

The Echo Chamber

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To the judges:

The U.S. Supreme Court has long been as mysterious as it is mighty. In “The Echo Chamber,” Reuters undertook the most comprehensive and original examination ever of the court’s docket to scrutinize its most secretive process – how the justices select which cases they will hear.

What we found was extraordinary, an insight that is changing how people view what the concept of equal access to justice means in the United States today. A small group of lawyers has secured special entrée to America’s court of last resort and given their clients – almost always the nation’s largest corporations – a disproportionate chance to influence the law of the land.

Our examination, led by reporters Joan Biskupic, Janet Roberts and John Shiffman, included dissecting more than 10,000 appeals that spanned nine Supreme Court terms and involved almost 17,000 lawyers. Among those attorneys, we identified a group that might best be called the elite of the elite: 66 lawyers who succeeded at getting their cases before the court at an incredible rate. Although they accounted for far less than 1 percent of attorneys who sought the high court’s ear, these lawyers were involved in an astonishing 43 percent of the cases the justices chose to decide during the period we examined.

To explicate these findings, the reporters interviewed about 200 of America’s top attorneys and constitutional law experts. And in an unprecedented coup for coverage of the publicity-shy Supreme Court, Biskupic – who has been on the beat for more than 20 years – secured on-the-record interviews with eight of the nine sitting justices.

Informed by this rare combination of sophisticated data work and deep beat reporting, our analysis suggests that the court has created a new criterion for determining whether to hear an appeal – a standard that goes beyond weighing the merits of a case and extends to judging the virtues of the lawyer who is bringing it.

The implications are profound. Because this small group of attorneys almost always represents corporate America, we found, workers or customers looking to challenge large companies are left to seek help from a smaller pool of attorneys who don’t enjoy nearly the same success at getting the court to hear its cases. Moreover, the deference to this cadre of lawyers creates an insularity that legal experts contend stunts the development of jurisprudence and reinforces an ever-narrowing view of how laws should be construed.

To build the foundation for our reporting, 23 journalists spent months scouring tens of thousands of pages of documents and readying them for computer analysis. Then, our data team used cutting-edge machine learning and entity extraction tools to help identify the small group of lawyers and define its outsized influence.

Although none of the lawyers was a household name, our reporters found that the justices knew many of them quite well: The lawyers had clerked for the high court, and some socialize with the justices. That familiarity can play an important role during the final phase of a case, the oral arguments, when chemistry with the court is key. In interviews, the justices admitted as much, revealing that they are on a first-name basis with attorneys such as Ted Olson. “The problem is when you have a tough case, you need really good lawyers to tee it up, to make the best arguments,” said Justice Clarence Thomas. “...You want to hear what Ted has to say.”

By penetrating some of the most powerful law firms in Washington, our reporting also shattered a widely held myth – even among lawyers – that Supreme Court cases are loss-leaders offering little more than prestige. In reality, firms have found ways to parlay their access to the court into tens of millions of dollars in new revenue, and their practices are part of a grander plan to shape the law to the broadest benefit of their key clients: Big Business.


“The Echo Chamber” earned praise from those most familiar with the high court and its workings. “Fascinating,” wrote Jeffrey Toobin, a legal analyst for CNN and The New Yorker. “Big,” tweeted NPR’s Nina Totenberg. “Amazing,” wrote Dahlia Lithwick, senior editor and legal correspondent for Slate. “Spectacular!” Linda Greenhouse, who won the Pulitzer Prize in beat reporting for her coverage of the Supreme Court, told us.

Sherrilyn Ifill, the head of the NAACP’s Legal Defense Fund, called our series “masterful and deeply troubling.” Veteran journalist Bill Moyers blogged, “How is it that a branch of government that’s supposed to serve as a neutral arbiter falls so frequently on the side of the wealthy and powerful?”

Devoting an entire editorial to the series, The New York Times highlighted a disturbing conclusion: “As troubling as the court’s shrinking bar is the justices’ matter-of-fact acceptance of it.” The editors cited Justice Ginsburg’s revealing comment: “Business can pay for the best counsel money can buy... That’s just a reality.” As a result, the Times wrote, “the biggest cost of all may fall on regular Americans, for whom justice at the highest court in the land becomes less accessible every day.”

We proudly submit “The Echo Chamber” for a Pulitzer Prize for Explanatory Reporting.

Sincerely,



Stephen J. Adler

Editor-in-Chief
Reuters