Laugh Track

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THE SUPREME COURT MAY have its own police force, its own museum curator, and even its own basketball court, but unlike the courts of yore it has no Jester. As a result, the responsibility of delivering humor within the hallowed halls of One First Street falls squarely on the backs of the nine Justices themselves. But which Justice provides the best comic entertainment for the court watchers, lawyers, and staff that make up the Court's audience on any given argument day? Surely many believe that Justice Scalia, with his acerbic wit and quick tongue, has provided the most laughs from the bench. Since Justice Thomas rarely speaks at all, he likely has not instigated much courtroom giggling. And of course, it is widely believed that Justice Ginsburg doesn't even laugh herself, much less make others laugh.[1] Until now, however, any discussion of the Justices' relative comic ability has remained in the realm of anecdote, speculation, and rumor.

Fortunately, however, scholars of the Court now possess some hard data that can help us determine, in a more or less scientific fashion, the relative funniness of the Justices. Prior to the most recent term, transcripts of oral arguments held at the Court did not refer to the questioning Justice by name, instead merely identifying each Justice's inquiry or remarks by the word "Question." In the 2004–2005 term, however, for the first time, the Court Reporter started revealing the names of the speaking Justices. Because the Court Reporter also indicates, with the notation "(Laughter)," when the courtroom has reached a certain level of mirth, it is now possible to determine how many times during the term any particular Justice's comments induced a substantial amount of laughter.[2] It would seem, then, that we can now rank the Justices with regard to their respective comic talents.

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1   The notion that Justice Ginsburg does not laugh is mistaken. As one of Justice Ginsburg's clerks during the OT '98 term, I can attest that she does, in fact, laugh. Maybe not often, perhaps not loudly or with great vigor and the wild waving of arms, but laugh she does.

2   It will be suggested here, by skeptical readers, that the Court Reporter may be biased in favor of or against one Justice or another, thus rendering any reliance on his notations unreliable. This may or may not be true, but I will not pursue the point. I considered calling the Court Reporter and asking whether

Taking advantage of this new development, I recently searched through the seventy-five oral argument transcripts from the 2004–2005 term that are available on the Supreme Court's official website and kept track of how many times each Justice invoked enough hoots and snickers from the audience that the Court Reporter felt the moment had risen to a state of "laughter." Of course, this methodology is far from perfect. For one thing, the Court Reporter does not distinguish between types of laughter, either in terms of duration or intensity; a quip that has resulted in a series of small chuckles, in other words, may count just as heavily in this methodology as a joke that brought down the house. Nor does the Court Reporter distinguish between the genuine laughter brought about by truly funny or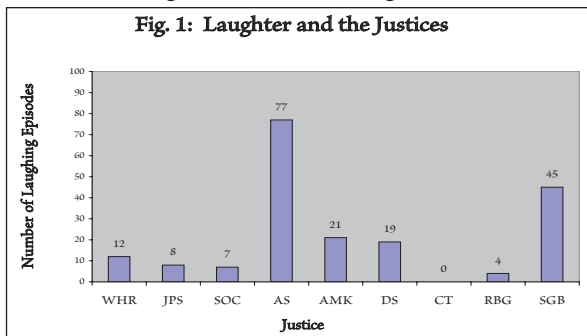 clever humor and the anxious kind of laughter that arises when one feels nervous or uncomfortable or just plain scared for the nation's future. Finally, the Court Reporter does not make any distinction between those instances when the audience is laughing *with* the Justice as opposed to *at* the Justice.[3]

Keeping these caveats in mind, however, the methodology provides a solid starting point for evaluating the senses of humor of the nation's nine most powerful jurists. When it came to who got the most and least laughs, the data revealed no surprises: As shown in Fig. 1, Justice Scalia won the competition by a landslide, instigating 77 laughing episodes, while Justice Thomas instigated zero laughing episodes, putting him all alone in last place among the Justices. Perhaps surprisingly, Justice Breyer accounted for far and away the second highest number of laughter episodes with 45. Justice Ginsburg managed to bring about four laughing episodes, falling only slightly behind Justice O'Connor's seven and Justice Stevens' eight. Justice Kennedy came in third with 21 laughter episodes invoked, slightly ahead of Justice Souter's 19 and Chief Justice Rehnquist's 12.

Of course, the total number of laughing episodes instigated by each Justice over the course of the term tells only part of the story, because not every Justice attends every oral argument. Thus, while the total number may tell us which Justice provided the most overall laughs in any given term, it cannot precisely measure the per-argument impact of the Justice's comic talents. To fill out the picture, then, I have calculated each Justice's "Laughter Episodes Instigated Per Argument Average," or LEIPAA, which represents the total number of laughter episodes instigated over the term divided by the number of oral arguments attended over the course of the term. The results are shown in

Fig. 1: Laughter and the Justices

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he is in fact biased in favor of or against one Justice or another, but I mean, come on, what do you think he's going to say?

3   The methodology provides an incomplete picture in other ways as well. Performance in oral argument, for example, may not be representative of a Justice's ability to bring about laughs in other settings, such as in writing, on the telephone, at cocktail parties, or while playing squash. And, of course, one could easily dispute the presumed correlation between the amount of courtroom laughter invoked and the actual funniness of the Justice who invoked it. Many arguments could be raised in response to this presumed relationship, and you can probably imagine what some of them are, but I won't discuss them here.

Fig. 2. Calculating these figures provides at least one interesting result. Although Chief Justice Rehnquist came in only fifth place in the overall rankings, his poor performance in that category can largely be explained by his illness, which caused him to miss thirty-two

Fig. 2: LEIPAA and the Justices
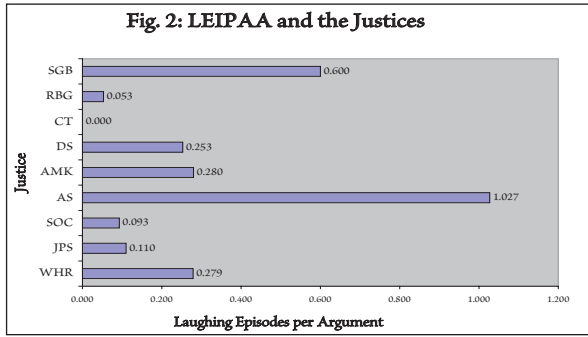
oral arguments; his relatively strong LEIPAA of .2791, on the other hand, puts the Chief in fourth place, only a tiny fraction behind Justice Kennedy.[4]

Hey, with a Court this funny, who needs a Jester? *GB*

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4   In calculating the Justices' LEIPAA, I attempted to determine how many oral arguments each Justice missed over the course of the term by looking through the oral argument transcripts and otherwise searching the internet and relevant databases for pertinent information. Using these techniques, I have concluded that Chief Justice Rehnquist missed thirty-two arguments over the course of the term, and Justice Stevens missed two. I should probably indicate here, however, that in attempting to determine how many arguments each Justice missed over the term, I really didn't try that hard. Thus the data presented in Fig. 2 may be incorrect, and they are certainly unreliable.