Scientific jury selection:
what social scientists know and do not know
Interviewing U.S. Supreme Court justices and interest group attorneys by Lee Epstein

The debate regarding "hard" and "soft" data in the judicial method is growing. A tumultuous and, ultimately, is very important to future research efforts. My aim is to describe the possible uses of one source of soft data, with an eye toward moving the debate from the abstract to the concrete. An important question to address in this debate is whether any hypothesis interacts with any other, or whether it has a lesser context. Whether better interviewing elites? More specifically, what are the valuable uses of interest interviews with justices in the judicial process? A general consensus emerges among methodologists that interest interviews provide a good way of looking at a smaller amount of different kinds of data than would be appropriate comparisons, analysis, and text alleged to hypothesize for future analysis. Intensive interviews often provide an excellent method by which to collect data in a substantial number of cases. That is, often, interviews will suggest, perhaps "accidentally," new ideas for research on which scholars can then translate into hypotheses for future testing. As Kerlinger notes, an interview "can be an effective device to help identify variables and relations, and to guide other phases of the research."1 This is not a unique or strange occurrence. Quite often during the course of interviews, elites make statements that they hold to be "fact," but which scholars have not considered in any serious way. While interviewing five Supreme Court justices about the quality of group representation before the Court, several mentioned state attorneys

17. Howard, supra note 9, at 95.
20. Interview notes were conducted with Kerlinger in 1983.
22. Kerlinger, supra note 19, at 98.
Interviewing Supreme Court personnel by H. W. Perry, Jr.

Interviewer: ...I noticed that you said that voting was done in order of seniority. Does that open with votes on the merits as well as with cert? Justly: Yes. I don't know where the textbooks ever get this idea about discuss- ing down and voting up. We have always somehow referred to this idea of voting coming from the old deck where thin which the more junior first. [He then got up and showed me a conference sheet with his name listed at the top and no one else's.] He then said to me, 'Well, junior justice.' I asked Justice Douglas about this one and he said that they had always worded down since he had been here. Maybe Bill's memory had slipped on that. There is no time at which he voted by juniority, but not since I have been here. There is no time at which he came from. I guess the theory was that the chief justice's voice might influence other votes or something.

Imagine the fate of the poor assistant professor, or worse the graduate student doing his dissertation, who develops a rational claim in his dissertation making on the basis of the notion that justices vote in order of "juniority." The model may be rigorous, elegant, parsimonious and quite understandable. One who understands these concepts understands what should be asked, how should be asked, and the procedures and problems in interpreting findings.

Much like survey research, or statistical procedures to control for third varia-

bles or multicollinearity, the good inter-

eviewee does not suppose that something is true ipse dixit. One figures out how to ask the question in a different way or how to get at a point in several different ways in order to determine the reliability of an answer. If, for example, one hears something over and over from many different people, one can feel fairly confident about its reliability, at least as a perception, barring reasons to doubt it. It is ironic that we should be so skeptical of "truth" being able to emerge from persistent, rigorous, purposeful questioning.

Who should be interviewed?

Interviewing Supreme Court personnel is just as important as interviewing any other person. Justices and other persons who work with them should be interviewed as well. Just what makes other persons who work with them specializes can interview these persons in the same way that we interviewed the justices. It is ironic that we should be so skeptical of "truth" being able to emerge from persistent, rigorous, purposeful questioning. 

It is ironic we should be skeptical of "truth" emerging from rigorous interviewing.

Managing the comparison is flawed, clerks are not unlike congressional staff. No staff member "controls" or manipu-

lates a senator, but to deny their impor-

tance or ignore the role they play in the legislative process would be foolish. Although there were notable exceptions. Practice found most of the clerks hired on the side of not wanting to sound arrogant. Moreover, when I talked with the justices, I found that most of what I had learned from the clerks was correct.