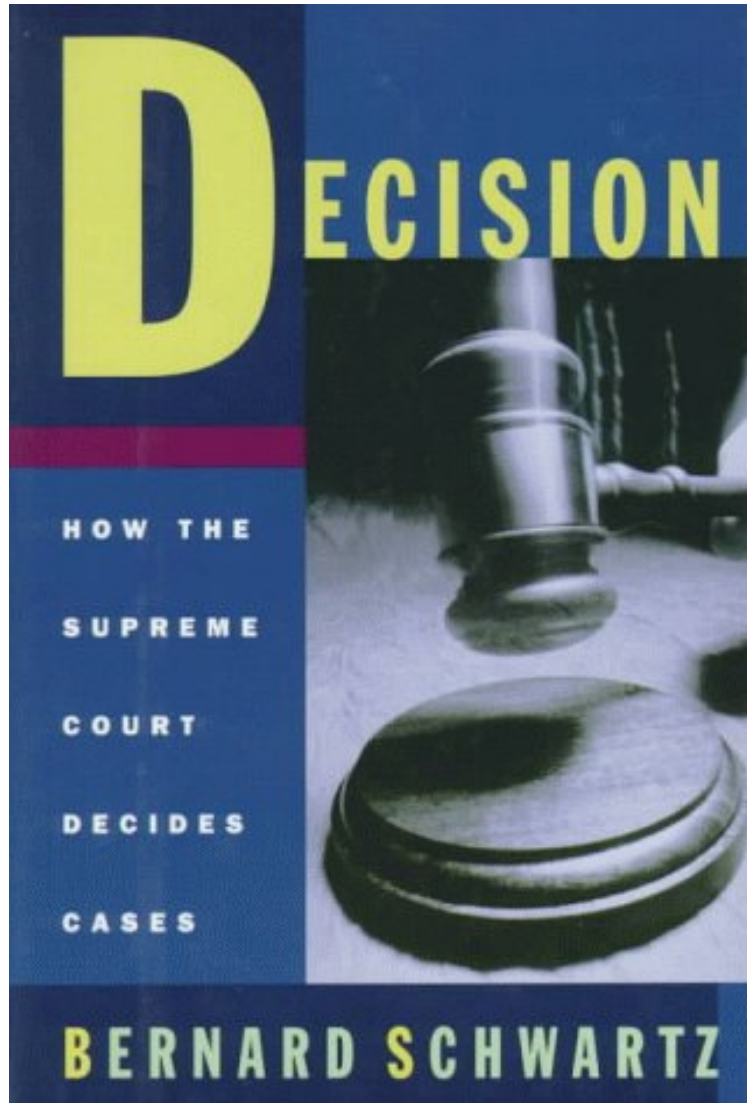


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Decision: How the Supreme Court Decides Cases

Bernard Schwartz

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Bernard Schwartz : Decision: How the Supreme Court Decides Cases before purchasing it in order to gage whether or not it would be worth my time, and all praised Decision: How the Supreme Court Decides Cases:

12 of 20 people found the following review helpful. The Politics of Supreme Court Decision MakingBy A CustomerI was greatly disappointed with the book. Schwartz didn't pay attention to who his audience is: we are not a general reading public but rather one with an interest in, and some level of sophistication of, the US Supreme Court. In other words, we expect sourcing and citing of ideas. With too many "a case did this" and "a book says that" without the sourcing, I gave up. Moreover, it was pretty clear that the stalwarts of the Warren Court: Warren, Black, Brennan

could do no wrong. Although it may be semi-true for the latter two, Warren was a glad-handing arm-twisting politician who's most famous opinion (Brown) was as dull as dish water to read. But its easier to pick on Rehnquist because he couldn't convince a majority to follow him on one single issue -- albeit an important issue. Yes, that's the learned perspective we get from this book. Ultimately, I can see the general media wanting to read this book to help "educate" them, but as for political scientists, law professors, legal journalists and the like there is little value to this book other than that Schwartz had access to private communications of some of the Justices, but we know not whom and know not when he uses it (and whether he uses it correctly). 0 of 0 people found the following review helpful. No. By Jayfred Poorly done.

Decision days appear to outsiders as among the most dramatic events on the Supreme Court calendar. One thinks, for instance, of Chief Justice Earl Warren, reading the unanimous opinion in *Brown v. Board of Education* in a courtroom pervaded by tension. But the real drama of *Brown* and other Supreme Court cases may well have been what went on behind the scenes. Rarely do the arguments of counsel--brilliant though they may appear to the courtroom audience--dictate the decision in an important Supreme Court case. Rather, the crucial argument in a case takes place privately among the Justices after the public hearing. *Decision* provides a unique behind-the-scenes look at the Supreme Court and how its Justices decide cases. Distinguished author Bernard Schwartz, described by *The New York Times* as "one of the nation's leading legal scholars," uses confidential conference notes, draft opinions, memoranda, letters, and interviews to tell what really goes on behind the red velvet curtain. Cases and anecdotes, woven into deft discussions of the Justices and how they function, provide unmatched insights into our high tribunal. We read of the conferences where the Justices cast their votes, the decisions as to who will write opinions (one of the most critical choices made by the Chief Justice), the often extensive give and take of the draft opinion, and the intense lobbying between Justices that influences vote changes (it was Chief Justice Earl Warren's pressure on Justice Reed in *Brown* that made the final vote unanimous). Schwartz focuses on the Warren, Burger, and Rehnquist courts, providing not just vivid portraits of the Chief Justices themselves, but also profiles of many Associate Justices in action--including Felix Frankfurter, Byron R. White, Sandra Day O'Connor, William J. Brennan, Thurgood Marshall, and John Paul Stevens. And Schwartz includes an eye-opening discussion of the expanding role of the Justices' clerks, revealing that they are no longer merely a "staff of assistants." Instead, they have evolved into a sort of "Junior Supreme Court," which performs a major part of the judicial role--including the writing of opinions--delegated by the Constitution to the Justices themselves. *Decision* gives readers a privileged look at countless cases throughout the Court's history, from the *Dred Scott* decision to *Miranda v. Arizona* to the controversial decision in *Roe v. Wade* to *United States v. Nixon* (the Watergate tapes case). Highly readable, yet written with impeccable scholarship, *Decision* shows the Justices in action as never before. Everything you wanted to know about the Supreme Court and were afraid to ask is here, in a revealing work on the institution that has had such an impact on our law and our life.

From Publishers Weekly In a book aimed at specialists, veteran court-watcher Schwartz (*A History of the Supreme Court*) draws on archives, including the files of recently retired Justices William Brennan and Thurgood Marshall, and confidential interviews to describe internal court arguments on cases recent and long past. He begins with a close analysis of the arguments--especially what he terms the manipulations of Chief Justice William Rehnquist--in the Webster abortion case, then admiringly describes the leadership of "Super Chief" Earl Warren, who gained all-important unanimity in the *Brown v. Board of Education* desegregation case (1954). Chief Justice Warren Burger, on the other hand, found his work regularly modified by pressure from his colleagues that led to an "opinion by committee" in cases such as the Nixon Watergate appeal. Schwartz also analyzes cases in which associate justices (Brennan, for example) took temporary leadership of the court, and how justices switched votes in crucial cases. He concludes by worrying that judges' young law clerks retain too much power as gatekeepers to the court, and endorses a 1972 proposal by a court-appointed committee to create a new court of appeals to screen all petitions for appeal. Copyright 1996 Reed Business Information, Inc. From Booklist This fascinating book shows how the major decisions of the Supreme Court came to be, including *Roe v. Wade*. In that case, Chief Justice Rehnquist, whose personality became much more serious when he was appointed chief, continued to push hard to have the case overturned. Similarly, author Schwartz delves into the legal issues of other cases over the last decade and a half when the Court changed complexion from the more liberal Burger Court to the more conservative Rehnquist Court. The author himself is often apt to blame zealous law clerks for influencing justices buried under mountains of work, but the most interesting material is the personalities. Justice Felix Frankfurter would become livid and his voice would become a high-pitched squeal; Chief Justice Burger had perfected the good ol' boy network by giving his friends the plum decision-writing assignments; associates respected Justice William Brennan, the cocky liberal leader of the Court during the 1970s and 1980s--or did they fear him? In all, a terrific primer on the Supreme Court, the true lawgivers of the republic. Joe Collins From Kirkus s An admixture of legal scholarship and gossip, by law professor Schwartz (Univ. of Tulsa; *The Ascent of Pragmatism: The Burger Court in Action*, 1989). Schwartz bases his study on internal documents and on interviews with (often anonymous) justices and clerks, as well as on historical materials and

published opinions. He shows that the justices, through a lengthy process of conferring and exchanging drafts, make law through a much more collaborative and less individualistic process than is generally assumed. Schwartz voices a deep concern with the "increasing delegation--if not abdication--of key elements of the deciding function" to law clerks, who not only select which cases the court will review, but write most of the opinions that set forth the law of the land. He also worries that the politicization of the nominating process has made it unlikely that "a nominee with the potential for greatness could be approved." The parts of the book most accessible to general readers can be seen as a more restrained version of Bob Woodward's 1979 *The Brethren* (which Schwartz terms "incomplete and inaccurate"). Reading about the justices' foibles and personality conflicts is all the more entertaining, given the veil of secrecy behind which they normally work. Much of the book will, however, be heavy going for readers unfamiliar with constitutional law. Schwartz relates in convincing but sometimes tedious detail a number of examples of horse-trading and vote-switching by justices. In trying to demonstrate the chief justice's leadership role, he proves only that a great politician, such as Charles Hughes or Earl Warren, will bend more justices to his views than a lesser one like Warren Burger. Those hostile to the Warren Court's liberal activism may be disturbed by this Warren biographer's unreserved approval of it. Thoughtful and illuminating, but probably a challenge for the general reader. -- Copyright 1996, Kirkus Associates, LP. All rights reserved.