does the State of New Hampshire Supreme Court select cases?
Approval Date: 24-Oct-2007

The Institutional Review Board for the Protection of Human Subjects in Research (IRB) has reviewed and approved the protocol for your study as Exempt as described in Title 45, Code of Federal Regulations (CFR), Part 46, Subsection 101(b). Approval is granted to conduct your study as described in your protocol.

Researchers who conduct studies involving human subjects have responsibilities as outlined in the attached document, Responsibilities of Directors of Research Studies Involving Human Subjects. (This document is also available at http://www.unh.edu/osr/compliance/irb.html.) Please read this document carefully before commencing your work involving human subjects.

Upon completion of your study, please complete the enclosed pink Exempt Study Final Report form and return it to this office along with a report of your findings.

If you have questions or concerns about your study or this approval, please feel free to contact me at 603-862-2003 or Julie.simpson@unh.edu. Please refer to the IRB # above in all correspondence related to this study. The IRB wishes you success with your research.

For the IRB,

Julie F. Simpson
Manager

cc: File
   Siggelakis, Susan