

**HOW JUSTICES SHAPE PUBLIC PERCEPTIONS OF THE SUPREME COURT ON
AND OFF THE BENCH**

by

Christopher N. Krewson

A dissertation submitted in partial fulfillment of
the requirements for the degree of

Doctor of Philosophy

(Political Science)

at the

UNIVERSITY OF WISCONSIN–MADISON

2018

Date of final oral examination: 5/2/2018

The dissertation is approved by the following members of the Final Oral Committee:

Barry Burden, Professor, Political Science

Yaron Nili, Assistant Professor, Law

Ryan Owens, Professor, Political Science

Eleanor Powell, Associate Professor, Political Science

Alexander Tahk, Assistant Professor, Political Science

© Copyright by Christopher N. Krewson 2018

All Rights Reserved

This dissertation is dedicated to Jessica Krewson. My best friend and fiercely loyal companion.

None of this was possible without her. I love you, my Jess.

ACKNOWLEDGMENTS

There is not enough time nor space here to name everyone who has contributed in some way or another to this dissertation project. I sincerely apologize to those whom I fail to acknowledge in these brief comments.

My family has provided immeasurable support. Their smiles and strength have carried me through every challenge. My extended family was unfailing in their encouragement, even when they were not exactly sure of what I was doing in Madison, Wisconsin. My colleagues in the Department of Political Science played a foundational role in my academic development. I am especially grateful to members of my dissertation committee for the many hours they devoted to this and other projects.

I owe a tremendous debt of gratitude to my advisor, Ryan Owens. To him I attribute much of my graduate success and academic development. Since the day I received my first communication from him in 2013, Ryan has provided me with needed direction and sage advice. He is as dedicated and loyal as they come. Others may think they had the best graduate school advisor. They are wrong — nobody beats Ryan. I look forward to benefiting from his friendship and expertise for years to come.

CONTENTS

Contents iii

List of Tables v

List of Figures vii

Abstract x

1 An Overview 1

2 Typical Speeches 5

2.1 *Introduction* 5

2.2 *The Supreme Court's Need for Public Support* 7

2.3 *Understanding Off-the-Bench Speech* 9

2.4 *Expectations* 13

2.5 *Methods and Data* 17

2.6 *Results* 23

2.7 *Conclusion* 31

3 Controversial Speeches 33

3.1 *Introduction* 33

3.2 *Positivity Bias Theory* 35

3.3 *Off-the-Bench Speech* 37

3.4 *Expectations* 38

3.5 *Methods and Data* 40

3.6 *Results* 43

3.7 *Conclusion* 54

4 Opinion Language 56

4.1	<i>Introduction</i>	56
4.2	<i>Justices' Goals and Their Audiences</i>	57
4.3	<i>Speaking to a Legal Audience</i>	58
4.4	<i>Speaking to a Broader Audience</i>	59
4.5	<i>Conditional Outreach</i>	61
4.6	<i>Persuasion</i>	63
4.7	<i>Methods and Data</i>	65
4.8	<i>Results</i>	70
4.9	<i>Conclusion</i>	74
A	Appendix	76
	References	93

LIST OF TABLES

2.1	Table of variables measuring the hypothesized impact of off-the-bench speech. The left column lists the variables and the right column the questions used to operationalize the variables. Unless indicated, the same questions were asked in both experiments.	22
3.1	Regression Analysis of Feeling Thermometer (Typical Speech)	44
3.2	Regression Analysis of Feeling Thermometer (Controversial Speech)	48
3.3	Regression Analysis of Legitimacy Index (Controversial Speech)	50
4.1	Regression Analysis of Opinion Sensationalism (Full Results in Appendix) . . .	73
A.1	Table of control and treatment group characteristics in survey experiment (Chapters 2 and 3).	76
A.2	Table of respondent characteristics in controversial speech survey experiment (Chapter 3).	77
A.3	Ordered Logistic Regression Analysis of Legitimacy Index (Chapter 3)	77
A.4	Regression Analysis of Legitimacy Index Component: If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)	78
A.5	Regression Analysis of Legitimacy Index Component: Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)	79

A.6	Regression Analysis of Legitimacy Index Component: The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)	80
A.7	Regression Analysis of Legitimacy Index Component: It is inevitable that the U.S. Supreme Court gets mixed up in politics; therefore, we ought to have stronger means of controlling the actions of the U.S. Supreme Court. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)	81
A.8	Regression Analysis of Legitimacy Index Component: The right of the Supreme Court to decide certain types of controversial issues should be reduced. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)	82
A.9	Regression Analysis of Legitimacy Index Component: The Supreme Court can usually be trusted to make decisions that are right for the country as a whole. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)	83
A.10	Full Regression Analysis Results from Table 4.1. (Chapter 4)	89

LIST OF FIGURES

2.1	Number of public appearances by justices per year from June 30, 2014 to July 26, 2017. Data obtained from www.scotusmap.com	11
2.2	Number of public appearances by state from June 30, 2014 to July 26, 2017. Data obtained from www.scotusmap.com	12
2.3	The point estimates represent the differences in feeling thermometer ratings between treatment and control groups. Positive values mean that levels of favorability were higher among the treatment group. The treatment is attending Justice Sotomayor’s speech before taking the survey. The horizontal bars are 95 percent confidence intervals.	24
2.4	Bar graphs of the number one response to the question of which statement best described judicial decision-making on the United States Supreme Court. The first column is for individuals who had not attended the speech when they took the survey. The second column is for responses after individuals attended the speech.	26
2.5	The point estimates represent the differences in feeling thermometer ratings between treatment and control groups. Positive values mean that levels of favorability were higher among the treatment group. The treatment was reading about a speech attributed to either Justice Sotomayor or Justice Alito before taking the survey. The horizontal bars are 95 percent confidence intervals. . . .	27
2.6	Bar graphs of the number one response to the question of which statement best described judicial decision-making on the United States Supreme Court. The first column is for individuals who had not read about the speech when they took the survey. The second column is for responses after individuals read news coverage of the speech.	29

2.7	The differences in the overall means of the treatment and control groups in the survey experiment after ordering the survey responses to the statements of politicization and institutional loyalty on a scale from 1 to 5. Bars are 95 percent confidence intervals. Positive values indicate greater agreement and negative values less agreement among the treatment group.	30
3.1	Predicted levels of favorability for Justice Sotomayor and Justice Alito, conditional on treatment received, as a function of ideological distance (Typical Speech)	45
3.2	Predicted levels of favorability for Justice Ginsburg and Justice Gorsuch, conditional on treatment received, as a function of ideological distance (Controversial Speech)	49
3.3	Coefficient plot of uninteracted treatment variable on legitimacy index components. Baseline reference of treatment is no exposure to speech. As liberal respondents were coded as zero, this plot shows how feelings of legitimacy among liberal respondents exposed to controversial speech from either Justice Ginsburg or Justice Gorsuch changed (Controversial Speech).	51
3.4	Coefficient plot of interacted treatment variable on legitimacy index components. Baseline reference of treatment is no exposure to speech. As liberal respondents were coded as zero, this plot shows the effect of being more conservative on feelings of legitimacy following exposure to a controversial speech by Justice Ginsburg or Justice Gorsuch (Controversial Speech).	53
4.1	Plot of the average sensationalism of both majority and dissenting opinions over time (left image). Plot of the average sensationalism of majority and dissenting opinions over time, separated by opinion type (right image).	70
4.2	Plot of the average salience of cases and opinions over time, separated by opinion type. Shaded bands are 95 percent confidence intervals.	71

4.3	Predicted levels of sensationalism as a function of pre-decision salience for both majority and dissenting opinions. Shaded bands are 95 percent confidence intervals.	74
A.1	Justice Sotomayor image (Chapters 2 and 3)	87
A.2	Justice Alito image (Chapters 2 and 3)	87
A.3	Justice Ginsburg image (Chapter 3)	87
A.4	Justice Gorsuch image (Chapter 3)	88
A.5	Justice Gorsuch (non-judicial) image (Chapter 3)	88

ABSTRACT

The United States Supreme Court is a unique institution. As Tocqueville stated, its members “are the all-powerful guardians of a people which respects law, but they would be impotent against popular neglect or popular contempt.” In a polarized and contentious era, how does the Supreme Court guard itself against popular contempt? I argue that justices actively seek to shape people’s perceptions of the Court both off and on the bench.

My dissertation explores the relationships between judicial behavior and micro-level perceptions of the Court. In particular, I categorize judicial behavior into two types: on-the-bench and off-the-bench. The dissertation uses content analysis, large-N data, and experiments to (1) test the impact of judicial speeches on public perceptions and (2) to explain why justices use sensational or emotional language in their legal opinions.

I begin by outlining the major debates to which my dissertation contributes. In particular, I emphasize the importance of micro-level work on public perceptions, the need to broaden our understanding of judicial behavior, and the novel contributions of my dissertation. Three essays then follow this overview, with each comprising a separate chapter. The three essays examine the implications of different judicial behaviors on public perceptions. While the essays are related, they are meant to be read as stand-alone arguments.

1 AN OVERVIEW

Their power is enormous, but it is clothed in the authority of public opinion. They are the all-powerful guardians of a people which respects law, but they would be impotent against popular neglect or popular contempt.

— ALEXIS DE TOCQUEVILLE (1835)

The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means, and to declare what it demands.

— PLANNED PARENTHOOD V. CASEY (1992)

[A]lthough the general political environment may be beyond the power of a Justice to control, it is rarely beyond his power to influence.

— WALTER MURPHY (1964)

In a polarized and contentious time such as ours, how can the Supreme Court maintain its legitimacy? A legitimate institution is one that has a fundamental level of support from its constituents. Even those who disagree with specific outcomes will accept the decisions of legitimate institutions. In an age where vitriolic disagreement is commonplace, such authority is necessary for an institution that cannot independently coerce obedience nor derive legitimacy through the electoral process. In such circumstances justices do not sit idly, crossing their fingers and hoping their institution will endure. They act in order to maximize their personal, legal, and policy goals in an uncertain environment.

The United States Supreme Court is an important and unique institution. Its members are appointed for life through the people's representatives in the President and Senate. Once appointed, though, they have little accountability to others. What is more, justices frequently make decisions with national policy consequences. Tocqueville suggested that "[t]he peace, the prosperity, and the very existence of the Union are vested in the hands

of the Justices of the Supreme Court.” With only slightly less hyperbole, he also stated “scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.”

On the other hand, the Court has perhaps one fatal flaw. Hamilton laid bare this weakness at its creation, explaining that the Court has “no influence over either the sword or the purse.” Having “neither FORCE nor WILL, but merely judgment,” it cannot compel others to accept its decisions nor punish them when they refuse. Rather, the Court must rely on voluntary compliance and the support of coordinate branches of government. This puts the Court in a predicament, as the Constitution is designed such that “ambition is made to counteract ambition.” For example, Congress may not be anxious to do favors for a branch that can nullify laws it happens to disagree with.

To overcome this glaring weakness, scholars have suggested that the Court has developed a reservoir of good will and high levels of legitimacy (Gibson and Caldeira, 2009). This means that people see the Court as appropriate, proper, and just; as a result, people are generally willing to follow decisions they disagree with and they have a fundamental commitment to the Court (Tyler, 2006). Research has shown the Court’s legitimacy leads others, especially Congress, to honor the Court. In particular, Congress is less willing to curb the court or overrule its decisions vis-à-vis legislation as support for the Court increases (Clark, 2009). Other scholars have detailed the intentional efforts of justices to build up the Court and strengthen its legitimacy (McCloskey, 2010).

Many political scientists agree. Using a standard battery of questions to measure legitimacy, they have found high levels of legitimacy within the United States and compared to other countries (Gibson and Nelson, 2014). A key finding is that Supreme Court legitimacy correlates only weakly with partisanship. Republicans and Democrats evaluate the Court similarly. These arguments are based largely on (1) national surveys, (2) cross-sectional data, and (3) an important assumption: the court is objectively conservative; therefore, a vulnerable court would be less favored by Democrats and more favored by Republicans.

Armed with data and relying on these assumptions, the Court appears to be on stable footing.

Recent work has questioned this approach on two grounds (Bartels and Johnston, 2013; Christenson and Glick, 2015). First, some scholars prefer a micro-level approach to understanding perceptions of the Court. Using experimental evidence and breaking down aggregate results, they find more individual-level variation in views of legitimacy than does previous work. Second—and this is somewhat related to the first point—scholars have suggested that not all people see the Court as objectively conservative. By measuring individual-level perceptions of ideological distance from the Court, scholars have concluded that legitimacy and ideology are more strongly correlated than previously understood.

These findings beget more research questions. If individual-level perceptions matter, does mass polarization inevitably lead to polarized views of the Court? Can the Court shape individual perceptions through its actions? How enduring is the legitimacy of the Court? My dissertation seeks to understand how justices shape and influence perceptions of themselves and the Court. Justices care about personal, legal, and policy goals. Through their actions both on and off the bench, they can maximize their ability to achieve such goals. In particular, I contribute to our understanding of how justices shape perceptions in three related essays.

In the first essay (Chapter 2), I analyze the impact of judicial speeches, focusing on neutral or non-controversial public remarks. The chapter uses two experiments to make my argument. In the first experiment, I fielded a survey to a group of law students at the University of Wisconsin-Madison who had reservations to a speech by Justice Sotomayor. I compared the views of groups of individuals who took surveys before or after the speech on a number of substantive topics. In the second experiment, I tested the effects of news coverage of typical, non-political speeches. Whether the speech was attributed to Justice Sotomayor or Justice Alito, news coverage led people to change their perceptions in meaningful ways.

In the second essay (Chapter 3), I examine the impact of controversial speeches. I chose two such speeches, one by Justice Ginsburg and another by Justice Gorsuch. While controversial judicial speeches are rare, they have the potential to gain widespread attention. I argue that controversial speeches should have polarizing effects using theories of motivated reasoning and cognitive dissonance. In addition, I incorporate tangible symbols (images of the justices in judicial garb) into my experiments. Research has relied strongly on a theory of positivity bias when explaining the legitimacy of the Court. Judicial symbols are central to this theory, and I use my experiment to test how judicial symbols work in the context of political speech.

In the final essay (Chapter 4), I probe whether justices seek to communicate with public audiences from the bench. I argue that authors of dissenting opinions will almost always seek to expand the scope of conflict by capturing the attention of the public through language, and that majority opinion authors will do so only when necessary. More specifically, I expect justices in the majority opinion to use more emotional or sensational language as public interest in a case increases. Dissenters, on the other hand, use such language consistently regardless of initial interest in a case. Using a novel measure of opinion sensationalism to capture emotional appeals and a sophisticated measure of pre-decision salience, my analysis confirms this hypothesized dynamic.

2 TYPICAL SPEECHES

2.1 Introduction

The United States Supreme Court is a constrained institution. In seeking to bring about legal policy, the Court relies on its power of judgment and the deference of others who will implement its decisions. Because it has neither the power of the purse nor the sword, it must rely on other branches of government to coerce and enforce others to accept its decisions. This explains why the Supreme Court is sometimes described as the “least dangerous branch” and why scholars have continued to emphasize its constraints.

Scholars also emphasize the public’s role in circumscribing judicial behavior (Bickel, 1986; Epstein and Knight, 1997). There are a number of reasons why the Court is influenced by the public. The public elects officials who influence the implementation of Supreme Court decisions. Regional mood and public opinion correlate with the decisions of state and lower-court judges (Rosenberg, 2008; Owens and Wohlfarth, 2017). Greater public support for the Court pressures Congress to respect Supreme Court decisions and engage in less Court curbing measures (Clark, 2009; Ura and Wohlfarth, 2010). Thus, at a very fundamental level, the public influences the degree to which the Supreme Court and its decisions are respected.

In fact, the Supreme Court fares better than other branches of government with regard to public support. It tends to have higher levels of public approval, and it is generally seen as the most trusted and popular branch. Some argue that the Court maintains high levels of support by staying out of the public spotlight (Hibbing and Theiss-Morse, 2002). If we look more closely at judicial activity, however, we find that justices are quietly persistent in their public outreach. In fact, as this chapter will demonstrate, a justice of the Supreme Court makes a public appearance every other day. Far from staying away, justices embrace opportunities to interact with the public.

Indeed, political leaders can take action to shore up public support. Research shows

government officials seek to counteract negative perceptions through their activities. For example, members of Congress tailor their “home style,” or manner of presenting self, in order to build trust with constituents. Building relationships with constituents provides these members greater flexibility when making voting decisions and performing their other duties (Fenno, 1978).

Political actors also seek to counteract negative perceptions in order to maintain a desired level of favorability. They may do so by shaping their own public image or improving perceptions of their institution. We know that members of the Supreme Court, for instance, care about self-presentation because it influences how favorably people view them (Baum, 2009; Posner, 2010). While justices choose to defend the Court (Davis, 2011; Schmidt, 2013), others benefit by distinguishing themselves from their institution. For example, Fenno (1978) argues that members of Congress run for Congress by running against it.

This chapter focuses on how justices of the Supreme Court impact public views of themselves and their institution through off-the-bench speech.¹ In so doing, justices overcome their constraints and exercise a degree of control over the stability of their institution. Importantly, this is the first study to employ experimental methods to measure the causal effects of off-the-bench speech on views of the Court. It highlights the importance of off-the-bench behavior and the diversity of goals that can motivate justices.²

In what follows, I review the Supreme Court’s need for public support and the importance of impression management to justices. I then connect these concepts to off-the-bench activity and report results from a field and survey experiment. Justices increase personal favorability and shape public perceptions through off-the-bench speech. Furthermore, news coverage multiplies and magnifies the effects and reach of these public appearances.

¹“On-the-bench” activity refers to what justices do in their official capacity, such as granting cases for review, voting, and writing opinions. “Off-the-bench” activity refers to unofficial activities, such as book tours, speeches, or interviews.

²This study cannot determine the extent to which off-the-bench speech is motivated by personal reasons (to increase their favorability), instrumental reasons (to bring about legal policy), or a mix of the two. Regardless of what mixture of motivations drive behavior, I find that off-the-bench speech brings about both personal and instrumental benefits.

2.2 The Supreme Court's Need for Public Support

The Supreme Court, like Congress and the President, makes decisions that bind other branches of government, agencies, and individuals. Unlike Congress and the President, though, the Supreme Court cannot fund or enforce its mandates. Thus, it must rely on its legitimacy for most decisions to be implemented. Legitimacy is “the belief that authorities, institutions, and social arrangements are appropriate, proper and just” (Tyler, 2006, 376). A governing entity with legitimacy, then, engenders voluntary deference among its constituents. Other branches may endure with diminished legitimacy through accountability to the people vis-à-vis elections and through brute enforcement power. The Supreme Court has no such alternatives on which to rely.

The Court's lack of institutional powers to implement decisions is more than an abstract concern. Presidents, Congress, and others have a history of resisting the Court's declarations. In one such instance, the Supreme Court ruled against Georgia state laws extending jurisdiction and control over the Cherokee Indians in *Worcester v. Georgia* (1832). President Andrew Jackson was no fan of this ruling and neither was Georgia. After the ruling, Georgia continued to exercise control over the Cherokee Indians. President Jackson wrote to a friend, “The Supreme Court decision has fell still born, and they find they cannot coerce Georgia to yield to its mandate.”

Members of Congress have the capacity to attack the Court with court-curbing bills and legislative overrides of judicial decisions (Clark, 2009). They can also, like presidents, resist or ignore decisions. For example, despite the clear ruling in *INS v. Chadha* (1983) that legislative vetoes are unconstitutional, such vetoes nevertheless continue to remain an important part of executive-congressional interactions (Fisher, 1993). Prominent examples of public resistance to Supreme Court rulings followed desegregation and school prayer decisions in the South (Rosenberg, 2008; McGuire, 2009).

The legitimacy of the Supreme Court, on the other hand, is a strong barrier against resistance to decisions. It leads individuals to comply with decisions, even when they

disagree with them. Furthermore, public support for the Court exerts pressure on other branches of government to yield to its declarations (Ura and Wohlfarth, 2010). The Court's source of legitimacy lies in its perception as a non-political institution and in a positivity bias that pervades the Court (Gibson and Caldeira, 2009). Judicial symbols, educational teachings, and media coverage of the judiciary lead others to perceive the Court in a more favorable and trusted light than other institutions.

Many suggest that the Court's legitimacy is quite strong. Indeed, studies have found high levels of loyalty to the Supreme Court (Caldeira and Gibson, 1992; Gibson et al., 1998). Support for the Supreme Court is strong relative to support for other branches of government (Gibson, 2007). Justices even avoid deciding cases in a counter-majoritarian fashion if it will buttress their public support and create a reservoir of good will (Casillas et al., 2011). Based on such evidence, many agree with Gibson's (2007) sentiment that the Supreme Court's "[i]nstitutional legitimacy may not be obdurate, but it does not seem to be caught up in the divisiveness that characterizes so much of American politics — at least not at present" (507).

Others disagree. For example, Baum (2009, 128-131) suggests that polarization is a concern for the Supreme Court's continuing legitimacy. Perhaps the strongest evidence regarding the limitations of Supreme Court legitimacy come from Bartels and Johnston (2013) and Christenson and Glick (2015). Using a national survey, Bartels and Johnston show that subjective ideological distance from the Supreme Court has a negative influence on the legitimacy of the Court. Results from their survey experiment show that perceived ideological disagreement with even a single decision can affect the legitimacy of the Court. In Christenson and Glick's study, individuals exposed to a credible news story about politicized decision-making felt the Court was less legitimate.

The relationship between support for the Court and subjective ideological incongruence is likely exacerbated by the psychological effects of polarization. Lee (2009) shows that members of Congress have become polarized over issues that are objectively non-

ideological. As elites and the mass public become polarized, the likelihood of seeing the Court as ideologically distant is bound to increase, leading to less legitimacy for the Court. Finally, Nelson and Gibson (2017) discuss the negative consequences of the politicization of the Supreme Court. They argue it is not so much accepting that the Court is a political institution where ideology matters (legal realism), but believing that justices engage in strategic or self-interested behavior that hurts legitimacy. Thus, new contexts and questions have arisen that cast doubt on the robustness of the Court's legitimacy.

What can members of the Court do to counteract concerns regarding the implementation of decisions and their institution's legitimacy? I argue that justices neutralize such threats through their public interactions. In fact, justices do engage the public frequently and routinely in their travels through public speeches. If speeches alter perceptions of the Court and increase the public's commitment to supporting Court decisions, then justices have available a potent tool to shore up public support and maintain their influence over policy.

It is important to note that justices may not care about public support for instrumental reasons alone. Their speeches also provide a prime opportunity to pursue their personal goals. Justices want to be well esteemed by others, especially those they most care about (Baum, 2009). As a consequence, they likely use speech for a mixture of personal and instrumental reasons (Krewson and Owens, 2017). Instrumentally, justices care about the standing of the Court because it affects their ability to effectuate policy decisions. Personally, speeches provide opportunities for justices to improve their public image as they interact with public audiences.

2.3 Understanding Off-the-Bench Speech

Scholars have explored the role of on-the-bench activities and judicial symbols in managing public perceptions. We know, for example, that justices use opinion language to manage public perceptions of the Court. When justices decide cases that go against public opinion,

they use clearer opinion language to justify their decisions and persuade the public (Black et al., 2016c). Justices appear to follow public opinion in most cases to store up a reservoir of good will which they cash in for cases with far-reaching political implications (Casillas et al., 2011). In addition, justices clothe their decisions and activities with legal language and symbols in order to bolster the sentiment that law is a key aspect of the decision-making process (Epstein and Knight, 1997; Baird and Gangl, 2006; Gibson and Caldeira, 2009).

On-the-bench activities are limited, however, in their ability to tackle the most pressing challenges of the day. They do not provide the best setting for members to develop personal relationships with the public or to encourage respect for the institution. Neither are they the best forum to reassure the public of the role of law nor to separate the partisan hostility in Congress from the bipartisanship which seems to exist in more abundance at the Supreme Court. Such efforts are better suited for off-the-bench environments where justices can interact with audiences on their own terms.

Members frequently engage in off-the-bench activities in the forms of public speeches, book tours, and interviews. In 2016 alone, there were at least one-hundred and seventy-five such events.³ According to Black et al. (2016b), the explicit purpose in just over 75 percent of trips was to give a speech. They also found that justices travel as frequently as members of Congress and that trips correlate with policy, institutional, and personal motivations. Members of the Court pay close attention to the public (Epstein and Knight, 1997; O'Brien, 2008).

More specifically, Black et al. use federal financial disclosures to determine the number of domestic reimbursed trips justices took from the years 2002-2012. They found that, as a unit, the justices made around 80 such trips per year, with a high of 105 in 2008. Justice Scalia was the most frequent traveller (17 per year) while Justice Souter rarely travelled. Most justices averaged about 10 trips a year. Justices frequently visited places in New York (146), California (118), and Illinois (52). While the numbers are high and perhaps

³<http://www.scotusmap.com/>

surprising, they only scratch the surface.

Crowd-sourced data on public appearances since the end of the 2013 Supreme Court term shed more light on the frequency of off-the-bench activity.⁴ In 2014, the justices made at least 125 public appearances in the final 185 days of the year. The total number of appearance in 2015 and 2016 were 179 and 175, respectively. To put this in perspective, a justice made a public appearance every other day. In 2017, the trend has continued, with at least 104 appearances in the first 207 days. Figure 2.1 plots counts of justices' public appearance for each year during this time period.

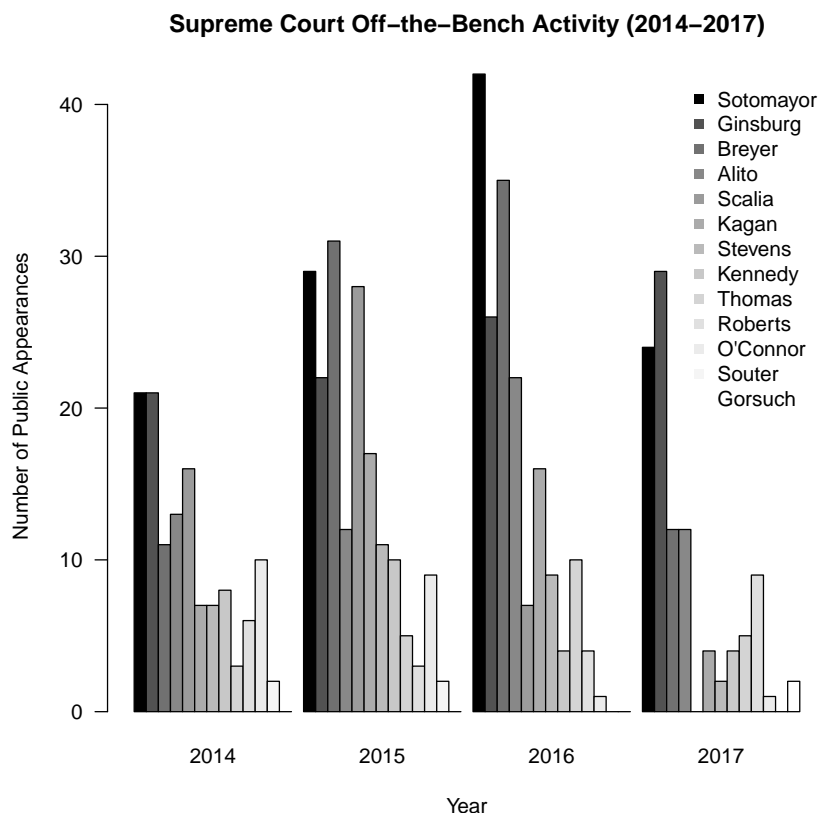


Figure 2.1: Number of public appearances by justices per year from June 30, 2014 to July 26, 2017. Data obtained from www.scotusmap.com.

Justice Scalia continued to be a frequent traveller in his final years on the Court, recording at least 51 appearances from the beginning of the summer recess in 2014 until his death

⁴Data obtained from <http://www.scotusmap.com/>.

in February of 2016. Justice Sotomayor is the most frequent traveller (116), with Justice Ginsburg close behind (98). Most of the justices' public appearances are in DC (155) or New York (99). While justices travel internationally as well (53), they are much more frequent domestic travellers. For example, justices travelled to California 30 times and Massachusetts 28 times, easily outnumbering the number of international travels based on those two states alone. Figure 2.2 plots a choropleth map of the United States showing the frequency of public appearances by state.

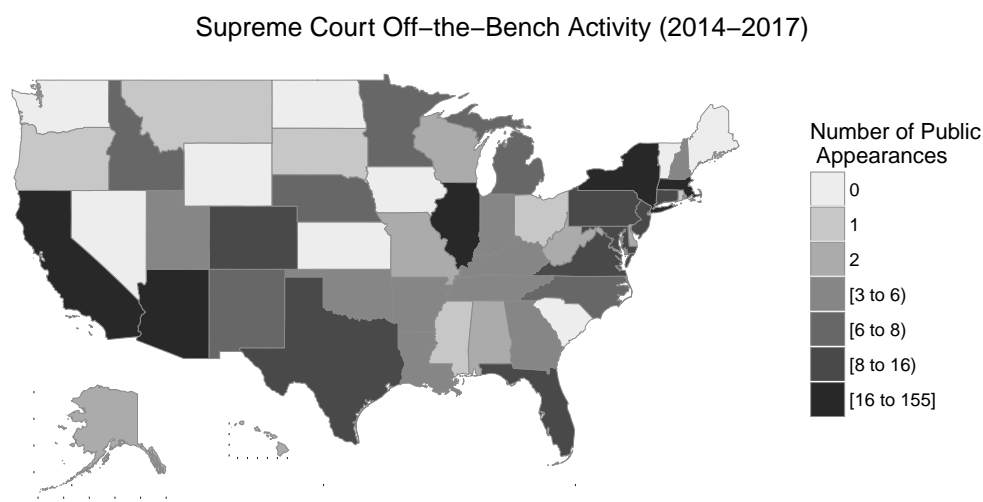


Figure 2.2: Number of public appearances by state from June 30, 2014 to July 26, 2017. Data obtained from www.scotusmap.com.

Schmidt (2013) categorizes off-the-bench activities into 5 categories: the personal, the interpersonal, the educational, the institutional, and the jurisprudential. He finds that justices tend to focus on the educational (justices as civic teachers) and the institutional (justices as defenders of the institution) when engaging in these activities. Davis (2011) concludes that justices focus on educating individuals, shoring up support for the Court, and making personal connections when speaking before public audiences. In addition, justices purposely shy away from political and contentious subjects.⁵

⁵In a recent law school visit, for example, the University of Colorado informed attendees that Justice Sotomayor would not discuss specific legal issues because “the public will lose confidence in the judiciary if

Justices are cognizant of the major challenges facing the Court and they use their speeches to address these challenges. In doing so, they hope to change public perceptions. Justice Sotomayor made this purpose explicit in 2012 when she said, “People think in fixing things, that there’s a magic bullet to every problem. It doesn’t work that way. We’re trying to convince. And we’re trying to convince (the public) what we’re doing is the right thing” (parenthetical clarification in original quotation).⁶

2.4 Expectations

Off-the-bench speech is a potentially powerful tool for managing perceptions of the Court and it is largely unstudied. Given concerns over implementation of judicial decisions and threats to legitimacy, these speeches promise to shore up support for the Court such that justices can maintain their influence over legal policy. My argument is that off-the-bench leads to both personal and instrumental benefits for the justices. More specifically, I expect justices will change levels of personal and institutional favorability, alter perceptions of the role of law and the politicization of the Court, and enhance institutional loyalty through their speeches.

Personal Favorability

Justices want to be liked by others and they engage in impression management in order to fulfill this desire (Baum, 2009; Posner, 2010). While justices can engage in impression management on or off the Court, off-the-bench activities likely provide the best setting to develop personal relationships and increase favorability with the public. This suggests that justices should use the opportunity provided by public speeches to attain this personal goal. As a consequence of such efforts, I expect individuals to rate justices more favorably

Justices opine on cases or issues before they are heard at the Court.” Nor would she “express her views on the conduct and opinions of others.” In fact, the “Justice would not explain or define her opinions in any way” (https://cuboulder.qualtrics.com/jfe/form/SV_6L09koLE905YONv, accessed on August 15, 2016.)

⁶<http://www.cnn.com/2014/07/01/politics/scotus-analysis/>

when they are exposed to off-the-bench speech.

Institutional Favorability

I also expect there to be positive spillover effects for the Supreme Court from off-the-bench speech. While the speech-giving justice should experience the greater increase in favorability, his or her association with the Supreme Court will lead to increased favorability toward the institution also. Research in the field of psychology argues that a prime or stimulus can cause evaluations of another object to move closer to the prime. If the prime is relevant to the other object, we should expect an assimilation effect where the prime and the other object are evaluated similarly (Sudman et al., 1996).

There are additional reasons to expect institutional favorability to increase. Members of the Supreme Court convey unity to the public. The majority of judicial decisions are indeed unanimous. Furthermore, justices regularly praise one another publicly. The Court is known for the collegiality among its members (Maltzman et al., 2000). The public harmony conveyed by the justices and an assimilation effect should lead participants to hold the Court in higher regard when participants are asked to evaluate the institution as a whole. Thus, I expect individuals to rate the Supreme Court more favorably when they are exposed to off-the-bench speech.

The Role of Law

Scholars continue to debate the nature of the Court as a political and/or a legal institution (Richards and Kritzer, 2002; Black and Owens, 2009; Hansford and Spriggs, 2006; Christenson and Glick, 2015). For their part, justices have long sought to portray their institution as a principled legal institution that is above the political fray (Davis, 2011). Scholars argue that this helps the Court to maintain its legitimacy (Baird and Gangl, 2006; Zink et al., 2009). The public is more likely to see the Court as legitimate (and to, therefore, accept unfavorable decisions) if they view the Court as a legal and principled institution.

This is not to say that legal realism — the concept that law is often ambiguous and judges are influenced by ideology — cannot coexist with a belief that the Court is a legal and unique institution. What matters most is that individuals perceive judges as different from ordinary politicians (Nelson and Gibson, 2017). The most straightforward way to convince the public of this is to highlight the uniquely legal aspects of the Court. For this reason, justices emphasize the importance of law to their decisions and deemphasize the importance of ideology.

Societal expectations, legal training, and the internalization of their role as judges should lead justices to emphasize the role of law in their speeches and to de-emphasize ideology. Individuals who are exposed to these speeches will perceive law as more important to judicial decision-making than ideology as a result. Thus, I expect individuals to rate legal norms and precedent as more relevant to judicial decision-making than ideology when they are exposed to off-the-bench speech.

Politicization

Related to the role of law is a concern that members of the Court have become more political in their decision-making and behavior in recent years. One explanation for this sentiment is the increasing politicization of the confirmation process. Whereas individuals with clear ideological preferences received unanimous support in earlier years, recent and qualified individuals have been denied the opportunity to be voted on in the Senate or have faced party-line opposition (Goldman, 2004; Epstein et al., 2004; Black et al., 2014). Chief Justice Roberts recently expressed his concern that the partisan hostility seen in the “political branches” may cause people to “think that the person who comes out of that process must similarly share that partisan view of public issues and public life.”⁷

Interestingly enough, patterns of decisional behavior in the Court do not indicate that

⁷https://www.washingtonpost.com/politics/courts_law/partisan-battles-over-nominees-pose-real-danger-for-supreme-court-chief-justice-says/2017/04/11/62e89c2c-1ee9-11e7-a0a7-8b2a45e3dc84_story.html?utm_term=.e47e15943abd

the Court has become more political over time. As Baum (2009) points out, “rates of dissenting and concurring opinions and proportions of close decisions have not increased in the past decade or so” (129). In fact, the only evidence Baum can point to of politicization is in justices’ now-frequent selection of law clerks who first clerked for ideologically similar lower-court judges. As with most things, however, it is the perception of politicization that matters and justices can influence these perceptions through their speeches.

The apolitical content of off-the-bench speech, judicial symbols, and depictions of a harmonious and non-political Court environment should lead individuals to re-adjust how politicized they view the justices. Thus, I expect individuals exposed to off-the-bench speech will be less likely to see justices as having become more political over time.

Institutional Loyalty

Legitimacy engenders institutional loyalty or, in other words, voluntary deference to an institution’s decisions (Tyler, 2006). Because the Supreme Court cannot enforce its decisions, it must rely either on voluntary deference or the support of coordinate branches of government for those decisions to have effect (Rosenberg, 2008). One potential result of direct engagement with the public is that individuals will express more willingness to follow Supreme Court decisions voluntarily. Institutional loyalty to the Court also discourages Congress and the President from attacking the Court or engaging in visible non-compliance (Clark, 2009; Ura and Wohlfarth, 2010). For these reasons, a justice should desire to increase institutional loyalty through off-the-bench speech. I expect individuals exposed to off-the-bench speech will express higher levels of institutional loyalty than those who are not.⁸

⁸Institutional loyalty is not the same as institutional favorability. Institutional loyalty is an important aspect of the Court’s legitimacy (or diffuse support) while institutional favorability is more closely related to how agreeable one finds the Court (or specific support).

2.5 Methods and Data

To test the impact of off-the-bench speech on my key expectations, I administered a field experiment to law students who planned to attend an actual speech by Justice Sotomayor and conducted a separate survey experiment providing individuals with news coverage of the speech using Amazon Mechanical Turk. The value of an experiment is that we can conclude whether a treatment caused differences in outcomes between the treatment and control groups. In a field experiment, the researcher uses a real event as a treatment but maintains control over the assignment of individuals to the treatment. In a survey experiment, the researcher provides the treatment in the survey itself.

Field Experiment

On September 8, 2016, Justice Sonia Sotomayor delivered the Robert W. Kastenmeier Lecture at the University of Wisconsin-Madison in front of 1,500 individuals. Earlier in the day, she met with one hundred law students. Justice Sotomayor's approach and topics were similar in both venues. She focused on sharing her personal experiences, the role of the High Court, and the collegiality among her and her colleagues. The justice acknowledged at least one purpose in coming out to Wisconsin. She felt that many people view the Court as a "distant and unknowable institution." But, she stated, "if I can talk to the general public about who I am, how important and passionate I am about the law, how important and passionate my colleagues are about it, even when we disagree, then maybe we can change people's perception of the court."⁹

The justice came to Wisconsin for the same reason justices travel to many places: to influence public perceptions of the Court and of themselves. These events provide a prime opportunity for field experiments. To perform the experiment, I identified all University of Wisconsin law students with a reservation to the lecture. I then randomly divided the

⁹As reported by Wisconsin Public Radio, <https://www.wpr.org/im-justice-also-human-sotomayor-says-uw-madison>.

list of names into two sets. One set, the control group, received an email with a survey link five days before the lecture and were told they must complete the survey before noon of the day of the event. The second set of individuals, the treatment group, received an email with a survey link the morning after the event and were told they must complete the survey within four days.

Because these individuals were randomly assigned to either group, there should be no systematic difference between the two other than the treatment of having been exposed to Justice Sotomayor's speech when taking the survey.¹⁰ Thus, I can compare the responses between the treatment group and the control group to isolate the causal effects of Justice Sotomayor's visit. 69 out of the 110 individuals I assigned into the first group completed the survey. 61 out of the 110 individuals I assigned into the second group completed the survey.

The value of the field experiment is in the external validity of the treatment. Rather than exposing individuals to off-the-bench speech in a sterile and artificial environment, using a live event allows me to measure the realistic effect of attending Justice Sotomayor's speech while still maintaining the causality standard provided by an experiment. Given the frequency of these events, it is a design that can be replicated in future work and by subsequent scholars. Field experiments do much to assuage more general concerns regarding the external validity of experiments (Druckman et al., 2011).

It is also important to note the population from which I randomly assigned individuals into either the treatment group (those who took the survey just after the speech) or the control group (those who took the survey just before the speech). Law students are a unique sample of individuals.¹¹ They have committed themselves to a career in law and have

¹⁰In order to perform the experiment, I agreed not to collect personal information about respondents. We can trust, however, that there are no systematic differences between the treatment group and control groups by virtue of random assignment. The results from the field experiment will be analyzed in tandem with those from the survey experiment. The consistency of the findings across the two experiments suggests that randomization worked.

¹¹Similarly, students at the University of Wisconsin Law School may not be representative of law students at other institutions.

developed views of the Supreme Court, justices, and the decision-making process. Because respondents have information and firm opinions, it should be a challenge to change their views (Zaller, 1992). Thus, the results likely underestimate the impact of off-the-bench speech on the general public.

Survey Experiment

Public speeches may be limited in reach because relatively few individuals are able to attend them. Still, local and even national news media cover these events and provide short synopses of the content of the speeches. I employed a survey experiment using Amazon Mechanical Turk (MTurk) to understand the impact of off-the-bench speech by Supreme Court justices on those exposed to it through newspaper coverage — a group that is likely a larger population than those able to attend a speech in person. The survey experiment provides at least three additional benefits. First, I replicate my original findings on a separate sample of individuals. Second, the survey experiment allows me to manipulate who appears to have given the speech.¹² Third, I provide some individuals with a picture of the relevant justice to gauge the role of text versus image.

The primary treatment in the survey experiment is exposure to news coverage of off-the-bench speech before answering the survey questions. Some participants read about a speech by Justice Sotomayor before answering survey questions regarding her and the Court. Others read about the same speech attributed to Justice Alito before answering questions about him and the Court. The control group did not read a speech before answering questions about either justice and the Court. Finally, half of those who read about the speech saw an accompanying picture of the justice. The survey design allows us to measure the impact of news coverage on views of the Court, see how results generalize to other justices, and compare the effects of images and newspaper text on public perceptions.

¹²These are important additions. Students at the University of Wisconsin Law School may be unrepresentative in their attitudes toward law and toward Justice Sotomayor. Replicating the results on an independent sample of respondents strengthens our confidence in the results from the first experiment. The survey experiment also helps us to generalize results to other justices.

To increase the external validity of the survey experiment, I adapted text from a news article by Wisconsin Public Radio covering Justice Sotomayor's visit titled, "'I'm A Justice, But Also A Human,' Sotomayor Says At UW-Madison."¹³ As indicated, I manipulated names and pronouns in the text for some treatment groups such that it appeared Justice Alito gave the speech. In the news text, the journalist highlighted the justice's interactions with the audience, quoted the justice explaining the purpose of the visit and the effect of the death of a colleague on the Court, and briefly summarized the content of the speech.

I obtained 952 survey respondents using Amazon Mechanical Turk. Publications in the field's top journals use this platform to secure survey respondents.¹⁴ Berinsky et al. (2012) show how samples from the platform are more representative of the United States population than in-person convenience samples used in much of published experimental research. In addition, Mullinix et al. (2015) show that survey experiments implemented using both population-based samples and MTurk revealed considerable similarity in estimates of treatment effects. Descriptive statistics regarding my respondents and more information on the survey are included in the Appendix.¹⁵

Measures

I seek to understand the personal and instrumental benefits of off-the-bench speech by measuring a broad set of dependent variables instead of narrowing in on a single concept. To operationalize the five key areas in which I expect off-the-bench speech to have an impact, I created six variables based on responses to survey questions. To measure *Personal Favorability*, I used feeling thermometer ratings for either Justice Sotomayor or Justice Alito. The survey presented respondents with a sliding scale and asked them to place

¹³<https://www.wpr.org/im-justice-also-human-sotomayor-says-uw-madison>

¹⁴During 2017, there were 12 articles published in *American Political Science Review*, *American Journal of Political Science*, or *Journal of Politics* using this platform. As in this chapter, most reported survey results from MTurk participants in conjunction with data obtained from other sources.

¹⁵Out of the 952 respondents, 60 responses were removed for appearing to take the survey from outside the United States, wrongly answering an attention-check question, or for moving too quickly through the treatment portion of the survey.

it somewhere between 0 and 100, where 0 represented feeling very cold or unfavorable toward the justice, 100 as feeling very warm or favorable toward the justice, and 50 as feeling neither favorable nor unfavorable. To measure *Institutional Favorability*, individuals reported feeling thermometer ratings for the Supreme Court on the same scale.

The next three variables move beyond favorability ratings to measure perceptions of the *Role of Law*, *Politicization*, and *Institutional Loyalty*. For *Role of Law*, I measured whether an individual chose law as the most likely explanation of Supreme Court judicial decisions. Respondents in the field experiment could have also chosen ideology, public opinion, or deference to colleagues. Because so few people ranked public opinion or deference to colleagues as their top choice, I provided only law and ideology as options in the survey experiment.

The next variable measured perceptions of *Politicization*, or the extent to which members of the Court have acted more politically over time.¹⁶ The survey presented individuals with a statement, “Members of the Supreme Court have become more political in their behavior and decision-making in recent years,” and measured their agreement using a 5-point scale from strongly disagree to strongly agree. The last variable measured *Institutional Loyalty*. Again, the survey presented individuals with a statement, “I defer to Supreme Court decisions out of a feeling of obligation to the institution rather than out of fear of punishment or anticipation of reward,” and measured their agreement using the same scale.¹⁷ Table 2.1 lists the key variables and each survey question used to measure them.¹⁸

To test for the causal effects of off-the-bench speech, I use Welch two-sample t-tests to compare means and equality of proportions between the treatment and control groups.

¹⁶This is in contrast to other work, which measures politicization “as the extent to which people perceive the Court as political and ideological, as opposed to impartial and legalistic” using multiple-item measures (Bartels and Johnston, 2011, 106). My measure of the role of law approximates this concept, while politicization measures a perception of change in politicized decision-making and behavior over time.

¹⁷The statement comes from Tyler (2006), as cited in Gibson and Nelson (2014).

¹⁸While measures of legitimacy and legal realism have been developed in numerous articles, they are multiple-item measures that create more of a burden on respondents than necessary for this project. Here I intend to obtain a snapshot of causal effects using a variety of dependent variables. In addition, I choose to measure institutional loyalty, a fundamental component of legitimacy, rather than the broader concept of legitimacy itself.

Variable	Survey Question
Personal Favorability	Please rate Justice Sonia Sotomayor (Samuel Alito) using the feeling thermometer below. You can choose a number between 0 and 100. The higher the number, the warmer or more favorable you feel toward this person, the lower the number, the colder or less favorable. You would rate Justice Sotomayor (Alito) at the 50-degree mark if you feel neither warm nor cold toward her (him).
Institutional Favorability	Please rate the Supreme Court using the feeling thermometer below. You can choose a number between 0 and 100. The higher the number, the warmer or more favorable you feel toward this institution, the lower the number, the colder or less favorable. You would rate the Supreme Court at the 50-degree mark if you feel neither warm nor cold toward it.
Role of Law	Rank the following statements in order of how likely they explain Supreme Court justices' decisions, with the most likely explanation placed at the top. (field experiment) Which of the following statements is the better explanation of Supreme Court justices' decisions? (survey experiment)
Politicization	To what extent do you agree or disagree with the following statement: members of the Supreme Court have become more political in their behavior and decision-making in recent years.
Institutional Loyalty	To what extent do you agree or disagree with the following statement: I defer to Supreme Court decisions out of a feeling of obligation to the institution rather than out of fear of punishment or anticipation of reward.

Table 2.1: Table of variables measuring the hypothesized impact of off-the-bench speech. The left column lists the variables and the right column the questions used to operationalize the variables. Unless indicated, the same questions were asked in both experiments.

For means, I compare average feeling thermometer ratings between the treatment and control groups. For proportions, I compare the equality of proportions of responses for individual categories and combined categories (e.g., I combine strong and somewhat agree or disagree categories) between the treatment and control groups.¹⁹

2.6 Results

In this section, I will present the results from the field experiment and then the results from the survey experiment. Together the experiments will provide for a compelling look at the aggregate impact of justices' appearances. In the field experiment, we will see the reactions of law students and future lawyers in their formative years of legal training. If justices care about their reputation, legacy, and prestige, then it is important to understand the impact of off-the-bench behavior on this most-relevant audience. In addition, as opinion leaders of the Supreme Court, lawyers' perceptions of the Court have a disproportionate influence on public support. Of course, legitimacy is not necessarily about the views of elites, but is concerned with the broader, diffuse support among the general public. In the survey experiment, we will gain further insight as we look at the reactions of a sample more representative of this constituency. Furthermore, we approximate real-world exposure among this group by exposing them to actual news coverage of the speech by Justice Sotomayor.

Field Experiment

Recall the field experiment measures the effects of off-the-bench speech on law students in attendance. To test whether justices bring about personal benefits through their speeches, I asked respondents to rate Justice Sotomayor on a feeling thermometer scale. In addition, they also rated the institution itself to test whether there was a spillover effect leading

¹⁹I report the results from two-tailed tests when comparing means and proportions for both experiments. The smaller sample of students in the field experiment (< 70 per treatment and control group) means that standard errors can be quite large for those results. I will state if a p-value is above .05 when discussing substantive results from this experiment. I do not discuss results with p-values above .05 for the survey experiment, as large standard errors were not an issue there.

individuals to also feel more favorable toward the Court. Figure 2.3 presents the differences in personal and institutional favorability between the treatment and control groups. Positive numbers mean the treatment group perceived the justice or institution more favorably than did the control group. The bands represent 95 percent confidence intervals of the difference estimates. The top result is for personal favorability and the bottom result for institutional favorability.

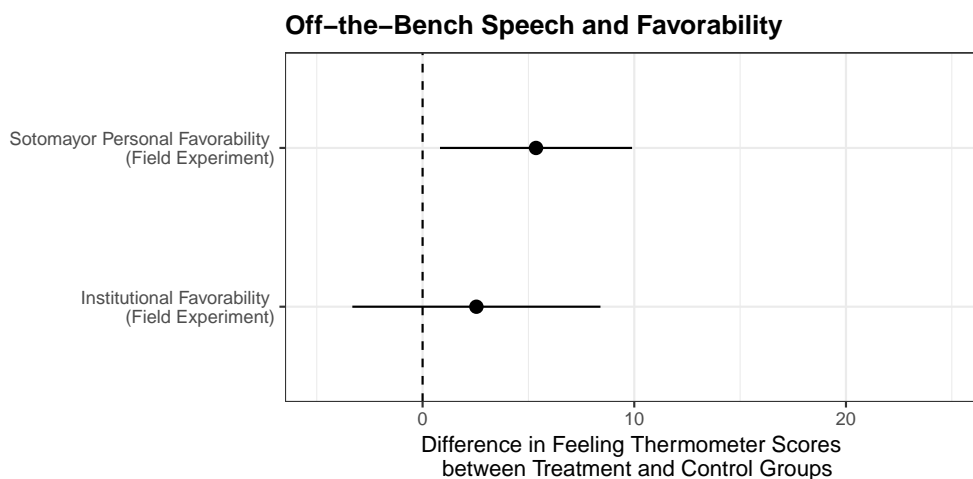


Figure 2.3: The point estimates represent the differences in feeling thermometer ratings between treatment and control groups. Positive values mean that levels of favorability were higher among the treatment group. The treatment is attending Justice Sotomayor's speech before taking the survey. The horizontal bars are 95 percent confidence intervals.

Clearly, off-the-bench speech can improve a justice's personal favorability, even among those who already feel quite favorable towards the justice. Justice Sotomayor caused her personal favorability to increase by more than 5 points among law students who attended her speech compared to those who had not attended. Before she made her visit, law students who planned to attend gave her an average rating of 81.1 on the feeling thermometer scale, which suggests that individuals felt quite warm or favorable toward the justice before they heard her speak. For those rating her after the visit, her average score was an 86.5.

The Supreme Court's favorability was slightly higher among those in the treatment

group than among those in the control group (73.1 compared to 70.5), but this difference was not statistically significant. The increase in favorability did not extend to the institution itself. Thus, we can conclude that the speech by Justice Sotomayor clearly brought about at least one personal benefit: She increased her favorability among a group of individuals of whom she desired their esteem (see Baum, 2009).

Did the speech cause substantial changes in perceptions beyond favorability? Let's begin with the importance of law. Here I compare the proportions of individuals who give specific categorical responses. Figure 2.4 presents the proportions of individuals who chose law or ideology as the primary explanation of judicial decision-making. Those who had not been exposed to the speech were divided over whether law or ideology drove judicial decisions (53.2 percent believed that law was the most likely explanation of judicial decisions). On the other hand, 69.2 percent of those who attended the event believed law was the primary factor. Despite small sample size, the difference approaches statistical significance ($p < .09$).

It is important to note that diffuse support for the Court is not necessarily dependent on believing in a myth of legality (Gibson and Caldeira, 2011). Individuals who are more knowledgeable of the Court are more likely to think personal beliefs influence judicial decisions *and* to express higher levels of diffuse support for the Court. Rather, what matters is that people believe justices make principled decisions and that the Court is not an ordinary political institution. Judicial symbols, such as law, set the judiciary apart from the other branches and are symbols of principled decision-making themselves. The findings suggest that speeches can elevate the relevance of law to judicial decision-making in the minds of law students.

I do not report the results for politicization and institutional loyalty from the field experiment. Those who attended the speech were no different in their perception of the politicization of the Court or in their strength of institutional loyalty than those who had not attended the speech. A strong majority of individuals expressed agreement with the

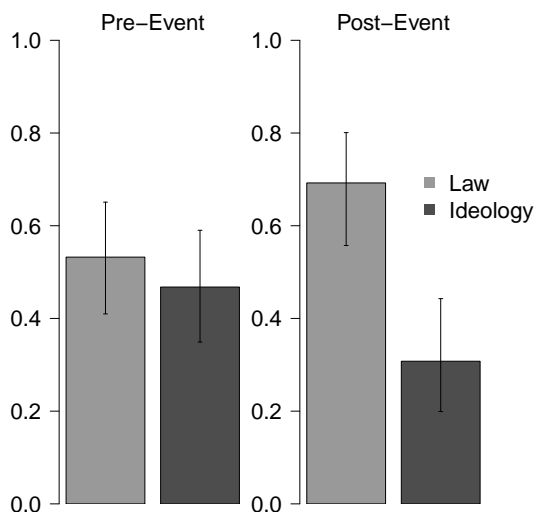


Figure 2.4: Bar graphs of the number one response to the question of which statement best described judicial decision-making on the United States Supreme Court. The first column is for individuals who had not attended the speech when they took the survey. The second column is for responses after individuals attended the speech.

statement of institutional loyalty regardless of the treatment. Also, law students felt the Court has become more political over time regardless of the treatment.²⁰

Survey Experiment

Is the reach of off-the-bench speech limited to those in attendance, or can justices alter perceptions among the more general public? Because most speeches are covered by major state newspapers where justices make public appearances, a much larger number of respondents are at least exposed to the idea of a justice giving a public speech in their state of residence. Furthermore, many of these individuals may read the short synopses of speeches provided in newspaper coverage. Can news coverage of a speech expand and enhance the causal effects of public speeches among newsreaders?

The survey experiment measures the effects of off-the-bench speech on the general

²⁰It is perfectly reasonable for law students to readjust their belief about the role of law while still thinking that the Court has become more political in recent years.

public vis-à-vis news coverage. Let's begin again with measures of favorability. Did the justice cause individuals who were given the treatment of newspaper coverage to feel more favorable towards her? To answer this question, I again look at feeling thermometer scores of those who did and did not read news coverage of Justice Sotomayor's speech. To test whether effects are consistent across justices, I also include the results for individuals when the same speech was attributed to Justice Alito (i.e., names and pronouns were changed). I present the results in in Figure 2.5.

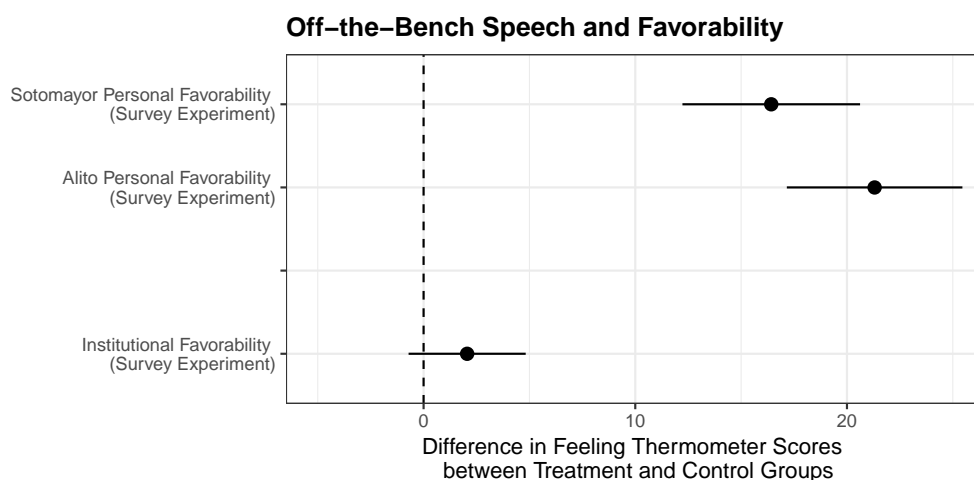


Figure 2.5: The point estimates represent the differences in feeling thermometer ratings between treatment and control groups. Positive values mean that levels of favorability were higher among the treatment group. The treatment was reading about a speech attributed to either Justice Sotomayor or Justice Alito before taking the survey. The horizontal bars are 95 percent confidence intervals.

The change in personal favorability caused by exposure to a justice's speech is quite strong. Compared to law students in attendance, the difference in personal favorability between treatment and control groups increased 300 percent (16 points) for those who read about the event. When individuals read about the speech attributed to Justice Alito, the impact was even greater (21 points). In fact, the Justice Alito manipulation demonstrates just how powerful off-the-bench speech can be in increasing personal favorability. Individuals felt lukewarm (48.8) toward him without having read the speech. The attitudes of those

who did read the speech were quite positive (70.0). The justices averaged a rating of 55.1 among those who did not read the speech and an average rating of 73.9 among those who did read the speech, a statistically significant difference.

Again, the strong change in favorability toward the justices does not extend to the Supreme Court more generally. The Supreme Court's favorability was slightly higher among those in the treatment group than among those in the control group for both the field experiment (73.1 compared to 70.5) and the survey experiment (60.5 compared to 58.4), but these differences were not statistically significant ($p > .18$). As we saw with personal favorability, the broader public felt less favorable toward the institution than did law students. For both groups and in both settings the speech increased personal favorability but not institutional favorability, despite the justice having praised her colleagues in the event and in the news coverage of it.

In addition, there was a difference in personal favorability levels between the treatment group presented with a picture of the justice when reading the newspaper text and a control group that only had the newspaper text ($p < .05$). Those who saw the picture rated the justices, on average, at a 75.8, while those who only read the text gave an average rating of 72.1. While statistically significant, the difference pales in comparison to the impact of exposure to the news coverage itself. This strongly suggests that the impact of the speech comes from its content rather than exposure to the basic symbol of a justice in judicial robe. It suggests that individuals in the survey experiment read the article, digested the information, and changed their views based on what they read.

Having found that news coverage causes an increase in personal favorability using a sample more representative of the general public—and that the effects are quite large in magnitude compare to the field experiment—I now to turn the survey experiment findings related to substantive perceptions of the Court. Here, there is reason to think members of the general public, who have less solidified views of the judiciary, will develop greater changes in perceptions than law students. Indeed, I find that news coverage of the speech

impacts each of our measured outcomes. Let's begin with Figure 2.6, which shows the results for belief in the importance of law.

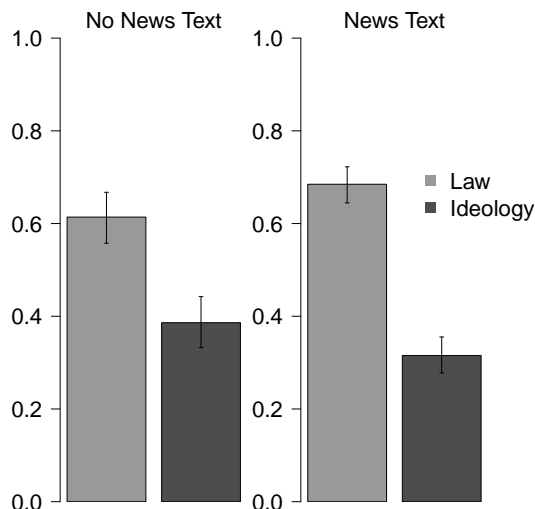


Figure 2.6: Bar graphs of the number one response to the question of which statement best described judicial decision-making on the United States Supreme Court. The first column is for individuals who had not read about the speech when they took the survey. The second column is for responses after individuals read news coverage of the speech.

There are similarities in the effects of both direct attendance and news exposure of a speech on belief in the importance of law. Both cause individuals to think law is a primary determinant of judicial decisions (though the results are statistically significant at the 5 percent level for the survey experiment). In both, approximately 70 percent of those exposed to the speech in either fashion think law is the primary determinant of judicial decisions. On the other hand, law students were more skeptical (pre-event) of the role of law while about 61 percent of individuals in the survey thought law mattered without reading about the speech. The “myth of legality” appears to be more widespread among individuals of the general public than among law students.

Next I test whether off-the-bench speech caused changes regarding institutional loyalty and perceptions of the politicization of the Court. In particular, I measure change in the

overall distributions of agreement with statements of politicization and institutional loyalty. After scaling the responses from 1 to 5 (with higher numbers indicating more agreement), I expect the mean response for the treatment group to be larger than the mean response of the control group for the statement of institutional loyalty and smaller than the mean response of the control group for the statement of politicization. In other words, the treatment group should have stronger agreement with the statement of institutional loyalty and stronger disagreement with the statement suggesting justices have become more political over time. Figure 2.7 plots the differences in means between the treatment and control groups. Positive (negative) values indicate greater (dis)agreement with the statement.

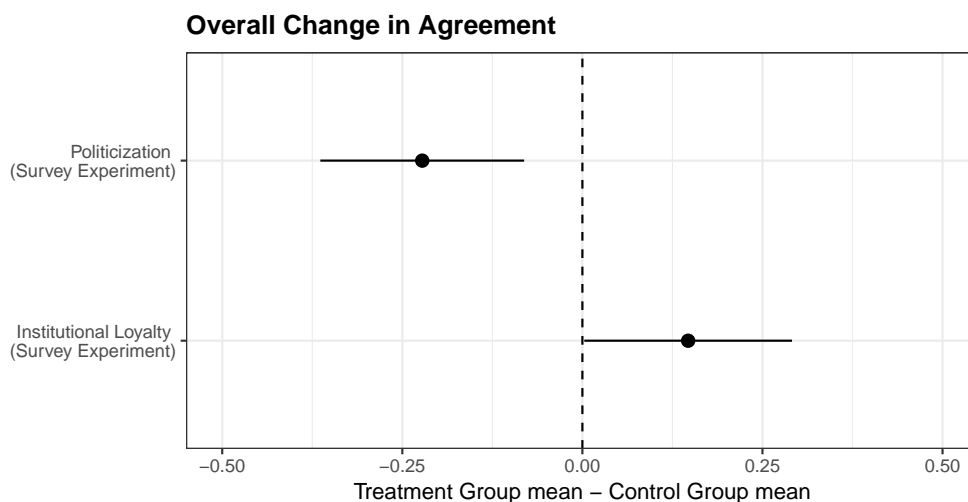


Figure 2.7: The differences in the overall means of the treatment and control groups in the survey experiment after ordering the survey responses to the statements of politicization and institutional loyalty on a scale from 1 to 5. Bars are 95 percent confidence intervals. Positive values indicate greater agreement and negative values less agreement among the treatment group.

For the survey experiment, I find that exposure to news coverage of the speech led to our hypothesized effects regarding institutional loyalty and perceptions of politicization ($p < .05$). The average response indicated both higher levels of institutional loyalty and lower levels of agreement with the statement of politicization for the treatment group compared to the control group. Thus, when it comes to individuals exposed to news

coverage of the speech in the general public, using a broad set of dependent variables, news coverage brings about both personal and various institutional benefits to the Court.

2.7 Conclusion

Justices have strong motivations to shape public perceptions of the Court. Not only are they constrained in their ability to bring about legal policy by other branches and public perceptions generally, but there are mounting concerns that the Court's legitimacy is being undermined by ideological polarization and the development of politicized views of the Court. Indeed, justices frequently lament negative public perceptions of the Court's role, image, and judicial decision-making process.

Justices do not sit by idly in this precarious situation. As argued by Murphy (1964), Epstein and Knight (1997), and numerous others, justices act strategically to maximize their influence over legal policy in an interdependent environment. What has gone unnoticed by scholars, however, is the degree to which justices can turn to off-the-court activities as a means of strategic action. This chapter combined previous research on off-the-bench activity with a unique research design and data to reveal the potential power of the oft-used and understudied activity of off-the-bench speech.

Taken together, the chapter demonstrates that off-the-bench speech not only increases personal favorability, but it can lead individuals to perceive law as highly pertinent to judicial decisions and the Court as less politicized. I also found evidence that it strengthens support for the democratic virtue of institutional loyalty. Importantly, the nature of the effects of speech depend on the audience and the way in which individuals are exposed to the speech. The results tended to be stronger for individuals exposed to the speech vis-à-vis news coverage than the direct effects on law students in attendance.

These findings have a number of important implications. For one, justices may be less constrained than theory suggests. By shaping public perceptions, justices side-step

constitutional constraints and directly influence the implementation of their decisions. In addition, by keeping the actual Court's proceedings fairly opaque (Hibbing and Theiss-Morse, 2002), yet making many public speeches, the justices can shape public perceptions much more easily than members in coordinate branches of government. Furthermore, in line with work by Baum (2009) and others (e.g., Krewson and Owens, 2017), the results suggests that justices care about both personal and instrumental benefits and can bring about both. Finally, the results suggest justices can alter perceptions of the broader public as they travel and speak in friendly environments.

These results are novel, compelling, and promising, and there is more work to do. For example, scholars should study how the variation in content of speeches influences individuals. In addition, future work ought to focus on the durability of changes in perceptions caused by off-the-bench activity. Chong and Druckman (2010) provide a research design which can measure the impact of multiple, sporadic and even conflicting messages over time. Justices spend an enormous amount of time engaging in off-the-bench activity. This chapter shows just how meaningful such activity can be.

The path ahead is an exciting one. This chapter begins the process by addressing why and how justices persuade the public. It does so through a novel and theoretically-based design to isolate the causal impact of off-the-bench speech. By and large, justices can persuade the public in key areas of interest to them. Members of the Court expend their resources to focus on off-the-bench activity. Given this chapter's findings, so ought we.

3 CONTROVERSIAL SPEECHES

3.1 Introduction

It may be challenging to maintain an apolitical view of the United States Supreme Court when it becomes enmeshed in political controversy. What is more, political controversy is often unavoidable for the Court. For example, justices can do little about the increasingly politicized confirmation hearings held for individuals nominated to the Court. Yet, these vitriolic hearings are likely to leave lasting negative impressions on people's perceptions. In a recent speech, Chief Justice Roberts bemoaned the current status of Senate confirmation hearings, suggesting that "it is very difficult I think for a member of the public to look at what goes on in confirmation hearings. . . and not think that the person who comes out of that process must similarly share that partisan view of public issues and public life."

Neither can the Court always avoid ruling on cases without appearing to favor one political position or party over another. To compensate, the Court emphasizes the importance of law and the legal underpinnings of its decisions. Because "[t]he Court's power lies . . . in its legitimacy," Justice O'Connor explained, "[t]he Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Courts claims for them" (*Planned Parenthood v. Casey* (1992)). In a recent oral argument session, Chief Justice Roberts wondered aloud whether a ruling favoring one political party over another "is going to cause very serious harm to the status and the integrity of decisions of this Court in the eyes of the country."¹

Judicial behavior off the bench may also shape public perceptions of the Court. In fact, justices spend considerable time meeting with private groups and making public speeches throughout the country (Black et al., 2016b). Public speeches provide a particularly interesting forum for justices to influence public perceptions. Unlike in other situations, justices largely control the content of their messages, the forums in which speeches take

¹<https://www.nytimes.com/2017/10/26/opinion/politics-supreme-court-legitimacy.html>

place, criteria for attending their events, and so forth. Research demonstrates that non-political speeches can impact public views of the justices and the Court in positive and meaningful ways (Krewson N.d.).

On the other hand, what happens when justices shed their myth of legality and choose to comment on politically-charged topics during their speeches? Many scholars are concerned about such behavior and its implications for the judiciary.² In a salient example, Justice Ginsburg made negative statements about Donald Trump during the 2016 presidential election, calling him a “faker” among other things. In response, Trump suggested that the justice’s mind was “shot” and that she should resign. The exchange was widely reported by the news media. In this article, I seek to understand the potentially detrimental effects of controversial speeches on views of the justices and of the Court.

In particular, I administered several survey experiments to participants using Amazon Mechanical Turk. Participants evaluated individual justices using feeling thermometer scales and the legitimacy of the Court by responding to a series of statements. I determined the causal effect of political speech by analyzing the various responses of participants when exposed to neutral, political or no speech. I found that the public applies different levels of scrutiny in their evaluations depending on the nature of the speech. When the speech is neutral or the content of the speech aligns with prior views, respondents appear to respond favorably to the speech. When the speech contradicts respondent views, individuals evaluate the justices and Court more negatively than they would otherwise.

After reviewing scholarship on legitimacy and judicial symbols, I put forward my argument regarding the likely effects of more controversial judicial behavior on public perceptions of the Court. I then test this theory using micro-level data.³ In particular, I measure favorability towards justices and feelings of legitimacy among individuals exposed

²<http://www.latimes.com/opinion/op-ed/la-oe-hasen-ruth-bader-ginsburg-celebrity-justices-supreme-co.html>

³While much of the early literature on legitimacy and positivity bias looked at macro-level trends, I follow more recent approaches and test the impact of judicial behavior on public views at the micro-level (e.g., Bartels and Johnston, 2013; Gibson et al., 2014; Badar, 2016).

to both neutral and controversial judicial speeches, conditioned on ideological attitudes of respondents. The results provide strong, empirical evidence that justices polarize views of the Court through their political speeches.

3.2 Positivity Bias Theory

At the macro-level, support for the United States Supreme Court has been consistently strong. This is true in relation to other institutions in the United States and it is true when compared to other countries more generally (Gibson et al., 1998). In explaining this high level of support, scholars have turned to a theory of positivity bias (Gibson and Caldeira, 2009). When individuals are exposed to information about the Court, even negative information, they are also exposed to judicial symbols. Judicial symbols can be intangible concepts, such as impartiality and the rule of law, or tangible images, such as judicial garb and the temple-like structure of the Court (Gibson et al., 2014). They reinforce the belief that the Supreme Court is not a typical political institution. Rather, it is a legal institution that deserves a healthy dose of deference (Nelson and Gibson, 2017).

Scholars surmise that symbols do not change views of the Court, but that they “simply stimulate the moving of material in long-term memory into working memory, thereby affecting cognitive . . . information processing” (Nelson and Gibson, 2017, 45). Most of the time, long-term associations with judicial symbols are positive, and those associations may lead individuals to discount even negative information. Most scholarship, however, takes for granted the central tenet of positivity theory that exposure to even negative information about the Court is harmless or neutralized by judicial symbols (Nelson and Gibson, 2017). It is possible that exposure to judicial behavior may activate pre-existing attitudes in such a way that they actually undermine support for the Court.

Recent work, in fact, has found some evidence for this argument. For example, Christenson and Glick (2015) suggest that their findings are contrary to

. . . one of the central tenets of positivity theory. Existing views about the Court appear to be ineffectual in protecting the Court's legitimacy from potentially damaging information that the Court is political. Perhaps more importantly, our evidence shows that not only did ideological updating affect legitimacy assessments, but that it also affected legitimacy assessments more for people who viewed the Court as legalistic. Indeed, the fact that prior legality exacerbates ideological updating raises questions about an important element of positivity theory (12-13).

Gibson et al. (2014) use an experiment to test whether judicial images cause people to be more likely to acquiesce in decisions they disagree with. They find support for their argument in some contexts, but express some surprise to learn that symbols can have a counteractive effect in others. For instance, they suggest that, for individuals with low levels of pre-existing support, symbols can depress the propensity to acquiesce. While, for those with high levels of pre-existing support, symbols increase acquiescence. In their own words, "[t]he symbols seem to activate and empower preexisting attitudes – whatever they may be, positive or negative" (856).

If symbols activate and empower pre-existing attitudes, then there may be contexts in which exposure to the Court negatively influence perceptions of the Court. I expect this to occur when a treatment activates pre-existing ideological attitudes and judicial symbols are either congruous or incongruous with those attitudes. Christenson and Glick (2015) found that people who had strong legalistic beliefs about the Court *a priori* were actually *more* influenced by ideological disagreement than others. In a similar way, political speeches can activate pre-existing ideological beliefs. When confronted with an explicitly ideological framing of the Court, individuals will rationalize their perceptions of the Court in a way that is consistent with their ideological attitudes.

Previous work looking at the impact of Court opinions on policy legitimation finds that the Court can have a conditional effect on public policy views and Court legitimacy (Mondak and Smithey, 1997; Hoekstra, 2003). Franklin and Kosaki (1989) explore the legitimation hypothesis that judicial decisions cause people to see prevailing policy as more legitimate than they would otherwise. While the authors find a general and positive

effect of *Roe v. Wade* on views toward abortion for health reasons, they find divergent effects when it comes to views toward abortion for discretionary reasons. Instead of producing a generally positive effect, the Court decision polarized the electorate on this issue.

3.3 Off-the-Bench Speech

Justices spend a substantial amount of time and effort interacting with public groups throughout the United States and even beyond. Most of their off-the-bench behavior consists of speeches (Black et al., 2016b). These can be private or public speeches. Scholars have argued that justices give speeches to defend the institution, humanize the Court, and educate others (Davis, 2011). Their speeches bring about increased prestige, but they also change perceptions of the Court more generally. The strongest and most important effects seem to be in regards to personal favorability and institutional loyalty (Krewson N.d.).⁴

Some are concerned about the Court's public behavior because it could undermine Supreme Court legitimacy. In *Stealth Democracy*, Hibbing and Theiss-Morse argue that the ability of the Supreme Court to avoid public spotlight strengthens support for the Court. As the authors explained:

The Court is more insular than any other political institution, and people like it for that very reason. People do not have to participate in or even see the deliberations of the Court. From the standpoint of preserving public support, Chief Justices Warren and Rehnquist were quite right to fight to keep the press as far away from the Court as possible (201).

By coming out into the public, the justices provide increased opportunities for criticism. In fact, Zilis et al. (2017) show us that negative news coverage of the Court is not uncommon, especially among ideologically oriented news outlets.

Some justices are reaching celebrity status. For example, Justice Ginsburg was recently described as a "judicial rock star" in the *New York Times*.⁵ The justice is widely known as

⁴That justices care about and garner personal prestige is an important conclusion of a cutting-edge and growing subfield in judicial politics research (Baum, 2009; Posner, 2010; Krewson and Owens, 2017).

⁵<https://www.nytimes.com/2018/02/08/us/politics/ruth-bader-ginsburg.html>

the “Notorious RBG” and celebrated for her biting dissents and progressive rulings. And she is not alone. In addition, justices may attract criticism by the location of their travels. By way of illustration, following his confirmation to the Supreme Court, Justice Gorsuch made an appearance at the Federalist Society. The visit raised eyebrows, as the group is responsible for placing Gorsuch on President Trump’s shortlist. Adding fuel to the fire, Justice Gorsuch also made an appearance with Senator McConnell, who had paved the way for Justice Gorsuch’s confirmation.⁶

Scholar Richard Hasen⁷ recently expressed his concerns with political behavior and political news coverage of justices in an ideologically polarized era:

But there is something disconcerting about Supreme Court justices becoming political rock stars, particularly in this polarized era. We’ve divided the Supreme Court into teams. We have our justices, champions who push our side’s agenda. The other side has their justices, villains intent on destroying America.

I am interested in how the public responds to justices’ activities off the bench. While on-the-bench activities clearly matter, their political implications are largely beyond the control of an individual justice to change. For example, justices have little influence over the politicized nature of Senate confirmation hearings and they will inevitably choose one side over another as they resolves significant legal disputes. On the contrary, justices choose whether to make a speech, and they largely choose its content, audience, and location. The extent to which justices should take on a public role is an ongoing and important debate to which this study speaks.

3.4 Expectations

The crux of positivity bias theory is that when people are exposed to information about the Court they are either implicitly or explicitly exposed to judicial symbols that carry a

⁶https://www.washingtonpost.com/politics/courts_law/gorsuchs-speeches-raise-questions-of-independence/2017/09/27/5accdb3c-a230-11e7-b14f-f41773cd5a14_story.html

⁷<http://www.latimes.com/opinion/op-ed/la-oe-hasen-ruth-bader-ginsburg-celebrity-justices-supreme-court-2017-09-27>

generally positive association. Even if they disagree with a specific aspect of a justice or the Court's decision (specific support), that will not alter their fundamental commitment to the Court (diffuse support). This fundamental commitment or diffuse support is the Court's legitimacy. Positivity bias theory has strong theoretical foundations but has not been tested directly. This is especially true for the notion that exposure to even negative information about the Court should not harm its legitimacy.

In many cases, I expect exposure to information about Supreme Court justices to have straightforward effects: it should cause individuals to feel more favorable toward them and lead to the maintenance or development of legitimacy. At other times, the positivity bias associated with judicial symbols may conflict with pre-existing attitudes. In particular, controversial judicial behavior may activate both pre-existing ideological attitudes as well as pre-existing associations with the Court. When this happens, I expect individuals to make observations that are a product of motivated reasoning or an attempt to reduce cognitive dissonance.

Badas (2016) defines motivated reasoning as "a biased decision-making process where decision-makers are predisposed to find authority consistent with their attitudes more convincing than cited evidence that goes against their desired outcomes" (320). The outcomes I speak of in this paper are policy positions, whether clearly liberal or conservative, and the authority I speak of is the justices and judicial symbols. Because people are strongly motivated to support policy outcomes they agree with, they will be more supportive of a justice or the Court when they are exposed to judicial behavior that reinforces their policy position, even if the judicial behavior is more controversial (political) than what we expect from the Court.

On the other hand, political behavior that contrasts with one's ideological viewpoint can create cognitive dissonance when juxtaposed with an institution like the Supreme Court. According to Badas, cognitive dissonance is "the theory that individuals strive for internal consistency in their cognitions. When individuals face inconsistent cognitions (dissonance),

they become psychologically uncomfortable and are motivated to reduce the dissonance” (321). When the Supreme Court, an allegedly objective arbiter of conflict, advocates for an ideological position people disagree with, I expect them to reduce dissonance by concluding that the Court is less deserving of deference than they would otherwise conclude. I test these hypotheses in the contexts of both neutral and controversial speeches by Supreme Court justices. The following section discusses data and methods in more detail.

3.5 Methods and Data

To test my hypotheses, I performed two experiments. The first experiment involves a neutral speech given by Justice Sotomayor at the University of Wisconsin-Madison in September of 2016. In her speech, the justice answered questions from former law clerks about the Court, the importance of law, collegiality, and the decision-making process.⁸ The speech was reported by the major local and state newspapers of Wisconsin. After obtaining a sample of respondents using Amazon Mechanical Turk (Berinsky et al., 2012; Mullinix et al., 2015), I provided half of my respondents with a lightly altered version of real news coverage of the speech. The other half of respondents were not told about the speech. Among those who read news coverage, I told half of them that Justice Alito delivered the speech.

In the second experiment, I obtained news coverage of two speeches that commentators deemed as controversial. The first was coverage of Justice Ginsburg’s public appearance at the Sundance Film Festival in January of 2018.⁹ The story included Justice Ginsburg’s remarks on the #MeToo movement, appearances in Saturday Night Live sketches, and her overall popularity. The speech was covered by multiple pundits and scholars alike, who expressed both excitement and concern with Justice Ginsburg’s wide-ranging discussion. The second news story, titled “Gorsuch Takes a Victory Lap at Federalist Dinner,”¹⁰ featured

⁸<https://www.wpr.org/im-justice-also-human-sotomayor-says-uw-madison>

⁹<https://www.cnn.com/2018/01/21/politics/ruth-bader-ginsburg-sundance-film-festival/index.html>

¹⁰<https://www.politico.com/story/2017/11/16/neil-gorsuch-federalist-society-speech-scotus-246538>

a speech by Justice Gorsuch before the Federalist Society, which group played an outsized role in helping to secure his nomination to the High Court. In his speech, the justice is portrayed as boastful and mocking of those who do not agree with his legal interpretation of law. The news article is one of many where journalists criticized the location of Justice Gorsuch's public appearances shortly following his contested Senate confirmation.

These two speeches were either political in nature, or were conveyed in a political manner by news journalists. Respondents who are ideologically aligned with Ginsburg will find common ground with her speech while those ideologically aligned with Gorsuch will find common ground with his. Regardless of whether their comments and actions were appropriate, both speeches paint a picture of a justice who is engaged in ideological or political behavior. In both sets of experiments, some participants were randomly assigned to read news coverage that also included a picture of the relevant justice in judicial garb (a tangible judicial symbol). For the Gorsuch news article, some people were also assigned to observe a picture of the justice in business attire (a non-judicial symbol).¹¹

For the first experiment, 889 respondents completed the survey in a timely manner with correct responses for attention check questions. 289 read news coverage of Justice Sotomayor, 283 read coverage of Justice Gorsuch, and 317 respondents were not exposed to the speech when they answered the survey questions. In the second experiment, 324 respondents read the Ginsburg news coverage, 464 respondents read the Gorsuch coverage, and 170 answered questions without exposure to any speech. More information on the demographics of respondents is in the Appendix. All individuals were randomly assigned to treatment groups.

My primary dependent variables are personal favorability and legitimacy. These two variables get at potential personal and institutional benefits obtained through off-the-bench speech. To measure personal favorability, I gave individuals a feeling thermometer question

¹¹I include this as a sort of placebo test. Here we have a symbol that may convey important values to the reader, but those values are not necessarily legal in nature. For favorability, I am unclear as to what effect this should have. For legitimacy, it should have a neutral or negative effect across ideologies.

for one or both justices. Respondents could rate justices on a scale from 0 to 100. A 0 would mean that the respondent felt very cold toward a justice, a 100 would mean they felt very warm toward a justice, and a 50 would suggest they felt neither warm nor cold toward a justice. Feeling thermometers are a widely implemented instrument in survey research used to measure general affect toward an individual or object (Lavrakas, 2008).

The second dependent variable, legitimacy, was measured in two different ways. Both measures are derived from six general statements with which respondents could express (dis)agreement on a five-point Likert scale. Each scale ranged from strongly disagree to strongly agree.¹² I used a canon of statements that is standard in political science scholarship on legitimacy (See Bartels and Johnston, 2011; Gibson and Nelson, 2016). I coded responses such that zero meant low support for the Court and five meant high support. The scores for each statement were added to create an index of legitimacy. In the analysis section, I present results based on regressions of the legitimacy index and regressions of each of its individual components on independent variables.

I have two primary independent variables. One is a categorical variable for the treatment, with the reference category assigned as no exposure to speech. The second is ideology. I measure ideology in two ways. First, taking my cue from recent micro-level research, I measure subjective ideological distance (Bartels and Johnston, 2013). I use this measure when my dependent variable is personal favorability toward an individual justice because I expect ideological distance from a justice to have more explanatory power than a measure of absolute ideology. Second, when explaining legitimacy, I measure ideology on a liberal-conservative continuum.¹³ This is because my theory suggests that controversial news

¹²The statements are (1-Do away with Court) If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether; (2-Remove judges) Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge; (3-Less Independent) The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want; (4-Mixed up in politics) It is inevitable that the U.S. Supreme Court gets mixed up in politics; therefore, we ought to have stronger means of controlling the actions of the U.S. Supreme Court; (5-Remove jurisdiction) The right of the Supreme Court to decide certain types of controversial issues should be reduced; and (6-Trust in Court) The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

¹³More specifically, the scale is a five-point scale ranging from liberal to conservative, with liberal anchored

coverage will activate pre-existing ideological beliefs, and I expect ideological beliefs to map on to this scale.

When fitting regressions, I estimate four separate specifications. In the first experiment, I have two models for those reading about Justice Sotomayor's speech and two for respondents reading about the speech when attributed to Justice Alito. Likewise, in the second experiment, I estimate two regressions for individuals who read about Justice Ginsburg's speech and two for those who read about Justice Gorsuch's speech. Sets of regressions include a model without an interaction between treatment and ideology and a model with an interaction. No control variables are needed as random assignment suggests there are not systematic differences between groups receiving different treatments. In the first experiment, I expect no interaction effects because there is no activation of strong pre-existing ideological concerns from the speech. For the second experiment, I do expect interaction effects because the political nature of the experiment should cause conditioning on ideology.

3.6 Results

I first analyze how people respond to a neutral judicial speech where pre-existing ideological attitudes were not activated. I then analyze responses in the context of more controversial speeches.

Neutral Speech

In a controlled experiment, I assigned respondents to read news coverage of a speech by Justice Sotomayor that she delivered at the University of Wisconsin-Madison in September of 2016. In the speech, Justice Sotomayor speaks of the collegial nature of the Court and the importance of law. As with the overwhelming majority of off-the-bench speeches, it

at zero. I operationalize this measure as a continuous variable in analyses below.

generated little controversy for the Court. As detailed in essay 1 (Chapter 2), the speech and news coverage of it caused individuals to feel more favorable toward the justices and supportive of the Court. Half of respondents were informed the speech came from Justice Sotomayor and half were told it came from Justice Alito.

Among those who read the speech, half also saw a picture of the justice in judicial garb. For a neutral speech such as this, I expect the addition of this tangible, judicial symbol to either have no effect (because it only reinforces what is in the speech) or magnify the effects of being exposed to judicial speech (and all of the symbolic judicial symbols wrapped in it). This should be true across ideological differences or ideological beliefs. Again, if there is any interactive effect, it should be in a positive direction. In Table 3.1, I present the results of a regression of feeling thermometer scores for Justice Sotomayor and Justice Alito. The first two models do not include the interaction between treatment and ideology; the third and fourth models do.

Table 3.1: Regression Analysis of Feeling Thermometer (Typical Speech)

	Sotomayor	Alito	Sotomayor	Alito
Ideological Distance	-9.26** (0.89)	-9.43** (0.82)	-10.42** (1.34)	-9.71** (1.32)
Judicial Speech	9.07** (2.40)	20.83** (2.43)	8.54** (3.70)	21.81** (4.33)
Judicial Image	15.91** (2.40)	21.03** (2.47)	10.70** (3.73)	18.42** (4.34)
Distance*Speech			0.12 (2.16)	-0.59 (1.98)
Distance*Image			3.98* (2.14)	1.47 (1.97)
Constant	76.45** (2.13)	65.84** (2.29)	78.20** (2.61)	66.37** (3.00)
N	394	364	394	364
R ²	0.30	0.40	0.31	0.41
adj. R ²	0.30	0.40	0.30	0.40
Resid. sd	19.41	19.18	19.36	19.20

Standard errors in parentheses

*p<0.1; **p<0.05

The regression analysis of favorability toward justices is consistent with my expectations. Increased ideological distance leads respondents to feel less favorable toward the justices. Exposure to the speech offsets these effects by increasing favorability toward the justices. This is especially true for Justice Alito, whose baseline favorability rating was much lower than the baseline rating for Justice Sotomayor. When ideological distance is interacted with exposure to judicial symbols, we observe a reinforcing effect for Justice Sotomayor and no effect for Justice Alito. For Justice Sotomayor, this means that individuals who felt ideologically distant from her were more likely to feel favorable when positivity bias was reinforced through the tangible symbol.

Figure 3.1 plots predicted levels of favorability for both justices across the measure of ideological distance. For Justice Sotomayor, the blue line is much flatter than the other lines. The difference in views between someone who sees Justice Sotomayor as an ideological ally and one who sees her as an ideological enemy is substantially smaller when the speech was reinforced with a tangible symbol. For Justice Alito, the effect of exposure to the speech is quite substantial, and the additional judicial image had no meaningful effect.

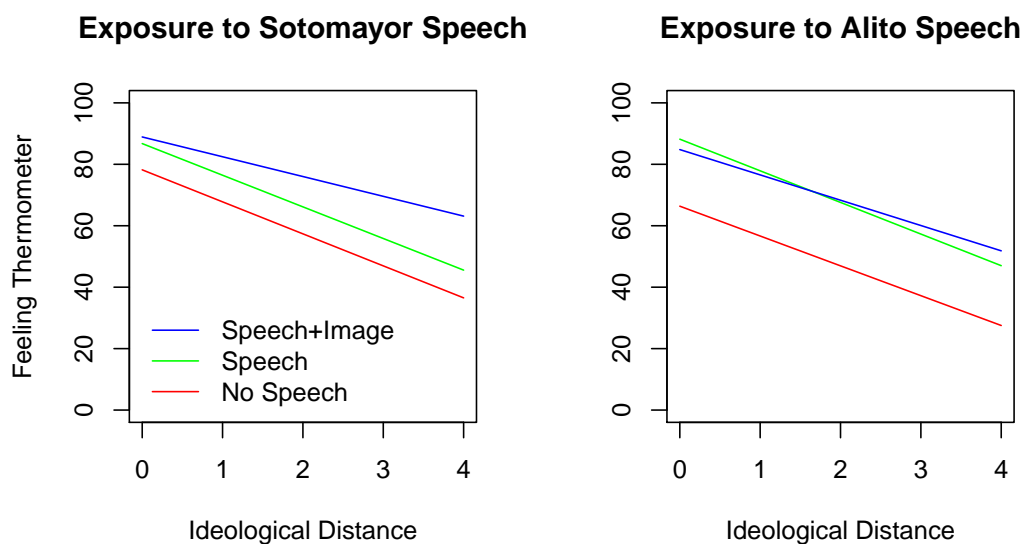


Figure 3.1: Predicted levels of favorability for Justice Sotomayor and Justice Alito, conditional on treatment received, as a function of ideological distance (Typical Speech)

The first experiment looked at other dependent variables as well, including a measure of institutional loyalty. I found positive effects for the treatment and negative effects of ideology, but no interaction effects when examining this dependent variable. As expected, the impact of judicial symbols are straightforward in a typical speech when it comes to explaining a specific aspect of legitimacy. We find a discernible impact of speech in a positive way, but no interaction with ideology because the speech did not activate pre-existing ideological beliefs in a way that conflicts with judicial symbols.

Controversial Speech

Judicial speeches may have quite a different impact on personal favorability and institutional legitimacy when they are controversial. In such instances, the political content of a speech is juxtaposed with judicial symbols, leading the respondent to receive conflicting messages about the Court. I expect reactions to the speech will be conditioned on ideology. Those who agree with the political position of the justice will be unlikely to perceive a distinction between the politics of the speech and judicial symbols. Those who disagree will perceive a gap in what the justice is saying and normative standards for judicial behavior. My expectation of divergent reactions to controversial speech is based on theories of motivated reasoning and cognitive dissonance discussed earlier.

The two controversial speeches I use came from Justice Ginsburg and Justice Gorsuch. For each justice, I estimate two regressions. One includes ideology and treatment as independent variables, and the other includes an additional interaction term. I use favorability and measures of legitimacy as dependent variables. For favorability, I employ ideological distance as a measure of ideology. For legitimacy, I adopt a measure that is based on a liberal-conservative continuum. As legitimacy is about the Court and not the justice specifically, I do not want to use an ideological measure anchored by the speech-giving justice. A model with the ideological distance measure performs substantially worse than a model that uses liberal-conservative ideology when legitimacy is the dependent variable.

I add one additional wrinkle to this analysis. I assigned a segment of respondents to read a speech given by Justice Gorsuch that included a picture of him in a business suit. My intention is to see how an image of the justice influences results when devoid of explicit judicial symbols. I expect it to have some effect, even if polarizing, for feelings of favorability. On the other hand, its effect on the legitimacy of the Court should be neutral or even negative. In general, my expectation is that exposure to a controversial speech will activate pre-existing beliefs of respondents in a way that leads to polarized reactions. Those who agree with the speech will be positively influenced by it. Those who disagree with the speech will be negatively influenced by it.

Table 3.2 contains the regression results. Let us turn our attention to the full models in columns three and four. For ideological allies, the speech—whether it includes reinforcing tangible symbols or not—leads to more favorability. However, these same treatments cause quite negative feelings among ideological enemies. Despite being exposed to the same speech, individuals of different ideological backgrounds have diverging reactions. It is quite notable that the baseline effect of ideological distance has absolutely no effect when individuals were not exposed to Justice Ginsburg’s speech. For Justice Gorsuch, there was a negative but minor relationship for ideological distance among those not exposed to speech. In other words, people feel quite similar to the justices when they do not give a speech. When justices give a controversial speech, they produce diverging and polarized perceptions of themselves.

When looking at favorability towards Justice Gorsuch, including a picture of him in a business suit had similar effects on favorability towards him as a picture of him in judicial garb. This addresses the question raised by previous scholars of whether any symbol (here it may convey professionalism or trust), even if devoid of explicitly judicial references, leads to greater support. In this limited case, I find some support for that notion. However, we must remember that the dependent variable is favorability. We should also remember that it had the same diverging effects. Those who were ideologically distant from Gorsuch were

Table 3.2: Regression Analysis of Feeling Thermometer (Controversial Speech)

	Ginsburg	Gorsuch	Ginsburg	Gorsuch
Ideological Distance	-9.25** (0.91)	-13.60** (0.75)	-0.55 (1.51)	-3.51** (1.47)
Judicial Speech	3.26 (2.99)	10.39** (2.98)	24.64** (4.42)	35.18** (4.78)
Judicial Image	6.68** (3.00)	9.45** (2.90)	26.79** (4.30)	33.85** (4.74)
Distance*Speech			-13.32** (2.16)	-13.83** (2.05)
Distance*Image			-12.59** (2.08)	-13.57** (2.03)
Non-Judicial Image		10.39** (2.95)		31.44** (4.55)
Distance*Non-Judicial Image				-12.26** (2.04)
Constant	81.50** (2.62)	64.52** (2.43)	66.79** (3.26)	47.46** (3.17)
N	460	593	460	593
R ²	0.20	0.37	0.28	0.43
adj. R ²	0.20	0.36	0.27	0.42
Resid. sd	26.02	25.26	24.76	24.07

Standard errors in parentheses

*p<0.1; **p<0.05

negatively influenced when reading about his speech—whether or not accompanied by a picture. Those who were ideologically similar were positively influenced. When looking at legitimacy, I expect this non-judicial image to have a generally neutral or negative effect.

These results are striking when displayed graphically, as shown in Figure 3.2. There is little to no relationship between ideological distance and the baseline level of favorability for a justice. When exposed to controversial news content, however, people's views of the justices depend heavily on their own ideology. Ideologically aligned individuals are heavily favorable toward the justice and the unaligned are highly unfavorable. This is quite different from our earlier results, where judicial symbols had a generally favorable and non-polarizing effect on individuals exposed to a less political speech.

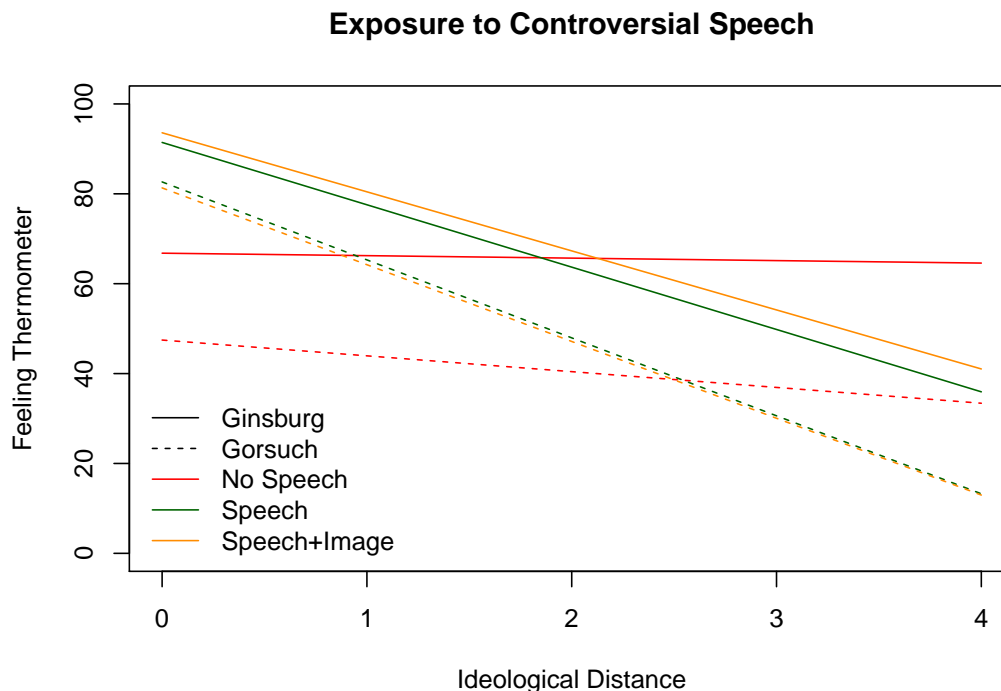


Figure 3.2: Predicted levels of favorability for Justice Ginsburg and Justice Gorsuch, conditional on treatment received, as a function of ideological distance (Controversial Speech)

Perhaps of more importance than personal favorability is the impact controversial speeches may have on the legitimacy of the Court. To measure legitimacy, I use a conventional battery of questions to create an index of diffuse support for the Court. The values of this measure can range from a low of 0 to a high of 24. I measure ideology on a liberal-conservative continuum for reasons explained earlier. My theory suggests that controversial speech activates pre-existing ideological attitudes that will condition how respondents react to controversial speeches. I present the results when using the legitimacy index as my dependent variable in Table 3.3.

When modeling general legitimacy, we find the expected results for Justice Ginsburg's speech but mostly null findings for Justice Gorsuch. As before, there is no relationship between ideology and legitimacy for those not exposed to the speech. For those exposed to the speech, we see polarizing effects. Liberals see the Court as more legitimate after

Table 3.3: Regression Analysis of Legitimacy Index (Controversial Speech)

	Ginsburg	Gorsuch	Ginsburg	Gorsuch
Ideology	-0.85** (0.18)	0.06 (0.16)	-0.30 (0.32)	-0.30 (0.32)
Judicial Speech	1.11 (0.61)	-0.10 (0.64)	2.93** (1.35)	-1.78 (1.40)
Judicial Image	0.53 (0.61)	-0.36 (0.63)	2.99** (1.32)	-1.00 (1.38)
Ideology*Speech			-0.67 (0.44)	0.62 (0.46)
Ideology*Image			-0.91** (0.43)	0.23 (0.46)
Non-Judicial Image		-1.09* (0.63)		-2.74* (1.44)
Distance*Non-Judicial Image				0.60 (0.46)
Constant	17.49** (0.64)	15.03** (0.62)	16.00** (0.96)	16.00** (0.98)
N	490	632	490	632
R ²	0.05	0.01	0.06	0.01
adj. R ²	0.05	-0.00	0.05	-0.00
Resid. sd	5.56	5.68	5.55	5.68

Standard errors in parentheses

*p<0.1; **p<0.05

reading about Justice Ginsburg's speech and individuals that are more conservative see it as less legitimate. For Justice Gorsuch, the only explanatory factor predicting general legitimacy is the picture of him in business attire. In fact, this has a general and negative effect, even after controlling for ideology, exposure to speech, and interactions. So, while the picture may allow people ideologically close to feel more *favorable* toward Gorsuch, the picture of him in a business suit has the opposite effect when it comes to the *legitimacy* of the Court.

The pattern of exposure to judicial symbols polarizing views of the Court is clearer if we break up the legitimacy index by its components. I regressed each component of the legitimacy index on the same explanatory factors as above, including interaction terms.

Figure 3.3 plots the confidence intervals of the uninteracted treatment coefficients for each regression and Figure 3.4 plots the interaction coefficients between the treatment and ideology variables for each regression. Thicker lines represent higher levels of confidence that the effects are real. Blue lines are for respondents who read about the Ginsburg speech and red lines for those who read about the Gorsuch speech. Dashes-only lines are for the effects of exposure to speech only. Dash-dot lines are for the effects of exposure to speech when it was accompanied with a judicial image.

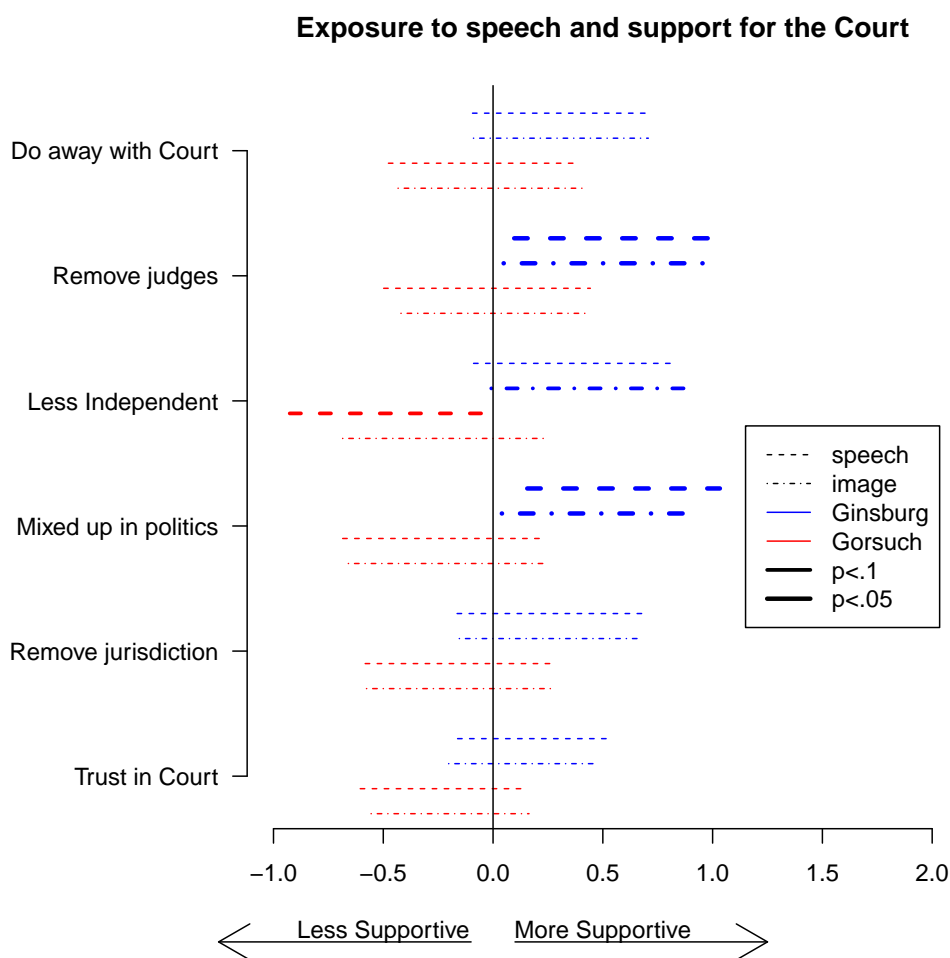


Figure 3.3: Coefficient plot of uninteracted treatment variable on legitimacy index components. Baseline reference of treatment is no exposure to speech. As liberal respondents were coded as zero, this plot shows how feelings of legitimacy among liberal respondents exposed to controversial speech from either Justice Ginsburg or Justice Gorsuch changed (Controversial Speech).

We will begin with Figure 3.3, which plots the uninteracted treatment effects. Ideology was coded such that these represent the effect of the treatment on liberal respondents. If liberals respond negatively to symbols when they disagree with a speech and positively to symbols when they agree with the speech, Figure 3.3 should only have red, statistically significant lines on the left and only blue, statistically significant lines on the right. Indeed, this is exactly what we find. Following exposure to Justice Ginsburg's speech, liberal respondents were more likely to disagree that justices who consistently make decisions at odds with what a majority of the people want should be removed from their position, that the Court should be made less independent, and that the people should have stronger means of controlling the Court because it inevitably gets mixed up in politics. Interestingly enough, liberals who read Justice Gorsuch's speech, on the other hand, *agreed* that the Court *should* be made less independent. Whether a liberal thought the Court should be made less independent flipped based on the ideological direction of a speech.

Figure 3.4 shows individuals that are more conservative also flipped on the independence question. The more conservative a person, the more likely he or she was to support the independence of the Court when Justice Gorsuch did the speaking, and the less likely to support the independence of the Court when Justice Ginsburg did the speaking. Individuals that are more conservative were more likely to say they trusted justices to make decisions that are right for the country as a whole after exposure to Justice Gorsuch's speech. When Justice Ginsburg spoke, they were more likely to say they would do away with the Supreme Court altogether if it started making a lot of decisions that most people disagree with, to reduce the right of the Supreme Court to make certain types of controversial issues, to remove judges, and that the Court is too mixed up in politics. Again, conservatives were only more likely to agree with negative statements regarding the Court when Justice Ginsburg gave the speech. Liberal respondents had the same pattern but in the opposite direction. As we can see from both Figures, controversial speeches can create either negative or positive reactions depending on one's ideology.

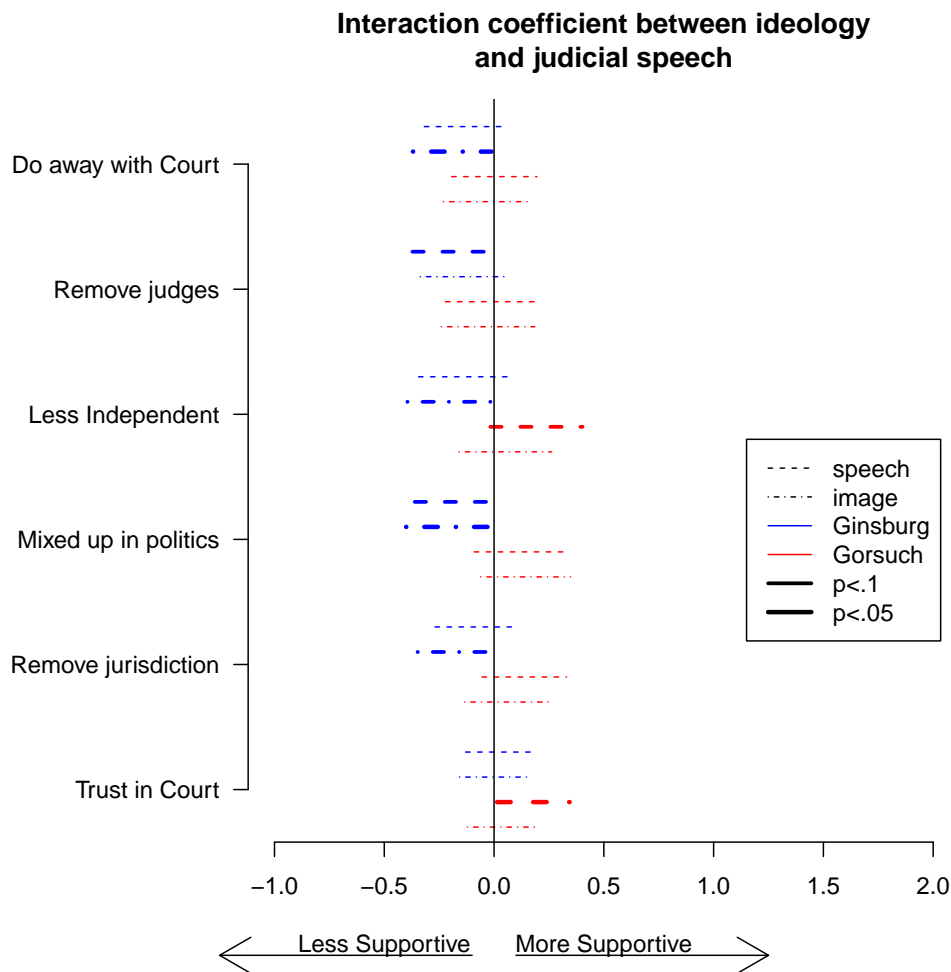


Figure 3.4: Coefficient plot of interacted treatment variable on legitimacy index components. Baseline reference of treatment is no exposure to speech. As liberal respondents were coded as zero, this plot shows the effect of being more conservative on feelings of legitimacy following exposure to a controversial speech by Justice Ginsburg or Justice Gorsuch (Controversial Speech).

The image of Justice Gorsuch in business attire tended to harm Supreme Court legitimacy. For example, all individuals, regardless of ideology, were more likely to say we should have stronger means to control the Court because they get mixed up in politics after being exposed to a speech with that picture accompanying it. The picture also caused people to be more likely to want to remove jurisdiction from the Court, although there was an interaction effect with ideology that approached statistical significance ($p=.074$). For trust in the Court, the picture caused the polarizing effect we have seen elsewhere.

3.7 Conclusion

In justifying his decision to “go public,” Justice Scalia said:

[T]hat’s one reason I’ve sort of come out of the closet and - in recent months - done more interviews and allowed my talks to be televised more than I did formerly. I’ve sort of come to the conclusion that the old common law tradition of judges not making public spectacles of themselves and hiding in the grass has just broken down. It’s no use, I’m going to be a public spectacle whether I come out of the closet or not . . . (Davis, 2011, 33).

What are the consequences of justices’ frequent public appearances for the ever-important legitimacy of the Court? How does the decision to go public play out in light of increasingly negative and polarized coverage of judicial behavior? Should justices stay out of the public spotlight, or are we confident that positivity bias will overcome negative coverage of justices’ public activities?

This chapter is the first to address views of justices and the legitimacy of the Court in the context of negative news coverage of off-the-bench speech. The results are quite informative. For neutral speeches, justices bring about both personal and institutional benefits. When speeches are political or politicized, they create polarized views of justices and the Court. More specifically, controversial speeches raise personal prestige and legitimacy in the eyes of those who are ideologically aligned. For those who are ideologically incongruous with the justices, the speeches have a devastating effect on views toward the speech-giving justice and—more importantly—on the legitimacy of the Court. These findings are well grounded in theories of motivated reasoning and cognitive dissonance.

I also examined the role of tangible symbols. Attaching a judicial image to news coverage of a speech can have a positive effect on personal favorability when speeches are neutral. In the context of a controversial speech, it has polarizing effects for both personal favorability and legitimacy. Interestingly enough, including a non-judicial symbol of a justice in business attire hurt the legitimacy of the Court across ideologies. I did not test the impact of a non-judicial symbol in the context of a neutral speech or in the context of no

speech. Future research should test further the impact of non-judicial symbols and judicial symbols in a variety of contexts.

4 OPINION LANGUAGE

4.1 Introduction

Occasionally, Supreme Court opinion language makes the news. For example, Sonia Sotomayor's dissent from a decision to uphold a Michigan voter-approved ban on affirmative action for public universities in *Schuette v. Coalition to Defend Affirmative Action* (2014) was widely reported and had "been variously described as 'blistering,' 'scathing,' and 'outraged.'"¹ Just this year, the media eagerly awaited the release of a decision on the detention of immigrants. When the decision came, Justice Alito's response to the dissenting opinion captured the attention of news reporters: "The dissent evidently has a strong stomach when it comes to inflicting linguistic trauma. The contortions needed to reach these remarkable conclusions are a sight to behold" (*Jennings v. Rodriguez* (2018)).

Why do justices use non-legalistic language in their judicial opinions? We know that justices are strategic actors who seek to bring about their preferred legal policy goals. Furthermore, opinion content provides an authoritative interpretation of law and guidance on how to apply law to specific situations. In this way, opinions help justices achieve their policy goals. What is less clear is why justices use non-legalistic language in their opinions or what justices hope to accomplish through dissents. Furthermore, commentators are increasingly concerned with the role of non-legalistic language on the Court.

My theory of non-legalistic writing focuses on the use of emotional appeals. While legalistic language is used to inform and persuade legal audiences, emotional language is more likely to capture the attention of and to persuade non-legal, or external, actors. I measure the presence of emotional appeals through a novel measure of sensational language. As my theory predicts, dissenters use words with high levels of sensationalism and that majority opinion sensationalism is conditioned on public interest in a case.

¹<http://www.latimes.com/local/abcarian/la-me-ra-sonia-sotomayor-affirmative-action-dissent-20140423.html>

4.2 Justices' Goals and Their Audiences

It has been a tenet of political science theory that justices care about the policy implications of their decisions. Rohde and Spaeth (1976) and then Segal and Spaeth (1993, 2002) convinced the scholarly community that votes over Supreme Court case outcomes were a function of ideology. "Simply put," Segal and Spaeth argued, "Rehnquist votes the way he does because he is extremely conservative; Marshall voted the way he did because he was extremely liberal" (65).²

Even so, justices are heavily constrained in their pursuit of legal policy goals (Epstein and Jacobi, 2010). For example, Rosenberg (2008) shows that the Court rarely, if ever, brings about social change without the support of other actors. Hall (2010) demonstrates that the Court is more successful in bringing about change when implementation is through lower court judges (vertical cases) rather than through co-branches of government (horizontal cases). Many more examples exist. The common thread in these and other similar studies is the dependency of justices on others to implement decisions.

Put plainly, justices seek to maximize their policy preferences in an interdependent environment (Epstein and Knight, 1997). There are a number of ways justices influence policy: They explicitly support one position over another as they decide cases. Through their discretionary docket, they make policy vis-à-vis agenda setting. And they can overturn legislation through judicial review. Of great significance, though, is their ability to constrain future actors through the content of their opinions.

While justices rule in favor or against one party when making decisions, it is the content of the opinion which has the most lasting impact (Maltzman et al., 2000; Cross and Pennebaker, 2014; Carlson et al., 2015). The language justices use to justify their decisions has crucial implications for understanding the process of judicial decision-making (Corley,

²That policy matters to justices, however, does not mean that other factors are irrelevant to understanding judicial decisions. Many scholars have provided compelling evidence that factors such as self-representation, personality, power motivations, law, and personal reasons lead justices to behave in ways that cannot be explained by policy preferences alone (see Krewson and Owens, 2017).

2008; Corley et al., 2011), the extent to which decisions are implemented (Hume, 2009), the rule of law (Owens and Wedeking, 2011), and judicial strategy (Owens et al., 2013). Judicial opinions create explicit legal doctrine that other judges apply in specific circumstances. They also articulate legal principles and provide interpretations of legal documents that guide policymakers.

Judicial opinions have a lasting impact because of *stare decisis*. *Stare decisis*, a Latin phrase which means “to stand by things decided,” refers to the normative concept that justices should not lightly overrule precedent. Supreme Court precedent binds lower-court judges and constrains justices in subsequent cases. In *Hutto v. Davis*, 454 U.S. 370, 375 (1982), it was stated that “a precedent of [the Supreme Court] must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.” Empirical research confirms that lower court judges largely follow Supreme Court rulings (Gruhl, 1980; Songer, 1987; Songer and Sheehan, 1990; Songer et al., 1994; Cross, 2005; Luse et al., 2009). Furthermore, the Court incentivizes individuals to follow its decisions through its ability to review and censor lower courts (Black and Owens, 2012).

4.3 Speaking to a Legal Audience

If the content of judicial opinions matters because of its articulation of law, why, then, do justices sometimes use non-legalistic—even sensational—language? I argue that a key concept to understanding variation in opinion content is that of “audience.” Justices are likely to alter the language of their opinions as they seek to persuade different audiences. The concept of audience is quickly becoming an important topic for judicial scholars (Baum, 2009; Owens et al., 2013; Black and Owens, 2016).

When defining an audience, scholars tend to focus on a few broad categories. Garoupa and Ginsburg (2008) and Black et al. (2016c) distinguish between two primary audiences: internal and external. By internal they refer to the judiciary, and by external they mean the

broader audience, including the media or general public. While Garoupa and Ginsburg categorize lawyers as an external audience, I consider the internal audience as the legal community, broadly construed. Specifically, I refer to the legal community as those individuals directly influenced by the majority opinion vis-à-vis the normative duty to follow or work within the constraint of *stare decisis*. I operationalize the external audience as the broader public who has the potential to be mobilized, especially through media coverage.

Let us consider first the legal community. Of critical importance for the implementation of most judicial decisions is the compliance of lower court judges. Justices often remand or send cases back to the courts from which they were appealed with instructions on how to rule on a case. Or they resolve a case with lower-court disagreement among circuits with the expectation that “misled” circuits will change their behavior accordingly. Lawyers use case law based on precedent to convince judges and litigants of their position. In any case, lower court judges are expected to follow the rationale stated in the majority opinions of the Supreme Court. Thus, one potential audience the justices seek to communicate with is other judges and practitioners.

It follows that the most immediate and relevant audience in a case is the legal community. The prevailing coalition in any case has a more favorable bias with the legal community due to norms of *stare decisis* than other coalitions in a case. The majority opinion is likely to focus its efforts on influencing this audience through the rationale of its opinion. On the other hand, I expect dissenting opinions to be more interested than majority opinions in communicating with a broad audience through opinion language.

4.4 Speaking to a Broader Audience

The minority opinion is, perhaps, less concerned about speaking to a legal audience because of a widespread belief or doctrine that lower court judges follow precedent and ought to ignore the dissenting opinion to a large extent. Having less influence here, the

minority opinion is likely better (or, at least, more immediately) served by reaching out to other relevant political actors, especially if those actors can then put pressure on the legal community. In other words, we should expect dissenters to be more interested than the majority coalition in engagement with external audiences.

In an intriguing paper on the use of emotional language in Supreme Court opinions, Ryan (2016) suggests that Justice Scalia used rhetorical devices not to influence his fellow colleagues or lower court judges necessarily, but he hoped to influence the general public. In other words, the author suggests that justices can use language to indirectly shape the law using a “bottom-up” approach instead of through traditional channels:

Contrary to the traditional trickle-down approach, the law may be shaped in a bottom-up manner. The general public influences legislatures to codify the public’s will. Indeed, legislators look to the polls in determining how to vote on a number of items. Further, the general public can have an effect on how constitutions and statutes are interpreted, and how the common law is shaped (317).

It is likely that justices rely on news coverage of their decisions to speak to a broader audience. The news media is the primary filter through which the general public learns about cases before the Court and Supreme Court decisions. Whether the news covers a case matters for justices seeking to speak to the external audience. The media has been shown to have a strong influence on the general public through its agenda-setting powers (Scheufele and Tewksbury, 2007). While they cannot always tell them *what* to think, the media surely has an influence on what the general public thinks *about*.

Evidence suggests that justices are acutely aware of the media climate that surrounds their cases. For example, Justice Frankfurter once explained to his law clerk that the justices held on to their decision in *Brown v. Board of Education* until after November 1952 because it was an election year (Clayton and Gillman, 1999). Epstein and Knight (1999, 220) note, “as we know from our research into the private papers of Justice Marshall, Brennan, and Powell, Court members regularly clip articles and editorials about specific cases.” Media

coverage may have influenced Chief Justice Roberts' decision to uphold the Affordable Care Act.³ Baum (2009, ch. 5) argues that justices are commonly influenced by the media.

I argue that justices in dissenting opinions should be more willing than justices in the majority opinion to speak to the external audience through their opinion language. Publishing a dissent signifies an intensity of preference over the case outcome and, I argue, an attempt to influence policy by influencing external audiences and law through a bottom-up approach.

4.5 Conditional Outreach

Dissenting justices should always want to speak to the external audience because of their intensity of preference over case outcomes, a desire to influence law through less traditional approaches, and a recognition that the majority has the comparative advantage with legal audiences due to norms of *stare decisis*. I argue that the majority opinion will also seek to address external audiences, but they will do so conditional on the salience of cases. In other words, the majority opinion coalition has a balance to maintain when deciding whether to tailor language to an external audience.

There are a few reasons to expect the majority opinion to vary its use of non-legalistic language. Research suggests that emotional language is ineffective (if not counterproductive) in influencing judicial actors. Black et al. (2016a) show briefs which use emotional language diminish the likelihood of justices voting in their favor. There may be times, however, that the majority opinion uses non-legalistic language in order to better influence the broader discussion surrounding highly salient cases. Other studies have also shown that the salience of cases conditions judicial behavior (Epstein and Martin, 2010; Kestelcec, 2016; Owens and Wohlfarth, 2017).

We can look to Schattschneider's (1960) theory of conflict management to better un-

³<http://www.cbsnews.com/news/roberts-switched-views-to-uphold-health-care-law/>

derstand my expectations for non-legalistic opinion writing.⁴ Conflict is at the root of all politics, and it consists of two parts: the small group of individuals actively engaged at the center and the potential audience.⁵ In the context of the Supreme Court, the small group of individuals actively engaged at the center consists of the justices. The immediate and relevant audience is the legal community. The prevailing coalition in any case has an immediate and favorable bias with the legal community due to norms of *stare decisis*. By expanding the scope of conflict, dissenters change the equation, mobilize opposition among those less obligated to *stare decisis*, and put external pressure on the legal community to alter behavior.

As the scope of conflict expands, the majority opinion's comparative advantage shrinks. The audience in the case has expanded beyond the legal community and dissenters now have the chance to influence policy through a bottom-up approach. The majority opinion may feel inclined to counteract the dissent's efforts by attracting the attention of the broader audience with non-legalistic language as well. This is what we saw in this chapter's introduction, when Justice Alito countered the emotional dissent with his own emotional appeal: "The dissent evidently has a strong stomach when it comes to inflicting linguistic trauma. The contortions needed to reach these remarkable conclusions are a sight to behold" (*Jennings v. Rodriguez* (2018)).

Schattschneider is not the only political scientist to suggest that dissenting behavior is best understood in terms of conflict. In a prominent article, Cross and Tiller (1998) argue

⁴In his classic work, *The Semi-Sovereign People: A Realist's View of Democracy*, Elmer E. Schattschneider uses conflict management theory to highlight the desirability of a governing system based on competitive parties. A key component of his argument is the concept of scope of conflict, or the extent to which individuals not directly in a conflict are nevertheless brought into it. When a competing perspective loses a debate or contest, it almost always stands to benefit by enlarging the scope of the conflict. Spectators are drawn to conflict, and alerting relevant groups to conflict mobilizes political forces against unfavorable outcomes. A smaller scope of conflict tends to lead to more biased outcomes than a larger one because the segment of society brought into the fight is less representative of the society as a whole. In Schattschneider's view, competitive parties are more likely than interest groups or other entities to engage the largest swath of the American public, and thereby be a less-biased governing entity.

⁵The primary argument made by Schattschneider is that "the outcome of every conflict is determined by the extent to which the audience becomes involved in it" (pg. 2, emphasis removed). The scope of conflict makes a difference in the determination of who wins, and "every change in the scope of conflict has a bias" (pg. 4).

that dissents occur because of “a minority member with doctrine on her side and the ability, through a dissent, to expose disobedient decisionmaking by the majority.” Other scholars have provided evidence that justices ignore precedent and act in a counter-majoritarian fashion at times (Segal and Spaeth, 1996; Casillas et al., 2011), which gives further motivation for judges to act according to my theory. Even congressional scholars McCubbins and Schwartz (1984) argue that Congress pays attention to and responds to cries of foul play from other branches of government.

Justices speak to various audiences through their opinions in an effort to maximize policy gains. In particular, the majority focuses on legal audiences while the dissent is more likely to speak to a broad audience. As interest in a case increases, we might expect the majority opinion to counteract the dissent’s influence by also using non-legalistic appeals to speak to a broader audience. Thus, while other work examining the relationship between judicial behavior and the public has focused on public opinion or public mood (Black et al., 2016c; Bryan and Kromphardt, 2016; Casillas et al., 2011; Hall, 2014; Calvin et al., 2011; Owens and Wohlfarth, 2017), I focus more specifically on the presence of public interest or involvement in a case. The simple mechanism of increased public *attention* may condition judicial behavior especially for those in the majority coalition.⁶

4.6 Persuasion

Before describing the methods and data I employ to test my theory of judicial opinion writing, I highlight a key theoretical contribution of this chapter. According to most work in judicial politics, justices “maximize” their preferences in an interdependent environment (see Epstein and Knight, 1997) by adjusting their behavior in order to *maintain* the support

⁶We know that public attention influences the behavior of other political actors. For example, the presence of C-SPAN has led to significant increases in the lengths of congressional sessions and individual speeches. These speeches are largely nonlegislative (one-minute and special order speeches) and directed at the external audience (Frantzich, 2015). We also have evidence that the arrival of C-SPAN and its associated public spotlight has led to decreased levels of collegiality and increased partisan rhetoric (Grundy, 2000; Mixon and Upadhyaya, 2003; Mixon Jr et al., 2003).

of pivotal actors. This is largely a reactive or passive behavior. In contrast, I suggest that justices do not always *respond* or *react* to the public, but they also actively seek to persuade the public through the use of emotional appeals. In his seminal work, Murphy (1964) argued that “[A]lthough the general political environment may be beyond the power of a Justice to control, it is rarely beyond his power to influence.”

How might a justice influence policy in a complicated political environment? Murphy emphasized the importance of the public: “Even where a Justice chose to act as effectively as possible to achieve his policy goals, there are severe limits to what he could accomplish.” Recognizing their limited abilities, he continued, justices “may succeed in influencing . . . segments of public opinion so that the effectiveness of opposition to the Court’s decisions will be reduced or positive co-operation induced” (207). Murphy hypothesized that justices target the public because the public can help them achieve legal policy goals.

Judicial opinions provide a visible and consistent medium for attempting to persuade external actors.⁷ Murphy suggested also that attempts at persuasion in judicial opinions “take the form of an intellectual or emotional appeal”:

As always persuasion would be an important element in any strategic plan. It may take the form of an intellectual or emotional appeal. It may be directed specifically at the executive department, at particular interest groups, or at the public opinion generally in the hope that pressure will be exerted against the administration. It may be contained in a Court opinion, a public speech, a message related through mutual confidants, or in private correspondence or communication. (147)

In particular, I am interested in how justices use emotional appeals in their Court opinions to influence external actors.⁸ I measure the use of emotional appeals through opinion-level sensationalism.

⁷In fact, some complain that dicta (arguments made in an opinion not necessary for deciding the case at hand) is quite pervasive (see Leval, 2006). But this is the point. The opinion is a platform through which justices can influence broader debates.

⁸I do not test Murphy’s argument that justices use intellectual appeals to persuade.

4.7 Methods and Data

Opinion Language Sensationalism

Scholars have analyzed variation in opinion language to understand how justices speak to various audiences. Black et al. (2016c) measure the clarity of judicial opinions by combining a number of different readability measures into a single measure. Other scholars have been interested in the tone of opinions. Most prominently, scholars have researched the use of more or less negative language in judicial opinions. The most popular software for analyzing negativity in judicial opinions is the Linguistic Inquiry and Word Count (LIWC) tool; the program codes text based on its proportion of negative words, among other things. For example, Bryan and Ringsmuth (2016) find that more negative opinions create more news coverage of a case using this tool. In another recent paper, Wedeking and Zilis (2017) find that justices use more or less “emotional” language as a function of public opinion and salience. To measure emotional language, they use the LIWC’s negativity measure and the Dictionary of Affect in Language’s (DAL) dictionary of nasty or unpleasant words.

While extremely useful, these previous studies measure disagreeable rhetoric but do not specifically quantify the emotional appeal of words in an opinion. In my theory, justices are employing language that is fundamentally different from the legal language used to instruct an already-engaged audience. Rather than instructing, justices are seeking to grab the attention of a non-legal audience and persuade them through emotional appeals. Thus, I am not seeking to measure clarity or negativity. Instead, I need a measure of language that quantifies the degree to which opinion content captures an audience’s attention and persuades them emotionally. I refer to this type of language, and my measure of it, as “sensationalism.”

The Center for the Study of Emotion and Attention at the University of Florida provides a set of ratings (Affective Norms for English Words or ANEW) that measures the sensationalism of an extensive number of English words. To create this dictionary, a team of researchers gave a large number of participants overlapping subsets of words and asked

them to rate those words on a scale. (Bradley and Lang, 2010). While participants rated words based on pleasantness/unpleasantness and dominance, the relevant ratings for us are based on sensation.⁹ Participants read a word and then rated it on a scale from 1 to 10. A set of images that ranged from a relaxed, sleepy figure to an excited, wide-eyed figure were placed over these numbers. Participants were asked to assign a value for each word based on their initial, emotional response to the word. Larger values indicate greater levels of sensationalism.

The dictionary contains the average sensationalism score among participants for over 1000 words. The scores for these words range from lows of 2.29 (“boring”) to highs of 8.17 (“rage”). The words in the dictionary are not stemmed. While the Center for the Study of Emotion and Attention provides dictionaries with scores based on responses of men and women, I use the dictionary of words and ratings based on ratings from both males and females. Political scientists have used the ANEW dictionary to study the language used by political actors in other contexts (Young and Soroka, 2012; Mondak, 2018).

Through CourtListener.com, I obtained the majority and dissenting opinions in cases with oral argument from the 1955 to 2008 Supreme Court terms. I then matched words in each majority and dissenting opinion with those which also existed in the ANEW dictionary. After obtaining the sensationalism score for each matched word in each majority or dissenting opinion, I operationalized opinion sensationalism as the average sensationalism score of all words scored in an opinion. I retained the Supreme Court citation for each case and merged my dataset with the Supreme Court Database (Spaeth et al., 2016) and Clark et al.’s (2015) measure of pre-decision salience (discussed below). I chose the years 1955 to 2008 because that is the time frame for which I have the pre-decision salience measures.

All opinions included at least 1 term from the ANEW dictionary. The median number of terms in an opinion matched with the dictionary is 219. Opinion Sensationalism varies

⁹Middling scores on the pleasantness/unpleasantness scale correlate with low levels of sensationalism while both pleasant and unpleasant terms correlate with high levels of sensationalism. Thus, the sensationalism measure allows us to capture emotional response to words with either a negative *or* positive connotation used in Supreme Court opinions.

from 4.32 to 5.86, with a mean of 5.12 and a standard deviation of 0.16. Again, the measure is an average of all the scored words in an opinion, which scored words were averages of participant ratings. This explains the constrained range of dependent variable values.

One example of a case where both the majority and dissenting opinions had high levels of sensationalism is *Brown v. Entertainment Merchants Association* (2012). Here, an association challenged a California law imposing restrictions on the sale or rental of violent video games. The sensationalism level of Justice Breyer's dissent was 5.62. Justice Scalia's majority opinion had a score of 5.42, and Justice Thomas's dissent had a score of 5.24. Each opinion had a score that was above average in terms of its sensationalism.

In addition to legal arguments, the opinion authors in this salient case used a variety of emotional appeals to make their arguments. While the dissents provided graphic details of violent games in order to justify restrictions, the majority countered with the graphic details of books currently supported by California law: "Certainly the books we give children to read—or read to them when they are younger—contain no shortage of gore. Grimm's Fairy Tales, for example, are grim indeed." In his opinion, Justice Scalia asks rhetorically why the non-majority opinions used sensational language and answers, "Who knows? But it does arouse the reader's ire, and the reader's desire to put an end to this horrible message."

In a less salient case, the Supreme Court was asked to decide whether a Michigan license plate fee on trucks that operated entirely in interstate travel was pre-empted by federal law. The majority opinion in this case, authored by Justice Kennedy, had a sensationalism score that was quite low (4.70). On the other hand, the dissenter, Justice Kennedy, used more colorful language in his opinion pushing back against the majority (5.02).¹⁰ Kennedy held little back when criticizing the majority opinion: "Instead of heeding what Congress actually said, the Court relies on flawed textual analysis and dubious inferences from legislative silence to impose the Court's view of what it thinks Congress probably wanted to say." Instead of taking the bait, the majority confined itself to mostly legal language.

¹⁰The difference between the two scores is nearly two standard deviations.

Public Attention

The most common measure of public attention to Supreme Court cases, the Epstein and Segal (2000) measure, is a dichotomous measure of whether a case appeared on the front page of the *New York Times* following a decision. This measure presents a causality issue if we want to understand how public attention *before* a decision influences opinion language. Furthermore, the measure is based on one newspaper, only front-page news coverage, and it cannot capture the wide variation in public attention.

Other common measures, such as whether justices read a decision from the bench (Johnson et al., 2008) or ask numerous questions during oral argument (Black et al., 2013), usually signify salience to the justices themselves and not to the public. In 2012, Collins and Cooper developed an indexing measure of salience based on all coverage of cases in four newspapers before the release of the decision. This measure, then, is a major improvement for studying the influence of public attention on judicial behavior. More recently, Clark et al. (2015) developed a latent variable measure of salience based on similar data to Collins and Cooper.

I use the measure of pre-decision salience developed by Clark et al. to account for public attention to a case. Until now, we have primarily relied on measures of salience based on post-decision coverage of a decision. Such a measure may be satisfactory for understanding the effect of decisions on the salience or coverage of a case, but it is inappropriate for gauging how justices adjust their opinion writing in the presence of public attention to a case. Thus, the development of a pre-decision measure of public salience provides for a more sound analysis of how public attention influences judicial opinion writing.

To measure pre-decision salience, Clark et al. expanded upon earlier measures to include the coverage of cases during the entire life of a case. To start, they recorded all coverage of cases in the *New York Times*, the *Washington Post*, and the *Los Angeles Times* between 1953 and 2009. They categorized the coverage into four types: coverage before oral argument, coverage of oral argument, coverage of cases pending decision, and coverage

of decisions. Last, they extracted the common dimension that explained media coverage across the three newspapers across the four types of stories using a latent variable model. For the pre-decision measure, the fourth type of coverage (coverage of decisions) is excluded. Thus, any relationship I find between salience and sensationalism cannot be driven by the sensationalism of the opinions themselves. The measure represents the extent to which these newspapers are attentive to a case. Newspaper coverage is the mechanism through which justices discern public attention.

Other Variables

I include a number of additional variables in my analysis of opinion sensationalism. To control for trends over time, I include the Supreme Court term as a continuous variable. To test for the influence of public attention, I include the measure of pre-decision salience. To understand any potential differences between majority and dissenting opinions I include an indicator for opinion type. I interact opinion type with pre-decision salience to test my key hypothesis that dissents and majority opinions respond to public attention in different ways. Another variable, Coalition Difference, controls for the relative size advantage of the majority coalition.¹¹ Finally, I include fixed effects for issue area of the case and opinion author. Results are based on ordinary least square regressions. My full dataset contains 9,644 observations of case-level data from the 1955 to 2008 Supreme Court terms. More specifically, there are 5,148 majority opinions and 4,496 dissenting opinions in my dataset.¹²

¹¹It is calculated by subtracting the number of individuals in the minority coalition from the number of individuals in the majority coalition.

¹²I exclude concurrences and *per curiam* opinions from my analysis. The ambiguity of the purpose of these opinions make them theoretically inappropriate to include. Concurrences are ambiguous in that they can be “regular,” and support the majority opinion, or “special” and be similar to a dissenting opinion. Even regular concurrences vary in their purposes (Corley, 2010). *Per curiam* opinions are unsigned opinions. It is unclear what strategic calculations lead justices to produce *per curiam* opinions, and how these calculations are related to attempts at persuasion.

4.8 Results

Time Trends

Before performing my primary analysis, let us first take a look at time trends in my two key variables - opinion sensationalism and case salience. The first thing to notice is that opinion sensationalism has been increasing over time. Figure 4.1 plots the average opinion sensationalism from 1955 to 2009, by term. I plot the actual changes in sensationalism over time along with a smoothed line created using a local polynomial regression fitting procedure (Loess). The left image in the Figure shows that there exists a steady increase in sensationalism from 1955 to 2009. Furthermore, my hypothesis that dissents are generally more sensational than majority opinions is confirmed by the right image in the same figure. The blue line, representing dissents, is always higher than the red line, which represents majority opinion sensationalism.

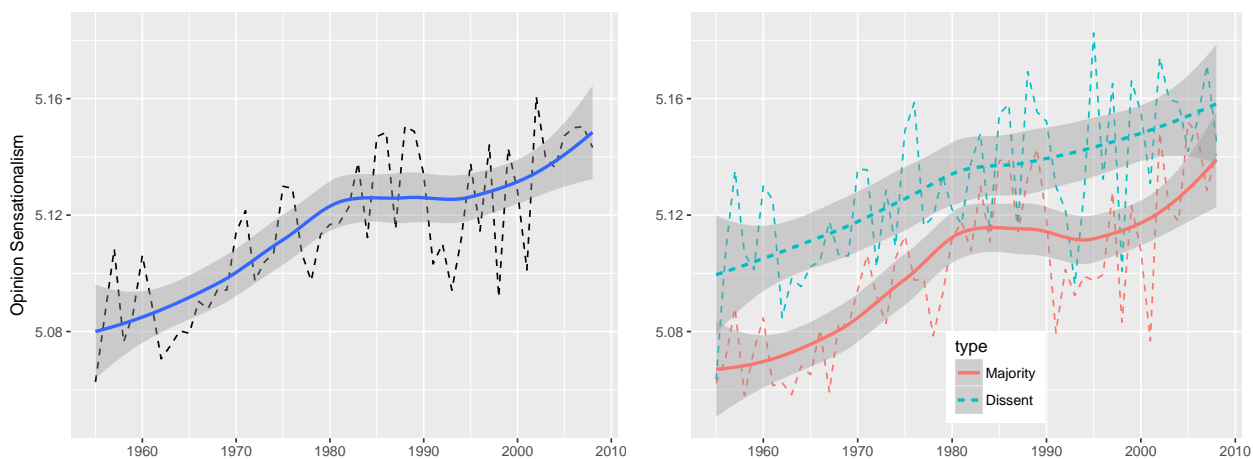


Figure 4.1: Plot of the average sensationalism of both majority and dissenting opinions over time (left image). Plot of the average sensationalism of majority and dissenting opinions over time, separated by opinion type (right image).

In Figure 4.2, I plot the average salience of cases (red line) and the average salience of cases for each dissent (blue line), by term. In other words, the salience of a case with multiple dissents is used multiple times in calculating the blue line but only once in calculating the red line. The divergence in lines tells us something about which cases justices systematically write dissents in. Unsurprisingly, dissents systematically appear in high salience cases. Perhaps more surprising is that this divergence began in the 1970s and became increasingly noticeable in the 1980s. The systematic use of dissents in high salience cases suggests that when justices dissent, they (and the majority opinion coalition) have the potential to reach a broad audience.

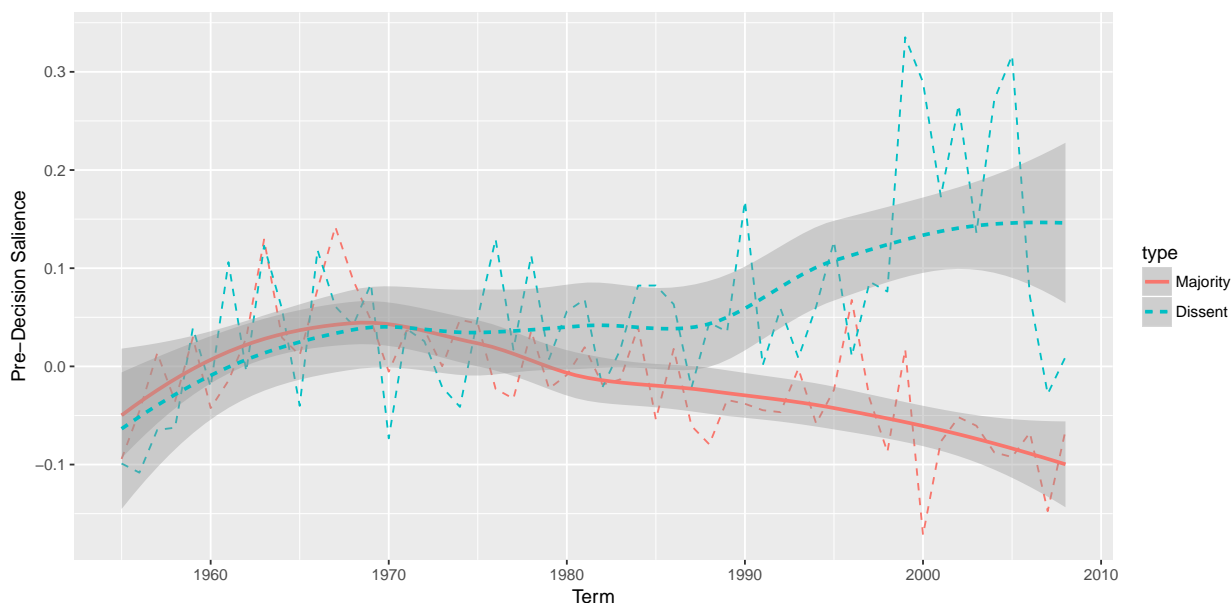


Figure 4.2: Plot of the average salience of cases and opinions over time, separated by opinion type. Shaded bands are 95 percent confidence intervals.

Davis (2011) argued that justices have been more willing to “go public” in the past quarter century. He outlines a number of important events leading to this behavior, such as changes in how the media covers the Court, the rise of interest group influence, and the increasing politicization of processes directly connected to justices, such as Senate confirmations of presidential Supreme Court nominees. Justice Scalia was quite forthright when he explained his decision to become more public, and Davis argues that his willingness to

engage the public is part of a more general trend in how justices are beginning to behave:

[T]hat's one reason I've sort of come out of the closet and - in recent months - done more interviews and allowed my talks to be televised more than I did formerly. I've sort of come to the conclusion that the old common law tradition of judges not making public spectacles of themselves and hiding in the grass has just broken down. It's no use, I'm going to be a public spectacle whether I come out of the closet or not. . . (33)

These time trends are congruent with recent concerns regarding the sensationalism of Supreme Court opinion writing and justices "going public." Both majority opinions and dissenting opinions have become increasingly sensational, with more and more dissents being written in salient cases. In the next section, I test whether dissenting opinions exhibit higher levels of sensationalism than majority opinions, and whether majority opinion sensationalism interacts with the salience of a case. Furthermore, I control for and analyze the impact of term effect, coalition size, issue area, and opinion author.

Pre-Decision Salience and Opinion Sensationalism

In Table 4.1, I present regression analysis results using a number of different model specifications. Regardless of whether term, difference in coalition sizes, author dummies, or issue area dummies are added, the results remain the same. When cases are not salient, the sensationalism of a dissent is significantly higher than the sensationalism of majority opinions. On the other hand, the sensationalism of majority opinions increases as pre-decision salience increases. For dissents, the relationship between increased salience and sensationalism is considerably weaker, if not non-existent.

My theory argues that dissenters write with high levels of sensationalism in order to expand the scope of conflict and mobilize external actors. Majority opinion authors write with low levels of sensationalism because the status quo favors their ability to achieve legal policy. When pre-decision salience increases, however, majority opinion authors use more sensational opinion language to counteract the dissent's influence in a new environment.

	Model 1	Model 2	Model 3	Model 4	Model 5
Dissenting Opinion	0.03* (0.00)	0.03* (0.00)	0.02* (0.00)	0.02* (0.00)	0.02* (0.00)
Pre-Decision Salience	0.01* (0.00)	0.02* (0.00)	0.01* (0.00)	0.01* (0.00)	0.01* (0.00)
Salience X Dissent	-0.01* (0.01)	-0.01* (0.01)	-0.01* (0.01)	-0.01* (0.01)	-0.01* (0.00)
Term		0.00* (0.00)	0.00* (0.00)	0.00* (0.00)	0.00* (0.00)
Coalition Difference			-0.00* (0.00)	-0.00* (0.00)	-0.00* (0.00)
Author				✓	✓
Issue Area					✓
(Intercept)	5.10* (0.00)	2.72* (0.23)	2.73* (0.23)	2.35* (0.48)	3.18* (0.46)
N	9644	9644	9644	9643	9643
adj. R ²	0.01	0.02	0.02	0.03	0.13
Resid. sd	0.16	0.16	0.16	0.16	0.15

* indicates significance at $p < 0.05$

Table 4.1: Regression Analysis of Opinion Sensationalism (Full Results in Appendix)

Based on Model 1 from Table 4.1, I next estimated levels of sensationalism as a function of pre-decision salience for both the majority and dissenting opinions. These estimates, along with 95 percent confidence intervals and a rug plot, are shown in Figure 4.3. They are quite instructive. Based on the data, we would predict absolutely no difference in sensationalism between the dissent and majority opinion in the most salient cases. On the other hand, we predict a much starker difference between the opinions in more typical, non-salient cases.

In addition to supporting our main hypotheses, the regression models confirm other intuitions. First, sensationalism has indeed increased over time. Controlling for other factors, we still see a positive and statistically significant relationship for Supreme Court Term. Another important variable is that of Coalition Difference. Opinion writers write with language that is more sensational when cases are closely divided. Finally, by controlling for issue area and author, we address some factors that may have led to a spurious relationship between salience and sensationalism otherwise.

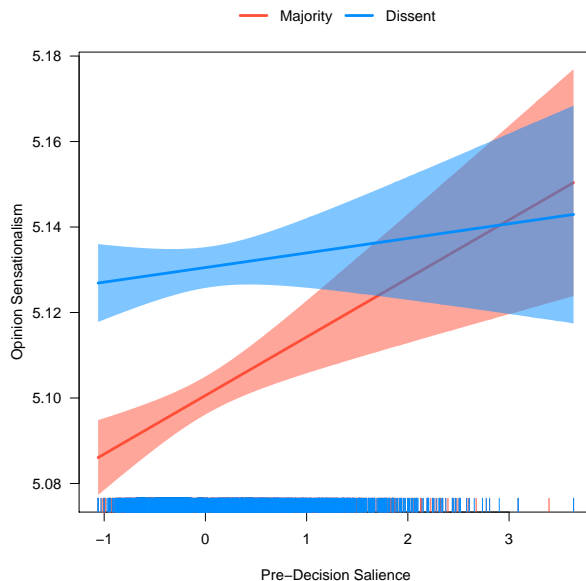


Figure 4.3: Predicted levels of sensationalism as a function of pre-decision salience for both majority and dissenting opinions. Shaded bands are 95 percent confidence intervals.

4.9 Conclusion

Justices are cognizant of external actors and seek to communicate with them (Baum, 2009). One way they do so is by adjusting the language of their opinions (Black et al., 2016c). My chapter uses this argument to understand the impact of public attention on Supreme Court opinion content. Justices use more sensational language in dissenting opinions and when there is increased public interest in a case.

The chapter makes at least four contributions. First, it sheds light on the purpose of dissents and the increasing sensationalism of legal opinions at the Supreme Court today. Second, it provides a new measure of emotional appeal, which measure I refer to as sensationalism, in Supreme Court opinions. Third, it incorporates recent advancements in salience measures to show that justices are responding to public interest, and not the other way around. And, fourth, it builds upon previous work by showing that the internal bargaining environment *and* external forces shape opinion content.

We can learn much regarding judicial behavior by examining how justices alter opinion

language to influence different audiences. For example, the choice of legal instruments in opinions may be based on trust of lower court judges or of federal administrations implementing decisions. Congruence with public opinion may provide justices more leverage over opinion content. Minimum-winning coalitions may be more likely to attack dissenting opinions than large majority coalitions.

Whatever the case, justices both seek to influence and are influenced by audiences. This perspective improves our understanding of the rise in sensational opinions in recent decades and the process of opinion writing more generally. Scholars need to continue to research how external actors and the strategic efforts of justices to maximize policy gains influence opinion content and the development of opinions.

A APPENDIX

Table A.1: Table of control and treatment group characteristics in survey experiment (Chapters 2 and 3).

Variable (scale)	Control Group		Treatment Group	
	Mean or Percent- age	Standard Deviation	Mean or Percent- age	Standard Deviation
Ideology (1-5)	2.79	1.39	2.59	1.38
Trust (1-5)	2.61	1.13	2.60	1.15
Knowledge (1-5)	2.96	0.84	2.92	0.83
News consumption (1-4)	3.28	0.72	3.30	0.74
Age bracket (1-7)	3.69	1.93	3.60	2.04
Income bracket (1-12)	5.97	3.04	5.79	3.02
Education level (1-10)	7.09	1.55	6.99	1.53
Gender: Female	48.0 %		49.2 %	
Race: White	77.7 %		79.6 %	
Race: Black/African American	10.5 %		05.0 %	
Race: Asian/Pacific Islander	06.2 %		08.3 %	
Race: Hispanic/Latino	03.7 %		05.5 %	
Race: Native American	00.6 %		00.2 %	
Race: Other	01.2 %		01.4 %	

Table A.2: Table of respondent characteristics in controversial speech survey experiment (Chapter 3).

Variable (scale)	Mean/% (Gins- burg)	St. Dev. (Gins- burg)	Mean/% (Gorsuch)	St. Dev. (Gorsuch)
Ideology (1-5)	2.74	1.43	2.73	1.39
Knowledge (1-5)	2.98	0.85	3.00	0.80
News consumption (1-4)	3.33	0.78	3.27	0.80
Age bracket (1-7)	3.89	1.96	3.90	1.86
Income bracket (1-12)	5.98	3.09	5.87	2.88
Education level (1-10)	5.90	1.83	5.77	1.80
Gender: Female	46.6 %		49.5 %	
Race: White	78.1 %		80.8 %	
Race: Black/African American	07.7 %		06.0 %	
Race: Asian/Pacific Islander	07.1 %		08.4 %	
Race: Hispanic/Latino	05.1 %		03.5 %	
Race: Native American	00.4 %		00.3 %	
Race: Other	01.6 %		01.1 %	

Table A.3: Ordered Logistic Regression Analysis of Legitimacy Index (Chapter 3)

	Soto	Alito	Soto	Alito
Judicial Speech	0.109 (0.225)	0.022 (0.233)	0.281 (0.353)	0.051 (0.415)
Judicial Image	0.492** (0.225)	-0.033 (0.231)	0.373 (0.355)	-0.089 (0.402)
Ideology	-0.228** (0.086)	0.117 (0.079)	-0.219* (0.127)	0.111 (0.125)
IdeologyXSpeech			-0.146 (0.214)	-0.017 (0.194)
IdeologyXImage			0.094 (0.203)	0.032 (0.185)
Observations	393	364	393	364

Note:

*p<0.1; **p<0.05

Table A.4: Regression Analysis of Legitimacy Index Component: If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)

	Ginsburg	Gorsuch
Constant	2.89** (0.15)	2.89** (0.15)
Judicial Speech	0.31 (0.21)	-0.05 (0.22)
Judicial Image	0.31 (0.20)	-0.01 (0.22)
Ideology	-0.01 (0.07)	-0.01 (0.07)
IdeologyXSpeech	-0.13 (0.09)	0.00 (0.10)
IdeologyXImage	-0.19** (0.09)	-0.04 (0.10)
Non-Judicial Image		-0.10 (0.22)
IdeologyXNon-Judicial Image		-0.04 (0.10)
Observations	490	632
<i>Note:</i>	*p<0.1; **p<0.05	

Table A.5: Regression Analysis of Legitimacy Index Component: Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)

	Ginsburg	Gorsuch
Constant	2.40** (0.16)	2.40** (0.17)
Judicial Speech	0.54** (0.23)	-0.03 (0.24)
Judicial Image	0.48** (0.22)	0.04 (0.24)
Ideology	0.02 (0.07)	0.02 (0.08)
IdeologyXSpeech	-0.17* (0.10)	-0.01 (0.11)
IdeologyXImage	-0.14 (0.10)	-0.03 (0.11)
Non-Judicial Image		-0.20 (0.25)
IdeologyXNon-Judicial Symbol		0.05 (0.11)
Observations	490	632
<i>Note:</i>	*p<0.1; **p<0.05	

Table A.6: Regression Analysis of Legitimacy Index Component: The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)

	Ginsburg	Gorsuch
Constant	2.60** (0.16)	2.60** (0.17)
Judicial Speech	0.36 (0.23)	-0.46* (0.24)
Judicial Image	0.43* (0.22)	-0.23 (0.23)
Ideology	-0.03 (0.07)	-0.03 (0.08)
IdeologyXSpeech	-0.14 (0.10)	0.19* (0.11)
IdeologyXImage	-0.20* (0.10)	0.05 (0.11)
Non-Judicial Image		-0.37 (0.24)
IdeologyXNon-Judicial Symbol		0.06 (0.11)
Observations	490	632
<i>Note:</i>	*p<0.1; **p<0.05	

Table A.7: Regression Analysis of Legitimacy Index Component: It is inevitable that the U.S. Supreme Court gets mixed up in politics; therefore, we ought to have stronger means of controlling the actions of the U.S. Supreme Court. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)

	Ginsburg	Gorsuch
Constant	2.29** (0.16)	2.29** (0.16)
Judicial Speech	0.59** (0.22)	-0.23 (0.23)
Judicial Image	0.47** (0.22)	-0.21 (0.23)
Ideology	-0.08 (0.07)	-0.08 (0.07)
IdeologyXSpeech	-0.17* (0.10)	0.11 (0.10)
IdeologyXImage	-0.21** (0.10)	0.14 (0.10)
Non-Judicial Image		-0.50** (0.24)
IdeologyXNon-Judicial Image		0.15 (0.11)
Observations	490	632
<i>Note:</i>	*p<0.1; **p<0.05	

Table A.8: Regression Analysis of Legitimacy Index Component: The right of the Supreme Court to decide certain types of controversial issues should be reduced. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)

	Ginsburg	Gorsuch
Constant	2.97** (0.15)	2.97** (0.15)
Judicial Speech	0.26 (0.21)	-0.16 (0.22)
Judicial Image	0.26 (0.21)	-0.16 (0.21)
Ideology	-0.17** (0.07)	-0.17** (0.07)
IdeologyXSpeech	-0.08 (0.10)	0.14 (0.10)
IdeologyXImage	-0.16* (0.09)	0.06 (0.10)
Non-Judicial Image		-0.53** (0.22)
IdeologyXNon-Judicial Image		0.18* (0.10)
Observations	490	632
<i>Note:</i>	*p<0.1; **p<0.05	

Table A.9: Regression Analysis of Legitimacy Index Component: The Supreme Court can usually be trusted to make decisions that are right for the country as a whole. Response on 5-point scale from strongly disagree to strongly agree. (Chapter 3)

	Ginsburg	Gorsuch
Constant	2.55** (0.13)	2.55** (0.13)
Judicial Speech	0.19 (0.18)	-0.24 (0.19)
Judicial Image	0.14 (0.17)	-0.20 (0.18)
Ideology	-0.05 (0.06)	-0.05 (0.06)
IdeologyXSpeech	0.03 (0.08)	0.18** (0.08)
IdeologyXImage	-0.00 (0.08)	0.04 (0.08)
Non-Judicial Image		-0.44** (0.19)
IdeologyXNon-Judicial Image		0.20** (0.09)
Observations	490	632
<i>Note:</i>	*p<0.1; **p<0.05	

Text of news stories:

'I'm A Justice, But Also A Human,' Sotomayor (Alito) says. (Chapters 2 and 3)

United States Supreme Court Justice Sonia (Samuel) Sotomayor (Alito) made the nation's highest court seem much more human during her (his) remarks Thursday.

Sotomayor (Alito) delivered the annual Robert W. Kastenmeier lecture. She/He roamed the audience as she/he took questions from moderators " two of her (his) former clerks " who remained seated on stage.

At one point, Sotomayor (Alito) stopped to take a photo with an 8-year-old girl (boy) in the crowd.

Later, the justice accepted a small gift from an audience member.

Sotomayor (Alito) said she (he) believes many people view the Supreme Court as a "distant and unknowable institution."

"But if I can talk to the general public about who I am, how important and passionate I am about the law, how important and passionate my colleagues are about it, even when we disagree, then maybe we can change people's perception of the court," she (he) said.

The justice spoke about the late Justice Antonin Scalia, saying his death in February has left "a big hole in the court."

Sotomayor (Alito) also spoke about her (his) judicial philosophy, the mentorship she (he) received from retired justice John Paul Stevens, and her (his) belief in the importance of the court's judges having diverse professional and personal backgrounds.

Ruth Bader Ginsburg: 'For so long, women were silent' (Chapter 3)

Ginsburg plainly is reveling in her current life as a cultural icon, who is known to her younger admirers as "the Notorious RBG." She has seen the 2016 Saturday Night Live "Gins-burn" parody, featuring Kate McKinnon as the black-robed justice. "I liked the actress who portrayed me," she declared, adding playfully, "And I would like to say, 'Gins-burrrrn.'"

When Totenberg asked Ginsburg what her eight fellow justices think of her rock-star status, she quipped, "My colleagues are judiciously silent about the Notorious RBG."

Ginsburg is the most senior liberal on the ideologically polarized court. It was her 2013 dissenting opinion in *Shelby County v. Holder*, which curtailed a key provision of the Voting Rights Act, that inspired the RBG meme. A New York University law student adapted it from rapper Notorious B.I.G., and the meme has since extended beyond the online world to songs, T-shirts, mugs, and all sorts of Ginsburg memorabilia.

A wide-ranging conversation in an informal café setting preceded the Sundance premiere of a new documentary film about Ginsburg's life, "RBG." Overall, the justice, who will turn 85 in March, appeared relaxed and in good humor. She was introduced by the founder of the film festival, actor Robert Redford, who saluted "her fight for justice and equality."

Supreme Court Justice Ruth Bader Ginsburg extolled the #MeToo movement and revealed one of her own experiences with sexual harassment in deeply personal observations Sunday at the Sundance Film Festival.

"I think it's about time," the 84-year-old Ginsburg said of the new emphasis. "For so long, women were silent."

Ginsburg has said she does not intend to leave the bench anytime soon. She recently signaled that she wants to remain at least through 2020 by hiring law clerks for at least two more terms.

On Sunday, Ginsburg said, "As long as I can do the job full steam, I will be here."

Gorsuch takes victory lap at Federalist dinner (Chapter 3)

Supreme Court Justice Neil Gorsuch mocked the conservative Federalist Society's critics along with his own detractors during a speech to the group's annual conference in Washington on Thursday.

Speaking in a cavernous hall just blocks from the high court, Gorsuch poked fun at those who've painted the Federalist group as a secretive organization intent on quietly taking over the judicial branch as well as other legal posts across the administration and White House.

Gorsuch's speech was a triumphant moment for the organization, which has played an outsized role in President Donald Trump's judicial picks and now counts scores of its members in powerful positions throughout the Trump administration.

"Tonight I can report, a person can be both a committed originalist and textualist and be confirmed to the Supreme Court of the United States," Gorsuch said to applause from the well-dressed and well-heeled crowd that gave him standing ovations at the beginning and end of his remarks. "Thank you from the bottom of my heart for your support and prayers through that process."

The new justice portrayed the Federalist Society's goals not only as benign, but as a welcome and much-needed corrective from an era in which federal judges felt increasingly empowered to issue sweeping rulings that had little to do with laws passed by Congress.

"The duty of a judge is to say what the law is not what it should be," the justice said.

At one point during his 33-minute address, Gorsuch also indicated emphatically that he plans to remain on the court "for a very long time."



Figure A.1: Justice Sotomayor image (Chapters 2 and 3)



Figure A.2: Justice Alito image (Chapters 2 and 3)



Figure A.3: Justice Ginsburg image (Chapter 3)



Figure A.4: Justice Gorsuch image (Chapter 3)



Figure A.5: Justice Gorsuch (non-judicial) image (Chapter 3)

Table A.10: Full Regression Analysis Results from Table 4.1. (Chapter 4)

	<i>Dependent variable:</i>
	Opinion Sensationalism
Dissenting Opinion	0.017*** (0.003)
Pre-Decision Salience	0.010*** (0.004)
Salience X Dissent	-0.010** (0.005)
Term	0.001*** (0.0002)
Coalition Difference	-0.001** (0.001)
ALITO	-0.023 (0.025)
BLACK	0.003 (0.011)
BLACKMUN	-0.004 (0.008)
BRENNAN	0.002 (0.008)
BREYER	-0.036*** (0.012)
BURGER	-0.003 (0.010)
BURTON	-0.029 (0.027)
CLARK	-0.001 (0.013)

DOUGLAS	−0.038*** (0.010)
FORTAS	−0.014 (0.021)
FRANKFURTER	0.015 (0.016)
GINSBURG	0.011 (0.012)
GOLDBERG	0.030 (0.021)
HARLAN	0.002 (0.011)
KENNEDY	−0.016 (0.011)
MARSHALL	0.009 (0.008)
MINTON	0.008 (0.047)
OCONNOR	−0.007 (0.009)
POWELL	−0.009 (0.010)
REED	−0.009 (0.035)
REHNQUIST	0.003 (0.008)

ROBERTS	−0.029 (0.027)
SCALIA	−0.017* (0.009)
SOUTER	−0.032*** (0.011)
STEWART	0.001 (0.010)
THOMAS	−0.012 (0.011)
WARREN	−0.006 (0.014)
WHITE	−0.021*** (0.008)
WHITTAKER	−0.026 (0.019)
Civil Rights	−0.061*** (0.005)
First Amendment	−0.013** (0.006)
Due Process	−0.028*** (0.008)
Privacy	−0.034*** (0.013)

Attorneys	0.038*** (0.014)
Unions	-0.205*** (0.008)
Economic Activity	-0.098*** (0.005)
Judicial Power	-0.016*** (0.006)
Federalism	-0.131*** (0.008)
Interstate Relations	-0.165*** (0.021)
Federal Taxation	-0.077*** (0.009)
Miscellaneous	-0.039 (0.030)
Constant	3.183*** (0.458)
<hr/>	
Observations	9,643
R ²	0.136
Adjusted R ²	0.132
Residual Std. Error	0.152 (df = 9596)
F Statistic	32.801*** (df = 46; 9596)
<hr/>	
Note:	*p<0.1; **p<0.05; ***p<0.01

REFERENCES

-
- Badas, Alex. 2016. The public's motivated response to supreme court decision-making. *Justice System Journal* 37(4):318–330.
- Baird, Vanessa A, and Amy Gangl. 2006. Shattering the myth of legality: The impact of the media's framing of supreme court procedures on perceptions of fairness. *Political Psychology* 27(4):597–614.
- Bartels, Brandon L, and Christopher D Johnston. 2011. Political justice? perceptions of politicization and public preferences toward the supreme court appointment process. *Public Opinion Quarterly* 76(1):105–116.
- . 2013. On the ideological foundations of supreme court legitimacy in the american public. *American Journal of Political Science* 57(1):184–199.
- Baum, Lawrence. 2009. *Judges and their audiences: A perspective on judicial behavior*. Princeton University Press.
- Berinsky, Adam J, Gregory A Huber, and Gabriel S Lenz. 2012. Evaluating online labor-markets for experimental research: Amazon.com's mechanical turk. *Political Analysis* 20(3):351–368.
- Bickel, Alexander M. 1986. *The least dangerous branch: The supreme court at the bar of politics*. Yale University Press.
- Black, Ryan C, Matthew EK Hall, Ryan J Owens, and Eve M Ringsmuth. 2016a. The role of emotional language in briefs before the us supreme court. *Journal of Law and Courts* 4(2):377–407.
- Black, Ryan C, Anthony J Madonna, and Ryan J Owens. 2014. Qualifications or philosophy? the use of blue slips in a polarized era. *Presidential Studies Quarterly* 44(2):290–308.

Black, Ryan C, and Ryan J Owens. 2009. Agenda setting in the supreme court: The collision of policy and jurisprudence. *The Journal of Politics* 71(3):1062–1075.

———. 2012. Consider the source (and the message) supreme court justices and strategic audits of lower court decisions. *Political Research Quarterly* 65(2):385–395.

Black, Ryan C., and Ryan J. Owens. 2016. Courting the president: How circuit court judges alter their behavior for promotion to the supreme court. *American Journal of Political Science* 60(1):30–43.

Black, Ryan C, Ryan J Owens, and Miles T Armaly. 2016b. A well-traveled lot: A research note on judicial travel by us supreme court justices. *Justice System Journal* 37(4):367–384.

Black, Ryan C., Ryan J. Owens, Justin Wedeking, and Patrick C. Wohlfarth. 2016c. *U.s. supreme court opinions and their audiences*. Cambridge University Press.

Black, Ryan C., Maron W. Sorenson, and Timothy R. Johnson. 2013. Toward an actor-based measure of supreme court case salience information-seeking and engagement during oral arguments. *Political Research Quarterly* 66(4):804–818.

Bradley, Margaret M., and Peter J. Lang. 2010. Affective norms for english words (anew): Stimuli, instruction manual, and affective ratings. Tech. Rep., Technical report C-2, Gainesville, Fl. The Center for Research in Psychophysiology, University of Florida.

Bryan, Amanda C., and Christopher D. Kromphardt. 2016. Public opinion, public support, and counter-attitudinal voting on the u.s. supreme court. *Justice System Journal* 1–20.

Bryan, Amanda C., and Eve M. Ringsmuth. 2016. Jeremiad or weapon of words?: The power of emotive language in supreme court dissents. *Journal of Law and Courts* 4(1): 159–185.

Caldeira, Gregory A, and James L Gibson. 1992. The etiology of public support for the supreme court. *American Journal of Political Science* 635–664.

Calvin, Bryan, Paul M Collins Jr., and Matthew Eshbaugh-Soha. 2011. On the relationship between public opinion and decision making in the u.s. courts of appeals. *Political Research Quarterly* 64(4):736–748.

Carlson, Keith, Michael A Livermore, and Daniel Rockmore. 2015. A quantitative analysis of writing style on the us supreme court. *Wash. UL Rev.* 93:1461.

Casillas, Christopher J, Peter K Enns, and Patrick C Wohlfarth. 2011. How public opinion constrains the us supreme court. *American Journal of Political Science* 55(1):74–88.

Chong, Dennis, and James N Druckman. 2010. Dynamic public opinion: Communication effects over time. *American Political Science Review* 104(04):663–680.

Christenson, Dino P, and David M Glick. 2015. Chief justice roberts's health care decision disrobed: The microfoundations of the supreme court's legitimacy. *American Journal of Political Science* 59(2):403–418.

Clark, Tom S. 2009. The separation of powers, court curbing, and judicial legitimacy. *American Journal of Political Science* 53(4):971–989.

Clark, Tom S., Jeffrey R. Lax, and Douglas Rice. 2015. Measuring the political salience of supreme court cases. *Journal of Law and Courts* 3(1):37–65.

Clayton, Cornell W., and Howard Gillman. 1999. *Supreme court decision-making: New institutionalist approaches*. University of Chicago Press.

Collins, Todd A., and Christopher A. Cooper. 2012. Case salience and media coverage of supreme court decisions toward a new measure. *Political Research Quarterly* 65(2):396–407.

Corley, Pamela C. 2008. The supreme court and opinion content: The influence of parties' briefs. *Political Research Quarterly* 61(3):468–478.

Corley, Pamela C. 2010. *Concurring opinion writing on the u.s. supreme court*. SUNY Press.

Corley, Pamela C, Paul M Collins Jr, and Bryan Calvin. 2011. Lower court influence on us supreme court opinion content. *The Journal of Politics* 73(1):31–44.

Cross, Frank. 2005. Appellate court adherence to precedent. *Journal of Empirical Legal Studies* 2(2):369–405.

Cross, Frank B, and James W Pennebaker. 2014. The language of the roberts court. *Mich. St. L. Rev.* 853.

Cross, Frank B., and Emerson H. Tiller. 1998. Judicial partisanship and obedience to legal doctrine: Whistleblowing on the federal courts of appeals. *The Yale Law Journal* 107(7): 2155–2176.

Davis, Richard. 2011. *Justices and journalists: The us supreme court and the media*. Cambridge University Press.

Druckman, James N, Donald P Green, James H Kuklinski, and Arthur Lupia. 2011. *Cambridge handbook of experimental political science*. Cambridge University Press.

Epstein, Lee, and Tonja Jacobi. 2010. The strategic analysis of judicial decisions. *Annual Review of Law and Social Science* 6:341–358.

Epstein, Lee, and Jack Knight. 1997. *The choices justices make*. SAGE.

———. 1999. Mapping out the strategic terrain: The informational role of amici curiae. *Supreme Court Decision-Making: New Institutional Approaches* 215:225–28.

Epstein, Lee, and Andrew D. Martin. 2010. Does public opinion influence the supreme court? possibly yes (but we're not sure why). *University of Pennsylvania Journal of Constitutional Law* 13(263).

Epstein, Lee, and Jeffrey A. Segal. 2000. Measuring issue salience. *American Journal of Political Science* 66–83.

Epstein, Lee, Jeffrey A Segal, Nancy Staudt, and Rene Lindstadt. 2004. The role of qualifications in the confirmation of nominees to the us supreme court. *Florida State University Law Review* 32:1145.

Fenno, Richard F. 1978. *Home style: House members in their districts*. Harper Collins,.

Fisher, Louis. 1993. The legislative veto: Invalidated, it survives. *Law and Contemporary Problems* 56(4):273–292.

Franklin, Charles H, and Liane C Kosaki. 1989. Republican schoolmaster: The us supreme court, public opinion, and abortion. *American Political Science Review* 83(3):751–771.

Frantzich, Stephen E. 2015. *Conversations of democracy: Linking citizens to american government*. Routledge.

Garoupa, Nuno, and Tom Ginsburg. 2008. Judicial audiences and reputation: Perspectives from comparative law. *Columbia Journal of Transnational Law* 47:451.

Gibson, James L. 2007. The legitimacy of the us supreme court in a polarized polity. *Journal of Empirical Legal Studies* 4(3):507–538.

Gibson, James L, and Gregory A Caldeira. 2009. *Citizens, courts, and confirmations: Positivity theory and the judgments of the american people*. Princeton University Press.

Gibson, James L., and Gregory A. Caldeira. 2011. Has legal realism damaged the legitimacy of the us supreme court? *Law & Society Review* 45(1):195–219.

Gibson, James L, Gregory A Caldeira, and Vanessa A Baird. 1998. On the legitimacy of national high courts. *American Political Science Review* 92(02):343–358.

Gibson, James L, Milton Lodge, and Benjamin Woodson. 2014. Losing, but accepting: Legitimacy, positivity theory, and the symbols of judicial authority. *Law & Society Review* 48(4):837–866.

Gibson, James L, and Michael J Nelson. 2014. The legitimacy of the us supreme court: Conventional wisdoms and recent challenges thereto. *Annual Review of Law and Social Science* 10:201–219.

———. 2016. Change in institutional support for the us supreme court: Is the court's legitimacy imperiled by the decisions it makes? *Public Opinion Quarterly* 80(3):622–641.

Goldman, Sheldon. 2004. Judicial confirmation wars: Ideology and the battle for the federal courts. *University of Richmond Law Review* 39:871.

Gruhl, John. 1980. The supreme court's impact on the law of libel: Compliance by lower federal courts. *Western Political Quarterly* 33(4):502–519.

Grundy, Harry. 2000. Television and legislatures: The american experience. *Canadian Parliamentary Review* 34–6.

Hall, Matthew E.K. 2010. *The nature of supreme court power*. Cambridge University Press.

———. 2014. The semiconstrained court: Public opinion, the separation of powers, and the u.s. supreme court's fear of nonimplementation. *American Journal of Political Science* 58(2):352–66.

Hamilton, Alexander. 2009. Federalist no. 78. In *The federalist papers*, 235–240. Springer.

Hansford, Thomas G, and James F Spriggs. 2006. *The politics of precedent on the us supreme court*. Princeton University Press.

Hibbing, John R, and Elizabeth Theiss-Morse. 2002. *Stealth democracy: Americans' beliefs about how government should work*. Cambridge University Press.

Hoekstra, Valerie J. 2003. *Public reaction to supreme court decisions*. Cambridge University Press.

Hume, Robert J. 2009. *How courts impact federal administrative behavior*. Routledge.

Johnson, Timothy R., Ryan C. Black, and Eve M. Ringsmuth. 2008. Hear me roar: What provokes supreme court justices to dissent from the bench. *Minnesota Law Review* 93.

Kastellec, Jonathan P. 2016. Empirically evaluating the countermajoritarian difficulty: Public opinion, state policy, and judicial review before *Roe v. Wade*. *Journal of Law and Courts* 4(1).

Krewson, Christopher, and Ryan Owens. 2017. History of supreme court research. In *Handbook of judicial behavior*, ed. Robert Howard and Kirk Randazzo. Routledge.

Krewson, Christopher N. Save this honorable court: Shaping public perceptions of the supreme court off the bench.

Lavrakas, Paul J. 2008. *Encyclopedia of survey research methods*. Sage Publications.

Lee, Frances E. 2009. *Beyond ideology: Politics, principles, and partisanship in the us senate*. University of Chicago Press.

Leval, Pierre N. 2006. Judging under the constitution: Dicta about dicta. *New York University Law Review* 81.

Luse, Jennifer K, Geoffrey McGovern, Wendy L Martinek, and Sara C Benesh. 2009. "such inferior courts..." compliance by circuits with jurisprudential regimes. *American Politics Research* 37(1):75–106.

Madison, James. 1961. The federalist papers: No. 51. *New York: New American Library* 961: 326.

Maltzman, Forrest, James F Spriggs, and Paul J Wahlbeck. 2000. *Crafting law on the supreme court: The collegial game*. Cambridge University Press.

McCloskey, Robert G. 2010. *The american supreme court*. University of Chicago Press.

McCubbins, Mathew D, and Thomas Schwartz. 1984. Congressional oversight overlooked: Police patrols versus fire alarms. *American Journal of Political Science* 165–179.

McGuire, Kevin T. 2009. Public schools, religious establishments, and the us supreme court: An examination of policy compliance. *American Politics Research* 37(1):50–74.

Mixon, Franklin, and Kamal P. Upadhyaya. 2003. *Legislative television as political advertising: A public choice approach*. iUniverse.

Mixon Jr, Franklin G., M. Troy Gibson, and Kamal P. Upadhyaya. 2003. Has legislative television changed legislator behavior?: C-span2 and the frequency of senate filibustering. *Public Choice* 115(1-2):139–62.

Mondak, Jeffery. 2018. From bad to worse: Political judgments and dispositional variation in the negativity bias.

Mondak, Jeffery J, and Shannon Ishiyama Smithey. 1997. The dynamics of public support for the supreme court. *The Journal of Politics* 59(4):1114–1142.

Mullinix, Kevin J, Thomas J Leeper, James N Druckman, and Jeremy Freese. 2015. The generalizability of survey experiments. *Journal of Experimental Political Science* 2(2):109–138.

Murphy, Walter F. 1964. *Elements of judicial strategy*. The University of Chicago Press.

Nelson, Michael J, and James L Gibson. 2017. Us supreme court legitimacy: Unanswered questions and an agenda for future research. In *Handbook of judicial behavior*, ed. Robert Howard and Kirk Randazzo. Routledge.

O'Brien, David M. 2008. *Storm center: The supreme court in american politics*. WW Norton & Company Incorporated.

Owens, Ryan J, Justin Wedeking, and Patrick C. Wohlfarth. 2013. How the supreme court alters opinion language to evade congressional review. *Journal of Law and Courts* 1(1): 35–59.

Owens, Ryan J, and Justin P Wedeking. 2011. Justices and legal clarity: Analyzing the complexity of us supreme court opinions. *Law & Society Review* 45(4):1027–1061.

Owens, Ryan J, and Patrick C Wohlfarth. 2017. Public mood, previous electoral experience, and responsiveness among federal circuit court judges. *American Politics Research*.

Posner, Richard A. 2010. *How judges think*. Harvard University Press.

Richards, Mark J, and Herbert M Kritzer. 2002. Jurisprudential regimes in supreme court decision making. *American Political Science Review* 96(2):305–320.

Rohde, David W., and Harold J. Spaeth. 1976. *Supreme court decision making*. WH Freeman.

Rosenberg, Gerald N. 2008. *The hollow hope: Can courts bring about social change?* University of Chicago Press.

Ryan, Meghan J. 2016. Justice scalia’s bottom-up approach to shaping the law. *Wm. & Mary Bill Rts. J.* 25:297.

Schattschneider, Elmer E. 1975. *The semi-sovereign people: A realist’s view of democracy in america*.

Scheufele, Dietram A., and David Tewksbury. 2007. Framing, agenda setting, and priming: The evolution of three media effects models. *Journal of communication* 57(1):9–20.

Schmidt, Christopher W. 2013. Beyond the opinion: Supreme court justices and extrajudicial speech. *Chicago-Kent Law Review* 88(2).

Segal, Jeffrey A., and Harold J. Spaeth. 1993. *The supreme court and the attitudinal model*. Cambridge University Press.

———. 1996. The influence of stare decisis on the votes of united states supreme court justices. *American Journal of Political Science* 971–1003.

Segal, Jeffrey A, and Harold J Spaeth. 2002. *The supreme court and the attitudinal model revisited*. Cambridge University Press.

Songer, Donald R. 1987. The impact of the supreme court on trends in economic policy making in the united states courts of appeals. *The Journal of Politics* 49(3):830–841.

Songer, Donald R, Jeffrey A Segal, and Charles M Cameron. 1994. The hierarchy of justice: Testing a principal-agent model of supreme court-circuit court interactions. *American Journal of Political Science* 673–696.

Songer, Donald R, and Reginald S Sheehan. 1990. Supreme court impact on compliance and outcomes: Miranda and new york times in the united states courts of appeals. *Western Political Quarterly* 43(2):297–316.

Spaeth, Harold J., Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh. 2016. *The supreme court database*. 2016 Supreme Court Database, Version 2015 Release 02.

Sudman, Seymour, Norman M Bradburn, and Norbert Schwarz. 1996. *Thinking about answers: The application of cognitive processes to survey methodology*. Jossey-Bass.

Tocqueville, A. de. 2017. *Democracy in america*.

Tyler, Tom R. 2006. Psychological perspectives on legitimacy and legitimation. *Annu. Rev. Psychol.* 57:375–400.

Ura, Joseph Daniel, and Patrick C Wohlfarth. 2010. “an appeal to the people”: Public opinion and congressional support for the supreme court. *The Journal of Politics* 72(4): 939–956.

Wedeking, Justin, and Michael A Zilis. 2017. Disagreeable rhetoric and the prospect of public opposition: Opinion moderation on the us supreme court. *Political Research Quarterly* 1065912917738578.

Young, Lori, and Stuart Soroka. 2012. Affective news: The automated coding of sentiment in political texts. *Political Communication* 29(2):205–231.

Zaller, John. 1992. *The nature and origins of mass opinion*. Cambridge university press.

Zilis, Michael A, Justin Wedeking, and Alexander Denison. 2017. Hitting the bullseye in supreme court coverage: News quality in the court's 2014 term. *Elon L. Rev.* 9:489.

Zink, James R, James F Spriggs, and John T Scott. 2009. Courting the public: The influence of decision attributes on individuals' views of court opinions. *The Journal of Politics* 71(3): 909–925.