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978-0-521-78394-1 - Crafting Law on the Supreme Court: The Collegial Game
Forrest Maltzman, James F. Spriggs and Paul J. Wahlbeck

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Crafting Law on the Supreme Court

The Collegial Game

In *Crafting Law on the Supreme Court*, Forrest Maltzman, James Spriggs, and Paul Wahlbeck use material gleaned from internal memos circulated among justices on the Supreme Court to account systematically for the building of majority opinions. The authors argue that at the heart of this process are policy-seeking justices who are constrained by the choices made by the other justices. By strategically using threats, signals, and persuasion, justices attempt to influence the behavior of their colleagues on the bench. Evidence derived from the recently released papers of justices Brennan, Douglas, Marshall, and Powell is used to test the authors' theory of opinion writing. The portrait of the Supreme Court that emerges stands in sharp contrast to the conventional portrait where justices act solely on the basis of the law or their personal policy preferences. This book provides a fascinating glimpse of how the Court crafts the law.

Forrest Maltzman is Associate Professor of Political Science at George Washington University. He was the 1991–1992 Robert F. Hartley Fellow in Government Studies at the Brookings Institution, as well as a 1994–1995 American Political Science Association Congressional Fellow. Maltzman has authored articles in numerous journals, including *American Political Science Review*, *American Journal of Political Science*, and *Journal of Politics*. He is the author of *Competing Principals: Committees, Parties, and the Organization of Congress* (1997) and a contributor to *Supreme Court Decision-Making* (1999).

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In memory of my aunt,
Carol Adler
– *Forrest*

To Cam, Rylie, Jeremy, and Adrienne
– *Jim*

To Janice, Matthew, and Katie
– *Paul*

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Acknowledgments

We subtitled this book “The Collegial Game” with two purposes in mind. First, it describes our view of how justices interact on the United States Supreme Court. Although each justice pursues his or her goals, each is also required to work within a collegial setting, with no single view of policy determining the final shape of the law. But, second, we believe the subtitle nicely captures a key characteristic of our profession. Life in the academy is also in many respects a collegial game. Despite harboring a diversity of goals and views, each of us is called upon to interact with colleagues with different goals, with conflicting visions of what constitutes good political science, and with alternative theoretical approaches for explaining similar events. Nowhere is this more clear to us than in the many colleagues and students who have given us advice and assistance in writing this book. Not all of these scholars have seen eye-to-eye with us in terms of their epistemological orientation or their understanding of life on the bench. Yet the fact that so many have been willing to play this collegial game reaffirms to us our decisions to become political scientists.

Much of the material in this book was initially presented as conference papers. In presenting our work and writing the final manuscript, we have benefited from the comments of Larry Baum, Sarah Binder, Lee Epstein, Roy Flemming, John Gates, Tim Johnson, Rich Pacelle, Ed Schwartz, Lee Sigelman, Elliott Slotnick, Harold Spaeth, and Sandra Wood. Saul Brenner and Jeff Segal not only read and commented on conference paper versions of many of the book’s chapters, they also read from cover to cover the completed manuscript. We are particularly grateful for the support they have given us on this and other projects. Steve Balla, Neal Beck, Eric Lawrence, Langche Zeng, and Chris Zorn have provided us with methodological advice. Along the way, we

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The antecedents of this book are many. We presented a version of Chapter 2 at the 1998 annual meeting of the American Political Science Association, Boston. Chapter 3 is a modified version of “Bargaining on the U.S. Supreme Court: Justices’ Responses to Majority Opinion Drafts” (Spriggs, Maltzman, and Wahlbeck 1999). Versions of Chapter 4 were presented at the 1997 and 1998 annual meetings of the Midwest Political Science Association, Chicago, and the 1997 annual meeting of the Law & Society Association, St. Louis. Finally, Chapter 5 was presented at the 1996 annual meeting of the American Political Science Association, San Francisco, and the 1996 annual meeting of the Scientific Study of Judicial Politics, St. Louis.

Of course, writing this book required more than great data, advice, and assistance. We have also relied upon a strong supporting cast. Thus, we conclude by acknowledging the love and support that Sarah and Noa provided Forrest, that Cam, Rylie, Jeremy, and Adrienne gave Jim, and that Janice, Matthew, and Katie gave Paul.