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Public Justice: Analyzing the Interactions of Supreme Court Justices with the American Public

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Digital Object Identifier: https://doi.org/10.13023/etd.2024.61

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Public Justice: Analyzing the Interactions of Supreme Court Justices with the
American Public

DISSERTATION

A dissertation submitted in partial
fulfillment of the requirements for
the degree of Doctor of Philosophy
in the College of Arts and Sciences
at the University of Kentucky

By
Sarah Abigail Wood
Lexington, Kentucky

Director: Dr. Justin Wedeking, Professor of Political Science
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2024

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ABSTRACT OF DISSERTATION

Public Justice: Analyzing the Interactions of Supreme Court Justices with the
American Public

When and how do Supreme Court justices choose to interact with the public? What motivating factors spur a justice to make a public appearance? In the fields of political science, public law, and legal studies, research has overwhelmingly studied on-the-bench behavior. Scholars have analyzed judicial voting patterns, opinion writing, oral arguments, and more. Despite the prevalence and importance of non-decision making activities as well as the growing reporting by media outlets concerning justices' public appearances, there remains a lack of attention devoted to exploring how justices behave off-the-bench. In this dissertation, I seek to develop this neglected area within judicial politics. Specifically, I examine one common element of off-the-bench behavior: The act of going public. I build a novel dataset of every instance of a justice going public from 2000-2022 in order to better understand judicial appearances. I explore this concept with three primary questions. First, when do justices go public? Because justices and their appearances are understudied, I begin by documenting that justices do regularly go public, have been doing so at an increasing pace, and multiple factors shape their decision of when to go public. Second, how do justices go public? I utilize the data I collect to showcase that justices are intentional in their choices of what audiences to speak to, what appearance form to use (speeches, television appearances, teaching, or public statements), and what to say in these appearances. Third, why do justices go public? I posit a variety of instrumental and non-instrumental forces cause a justice to make a public appearance. I find that public appearances are strategic and based on a myriad of factors including the Court's approval rating, ideology, and demographic factors. Collectively, my findings depict the behavior justices choose to adopt in their off-the-bench behavior and how this behavior has changed over time. More broadly, this dissertation speaks to important subjects including communication by elite actors, the relationship between the Court and the public, and strategic behavior.

KEYWORDS: Supreme Court, Judicial Politics, Going Public

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Sarah Abigail Wood

April 30, 2024

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Public Justice: Analyzing the Interactions of Supreme Court Justices with the
American Public

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To James Saulsbury and to his memory. He is missed every day.

ACKNOWLEDGMENTS

This Ph.D. feels only partly mine and more so like it also belongs to countless other individuals who have supported me not just the past four years but far before then as well. The next few pages contain a glimpse at some of the important people who I owe so much gratitude to. And above all, I am thankful to the Lord for the gifts He has provided me with and the blessing of community. Completing this PhD, as with the rest of my life and my journey thus far, is a story of Him holding me fast. Great is His faithfulness.

I am indebted to various individuals at the University of Kentucky. When I arrived at Kentucky as a Ph.D. student, I was barely 21 years old and did not have much of any idea at all of what graduate school looked like. So many individuals poured into me to ensure that this Ph.D. would become a reality. First, I would like to thank my advisor, Dr. Justin Wedeking. I truly cannot express how much Justin has shaped me as a scholar. He has been a supportive presence throughout my time in the department. He has always made time for my questions and has spent countless hours discussing research with me, reading many drafts, and offering thoughtful feedback. This dissertation, and everything I have written the past few years, has benefited from Justin's expertise and knowledge. Justin has always made sure to fight and advocate for me as his graduate student. I truly could not imagine a better advisor and will always be grateful for his mentorship of me.

I would also like to thank Dr. Michael Zilis. I began this project in Mike's class during my second year and he helped shape the project into what it is today. Mike is an amazing scholar and I have learned a tremendous amount from him. He has also been DGS for a number of my years in the program and I am grateful for his leadership of graduate students. I would like to thank Dr. Maggie Macdonald

for also serving as a committee member. Maggie's comments helped me push my thinking. I am excited to see how Maggie continues to thrive in the department of political science. I am also grateful to Dr. Annelise Russell who served as my outside committee member. In many ways, this work is influenced by Annelise's research on how Congress members communicate. Her work encouraged me to think about how judges and justices engage in communication. I am also grateful to my outside examiner, Dr. Sarah Geegan, for her time and expertise.

There are other faculty members in the Department of Political Science that deserve my thanks. I thank Dr. Dan Morey for teaching me statistics and always being a friendly and encouraging presence in the department. I thank Dr. Steve Voss for all the advice he has offered me over the years. I have had the privilege of serving as Steve's TA twice and do not believe I will ever witness a better instructor than him. I also wish to thank Dr. Clayton Thyne. I cannot adequately depict how much Clayton has helped me during my time at UK. Clayton was the chair of the department for my first three years at UK. In that role, he always supported and advocated for me. I learned so much from him, not only in his teaching my stats course, but also from observing his consistent leadership and his care for everyone in our department. Now, as associate dean, Clayton continues to advocate for me and support me. In particular, he was an influential figure when I decided to pursue the career I am in now. I think the University is all the better with Clayton in a leadership position.

Long before I ever came to Kentucky, I was shaped by other instructors and administrators. I am a proud community college graduate and am thankful to so many people at Northeast State Community College for igniting a love for higher education in me. In particular, thank you to James King, Sherman Patrick, Rick Merritt, Jim Kelly, Matt Delozier, Jim Henrichs, Carson Waugh, Anne Darden, Tim Harrison, Wayne Loving, William Wilson, Greg Walters, Mark Beaty, Josh Johnson, and many

others. I am also thankful for programs like the Tennessee Promise Program and the individuals working to make that program what it is.

My last two years of college at East Tennessee State University were some of the best years of my life. It was at ETSU where I decided to pursue a Ph.D. I would like to thank Dr. Kimberly Wilson for being the first person to suggest that I go to graduate school and keep studying political science. I enjoyed her classes so much and the things I learned in Chinese Politics class still regularly come to mind. I would also like to thank Dr. Wesley Wehde for his mentorship of me. Especially as a new graduate student, I always enjoyed seeing Dr. Wehde's friendly presence at conferences. I would also like to thank Dr. Briley and Dr. Battista for their courses that furthered my knowledge of political science. Dr. Fulks provided instruction that aided my passion for judicial politics and the courts. Dr. Michael McKinney's Legal Environment of Business course was also influential in my collegiate experience. I am incredibly indebted to Dr. Colin Glennon. Dr. Glennon served as my undergraduate thesis advisor and mentor. He offered countless pieces of advice on applying for graduate school, the world of judicial politics, and encouraged me every step of the way. It was in his class, Constitutional Civil Liberties, that I realized the Supreme Court truly was fascinating and that I wanted to study it more. I also had the unique privilege of being a Midway Honors Scholar at ETSU. I would like to thank the ETSU Honors' College for that honor and Dr. Karen Kornweibel for that opportunity.

I would be incredibly remiss to not thank my fellow political science graduate school friends who are family to me in so many ways. Whenever I am asked the best part of graduate school, the answer will always be them. When you start a Ph.D. program, you move to a strange place and start a new position without knowing anyone and have to just hope you enjoy the fellow graduate students. I feel incredibly lucky to not just enjoy my fellow graduate students but also to call so many of them good friends. In particular, thank you to Audrey Baricovich and EmiLee Smart.

Aside from being fellow judicial politics women, I know we will also all be lifelong friends. It is without exaggeration when I say we have texted multiple times every single day for the past few years. They have served as my sounding board, fellow colluders, and venting partners. I am thankful for many hours of laughter, research idea, venting, and spilling tea with them.

Thank you to Ben Leo and John Gantner who have also been wonderful friends and colleagues. Ben never failed to make Office 1606 bust out with laughter and during a PhD program, that laughter was very much needed. John has been a wonderful presence in the department the past two years and despite his affinity for queso, we stuck it out with him. Yasuki Kudo has been a wonderful fellow cohort member and colleague. Especially our first few years in the program, it was wonderful to have Yasuki to navigate graduate school with. I have to also thank my dear Baylee Harrell. You just don't meet many people in a political science PhD program with good southern values but Baylee was certainly that for me. I miss her quite a bit now that she is in D.C. but am so proud of her for living out her dreams. I know we will still go blackberry picking and hunting for good fences whenever we get the chance. Thank you to Kelly Grenier for your friendship and encouragement of me since I have been in the program. I have learned a lot from Kelly and am grateful for that. Thank you to both Eva Hicks and Matt Penn for their support of graduate students and how both have always been so helpful and friendly to me. I would also like to thank all my new colleagues at the Stuckert Career Center and The Graduate School. While new in my work, you all have already made me feel at home.

When I moved to Lexington as a new graduate student during a global pandemic, the world felt very lonely at first. Tates Creek Presbyterian Church helped that loneliness to cease. I am so grateful to the congregation at TCPC for their love and care for me and my husband. I love being a part of this church and its mission to serve the Bluegrass. I am thankful for the preaching and pastoral care of Mark,

Will, and Luke. I am particularly grateful to Mark for the pre-marital counseling he provided to Trey and I. His continued, gentle reminders that I have freedom in Christ have impacted my life profoundly and spurred me to live and bask in the freedom we have because of the cross of Jesus Christ. I am grateful to Nate Jones and his love and passion for our church. I am thankful for his and Cynthia's leadership in our beloved newlywed group. Thank you to the Cunningham family as well. I have loved being in your home and with your family and the boys who are so special to me. I am thankful for parish group friends who are our community in so many ways. I am also thankful for the Tuesday night girls' group. The Tuesday night group has been one of the sweetest gifts the Lord has provided to me during my time in Lexington. The ability to gather with other believing women in a similar life stage every week to talk, eat, share, and learn together is something so dear to my heart. To the Tuesday night girls (both past and present members), I am thankful to know you all and be in community with each of you.

There are other individuals at TCPC worthy of mention. I owe so many thanks to Kay Sox. When I think of a person that embodies Jesus, Kay always comes to mind. For over 3 years, I have been in Kay's home most Tuesday evenings. Aside from Tuesday night gatherings, she regularly encourages me and pours into me over a cup of coffee or a meal together. I hope to be half the woman she is one day. I also do not have the right words to express how much of an influence Allison and Stephen Gordon have had on my life in the last few years. One obvious way that Allison has helped me is that because of her wisdom and advice, Trey and I got together and stayed together. Her testimony of "God opening the heavens for her" has resonated with me in so many ways. I am grateful for the friendship and discipleship that Stephen and Allison have offered to us. And thank you as well to Claire, Cecily, Julia, Peter, and Sibby for adding many smiles to my life.

My favorite line from my favorite movie, It's a Wonderful Life, says "Remember,

George, no man is a failure who has friends." A Ph.D. journey can often lend itself to feelings of failure. When these feelings arose, remembering the dear friends I have helped. I am grateful to Audra Hines who I have had the privilege of being friends with for almost all of my life. We truly grew up together and now get to be old married women together. I am thankful for her unending and unconditional friendship. I am thankful to Sydnee Birkner who makes me laugh harder than anyone else. I do not think I would have liked political science so much had I not had you by my side the last two years of college. I am thankful to Emily Burroughs who is a steadfast friend who filled my college years with deep friendship. Audrey Sanders is another dear friend that I am so glad to have gotten to be in community with during college.

Since moving to Lexington, I have felt immensely blessed by the Lord to have made other close friendships. One of the best things that ever happened to me is deciding to move in with Lydia and Annelise. There, I found myself with two lifelong friends. We went from casual friends to close friends who would tell each other anything in just a couple of weeks. Thank you, Lydia, for being a thoughtful and honest friend, always willing to listen and offer sound advice. Thank you, Annelise, for filling my life with so much laughter but also for being there for me through all the good, bad, and the ugly. Thank you to Anna Brashier who I miss so much. I loved our time together in Lexington of so many coffee shops, Target and Peddler's Mall shopping trips, hanging out and just doing life together, and so much more. I love your friendship and love making eye contact with you across rooms whenever something funny happens. To Georgie Stacy, thank you for many coffee dates and being able to talk about anything under the sun. To Maddy Bratcher, thank you for your sweet friendship and love and care for me. To Meggie Lund, thank you for all the times at Chocolate Holler filled with deep conversations. To Sidney Fisher, thank you for your thoughtful presence in my life and for being welcoming as soon as I came to Lexington.

Anyone who knows me at all knows how much I love and adore my family. And, without a doubt, this Ph.D. could not have happened without them. My parents, David and Debbie Saulsbury, have supported me and encouraged me through every step of life. As I have gotten older, I have realized that one of the greatest privileges I have in life is having two parents who unconditionally love me. I have never once questioned their love and care for me which is a true blessing not afforded to everyone. My parents have always encouraged me to pursue big things and never once doubted my abilities. To my mom, thank you for your loving presence in my story. You exude happiness and joy that spurs me on. Taylor Swift says about her own mother "I love you for being on my side, even when I was wrong". How blessed I am to know you've always been on my side, even when I was wrong. This Ph.D. only happened because of your strength and dedication. To my dad, thank you for loving me so deeply and being the constant in my life. No matter what happened in life, I have always known you would be there. Your hard work encourages me to do hard things like this dissertation. I will always know and believe with everything in me that I have the best dad in the world.

I often get asked what it's like to have 8 siblings and the answer is that I wouldn't trade it for anything in the world. Having 8 siblings has ensured that my life is always filled with joy, To Will, thank you for your steady nature and your deep love for each member of our family. To Joe, thank you for your amazing sense of humor, great love of sports, and being a marshmallow on the inside. To Elizabeth, thank you for being the quintessential big sister and consistently believing your younger sisters can take on the world. To Matt, thanks for always being someone I can talk about anything with and always pointing me back to Christ. To Hannah, thank you for your constant encouragement and for always inspiring me to try my best and reach for big things. To Rebekah, thank you for your passion for life and your presence which is fun and something I always want to be around. To Tabitha, thank you for being the light of

my life and always bringing a smile to my face. To Zuzu, thank you for your loyalty, spirit, and for rounding out our family in the very best way. To my dear sister-in-law Morgan, I love you dearly and am so thankful you are in my life. Thank you for always being open to a long phone call to talk about anything and everything. And to Naomi and Harrison, thank you for being the cutest niece and nephew ever. I have shown pictures of you all to many, many people across the University of Kentucky (whether they wanted to see them or not) and regularly procrastinate by watching adorable videos of you all. I love you both and love being your aunt. Thank you also to Grandad and Darlene for being wonderful grandparents and always supporting me.

And finally, I extend all my thanks and all my love to my husband and best friend, Trey. Trey walked into my life on August 24th, 2020, and I haven't known a day since without him in it. We went from being colleagues, to friends, to best friends, to awkwardly liking each other, to dating, to boyfriend and girlfriend, to engaged, and to married. Through the crazy journey that the past four years have been, I am thankful that Trey has been by my side through it all. I have gained many things from the University of Kentucky but the best by far is him. This Ph.D. is only possible because of Trey's unconditional love and support. It is no understatement that I have likely said I wanted to quit the Ph.D. no less than 500 times. For each of those hard 500 times, it was Trey's love and care for me that kept me going. Through the smaller things like cooking meals so I could work, helping me with data, reminding me to take breaks and the big things like always listening, being patient when I was incredibly stressed, and encouraging me when I did not know if I could keep doing it, this Ph.D. has perfectly displayed the deep and unending love that defines Trey. I spent many years thinking of what my future husband would be like, but never did I imagine my husband could be someone as thoughtful, sincere, loving, strong, compassionate, and forgiving as Trey. To Trey, thank you for being my husband, best friend, favorite person, and biggest supporter. Trey, I love you with everything in me

and love the fact that I get to spend the rest of my life with you. Here's to us and our future.

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Chapter 1 Introduction

On September 12th, 2021, the U.S. Supreme Court's then most recent member, Justice Amy Coney Barrett, visited the McConnell Center in Louisville, Kentucky. Accompanied by Senator Mitch McConnell, Barrett made a speech in front of a large audience. In her speech, Justice Barrett attempted to persuade the audience that the high Court was, in fact, not partisan. As was reported through a variety of news media outlets, she began by saying, "my goal today is to convince you that this Court is not comprised of a bunch of partisan hacks" (Duster, 2021a). Justice Barrett went on to detail how justices on the Court decide cases and their reliance on judicial philosophy instead of ideological considerations in reaching decisions. Barrett's appearance at this event marked an instance of a justice going public. Her comments, when considered in full, seem to have a direct purpose: To engage in institutional maintenance and to raise support for the Court. These comments, if they are, in fact, an effort to raise approval ratings, come at an important time due to decreasing confidence in and support for the Court (Jones, 2021).

A little over one year after Justice Barrett's remarks, Justice Elena Kagan made a speech of her own on September 19th, 2022. Speaking to an audience at Salva Regina University in Newport, Rhode Island, Justice Kagan said the following, "The Court shouldn't be wandering around just inserting itself into every hot button issue in America, and it especially, you know, shouldn't be doing that in a way that reflects one ideology or one set of political views over another" (Fritze, 2022). Kagan's remarks were made in the aftermath of a series of controversial decisions by the Court, including the overturning of *Roe v. Wade* (410 U.S. 113, 1973). In contrast to Barrett's remarks, Kagan seems to critique the Court and its recent decision making.

In October of 2022, Justice Samuel Alito also engaged the public. In his public

appearance, he pushed back against accusations regarding the Court by remarking in a media interview to the Wall Street Journal, "Saying or implying that the Court is becoming an illegitimate institution or questioning our integrity crosses an important line" (de Vogue, 2022a). In that interview and in other recent public appearances, Alito sought to defend the Court from various accusations. In fact, some even speculate Alito was responding to criticism from other justices, including Justice Kagan (de Vogue, 2022a).

These examples of Justices Barrett, Kagan, and Alito's remarks all share several things in common. First, they represent examples of a United States Supreme Court justice making a public appearance. In each instance, a justice made some sort of public-facing comment whether that be a speech to a general or university audience or an interview with a media outlet. Furthermore, the public-facing comments all share a commonality of signaling. While the justices are speaking about the Court and its health, they also appear to be engaged in a signaling game with other political elites. For instance, Justice Kagan's aforementioned remarks could be interpreted as a signal to her fellow justices while Justice Alito's comments just one month later appear to almost respond to Kagan's criticism. However, each example is also somewhat different. Each justice felt the need to go public and engage in signaling but each did so in a different manner. Barrett went public via a speech in front of a general audience, Kagan through speaking to a university crowd, and Alito through a media interview. The comments by justices were different, their various opinions on the Court's current status in society were all different, and their methods for making remarks were different. Yet, despite these discrepancies across justices, despite differences regarding ideology and judicial philosophies, each justice chose to make a public appearance. What explains these differences and commonalities? Are justices attempting to act in their own best interest or the best interest of the Court when they interact with the public? What is the driving force causing justices to

make public appearances?

Aside from these questions, the notion of a justice engaging in public appearances creates a puzzle. Justices are unelected and serve lifetime appointments on the Court. Justices represent an insulated political institution. While it is intuitive to expect legislators and executives to engage with the public (Eshbaugh-Soha, 2010; Frantzich, 2015), the mechanism causing justices to engage with the public is less clear. Why do members of an insulated political institution need to appeal to the public? Why are members of the Court seeking out public interactions?

Motivated by instances of judicial public appearances and the questions they raise, in this dissertation, I explore off-the-bench behavior by justices. More specifically, I am interested in understanding justices and their public appearances, often coined in other scholarship as acts of "going public" (Kernell, 1997). I define "going public" to be any public facing remarks a justice chooses to make through a variety of extrajudicial activities including media appearances, speech making, teaching, and public statements.[1] Public facing comments typically fall into these four broad categories: A news media interview, a speech at an event, issuing a public statement, or teaching a course.[2] Importantly, my data does not include instances where a justice appeared at an event but did not speak. Because the very definition of going public includes the making of an appeal, I only include events and instances where justices speak in some form. Similar to literature on other political actors going public, I recognize the various costs that going public imposes upon a justice but hold that under certain conditions, the members of the Court will find it in their own and the Court's best interest to interact with the public in some form.

These speeches and interviews by justices appear to attract quite a bit of attention from media outlets and the general public. The aforementioned remarks by

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[1] In my review of the literature in chapter 2, I discuss various definitions of going public that have previously been offered by scholars.

[2] This categorization will be further refined and clarified when I discuss the coding scheme for determining acts of going public in chapter 3.

Justices Barrett, Kagan, and Alito were highly reported and discussed in the media. It is clear the media is paying attention to the Court's appearances. Because of the media's increased attention to justice appearances and because of an increased attention to the Court, the public should also be following the behavior of justices, *including* off-the-bench behavior. This media attention (and, therefore, citizen attention) to justice appearances certainly motivates my research. Beyond that, I am motivated by the potential importance of going public both to the Court and to the public. While decision making occupies some of the time of the Court, justices still have ample opportunity to engage in other behaviors as well. As scholars of Congress and the president have depicted, instances of going public appear to be happening more, in new forms, and are often a means for political actors to carry out their agenda (Kernell, 1997; Tulis, 2017; Vinson, 2017; Russell, 2021b).

This work is timely for another reason. In their appearances, justices can discuss politically relevant and polarizing topics. For example, in April 2021 during a speech at Harvard University, Justice Stephen Breyer spoke out against Court curbing efforts and detailed why he believed those efforts could damage the Court (Williams, 2021). These instances are certainly noteworthy. They represent justices' position taking on polarizing subjects. If justices engage in position taking when appearing before the public, they could have the potential to influence citizen attitudes concerning politically relevant subjects.

With each of these motivators in mind, I seek to understand going public in the judicial realm. To best explore this concept, I ask and answer three important and interconnected questions. First, when do justices go public? Because of the lack of scholarship regarding extrajudicial activity, I begin by documenting the instances of justices engaging with the public. The examples of Justice Barrett, Alito, and Kagan showcase public appearances by justices but there needs to be a systematic accounting of these going public instances. To fill this gap, through a series of rigorous

and comprehensive searches, I build a unique dataset of justices' appearances from 2000-2022. This data set is the first to systematically consider judicial appearances. I code every speech, media appearance, public statement, or teaching engagement by a justice from the years 2000-2022. In coding these appearances, I pay specific attention to things like the location, intended audience, and content of the speech. Furthermore, I code for other variations like the number of individuals present at the event, the justice's method for going public, and if the event was a part of a book tour.

I document that justices regularly go public and this tendency is increasing. In the early 2000s, it was typical for a a justices to go public a total of 5-10 times per year. In 2016, justices went public 175 times. These numbers denote a drastic increase in public engagement. Essentially, I find that while justices have always engaged with the public through their appearances, the propensity to do so has greatly increased. The Court appears to be in a new era as justices hesitant to engage with the public, like former Justice David Souter, are no longer on the Court. Even in regards to their on the bench behavior, justices appear to be more public-facing as recently witnessed by Justice Clarence Thomas breaking his silence and asking a question from the bench after a ten year period of not doing so[3] (Hill, 2016). From my initial finding that appearances are common, I conclude that justices do regularly engage with the public (highlighting another aspect as to the importance of this topic).

After finding that the number the number of appearances has drastically increased over the years, I choose to explore this result further. To provide even further insight to this question of when justices interact with the public, I consider the exact timing of justices' appearances. I posit that the timing of the decision to make an appearance is based on controversy. Specifically, I discuss the controversy that Supreme Court nominations and confirmations bring to the Court. I theorize that

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[3]Thomas breaking his silence occurred before the Court's oral argument format changes.

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justices may attempt to quell the negative effects of a contentious nomination and confirmation by engaging with the public more. Because public support matters to the Court, I contend justices will go to lengths to preserve the public's support and beliefs. For a number of years, the Court has presented itself to the public as a non-partisan institution. Events like contentious nominations and confirmations could threaten the belief that the Court is an apolitical body. Legitimacy matters to justices and I propose that off-the-bench behavior represents an advantageous opportunity for the Court to shore up their support. Examining this notion, I find that in post-confirmation periods, justices are more likely to increase the number of appearances they make. When a nomination/confirmation period comes, the aftermath of that period results in greater public engagement by justices. This finding is statistically and substantively noteworthy. From a broader perspective, this result speaks to strategic behavior by justices and how justices respond to negative external events, highlighting that the Court does not operate in a vacuum but can be heavily influenced by outside forces.

In addition to these strategic considerations, I argue other, non-strategic forces will impact a justice's decision. Because going public involves a substantial amount of time and resources and because of the impact of workload on judicial behavior, I anticipate justices will be more likely to go public when their schedules have more flexibility. For a justice, a more flexible schedule is present during their summer recess period. Thus, I compare justices' public interactions during recess and non-recess months to further depict when justices go public. Doing so is important in order to gain a better understanding of each factor at work shaping justice's decision making calculus. While strategic factors are certainly at work in the process, it is reasonable to expect *non-strategic* factors, like workload, to also be present. I first show that September is the most common month for public appearances by justices. Given that September is a recess month, this descriptive statistic conforms to my

expectation. In my first regression analysis, I do not find support for the notion that justices are more likely to go public during recess periods than other times of year. However, when I use dummy variables to disentangle July, August, and September, I find statistical support for justices being the most likely to go public during their last recess month of September. I discuss potential reasoning for the initial null finding and then discuss why justices are more apt to going public in September than other recess months. My finding that public appearances vary from recess to non-recess months emphasizes the need for scholars to consider determinants of judicial behavior from both strategic and non-strategic viewpoints.

I also answer the question of when justices go public by considering when in a justice's tenure on the Court they will be the most likely to engage with the public. This is another manner for observing when exactly justices go public. I expect to observe an acclimation or freshman effect wherein a justice will be less likely to go public as a freshman justice. In short, I argue that as a justice adjusts to their new position on the Court, they will be less likely to go public than more senior members of the Court. This notion argues that when justices go public is impacted by their status on the Court. I utilize descriptive statistics comparing appearances by justices during their tenure as a freshman justice and as non-freshman. I then use regression analysis and find partial evidence for my expectation and discuss potential explanations of the mixed results. While the evidence for an acclimation effect is mixed, I propose that additional study of how a justice's position on the Court effects their public engagement should be conducted.

Having thoroughly considered when justices go public, in chapter 5, I shift my focus to exploring my second question of *how* justices go public. The richness of my data allow me to examine the variations in appearances to be able to document not just when justices go public but the specific nuance taking place within interactions. For example, why did Justice Barrett make a speech while Justice Alito gave a media

interview? What mode is the most common method for justices to go public through? What audience do justices attempt to speak to? Where do justices go to make appearances? These questions are answered in the fifth chapter of this dissertation.

I argue that a speech will be the most common form for a justice to utilize in going public. Specifically, I posit justices will prefer the controlled environment of making a speech versus other modes of appearances. Speeches allow for justices to exert more control over the content of their appearance and better follow traditional norms with how members of the Court interact with the public. Thus, I explore the four categories of appearances to ascertain the preference justices hold for appearance mode. Importantly, I am also able to address the change over time in justices' appearances by positing that within my data, justices will come to increasingly embrace the media as a form for going public. I argue justices will use the media in different ways than before. In much of the early data, I showcase that justices' only form of media appearance would come from a traditional media source like a newspaper. However, I document a new trend in which justices now even use things like a late night television show to appear before the public. I hold this portion of my data speak to the changing role and face of a U.S. Supreme Court justice in the 21st century.

I also explore the question of how a justice goes public by examining the audience of an appearance. I do this in a variety of ways. For all speeches given by justices, I code for the audience type (whether it be a general audience, ideologically leaning, legal audience, or a different type). In short, I pay specific attention to the audiences that justices appear before. I hold that the goal-oriented nature of judicial actors will make them most likely to appear before ideologically-favorable audiences. I examine this by considering the ideological disposition of the states justices conduct appearances in. I find that liberal (conservative) justices are more likely to visit liberal (conservative) states. This result is important as it highlights justices seeking out agreeable audiences. To add more detail, I then argue ideological extremity

will impact who a justice speaks to, proposing that ideologically extreme justices are particularly apt to engage with distinctly ideological audiences. I find support for this notion. Justices who are ideologically extreme are more likely to appear before distinctly ideological audiences (The Federalist Society serves as an example). Combining these two findings, I hold that all justices seek out favorable audiences but ideologically extreme justices are particularly apt to seeking out *distinctly* ideological audiences. I discuss these findings and why these differences are present across ideologically moderate and ideologically extreme justices.

In addition to these conceptualizations, I further explore how justices go public with specific attention to justices' joint appearances (appearances made by more than one justice). Specifically, I argue that justices will be apt to make appearances together in the aftermath of conflict or controversy on the Court. In essence, I argue justices are strategic in how they go public and this can be observed through an examination of joint appearances. I posit that joint appearances occur in light of rumors of interpersonal conflict on the Court. My empirical support for this finding speaks to justices' attempts to work together to contradict negative attention. This supplements results from chapter 4 concerning justices' response to external events.

Finally, I discuss how justices go public by examining the remarks and comments by justices in their appearances. I gather data on the subjects and topics that justices discuss during their public engagements. With these data in hand, I can test for differences and commonalities among remarks by justices. In particular, I consider the extent to which signaling and legitimacy are present in justice comments. I find that justices are prone to "legitimacy enforcing" topics in their appearances. Justices regularly discuss things like their roles as judges, their decision making process, and judicial philosophy but avoid discussing other political actors, external events, and partisan topics. This provides preliminary insight to the question of why justices go public. I do not find that justices' signaling behavior is contingent on ideology.

In chapter 6, having found evidence of when justices go public and how they do so, I turn to answering the third, and arguably most important question question of why they choose to interact with the public. This question begins to answer the puzzle I posed of why justices representing an insulated institution still engage with the citizenry. It is clear from my initial findings that justices regularly choose to make public appearances and interviews and are doing so at an increasing pace. However, the puzzle I posed earlier remains of why justices choose to go public? Why do unelected actors interact with the public? What is the motivation for this behavior?

In answering these questions, I turn to a variety of explanations. Specifically, I describe several instrumental and non-instrumental factors that cause a justice to choose to engage in off-the-bench behavior. Building on previous work by scholars, I argue a variety of considerations shape a justice's decision making. To that end, I explore multiple instrumental factors that could explain going public. First, I argue the decision will be shaped by the Court's approval. I argue that the Court's reliance on the opinions of the public combined with the decreasing confidence and approval in the Court will be worrisome to justices. Therefore, I expect justices to increase their appearances based on approval in the Court in an effort to appeal to the public. I analyze this expectation in several ways. First, I graphically show decreasing approval for the Court contrasted with an increasing number of appearances by justices. The two trends are opposite. In the early 2000s, the Court's approval is relatively high but the number of appearances is quite low. Conversely, in recent years, the number of appearances is remarkably high but the Court's approval is low. This preliminary evidence offers support for the notion that appearances are contingent on approval. Using statistical analysis, I find significant results as well. As approval in the Court declines, justices are more likely to go public. This particular finding is noteworthy for a variety of reasons. It demonstrates justices' attention to things like approval rating. In fact, the result highlights that justices do not just pay attention to approval

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rating but actively *respond* to it as well. Furthermore, similar to other findings in this dissertation, this result demonstrates another external force that shapes behavior of justices. It is also important given the continued downward trend of the Court's approval. I argue that how justices continue to respond to this era of historically low approval rating is worthy of further consideration.

Furthermore, I argue that ideology shapes the decision to go public. I argue that members of the minority ideological bloc will be more likely to go public than majority ideological bloc justices. I propose two separate mechanisms, legitimacy enforcement and agenda setting, that should make justices from the minority ideological bloc more likely to go public. I find evidence to support these expectations. I discuss the implications of these results as well as avenues for future study of how extrajudicial behavior is shaped by ideology. These findings showcase that ideology does hold importance in off-the-bench behavior as well as on-the-bench behavior.

I also suggest that a justice deciding to go public is shaped by individual level factors as well. Specifically, recognizing the variation across justices, I argue personality differences will assist in explaining why a justice goes public. Using data on justices' personalities, I consider how personality traits shape a justice's inclination to engage with voters. Using the personality trait of conscientiousness, I posit that justices who possess higher degrees of conscientiousness will be more likely to go public. While I do not find support for my expectations, I argue that personality remains an important determinant of judicial behavior and scholars should consider the extent to which personality does or does not play a relevant role in dictating extrajudicial behavior by justices.

Finally, I argue the decision of going public is also influenced by demographic factors. For my purposes in this dissertation, I choose to focus on gender as a determinant of judicial behavior. Using research on differences between male and female judges and politicians, I theorize that male and female justices will demonstrate dif-

ferences in how they behave off-the-bench. More specifically, I argue female justices will be *more* likely to go public than their male counterparts. I find support for this expectation. Female justices are more inclined to go public than their male counterparts and at a substantively significant rate.

This dissertation and its results call attention to a number of interesting and important dynamics. First, I provide a robust discussion of public appearances in the judicial realm. Just as scholars have considered how the president and members of Congress engage the public, this dissertation applies this same concept to justices on the Court. Doing this expands judicial politics scholarship to include the behaviors justices engage in when not deciding cases. Second, I document that the justices do regularly engage with the public and are increasing the number of their public appearances. For example, I find that at its highest, justices make 175 appearances per year. This finding depicts a reality in which justices do not just occasionally go public but *regularly* do. Third, I offer a unique data contribution to the field. The detailed and extensive data I collect on justices' public appearances can be used to answer important questions by scholars. Fourth, I further literature on strategic communication by political elites by documenting that justices are not just aware of opinion but choose to actively respond. Fifth, I provide a better understanding of justice behavior by showcasing that a variety of factors, strategic and non-strategic, influence decision making. I document that it is not simply one consideration motivating justices to make an appearance but, rather, a host of instrumental and non-instrumental forces. This is, in and of itself, an important contribution.

I also showcase the similarities and differences between on-the-bench and off-the-bench behavior. As I will detail, judicial scholarship is in need of a theory of judicial behavior that can explain off-the-bench behavior. I believe this dissertation makes a significant impact by using a broad lens to study behavior by Supreme Court justices that includes extrajudicial behavior. By doing so, I can speak to the forces

at work in on-the-bench behavior, those at work in off-the-bench behavior, and the forces at work in both. Put another way, it is not that off-the-bench behavior is entirely distinct from on-the-bench behavior. Rather, there are both similarities and differences between the two that warrant exploration and elucidation. For example, my research highlights the conditions under which ideology is less relevant and when other factors are more pertinent in explaining how justices behave.

This dissertation does not just speak to political science scholarship but also recent developments in American politics. As attitudes toward the Court continue to decline, it becomes necessary to examine how members of the Court respond to this negative approval. The Court is in a unique era that consists of the lowest approval ever before seen. Undertaking the task of how justices respond to this new environment is important to consider. Taken collectively, this research furthers understanding of the Court, public opinion, media, and strategic behavior and communication by political elites. Furthermore, this research assists in understanding the Court's new role as a policymaker in the 21st century. While Dahl (1957) previously depicted the Court as a national policymaker, I showcase this role has rapidly changed. I demonstrate that justices are adapting to new phenomena like social media, rapid reporting, and persuasive media coverage which extends an understanding of how justices are changing the role of the Court to keep up with the rest of society.

Chapter 2 Literature Review

How has research informed an understanding of the activities of Supreme Court justices? While quite a bit is known about things like how judges decide cases, judicial voting patterns, oral arguments at the Court, and the Court's decisions related to certiorari, the same cannot be said for a host of other activities the justices engage in in. With few exceptions, most scholarship in judicial politics has not examined justices' off-the-bench behavior. While deciding cases is the primary job of a Supreme Court justice, the justices take part in a variety of other behaviors that should also be studied. Examining public appearances at the Court level has not been done in much scholarship but has been studied at length in other political realms. This work conducted on how other political actors engage the public can serve to inform an understanding of how justice might interact with the public.

2.1 Going Public

One element of off-the-bench behavior is the act of going public. In his influential book on the American presidency, Samuel Kernell defined the concept of going public to be "a strategy whereby a president promotes himself and his policies in Washington by appealing to the American public for support" (Kernell, 1997). Kernell relied on examples of presidents engaging with the public in a variety of ways to showcase the public-facing nature the president has come to adopt (Kernell, 1997). Importantly, Kernell documents that the act of going public has dramatically increased among presidents (Kernell, 1997). According to Kernell (1997), as governing became more complex and the U.S. increased in polarization, presidents opted to take a message straight to the American people instead of more complex avenues for promoting a message.

Similar work by Tulis (2017) demonstrates this phenomena by which a president works less with Congress or other officials and engages more and more with the public directly. As Tulis (2017) notes, while the president used to rarely engage in direct interactions with the public, this rapidly changed to the point where presidents do not just occasionally appeal to the public but regularly do. Both Tulis (2017) and Kernell (1997) point to a distinct change in which presidents began to engage with the public more, marking a departure from typical presidential duties. Now, presidents can regularly be observed appealing to the public for support be that through rallies, public statements, social media, or press conferences. As complexities in governing and polarization have continued to increase, the need to directly appeal to the public has continued to increase as well.

Other scholars have extended the theory of going public and have applied the concept to, among other things, president's preferred media forms (Tedin et al., 2011), policy positions presidents adopt (Corrigan, 2000), and how presidents engage in bargaining with Congress (Powell, 1999). More recently, a president may make use of Twitter (now known as 'X') as a means of strategic behavior (Ouyang and Waterman, 2020). As it pertains to their relationship with the judiciary, the president may go public to assist judicial nominees (Johnson and Roberts, 2004; Cameron and Park, 2011), to comment on pending or recent Court decisions (Collins Jr and Eshbaugh-Soha, 2020), to attempt to influence the justices (Rogol et al., 2018), and to shape public opinion of the Court (Montgomery et al., 2019).

While influential, Kernell's work has been criticized in subsequent scholarship. Primarily, these critiques have centered around the goals of a president in choosing to go public and how effective the strategy actually is at swaying opinion. Powell (1999) calls for a re-examination of Kernell's model of going public, arguing that going public is not caused by purely institutional factors. Powell argues the going public model proposed by Kernell is too simplistic an explanation to properly understand

presidential behavior (Powell, 1999). Other scholars also question the effectiveness of president's public appeals. One critique has centered around the perceived disconnect between the president and the media (Cohen, 2004) and how this disconnect could result in the president granting less media interviews. Aside from the media, the president's propensity to make public appeals is heavily influenced by the public (Eshbaugh-Soha, 2007).

In general, scholars have not completely disregarded Kernell's theory but, instead, have attempted to broaden and re-purpose the concepts at work to better understand interactions between the president and the public. For example, Tedin et al. (2011) argue that certain groups of individuals will be more impacted by presidential appeals than others. Additionally, the authors find that various issue areas are more likely to be swayed by presidential addresses than others (Tedin et al., 2011). Furthermore, Christenson et al. (2021) note that presidents may be unable to move opinion through appeals or that attempts at going public could even backfire and move opinion in the opposite intended direction.

While these updates to Kernell's theory are welcome, it is important to note that even despite its critiques, there remains evidence that going public (as it has now been more broadly defined) is an activity presidents regularly engage in and can be an effective tool in shaping support and attitudes. Not only can political figures be observed engaging the public but these actions actually do have an impact. This effectiveness presents itself in shaping short-term public opinion (Cavari, 2013), in terms of accomplishing a presidential agenda (Barrett, 2004), in impacting support for presidential nominees (Holmes, 2007), and achieving legislative success (Barrett, 2005).

Aside from the focus on executive actors and the public, interactions between congresspeople and the public has also been studied. First, scholars have offered several (and varied) definitions regarding how a member of Congress goes public.

Because members of Congress occupy a role distinct from the president, it is necessary to distinguish how individual political actors interact with the public. Congress people going public has been defined as "a class of activities specifically intended to reach the public at large, generally by attracting media attention, that members of Congress engage in to promote their policies and/or to enhance their influence in the policy making process" (Vinson, 2017, p.4). Just as presidents can engage with the public in a variety of manners, so too can members of Congress. Duties like floor speech making and grandstanding may represent members' attempts to partake in public-facing activities and evidence suggests members may strategically engage in such actions (Hill and Hurley, 2002). A more modern way for members to communicate with the public has arisen from social media. Members can now use Twitter (or, as it is now known, 'X') to effectively communicate a message straight to the American people (Russell, 2021b; Krewson et al., 2018). In addition, canonical work within political science, such as Fenno (1977), denotes the "home style" that defines members' relations with constituents and their desire to regularly communicate with the public.

Even candidates for office now utilize going public and social media to accomplish their goals. This can happen through a candidate making targeted television advertisements as a method to directly appeal to the public to cast a vote a certain way (Sulkin, 2009). Candidates also use platforms like Facebook to increase their public-facing presence (Macdonald et al., 2023).

These examples speak to how the president and Congress members go public but still leave open the question of when and why justices themselves go public. Before turning to explain this, it is necessary to note that justices *do* go public. As the aforementioned examples of Justices Barrett, Kagan, and Alito demonstrate and the data I present showcases, justices do frequently choose to go public. Thus, this lack of attention to this phenomenon in the field, coupled with its importance and

the media coverage it receives, should be remedied.

In my review of the literature so far, I have discussed public appearances in both the judicial and non-judicial realm. To be clear, differences exist in public appearances across political actors. For one, the president and members of Congress certainly go public more than justices on the Court. Additionally, a president and members of Congress may be motivated to go public for election purposes, a motivation not pertinent to justices. However, commonalities exist as well. As polarization increases, the motivation for all political actors to increase public engagement and shore up support should increase. Additionally, the new media and technological landscape should create a greater tendency to seek out public relations. Thus, while differences certainly exist in going public across political elites, literature from Kernell (1997) and others is still helpful in understanding public appearances by actors.

2.2 The Court and the Public

Scholars have thoroughly considered the relationship between the Court and the public. First, research has demonstrated that the Court remains aware of and attune to public opinion (Casillas et al., 2011; Mishler and Sheehan, 1993). While some argue the Court may not actually heed public opinion but simply be following the same trends as the rest of society, there remains a general connection between the opinions of the public and the actions of the Court (Giles et al., 2008; Epstein and Martin, 2010).[1] Each of these studies, including the work by Johnson and Strother (2021), are primarily concerned with the relationship of the Court and the public as it is present in justices' opinion writing and case outcomes. Taken collectively, this research summarizes that the Court appears cognizant of the public's preferences and takes them into account in deciding cases. Thus, it can be concluded that the public holds an important role in shaping Court output.

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[1]Johnson and Strother (2021) reach a different conclusion regarding the Court and opinion.

Aside from public opinion shaping the justices' actions on the bench, judicial behavior is shaped by citizen attitudes in other realms as well. One seemingly routine activity of justices is to attend the State of the Union (SOTU) Address. The State of the Union is offered each year by presidents and justices are invited to attend. The State of the Union address represents a public-facing event that justices can choose whether or not to attend. However, justices' role in the address is limited as the justices themselves do not speak and remain reserved throughout the address. Through the years, justice attendance at the State of the Union has tapered (Rogol and Montgomery, 2022). Recent research has found that the decision of whether or not to attend the SOTU is highly impacted by public opinion (Williams and Smith, 2018; Peppers and Giles, 2012). This example highlights the Court's adherence to public opinion not just in their decision making but other activities as well.

Another body of research on the Court and the public has focused on public perceptions of the Court. Bartels and Johnston (2013) showcase that an individual's own ideological preferences shape their perception of the Court as legitimate or not while Zilis (2021a) demonstrates that individuals can base their perceptions of the Court based on the president's preferences. The public has a tendency to form perceptions of the Court based on ideological and partisan cues (Malhotra and Jessee, 2014; Nicholson and Hansford, 2014). As with the previously detailed literature on the Court and opinion, literature on public perceptions of the Court also showcases the important role of the public as it comes to the Court.

Considered in conjunction, the aforementioned research on the Court and the public's relationship has primarily been studied from two angles: First, what are the public's perceptions and opinion of the Court? Second, how does the Court respond to the public's preferences on issues? While these two angles are helpful in understanding both the Court and the public, they do not capture all ways in which the Court and the public interact. Specifically, as I argue, the way judges behave

when *not* deciding cases (off-the-bench behavior) can also explain the relationship between the public and Court.

An important aspect of the relationship between the Court and the public may very well be when the Court more directly interacts with the public. Off-the-bench behavior or, as it can alternatively be termed, extrajudicial activity, can present a unique opportunity for justices. Justices represent an insulated institution so the opportunity to directly engage with the public is of note. While the judicial branch of government arguably interacts with the public the least of the three branches of government, interactions still occur (and occur frequently) and have important implications. The previously detailed studies on the Court and the State of the Union, while informative, are limited in their ability to understand judicial-public interactions. The State of the Union is conducted by the president and justices occupy a passive role at the address, remaining reserved and not speaking during the address.[2] Thus, it is important to consider how research has informed an understanding of justices' *direct* interactions with the public. Research that *has* attempted to study judicial-public interactions showcases the importance of this topic.

For example, studying a speech by Justice Sonia Sotomayor, Krewson (2019a) finds that justices can shape perceptions of the Court through their speech making. Using a survey experiment, Krewson demonstrates that an audience responded positively to Sotomayor's attempts to increase the Court's legitimacy via the public speech she gave. This speech represents a direct judicial-public interaction. In conducting a speech or an interview, a justice does not occupy a passive role but, rather, an active one.

Similar to the Krewson (2019a) study, Glennon and Strother (2019) study justices' television appearances and discover that justices are primarily concerned with increasing their own legitimacy in these appearances. Justices can and do make me-

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[2]When justices *do* break from their passive behavior at the SOTU like Justice Ginsburg falling asleep or Justice Alito responding to former President Obama, these instances garner news attention.

dia appearances and seemingly do so for the purpose of shaping public perceptions of the Court. Schmidt (2012) explores instances of extrajudicial speech and the propensity of justices to engage in these opportunities as a chance to defend themselves or their work. This work by Schmidt (2012) reinforces the notion that going public is a strategic act. This strategy combined with the fact that Black et al. (2016) document the willingness of justices to travel to make speeches or attend events speaks to the importance, in the mind of a justice, of going public. Finally, these acts are not without important consequences. As previously detailed, the findings by Krewson (2019a) demonstrate that an off-the-bench activity undertaken by justices can actually change how the Court is viewed. Furthermore, Strother and Glennon (2021), building on their 2019 study, showcase that justices make media appearances and these said appearances can impact public perceptions of the Court. Thus, the ways justices behave when not deciding cases can have a large influence on the public.

Extrajudicial speech tends to garner media attention. When a justice chooses to make public-facing comments, the media devotes time and attention to covering these comments. This has not been studied from a scholarly perspective but the relationship between the media and the Court has. For example, as found by Hitt and Searles (2018), the specific frames utilized by the media can influence acceptance of Court decisions by the public. This research demonstrates that media coverage can impact citizen perceptions of the Court. Work from Strother (2017) considers the political impact of a case in accounting for how media will cover the Court. Using survey data, Linos and Twist (2016) demonstrate that one-sided information provided to the public by the media can increase support for the Court. It can be concluded that research on the relationship between the Court and the media has provided a robust understanding of media coverage of the Court, as well as how the public responds to this coverage.

However, the justices are not just recipients of media coverage but, as scholars

have argued, may seek out a relationship with the press. In addition to this, justices on the Court appear to be aware of the coverage the media offers and respond to this coverage. First, contrary to early opinion, justices seek a relationship with the press (Davis and Strickler, 2000). Davis and Strickler (2000) argues that justices seek this relationship in order to carefully curate their image in the eyes of the public. While the justices may have been slow in an embracing of technology and the media due to social norms, this has changed over time (Papandrea, 2012). Second, aside from seeking the media for a relationship, justices often respond and change in reaction to the coverage the media offers. For example, the media will influence the Court's deliberations. Badas and Justus (2022) find that media attention directed toward a SCOTUS case impacts justices' behavior, including deliberation time and the number of draft opinions issued. This research essentially showcases the Court directly responding to the media. As another example, Zilis (2017) demonstrates that the Court values consensus because of the positive press coverage that can come from agreement among the justices.

These examples illustrate that the Court is not simply a passive recipient of media coverage but, instead, are proactive actors that can utilize the media and the public to accomplish certain goals. This is, in and of itself, noteworthy. Exploring this concept via the lens of justices choosing to go public is the task I take up in the rest of the dissertation. Make no mistake, the above literature, while helpful, fails to answer the broad questions I posed at the beginning of this dissertation. Namely, the differences and commonalities in public appearances, whose interest justices act in when deciding to go public, or the driving force behind public appearances.

Chapter 3 Supreme Court Judicial Appearance Data

To examine when and why justices go public, data is needed. Unfortunately, data on all of justices' appearances does not exist in published research. Glennon and Strother (2019) examine justices' media appearances but this dataset only includes television interviews conducted by the justices from 1998-2016. As I showcase in this work, media is not the most common forum for a justice to go public. Therefore, a singular focus on television interviews would severely limit my analysis and the inferences that can be drawn. Additionally, the Glennon and Strother (2019) dataset ends in 2016 so does not include more recent years. Work by Black et al. (2016) focuses on judicial travel. While this research includes some public appearances by justices, it does not account for justices' media interviews or remarks nor do these data capture the nuance of justices' appearances including the intended audience, type of event, or comments while speaking. This source is also limited as it covers 2002-2012 so is lacking more recent data. There is a lack of data on appearances in general and a complete lack of a dataset that wholly captures judicial appearances and their various nuances. As I detailed in the introduction, data should capture justices' appearances and commonalities and differences across appearances.

This lack of data is, in part, due to its difficulty to collect and gather. Judicial appearances are not covered in any systematic fashion. As I showcase when discussing the data I gather, some appearances are covered by a university press release only, some are covered by major news outlets, and some are reported on just by a local paper. These are examples of the nuance that exists not only with regards to appearances but also the *coverage* of appearances. Thus, a challenge is immediately posed in studying extrajudicial behavior.

Therefore, in order to answer my research questions and address this data chal-

lenge, I begin by building an original dataset of every time a justice has gone public from 2000-2022 for a total of 23 years of novel data. This data is collected entirely through a hand-coding process. To collect these data, I follow a lengthy process to ensure reliability and validity.

To begin, I obtain records of Supreme Court justices going public. To accomplish this, I follow in the work of Glennon and Strother (2019). Glennon and Strother (2019) detail their own process saying, "the data set includes all nationally televised Supreme Court justice interviews from 1998 to 2016 discovered through a process of using multiple online search engines and searching broadcast company websites" (Glennon and Strother, 2019, p.244). I follow this work by using the most common search engine, Google, which is also used by Krewson (2019a).[1] Krewson (2019a) collects information on off-the-bench appearances during the year 2017. He uses Google to find these public appearance data (Krewson, 2019a).

I collect event data and not news coverage data. Because of this, my focus is on data relating to going public events and not news coverage data of these events (although I do collect information on things like the specific outlet a justice gives an interview to). While an avenue for future work would be to examine how the media covers extrajudicial behavior, for now, I remain concerned with extrajudicial behavior from the perspective of justices.

Using Google, I am able to utilize the "tools" function to specify a time range for results. For each search conducted, I specify a specific month. To do this, I use the "custom time range" option and then specify the month of interest's dates. For example, for the month of July 2022, I specify the beginning date as July 1st, 2022 and the end date as July 31st, 2022. This means that this particular search would only include results ranging that time span. This example is depicted in Figure 3.1.

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[1]As a reliability check, I also compare portions of the data to results gathered via Bing and do not find any significant differences. Specifically, I collect results from both search engines from 2018-2021. I do not find any notable differences but Google did provide more results and "hits" than Bing captured. This reliability check is displayed in Table 1 in the Appendix.
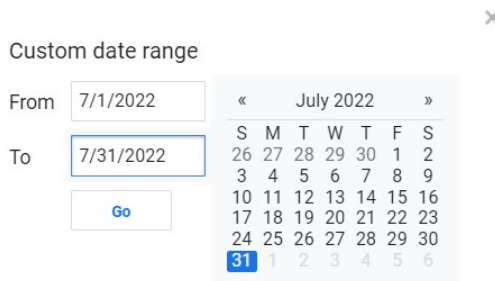
Figure 3.1: Setting a Range Example

By using the "time" function, I can ensure that I am collecting data for one month at a time only. Once again, this allows me to add more specificity to my analysis of when justices go public. Furthermore, it also allows me to ensure that I am capturing each going public instance and that one particularly newsworthy event does not drown out other instances. For example, a yearly approach is difficult for capturing events that garner little news attention. Some of the events in my data are only covered by one local news source or just detailed in a university press release. If I were to use a yearly approach, events with greater media coverage, such as Justice Ginsburg's public critiques of former President Trump, could cause me to miss these other instances of justices going public (Liptak, 2016).

As for the specific search terms, I perform a boolean search and begin each search "Supreme Court Justice *insert justice last name* and then us the following words via the OR function: 'appearance', 'speech', 'audience', 'media' and 'interview'. The "OR" function allows for potential matches to not be excluded if they do not contain each of the words. In essence, because of this function, a potential result is included even if it only contains one of the key terms.

Each of these key terms was chosen after a testing period to see what search terms associated with judicial appearances generated false positives or no results. After this testing period, it was found that the aforementioned five words captured instances of justices going public. Because of this, these terms were utilized.

As an example, a specific search is spelled out in this manner: "Supreme Court Justice Kavanaugh appearance OR speech OR audience OR media OR interview." For each month, I conduct this search per justice. Thus, for each month, I conduct this search, inserting the correct last name for the justice, nine times (presuming there are nine justices on the Court in the month in question).

Figure 3.2 is a image of an example search page.[2] Highlighted in yellow is an example of a "hit." A "hit" represents an example of a search revealing an instance of a justice going public. In Figure 3.2, the instance of Justice Alito appearing at TAC Town Hall is a public appearance example. The other search results in Figure 3.2 are not public appearances.

If, after searching the first 25 results from the search engine and not finding a "hit," I conclude that particular search. For searches where a "hit" is reached, after that search is coded, if 30 more results are gone through without a "hit," that search is concluded. In Figure 3.3, I show an example of a search page with no hits.

As depicted in the "no hit" example in Figure 3.3, when a search is not generating going public instances, the results often reference Supreme Court cases, opinion pieces, or quotes from Supreme Court opinions. While the aforementioned search terms have eliminated many false positives, some still come up in the search process. However, these are still relatively easy to spot and eliminate by not including these results in the data.

When a "hit" is found, I follow that link to begin to code that appearance. I begin by noting the date of the appearance (if provided. If the date is not provided, I use the date of publication on the media coverage of the instance), the justice making the appearance, the type of appearance, and more. Within each event, I then code for things like audience type, if the event was public or private, the event state, if

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[2]While the Google search process I employ is highly detailed, concerns might exist over the ability to find non-local or non-regional searches given that Google results can be skewed toward one's geographical location. However, this issue does not seem to be present in my data. My data consists of many small or local-to-one-area news sources.

Figure 3.2: Hit Example From a Google Search for Justice Alito's Appearances
Note: Highlighted portion showcases a hit.

multiple justices appeared at the event, and more. Occasionally, I have to search multiple news articles to obtain all of this information. I describe such instances below. After collecting all of the background information, I then code for the specific content of a justices' appearances. In many instances, there is a transcript of a justice's remarks that allows me to code directly from a justice's own words. In cases where a transcript or full video recording is not available, I rely on the media coverage of the instance to ascertain the topics a justice discussed. All together, transcripts exist for 351 of the total instances of going public.

I use the topic codes from Glennon and Strother (2019), as well as some of my own topic codes, to categorize the subjects justices discuss. Glennon and Strother (2019) create the following topic codes which I use: "Judicial Role", "Judicial Phi-
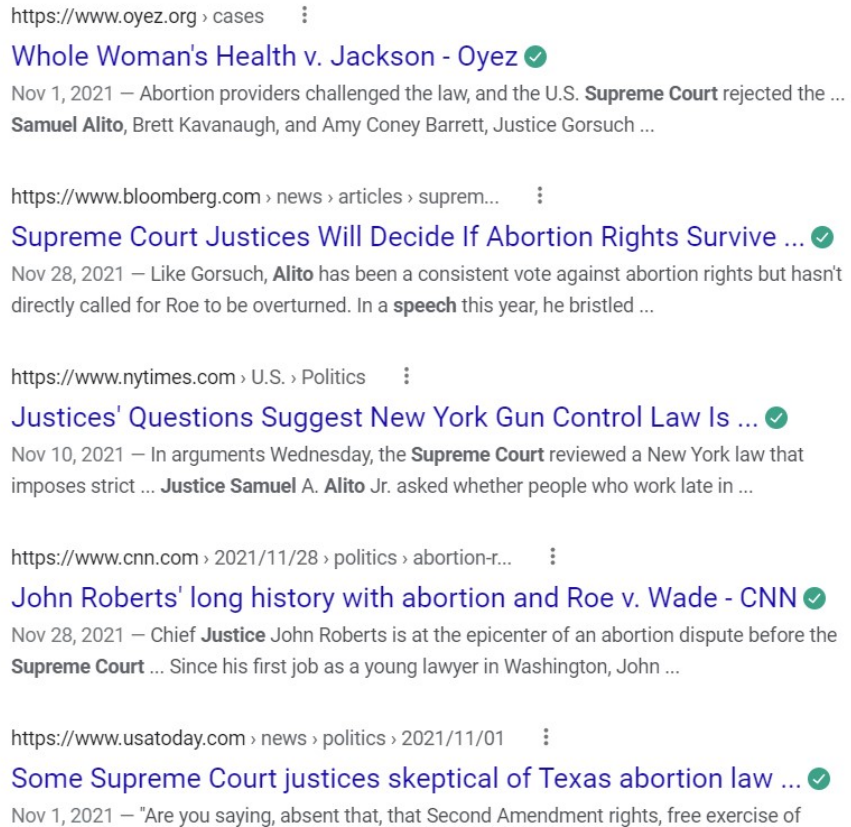
Figure 3.3: No Hit Example

Note: None of these search results represent a hit.

losophy", "Decision Making Process", "Life on Supreme Court", "Supreme Court Cases", "Justice Personal Life", "Prior Judicial Experience", and "Supreme Court Building." I create the following codes and use these in conjunction with the other topics: "Current Event", "Legitimacy", "Colleagues", "President", "Congress", "Public", and "Other." With these categories of topics, for each appearance I code, I code whether or not the justice making the appearance referenced one of these subjects.

Oftentimes, a going public instance is covered by more than one news source. For example, Justice Gorsuch gave a speech in July of 2019 that generated a variety of coverage. When instances like this occur, the going public instance is just counted once in my data. Figure 3.4 is an example of multiple search hits all depicting the same going public instance. In these instances, I use the first suggestion on Google

Figure 3.4: Multiple Coverage Example

Note: Both the Notre Dame and the Politico search results represent the same going public instance.

(in the instance depicted in Figure 3.4, I would use the https://law.nd.edu article). However, in some instances, an article may not cover all relevant details. In these cases, I use the other search results to obtain more information not covered in the original article but this is still only coded as one instance of going public since the articles are each addressing the same instance. As an example, if the aforementioned Notre Dame law article did not mention the size of the event, I would look at other search suggestions to see if this information could be found and coded.

Importantly, my instances of a justice going public only include when a justice speaks in some form (whether that be through their speaking of a written statement

or interview). Sometimes, justices appear at events but do not speak to the public. For example, Justice Ginsburg occasionally would attend the opera while Justice Sotomayor has been known to enjoy New York Yankee's baseball games. Perhaps the most obvious instance of a justice attending an event and not speaking is the annual State of the Union (SOTU) Address. Scholars have studied justices' attendance at this event, what determines a justice's attendance, and how the public reacts to attendance (Peppers and Giles, 2012; Rogol et al., 2018; Rogol and Montgomery, 2022; Montgomery et al., 2019). In this dissertation, I do not consider the SOTU address or any other public appearances by justices that do not include speaking. My reasoning for not including these relates back to the definition of going public. Recall that I am specifically interested in the notion of justices appealing to the public. In order to make an appeal, justices need to speak in some form or fashion.[3] As I have already detailed, original theories of going public emphasize the process of a political actor appealing to the public (Kernell, 1997). In exploring the question of if justices go public, I want to examine if, in fact justices do go public, if this going public appears to take place in an effort to appeal to the public. Therefore, my data collection only includes instances when a justice speaks in some form.

For each instance of going public that I identify, I code 51 different variables. These variables are listed in Figures 3.5 and 3.6. The variables capture the details of each appearance. For instance, a grouping of the variables capture the *when* of appearances by documenting the date, month, and year of an appearance. Another grouping captures the *how* of appearances by documenting the type of appearance (speech, media, teaching, or public statement), the specific justice making an appearance, the justice's position on the Court, if multiple justices go public together, the audience of an event, an event's openness, and the justice's specific comments. The

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[3]While teaching may include less appeal making than other forms of going public, I still hold that justices *can* use these opportunities to make an appeal and still must give up time and resources when they engage in teaching opportunities.

Variable Name	Description
Month of Appearance	Example: Jan
Year of Appearance	Example: 2019
Date of Appearance	Example: 16
Instances	Monthly total of the number of going public instances
Justice Name	Justice's last name
Chief Justice	Coded as a '1' if the justice going public was the Chief, '0' otherwise.
Female Justice	Coded as a '1' if the justice going public was female, '0' otherwise
Justice Ideology	Justice's ideological position
Multiple Justice	Coded as a '1' if the instance of going public involved multiple justices, '0' otherwise
Multiple Justice Name	List of the last names of the justices involved in the joint going public event
Media	Coded as a '1' if the justice was conducting a media interview, '0' otherwise
Media Mode	Coded as a '1' for television'2' for radio, '3' for print newspaper, '4' for online newspaper, '5' for podcast, '6' for telephone, '7' for multiple media, '8' if media type could not be determined, '99' for all other types
Media Name	Name of the news source interviewing the justice
Public Statement	Coded as a '1' if the justice issued a public statement, '0' otherwise
Teaching	Coded as a '1' if the justice taught a class, '0' otherwise
Speech	Coded as a '1' if the justice gave a speech or Q&A, '0' otherwise
Event Name	Title/name of the event at which a justice spoke
Audience	Coded a '1' if legal audience, coded as a '2' if professional audience, coded as a '3' if college audience, coded as a '4' if K-12 audience, coded as a '5' if conservative audience, coded as a '6' if liberal audience, coded as a '7' if general audience, coded as '8' if audience could not be determined, coded as a '99' for all other types
Public Event	Coded as a '1' if the event was public, '0' if private, '99' if it could not be determined
Event State	State event was held in
Event City	City event was held in
International Event	Coded as a '1' if the event took place internationally, '0' otherwise
Home State	Coded as a '1' if the justice visit was to their home state, '0' otherwise
Alma Mater	Coded as a '1' if the visit was to their alma mater, '0' otherwise
Event Size	Coded as a '1' if directly provided attendance number, coded as a '2' if an expression was used to describe: ex: "packed".
Number at Event	If a '1' is recorded for Size of the Event, how many people were reported to be in attendance?
Live Stream	Coded as a '1' if the event was livestreamed, '0' otherwise

Figure 3.5: Variable List

Variable Name	Description
Book Tour	Coded as a '1' if the event was part of a justice's book tour, '0' otherwise
Judicial Role	Coded as a '1' if a justice refers to their role as a judge, '0' otherwise. Topic from Glennon and Strother (2019)
Judicial Philosophy	Coded as a '1' if a justice refers to their judicial philosophy, '0' otherwise. Topic from Glennon and Strother (2019)
Decision Making Process	Coded as a '1' if a justice refers to their decision making process, '0' otherwise. Topic from Glennon and Strother (2019)
Life on Supreme Court	Coded as a '1' if a justice refers to life on the Court, '0' otherwise. Topic from Glennon and Strother (2019)
Supreme Court Cases	Coded as a '1' if a justice refers to a Supreme Court case, '0' otherwise. Topic from Glennon and Strother (2019)
Case Name	If a '1' is recorded for Supreme Court Cases, what is the name of the case(s) the justice references?
Justice's Personal Life	Coded as a '1' if a justice refers to their personal life, '0' otherwise. Topic from Glennon and Strother (2019)
Prior Judicial Experience	Coded as a '1' if a justice refers to their prior judicial experience, '0' otherwise. Topic from Glennon and Strother (2019)
Supreme Court Building	Coded as a '1' if a justice refers to the Supreme Court building, '0' otherwise. Topic from Glennon and Strother (2019)
Current Event	Coded as a '1' if a justice refers to a current event happening, '0' otherwise
Legitimacy	Coded as a '1' if a justice directly refers to the Court's reputation/legitimacy, '0' otherwise
Colleagues	Coded as a '1' if a justice references their fellow justices by name, '0' otherwise
Colleague Name	If a '1' is recorded for Colleagues, the specific name(s) of the justice(s) referenced
President	Coded as a '1' if a justice references the president, '0' otherwise
President Name	If a '1' is recorded for President, the specific name(s) of the president(s) referenced.
Congress	Coded as a '1' if a justice references Congress, '0' otherwise
Public Mention	Coded as a '1' if a justice references the public, '0' otherwise
Other Topic	Coded as a '99' for all other topics a justice references
Court's Approval	Monthly approval of the Supreme Court
Transcript	Coded as a '1' if the transcript was available, '0' otherwise
Article Title	Title of the article from which the going public instance was found and coded
Link to Sourcec	Link to article describing the going public instancce for easy retrieval
Note	Make any notation for other information that might be relevant to that specific row

Figure 3.6: Variable List Continued

final grouping attempts to capture the *why* of an appearance by coding for ideology, approval ratings, the reach of a justice's comments, and the comments themselves. Each variable is listed in Figures 3.5 and 3.6 and further descriptions along with examples can be found in the Appendix.

3.1 Units of Analyses

Throughout the dissertation, I use three different units of analysis. This is primarily to be able to answer different questions of interest. For instance, some of the questions I explore include things like how going public is shaped by the Court's approval. This is a topic that needs to be explored using month-level data. However, I also explore things like how going public is shaped by the audience present at events. This question requires event-level data. These examples highlight the need for data that can appropriately account for the various levels of interest within judicial appearances. In addition to this reasoning, using multiple units of analysis is beneficial to allow for statistical power as well as additional variance and nuance.

The first unit of analysis I employ is the *Month-Level Unit of Analysis*. Specifically, the data is a count of the number of times all justices went public in a particular month. For example, in January of 2022, the justices went public a total of 20 times. In April of 2009, the justices went public a total of 4 times. Thus, this data is month-level concerning the number of appearances. The total number of observations for this unit of analysis is 276. The first month included in the data set is January of 2000 and the last is December of 2022. I call this the *Month-Level Unit of Analysis*.

This monthly data is helpful but also limited. In particular, the monthly data means that I cannot account for differences across justices. This data considers the Court as an entity and how many times the justices as a whole went public. Thus, this does not allow me to account for things like ideology, personalities, differences in a justice's position on the Court, and more. Additionally, for this unit of analysis,

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my number of observations is only 276 which limits the statistical power.

The second unit of analysis I term the *Justice-Month Level Unit of Analysis*. This unit of analysis is an individual justice's public appearances for a month. For instance, Chief Justice Roberts went public six times in April of 2021. With this data, the count of the number of times each justice went public in a given month makes up the "row" in my data. This justice-month level data allows for more nuance than the monthly level data. In particular, I can consider differences across justices which is important in explaining the decision to go public. This unit of analysis also allows for additional statistical power. With the *Justice-Month Level Unit of Analysis*, I have a total of 2,467 observations.

While this *Justice-Month Level Unit of Analysis* allows for individual justice level consideration, there are still drawbacks. This level does not allow for considering the nuance that exists within appearances. For example, with this data, while I can include individual justice information, I cannot consider things like specific audience types, the mode of going public, the comments justices make, and more. Therefore, I use one additional unit of analysis.

The final unit of analysis is event data which I call the *Event-Level Unit of Analysis*. This data represents instances of each justice going public from the date level. For example, on December 5th, 2006, Justice Scalia went public. Thus, each event of a justice going public is a "row" in this data. Thus, while using the *Event-Level Unit of Analysis*, the individual instances of going public represent each row in my dataset. This unit of analysis overcomes many of the issues with the other two. Specifically, using this data, I can consider various nuance within appearances. The total number of observations for the event-level analysis is 1307.

3.2   Validity

In an effort to ensure reliability, after collecting the data, I use three supplementary sources to ensure my coding process is accurately capturing appearances. First, I use the SCOTUSMap tool published by SCOTUS blog (SCOTUSBlog.com). The SCOTUSMap feature of the SCOTUS Blog displays Supreme Court justices' event and appearance attendance on a map. The site collects some basic information about appearances by justices including the date, time, and location of an event as well as the specific justice(s) appearing at the event. Using this site, I can double check my own coding by comparing it to the events captured on SCOTUSMap. This validity check includes seven years of data. SCOTUSMap includes judicial appearance information from 2014 through 2020. Thus, I can check my data against this supplementary data for seven years of the time frame. Additionally, their data is about public appearances and does not include media appearances or public statements. Therefore, I cannot confirm the accuracy of my coding for any media interviews or public statements I collect using this source.

The second supplementary source I use are the television appearances by justices collected by Glennon and Strother (2019). With these data, I can confirm that the television appearances by justices that I collect are correctly coded. Once again, this source is not without limitations. The data collected by Glennon and Strother (2019) ranges from 1998-2016 so the last 7 years of my data cannot be cross-checked. Additionally, because this source only considers television appearances, I cannot cross-check the other types of appearances justices take part in, including other types of media appearances (newspaper, radio, and more).

The third supplementary source I use is information on justices' travel by Black et al. (2016). This source uses financial disclosures of justices to document travel as well as ascertain justices' purposes in travelling (Black et al., 2016). These data range from 2002-2012, capturing 10 years of my own dataset. While the article just focuses

on travel (and therefore, not media appearances) and does not consider the comments or remarks a justice provides at an event, this source still serves as a reliability check on my own coding.

For each of these supplementary sources, I compare the data these sources gather to my own data. For each source, there was not an instance of going public that my own data did not also include. Thus, I conclude from this that my data captures the public appearances that other sources have captured as well.

Chapter 4 First Empirical Chapter: When do justices engage the public?

In this chapter, I consider the question of when do justices engage the public? Before I can fully answer this question and explore nuance in justice appearances, it is important to establish whether justices engage with the public at all. While the three examples of Justices Sotomayor, Alito, and Barrett I detailed earlier make it reasonable to assume that Supreme Court justices do go public, this claim needs further scrutiny. In particular, because of the puzzle I detailed regarding why justices representing an insulated institution would go public, showcasing first and foremost that justices engage in this behavior is important. In chapter 6, I probe this puzzle, demonstrating the determination of why justices make appearances. For now, I begin by showcasing that justices do engage with the public and then turn to dissecting the nuance regarding when they choose to do so. To explore when justices go public, I first argue that an increase will be present across my data. In particular, I discuss why we should expect to observe an increase in extrajudicial behavior. I then use three concepts to further detail when justices go public. Specifically, I posit that a justice's decision to go public is related to controversy, workload, and position on the Court. I explore each mechanism in turn, building a theory as to why each concept should shape when justices go public.

4.1   Theoretical Expectations

I expect that justices regularly engage in public appearances and that this trend will rapidly increase across the 23 years of data I collect. This expectation is based on several things. First, political actors within each branch of government have been increasing their public appearances. Within the executive branch, the presidency has undergone a dramatic shift to becoming increasingly public-facing. As

aforementioned, both Kernell (1997) and Tulis (2017) point to the phenomena of presidents increasing their public appearances. Similarly, Skowronek (1997) identifies four eras of presidential relations with the fourth era, the current one, possessing presidents who are heavily involved in engaging the citizenry. This research depicts what Greenstein (1988) refers to as "increased presidential visibility." Put simply, presidents are engaging with the public at an increasing rate (Hager and Sullivan, 1994). Importantly, while scholars posit that presidents' increasing public relations can be somewhat attributed to technological advances (Kernell, 1997), these explanations alone do not account for the change in executive communications (Skowronek, 1997). Rather, scholars contend that a dramatic shift has occurred in the ability of presidents to effectively communicate with Congress and the bureaucracy, forcing the president to appeal directly to the American public instead in order to accomplish his agenda (Skowronek, 1997; Tulis, 2017).

Not only has the executive been communicating more so through appearances, the legislative branch has also become increasingly public-facing. One avenue through which this has occurred is social media. As I previously detailed, members of Congress now use social media platforms as an avenue for advancing their own agenda (Lipinski and Neddenriep, 2004; Russell, 2021b). Especially for members of Congress who must compete with other senators and representatives for the media's time and attention, ensuring a message is actually received by the public is important (Macdonald et al., 2022).

Furthermore, the age of celebrity politicians and large personalities in politics has created an environment in which all politicians must be more public-facing in order to garner attention (Street, 2004). Aside from these high ranking officials, political actors from various levels of office are increasingly engaging the public. Alexander et al. (2011) find that even lower bureaucrats actively interact with the public while Rustad and Sæbø (2013) demonstrate a new trend in which politicians take a message

straight to their local constituency using Facebook. Importantly, not only do politicians engage in this behavior, but members of the public have come to expect and even demand this engagement. Tromble (2018) details this phenomenon by examining how citizens expect politicians to interact with their accounts on social media platforms.

Just as the executive and legislative branches have been increasingly engaged in public-facing activities, I expect the same for the judicial branch. At the lower court level, judicial actors have been more involved with the public. For example, Curry and Fix (2019) document that state supreme court judges are increasingly using Twitter to communicate with the public. These authors find that in 2009, approximately ten state court judges used Twitter compared to over 40 in 2016 (Curry and Fix, 2019). One might think that Supreme Court justices would exhibit a different pattern than state court justices given that Supreme Court justices are not elected. However, justices themselves are also exhibiting a pattern of increased public interactions. For instance, justices have been regularly making television appearances (Glennon and Strother, 2019). This corresponds with the trend that Davis and Strickler (2000) identify in which justices are increasingly concerned with their own public relations. Davis (2014) also denotes this trend and its marked change from justices' public relations in the past. These accounts coincide with contentions by Black et al. (2016) that the Court is a "well-traveled lot."

There are other reasons I expect to see increasing public appearances across the data. Technological advances have certainly made it more likely that justices will go public. Papandrea (2012) notes that justices have grown to embrace technology more as social norms regarding the Court have changed. While going public at one point in time may have been thought to be activity not befitting a justice on the high Court, this norm has evolved over time. Davis (2017) points to this trend by discussing a change in what is viewed as "justice-like." Historically, justices have

occupied reserved and reverent roles so things like media interviews would have been thought to be outside the bounds of appropriate behavior. Davis (2017) points to a change in which this behavior is now considered within the purview of a justice's role. In addition to these technological changes, media attention and coverage of the Court has grown. In fact, an important development is that the media now covers the actions of individual justices to a greater extent than in previous time periods (Fogarty et al., 2020).

I expect that these technological and media advances do not just result in more coverage of justices' going public but also, that the changing technological and media landscape could spur justices to increase their appearances. Put another way, it is not that increased media coverage is creating the depiction that justices go public more. Rather, it is increased media coverage of the Court that justices can observe and then knowingly choose to take advantage of this said coverage by going public more.[1] In this new and unique era, justices do not have to question if their appearances will be covered or not. Instead, justices can know that new media and technological developments have resulted in a reality in which their public appearances are sure to be covered by the media and, therefore, possess the potential for a wide-ranging effect. As I previously discussed, it can be easily concluded from prior research that the Court is certainly aware of media coverage and even changes their behavior in response to this coverage (Badas and Justus, 2022; Zilis, 2017).

In addition to this increased coverage as well as justices' awareness of coverage, the *way* in which the media covers the Court has changed. I propose this could also spur justices to increase their appearances. From Sill et al. (2013), it is clear the media often has an attention toward the Court focused on "newsworthiness." This coverage of the Court is becoming increasingly contentious with Hitt and Searles (2018) showcasing that the media's increased usage of a "game frame" for coverage

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[1]This media coverage is primarily directed toward covering the Court's decisions (Strother, 2017).

reduces agreement among the public with the Court's decision. I hold the changing coverage of the Court, particularly its increased negativity, could prompt judges to attempt to counteract this coverage by producing positive coverage for the Court and themselves. An appearance represents the opportunity for a justice to garner some positive, and non-controversial opinion. Because of the nature of judicial appearances that I discuss, primarily the controlled environment these events and appearances take place in, I argue that justices will believe their appearances can generate positive coverage.

I pose an additional reason why I expect justices to increase their appearances. I expect an upward trend in the number of appearances by justices due to decreasing confidence and support in the Court during the time frame under study. Current approval ratings for the Court are at a record low. Most recent polls found that just 40 percent of Americans approve of the way the Court is doing its job (Jones, 2021). The low approval ratings mark a unique era for the Court which has typically enjoyed a high degree of support especially when compared to other governmental institutions (Mondak, 1992). This decline in support for the Court comes at a time when U.S. politicians are increasingly calling for judicial reform. Court curbing bills continue to be heavily discussed in Congress (Moyer and Key, 2018). Not long after taking office, President Joe Biden announced a presidential commission tasked with studying the prospect of reforming the Court (Biskupic 2021). Taken collectively, the Court's status in society is currently in a precarious position. Because of this decreased support and because of the importance of legitimacy for the Court (Friedman, 2009), the maintenance of legitimacy and approval should be key priority for justices. In chapter 6, I consider more specifically the motivating factors spurring justices to go public. For now, I tackle the question of *when* justices go public, positing that various changes to the Court's status among the public will lead justices to increase their appearances.
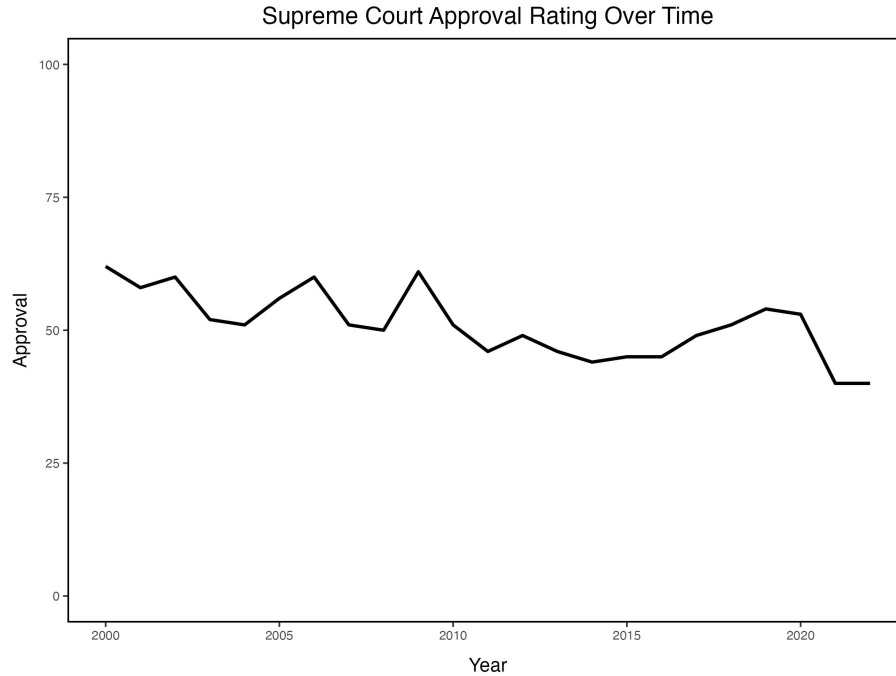
Figure 4.1: Supreme Court Approval Rating Over Time

The data in this study range from 2000-2022. During these 23 years, the Court has undergone several challenges to its standing among the public. For example, Carrington and French (2021) find that the confirmation of Brett Kavanaugh resulted in a decrease of positive attitudes for the Court and an increase in support by the public for Court curbing. Aside from one event or one disliked decision shaping attitudes toward the Court, research demonstrates that the Court's overall approval and legitimacy is highly contingent on ideology (Bartels and Johnston, 2013). As the public has become increasingly polarized and engaged in ideological sorting within the last few years (Mason, 2018a,b), it follows that attitudes toward the Court will also become increasingly polarized and based on ideology. Over 23 years, approval of the Court has continued to decline. This trend is depicted in Figure 4.1. Figure 4.1 highlights a decreasing approval rating for the Court, marking a new low in terms of support among the public.

Because both legitimacy and institutional maintenance are important to the Court, I posit another reason that justices will increase their appearances is due to the

unique, trending downward environment the Court faces among the public. Justices are not immune from the political environment or attitudes but are influenced by these outside forces. This is why justices can be seen responding to threats toward the Court. Justices can be observed conducting interviews to protect the Court's legitimacy (Glennon and Strother, 2019) or changing their behavior in the aftermath of Court curbing proposals (Mark and Zilis, 2019). I hold these behaviors are the result of justices observing the political environment surrounding the Court and, more broadly, the entire U.S., and altering their behavior to account for this environment. Both approval and confidence are important to the Court and the execution of their duties. Taken collectively, based on the increased propensity of political elites to use the public to accomplish their goals, due to an increase in the embrace of technology, and due to increasingly negative attitudes toward the Court, I expect justices will increase their public appearances.

Appearances Hypothesis: The amount of public appearances by Supreme Court justices will increase from 2000-2022.

4.2   When justices go public: Controversy

Thus far, my theoretical expectations center around when a justice will go public primarily focusing on the actual numerical amount of appearances. But there is more to consider than simply the amount of appearances per year or a rate of increase. In particular, there is further nuance to probe in thinking about *when* a justice goes public. While the starting place for discussing when a justice goes public can occur from an examination of yearly trends, it should be supplemented by other specific analyses. This specific analysis can come from zeroing in on other factors that will impact when a justice goes public. In this section, I focus on when a justice goes public by focusing on controversy.

I hold that the calculus of when a justice goes public will be dictated by nomina-

tions and confirmations and the controversy surrounding these proceedings (Farganis and Wedeking, 2014). Particularly in recent years, as the role of ideology becomes increasingly potent in nominations and confirmations to the Court, I expect this to effect the actions of sitting justices on the Court (Epstein et al., 2007). The importance of nominations from a political perspective, along with the contention often surrounding these events, has an effect on other political actors as well. These proceedings, and the public's interest in them, can impact Senator's voting patterns and can reduce the president's ability to navigate his agenda in the Senate (Kastellec et al., 2010; Madonna et al., 2016).

Aside from a scandal or controversy shaping behavior in this way, scandals can negatively impact entire political institutions. Paschall and Burgat (2022) showcase this phenomena by explaining the trickle down effect of a Congressional member's scandal on their staff. Evidence of the wide ranging effect of a scandal comes from Bowler and Karp (2004). Specifically, these authors find that a scandal depletes citizens' trust in an entire political institution as well as their faith in the political process (Bowler and Karp, 2004). Across the judiciary, scandals also have effects on citizen attitudes. Boston et al. (2023) find that scandals negatively impact diffuse support for the judiciary and individual justices. This research is of particular importance as various scandals emerge within the judiciary. At the state level, citizens also dislike scandals involving the judiciary, leading to an increase in negative feelings (Casey, 1988).

Importantly, within the data I collect, the Court has undergone various scandal or controversy periods. For my purposes in this dissertation, I focus my efforts on controversy surrounding Supreme Court nominations. Nomination and confirmation politics can alter views toward the Court. As nominations have grown increasingly contentious, these nominations have the potential to negatively impact the Court (Downs, 2021). Citizens place high value on nominations and confirmations and the

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proceedings can influence their voting behavior (Badas and Simas, 2022).

In the aftermath of a vacancy or a nomination, the Court's legitimacy can decrease. This is shown in a variety of studies. Armaly and Lane (2023) document that the vacancy occurring in the aftermath of the death of Justice Ginsburg decreased diffuse support for the Court. Furthermore, numerous studies point to a change in attitudes toward the Court regarding the confirmation of Justice Kavanaugh. For example, Krewson (2023) finds that the Kavanaugh hearings decreased feelings of legitimacy toward the Court (and altered the importance citizens place on certain characteristics of a nominee). Similarly, Krewson and Schroedel (2020) find that the Court's legitimacy took several blows in the aftermath of Kavanaugh's confirmation. These negative feelings in the aftermath of a confirmation can even lead to increased support for Court curbing measures (Carrington and French, 2021). Even when the contention and partisanship surrounding a nomination is coming from other political actors, the Court's legitimacy can still decrease (Rogowski and Stone, 2021).

I hold that the controversy nominations and confirmations bring to the Court will shape the activities of current members of the Court. Specifically, I argue that these events and the attention they carry will spur members of the Court to be more likely to go public in the aftermath of a nomination and confirmation period. In essence, I hold members of the Court will attempt to "save face" by engaging with the public. As I have previously detailed, justices can often be observed responding to negative external forces and responding in such a way that appears to be an attempt to bolster support.

Responding to negative forces can be seen in evidence of justices adhering to public opinion by following it in their decision making (Casillas et al., 2011). This public opinion can exert itself strongly enough for justices to vote in a way opposite of their ideological preference (Bryan and Kromphardt, 2016). Justices write opinions with the opinions of the various audiences that will read them in mind (Black et al.,

2016b). The Court can even anticipate negative reactions to their rulings and shape their opinion language to account for this (Wedeking and Zilis, 2018).

Based on this theorizing regarding the impact of scandal, increasing negativity surrounding nominations and confirmations, and how justices respond to negative external forces, I anticipate observing justices attempting to counteract these various forces through their appearances. Thus, I form the following hypothesis:

Confirmation Hypothesis: Justices will be more likely to go public in the aftermath of a Supreme Court nomination and confirmation.

4.2.1 When justices go public: Workload

I posit the decision of when to go public may also be related to workload. As has been documented in literature, workload has a significant impact on the behavior of judges. This is true for courts across the globe. For example, Martín-Román et al. (2023) showcase that workload has a substantial impact on Spanish labour courts. From a U.S. perspective, workload is also important. Wahlbeck et al. (1998) demonstrate that a justice's willingness to engage in strategic bargaining is conditional on their workload. Clark et al. (2018) find that Court of Appeals judges, when engaged in or preoccupied by a leisure activity, are slower at drafting opinions. Workload considerations are potent enough to influence the legal reasoning used in a case (Masood and Kassow, 2023). Justices on the Court use their clerks to assist in managing this heavy workload (Corley and Feldman, 2023). Based on this research regarding the sheer influence of workload, I contend this will also factor into the decision to go public.

Going public can be costly and add to a justice's already-full schedule. It includes travel, it includes time, and it could involve resources. Because a Supreme Court Justice's time is split each year between an in-term and out-term period, it is logical to anticipate that justices should have more availability during their recess.

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The Supreme Court's term runs from the first Monday in October until late June. From July-September, the Court is in recess. Per the Court's own website, during these summer months, the Justices "study the argued and forthcoming cases and work on their opinions. Each week the Justices must also evaluate approximately 130 petitions seeking review of judgments of state and federal courts to determine which cases are to be granted full review with oral arguments by attorneys" (Supreme Court Website). This contrasts with the rest of the term in which justices are sitting and must appear for oral arguments and conference meetings. While justices still have responsibility during recess, these responsibilities do not require their physical presence. Thus, justices have a more open schedule in the summer should they wish to make speeches or public appearances. Put simply, when justices are on recess, they should have more time and opportunity to go public. I argue this reality combined with their workload will impact the decision of when to go public. Therefore, I form my next hypothesis:

Recess Hypothesis: Supreme Court Justices will be more likely to go public when on recess than during the Court's term.

4.2.2 When justices go public: Freshman

I also posit that the question of *when* a justice goes public can be explained by considering when in a justice's term on the Court they will be the most likely to go public. Specifically, I expect a justice's position on the Court will make them more or less likely to go public. Justices on the Court do not all behave in a static manner. Rather, a myriad of factors, including a justice's position or status on the Court, can shape the actions they do and do not take. For example, in judicial politics literature, the freshman or acclimation effect has received significant attention. This acclimation effect represents a period of adjustment as an individual transitions from their prior role to the new role of a justice on the Court (Hagle and Spaeth, 1991; Wood et al.,

1998). This freshman effect can be seen in countries' courts across the globe as well as in lower courts in the U.S. (Ostberg et al., 2003; Hettinger et al., 2003).

Scholars have found the acclimation effect can manifest itself in a variety of ways, including voting instability (Brenner and Hagle, 1996), writing less opinions than their senior colleagues (Bowen, 1995), and being less likely to speak or interrupt at oral arguments (Houston et al., 2021). Furthermore, freshman justices are more likely to adhere to precedent than longer serving justices (Hurwitz and Stefko, 2004). This freshman effect translates to voting inconsistencies that are not present later in a justice's tenure (Shipan, 2000). Thus, these justices act differently than their senior colleagues *and* act differently than they do later in their own term. Aside from freshman justices acting differently on their own, the Court treats newer justices differently as well. There are a variety of norms the freshman justice must abide by including things like serving on the Court's cafeteria committee, being the least ranked justice, being the individual to get the door should it be knocked on, and more. These effects depict the reality of being the "newcomer" justice on the Court (Hurwitz and Stefko, 2004).

Aside from these accounts, empirically, freshman justices are treated differently. Primarily, this manifests itself in freshman justices being assigned as majority opinion writer less than their senior colleague counterparts (Brenner, 2001). In the law and judicial realm, experience is important for dictating both what an actor does as well as what they do *not* do. For example, more experienced attorneys fare better in front of the Court (Nelson and Epstein, 2022) and greater experience in a justice shapes their certiorari voting (Caldeira and Lempert, 2022).

These experience and acclimation effects can have an impact on the Court. In addition to both of these forces at work, the concept of collegiality works with the freshman effect and role of experience. I hold that collegiality will work alongside the freshman effect to impact when a justice goes public. Collegiality, understood as

companionship among colleagues, impacts judicial behavior to a large extent (Nash, 2022; Hazelton et al., 2023; Zilis and Wedeking, 2020; Garoupa and Botelho, 2022; Swalve, 2022). I hold this collegiality will operate alongside the freshman effect, impacting when a justice goes public.

Specifically, I hold the relationship between justices will be another reason that freshman justices are less likely to go public. As a justice attempts to adjust to life on the Court, it follows that this justice will not be as active as their senior colleagues who are experiencing no acclimation effect. The collegiality element will play an important role as more senior justices will be more likely to support the Court by going public during another justice's acclimation period. A membership change on the Court can have an effect not just on a new justice but the senior justices as well. An example of this concept comes from Meinke and Scott (2007) who find that membership changes on the Court induce senior justices to change their behavior. I propose the same forces are at work here. Based on this theorizing, I this hypothesis pertaining to an acclimation effect.

Freshman Hypothesis: Freshman justices will be less likely than their more senior colleagues to go public.
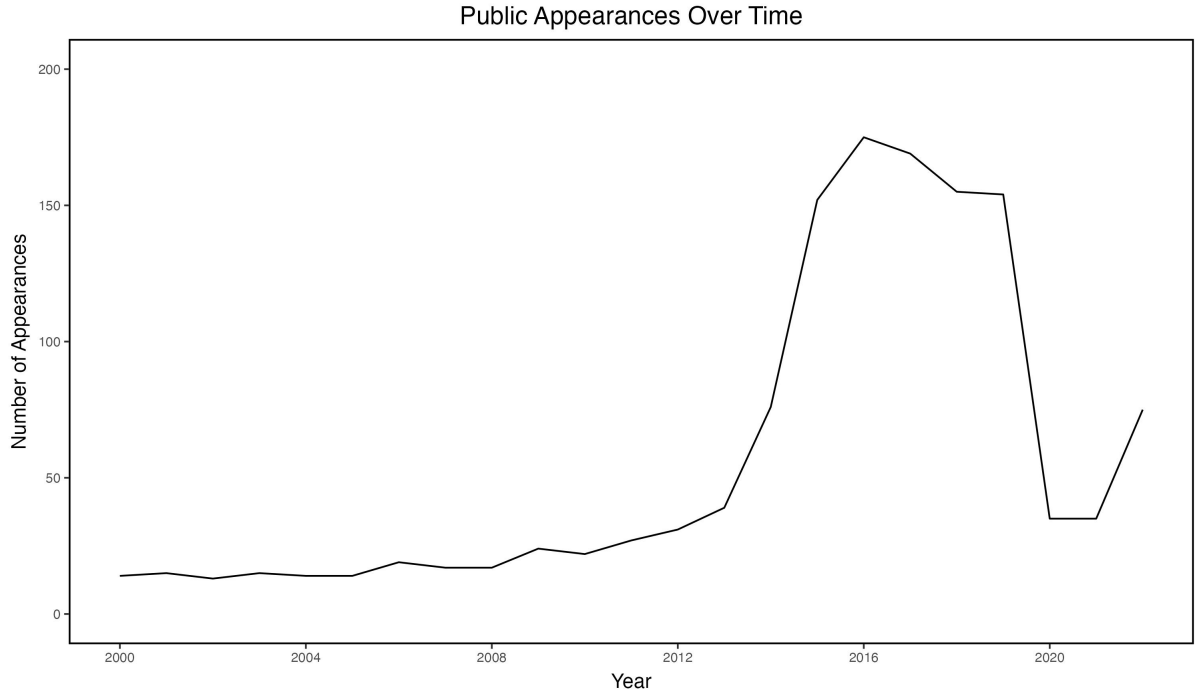
Figure 4.2: Time Trends in Going Public by Year

4.3 Methods and Results

4.3.1 Descriptive Statistics

As I detailed in introducing the Supreme Court Judicial Appearance dataset, this data is novel. Therefore, before turning to regression analysis, I begin by descriptively showcasing many of the variables I collected. In doing so, I also showcase trends in this unique data and offer preliminary insight into when justices go public.

Recall, my first hypothesis concerns the number of appearances justices will engage in over time. My expectation is that this number will increase in the 23 years of data I collect. I show graphically the number of appearances per year for the range of the database (2000-2022). This is displayed in Figure 4.2. Justices choosing to go public has vastly increased over time. In 2002, justices went public just 13 times. By contrast, in 2016, justices went public 175 times.

There are several takeaways from Figure 4.2. First, to answer an important

preliminary question, justices do go public. In reviewing literature earlier, I posed the question of whether or not justices made appearances like members of Congress and the president. While the examples of Justices Barrett, Alito, and Kagan that I provided previously appeared to answer this question, the data presented in this figure answers the question in a systematic manner. Perhaps the most important takeaway from this figure should be that justices are going public *more*.[2] The sharp increase illustrates a uptick in the number of appearances justices make. It also raises the question of why did appearances increase so drastically between 2013-2016? This increase is important for a variety of reasons. First, it underscores the importance of studying this subject. As I have detailed, off-the-bench behavior is the subject of little scholarship. This figure alone could be used as evidence that this omission of extrajudicial behavior from scholarship is a mistake. Justices do not just occasionally go public but regularly do. Scholarship should be able to speak to this. Even before the increase takes place, justices still were engaging the public. In the early 2000s, justices still consistently went public each year. The omission of extrajudicial behavior from research is also resulting in scholars failing to explain the sharp increase in going public behavior. Current research is unable to explain the large increase in judicial public appearances. Why did justices go from making 13 appearances per year to now making as many as 175? What can explain this increase? In chapter 6 I drill down on this puzzling result from this figure by probing the question of why justices go public and why the behavior has increased. For now, I note that this dramatic increase as well as the variations across time in appearances highlight the need to consider when exactly justices go public.

One other trend in Figure 4.2 is worthy of note. As depicted, there is a sharp

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[2]Concern might exist that the low number of appearances in the early 2000s is a product of how much Google is able to retrieve that far back in time. However, across a variety of other studies, it is clear that judicial appearances have undergone a recent increase (Black et al., 2016; Glennon and Strother, 2019; Strother and Glennon, 2021). Thus, I am not concerned about this finding being a product of Google as the results are consistent with other studies.

and dramatic decrease in the number of public or media appearances from 2020-2021. This is almost certainly caused by the COVID-19 pandemic. COVID-19 impacted off-the-bench behavior. In particular, the pandemic gave rise to strict restrictions on traveling and gatherings. These restrictions should result in far less judicial appearances during the pandemic era compared to non-pandemic periods. In January and February of 2020, justices still were making appearances but this behavior almost stopped completely once the pandemic hit in early March. Up until 2020, justices had increased their number of appearances almost every year and there was a clear upward trend in appearances. Had the pandemic not occurred, my expectation is that justices would have continued along with the trend of increased appearances. Importantly, Figure 4.2 indirectly serves as an indicator of the validity of this unique dataset. The number of appearances dropping so drastically beginning in early 2020 points to the validity of the variables in capturing the number of appearances by justices. Thus, while inadvertent, the pandemic and the drop off of appearances helps to validate the data collection process.

I also hypothesized that the decision of when to go public would depend on recent controversy surrounding a nomination. To descriptively examine this, I use the *Confirmation* variable. This variable captures the six-month post confirmation period. Recall that my expectation was that the period following a confirmation would result in a increase of appearances. In Figure 4.3, I plot the six month post-confirmation period as well as the number of appearances taking place each month. I choose the six month period as it is a long enough time frame to capture lingering effects from a confirmation but not so long as to conflate with other time periods. As a robustness check to ensure any eventual result was not driven by the choice of the six month time period, I also coded this variable in periods of one-five months and found no significant differences. This allows me to examine, descriptively, how these confirmations may or may not cause spikes in appearances across the entirety of the

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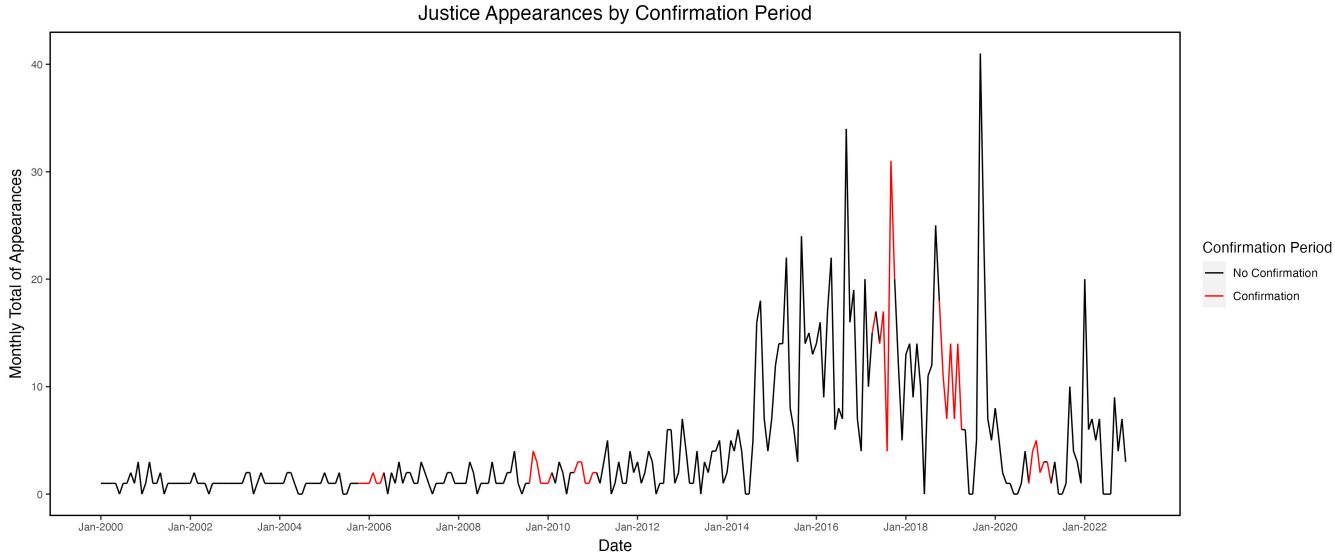
Figure 4.3: Going Public and Confirmation Periods by Month

data. I plot the raw data instead of rolling averages in order to better observe the exact timing of public appearances.

From Figure 4.3, it is not entirely clear if my expectation is supported. There are various periods, like 2015, that have spikes but no confirmation. However, there are still spikes observed across the data. Interestingly, there also appears to be a large downward spike in the aftermath of the confirmation of Justices Gorsuch and Kavanaugh. These are only preliminary results and need to be further tested. Additionally, there have only been seven confirmations to the Court within my dataset. Further examination is needed in order to conclusively speak on the effects of confirmations on going public.

My third hypothesis concerns when a justice will go public from the perspective of their recess periods. Specifically, I expect they will be more likely to go public during recess periods than non-recess periods. Recess months are coded as July, August, and September while the remaining months are non-recess months. With this variable, I graph the number of appearances per month to descriptively consider the *Recess* hypothesis.
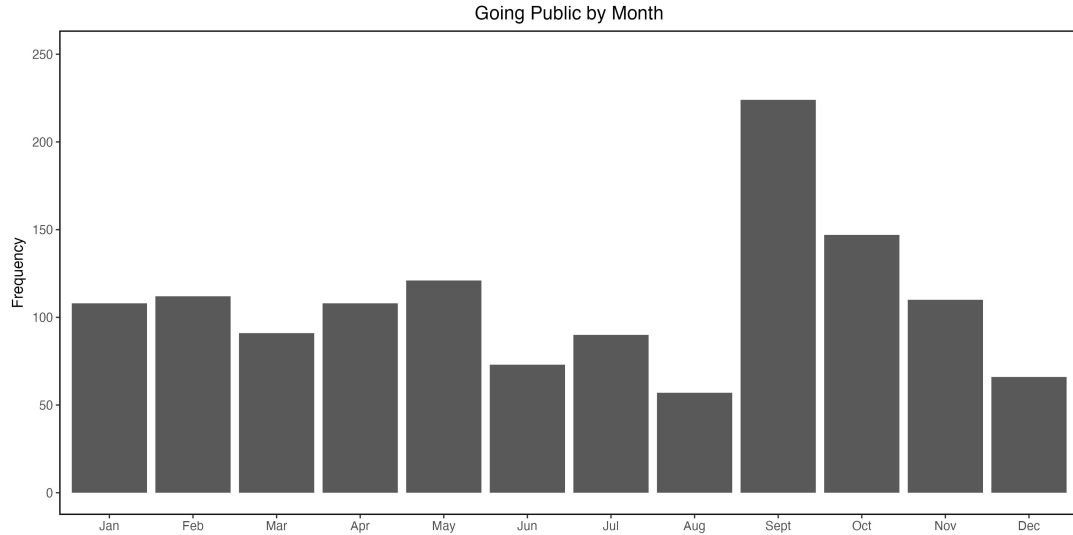
Figure 4.4: Monthly Counts of Going Public

Figure 4.4 provides some initial support for the *Recess* hypothesis. Specifically, this graph showcases that September is the most likely month for judicial appearances. In total, of the entire dataset, 224 of the appearances came in the month of September. Again, this appears to support the *Recess* hypothesis. I hypothesized that justices would be most likely to go public during recess periods. The month of September is the last month of recess for justices before their term begins on the first Monday of October. However, the months of July and August do not appear to support my expectations. These months are low in the number of appearances taking place. This could be, in part, due to justices taking personal vacations during those months given that these months immediately follow the end of the term. I explore various reasons for the differences between the three recess months when I turn to conducting statistical analyses.

My fourth hypothesis concerned a freshman effect. I hypothesized that freshman justices will be the least likely to go public. To descriptively showcase appearances by freshman justices, I use Figure 4.5. This figure compares justices' first two years on the Court with the rest of their tenure. Put another way, it displays a justice's appearances as a freshman justice alongside the number of appearances they make
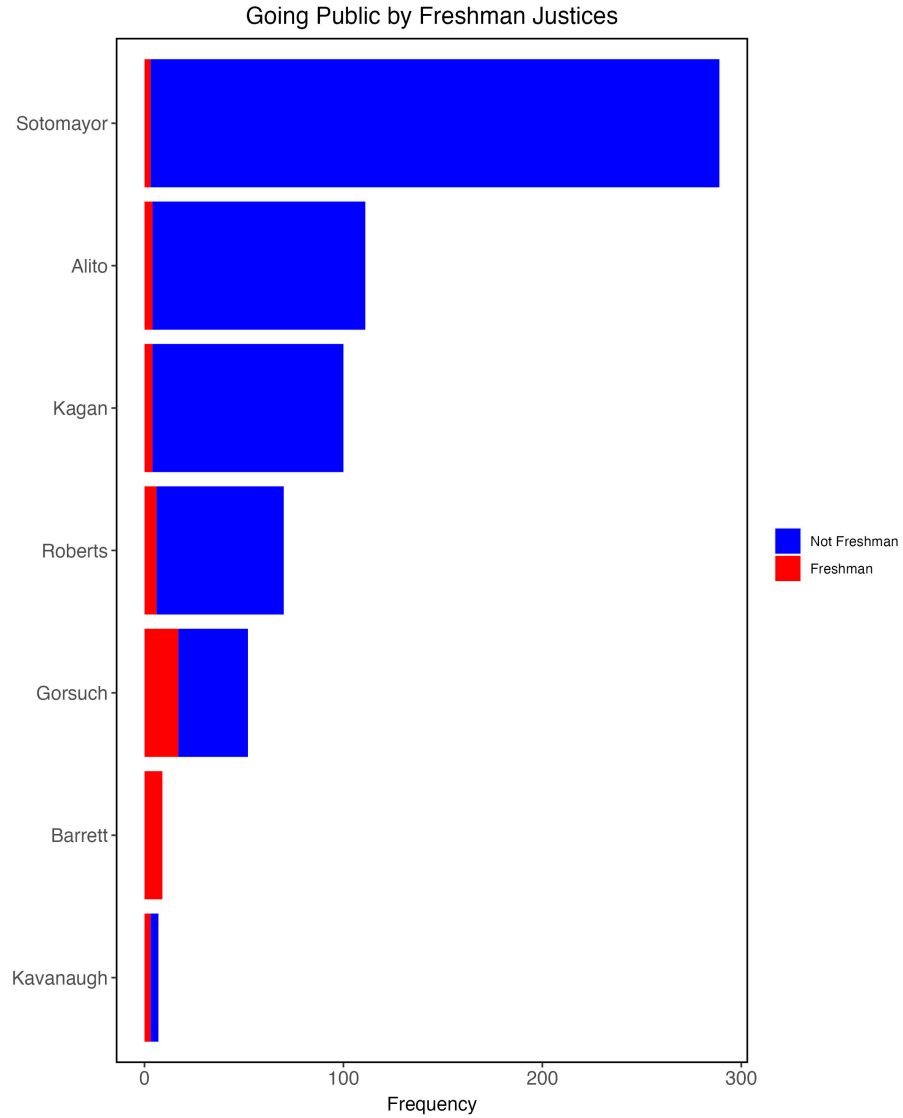
Figure 4.5: Comparing Freshman and Non-Freshman Appearances

as a more senior justice. This allows for an examination of how an acclimation effect may or may not effect an individual justice. It also allows for potential variation in whether or not an acclimation effect is present across all justices or only a subset. In Figure 4.5, I only present justices who were a freshman on the Court during my data. These justices are Sotomayor, Alito, Kagan, Roberts, Gorsuch, Barrett, and Kavanaugh while Justices Stevens, Souter, Ginsburg, Scalia, Kennedy, O'Connor, and Rehnquist were not freshman justices within the years my data captures.

As Figure 4.5 shows, judicial appearances are rare as a freshman justice. All together, justices in their first two years on the Court made a total of 46 appearances. For some justices, appearing as a freshman justice is more likely than others. Justice Neil Gorsuch made a total of 17 appearances as a freshman justice with the next highest, Justice Barrett, making nine appearances. Justices Sotomayor and Kavanaugh gave the least amount of appearances as freshman justices, with only three instances each. This provides some introductory support for the notion that an acclimation effect will result in a decrease in public appearances.

4.3.2 Empirical Analysis

Having shown these descriptive statistics, I now turn to empirically testing the hypotheses. I will be using the *Justice-Month Unit of Analysis* to allow for the examination of the data in different ways. Specifically, this unit of analysis is beneficial for my purposes in this chapter because it allows me to consider the data at a justice level. This approach is needed for testing the *Freshman* variable, in particular. For the first model, my dependent variable will be a count of the number of times a justice goes public per month. The observation total is 2,467.

Because the dependent variable is a count variable, I will employ a negative binomial regression model. I selected this model after conducting two tests to ensure this was the correct modeling choice (Musunuru et al., 2020). First, in the *Count* variable, the variance is greater than the mean which is the first indication that it is acceptable to use a negative binomial regression. Second, after running the model using a negative binomial regression, the p-value for the model was below the necessary 0.05 level to justify its usage. Therefore, I employ this model in this chapter.

In my model, I include three different independent variables to empirically test my hypotheses. The first independent variable is the *Confirmation* variable. This

variable is coded as a '1' if a justice's appearance is taking place within 6 months after a new confirmation to the Court and '0' otherwise. Recall that I expect this variable to be signed in a positive direction, indicating that justices will increase appearances post-confirmation.

The second independent variable is the *Recess* variable. This variable is coded as a '1' if a public appearance took place during a recess month and a '0' otherwise. Because the *Justice-Level Unit of Analysis* is monthly, I cannot account for the specific dates the justices are on recess but, instead, have to use recess months. This is not too much of an issue since the Court's term typically ends at the end of June and begins the first Monday of October. Therefore, I code July, August, and September as recess months and the remaining months in a year as non-recess months. I also expect this variable to be signed in a positive direction following my hypothesis that recess periods should increase appearances.

The third independent variable is the *Freshman* variable. This variable is coded as a '1' if a justice's appearance is during their first two years on the Court and a '0' otherwise. I use the two year period as this is largely what literature has agreed the acceptable time frame for an acclimation period is (Ostberg et al., 2003; Houston et al., 2021).

I include several control variables. First, I control for presidential election years. I do this under the assumption that justices will be less likely to go public during election years. Specifically, I hold that justices may want to avoid controversy that election years bring and, therefore, will decrease their appearances during these years. This variable is coded as a '1' if an appearance takes place during a presidential election year and a '0' otherwise.[3] I expect this variable to be signed in a negative direction. The presidential election years within my dataset are 2020, 2016, 2012,

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[3]With this coding, an election year is operationalized as the 10 months prior to the election (January-October), the election month (November), and the month following the election (December). This accounts for both a pre and post election period.

2008, 2004, and 2000.

I also include a control variable for whether or not a justice's appearance is a part of a book tour. Justices often publish books and use media outlets and other forms of appearances to promote these books. I expect that during a book tour, a justice will be more likely to make an appearance so I control for that. This variable is coded as a '1' if that particular month includes a book tour event by a justice and a '0' otherwise. I expect this variable to be signed in a positive direction.

I also include a control variable accounting for the periods in which there are less than nine justices on the Court (for example, during a vacancy period). I anticipate when a vacancy is present on the Court, there will be less likelihood of an appearance occurring. This expectation is intuitive in that when there are nine justices on the Court, there is a higher likelihood of an appearance versus when there are only eight. This variable is coded as a '1' for a vacancy month and a '0' otherwise.

Before running the regression, I cluster the results by justice and I specified the model to include fixed effects by year. Including the year fixed effects allows for an over time increase in appearances. The results from the negative binomial regression are presented in Table 4.1.

	Appearances
Confirmation	0.335**
	(0.103)
Recess	0.0942
	(0.165)
Freshman	-0.471
	(0.363)
Election	-0.839***
	(0.128)
Vacancy	1.952***
	(0.184)
Book Tour	2.166***
	(0.193)
Year Fixed Effects?	Yes
N	2467

Dependent variable is a count of the number of times a justice goes public per month

Negative binomial regression model

Standard errors in parentheses and clustered by justice

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 4.1: Explaining When a Justice Goes Public: Controversy, Workload, and Position

From Table 4.1, multiple findings emerge. The *Confirmation* hypothesis receives support from these findings. I expected that appearances would increase in the aftermath of a Supreme Court confirmation. The *Confirmation* variable is significant and signed in the expected direction. From this finding, I conclude that confirmation politics impacts justices' off-the-bench behavior. Through this result, I showcase another realm where justices respond to a negative external force. The *Confirmation* variable is also substantively important. The coefficient indicates that confirmation periods increase the likelihood of a public appearance by over thirty percent. As

scholars continue to discuss controversial nomination and confirmations, the reaction of justices to these proceedings should be investigated further.

Turning to the *Recess* hypothesis, I do not find support for my expectation. The *Recess* variable is signed in the expected direction but does not achieve statistical significance. The results from the earlier Figure 4.4 indicate that September is a particularly common month to go public but less so July or August. This difference between the months could be a cause of this null result. I consider this possibility further by adding dummy variables for September, August, and July into the model. Doing this allows me to observe if the differences between these months is driving the null result. In Table 4.2, I show three dummy variables for September, August, and July (the three recess months).[4]

From Table 4.2, I conclude there is support for my expectation that the null result for the *Recess* variable in 4.1 is driven by differences in recess months. The results from this model conform to the descriptive results I presented in Figure 4.4. Specifically, in Table 4.2, I document that justices are more likely to go public during the month of September. The *September* dummy variable is positive and statistically significant. This indicates that judicial appearances increase during the recess month of September, which conforms to my expectation and provides support for the hypothesis that justices would increase their appearances during recess months. The *August* and *July* dummy variables are are both signed in a negative direction, but the *July* variable is not significant. This negative result also provides support for the notion that disentangling recess months provides more insight into how workload impacts extrajudicial behavior. From both Figure 4.4 and Table 4.2, I conclude that justices are more likely to go public in *specific* recess months but not others. These results indicate that justices are *more* likely to go public during the recess month of September but *less* likely to go public during the recess months of July and October.

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[4]I include the *Confirmation*, *Recess*, *Freshman*, *Election*, *Vacancy*, and *Book Tour* variables as well as year fixed effects in the model I run but omit them from display in Table 4.2.

	Appearances
September	0.626***
	(0.120)
August	-0.616*
	(0.289)
July	-0.150
	(0.239)
N	2467

Dependent variable is a count of the number of times a justice goes public per month

Other variables not shown

Negative binomial regression model

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 4.2: Considering Individual Recess Months' Impact on Appearances

As I alluded to previously, this difference between these three months could be due to justices wrapping us Court-related business in July or using the early recess months of July and August for vacations or personal trips.

Returning to Table 4.1, the *Freshman* variable is signed in the expected (negative) direction but does not achieve statistical significance. While the variable's direction indicates that freshman justices are less likely to go public, this finding is not statistically significant. Given the literature on freshman effects, this is not entirely unsurprising. In particular, scholars often offer mixed evidence on whether or not a freshman effect actually exists, largely concluding the effects are experienced by some justices but not by others (Wood et al., 1998). Still, there remains a need to consider how off-the-bench behavior is impacted by justices' positions on the Court.

The *Election* control variable is signed in a positive direction and is significant. From this finding, I conclude that justices are less likely to go public during election years which fits with my hypothesis. In addition to the *Confirmation* variable, this

variable also showcases the impact of external events on judicial behavior. Additionally, this particular finding indicates the influence of *executive* external events on judicial politics.

Looking to the control variables, the *Vacancy* variable is significant and positively signed. This finding is somewhat unexpected. It demonstrates that during a vacancy period, the justices are *more* likely to go public. Because there are only eight justices on the Court during those periods, this is not what I anticipated. However, it could be caused by the same forces at work causing appearances to increase during the aftermath of a confirmation.[5] I suggest that this finding could be due to justices anticipating the volatility about to occur surrounding the Court and being proactive to push back against this.

The *Book Tour* variable is positive and statistically significant at the 0.05 level. This indicates that justices are more likely to go public while promoting a book. I anticipated that justices would have the desire to promote their newly published book and would do so through taking advantage of appearance opportunities. This finding supports that holding. Furthermore, these results align with findings from Black et al. (2016).

I graphically showcase my results for both the *Confirmation* and *Election* variables in Figure 4.6 and Figure 4.7. Given the interesting finding of the *Election* control variable, it warrants further consideration so I substantively examine it. Both of these figures showcase the likelihood of going public in confirmation and non-confirmation and election and non-election periods using margins plots.

Beginning with Figure 4.6, I show how confirmation periods influence the predicted count of appearances. The confidence intervals overlap in Figure 4.6 but the *Confirmation* variable is significant. Based on Figure 4.6 This indicates that the

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[5]To ensure that there was not a multicollinearity issue between the *Vacancy* and *Confirmation* variables, I ran a correlation between the two variables. The correlation is not significant. Thus, I am not concerned about a multicollinearity issue.

Effect of Confirmation on Going Public Counts
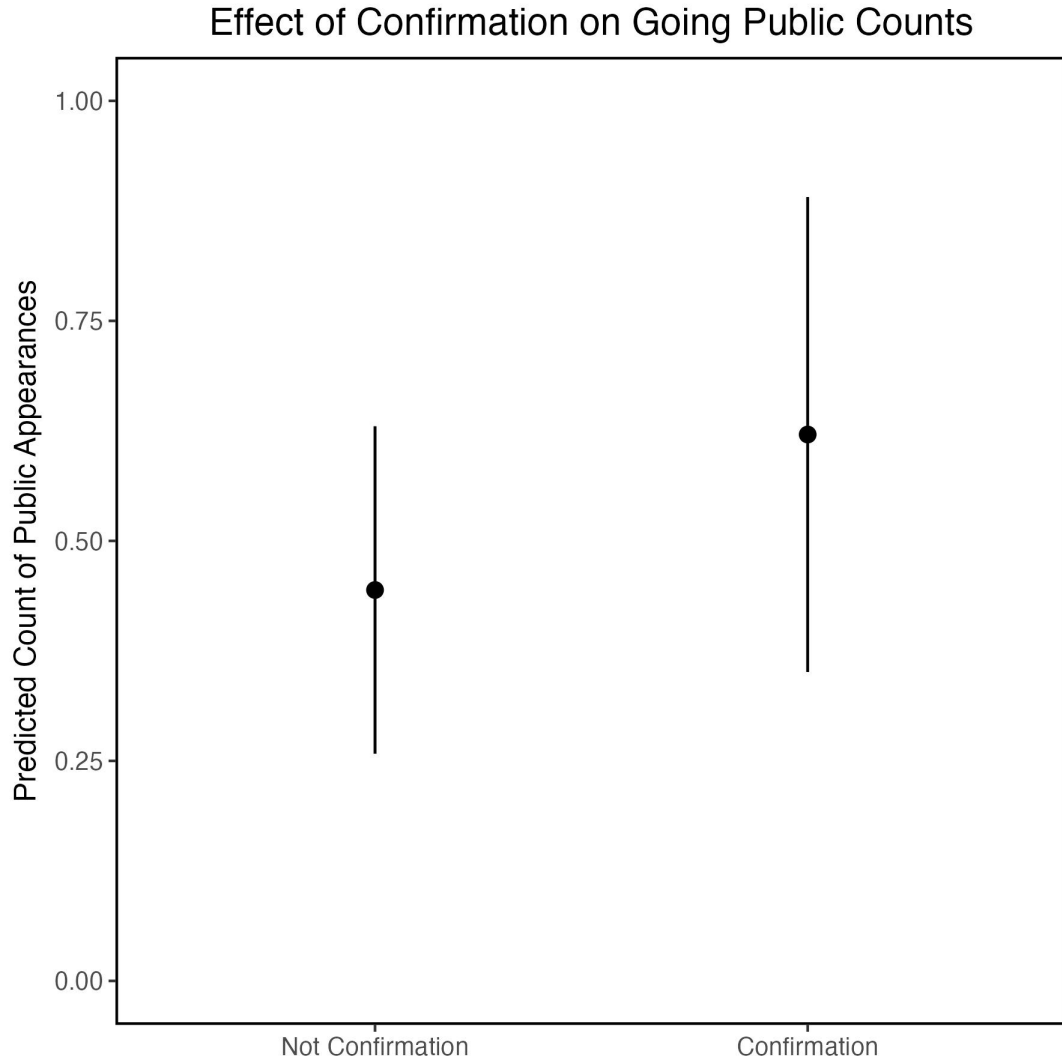
Figure 4.6: Effects of Confirmation Period on Appearances

predicted count of public appearances is greater during a confirmation period than a non-confirmation period.

Figure 4.7 showcases the predicted count of appearances during an election period or a non-election period. In this graph, the confidence intervals do not overlap. Figure 4.7 showcases that there is a greater probability of public appearances during a non-election period than during an election period.
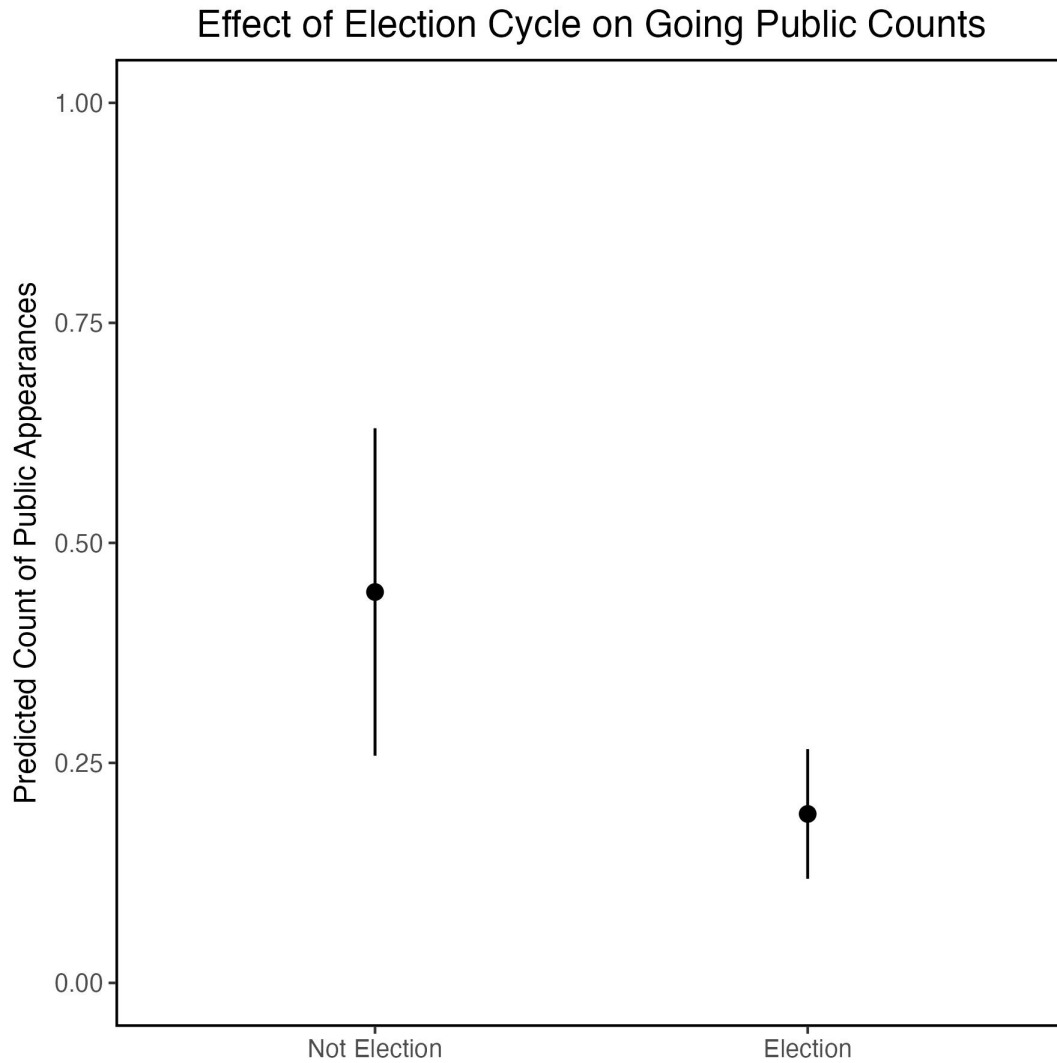
Figure 4.7: Effects of Election on Appearances

4.4   Conclusion

In this chapter, I explored the question of when justices engage the public. I began by theorizing that justices' public appearances will increase for a variety of reasons. First, I expected to observe an increase due to the forward-facing nature of other political actors and institutions. Second, I argued that technological increases could spur a justice to go public. Finally, I argued the unique environment the Court finds itself in, due to low approval and support, should also influence the likelihood of going public. I argued a combination of these three forces would create an increase

in going public among justices on the Court.

In addition to expecting a numeric increase in appearances, I anticipated further nuance in when justices go public. I hypothesized that a justice's decision is also based on controversy, workload, and position on the Court. I posited that because of the impact of scandals and controversy on political institutions, that justices would respond to these forces. Specifically, with nominations and confirmations, I expected justices to be proactive in attempting to negate negativity and would be more likely to go public in the aftermath of a confirmation. I found support for this hypothesis. In particular, justices are more likely to make appearances during a post-confirmation period. I documented statistical significance for this notion and also showcased the substantive importance of confirmation periods on judicial appearances. This finding is important as it showcases justices responding to external forces.

I also found support for the notion that election years could impact the likelihood of justices to go public. This was an unexpected finding but particularly interesting. This is another finding that lends credence to the concept of external actors and forces exerting influence on the behavior of justices. Both of these findings should be investigated further.

I anticipated that freshman justices would be less likely to go public given their newness to the Court. While this variable was signed in the expected (negative) direction, it did not achieve statistical significance. As I detailed previously, this is not entirely unsurprising given some of the mixed results on an acclimation effect within the literature (Wood et al., 1998). Going forward, scholars should continue to disentangle the notion of an acclimation effect and the circumstances under which it is or is not present.

I did not find support initially that a justice's decision is impacted by workload. While the *Recess* variable was signed in a positive direction, it was not statistically significant. There are a variety of potential reasons for the null finding. It could be,

in part, due to the lack of specificity in the recess categorization due to the monthly data. Additionally, this could be attributed to the Court's shrinking docket and, therefore, more free time during non-recess periods (Owens and Simon, 2011). Using the descriptive data on the total number of appearances per month as a guide, I considered that the null result could be driven by the months of July and August, which contained less appearances than September. I created dummy variables for these months and found, in fact, that justices are more likely to go public during September.

Chapter 5 Second Empirical Chapter: How do justices engage the public?

5.1 Theoretical Expectations

In the previous chapter, I explored at length the question of when do justices go public? I answered this question in a variety of ways, proposing that controversy, workload, and a justice's position on the Court all factor into the timing of public appearances. Having established that justices do go public and that the timing of their decision is shaped by a multitude of factors, I now turn to considering *how* justices go public. This question is important for a variety of reasons. Various political actors often have different styles in their communication. These styles can be dictated by factors like intended audience, ideology, and media attention (Russell, 2018; Sheafer, 2001; Kelm, 2020). Importantly, these communication strategies can help explain important political phenomena (Ritchie, 2018). Justices on the Court also have different styles or approaches for how they go about their duties. This includes different writing styles, different styles for asking questions during oral arguments, and different styles for gathering information (Owens and Wedeking, 2011; Carlson et al., 2015; Wanderer, 2002; Jacobi and Schweers, 2017; Johnson et al., 2007). From a broader perspective, justices on the Court have distinct personality traits that can also influence their actions (Black et al., 2019).

The takeaway from this literature is that various styles for how politicians and justices go about their duties hold importance. I posit that there is similar importance to be uncovered by discovering how justices engage with the public. I explore the question of how justices go public by examining three things: Method, audience, and content. While there are numerous ways to think about how justices go public, I devote my attention to these three areas. With regards to method of appearance, I consider the specific mode of judicial appearances, particularly the likelihood of me-

dia and speech appearances. Understanding how justices navigate appearance mode can be helpful in comprehending justices' attempts to influence the public. Additionally, I discuss the usage of joint appearances and the determinants behind justices making appearances together. Exploring these inter-connected concepts allows me to speak into how justices go public, focusing on the method used. Second, with regard to audience type, I explore differences in audiences, positing that justices will be particularly apt to appear before favorable audiences. This allows me to speak to the relationship between justices and their audiences and proffer on the broader purposes justices have in making appearances and how audiences shape judicial goals. Third, I examine how justices go public by focusing on the content of their public appearances. Specifically, I categorize the contents of justices' remarks as legitimacy or non-legitimacy enforcing. Doing this allows me to infer the broader purpose in judicial public appearances.

Examples assist in illustrating the variability in public appearances, the nuance in how justices choose to interact with the public, and why this topic is worthy of study. Looking at four recent examples of public appearances, there are various differences to be explored. For instance, on July 15, 2021, Justice Stephen Breyer offered an interview to CNN. In the midst of ongoing speculation pertaining to his retirement plans, Breyer spoke to the outlet, covering a range of topics including his future on the Court, the justices' conferences, and his record as a long-standing liberal justice (CNN, 2021).

Turning to a second example, in March 2020, the Chief Justice of the Supreme Court, John Roberts, went public via the issuing of a statement. Specifically, Chief Justice Roberts responded to comments made by Senator Chuck Schumer referencing Justices Gorsuch and Kavanaugh. In his public statement, Roberts reiterated justices' commitment to their roles as judges and called comments such as Schumer's, "dangerous" (Williams, 2020). A third example comes from Justice Clarence Thomas

engaging in a public appearance by teaching a course at the University of Georgia law school in September of 2016. Thomas's short course focused on the importance of judges following stare decisis and adherence to precedent in their rulings, emphasizing the duty of judges to embrace longstanding precedent in their decision making.

A fourth example occurred on May 24, 2017. Justice Ruth Bader Ginsburg attended and spoke at a Wye Fellows Speaker Series event. Ginsburg delivered a speech to the audience, sharing about her background growing up and her efforts at overcoming obstacles stemming from her status as a female in the legal profession. She went on to mention her former colleague, Justice Antonin Scalia, and the mutual respect and friendship the two shared. In addition to these topics, she proffered opinions on the difficulty of death penalty cases. Her time at the event concluded with her expressing admiration for her newest colleague, Justice Neil Gorsuch (Bishop, 2017).

These four examples showcase both the differences and commonalities in appearances by justices. In each of these examples, a justice went public through a different method: Breyer through a media appearance, Roberts through a public statement, Thomas by teaching a course, and Ginsburg through delivering a speech. There are other differences and similarities as well. Justice Ginsburg made reference to a specific case during her appearance while other justices did not. She also made reference to two of her colleagues. Roberts, Thomas, and Breyer each made references to the role of judges, their duties, and the importance of these duties.

These examples highlight the nuance that exists within judicial appearances. Justice appearances are not all the same. Just as justices are distinct individuals with different personalities and preferences, we should expect their appearances to also be distinct. I am interested in finding trends and dissimilarities across justices' appearances in order to make inferences about justices' broader purposes in their public interactions. Thus, I now explore *how* justices go public focusing on method,

audience, and content.

5.1.1 How justices go public: Method

One of the areas where I will focus my attention is the method through which justices go public. As various examples have shown, justices have different methods for going public both with regards to how they make their comments and how they present themselves in appearances. A better understanding of these methods can allow for inferences regarding differences in how justices conduct their duties.

First, I posit that justices will be most likely to go public through speeches. Recall that I suggest justices can go public in four different ways: A speech, a media interview, by teaching a course, or by issuing a public statement. I expect speeches to be the most common method for a justice to interact with the public. This expectation is built on a variety of reasons.

Generally speaking, justices appear to have a general distrust and distaste for media. Throughout all eras of the Court, justices have been hesitant to interact with the media (Davis, 2011; Papandrea, 2012). A motivation for this hesitancy could be related to justices' desire to appear above the political fray. The public regularly expresses a desire for justices to be apolitical (Baird and Gangl, 2006). Despite this goal, the Court can still be perceived as political as Bartels et al. (2015) showcase through their finding that lawyers perceive the Court as a political body.

Still, the goal remains for justices to *not* be perceived as political. Justices' own comments reflect this goal. For example, in November of 2018, Chief Justice John Roberts responded to comments by then President Donald Trump concerning the Court. Roberts pushed back against Trump's criticism of justices on the Court by saying, "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them" (Sherman, 2018). The

comments by Roberts appear to be an effort to reject a narrative of the Court as political. By emphasizing the lack of tie from a justice to the president who nominated them, Roberts pushes back against a broader perception of the Court being filled with political actors.

Because of this goal to appear apolitical, I argue that justices will put themselves in environments to best accomplish this. Essentially, I hold that justices will prefer to engage the public via a speech rather than a media source that they may not trust. By giving a speech, justices are better able to control questions they may be asked as well as the content on which they will speak. Through a speech, justices can still utilize the media by allowing media to cover a speech instead of giving a direct interview to a media outlet. In short, I hold justices will perceive media coverage of a speech to be a "safer" option than giving an interview. While justices are able to completely control the content of public statements, these statements are not readily issued. Public statements typically occur in the aftermath of some large event or news as I detail below.

Additionally, a speech will appear to a justice as the best tool for getting a message across to an audience. Glennon and Strother (2019) find that justices have clear goals in their communications. Similarly, Epstein and Knight (1997) argue that justices are "goal-oriented". I hold that the best way for a justice to accomplish their goals will be through a speech. In a media interview, justices will be constrained by a variety of forces including the interviewer, the outlet, and the outlet's need for an audience. As I detailed previously, justices have been skeptical of media in the past (Papandrea, 2012), perhaps due to these very constraints. In contrast to media appearances, by making a speech, justices can choose what they will or will not say which may be advantageous given that the justices represent an institution enshrined in secrecy and privacy. Because justices are goal-oriented (Baum, 1994), this nature should also adhere to their choice of public engagement.

Finally, a speech will also consume less time than other methods of communication. Teaching a course involves a lengthy time commitment from a justice which could prove difficult due to a busy schedule. By contrast, a speech involves a justice speaking but far less time than teaching an entire course. Additionally, I expect speeches to be more common than justices' issuing public statements. Public statements appear to be reserved for monumental events like a justice retirement or addressing rumors of conflict on the Court. A justice can choose to give a speech anytime and does not have to wait for a noteworthy occasion.

To summarize, there are four reasons I expect justices to be more likely to use speeches than other forms of going public. First, because of a distaste for the media, justices will be cautious to avoid the media as much as possible and, instead, interact with the public through speeches. Second, justices can be the clearest in their communications and presentation of a message through a speech, which will assist them in pursuing their goals. Third, justices can best control the environment of a speech which will allow them the best opportunity for an effective and persuasive appeal. Fourth, speeches are the most convenient form for a justice to engage the public.

Importantly, these four reasons involve a mix of logistical considerations (the convenience factor of speeches) as well as strategic considerations (desire to avoid the media and the ability to control the content of their messaging). In chapter 6, I discuss more thoroughly various considerations that motivate justices to go public at all, arguing that both instrumental and non-instrumental forces are at work in this process. For now, I simply note that even with regards to the decision of *how* to go public, justices take into account multiple considerations. Throughout this dissertation, I argue justices are not one-dimensional in their thinking and motivations. Rather, they are multi-faceted and studies of judicial behavior should take into account this nature. These four reasons lead me to conclude that giving a speech should

be the most common method a justice uses to go public.

Speeches Hypothesis: Justices will be more likely to go public by way of speeches than other forms of engaging with the public

While I expect speeches will be the most common method for going public, I do expect to observe a change in justices' usage of media. Specifically, I anticipate their usage of media will increase. Traditionally, justices have been hesitant to use the media but this trend shows signs of changing (Davis, 2011; Papandrea, 2012). The media pays the Court and its individual justices quite a bit of attention (Fogarty et al., 2020). I argue the Court is not simply a passive recipient of this media coverage. Instead, I hold that justices can be proactive in their relationship with the media and adapt to a changing media environment.[1] In particular, I expect to observe justices come to use the media more. Because of media and technological advances taking place as well as the unique position the Court finds itself in, I anticipate that justices will use the media more over time.

A portion of my reasoning pertains to the notion that justices will come to use the media more because media appearances have the potential for the most wide-reaching effects. If a justice provides a media interview to a major outlet, that interview is likely to be read or watched by millions of Americans. Thus, if justices have a goal of appealing to the public, media can be an effective and efficient way to do so.

Media coverage of the Court is expanding. Katsh (1983) details the relationship between media and the Court and the historical lack of coverage the judicial branch of government receives compared to the other two branches. This relationship has evolved since. Over time, media coverage directed toward the Court is now significant and has the potential to influence public opinion (Zilis, 2015; Strother, 2017).

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[1]To be clear, the choice between a justice's use of an appearance is not always entirely straight forward. For instance, a justice may give a speech, recognizing that this speech will generate media coverage.

Particularly at the Supreme Court level, media coverage of judicial politics is vast (Policinski, 2014).

I argue that if a justice makes a media appearance, their appearance will likely reach the largest audience. This potential audience reach could be a motivating factor for a justice. Specifically, if going public is based on strategic considerations and is, as I discussed in chapter 4 and discuss more thoroughly in chapter 6, based on attempting to bolster public opinion, it follows that a justice would seek out large audiences where they have the potential for the most impact.

Another mechanism could be at work that shapes justices' use of media. Particularly, changes in what behavior is considered "justice-like" could spur greater use of non-traditional media methods (Davis, 2017). In his work, Davis (2014) denotes a change in the media forms justices are open to using. For instance, justices have had a hesitancy to take part in any news interviews for much of the history of the Court (Davis, 2014). If justices were to conduct an interview, it was typically for some sort of legal outlet (Davis, 2014). This behavior has since changed. Justices now conduct interviews with outlets like USA Today, Fox News, The New York Times, and Larry King Live (Davis, 2014). Similar to these outlets that Davis (2014) showcases, within my own data, I document instances of justices appearing on talk shows like The Stephen Colbert Show or The Daily Show with Trevor Noah. Based on these trends, I conclude that the Court is in a new media era where justices are more open to non-traditional methods of going public.

Media Usage Hypothesis: Justices will increasingly use the media as a going public method in the 23 years of data.

I further explore the method for how justices go public by considering joint appearances. Joint appearances are an appearance where multiple (at least two) justices appear together. I expect that the usage of joint appearances by the Court will be strategic. Specifically, I argue the decision for justices to appear together

will be based on negative attention directed toward the Court and an attempt to combat this. I argue this theorizing represents an important, understudied aspect of the Court. Essentially, I posit that the justices on the Court may work together to help improve the Court's position in the eyes of the public through joint appearances.

Here, I rely on much of the same literature I did in chapter 4 when discussing the impact of controversy on the Court. I argue that controversy does not just impact when the justices go public but *how* they do so. In the aftermath of controversy, I anticipate justices making more joint appearances. In this chapter, I focus on a different type of controversy other than confirmations. Specifically, I hypothesize that justices will make more joint appearances in the aftermath of rumors of conflict on the Court. My argument is that justices will attempt put to rest rumors of interpersonal conflict on the Court by making appearances with their colleagues. These joint appearances are an opportunity for justices to appear friendly with one another and portray good working relationships to the public. Hypothetically, these appearances could give the impression that the Court is entirely collegial.

By many accounts, the Court is a collegial working group. As Cross and Tiller (2007) point out, the Court's working style necessitates justices having good relationships with one another. The justices spend a large amount of time together during oral arguments and conference so getting along with one another would appear to be imperative (Cross and Tiller, 2007). Maltzman et al. (2000) further detail the nature of justices' relationships with one another by depicting the work the Court does as "the collegial game".

Justices themselves describe the importance of collegiality in their role as jurists. Justice Benjamin Cardozo spoke on the collegial atmosphere the justices share, noting its importance for reaching decisions (Edwards, 2003). More recently, justices have taken to praising one another in their public appearances, seemingly showcasing evidence of their good relationships with one another. For example, Justice Sotomayor

has repeatedly defended and praised Justice Thomas, recently saying he is, "a man who cares deeply about the Court as an institution-about the people who work here" (de Vogue, 2022c). Justice Ginsburg and Justice Scalia were often on opposite sides in cases but regarded as having an exceptionally close friendship. In her memoir, Ginsburg wrote about Scalia, saying "How blessed I was to have a working colleague and dear friend of such captivating brilliance, high spirits and quick wit" (Wolf, 2020). These comments seem to depict even further attempts at portraying collegiality.

However, despite appearances and despite the justices' own comments, rumors continue to circle concerning interpersonal conflict among the justices. In January of 2022, media reports detailed alleged conflict between Justice Gorsuch and Justice Sotomayor over mask wearing on the bench.[2] In the aftermath of this, the two issued a joint public statement describing themselves as "warm colleagues and friends" (de Vogue, 2022b). More recently, media speculation continued regarding potential disagreement between Justices Alito and Kagan. Justice Kagan, at a public appearance in Portland, Oregon, appeared to contradict previous public statements by Alito on Congress's power, arguing that Congress did have a Constitutional role in constraining the Court (Gerstein, 2023). Her comments were taken by some as criticizing a recent interview of Alito's. This speculation caused Kagan to clarify that her comments were not addressed toward Alito as she was not sure of the context of his remarks (Gerstein, 2023).

In addition to these real-world examples, scholars have also highlighted a lessening collegiality among members of the Court. The "norm of consensus" that at one point defined the Court has suffered decline (Epstein et al., 2001). The end of the norm of consensus meant that justices stopped going along with the majority so much and began writing more dissents (Epstein et al., 2001). Still, justices on the Court attempt to present themselves as collegial in a variety of ways. The above examples

[2]At the time, justices were wearing masks while conducting oral arguments due to the COVID-19 pandemic.

of justices complementing their colleagues or clarifying perceived disagreement points to this reality, as does research. Evidence of this comes from Nash (2022) who finds that justices are more collegial in their dissents in published cases versus unpublished. This finding means that justices, at the very least, want to *appear* collegial. And, it showcases that even when justices disagree, they will mask that disagreement to the public. Based on these actions by justices and their efforts to portray a collegial Court, I expect their off-the-bench behavior to follow a similar pattern. Therefore, I hypothesize the following:

Collegiality Hypothesis: In the aftermath of perceptions of disagreement on the Court, justices will be more likely to make joint public appearances.

5.1.2 How justices go public: Audience

In addition to the method by which justices go public, I contend that the audience justices choose to appear before will also lend insight into the motivations behind their public appearances. Method is important but I also argue that how justices make appearances can be best understood by accounting for *who* justices appear before. Put differently, when a justice goes public, who do they go public to? Who is the audience hearing a justice make a speech? When a justice teaches a course, who exactly are they instructing? Within my data, I collect information on audience types at justices' events. This allows me to answer these questions.

My first contention with regard to audiences is that justices will seek out primarily favorable audiences. Audience types are not all the same. Justices appear before various audiences that include legal audiences, college students, elites, or general audiences. Aside from these broad categorizations of audiences, justices travel to different states and cities which may or may not be favorable toward that justice's ideology or policy preferences. I hold that justices will strategically choose what audiences to appear in front of or what states to travel to.

First, I argue that justices will seek out favorable audiences through the states they travel to. Essentially, I propose that justices will anticipate potential negative reaction to their visits or appearances in ideologically-unfriendly states. In an effort to avoid this, justices will be more likely to visit ideologically-friendly states and less likely to visit ideologically-unfriendly states. This holding fits with literature on justices and their audiences. I choose to focus on the state-level as this same choice is made by Black et al. (2016).

Audiences matter greatly to Supreme Court justices in a variety of respects. From a broad perspective, Frishman (2017) contends that Court-audience relations are important to the justices and they work to maintain these relations. To that end of audiences being important to the justices, the Court can be observed curtailing their behavior for certain audiences (Black et al., 2016b). Further evidence of this is seen in justices' language. Krewson (2019b) finds that a justice's emotional appeal during oral argument is based on the suspected audience. When a case is non-salient, and, therefore, likely to be interesting to a legal audience, justices use different language than when they are speaking concerning a salient case that is likely to garner public attention (Krewson, 2019b). These examples highlight justices changing their behavior based on an audience.

I anticipate observing similar behavior in extrajudicial activity. I believe justices will also anticipate audience types in their public appearances. Specifically, in making the decision to go public, I argue justices will seek out favorable audiences. One way for justices to potentially identify favorable audiences is through the state an event will take place in. Importantly, this contention follows the findings of Black et al. (2016b). These scholars find that justices' ideological preferences shape the states they travel to. Essentially, this reasoning argues that because audiences do matter to justices, they will seek out states in which they are most likely to receive a non-hostile

crowd.[3] For instance, Justice Alito might be better perceived in Alabama than in New York because his ideology aligns better with the ideology of Alabama than New York. Because of this reality, this literature argues justices will think ahead regarding potential audiences by selecting ideologically-friendly states to visit. Based on this literature, I form the following hypothesis:

Favorable State Hypothesis: Conservative (liberal) justices will be more likely to make an appearance in a conservative (liberal) state.

While I expect all justices to prefer to appear before favorable audiences, I anticipate this tendency will be greatest among ideologically extreme justices. There are two reasons I predict that ideological extremity will impact a justice's chosen audience. First, I expect that justices who are ideologically extreme will care the least about the Court appearing apolitical or legitimate and, therefore, not worry about the effects of appearing before a distinctly ideological audience. Second, I anticipate that ideologically extreme justices will receive the most satisfaction from appearing before similar-ideological audiences.

Ideological extremity is an important concept that shapes the behavior of judges and justices. For instance, ideological extremity has strengthened polarization on the Court (Devins and Baum, 2017). Justices who are ideologically extreme use different decision calculus than other justices (Clark et al., 2022). While these justices can occasionally cast a swing vote in a case, they are typically predictable voters given their ideological extremity (Enns and Wohlfarth, 2013; Martin et al., 2004). In sum, the behavior of ideologically extreme justices is easier to predict than the behavior of moderate justices.

Importantly, these ideological extreme justices can have differing goals from other justices. For example, Houston et al. (2021) finds that ideological extremity can impact the willingness of justices to ask questions during oral arguments. Fur-

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[3]I discuss this concept more in Chapter 6 in addressing justice's primary motivations in going public.

thermore, Maltzman et al. (2000) conclude that justices who are more ideologically extreme are less likely to engage in bargaining or cooperation. This finding is supplemented by Masood and Kassow (2020), showcasing differences across individual justices. Based on these findings, I argue that ideologically extreme justices will be more likely to seek out a favorable audience than non-ideologically extreme justices. Instead of just choosing an ideologically friendly state, these justices may be more willing to appear in front of a distinctly conservative (The Federalist Society) or liberal (American Constitution Society) audience (like a Federalist Society or American Constitution Society event). Therefore, I form my next hypothesis:

Favorable Audience Hypothesis: Ideologically extreme justices will be more likely to make appearances before a distinctly ideological audience that non-ideologically extreme justices.

5.1.3 How justices go public: Content

I now consider how justices go public with regards to what they say. Most broadly, I begin by asking, what topics do justices choose to discuss in their appearances? What subjects do they devote the majority of their time to speaking about? With regards to justices' on-the-bench behavior, scholars have analyzed what justices say from perspectives of interruptions during oral arguments, questions as cues of support, as well as the emotional content of comments and questions (Johnson et al., 2009; Epstein et al., 2010; Black et al., 2011). Just as what justices say is important on-the-bench, it is also important off-the-bench. An in-depth analysis of the content of justices' remarks is needed.

In their article, Glennon and Strother (2019) argue that justices primarily choose to discuss "legitimacy enforcing topics" in their appearances. I agree with the reasoning by Glennon and Strother (2019) that justices on the Court have a desire to appear legitimate and not partisan. In the aforementioned example of Justice Barrett's re-

marks at an event in Louisville, she even went so far as to comment that the justices were not "just a bunch of partisan hacks" (Duster, 2021b). These comments appear to be attempts to engage in institutional maintenance and reinforce the legitimacy of the Court.

Legitimacy enforcement should be a chief priority for justices on the Court. The Court relies heavily on legitimacy to be able to accomplish its work. Historically, scholars have conceptualized the Court's legitimacy as vast and not susceptible to changing political forces (Gibson, 2007; Gibson and Nelson, 2014). However, recent work pushes back against these contentions to argue that the Court's legitimacy can be damaged by political forces, including ideology (Bartels and Johnston, 2013, 2020).

As I previously detailed, the justices may have reason to be concerned about the Court's legitimacy due to decreasing confidence and approval in the Court. In addition to declining confidence, other political actors can impact the legitimacy of the Court (Armaly, 2020). I discussed previously that justices can often be observed changing their behavior in light of legitimacy. It is worth noting here as well that justices are aware of their own legitimacy and act accordingly. For example, Zilis (2021b) finds that justices are aware of dynamics that exist in the public concerning attitudes toward minority groups and alter their behavior to reflect these attitudes in an effort to maintain legitimacy. Clearly, legitimacy matters to justices. Therefore, I expect the justices to purposefully attempt to enforce and maintain their own legitimacy through the realm of their public appearances.

I argue that justices think they can shore up support or shape citizen attitudes by discussing legitimacy enforcing topics in their appearances. In particular, the justices may make an effort to reinforce beliefs about the Court. For instance, if justices speak about the role of a judge or justices' lack of reliance on ideology in decision making, this could be an effort to assist citizens in perceiving the Court as following the law alone in decision making.

It is important to note that I do not make any claim about whether or not justices actually can reinforce legitimacy through their appearances. As I discuss in chapter 6, I am agnostic about the success of justices' efforts at boosting approval or shaping legitimacy, though some work suggests justices' efforts can be successful (Strother and Glennon, 2021; Krewson, 2019a). For my purposes in this dissertation, I simply pose that justices *think* their appearances can be successful and, therefore, engage in legitimacy enforcement through these appearances.

Legitimacy Hypothesis: During public appearances, justices will be most likely to discuss legitimacy enforcing topics.

Finally, I argue an additional component of justices' public appearances will be signaling. Signaling can be observed in many respects on the Court. For instance, Justice Sonia Sotomayor created news when questioning the Mississippi Solicitor General during oral arguments in the *Dobbs v. Jackson Women's Health Organization* (597 U.S. 215, 2022) case. Sotomayor remarked to the Solicitor General, "Will this institution survive the stench that this creates in the public perception that the Constitution and its reading are just political acts? I don't see how it is possible" (Gregorian, 2021). Sotomayor's comments appear to represent some form of signaling to the other justices regarding her concerns of a particular ruling in the case. Her comments also appear to signal to the other justices that they should be concerned as well. Aside from these types of comments, the Court engages in other signaling behavior too. For example, Baird (2004) documents that justices can use signaling to shape the cases that are appealed to it. Similarly, Cameron et al. (2000) show justices' usage of signals to determine what cases to review.

This signaling behavior is present off-the-bench as well. An example comes from Justice Kagan giving a speech at a judicial conference in Big Fork, Montana. Speaking to the audience, Justice Kagan remarked, "If, over time, the Court loses all connection with the public and the public sentiment, that's a dangerous thing

for democracy" (Haroun, 2022). Kagan continued her speech by saying, "We have a Court that does important things, and if that connection is lost, that's a dangerous thing for the democratic system as a whole" (Haroun, 2022).

I hold that this signaling behavior deserves further study. Public appearances can be a prime opportunity for justices to engage in signaling and this behavior is significant. In his book, Eshbaugh-Soha (2022) presents the idea that in the presidential realm, going public is actually used by presidents as part of a signaling game. In this signaling game, presidents signal during their speeches in order to co-opt both legislators and bureaucrats into adopting the president's preferred policy positions (Eshbaugh-Soha, 2022). It is important to consider if this same sort of signaling behavior, with the specific intent of co-opting others toward one's policy position, is present in judicial appearances.

I argue that this signaling occurs when justices go public, but I primarily expect this behavior from justices in the minority ideological coalition. Using the notion from Eshbaugh-Soha (2022) that going public is an opportunity to co-opt others, I argue justices who represent the minority ideological bloc have more reason to co-opt others toward their position. This is because these justices may have more legitimacy concerns and less opportunity to express their ideological preferences. In chapter 6, I delve deeply into the impact of ideology, arguing that for the minority ideological bloc, going public provides the opportunity to express their policy preferences that is not present to the same extent in on-the-bench behavior. While going public may be an avenue to this goal, it can also be an opportunity to signal to other justices on the Court. Kagan's remarks at the judicial conference represent this type of signaling. Based on this theorizing, I form the following hypothesis:

Signaling Hypothesis: Justices of the minority ideological bloc will be more likely to reference other justices on the Court or the other branches of government in an attempt to signal than justices of the majority ideological bloc.

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5.2 Methods and Results

5.2.1 Descriptive Statistics

I begin my results by descriptively showing some of the variables of interest, as I did in chapter 4. First, I examine methods for going public. Recall that the four methods I identify by which a justice can go public are through speeches, media appearances, teaching, and public statements. I hypothesized that speeches would be the most likely forum for a justice to go public. In gathering the data, for each appearance I found, I coded which of the four categories of appearance types it constituted. Figure 5.1 compares the numerical counts for each method of going public.

From Figure 5.1, it is clear that speeches make up the bulk of appearances. Of the roughly 1300 appearances justices engage in across the 23 years of data, 1,043 of those appearances were in the forum of speeches. Media appearances represent the second highest category of appearances, followed by public statements, and then teaching. This preliminary result conforms to my expectation that justices would be more prone to use speeches due to the controlled environment they represent. These speech forms often include question and answer periods which represent an opportunity for justices to more directly engage with audience members as well. In chapter 6, I draw on these descriptive results more in discussing why a speech is advantageous for a justice's purposes.

While I expected speeches to make up the most appearances, I argued that justices would use the media to a greater extent over time. This expectation was built on changing media and technological trends as well as an evolving sense of what is appropriate behavior for Supreme Court justices. I now graphically examine this by considering time trends in media usage in order to ascertain if usage has increased. Figure 5.2 depicts these results by plotting the number of media appearances per year
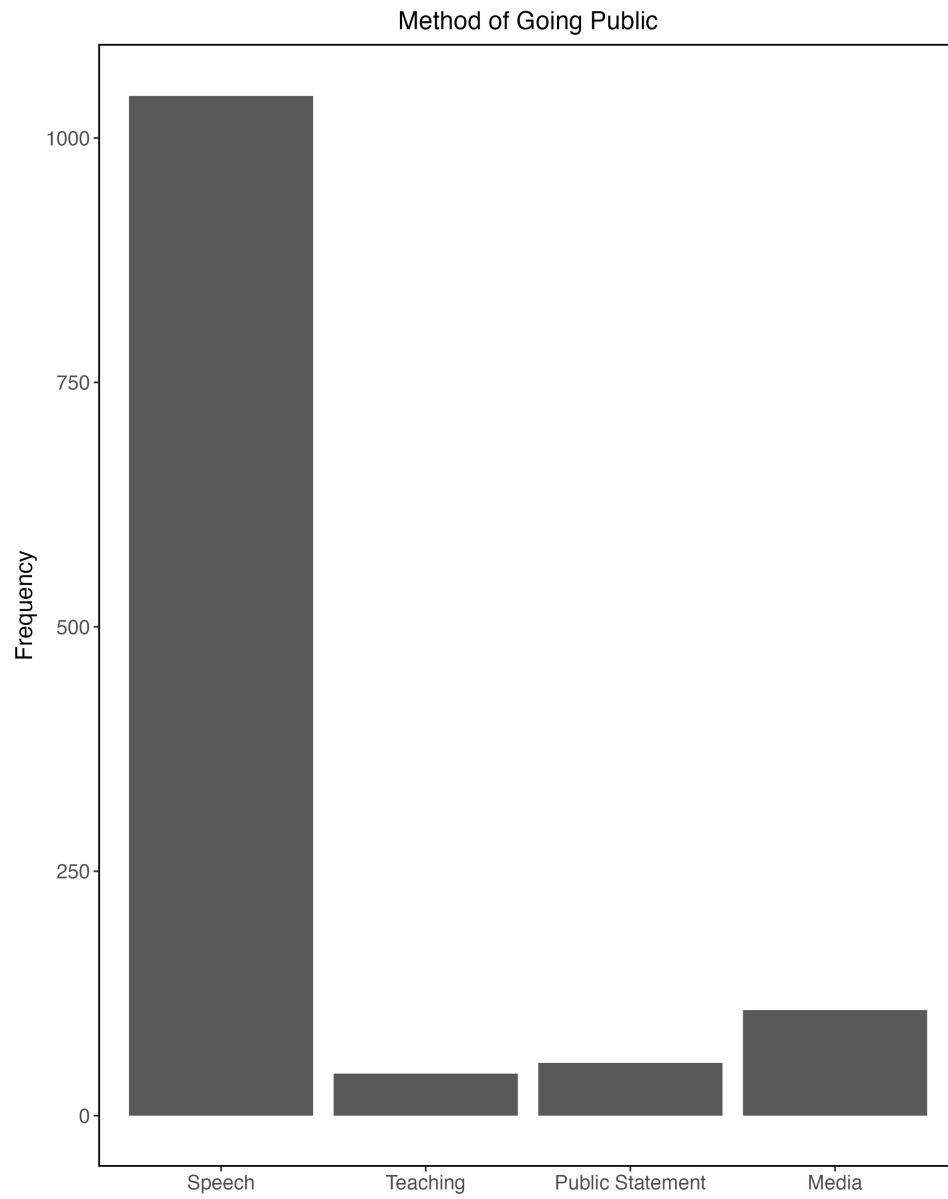
Figure 5.1: Method of Going Public
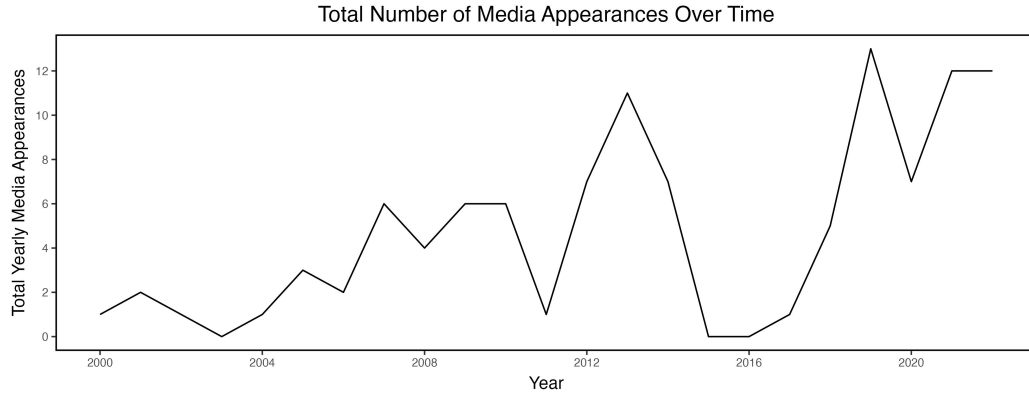
Figure 5.2: Examining Media Appearances Over Time
Note: Includes all media appearances by justices

across the data.

The results from Figure 5.2 are difficult to decipher. Overall, it appears that media appearances have increased over time. While there is only a small number of observations, Figure 5.2 can still provide preliminary evidence into justice's relationship with media. There is a sharp decline around 2015-2016 in media usage. What can explain this decrease? It could be due to the tumultuous events of 2016 including the presidential election, the death of Antonin Scalia and the failed nomination of Merrick Garland. For now, it is worth noting that media appearances do undergo a drastic uptick in early 2017 that continues on. While these appearances decreased somewhat during 2020, the flexibility of media with regards to the ability to connect an interview online or via Zoom result in media appearances not decreasing as drastically as other appearance types during the pandemic.

Next, I descriptively examine the states justices visit. The *Favorable State* hypothesis states that justices will be most likely to visit ideologically friendly states. I gather data on the states events took place in. Before testing to see if justices prefer ideologically friendly states, I use a map to depict the states justices visit to provide a general idea of the locations justices travel to. Figure 5.3 presents these results.

From Figure 5.3, I observe that justices have visited every state in the U.S.

Total Public Appearances by State
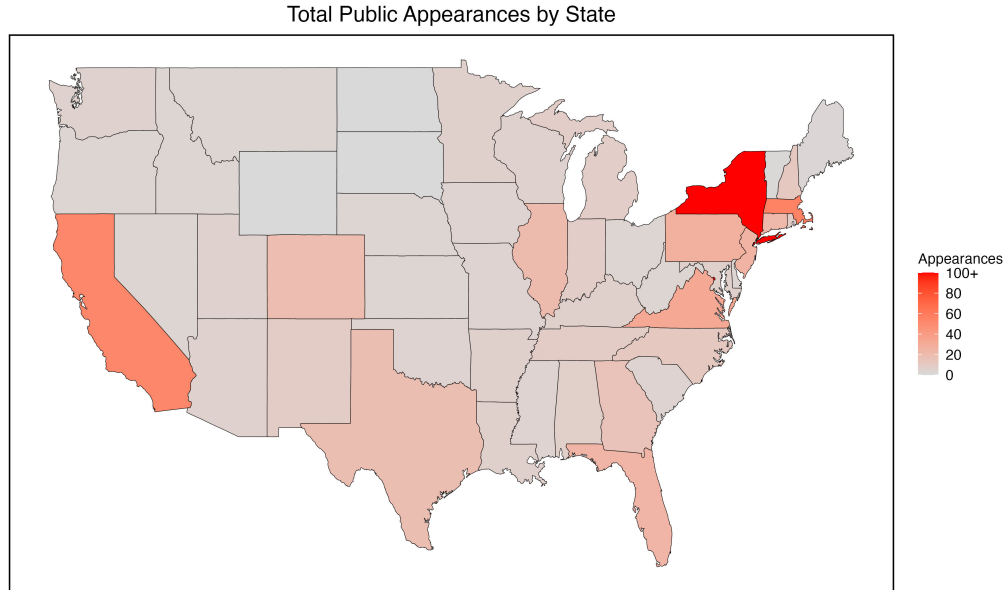
Figure 5.3: The States Justices Visit
Note: Washington D.C. has the most appearances with 313

from 2000-2023 with the exception of three: Wyoming, North Dakota, and South Dakota. The most visited area is Washington D.C.[4] In total, justices have made 313 appearances in D.C. The next most visited state is New York, where justices have appeared 169 times. The justices are also frequent visitors of California, making 53 different visits to the state. Figure 5.3 provides some initial insight into where justices visit which I examine further through empirical testing.[5] In chapter 6, I discuss non-instrumental and instrumental explanations with regards to a justice's motivation for making an appearance. Figure 5.3 also fits within an instrumental versus non-instrumental framework. For example, D.C. being the most visited area by far could be because of its close proximity to the justices, and less so explained by ideology or a different instrumental factor.

I now showcase data on audience types. These data are only showcasing the audiences at justices' speaking events, not the audience or intended audience of media, teaching, or public statement appearances. As shown in my variable list, justices

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[4]While not visible on the map due to its small size, D.C. represents the most visited area.

[5]While not shown on the map, justices visited Hawaii three times and Alaska two times.

present before a variety of audiences including legal, general, and ideological groups. Figure 5.4 showcases the number of appearances per audience type. From Figure 5.4, I conclude that general and legal audiences are the most common audiences justices appear before. This is not entirely surprising. Justices may desire to speak to audiences similar to themselves. These legal audiences could be filled with elites that justices want to speak to (Baum, 2009). Justices care about the opinions of elites so the large number of legal audiences could be related to justices' desire to interact with these elites. Additionally, these legal audiences are likely to seek out justices and invite them for appearances. Despite legal audiences being the most common audience, justices still regularly engage with general audiences too.

Another interesting finding from Figure 5.4 is the conservative audience column. While I coded in my data for both liberal and conservative audiences, I only found four instances of a distinctly liberal audience in my data compared to 29 instances of a distinctly conservative audience. These conservative audiences represent a Federalist Society event of some sort. The emergence of The Federalist Society as an important political actor that has the ability to exert influence on who serves on the Court and the Court itself is a topic of recent study (Bird and McGee, 2023a,b). This notion of justices engaging with these distinctly conservative audiences via Federalist Society events is another potential method to study the group's relationship with the Court.

The next thing I turn to is the content of justices' appearances. These data can be used to study what justices say when they go public. I use the eight topic codes from Glennon and Strother (2019) and five I created myself to categorize the remarks of justices. These content codes are listed in Table 5.1. Because I am concerned with phenomena like legitimacy enforcement and signaling, variables like *"Colleagues"*, *"President"*, or *"Current Event"* allow me to capture these subjects in justices' comments.
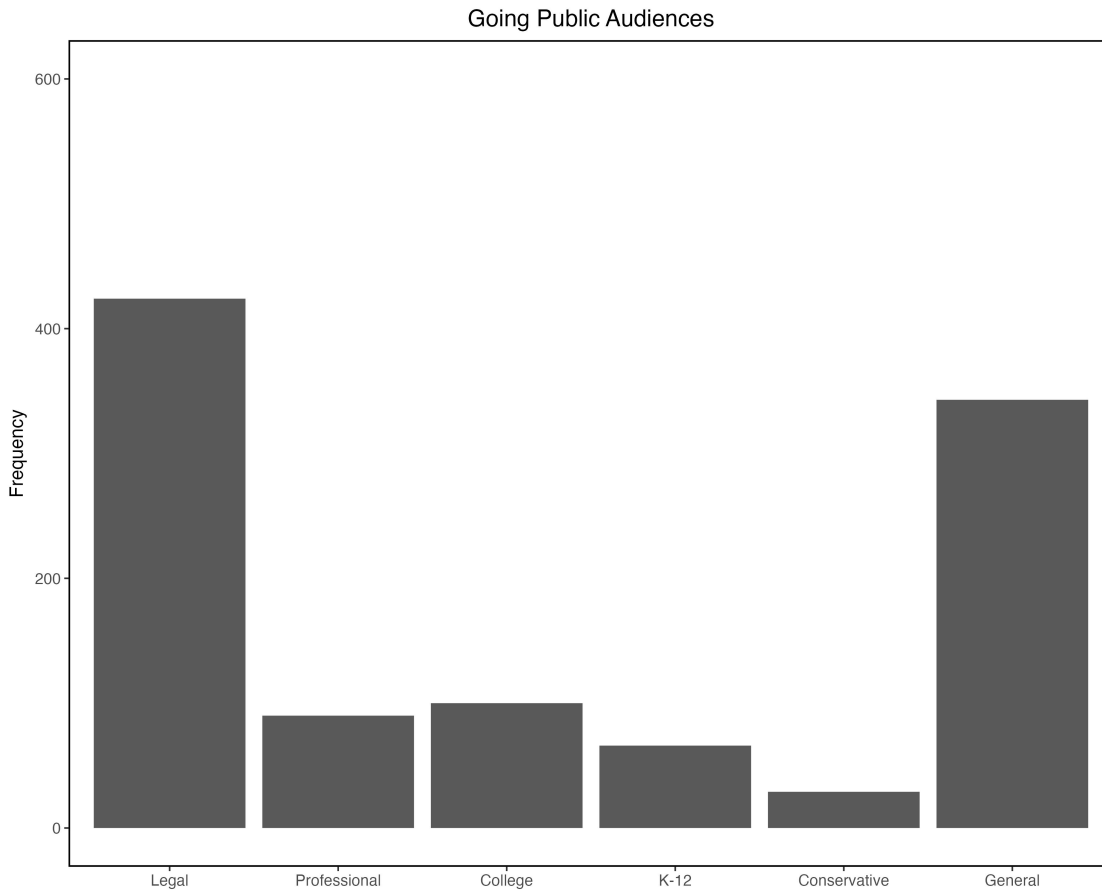
Figure 5.4: Audience Type for Public Appearances

In collecting the data, I code for each time a justice references one of the topics at hand. The descriptive data of the content making up justices' appearances is presented in Figure 5.5 where I showcase how many times a justice referenced each topic. This allows for some initial comparison of the subjects justices discuss.

Figure 5.5 showcases the subjects justices are most inclined to talk about when they go public. *Judicial Role* is the highest category with 800 references to a judge's role across the data. *Decision Making Process* is the second most discussed topic, followed by *Life on the Supreme Court*. The topics garnering the least mentions are the topic *Congress* followed by the *President* topic. The two have just 18 and 19 mentions, respectively. This is perhaps unsurprising. The Court has long been careful to wade into the affairs of the executive and legislative branches of government. The

Topic	Source
Judicial Role	Glennon and Strother (2019)
Judicial Philosophy	Glennon and Strother (2019)
Decision Making Process	Glennon and Strother (2019)
Life on Supreme Court	Glennon and Strother (2019)
Supreme Court Cases	Glennon and Strother (2019)
Justice's Personal Life	Glennon and Strother (2019)
Prior Judicial Experience	Glennon and Strother (2019)
Supreme Court Building	Glennon and Strother (2019)
Current Event	
Legitimacy	
Colleagues	
President	
Congress	
The Public	
Other	

Table 5.1: Going Public Topic Codes

Court's relationship with Congress can be dictated by the Court's fear of reversal or Congressional review (Hall, 2014; Segal et al., 2011). This same worry could shape how justices talk about Congress off-the-bench and make them hesitant to speak about the legislative branch. Justices are often constrained by the executive as well (Curry et al., 2008; Gardner and Thrower, 2023). For example, a loyalty effect can shape the behavior of a Supreme Court justice toward the president who nominated them (Epstein and Posner, 2016). These same considerations could shape justices' extrajudicial behavior and make them hesitant to speak about the executive or legislative branches. I provide further insight into these comments in the next section.
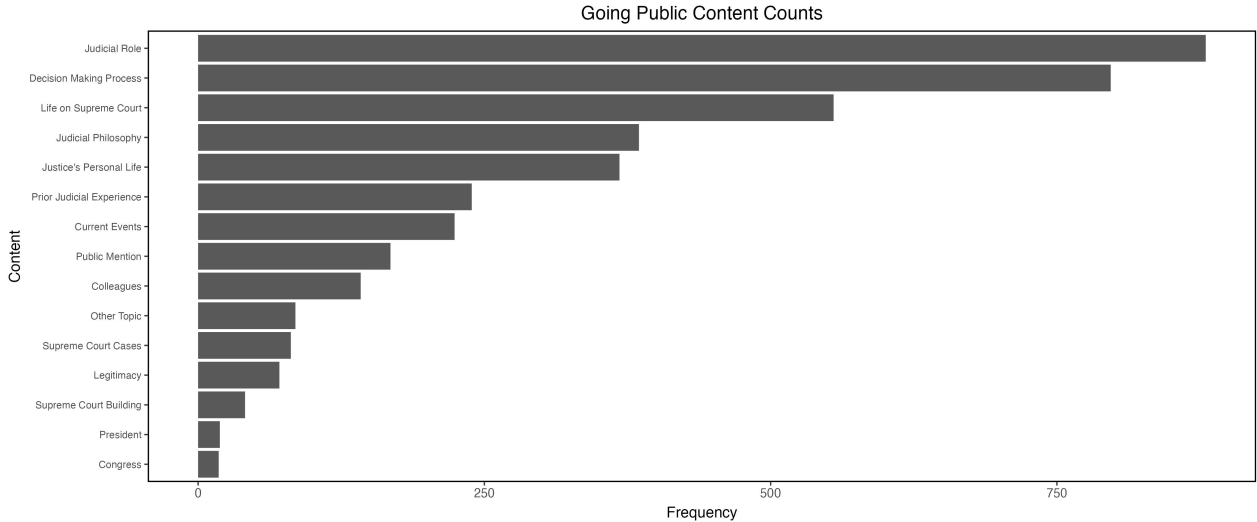
Figure 5.5: Going Public by Topic

5.2.2 Empirical Analysis

I now begin testing my hypotheses. In doing so, I utilize the *Event-Level Unit of Analysis.* To test the *Speeches* hypothesis, I will make use of the variables I coded regarding type of appearance. Specifically, in my coding, I code each appearance type as either a media appearance, a public statement, teaching a course, or a speech. Using this data, I create a new variable coded as a '1' if an appearance is a speech and a '0' for all other methods. Because I want to explore if speeches are used more than other types of methods for going public, I do not employ inferential statistics for this particular analysis but, rather, use a differences in proportions test. I use the categories of "Speech" and "Not Speech" to examine, empirically, if speeches are justices' preferred method for engaging with the public. The descriptive results I presented previously in Figure 5.1 indicated that speeches are strongly preferred compared to other forums but I use this test to more conclusively answer this question.

From these results, I conclude that speeches are the most likely method a justice uses to go public. The p-value is significant at the 0.0001 level indicating that speeches are the preferred communication style of justices compared to other forms. Showcasing these results a different way, justices made speeches 1,108 times and other

VARIABLE	MEAN	STANDARD ERROR	95% CONFIDENCE INTERVAL	
SPEECH	.8384	.010411	.8179949	.8588051
NOT-SPEECH	.1545524	.0099987	.1349553	.1741495
	Ha: diff > 0 Pr(Z > z) = 0.0000			

Table 5.2: Difference in Proportions Test: Speech vs. Non-Speech

going public forms only 199 times. This finding lends credence to my contention that speeches would be favored among justices. This result could be driven by justices' adherence to norms. Because justices have traditionally used speeches to go public, members of the Court may be hesitant to break from that norm. Going forward, scholars should continue to consider why these speeches are advantageous to the purposes of a justice.

To test the *Media Usage* hypothesis, I employ a logistic regression model. My goal is to observe if, over time, justices come to use the media more. For this analysis, my dependent variable captures if a justice went public through the media or not. This is coded as a '1' if their appearance was media related and a '0' otherwise. The independent variable is the year of the appearance to examine if an increase in media usage occurs over time.[6] The *Media Usage* hypothesis proposes that increased media usage would be a result of increase in the year in question.

I employ a variety of control variables. First, I include many previously used control variables including the *Book Tour*, *Vacancy*, and *Freshman* controls. I antic-ipate that justices will be more likely to go on book tours over time and also that

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[6]In running the model, I also include a squared and a cubed term for the year to account for the possibility that the relationship between year and appearances is not linear.

the media will be a more advantageous method for promoting a book over time. I include the vacancy control variable as I expect it will impact the number of appearances made. In particular, I expect to find that vacancies will decrease the usage of media appearances. I expect freshman justices to make less media appearances over time compared to earlier years on the Court.

I also control for if the justice making the appearance is the Chief Justice or not. This is a binary variable taking a value of '1' if the justice in question is the chief and a '0' otherwise. My expectation is that the Chief Justice will be less likely to make media appearances given the Chief's legitimacy concerns (Mark and Zilis, 2019). In essence, I argue that media as an avenue for going public will be less legitimacy enhancing in the eyes of the Chief and, therefore, this actor will seek to avoid it. I expect this variable to be signed in a negative direction. Due to the binary dependent variable, I use a logistic regression model. I again cluster the standard errors by justice. These results are presented in Table 5.3.

	Media Usage
Year	-0.0717*
	(0.0280)
Book Tour	1.482***
	(0.383)
Chief Justice	-0.417
	(0.559)
Vacancy	-2.650**
	(0.892)
Freshman	0.0372
	(0.693)
N	1250

Dependent variable is if a justice used the media or not

Logistic Regression Model

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5.3: Media Usage Over Time

Examining the results in Table 5.3, I do not find support for my expectation. The results demonstrate that media usage is less likely than other methods of going public over time. I expected media usage to increase year by year and I find the opposite. Media usage is actually decreasing and is statistically significant at the 0.05 level. The control variables largely perform as expected. The *Book Tour* variable is significant and positively signed. The *Chief Justice* and *Freshman Justice* both do not achieve statistical significance. The *Vacancy* variable is significant and signed in a negative direction. The reasoning for this decrease in media usage is not entirely clear. Exploring this subject is a task I take up in future work that considers media coverage of going public and the Court's usage of media.

I now consider the *Collegiality* hypothesis. Recall that I expected that justices would be more likely to make joint appearances (engagements where they appear

together) in the aftermath of rumors of interpersonal conflict on the Court. To examine this, my dependent variable captures instances in which one or more justice appeared together. For some joint appearances, as few as two justices appear together while at others, as many as five justices make a public appearance together. This dependent variable is coded as a '1' if the appearance is a joint appearance and '0' otherwise. Justices engaged in joint appearances 105 times.

My independent variable captures the months following rumors of conflict on the Court. Specifically, I code the six months following rumors of interpersonal issues on the Court as a '1' and other months as a '0'. I expect justices to be more likely to make these joint appearances in the direct aftermath of rumors of conflict. I identify instances of interpersonal conflict by using the Google Advanced Tools function and by using the following terms in conjunction with Court related terms: "Conflict", "Disagreement", "Justices arguing", and "Conflict on the Court." This search reveals multiple instances of reports of conflict between justices. All together, in the *Event-Level Unit of Analysis*, there is a total of 236 instances of conflict. For example, Justice Gorsuch and Justice Sotomayor's masking issue, Justice Kagan and Justice Alito's contradictory remarks issue, Justice Kagan and Justice Kavanaugh's disagreement during oral arguments, and rumors of conflict between Justices O'Connor and Scalia. This measure does not include conflict between branches but just conflict within justices on the Court.

I include a measure of shared ideology as a control variable. This variable captures if justices share ideological beliefs as I expect justices of a similar ideology to be more likely to go public together. I use justices' Martin and Quinn (2002) scores to construct the *Shared Ideology* variable. I also include the *Vacancy* and *Confirmation* control variables. Table 5.4 showcases the results from the logistic regression model.

I find support for the *Collegiality* hypothesis. As depicted in Table 5.4, justices

	Joint Appearances
Conflict	0.804**
	(0.271)
Similar Ideology	0.0152
	(0.0468)
Vacancy	0.215
	(0.331)
Confirmation	0.413
	(0.300)
N	1193

Dependent variable is whether or not a joint appearance occurred

Logistic regression model

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5.4: Effect of Conflict on Joint Appearances

are more likely to make joint appearances in the aftermath of reported conflict. The *Conflict* variable is positive and statistically significant at the 0.01 level. From this, I conclude that justices view joint appearances as a method for counteracting reported conflict. Essentially, I argue that from this finding, it can be concluded that justices attempt to negate reports and rumors of conflict by appearing together and appearing collegial. None of the control variables in this model achieve statistical significance. The *Similar Ideology* variable is positive, per my expectation, but not significant.

I now test the *Favorable State Hypothesis*. I expect that justices will be the most likely to visit ideologically friendly states. To operationalize this, I use measures of justices' ideology and measures of state ideology. In particular, to capture justice ideology, I use a justice's Martin and Quinn (2002) score. To capture state ideology, I use measures by Berry et al. (1998). These ideology measures are multi-faceted, capturing things like congressional roll call voting in each state, the ideology of the

	New Media Usage
Year	0.103***
	(0.0262)
Book Tour	1.777**
	(0.548)
Freshman	1.910
	(1.205)
Constant	-206.9***
	(52.82)
N	165

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5.5: New Media Usage Over Time

governor of each state, and election outcomes. With these scores, I create a binary variable capturing if a state is liberal or conservative. I code conservative states as '1' and liberal states as '0'. Table 2 in the Appendix provides a listing of the conservative and liberal states. This serves as my dependent variable. My independent variable is justices' ideological scores. Higher values indicate a more conservative justice while lower values are associated with more liberal justices.[7]

I again include the *Vacancy*, *Book Tour*, and *Confirmation* variables as controls. I add in to this model a control variable for if a justice's visit was to their home state. I anticipate that justices will be more likely to visit their home state. I expect this due to a justice's likely ties and connections to their home state. I control for if a justice's visit was to the state in which their alma mater (from any educational level) was. I also expect justices to be more likely to visit these states. Using the *Event-Level Unit of Analysis*, I conduct a logistic regression. My number of observations

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[7]As a robustness check, I also include a moderate ideology measure for justices like Anthony Kennedy and find no difference.

	Ideologically Friendly State
Justice Ideology	0.748***
	(0.0684)
Home State	-0.212
	(0.556)
Vacancy	-0.149
	(0.403)
Confirmation	0.380
	(0.380)
Book Tour	-1.617
	(1.085)
Alma Mater	0.661
	(0.620)
N	981

Dependent variable is if a visit was to an ideologically friendly state
Logistic regression model
Standard errors in parentheses
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5.6: Ideologically Friendly State Visits

decreases slightly from 1307 to 981 due to the fact that I am only considering speech appearances and I am not including events taking place internationally. These results are presented in Table 5.6.

In Table 5.6, I find support for the *Favorable State* hypothesis. Specifically, I find that justices are more likely to make appearances in states that are ideologically friendly to themselves. The *Justice's Ideology* variable is significant and signed in a positive direction. This is a notable finding. It indicates justices are strategic in deciding who to speak to. Just as justices are strategic in a host of on-the-bench behaviors, they are strategic off-the-bench as well. And, this strategic behavior could have important implications. If justices select into visiting ideologically friendly states,

preferring to make appearances in these areas, this could indicate justices "playing to their base." I discuss this notion further in chapter 6. None of the control variables in this model achieve statistical significance but the *Book Tour* variable is significant at the .1 level. The *Alma Mater* variable is signed in a positive direction but not significant. Interestingly, the *Home State* variable is negative but is also not significant. This is surprising given that it is intuitive to expect justices to be most apt to visit their home state. A justice's distance from their home state or the amount to which they've relocated to D.C. could explain the result.

I now turn to examining if particular justices are more likely than other justices to appear in front of ideologically friendly audiences. Specifically, are justices that are more ideologically extreme more willing than other justices to appear in front of ideological audiences? Recall that I hypothesized ideological extremity could spur some justices to be more likely to appear in front of an ideological audience due to lessened legitimacy concerns. I now test this hypothesis. Here, I shift my focus from ideologically-friendly states to audiences that are distinctly conservative or liberal. For example, The Federalist Society is a distinctly conservative audience that a conservative justice could choose to appear in front of. However, these appearances could also be damaging to the Court given that the public may not view these types of appearances favorably. For instance, Nicholson and Hansford (2014) find that when the Court engages in seemingly partisan behavior, this behavior negatively shapes public opinion. The notion of negatively shaping public opinion should restrain moderate justices but I do not expect it to constrain ideologically-extreme justices to the same degree. Thus, I hold that more ideologically extreme justices will be the most likely to appear in front of distinctly ideological audiences.

To test this hypothesis, my dependent variable captures distinctly ideological audiences. Specifically, using the information I collected on audience type, I generate a new variable that captures distinctly conservative or liberal audiences. This variable

	Ideological Audience
Ideological Extremity	0.460***
	(0.0919)
Home State	-0.835
	(1.193)
Vacancy	-0.161
	(0.639)
Confirmation	-1.226
	(1.038)
Book Tour	-0.0833
	(1.060)
Alma Mater	0.204
	(0.254)
N	981

Dependent variable is if an audience was distinctly ideological

Logistic regression model

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5.7: Ideological Extremity and Audience Type

is made up of Federalist Society or American Constitution Society events as these are the partisan audiences justices are apt to appear before. The variable is coded as a '1' if a justice appeared before one of these distinctly ideological audiences and a '0' otherwise. This serves as my dependent variable for this analysis. The independent variable is justices' ideological extremity. I expect that more ideologically extreme justices will be more likely to engage with these types of audiences.

In Table 5.7, I find support for my theoretical expectation. The *Ideological Extremity* variable is signed in a positive direction and statistically significant at the 0.001 level. This finding translates to ideologically extreme justices being more likely to appear in front of distinctly ideological audiences. Putting this finding in

simpler terms, based on the results, I would expect Justice Clarence Thomas to be more likely to appear at a Federalist Society event than Justice Anthony Kennedy. These findings are necessary to further consider as polarization and extremity on the Court increases (Bartels, 2015). If more ideologically extreme justices are added to the Court, this could mark an era in which justices engage in ideological sorting regarding the audiences they appear before. None of the control variables in this model achieve statistical significance. Considering substantive effects, Table 5.7 shows that the *Justice Ideology* coefficient is large, showcasing that ideology is a large predictor of the audience justices will appear before.

I turn to testing my two hypotheses regarding the comments justices make in their appearances. Beginning with the *Legitimacy Enforcement* hypothesis, I expect that justices will be the most likely to discuss legitimacy enforcing topics in their appearances. Following in the criteria of Glennon and Strother (2019), I categorize topics as either legitimacy enforcing or non-legitimacy enforcing. This allows me to parse out behavior that is or is not related to institutional maintenance. The topics along with their categorizations are shown in Table 5.8.

To test the *Legitimacy Enforcing* hypothesis, I begin by using a differences in proportions test as I am simply interested in knowing the most discussed topics by justices and perceive that legitimacy-enforcing topics will be more frequent than non-legitimacy enforcing topics. The results I presnted previously in Figure 5.5 appear to support my hypothesis but I consider this more fully by running a differences in proportions test. This test is useful for two reasons. First, I can begin to ascertain justices' purposes in going public. Second, this test is advantageous for my initial purposes of determining the most discussed topic when justices speak to the public. I present these results in Table 5.9.

These results are consistent with the *Legitimacy Enforcing* hypothesis. The p-value in this test is significant indicating that justices are most likely to discuss

Topic	Legitimacy Enforcing?
Judicial Role	Yes
Judicial Philosophy	Yes
Decision Making Process	Yes
Life on Supreme Court	No
Supreme Court Cases	No
Justice's Personal Life	No
Prior Judicial Experience	Yes
Supreme Court Building	No
Current Event	No
Legitimacy	Yes
Colleagues	Yes
President	No
Congress	No
The Public	No
Other	Excluded

Table 5.8: Legitimacy Enforcing Topics

legitimacy-enforcing topics in their appearances. This result also fits with the amount of times a justice spoke on each subject I showed previously in Figure 5.5. This finding is noteworthy for several reasons. First, it showcases that justices are strategic not just in considerations of when or how to go public but are also strategic in what they say to the public. Justices are all well-educated, experienced individuals and this realty appears to translate to their public appearances and their ability to curtail the topics they discuss, devoting more attention to topics that are legitimacy-enforcing. Second, the effects of this behavior are important to consider. If justices primarily speak on legitimacy enforcing topics, what type of effect might this have on the audiences they speak to? As Strother and Glennon (2021) and Krewson (2019a) denote, justices have the ability to shape perceptions of themselves and the Court through their extrajudicial behavior. Thus, from this research, if justices primarily discuss

legitimacy-enforcing topics in their appearances, they should be able to positively impact perceptions of legitimacy. This is a concept I will dive further into in future research.

VARIABLE	MEAN	STANDARD ERROR	95% CONFIDENCE INTERVAL	
LEGITIMACY ENFORCING	.9089518	.0079573	.8933557	.9245479
NON-ENFORCING	.0910482	.0079573	.0754521	.1066443
	Ha: diff > 0 Pr(Z > z) = 0.0000			

Table 5.9: Difference in Proportions Test: Legitimacy vs. Non-Legitimacy Enforcing

Finally, I test the *Signaling* hypothesis. I expect that justices of the minority ideological bloc will be the most likely to engage in signaling. To test this, my dependent variable captures instances of signaling. Specifically, this variable is made up of every instance of a justice signaling by mentioning the president, Congress, another justice by name or, more broadly, referencing their fellow justices, the public, or a different elite actor. This is a binary variable, coded as a '1' if this signaling behavior is present and '0' otherwise.

My main independent variable is the ideological bloc a justice is in. This variable is coded as a '1' if the justice is in the majority ideological bloc, and a '0' otherwise. This coding means that if the model carries a positive coefficient my result is not supported but if it contains a negative coefficient, it is.

I include the *Freshman* and *Chief Justice* variables as controls. I expect these two positions to be the least likely to engage in signaling due to their adherence to traditional norms of justices (Mark and Zilis, 2019; Houston et al., 2021). I also include the *Joint Appearance* variable as a control. I anticipate that justices will be

	Signaling
Ideological Bloc	-0.0272
	(0.149)
Freshman Justice	0.178
	(0.348)
Chief Justice	0.356
	(0.267)
Joint Appearance	1.234***
	(0.224)
Conflict	0.107
	(0.168)
N	1250

Logistic regression model

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 5.10: Signaling Behavior

most likely to engage in signaling when appearing with other justices. I expect this to be the case because they will view appearances with other justices as the best opportunity to signal their fellow justices since at least one justice will directly hear their comments. I also include the *Conflict* variable as a control variable because I expect signaling to be highest in the aftermath of rumored conflict. I run a logistic regression model due to the binary dependent variable. These results are displayed in Table 5.10.

I do not find support for the *Signaling* hypothesis. As shown in Table 5.10, the *Ideological Bloc* variable is signed in the expected negative direction, indicating that members of the majority ideological bloc are the least likely to signal but this variable is not significant. The *Freshman*, *Chief Justice*, and *Conflict* controls are also not significant. An interesting finding is that the *Joint Appearance* variable is significant

and signed in a positive direction. This is what I expected and means that justices engage in signaling most when their fellow justices are present. This is notable as it appears to represent justices attempts to signal directly to their fellow justices. As scholars continue to consider behaviors related to collegiality and signaling, the notion that justices want to encourage certain behavior in their colleagues should be of note.

5.3 Conclusion

In this chapter, I explored how justices go public. More specifically, I posited that great nuance exists within extrajudicial behavior and that this nuance is worthy of further consideration. To that end, I argued that how justices go public could be explained by things like their method of appearance, the audience they speak to, and the remarks they make. I found support for many of my expectations. First, I discovered that speeches are the most likely forum for a justice to go public through. Compared to other methods for going public, justices far prefer to use speeches as an avenue for engaging the public. This fit with my theorizing that justices would prefer speeches given norms justices adhere to as well as the controlled atmosphere speeches present. However, I posited that while speeches might be preferred, media appearances would increase over time. While I did not find support for this expectation, I still documented changing norms regarding how justices use the media. Furthermore, I showcased that collegiality matters off-the-bench to justices. In particular, they take effort to present collegiality in the aftermath of reported conflict. I found that in light of rumors of conflict on the Court, justices are more likely to make appearances together. This is another finding that I hold indicates strategic behavior taking place in the realm of off-the-bench behavior.

I also found that how justices engage with the public can be understood in terms of the audiences they appear in front of. I hypothesized that ideology plays a signif-

icant role in going public and that justices would be the most likely to go public in ideologically-friendly states. I found support for this hypothesis but further explored the differences in justices' behavior by showcasing that ideological extreme justices are particularly apt to appear before distinctly conservative (liberal) audiences.

Finally, I explored the comments justices make in their appearances. I found that they are most likely to discuss legitimacy-enforcing topics when they engage the public whether it be through a speech, media appearance, statement, or teaching a course. Once again, this finding highlights strategic behavior taking place. I did not find any statistically significant difference in how justices engage in signaling behavior but did find that justices engage in signaling most when other justices are present.

Collectively, the findings of this chapter contribute to a better understanding of off-the-bench behavior. In chapter 6, I build on these findings to investigate the question of why justices engage in this behavior? Just as I showcased in this chapter that the details of this behavior are strategic, in chapter 6, I explore the broader question of why justices engage in this behavior at all.

Chapter 6 Third Empirical Chapter: Why do justices engage the public?

Having considered the act of going public itself, both in terms of when public appearances occur and how they take place, I turn to building a theory pertaining to a justice's motivations for interacting with the public. Why would justices on the Court choose to interact with members of the American public? The justices are un-elected and serve lifetime appointments. Unlike members of Congress or the president, the justices need not appeal to the public for re-election purposes.

Despite the reality that justices are un-elected and represent an insulated institution, scholars have found that justices do adhere to public opinion in many of their typical duties. For instance, public opinion can have a significant impact on the voting behavior of moderate justices (Mishler and Sheehan, 1996). A robust discussion of the Court's adherence to opinion is provided by Friedman (2009). Friedman (2009) argues that the Court's power is ultimately dictated by public opinion. In essence, he makes the case that the Court will never stray too far from public opinion in their decision making for fear of backlash (Friedman, 2009). An example of attempting to avoid backlash in the aftermath of *not* following opinion is depicted by Caldeira (1987). In response to President Roosevelt's Court-packing proposals, Caldeira (1987) demonstrates that the justices changed their behavior to align better with the opinions of Roosevelt and the public in an effort to avoid potential negative consequences. From this literature, it is clear than in their on-the-bench behavior, justices actively engage the public by following their opinions. In their on-the-bench activities, justices are engaging with the public because of legitimacy and backlash concerns.

What factors dictate justices' engagement with the public off-the-bench? While the reasoning for justices engagement with the public via things like their decision

making activities is connected to the Court's need for enforcement and legitimacy, the mechanism spurring justices to engage with the public *off-the-bench* is less clear. Why do justices choose to go public? Is it an attempt to shape opinion? Is it based on ideological considerations? What spurs justices representing an insulated institution to take the time to make a speech or conduct a media interview?

As I posed earlier, instances of going public create a puzzle. In particular, the question of *why* justices go public is not clear or intuitive. The same cannot be said for the president and Congress who must regularly interact with the public in order to be effective and for re-election purposes (Canes-Wrone, 2010). While the Court may also need the public to be effective in their on-the-bench activities, it is not clear why they would actively choose to engage the public off-the-bench. Thus, in this chapter, I seek to answer these questions by exploring why justices go public.

I turn to both instrumental and non-instrumental explanations. I believe this approach is proper given that justices are multi-faceted. While early research focused on the law or ideology as the sole explanation dictating a justice's behavior (George and Epstein, 1992; Segal and Spaeth, 2002), these explanations alone are lacking. Justices' decision making is shaped by a variety of factors including things like precedent, ideology, case salience, Congress, and the public (Songer and Lindquist, 1996; Segal and Spaeth, 2002; Unah and Hancock, 2006; Bergara et al., 2003; Casillas et al., 2011). Research demonstrates that multiple factors shape how a justice behaves.

This idea that multiple factors impact judicial behavior fits within the strategic model of decision making. Scholars have found justices care about a host of factors when casting decisions including workload, complexity, coalition heterogeneity, and leisure (Epstein and Knight, 2013). Aside from these traditional strategic explanations, researchers have discovered that other factors influence judicial behavior including a justice's desire to be well-perceived and justices' personality characteristics (Baum, 2009; Black et al., 2019).

This recognition of justices as multi-faceted has been important for research and an understanding of how justices operate. However, even with the growth and development of this research, explanations of judicial behavior still choose to primarily focus on strategic behavior as it relates to deciding cases or granting cert. This literature can certainly be expanded by considering strategic and non-strategic activities through the lens of off-the-bench behavior. As I have previously detailed, this dissertation takes up the under-studied topic of off-the-bench behavior. However, I also recognize how literature in judicial politics scholarship informs my own work. Specifically, explanations like the strategic model of decision making or non-traditional explanations of decision making can inform how I approach the motivations for justices to go public. To that end, I posit that both instrumental and non-instrumental forces can serve to explain off-the-bench behavior. In this chapter, I consider four factors that shape why a justice goes public: Approval, ideology, personality, and gender.

6.1 Theoretical Expectations

6.1.1 Why justices go public: Approval

Taking into account the multi-faceted nature of Supreme Court justices, I posit that both instrumental and non-instrumental forces will dictate a justice's likelihood of going public. Thus, I theorize multiple factors will shape a justice's off-the-bench behavior. First, I argue that a justice's decision to go public will be based on the Court's approval ratings. In short, I hold that during times of decreased approval, justices will increase their public appearances in an attempt to bolster support for the Court. This theorizing is based on a host of literature demonstrating the importance of approval and support to the Court.

The citizenry is regularly polled concerning their feelings and attitudes toward the Court. Historically speaking, the Court has enjoyed a high level of support from

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the public. This high support is in stark contrast to the other branches. While the president and Congress have often suffered from low approval, for many years, citizens report high feelings toward the Court (Sinozich, 2016; Handberg, 1984; Marshall, 2022). However, this trend of citizens having high regard or confidence in the Court has changed. More recently, attitudes toward the Court have been declining steadily (Jones, 2014; Kritzer, 2005; Bryan and Kromphardt, 2016). This decline in confidence could have dramatic effects. As I have detailed, the Court relies on the public in order to be effective. Thus, if public attitudes toward the Court are declining, this trend is necessary to consider. Particularly, it is important to consider how justices might *respond* to declining attitudes.

Literature has shown that justices take into account public opinion and support in a host of activities including their opinion writing, voting, and other behaviors. Wedeking and Zilis (2018)) find that justices are less likely to use disagreeable rhetoric in cases when public opinion differs from their own opinion. Bryan and Kromphardt (2016) demonstrate that justices are more likely to vote against their own preferences when the Court faces periods of low public support. Hall (2014) showcases that the Court operates in a constrained capacity due to its fear that its decisions will not be implemented. Clark (2009) argues that in response to general levels of public disagreement with the Court, the justices will invalidate less acts by Congress. Each of these examples demonstrates that the justices adhere to public opinion and do so in a multitude of ways.

This trend of justices adhering to opinion and approval may have reached new heights. By this, I mean that the new era the Court finds itself in, due to decreasing and record low approval, could spur an even greater attention to attitudes the public has toward the Court. This new era is demonstrated by Merrill et al. (2017) in their documenting that the Roberts Court is more prone than other Courts to adhering to public support. From this research, it can be concluded that while the Court has

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always cared about opinion, the Roberts Court may be particularly concerned with it.

Thus, there is a wealth of literature demonstrating that justices are not just aware of their own support and the opinion of the public but also *respond* to it. Given this, it follows that if justices are attuned to public opinion and change their opinion writing and voting to adhere to it (on-the-bench behavior), justices will change their behavior in other respects as well. For the purpose of this dissertation, I expect behavior change to manifest itself by way of going public. I hold that such a perspective fits within the framework of strategic behavior by justices (Epstein and Knight, 1997). According to this account, justices are not simply behaving in a way consistent with models of behavior that depict justices as one-dimensional. Rather, a variety of factors shape a justice's behavior including career, policy preferences, and more. Thus, justices are strategic and it is a multitude of factors that impact their behavior. I expect these findings to translate to off-the-bench behavior as well.

It is important to note, I make no claim for now as to whether or not the act of going public actually translates to increased public approval for the Court, although findings by Strother and Glennon (2021) and Krewson (2019a) would suggest it can. For my current purposes, it is only necessary that justices *think* going public is a necessary step toward increasing their own approval. I hold that justices observe declining approval and attempt to counteract these negative forces by going public but I am agnostic about the ultimate success of justices in changing opinions. This theorizing is consistent with theories of institutional maintenance (Hall, 2014; Segal et al., 2011). Based on the aforementioned, I hypothesize the following:

Approval Hypothesis: During times of low approval for the Court, Supreme Court justices will be more likely to increase their public engagement.

6.1.2 Why justices go public: Ideology

While my first contention is that justices go public in response to low approval, I offer additional theorizing based on other potential determinants of going public. In addition to the Court's approval, I also consider how ideology impacts a justice's decision to go public. I hold that justices from the majority ideological bloc on the Court will be more likely to go public than those of the minority ideological bloc. In forming this expectation, I rely on literature that denotes when and why justices are willing to change their behavior and how ideology factors into decision making by justices.[1]

I identify two mechanisms that I expect to be at work, making members of the minority ideological bloc more likely to go public than those in the majority. I argue both of these mechanisms could be the driving force that shapes the role of ideology in public appearances. First, members of the minority ideological bloc will be more likely to go public because of legitimacy purposes. Second, members of the minority ideological bloc will be more likely to go public for agenda setting purposes.

Considering the legitimacy mechanism first, I posit that justices of the minority ideological bloc will be more likely to go public in an effort to enhance the Court's legitimacy. I argue the act of going public will be an attempt to bolster the Court's legitimacy and that justices in the minority ideological bloc are uniquely positioned to do this. Members of the Court often consider legitimacy and the public's preferences in their actions. For example, Wedeking and Zilis (2018) find that the Court takes into account the public and the public's response when choosing what rhetoric to use. Similarly, Black et al. (2016a) find that when justices anticipate public opposition to a ruling, they write clearer opinions. Bryan and Kromphardt (2016) argue that a justice will be more likely to vote against their own ideological preference (cast a counter-

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[1] In the previous chapter, I discussed ideology in terms of the states a justice would visit. In this chapter, I shift my focus to considering how ideology impacts the motivations behind going public.

attitudinal vote) when public opinion does not coincide with their own preference. Flemming and Wood (1997) propose that in an effort to protect the Court, justices will shift their policy preferences. Each of these accounts points to the lengths justices will go to in an attempt to cater to the public and protect the Court.

Going public is an another activity that could be undertaken to protect the Court. Just as the president can promote himself by going public, justices can promote themselves and the Court by going public. My argument is that the justices making up the minority ideological bloc will be more likely to go public than those in the majority ideological bloc. I theorize this is the case due to justices attempting to be strategic and enhance legitimacy. As documented by Boddery and Yates (2014), the public is more receptive to opinions when issued by a member not of the majority ideological bloc on the Court. When a justice of the Court not representing the majority ideological bloc signs onto an opinion, in the eyes of the public, this act lends credence to the opinion itself (Boddery and Yates, 2014). I question if a similar concept takes place in off-the-bench behavior. Will members of the minority ideological bloc be more likely to go public in an attempt to legitimize actions by the Court as a whole? Put another way, these justices may infer that their actions can assist in protecting the Court's reputation and be more likely to go public because of this.

Just as the justices are aware of and respond to opinion, I argue they strategize in *how* they will respond to opinion. In an effort to appear less polarized, justices from the minority ideological bloc will be more likely to go public. This concept fits within the concept of a group cooperating together for collective action purposes. The Court fits within such a framework (Olson, 1965). As a small group, the justices should be able to efficiently work together to achieve their collective goal. Furthermore, such theorizing is consistent with accounts arguing individual justices are not increasing in polarization but more concerned with the status of the Court in society (Gooch,

2015).

In addition to this mechanism, I posit an alternative force that could shape the decision of minority ideological bloc justices to go public is that of agenda setting. By this, I mean that going public can be advantageous for justices in the minority ideological bloc as it provides opportunity for agenda setting not present in decision making. In forming this expectation, I rely on research regarding justices' dissent behavior. In particular, Rice (2017) finds that dissenting offers justices in the minority of a case the opportunity to agenda set and curtail what the majority opinion in a case speaks to. Essentially, he argues that a dissent provides justices with the opportunity to have their voices heard, an opportunity they do not receive as much of (Rice, 2017). Judges are strategic in their behavior and this includes when they are dissenting and in less control than those in the majority (Blackstone and Collins Jr, 2014). How justices in the minority ideological bloc behave in dissent behavior can be understood in ideological *and* strategic terms (Hettinger et al., 2004).

An important finding in these regards comes from Bryan and Ringsmuth (2016). These authors depict that justices who are in the minority on the Court must find creative ways to achieve their policy goals and preferences. They can do so through the language they use. Specifically, because emotive language attracts negative media coverage, justices can strategically use this language as an avenue for asserting their policy preferences. Through this language or through dissenting opinions, justices do not just communicate with one another but also outside actors (Bryan and Ringsmuth, 2016; Wahlbeck et al., 1999). This reality means that justices not a part of the majority ideological bloc can use other actions to still exert influence. And, importantly, these actions could serve as a signal to the other branches, courts, or political actors regarding a justice's preferences (Wahlbeck et al., 1999).

This notion is coined by Rice (2017) as "heuristical maneuvering" and denotes instances in which justices are strategic in their issue framing. This concept can be

observed at a variety of different levels at the Court (Wedeking, 2010). I argue the sum of this research demonstrates that issue framing matters to justices as does the opportunity for each justices' policy preferences to be voiced. Taking these findings and applying them to extrajudicial behavior, I anticipate that justices in the minority ideological bloc will be more likely to go public because it will be an opportunity for them to assert their policy preferences and potentially shape political outcomes. I am, once again, agnostic over whether or not minority ideological bloc justices can have a policy influence by going public. I do, however, argue that these justices view going public as a method for achieving their policy goals.[2] Because of these two mechanisms pertaining to legitimacy and policy preferences, I form the following hypothesis:

Ideology Hypothesis: Members of the minority ideological bloc will be more likely to go public than members of the majority ideological bloc.

6.1.3   Why justices go public: Personality

Additionally, I posit that why justices go public can be explained by personalities. Specifically, I hold that the personality traits of justices will impact their willingness to go public. This expectation recognizes forces other than ideology or the law that shape behavior. It also acknowledges differences in individual justices, their backgrounds, and personalities and accounts for these differences.

The background of judges can impact judicial behavior. At the lower court level, characteristics of judges and their backgrounds can influence sentencing decisions (Steffensmeier and Britt, 2001; Johnson, 2014; Boyd and Nelson, 2017). At the SCOTUS level, the backgrounds of justices also leads to a greater understanding of differences across individual justices. For instance, the social background of justices, particularly when it comes to things like party affiliation, religious orientation, state

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[2]I also consider that the size of the minority ideological bloc might matter but do not find results indicating that the size of the majority makes a difference.

or city grown up in, or prior legal experience (Ulmer, 1973), can have an impact. Utilizing social background theory, many scholars have examined how differential legal experience impacts judging (George, 2007; Epstein et al., 2003). In addition to studying how background characteristics influence judicial behavior, scholars have also conceptualized that personality traits may also influence judging.

The study of personality traits of Supreme Court justices is a more recent development in research. Hall (2017) depicts the need for studies of personality traits in justices. He summarizes that some scholarship assumes justices all possess the same goals and argues that disentangling judicial personalities could lead to a better understanding of the goals justices possess (Hall, 2017). He continues this study by arguing judicial behavior can best be understood by accounting for "who they are and what they want" (Hall, 2018). This work also emphasizes the notion that justices are not entirely uniform and personality differences can explain discrepancies in behavior. Black et al. (2019) study this notion with particular attention to the trait of conscientiousness. These authors, out of the Big 5 personality traits, focus on the trait of conscientiousness due to its connection to the job of a judge (Black et al., 2019). They are able to demonstrate that personality traits can be an important predictor of judicial behavior.

I theorize that this trait of conscientiousness will also impact off-the-bench behavior. Black et al. (2019) define the term as "a person's tendency to act in an organized or thoughtful way. It captures whether a person is dutiful, deliberate, driven, persistent, self-assured, or hardworking. In surveys, people who score low on conscientiousness, in contrast, tend to be carefree, unstructured, self-doubting, and content." Applying this definition to off-the-bench conduct, I anticipate justices scoring higher in conscientiousness will be more likely to go public. Because being conscientious involves characteristics like "driven" and "deliberate", I hold these traits map onto judicial appearances (Black et al., 2019). Justices who are more

driven should be more likely to seek out appearances. These justices might be more likely to put in the effort an appearance requires. Justices who are deliberate will be more likely to think about the benefits going public could offer. Conscientiousness also includes self-assurance as a trait. I posit that justices who are more self-assured will also be more likely to engage with the public as these acts will be more suited for justices who are confident in themselves. The traits associated with the *opposite* of conscientiousness also fit with justices who should be less likely to go public. Justices who are carefree, unstructured, or self-doubting should be the least likely to go public. The trait of conscientiousness and what it should entail for going public causes me to hypothesize the following:

Personality Hypothesis: Justices with a higher level of conscientiousness will be more likely to go public than justices with a lower level of conscientiousness.

6.1.4 Why justices go public: Gender

Finally, I argue that aside from personality, other characteristics inherent within a justice will increase their willingness to go public. I focus on gender as a demographic characteristic that will shape the reasoning behind a justice goes public. I theorize that female justices will be more likely to go public than males. For this theorizing, I rely on prior work regarding differences between male and female justices as well as sociological studies on gendered differences in political action.

As aforementioned, background characteristics can be determinants of judicial behavior. An important characteristic that influences the actions of judges and justices is gender. For instance, female judges on state supreme courts tend to have more liberal voting tendencies than their male counterparts (Songer and Crews-Meyer, 2000). Moyer et al. (2021) find that female judges on the U.S. Court of Appeals go further when justifying their rulings. Female judges can bring differing viewpoints to courts (Sen, 2017). These differing viewpoints can lead to female judges relying on

different decision making criteria than their male colleagues, particularly in certain types of cases (Collins et al., 2010; Boyd, 2016; Boyd et al., 2010).

While the Court has only had six female jurists in its history, gender matters at the SCOTUS level as well. Research in this vein has examined emotional content of Court opinions, treatment of female lawyers during oral arguments, and nominations and confirmations to the Court (Gleason et al., 2019; Jacobi and Schweers, 2017; Patton and Smith, 2017; Gleason and Smart, 2023; Szmer et al., 2010; Boyd et al., 2018). Taken in sum, this research demonstrates gendered differences at the highest Court.

While this research pertains to on-the-bench activities like oral arguments and deciding cases, I posit that off-the-bench behavior is also subject to gendered differences. The above literature demonstrates that male and female jurists behave differently. Why might they behave differently off-the-bench? To answer this question, I rely on psychological and sociological explanations as well as literature on extrajudicial behavior.

My theorizing aligns with findings from Glennon and Strother (2019). In particular, Glennon and Strother (2019) showcase that male and females provide differential focus to certain topics during their television interviews with females being more likely to discuss subjects like their personal life and life on the Court.[3] Instead of focusing on gendered differences in the subjects justices discuss, I choose to instead consider the very decision to go public and how male and female justices will differ in their reasoning for going public.

I anticipate female justices will be more likely to go public than male justices. There are several reasons I hypothesize this. First, following in the work of Moyer et al. (2021), female judges are more prone to justifying their decisions. If females feel the need to justify their decisions to an extra extent in opinion writing, they may

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[3]The authors contend this result is likely a product of the questions female justices are asked by interviewers.

seek out other methods of justification, including their public appearances. By going public, a female justice could be afforded an opportunity to justify their stance on an issue, their qualifications, or anything else. As these authors depict through relying on studies discussing the differences in how men and women internalize messages, there is reason to believe that females will take different actions than males in an attempt to respond to internal and external critiques.

In addition to this mechanism, research demonstrates the adaptability of female leaders when it comes to political communications. For example, Russell (2021a) finds that female members of Congress are heavily involved in communicating via Twitter concerning important policy issues. In the House of Commons, members adopt different communication styles based on gender (Hargrave and Langengen, 2021). Bauer and Cargile (2023) finds that these differences in communication based on gender are substantive. From a judge's perspective, female judges use a different voice in their communication than males (Miller and Maier, 2008). Female justices may be more quick to adapt to changing communication trends or embrace opportunities to engage with the public.

Based on this literature, I anticipate that going public is an area where differences in male and female justice behavior, both in terms of justifying decisions and different communication styles, can be observed. Specifically, I anticipate that female justices will be more likely to make appearances.

Gender Hypothesis: Female justices will be more likely than male justices to go public.

6.2 Methods and Results

6.2.1 Descriptive Statistics

My first hypothesis concerns the Court's approval. Specifically, I posit that when approval for the Court is low, justices will be more likely to go public. Before
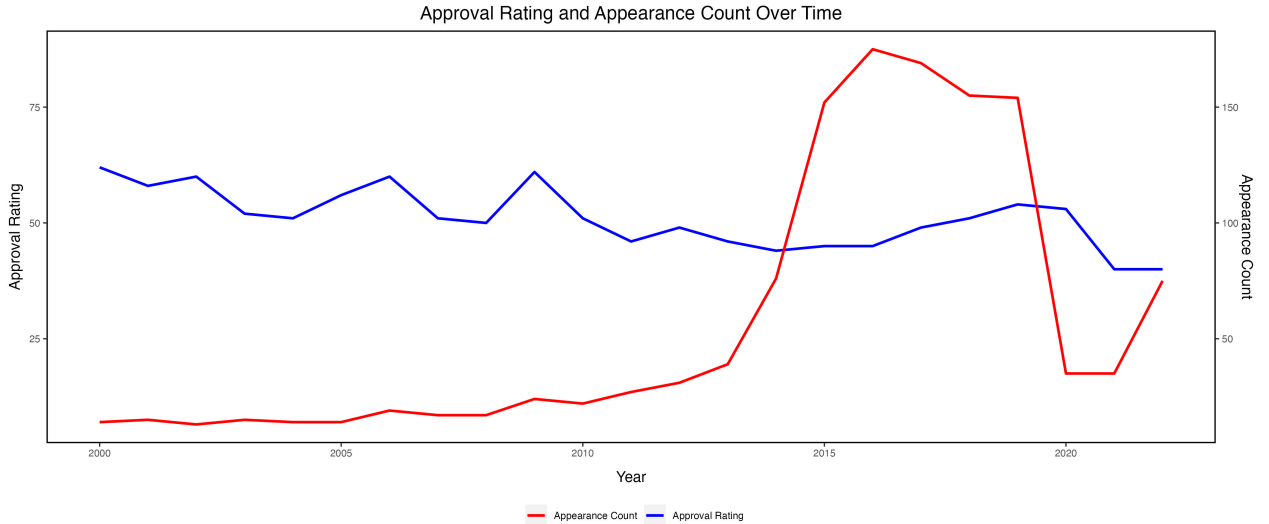
Figure 6.1: Yearly Trends in Approval and Going Public

testing this hypothesis, I consider the Court's changing approval. The Court's approval has been steadily declining. Figure 6.1 showcases this downward trend and compares it alongside going public appearances. Doing so allows me to examine both decreasing approval and increasing appearances in conjunction.

As depicted in Figure 6.1, the Court's approval was high in much of the early data but has steadily declined. This represents a marked change. While the Court has traditionally maintained high approval rating, this had shifted rapidly. The two trends displayed in Figure 6.1 indicate some moving together. As approval decreases, appearances increase. The exact timing and trends are difficult to entirely decipher so I turn to empirically testing the *Approval* hypothesis later on.

I next graphically examine going public by ideology. Specifically, using justices' Martin and Quinn (2002) scores, I group justices into liberal and conservative blocs. This allows for a preliminary examination of how ideology might impact the decision to engage with the public. Figure 6.2 showcases the number of times liberal justices went public compared to the number of times conservative justices did.

This figure documents that liberal justices went public more than conservative justices. However, a noteworthy finding from Figure 6.2 is that *both* ideological groups
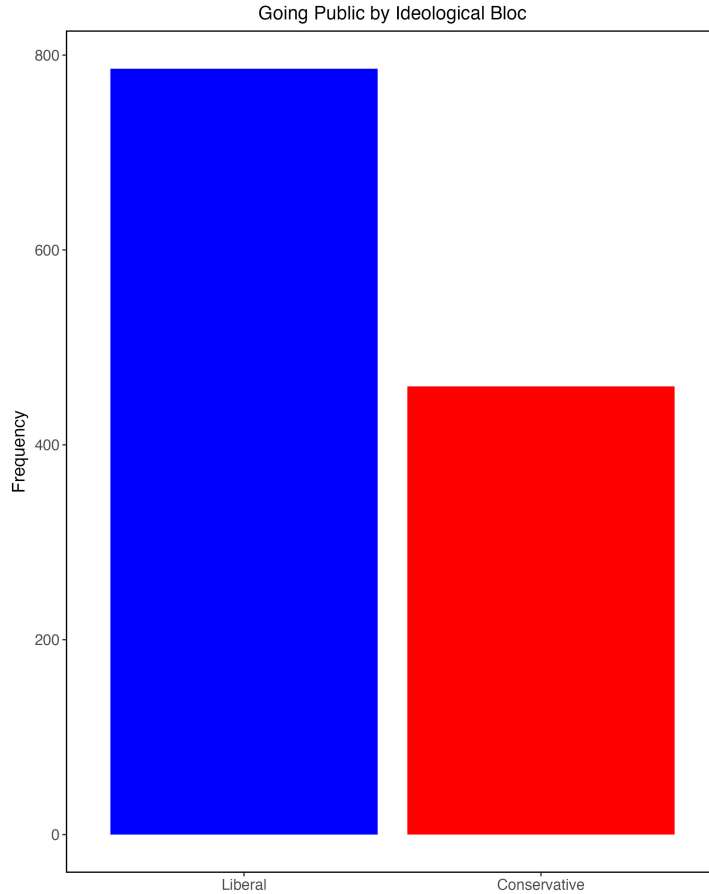
Figure 6.2: Going Public by Ideological Bloc

regularly go public. Put another way, it is not that one ideological grouping is driving all instances of public appearances. If this were the case, it would be necessary to consider the applicability of going public across all ideological blocs. Rather, I find that both groups regularly engage the public. This leads to the question of why liberal justices engage with the public *more* which I discuss further when testing the effects of ideology on appearances later in this chapter.

As another method to consider going public by ideology, in Figure 6.3, I showcase each justices' name alongside the number of public appearances they made. This allows me to not only consider ideological groupings in going public but also by individual justice. In this chapter, I posit that a variety of individual effects, like personality, could cause a justice to engage with the public. Therefore, examining ap-
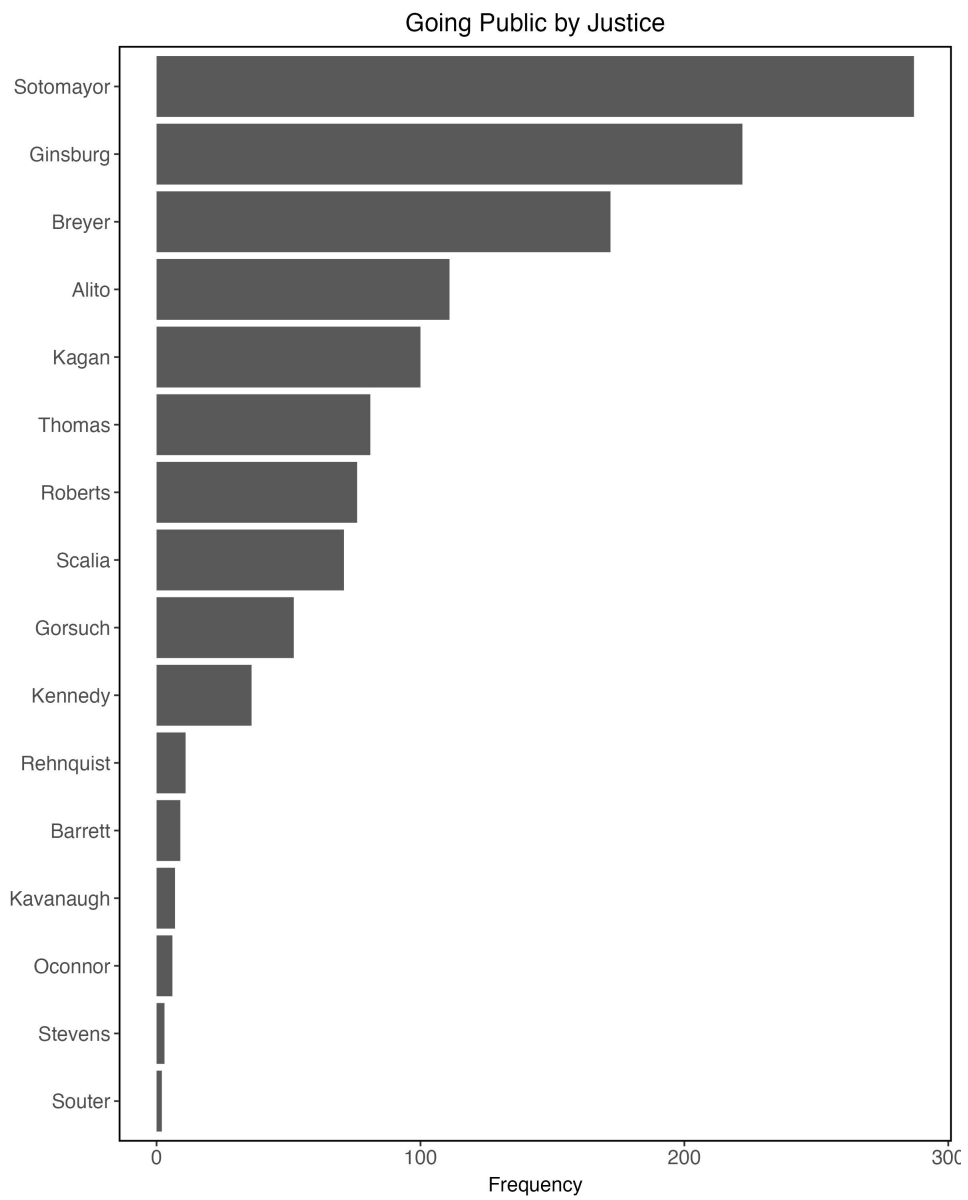
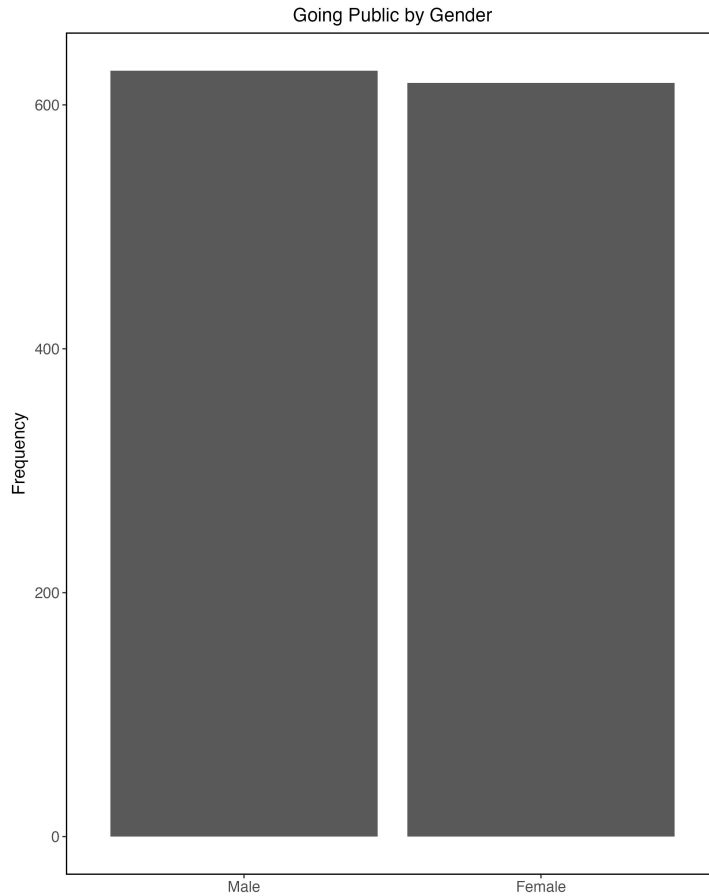Figure 6.3: Public Appearances by Individual Justice

Figure 6.4: Going Public by Gender

pearances by individual justice is a necessary step to ascertaining potential individual effects. Going public by justice is shown in Figure 6.3.

Figure 6.3 lends additional insight into the question of how ideology impacts going public. The three justices that went public the most are Justices Sotomayor, Ginsburg, and Breyer. Each of these justices are in the liberal, minority ideological bloc on the Court. Figure 6.3 also demonstrates that public appearances are not a product of one justice. Each justice in my dataset, even notoriously reserved Justice Souter went public at least *once.* Even justices that undergo controversy during their nomination and confirmations, like Justices Thomas and Kavanaugh, still go public. Thus, while Figure 6.3 provides some preliminary evidence that the determinant of judicial appearances could be related to ideology or individual justice effects, it also

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exemplifies, once again, that extrajudicial behavior is occurring across all justices.

I now consider going public by gender. Recall that I expected going public would be most common among female justices. To graphically examine this, in Figure 6.4, I compare going public instances across male and female justices to observe which group interacts with the public the most. This figure captures whether a going public instance was conducted by a male or a female justice.

Figure 6.4 demonstrates that going public is more common among male justices but only slightly and there is no difference in proportion. While the difference is hard to make out, the male column is slightly higher than the female column. Both groups of male and female justices engage in over 600 public appearances each. This is noteworthy and lends support for the *Gender* hypothesis. While males are making more appearances than females, the difference is only slight. This is a particularly interesting phenomena given that there are far less female justices on the Court in my data time frame than males. All together, there are five female justices within the data and eleven males.[4] Thus, while male justices as a group make slightly more appearances than females, given that there are far less females on the Court, it is an interesting finding that the difference is not more pronounced.

6.2.2 Empirical Analysis

Having descriptively depicted several of the variables for these analyses, I now test each hypothesis. My four expectations concern how approval, ideology, personalities, and gender would each determine why a justice makes a public appearance. First, I test the *Approval* hypothesis. I anticipate that during times of low approval, the justices will be more likely to go public. The dependent variable for this analysis will be a count of the number of times per month the Court has gone public. For

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[4]The five female justices are: O'Connor, Ginsburg, Sotomayor, Kagan, and Barrett. The male justices are: Stevens, Souter, Rehnquist, Scalia, Thomas, Breyer, Kennedy, Roberts, Alito, Gorsuch, and Kavanaugh.

this first analysis, I use the *Month-Level Unit of Analysis.* My independent variable is the Court's approval. This data comes from Statistica complied in concordance with YouGov. This data is yearly so I use imputation to obtain values so the data is monthly, in correspondence with the dependent variable. I interpolate missing values for the independent variable which is a method other judicial scholars have utilized when working with approval or confidence data (Ura and Wohlfarth, 2021). Specifically, the missing monthly values are filled in using data that does exist for the year in question. For this particular model, because it uses time-series data, I use a lagged version of the dependent variable.

I utilize a variety of control variables. Specifically, I use numerous control variables used in previous chapters including the *Confirmation*, *Recess*, *Freshman*, *Vacancy*, *Book Tour*, and *Home State* variables. I employ a negative binomial regression. I choose this model because the model's p-value is below 0.0001 and the variance is greater than mean. These results are presented in Table 6.1.

Table 6.1 provides support for the *Approval* hypothesis. The *Approval* variable is negative, indicating that when the number of judicial appearances increases, the Court's approval is lower. This conforms to my expectation. Specifically, when the Court faces low approval, the justices make more appearances. Conversely, when the Court's approval is higher, justices engage the public less. This finding showcases that approval matters to the Court, and I argue that the Court pays attention to things like its own approval. The results from this analysis lead me to conclude that justices are actively trying to shape their own approval by making more appearances when approval declines. While the coefficient is not substantively large, given the Court's rapid approval changes, even small changes in likelihood of going public are important.

The control variables perform largely as expected. The *Confirmation* variable is positive but does not achieve statistical significance. The *Recess* and *Freshman*

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	Count of Appearances
Approval	-0.0593***
	(0.00901)
Confirmation	0.239
	(0.147)
Recess	-0.100
	(0.117)
Freshman	0.0530
	(0.102)
Vacancy	0.693***
	(0.179)
Book Tour	0.0783**
	(0.0290)
Home State	0.398***
	(0.0524)
N	276

Dependent variable is a count of the number of appearances

Negative binomial regression model

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.1: Approval Rating and Going Public

variables are also not significant. The *Vacancy* variable is positive and significant, showcasing that appearances increase during vacancies on the Court. This fits with earlier findings. The *Book Tour* variable is also positive and significant which also conforms to previous findings. Finally, the *Home State* variable is positive and statistically significant.

One way to test this hypothesis is using the *Month-Level Unit of Analysis* but an alternative approach is to use the *Justice-Level Unit of Analysis.* The *Justice-Level Unit of Analysis* contains more observations and allows for more nuance in the control

	Count of Appearances
Approval	-0.0734***
	(0.0159)
Confirmation	0.530***
	(0.108)
Recess	0.120
	(0.162)
Freshman	-0.477
	(0.359)
Vacancy	1.513***
	(0.143)
Book Tour	2.109***
	(0.210)
Election	-0.658***
	(0.124)
Fixed Effects?	Yes
N	2467

Negative binomial regression model
Standard errors in parentheses
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.2: Approval Rating and Going Public, Justice-Level

variables that can be included in the model. Thus, I conduct an additional test to consider the effects of approval on appearances, switching the unit of analysis. These results are presented in Table 6.2.

The results in Table 6.2 fit with the results from the *Month-Level Unit of Analysis*. Thus, even with two alternative specifications of the unit of analysis, the results still hold. Approval shapes the Court's decision to go public. Examining this at both the month-level and justice-month level, the results remain the same. When approval

is low, the justices are more likely to go public and when approval is high, they are less likely to go public. Both of these analyses support the *Approval hypothesis*. More broadly, these two empirical tests showcase the ability of the public's approval in the Court to influence the actions of justices.

Next, I turn to testing the ideology hypothesis. My anticipation is that justices in the minority ideological bloc, because of legitimacy and agenda setting motivations, will be more likely to go public than justices in the majority ideological bloc. To test this hypothesis, I use the *Justice-Level Unit of Analysis*. The main independent variable of interest captures ideological blocs on the Court. Specifically, I use justices' Martin and Quinn (2002) scores to form a variable that captures whether a justice is in the majority or minority ideological bloc. I code this variable as a '1' if the justice going public is in the minority bloc and a '0' otherwise.[5] The dependent variable for this remains a count of the number of times a justice goes public per month. I use the following control variables: *Confirmation*, *Recess*, *Freshman*, *Book Tour*, *Vacancy* and *Election*. I also include the *Approval* variable as a control variable in this model. I run a negative binomial regression with standard errors clustered by justice. These results are depicted in Table 6.3.

Table 6.3 displays the results from analyzing the impact of ideology on going public. From this table, I find support for the *Ideology* hypothesis. In particular, I find that justices in the minority ideological bloc are more likely to go public than justices in the majority ideological bloc. The *Ideological Bloc* variable is significant and signed in a positive direction. This provides support for my expectation and, importantly, depicts that ideology plays an important role in the decision to go public. Specifically, this finding showcases that justices in the minority ideological bloc are more likely to engage with the public than those in the majority ideological bloc. Of the control variables in Table 6.3, the *Recess* and *Freshman* variables are both not significant.

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[5]I also use other specifications that account for justices that are ideological moderates but do not find any differences.

	Count of Appearances
Ideological Bloc	0.679**
	(0.247)
Approval	-0.0742***
	(0.0166)
Confirmation	0.511***
	(0.114)
Recess	0.0996
	(0.152)
Freshman	-0.282
	(0.354)
Book Tour	1.984***
	(0.198)
Vacancy	1.424***
	(0.166)
Election	-0.629***
	(0.121)
Fixed Effects?	Yes
N	2467

Dependent variable is a count of appearances

Negative binomial regression model

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.3: Going Public by Ideological Bloc

The remaining variables are significant and signed in the anticipated direction. The controls indicate that *Approval*, *Confirmation*, *Book Tours*, *Vacancy*, and *Election* each remain an important determinant of public appearances.

I now turn to testing the *Personality* hypothesis. Recall that I anticipate a justice's decision to go public will be dictated by a justice's degree of conscientiousness. To test this hypothesis, I use data from Black et al. (2019) on degrees of conscientiousness within justices. This serves as my independent variable for this analysis. Because a score does not exist for Justice Barrett, she is excluded from this analysis. The dependent variable remains the number of times per month a justice went public and I use the *Justice-Level* unit of analysis. The control variables remain the same but I include ideological bloc as an additional control. I use a negative binomial regression model and the results from the model are in Table 6.4.

The results in Table 6.4 only partially support the *Personality* hypothesis. The variable is signed in a positive direction, indicating that justices who have a higher level of conscientiousness are more likely to go public, but the variable does not achieve statistical significance. The relationship between personality and going public remains an area for future study. While this variable is not significant, future work should continue to consider how the decision to go public is or is not related to personality traits. It is possible that personality conditions certain effects. In future work, I consider this further by questioning how factors like personality condition the impact of approval and ideology on justices. The control variables all perform as expected.

Finally, I turn to testing the *Gender* hypothesis. I anticipate that female justices will be more likely to go public than male justices. In other words, I expect that the calculus of *why* justices go public can be disentangled by considering the impact of gender on this decision. To test this, I run a model with gender as the independent variable while the dependent variable remains a count of the number of times per month each justice goes public. The independent variable is a binary variable coded

	Count of Appearances
Personality	0.164
	(0.327)
Approval	-0.0828***
	(0.0173)
Ideological Bloc	0.771**
	(0.250)
Confirmation	0.544***
	(0.117)
Recess	0.0640
	(0.160)
Freshman	-0.636
	(0.467)
Book Tour	1.868***
	(0.161)
Vacancy	1.395***
	(0.168)
Election	-0.620***
	(0.126)
Fixed Effects?	Yes
N	2317

Dependent variable is a count of the number of appearances
Negative binomial regression model
Standard errors in parentheses
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 6.4: How Personality Impacts Public Appearances

	Count of Appearances
Female	0.928*
	(0.369)
Approval	-0.0617***
	(0.0145)
Ideological Bloc	0.0649
	(0.370)
Confirmation	0.490***
	(0.120)
Recess	0.0681
	(0.149)
Freshman	-0.590
	(0.477)
Book Tour	2.021***
	(0.189)
Vacancy	1.433***
	(0.173)
Election	-0.607***
	(0.117)
Fixed Effects?	Yes
N	2467

Dependent variable is a count of the number of appearances

Negative binomial regression model

Standard errors in parentheses

$^{*}\ p < 0.05,\ ^{**}\ p < 0.01,\ ^{***}\ p < 0.001$

Table 6.5: How Gender Impacts Public Appearances
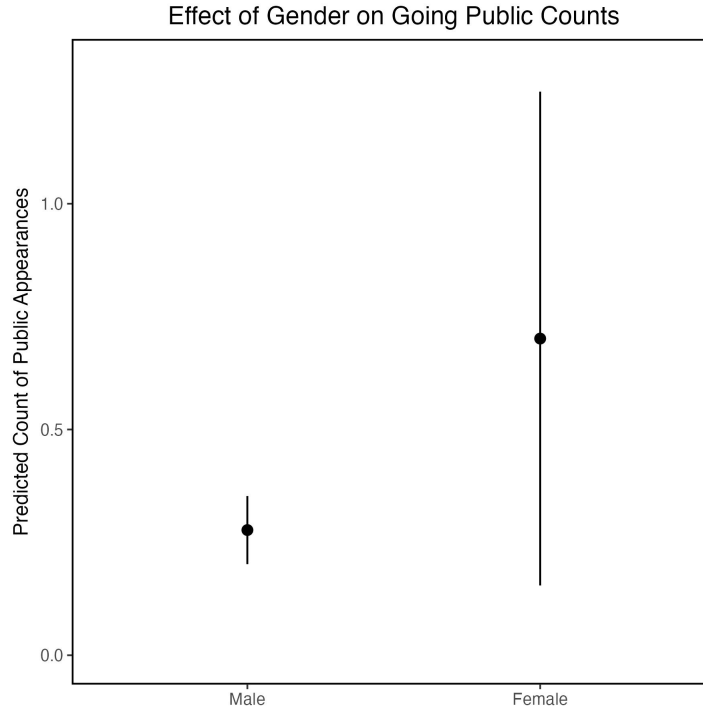
Figure 6.5: Effects of Gender on Appearances

as a '1' if the justice going public is female and a '0' otherwise. The control variables remain the same. The model for this analysis is a negative binomial regression and standard errors are clustered by justice. The results from this analysis are presented in Table 6.5.

Table 6.5 showcases support for the *Gender* hypothesis. Specifically, the *Female* variable is significant and signed in a positive direction. This finding means that female justices are more likely than males to go public. The *Female* variable is significant at the 0.05 level. The control variables largely perform as expected but in this model, the *Ideological Bloc* variable does not achieve significance but is signed in a positive direction. I display the substantive effects for the *Female* variable in Figure 6.5. This figure showcases that gender has a large impact on appearances. Being a female justice increases the likelihood of going public by approximately two times as much.

To summarize the findings in this chapter, I found support for almost all my

hypotheses. Collectively, I found that going public is motivated by the Court's approval, ideology, and gender. I did not find support for the decision being driven by personalities but hold that going forward, the impact of personalities should still be studied.

6.3   Conclusion

In this chapter, I turned to the third and final question I posed: Why do justices go public? I argued this question represented a puzzle. Namely, because justices are un-elected and serve lifetime appointments, the driving force behind them engaging with the public is not clear. Recognizing this lack of certainty behind why a justice would go public, I argued the decision calculus could be best understood by considering a host of factors that could entice a justice to engage in extrajudicial behavior.

To that end, I hypothesized that the decision by a justice to go public would be based on the Court's approval. Specifically, I recognized the unique environment the Court finds itself in as their support among the public continues to plummet. I considered the effects of this declining approval on extrajudicial behavior, hypothesizing that justices would respond to this negative approval by being more likely to go public. Across a variety of specifications, I found support for this contention. This finding showcases that the Court's approval, a seemingly distant notion from the Court itself, is actually connected to the behavior the Court does and does not engage in. Throughout this dissertation, I have showcased in a variety of ways how external forces shape the behavior of justices. This is another example of this notion.

I also argued ideology should shape off-the-bench conduct. Given ideology's ability to shape on-the-bench behavior, I theorized it should also impact how justices behave off-the-bench. Specifically, I argued that there would be observable differences in the behavior of majority and minority ideological bloc justices. I hypothesized that

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agenda setting and legitimacy concerns would create a greater likelihood of minority ideological justices going public. I showcased descriptive statistics that, importantly, demonstrate that while ideological differences exist in the propensity to go public, all justices, regardless of ideology or personal background, do go public. This is another finding showcasing the importance of this topic. The behavior under study does not just apply to a handful of justices but to all. I found support for my expectations regarding ideology. Justices of the minority ideological bloc are more likely to engage the public than majority ideological bloc members.

Third, recognizing that intricacies within each justice can shape their behavior, I exploit personality differences among the justices. Specifically, I argue that personality traits will impact the willingness of a justice to engage the public. I use the trait of conscientiousness to examine whether or not personality differences can explain why a justice goes public. I did not find support for this contention. However, I argue further study is needed to better understand the influence (or lack thereof) of personalities on judicial appearances. Specifically, considering traits like extroversion that might be more directly tied to public appearances is a future step worth taking.

Finally, I theorized that gendered differences exist within public appearances. More specifically, I contended that female justices would be more likely than males to engage with the public. Despite there only being five females on the Court in the time period under study, I graphically showed that males and females make almost the same number of appearances per year. I also showed that female justices are statistically more likely to make appearances than males. This finding is of particular importance given the Court's changing demographic landscape. The Court has diversified over the years, to include more women and people of color. As these trends continue or cease, scholars should continue to assess how the demographic makeup of the Court influences the Court's off-the-bench behavior.

Chapter 7 Conclusion

7.1 Findings and Implications

In this dissertation, I considered public appearances by U.S. Supreme Court justices. Motivated by the increasing tendency of Supreme Court justices to go public, the potential impact of this behavior, and the questions these behaviors pose, I took up the task of explaining public appearances by justices on the Court. I explored public engagement by justices with three primary questions. First, when do justices go public? Second, how do justices go public? Third, why do justices go public? Each of these questions contain nuance and depth and are interconnected. While I set out to answer these three questions, my broader motivation in this work (and in posing and answering each question) was to gain a better, more holistic understanding of public appearances by justices.

In judicial politics scholarship, the focus of research primarily lies within justices' on-the-bench behavior. Activities like oral arguments, opinion writing, voting in cases, and public opinion have been explored at length. Because of this, scholars have a relatively clear understanding of how judges behave on the bench. It is less clear how judges behave *off-the-bench*. While justices increasingly are interacting with the public in a variety of different forums, current scholarship is unable to speak to this new trend. The motivations behind appearances by Supreme Court justices, who represent an institution insulated from the public and who serve lifetime appointments and are un-elected, are unclear. Current scholarship also lacks a mechanism for understanding where justices visit when acting off-the-bench, who they interact with, and how they choose to go public. This lack of information on extrajudicial behavior is noteworthy. Justices have been going public and are doing so increasingly. Thus, research needs to be able to speak to these important and changing trends.

Filling this gap required data on public appearances by justices. This data does not exist in public research and does not exist in other spaces in any systematic fashion. Thus, I collected novel data on justices' public appearances from 2000-2022. To do this, I followed a lengthy coding process, used multiple search engines and supplementary data sources which served as validation for the data I gathered. This data collection resulted in 23 years of novel data that included information on the audiences of appearances, method of going public, the venue of an appearance, and a justice's remarks during their appearance. All together, I collect 51 different variables for each observation. I use three different units of analysis throughout the dissertation to explore concepts in a variety of ways. With the data I collect, I devoted three chapters to exploring each preliminary question posed.

In Chapter 4, I considered when justices go public. More specifically, I questioned the amount justices go public along with the specific timing of appearances. To study this, I considered how the timing of a justice's decision to go public is impacted by three factors: Controversy, workload, and a justice's position on the Court. Specifically, I first considered how controversy impacts a justice's propensity to go public. I argued that just as justices' on-the-bench behavior can be shaped by external forces, the same can be said for their off-the-bench behavior. To that end, I argued that a nomination and confirmation period, and the controversy such a period brings, would cause justices to engage with the public more. I hypothesized this would be the case as justices attempted to counteract potential negative post-confirmation media and public attention. I tested this concept by considering how a confirmation period impacts public engagement by justices.

I found that during the post-confirmation period, justices are more likely to go public. The results were statistically significant and substantively important. From this finding, I concluded that controversy does impact the decision by a justice to go public. In essence, I propose that justices engage in a decision making process

calculus and this calculus is shaped by attempts to negate controversy. This finding demonstrates justices' responsiveness to external events and the lengths they will go to respond to these said events. This is certainly an interesting finding and one that demonstrates justices' propensity to alter their behavior based on external forces. This notion has been explored within the realm of on-the-bench behavior but through this particular finding, I showcase another area in which justices are strategic with regards to public opinion.

I also argued that the decision of when a justice goes public can be understood by accounting for workload. In essence, I posited that because workload impacts the justices and the operations of the Court, it should influence their extrajudicial behavior too. Here, I argued that justices' going public can be shaped by strategic concerns like concern over controversy but also practical considerations like their schedule. I showcased through descriptive data that justices are particularly apt to go public in September, one of their recess months. Although I did not initially find statistical support for the contention that justices are more likely to go public during recess months, when considering recess months individually, I found that justices are less likely to go public during September than other months. This particular finding speaks to a non-instrumental force at work shaping judicial behavior. I propose that scholars should consider going forward the calendar year as a force at work influencing justices' decision making and actions.

The third component of exploring when justices go public pertained to a justice's position on the Court. I anticipated that freshman justices would be less likely than other justices on the Court to go public. This expectation was built on a variety of literature denoting different behavior by freshman justices compared to other justices on the Court as well as different behavior by a justice during their beginning years compared to their later years. I did not find empirical support for this expectation. The null finding highlights the need for further work on freshman

justices and how a justice's position on the Court impacts their activities both on and off the bench. Going forward, scholars should further examine how a a justice's position as a freshman justice, a chief justice, or a median justice influences their extrajudicial behavior.

After thoroughly discussing when justices engage the public, I turned to answering *how* justices engage the public. Chapter 5 examined this question in detail. I offered three avenues by which how justices engage the public can be explained. Specifically, I argued that various nuance exists with regards to the method, audience, and content of appearances. I proposed that a deeper understanding of method, audience, and content will lend itself to an understanding of how justices make public appearances. Beginning with the method of appearance, I found that speeches are the most common avenue for a justice's appearance. This conformed to my expectation. I anticipated this finding given the norms that exist regarding how justices should engage with members of the public. Additionally, I proffered that justices are more likely to use speeches (compared to other avenues of going public) due to the ability to control content at these events. This finding indicates strategic behavior on the part of justices. Essentially, I propose that a justice's use of speeches is strategic because it allows for norm conformance while having a high degree of control over the content they portray to the public. In addition to considering the method of appearance in terms of what form justices choose, I also proffer regarding justices' use of joint appearances. Joint appearances, appearances in which more than one justice appears, offer the opportunity for justices to appear together. I argue that the usage of joint appearances will be strategic. Because justices can appear together during these appearances and present themselves as collegial, I argue they will view these appearances as advantageous. Specifically, I propose that justices will be more likely to make use of joint appearances in the aftermath of rumors of conflict on the Court. In the minds of the justices, these appearances can be a profitable avenue

for portraying themselves as collegial and downplaying rumors of conflict or disagreement. I find statistical support for my expectations. Specifically, in the aftermath of reports of conflict or disagreement on the Court, justices are more likely to engage in joint appearances. This finding speaks to another avenue by which justices use their public engagements to respond to external forces.

I also examined the audience present at justices' appearances. Doing so allows me to speak into who justices target through their appearances. I find that ideology plays a significant role in shaping the audiences justices appear before. I argue justices can use a state's ideology as a cue of the potential reception they will receive in that given state. In the mind of a justice, a state that is ideologically similar to their own ideology will be an advantageous state to make an appearance in. I showcase evidence that, in fact, justices are more likely to appear in ideologically friendly states than non-ideologically friendly states. I probe this finding further and demonstrate that *specific* ideologies are more likely to go to ideologically friendly audiences. Ideologically extreme justices are more likely than non-ideologically extreme justices to appear before distinctly conservative or liberal groups. Through this result, I demonstrate that just as ideology has a role on-the-bench, it also matters off-the-bench. Additionally, I document that justices are not wholly stagnant with regards to how ideology shapes their public behavior. Rather, ideologically extreme justices are more willing to appear before distinctly ideological audiences.

In Chapter 5, I also examine the content of justices appearances. In collecting the data, I code for the remarks a justice makes during their appearance. In this chapter, I consider these data and what justices say when engaging with the public. I hold that one of the best ways to understand judicial appearances is to examine the content of justices' remarks when they engage with the public. This approach allows me to consider justices' purposes in going public from their own remarks and comments. To consider these remarks, I use the content data I collect and categorize

justices' comments when making an appearance as "legitimacy enforcing" or "non-legitimacy enforcing." With these categorizations, I began an exploration of justices' broader intentions in going public. I found that justices remarks in going public are primarily legitimacy-enforcing. Justices prefer to discuss topics that enforce or build up their own legitimacy. Examples of this include discussing their role as judges or detailing their decision making process. Justices are hesitant to discuss non-legitimacy enforcing topics. They refrain from mentioning other political actors or partisanship. These findings led me to the conclusion that legitimacy does, in fact, matter greatly to justices. The importance of legitimacy is not simply abstract for justices but is actually a key component of their public engagement. Justices will go to lengths, including making public appearances, in an effort to enforce their own legitimacy.

Building on each of these findings, in Chapter 6, I turn to the third and arguably most important question: *Why* do justices go public? I posed that judicial appearances represent a unique puzzle. While it is intuitive to expect many other political actors to go public, the mechanism spurring justices on the Supreme Court to go public is not entirely clear. In Chapters 4 and 5, I began to provide a holistic view of judicial appearances by showcasing when justices go public and how they do so. Yet, *why* justices go public still needed to be answered in order to comprehensively understand motivations of justices.

I offer several explanations for why justices engage the public. The first and primary explanation I pose is that justices are strategically engaging the public due to decreasing approval and confidence in the Court. I showcase that as confidence and approval in the Court has decreased, the number of appearances justices make has increased. I use regression analysis to show that justices are more likely to make a public appearance during a period of low approval than when approval is high. With this finding, I empirically demonstrate that public approval matters to justices. I hold

this is one of the most important findings I present. The Court is in a new and unique era of low approval. Historically speaking, the Court has enjoyed high public approval ratings, particularly when compared to the public's approval for the legislative and executive branches. This trend is changing. This new era of low approval the Court finds itself in deserves empirical scrutiny. As I demonstrate in Chapter 6, the Court is responding through their extrajudicial behavior to this decreasing confidence. Going forward, scholars should consider other avenues by which justices act in response to decreasing approval ratings.

I explore other motivations for the reasoning behind public appearances. Specifically, I contend that ideology factors into the decision calculus. I propose that justices from the minority ideological bloc will be more likely to go public than justices in the majority ideological bloc for two reasons: Agenda setting and legitimacy enforcement. I demonstrate that justices do, in fact, conform to ideological trends when going public. Justices of the minority ideological bloc are more likely to go public than justices in the majority ideological bloc. This finding is important as it speaks to the relevance of ideology off-the-bench as well as on-the-bench. Furthermore, it highlights an avenue by which members of the minority ideological bloc can agenda set.

I also consider that a justice's personality will impact their willingness to go public. Because justices do not all behave statically and personality differences can influence their actions, I expect to see the impact of personality traits translate to their extrajudicial behavior. While I do not find support for my expectations, I argue that future work should still attempt to disentangle the relationship between personality and public engagement. In particular, considering additional personality traits and the degree to which these traits are present in a justice could be beneficial. Recent work illuminates the importance on personality with regards to on-the-bench behavior so scholars should continue to assess the relevancy of personality traits in

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explaining justices' other activities.

Finally, I also proposed that gender could influence a justice's propensity to go public. Relying on literature depicting the differences between male and female judges and politicians, I argue that female justices will be more likely to go public than their male counterparts. I hold that the differences between male and female judges in terms of justifying decision making and communication styles will result in an increased tendency by female justices to interact with members of the public. I find support for this expectation and demonstrate that the impact of gender on public appearances is substantively significant. As the Court continues to diversify and include more gender representation, the implications of these findings will become even more relevant.

My findings hold important implications for a number of reasons. Aside from the reasons I have already detailed, the implications of this research are important because they speak to three current trends taking place within and outside of the Court. First, this dissertation lends insight into how justices respond to low approval ratings. As I have explained, the Court is currently in a historically unique era, facing its lowest approval rating ever. Given this unique era, it is essential to consider how the Court will respond. The results I present demonstrate that justices do care about their approval and make attempts to improve it. This provides necessary insight into the new trend of the Court's decreasing approval and how the justices will respond to it.

Second, this dissertation holds significant implications because it also speaks to the changing media environment facing the Court and the rest of society. I demonstrate a marked change by which justices now regularly go public and do so in ways not previously used. For instance, while justices at one point were hesitant to interact with the media at all, I document that justices in today's society are willing to utilize avenues like late night television for going public. This represents a distinct change

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in justices' behavior and showcases justices adapting to new media environments.

Finally, my findings also hold important implications given increased diversification across the Court. For instance, in Chapter 6, I showcase that female justices are more likely to go public than their male counterparts. Findings like this speak to increased diversification efforts across the judiciary. As the Court continues to diversify, scholars should question how things like increased gender diversity will shape political outcomes. This research provides insight into how increased diversity at the Court might shape the Court's public relations.

7.2 Future Directions

Going forward, this research can be expanded in a variety of ways. The novelty of the data I collected means that there are a plethora of avenues for future research. In particular, I posit there are three broad categories that are worthy of consideration and I plan to explore in future scholarship: Media coverage of public appearances, effects of public appearances, and nuance in the behavior of individual justices in going public. Each of these categories builds on my findings in this dissertation and can be further explored to illuminate importance within extrajudicial behavior. I discuss each of these avenues in turn, highlighting the importance of each as well as a path forward.

7.2.1 Media Coverage of Public Appearances

First, in future work, I consider how the media covers judicial public appearances. In this dissertation, I focused on justices' use of public appearances. When I discussed the media and its relationship to off-the-bench behavior, I considered how justices actively use the media to accomplish their goals. In later work, I will consider the opposite relationship: How the media uses judicial appearances to accomplish its goals. Or, put another way and more simply, how does the media cover judicial ap-

pearances? Are they covered uniformly? How wide-spread is coverage of extrajudicial behavior? How does ideology of media outlets and the ideology of justices influence coverage?

Examining this media coverage of judicial appearances is a fruitful arena for future work. Media has a continued and growing influence on U.S. political phenomena. Given that Supreme Court justices are going public at an increasing rate and garnering additional media coverage due to newsworthy events taking place within the Court, it is essential to consider media coverage of justices' off-the-bench behavior. As I have shown in this dissertation, judicial appearances vary vastly. I expect media coverage of these appearances to vary as well. The ideology of a media outlet, the outlet's audience, the spread of an outlet, and other factors should influence coverage of extrajudicial behavior. Going forward, I disentangle media coverage of this behavior which allows me to consider how public opinion of going public instances is shaped and formed.

7.2.2 Effects of Going Public

A second broad avenue for future work is to examine the effects of public appearances on public opinion. In this dissertation, I have actively argued that justices are strategic in their attempts to shape public opinion. In future work, I consider if justices' attempts can be successful. Put another way, while justices may *think* they can shape approval by going public or reinforce legitimacy through their remarks, are they actually correct? Can a justice, through their public-facing remarks, actually alter or improve opinion?

This question is of particular importance to explore. If, justices can, in fact, shape opinion by going public, then it is reasonable to assume that justices' increased use of public appearances will result in changing opinion. This is a notion that warrants further explanation. If justices shape approval through their appearances,

than perhaps their increased efforts at public engagement will change their downward approval. Conversely, justices may be unable to shape opinion through their engagements or even *negatively* shape approval ratings.

It is important to explore this phenomena of the effects of going public for another reason too. If I find that justices are able to shape opinion through their off-the-bench behavior, that finding would highlight another realm by which justices can shape opinions of the public. Scholars have already considered justices' ability to shape the opinions of the public through their opinion writing and decisions in cases. Examining this ability with regard to their off-the-bench behavior will provide a more complete understanding on the potential for judges to effect citizen attitudes.

In addition to exploring the broad question of the effects of appearances on the public, I will examine the *specific* groups impacted by extrajudicial behavior. There is likely more nuance with regards to the effects of appearances than simply if appearances are effective or not. Rather, certain groups may be impacted by appearances while others are not. Furthermore, certain groups may be impacted by certain *appearances*. In examining this in future work, I rely on many of the findings of this dissertation. For instance, based on my findings in Chapter 5 and 6 regarding the relevant role of ideology in going public, I suspect ideology also plays a role in mitigating or aggravating the effects of going public. Liberal (conservative) individuals should be more prone to increasing their approval when a liberal (conservative) goes public. However, I anticipate that when a conservative (liberal) justice goes public, a liberal (conservative) individual could decrease their support for the Court. Examining the effects of public appearances requires a consideration of how the public might differently respond to engagement based on a host of factors, including ideology.

7.2.3 Individual Justice Behavior

Finally, in future work, I attempt to more thoroughly disentangle the differences in going public across all justices and individual justices. Throughout the dissertation, I discussed instances in which individual justice variation in going public could be observed as well as instances in which I expected behavior to be consistent with all justices.

In the future, I attempt to disentangle these differences more. For instance, I examined the impact of recess periods on the number of public appearances justices make in Chapter 4. An avenue for future research could be to consider if *specific* justices experience a recess effect or not. Doing so could illuminate if certain justices are more prone to be effected by workload than others. This need for disentangling individual effects does not just apply to recess but a host of other things I studied including freshman effects, ideology, external events, content, and gender. By considering more thoroughly when specific justices experience an effect versus all justices, I can gain a better understanding of how judicial appearances are similar or dissimilar across the Court.

Appendices

Tables and Figures

      This portion of the Appendix provides supplementary tables and figures not included in the rest of the dissertation. Table 1 compares the number of "hits" found via Google versus the number of hits found via Bing for the years 2018-2021.

Google Hits	Bing Hits	Year
155	152	2018
154	153	2019
35	32	2020
39	37	2021

Table 1: Comparing "Hits" via Google and Bing

      Table 2 lists the conservative and liberal state ideology scores by Berry et al. (1998). Higher values indicate more liberal states, lower values indicate more conservative.

State	2017 Ideology Score
Alabama	24.47462
Alaska	40.9903
Arizona	18.87136
Arkansas	26.67673
California	70.38421
Colorado	56.349
Connecticut	62.50349
Delaware	60.11323
Florida	26.30193
Georgia	19.11856
Hawaii	69.13984
Idaho	22.53521
Illinois	48.46239
Indiana	24.70448
Iowa	26.0088
Kansas	23.61311
Kentucky	22.51366
Louisiana	49.62891
Maine	46.28472
Maryland	44.25162
Massachusetts	61.21511
Michigan	27.27734
Minnesota	51.9339
Mississippi	28.86485
Missouri	25.06467
Montana	43.9497
Nebraska	24.28571
Nevada	45.59797
New Hampshire	33.10439
New Jersey	54.59703
New Mexico	44.61861
New York	67.66743
North Carolina	45.70129
North Dakota	31.38833
Ohio	26.55549
Oklahoma	24.72693
Oregon	66.78907
Pennsylvania	49.7449
Rhode Island	69.30332
South Carolina	17.78448
South Dakota	29.67807
Tennessee	23.99955
Texas	21.09136
Utah	20.11354
Vermont	58.75833
Virginia	46.93727
Washington	61.82232
West Virginia	42.27238
Wisconsin	20.98424
Wyoming	23.12206

Table 2: State Ideology in 2017

Codebook

To begin, I obtain records of Supreme Court justices going public. To accomplish this, I follow in the work of Glennon and Strother (2019). Glennon and Strother
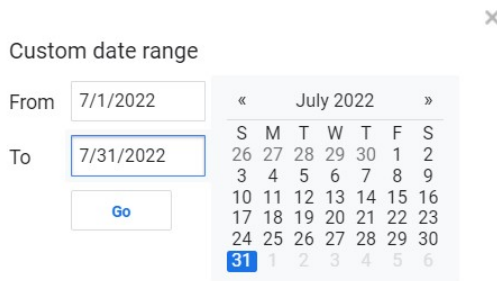
Figure 1: Example Code Range

say "the data set includes all nationally televised Supreme Court justice interviews from 1998 to 2016 discovered through a process of using multiple online search engines and searching broadcast company websites" (Glennon and Strother, 2019). For my purposes, I use the most common search engine, Google, which is also used by Krewson (2019a).

My dependent variable for the first analysis is a count of the number of times any justice on the Court goes public per month. Using the search engine of Google, I am able to utilize the "tools" function to specify a time range for results. Therefore, for each search, I specify a specific month. I use the "any time" button, select "custom time range", and then specify the month of interest dates. For example, for the month of July of 2022, I specify the beginning date as July 1st, 2022 and the end date as July 31st, 2022. This example is shown in Figure 1:

As for the specific search, I begin each search with "Supreme Court Justice *insert justice last name* and then us the following words via the OR function: 'appearance', 'speech', 'audience', 'media' and 'interview'. Each of these words was chosen after a testing period to see what search terms generated false positives. After this testing period, it was found that the aforementioned five words captured instances of justices going public. Because of this, these terms were utilized.

Example: "Supreme Court Justice Kavanaugh appearance OR speech OR audience OR media OR interview."

Figure 2 depicts an example search page. Highlighted in yellow is an example of a "hit." That is a "hit" represents an example of a search revealing an instance of a justice going public.
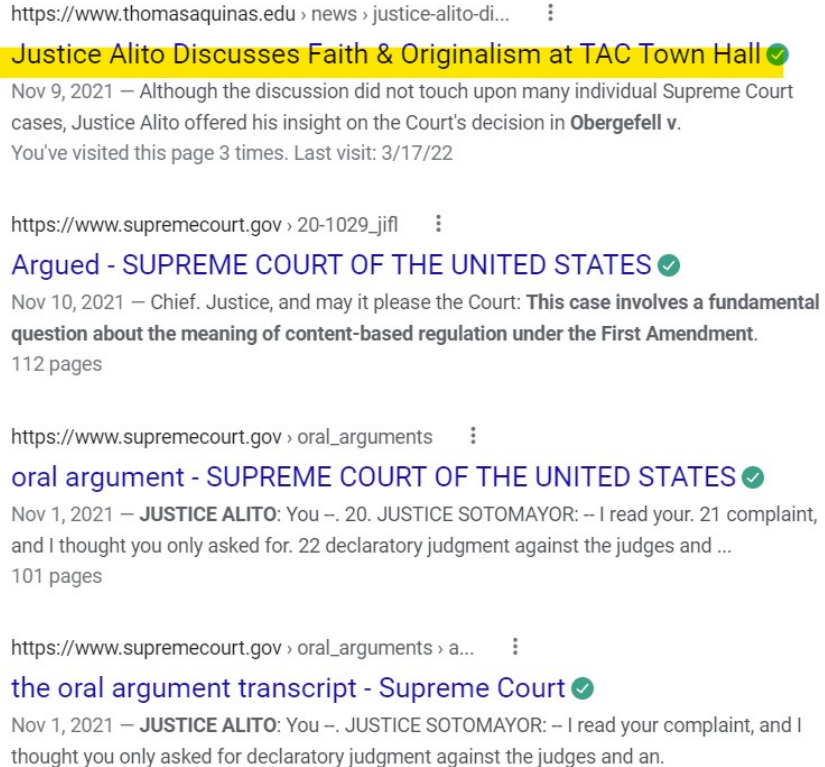
Figure 2: Hit Example From a Google Search for Justice Alito's Appearances

Note: Highlighted portion showcases a hit.

If after searching the first twenty-five results and not having found a "hit", I conclude that particular search. In Figure 3, I show an example of a search page with no hits.

As depicted in the "no hit" example in Figure 3, when a search is not generating going public instances, the results often reference Supreme Court cases, opinion pieces, or quotes from Supreme Court opinions. While the aforementioned search terms have eliminated many false positives, some still come up in the search process. However, these are still relatively easy to spot and eliminate from the data. For searches where a "hit" is reached, after that search is coded, if 30 more results are gone through without a "hit", that search is concluded.

Oftentimes, a going public instance is covered by more than one news source. When this occurs, the going public instance is just covered once. Figure 4 is an example of multiple search hits all depicting the same going public instance. In these instances, I use the first suggestion on Google (in this instance, I would use the https://law.nd.edu article). However, in some instances, an article may not cover all relevant details. In these cases, I will use the other search results to obtain more information not covered in the original article but this will still only be coded as one instance of going public since the articles are each addressing the same instance. As

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Figure 3: Example No Hit Search

an example, if the aforementioned Notre Dame law article did not mention the size of the event, I would look at other search suggestions to see if this information could be found and coded.

Figure 4: Example of Multiple Hits

Coding Variable List

1. Month of Appearancec: (monthappear)

   - Abbreviated. Example: Jan

2. Year of Appearance: (yearappear)

   - Example: 2019

3. Specific Date of Appearance: (dateappear)

   - Example: 16

4. Number of Going Public Instances: (instances)

   - Monthly total of the number of going public instances.

5. Justice Name: (justicename)

   - Example: Breyer

6. Justice Position: (chiefjustice)

   - Coded as a '1' if the Justice going public was the Chief, '0' otherwise.

7. Female Justice: (femjustice)

   - Coded as a '1' if the Justice going public was female, '0' otherwise.

8. Justice Ideology: (ideology)

   - Coded using justice's Martin-Quinn scores (Martin and Quinn, 2002)

9. Multiple Justices (multijustice)

   - Coded as a '1' if the instance of going public involved multiple justices, '0' otherwise.
     - Example: Ruth Bader Ginsburg and Antonin Scalia appear together for an interview with Marvin Kalb.

10. Multiple Justice Names (multijusticename)

    - List the last names of the justices involved in the going public event if there were multiple justices involved.
      - Sepaated by last names.
        * Example: Breyer; Alito; Barrett.

11. Media Interview: (media)

    - Coded as a '1' if the Justice was conducting a media interview, coded as a '0' otherwise.

12. Media Mode: (mediamode)

    - Coded as a '1' if the Justice was conducting a media interview via television.
    - Coded as a '2' if the Justice was conducting a media interview via radio
    - Coded as a '3' if the Justice was conducting a media interview via print newspaper.
    - Coded as a '4' if the Justice was conducting a media interview via online newspaper.
    - Coded as a '5' if the Justice was conducting a media interview via podcast.
    - Coded as a '6' if the Justice was conducting a media interview via telephone.
    - Coded as a '7' if the Justice was conducting a media interview via multiple media.
      - Example: Both podcast and radio interview.
    - Coded as a '9' if the media mode could not be determined.
    - Coded as a '99' if the media mode could not be determined.

13. Media Name: (medianame)

    - Name of the news source interviewing the Justice/
      - Example: CNN

14. Public Statement: (pubstate)

   - Coded as a '1' if the Justice going public instance was in the form of releasing a public statement, coded as '0' otherwise.
     - Example: John Roberts's public statement regarding mask wearing during the COVID-19 pandemic on the Court (Chen, 2022).

15. Teaching: (teaching)

   - Coded as a '1' if the Justice going public instance was in the form of teaching a class, coded as a '0' otherwise.

16. Speech: (speech)

   - Coded as a '1' if the Justice going public instance was in the form of a speech or question and answer, coded as a '0' otherwise.

17. Event Name: (eventname)

   - Title/name of the event at which the Justice was speaking.
     - Example: University of Kentucky Heyburn Lecture

18. Audience: (audience)

   - The type of audience present at the event.
   - Coded as a '1' if the justice's speech was for a legal audience.
     - Legal audiences include law school students, lawyers and judges.
   - Coded as a '2' if the justice's speech was for a different professional audience (non-law profession).
   - Coded as a '3' if the justice's speech was for a college audience.
   - Coded as a '4' if the justice's speech was for a K-12th grade audience.
   - Coded as a '5' if the justice's speech was for a conservative audience:
     - Example: A Federalist Society event.
   - Coded as a '6' if the justice's speech was for a liberal audience.
   - Coded as a '7' if the justice's speech was for a general audience.
   - Coded as a '8' if the justice's speech audience could not be determined.
   - Coded as a '99' for all other audience types.

19. Public Event: (pubevent)

   - Coded as a '1' if the event was public, '0' if it was private, '99' if it was uncertain.
     - Public meaning the event was open to the public, not restricted to a certain group.

20. State Event was held in: (eventstate)

    - Example: KY

21. City Event was held in: (eventcity)

    - Example: Lexington

22. International Event: (intlevent)

    - Coded as a '1' if the event took place internationally, '0' otherwise.

23. Home State: (homestate)

    - Coded as a '1' if the justice's visit was to their home state, '0' otherwise.

24. Alma Mater: (almamater)

    - Coded as a '1' if the justice's visit was to their alma mater school.

25. Size of the Event: (eventsize)

    - An estimate of how many people attended the event.
        - Coded as a '1' if the news story directly provides an attendance number.
        - Coded as a '2' if the news story uses an expression to depict the event size like "packed", "standing room only" or "sold out".

26. Number at Event: (numsize)

    - If a '1' is recorded for the Size of the Event variable, how many people were known or reported to be in attendance?

27. Live Stream (livestream)

    - Coded as a '1' if the event was livestreamed, '0' otherwise.

28. Book Tour: (booktour)

    - Was the going public instance a part of a Justice's book project?
        - Coded as a '1' if yes, '0' otherwise.

29. Judicial Role: (judrole)

    - Coded as a '1' if a justice refers to their role as a judge, '0' otherwise.
        - Topic from Glennon and Strother (2019).

30. Judicial Philosophy: (judphil)

    - Coded as a '1' if a justice refers to their judicial philosophy, '0' otherwise.
        - Topic from Glennon and Strother (2019).

31. Decision Making Process: (decisionprocess)

   - Coded as a '1' if a justice refers to their decision making process, '0' otherwise.

      – Topic from Glennon and Strother (2019).

32. Life on Supreme Court: (lifecourt)

   - Coded as a '1' if a justice refers to life on the Court, '0' otherwise.

      – Topic from Glennon and Strother (2019)

33. Supreme Court Cases: (sccases)

   - Coded as a '1' if a justice refers to a Supreme Court case, '0' otherwise.

      – Topic from Glennon and Strother (2019).

34. Case Name: (casename)

   - If a '1' is recorded for Supreme Court Cases, what is the name of the cases(s) the justice references?

35. Justice's Personal Life: (justicelife)

   - Coded as a '1' if a justice refers to their personal life, '0' otherwise.

      – Topic from Glennon and Strother (2019).

36. Prior Judicial Experience: (priorexp)

   - Coded as a '1' if a justice refers to their prior judicial experience, '0' otherwise.

      – Topic from Glennon and Strother (2019)

37. Supreme Court Building: (scbuilding)

   - Coded as a '1' if a justice refers to the Supreme Court building, '0' otherwise.

      – Topic from Glennon and Strother (2019).

38. Current Event: (currentevent)

   - Coded as a '1' if a justice refers to a current event happening, '0' otherwise.

39. Legitimacy: (legitimacy)

   - Coded as a '1' if a justice directly refers to the Court's reputation or legitimacy, '0' otherwise.

40. Colleagues: (colleagues)

- Coded as a '0' if a justice directly references their colleagues by name, '0' otherwise.

41. Colleague Name: (colleaguename)

    - If a '1' is recorded for Colleagues, the specific name(s) of the justice(s) referenced.

42. President: (presidentmention)

    - Number of times a justice refers to the president.

43. President Name: (presidentname)

    - If a '1' is recorded for President, the specific name(s) of the president(s) referenced.

44. Congress: (congressmention)

    - Number of times a justice refers to Congress.

45. Public Mention: (publicmention)

    - Number of times a justice refers to the public.

46. Other Topic: (othertopic)

    - Coded as a '99' for all other topics a justice references other than those outlines in variables 30-44.

47. Court's Approval: (approval)

    - Monthly approval of the Supreme Court.

48. Transcript of instance: (transcript)

    - Was a transcript available for the interview or speech?
        - Coded as a '1' if the transcript was available, '0' otherwise.

49. Article Title: (articletitle)

    - Title of the article from which the going public instance was found and coded.

50. Link to source: (link)

    - Link to article describing the going public instance for easy retrieval.

51. Note: (note)

    - Make any notation for other information that might be relevant to that specific observation.

Bibliography

Alexander, Damon , Jenny M Lewis, and Mark Considine (2011). How politicians and bureaucrats network: a comparison across governments. *Public Administration 89*(4), 1274–1292.

Armaly, Miles T (2020). Who Can Impact the US Supreme Court's Legitimacy? *Justice System Journal 41*(1), 22–36.

Armaly, Miles T and Elizabeth A Lane (2023). Politicized Battles: How Vacancies and Partisanship Influence Support for the Supreme Court. *American Politics Research 51*(1), 23–36.

Badas, Alex and Billy Justus (2022). Media Attention and Deliberation on the Supreme Court. *Political Research Quarterly*, 10659129221114049.

Badas, Alex and Elizabeth Simas (2022). The Supreme Court as an electoral issue: evidence from three studies. *Political Science Research and Methods 10*(1), 49–67.

Baird, Vanessa A (2004). The effect of politically salient decisions on the US Supreme Court's agenda. *The Journal of Politics 66*(3), 755–772.

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.

Barrett, Andrew W (2004). Gone public: The impact of going public on presidential legislative success. *American Politics Research 32*(3), 338–370.

Barrett, Andrew W (2005). Going public as a legislative weapon: Measuring presidential appeals regarding specific legislation. *Presidential Studies Quarterly 35*(1), 1–10.

Bartels, Brandon L (2015). The sources and consequences of polarization in the US Supreme Court. *American gridlock: The sources, character, and impact of political polarization 171*, 198.

Bartels, Brandon L and Christopher D Johnston (2013). On the ideological foundations of Supreme Court legitimacy in the American public. *American Journal of Political Science 57*(1), 184–199.

Bartels, Brandon L and Christopher D Johnston (2020). *Curbing the court: Why the public constrains judicial independence.* Cambridge University Press.

Bartels, Brandon L , Christopher D Johnston, and Alyx Mark (2015). Lawyers' Perceptions of the US Supreme Court: Is the Court a "Political" Institution? *Law & Society Review 49*(3), 761–794.

Bauer, Nichole M and Ivy AM Cargile (2023). Women Get the Job Done: Differences in Constituent Communication from Female and Male Lawmakers. *Politics & Gender*, 1–24.

Baum, Lawrence (1994). What judges want: Judges' goals and judicial behavior. *Political Research Quarterly 47*(3), 749–768.

Baum, Lawrence (2009). *The puzzle of judicial behavior.* University of Michigan Press.

Bergara, Mario , Barak Richman, and Pablo T Spiller (2003). Modeling Supreme Court strategic decision making: The congressional constraint. *Legislative Studies Quarterly 28*(2), 247–280.

Berry, William D , Evan J Ringquist, Richard C Fording, and Russell L Hanson (1998). Measuring citizen and government ideology in the American states, 1960-93. *American Journal of Political Science*, 327–348.

Bird, Christine C and Zachary A McGee (2023a). Going Nuclear: Federalist Society Affiliated Judicial Nominees' Prospects and a New Era of Confirmation Politics1. *American Politics Research 51*(1), 37–56.

Bird, Christine C and Zachary A McGee (2023b). Looking Forward: Interest Group Legal Strategy and Federalist Society Affiliation in the United States Circuit Courts of Appeal. *Polity 55*(2), 389–399.

Bishop, Doug (2017). Justice Ginsburg talks about career. *The Star Democrat*.

Black, Ryan C , Ryan J Owens, and Miles T Armaly (2016). 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 (2016a). The influence of public sentiment on Supreme Court opinion clarity. *Law & Society Review 50*(3), 703–732.

Black, Ryan C , Ryan J Owens, Justin Wedeking, and Patrick C Wohlfarth (2016b). *US Supreme Court opinions and their audiences.* Cambridge University Press.

Black, Ryan C , Ryan J Owens, Justin Wedeking, and Patrick C Wohlfarth (2019). *The Conscientious Justice: How Supreme Court Justices' Personalities Influence the Law, the High Court, and the Constitution.* Cambridge University Press.

Black, Ryan C , Sarah A Treul, Timothy R Johnson, and Jerry Goldman (2011). Emotions, oral arguments, and Supreme Court decision making. *The Journal of Politics 73*(2), 572–581.

Blackstone, Bethany and Paul M Collins Jr (2014). Strategy and the Decision to Dissent on the US Courts of Appeals. *Justice System Journal 35*(3), 269–286.

Boddery, Scott S and Jeff Yates (2014). Do policy messengers matter? Majority opinion writers as policy cues in public agreement with Supreme Court decisions. *Political Research Quarterly 67*(4), 851–863.

Boston, Joshua , Benjamin J Kassow, Ali S Masood, and David R Miller (2023). Your Honor's Misdeeds: The Consequences of Judicial Scandal on Specific and Diffuse Support. *PS: Political Science & Politics 56*(2), 195–200.

Bowen, Terry (1995). Consensual Norms and the Freshman Effect on the United States Supreme Court. *Social Science Quarterly*, 222–231.

Bowler, Shaun and Jeffrey A Karp (2004). Politicians, scandals, and trust in government. *Political behavior 26*, 271–287.

Boyd, Christina L (2016). Representation on the courts? The effects of trial judges' sex and race. *Political Research Quarterly 69*(4), 788–799.

Boyd, Christina L , Paul M Collins, and Lori A Ringhand (2018). The role of nominee gender and race at US Supreme court confirmation hearings. *Law & Society Review 52*(4), 871–901.

Boyd, Christina L , Lee Epstein, and Andrew D Martin (2010). Untangling the causal effects of sex on judging. *American journal of political science 54*(2), 389–411.

Boyd, Christina L and Michael J Nelson (2017). The effects of trial judge gender and public opinion on criminal sentencing decisions. *Vand. L. Rev. 70*, 1819.

Brenner, Saul (2001). Majority opinion assignment in salient cases on the US Supreme Court: Are new associate justices assigned fewer opinions? *Justice System Journal 22*(2), 209–221.

Brenner, Saul and Timothy M Hagle (1996). Opinion writing and acclimation effect. *Political Behavior 18*(3), 235–261.

Bryan, Amanda C and Christopher D Kromphardt (2016). Public Opinion, Public Support, and Counter-Attitudinal Voting on the US Supreme Court. *Justice System Journal 37*(4), 298–317.

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 (1987). Public opinion and the US Supreme Court: FDR's court-packing plan. *American Political Science Review 81*(4), 1139–1153.

Caldeira, Gregory A and Daniel Lempert (2022). Justice-level heterogeneity in certiorari voting: US Supreme Court October terms 1939, 1968, and 1982. *Political Science Research and Methods 10*(4), 793–805.

Cameron, Charles and Jee-Kwang Park (2011). Going Public When Opinion Is Contested: Evidence from Presidents' Campaigns for Supreme Court Nominees, 1930-2009. *Presidential Studies Quarterly 41*(3), 442–470.

Cameron, Charles M , Jeffrey A Segal, and Donald Songer (2000). Strategic auditing in a political hierarchy: An informational model of the Supreme Court's certiorari decisions. *American Political Science Review 94*(1), 101–116.

Canes-Wrone, Brandice (2010). *Who leads whom?: presidents, policy, and the public.* University of Chicago Press.

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.

Carrington, Nathan T and Colin French (2021). One bad apple spoils the bunch: Kavanaugh and change in institutional support for the Supreme Court. *Social Science Quarterly 102*(4), 1484–1495.

Casey, Greg (1988). Public perceptions of judicial scandal: the Missouri Supreme Court 1982-88. *The Justice System Journal*, 284–307.

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.

Cavari, Amnon (2013). The short-term effect of going public. *Political Research Quarterly 66*(2), 336–351.

Chen, Shawna (2022, January 19). Roberts says he did not ask Gorsuch to wear mask on bench. *Axios*.

Christenson, Dino P , Sarah E Kreps, and Douglas L Kriner (2021). Contemporary presidency: Going public in an era of social media: Tweets, corrections, and public opinion. *Presidential Studies Quarterly 51*(1), 151–165.

Clark, Tom S (2009). Measuring ideological polarization on the united states supreme court. *Political Research Quarterly 62*(1), 146–157.

Clark, Tom S , Benjamin G Engst, and Jeffrey K Staton (2018). Estimating the effect of leisure on judicial performance. *The Journal of Legal Studies 47*(2), 349–390.

Clark, Tom S , B Pablo Montagnes, and Jörg L Spenkuch (2022). Politics from the bench? Ideology and strategic voting in the US Supreme Court. *Journal of Public Economics 214*, 104726.

CNN (2021). Justice Stephen Breyer has not made any retirement plans, source says. *CNN*.

Cohen, Jeffrey E (2004). If the news is so bad, why are presidential polls so high? Presidents, the news media, and the mass public in an era of new media. *Presidential Studies Quarterly 34*(3), 493–515.

Collins, JR, PAUL M , Kenneth L Manning, and Robert A Carp (2010). Gender, critical mass, and judicial decision making. *Law & Policy 32*(2), 260–281.

Collins Jr, Paul M and Matthew Eshbaugh-Soha (2020). *The president and the Supreme Court: Going public on judicial decisions from Washington to Trump.* Cambridge University Press.

Corley, Pamela C and Adam Feldman (2023). Does Quality Matter? The Influence of Party Briefs and Oral Arguments on the US Supreme Court. *J. App. Prac. & Process 23*, 345.

Corrigan, Matthew (2000). The transformation of going public: President Clinton, the first lady, and health care reform. *Political Communication 17*(2), 149–168.

Cross, Frank B and Emerson H Tiller (2007). Understanding collegiality on the court. *U. Pa. J. Const. L. 10*, 257.

Curry, Brett W , Richard L Pacelle Jr, and Bryan W Marshall (2008). "An Informal and Limited Alliance": The President and the Supreme Court. *Presidential Studies Quarterly 38*(2), 223–247.

Curry, Todd A and Michael P Fix (2019). May it please the twitterverse: The use of Twitter by state high court judges. *Journal of Information Technology & Politics 16*(4), 379–393.

Dahl, Robert A (1957). Decision-making in a democracy: The Supreme Court as a national policy-maker. *J. Pub. L. 6*, 279.

Davis, Richard (2011). *Justices and journalists: The US Supreme Court and the media.* Cambridge University Press.

Davis, Richard (2014). *Covering the United States Supreme Court in the digital age.* Cambridge University Press.

Davis, Richard (2017). The US Supreme Court and the Journalists Who Cover It. *Justices and Journalists: The Global Perspective*, 281.

Davis, Richard and Vincent James Strickler (2000). The invisible dance: The Supreme Court and the press. *Perspectives on Political Science 29*(2), 85–92.

de Vogue, Ariane (2022a, September 29). Alito on SCOTUS critics: 'Questioning our integrity crosses an important line'. *CNN*.

de Vogue, Ariane (2022b, January). Justice Neil Gorsuch declines to wear a mask in Supreme Court photos, setting off a debate with Sotomayor. *CNN*.

de Vogue, Ariane (2022c, June). Sonia Sotomayor and Clarence Thomas clash over 'stench' in Supreme Court decision. *CNN*.

Devins, Neal and Lawrence Baum (2017). Split definitive: How party polarization turned the Supreme Court into a partisan court. *The Supreme Court Review 2016*(1), 301–365.

Downs, Donald Alexander (2021). Supreme Court nominations at the bar of political conflict: the strange and uncertain career of the liberal consensus in law. *Law & Social Inquiry 46*(2), 540–571.

Duster, Chandelis (2021a). Justice Amy Coney Barrett says Supreme Court is 'not a bunch of partisan hacks'. *CNN*.

Duster, Chandelis (2021b, September). Justice Amy Coney Barrett says Supreme Court is 'not a bunch of partisan hacks'. *CNN*.

Edwards, Harry T (2003). The effects of collegiality on judicial decision making. *University of Pennsylvania Law Review 151*(5), 1639–1690.

Enns, Peter K and Patrick C Wohlfarth (2013). The swing justice. *The Journal of Politics 75*(4), 1089–1107.

Epstein, Lee and Jack Knight (1997). *The choices justices make*. Sage.

Epstein, Lee and Jack Knight (2013). Reconsidering judicial preferences. *Annual Review of Political Science 16*(1), 11–31.

Epstein, Lee , Jack Knight, and Andrew D Martin (2003). The norm of prior judicial experience and its consequences for career diversity on the US Supreme Court. *California Law Review*, 903–965.

Epstein, Lee , William M Landes, and Richard A Posner (2010). Inferring the winning party in the Supreme Court from the pattern of questioning at oral argument. *The Journal of Legal Studies 39*(2), 433–467.

Epstein, Lee and Andrew D Martin (2010). Does Public Opinion Influence the Supreme Court-Possibly Yes (But We're Not Sure Why). *U. Pa. J. Const. L. 13*, 263.

Epstein, Lee and Eric A Posner (2016). Supreme Court justices' loyalty to the President. *The Journal of Legal Studies 45*(2), 401–436.

Epstein, Lee , Jeffrey A Segal, and Harold J Spaeth (2001). The norm of consensus on the US Supreme Court. *American Journal of Political Science*, 362–377.

Epstein, Lee , Jeffrey A Segal, and Chad Westerland (2007). The increasing importance of ideology in the nomination and confirmation of Supreme Court justices. *Drake L. Rev. 56*, 609.

Eshbaugh-Soha, Matthew (2007). Who Leads Whom? Presidents, Policy, and the Public. *Presidential Studies Quarterly 37*(3), 567–569.

Eshbaugh-Soha, Matthew (2010). The politics of presidential speeches. In *Congress & the Presidency*, Volume 37, pp. 1–21. Taylor & Francis.

Eshbaugh-Soha, Matthew (2022). The Presidents' Speeches. In *The Presidents' Speeches*. Lynne Rienner Publishers.

Farganis, Dion and Justin Wedeking (2014). *Supreme Court confirmation hearings in the US Senate: Reconsidering the charade*. University of Michigan Press.

Fenno, Richard F (1977). US House members in their constituencies: An exploration. *American Political Science Review 71*(3), 883–917.

Flemming, Roy B and B Dan Wood (1997). The public and the Supreme Court: Individual justice responsiveness to American policy moods. *American Journal of Political Science*, 468–498.

Fogarty, Brian J , S Nasser Qadri, and Patrick C Wohlfarth (2020). Personalizing the US Supreme Court through attention to individual justices. *Social Science Quarterly 101*(2), 825–841.

Frantzich, Stephen (2015). *Congress, the Media, and the Public: Who Reveals What, When, and How?* Routledge.

Friedman, Barry (2009). *The will of the people: how public opinion has influenced the Supreme Court and shaped the meaning of the Constitution*. Farrar, Straus and Giroux.

Frishman, Olga (2017). Court-Audience Relationships in the 21st Century. *Miss. LJ 86*, 213.

Fritze, John (2022, September 19). Kagan warns the Supreme Court must 'act like a court' to keep Americans' faith. *USA Today*.

Gardner, Paul J and Sharece Thrower (2023). Presidential Constraints on Supreme Court Decision-Making. *The Journal of Politics 85*(1), 139–152.

Garoupa, Nuno and Catarina Santos Botelho (2022). *Judicial Dissent in Collegial Courts: Theory and Evidence*. Oxford.

George, Tracey E (2007). From judge to justice: Social background theory and the Supreme Court. *NCL Rev. 86*, 1333.

George, Tracey E and Lee Epstein (1992). On the nature of Supreme Court decision making. *American Political Science Review 86*(2), 323–337.

Gerstein, Josh (2023). Kagan enters fray over Congress' power to police Supreme Court.

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 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.

Giles, Micheal W , Bethany Blackstone, and Richard L Vining Jr (2008). The Supreme Court in American democracy: Unraveling the linkages between public opinion and judicial decision making. *The Journal of Politics 70*(2), 293–306.

Gleason, Shane A , Jennifer J Jones, and Jessica Rae McBean (2019). The role of gender norms in judicial decision-making at the US Supreme Court: The case of male and female justices. *American Politics Research 47*(3), 494–529.

Gleason, Shane A and EmiLee Smart (2023). You Think; Therefore I Am: Gender Schemas and Context in Oral Arguments at the Supreme Court, 1979–2016. *Political Research Quarterly 76*(1), 143–157.

Glennon, Colin and Logan Strother (2019). The maintenance of institutional legitimacy in Supreme Court justices' public rhetoric. *Journal of Law and Courts 7*(2), 241–261.

Gooch, Donald Michael (2015). Ideological Polarization on the Supreme Court: Trends in the Court's Institutional Environment and Across Regimes, 1937-2008. *American Politics Research 43*(6), 999–1040.

Greenstein, Fred I (1988). *Leadership in the modern presidency.* Harvard University Press.

Gregorian, Dareh (2021, December). Sotomayor suggests Supreme Court won't 'survive the stench' of overturning Roe v. Wade. *NBC News*.

Hager, Gregory L and Terry Sullivan (1994). President-centered and presidency-centered explanations of presidential public activity. *American Journal of Political Science*, 1079–1103.

Hagle, Timothy M and Harold J Spaeth (1991). Voting fluidity and the attitudinal model of Supreme Court decision making. *Western Political Quarterly 44*(1), 119–128.

Hall, Matthew (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*.

Hall, Matthew EK (2017). They've Got, Personality: Goals, Traits, and Behavior on the US Supreme Court. *Wash. UJL & Pol'y 54*, 101.

Hall, Matthew EK (2018). *What justices want: Goals and personality on the US Supreme Court.* Cambridge University Press.

Handberg, Roger (1984). Public Opinion and the United States Supreme Court 1935-1981. *International Social Science Review 59*(1), 3.

Hargrave, Lotte and Tone Langengen (2021). The gendered debate: Do men and women communicate differently in the house of commons? *Politics & Gender 17*(4), 580–606.

Haroun, Azmi (2022, July). Justice Kagan gives pointed warning about the 'legitimacy' of the court, seemingly calling out justices with 'political social preferences'. *Politico*.

Hazelton, Morgan LW , Rachael K Hinkle, and Michael J Nelson (2023). *The Elevator Effect: Contact and Collegiality in the American Judiciary.* Oxford University Press.

Hettinger, Virginia A , Stefanie A Lindquist, and Wendy L Martinek (2003). Acclimation effects and separate opinion writing in the US Courts of Appeals. *Social Science Quarterly 84*(4), 792–810.

Hettinger, Virginia A , Stefanie A Lindquist, and Wendy L Martinek (2004). Comparing attitudinal and strategic accounts of dissenting behavior on the US Courts of Appeals. *American Journal of Political Science 48*(1), 123–137.

Hill, Kim Quaile and Patricia A Hurley (2002). Symbolic speeches in the US Senate and their representational implications. *Journal of Politics 64*(1), 219–231.

Hill, The (2016). Justice Thomas breaks silence on Supreme Court.

Hitt, Matthew P and Kathleen Searles (2018). Media coverage and public approval of the US Supreme Court. *Political Communication 35*(4), 566–586.

Holmes, Lisa M (2007). Presidential Strategy in the Judicial Appointment Process: "Going Public" in Support of Nominees to the US Courts of Appeals. *American Politics Research 35*(5), 567–594.

Houston, Rachael , Siyu Li, and Timothy R Johnson (2021). Learning to Speak Up: Acclimation Effects and Supreme Court Oral Argument. *Justice System Journal 42*(2), 115–129.

Hurwitz, Mark S and Oseph V Stefko (2004). Acclimation and attitudes:"Newcomer" justices and precedent conformance on the Supreme Court. *Political Research Quarterly 57*(1), 121–129.

Jacobi, Tonja and Dylan Schweers (2017). Justice, interrupted: The effect of gender, ideology, and seniority at Supreme Court oral arguments. *Va. L. Rev. 103*, 1379.

Johnson, Ben and Logan Strother (2021). TRENDS: The Supreme Court's (Surprising?) Indifference to Public Opinion. *Political Research Quarterly 74*(1), 18–34.

Johnson, Brian D (2014). Judges on trial: A reexamination of judicial race and gender effects across modes of conviction. *Criminal Justice Policy Review 25*(2), 159–184.

Johnson, Timothy R , Ryan C Black, and Justin Wedeking (2009). Pardon the Interruption: An Empirical Analysis of Supreme Court Justices' Behavior During Oral Arguments. *Loy. L. Rev. 55*, 331.

Johnson, Timothy R and Jason M Roberts (2004). Presidential capital and the Supreme Court confirmation process. *Journal of Politics 66*(3), 663–683.

Johnson, Timothy R , James F Spriggs II, and Paul J Wahlbeck (2007). Supreme Court Oral Advocacy: Does it Affect the Justices' Decisions? *Washington University Law Review, Forthcoming.*

Jones, Jeffrey M (2014). Americans' Approval of Supreme Court Steady at 44%; Job approval has been about evenly divided since 2012. *Gallup Poll News Service.*

Jones, Jeffrey M (2021). Approval of U.S. Supreme Court Down to 40 Percent, a New Low. *Gallup.*

Kastellec, Jonathan P , Jeffrey R Lax, and Justin H Phillips (2010). Public opinion and senate confirmation of Supreme Court nominees. *The Journal of Politics 72*(3), 767–784.

Katsh, Ethan (1983). The Supreme Court beat: how television covers the US Supreme Court. *Judicature 67*, 6.

Kelm, Ole (2020). Why do politicians use Facebook and Twitter the way they do? The influence of perceived audience expectations. *SCM Studies in Communication and Media 9*(1), 8–34.

Kernell, Samuel (1997). The theory and practice of going public. *Do the media govern*, 323–333.

Krewson, Chris , David Lassen, and Ryan J Owens (2018). Research note: Twitter and the Supreme court: An examination of congressional tweets about the Supreme court. *Justice System Journal 39*(4), 322–330.

Krewson, Christopher N (2019a). Save this honorable Court: Shaping public perceptions of the Supreme Court off the bench. *Political Research Quarterly 72*(3), 686–699.

Krewson, Christopher N (2019b). Strategic sensationalism: Why justices use emotional appeals in Supreme Court opinions. *Justice System Journal 40*(4), 319–336.

Krewson, Christopher N (2023). Political hearings reinforce legal norms: Confirmation hearings and views of the United States Supreme Court. *Political Research Quarterly 76*(1), 418–431.

Krewson, Christopher N and Jean R Schroedel (2020). Public views of the US supreme court in the aftermath of the Kavanaugh confirmation. *Social Science Quarterly 101*(4), 1430–1441.

Kritzer, Herbert M (2005). The American public's assessment of the Rehnquist Court. *Judicature 89*, 168.

Linos, Katerina and Kimberly Twist (2016). The Supreme Court, the media, and public opinion: Comparing experimental and observational methods. *The Journal of Legal Studies 45*(2), 223–254.

Lipinski, Daniel and Gregory Neddenriep (2004). Using "new" media to get "old" media coverage: How members of Congress utilize their web sites to court journalists. *Harvard International Journal of Press/Politics 9*(1), 7–21.

Liptak, Adam (2016, July). Ruth Bader Ginsburg, No Fan of Donald Trump, Critiques Latest Term. *The New York Times.*

Macdonald, Maggie , Annelise Russell, and Whitney Hua (2023). Negative Sentiment and Congressional Cue-Taking on Social Media. *PS: Political Science & Politics 56*(2), 201–206.

Macdonald, Maggie , Joshua A Tucker, and Jonathan Nagler (2022). The Democratizing and Polarizing Impact of Fundraising on Twitter: Easy Money, Viral Incentives, and the Catalyzing Role of Mainstream Media.

Madonna, Anthony J , James E Monogan III, and Richard L Vining Jr (2016). Confirmation wars, legislative time, and collateral damage: The impact of Supreme court nominations on presidential success in the US Senate. *Political research quarterly 69*(4), 746–759.

Malhotra, Neil and Stephen A Jessee (2014). Ideological proximity and support for the Supreme Court. *Political Behavior 36*(4), 817–846.

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

Mark, Alyx and Michael A Zilis (2019). The conditional effectiveness of legislative threats: how court curbing alters the behavior of (Some) Supreme Court justices. *Political Research Quarterly 72*(3), 570–583.

Marshall, Thomas R (2022). *American Public Opinion and the Modern Supreme Court, 1930-2020: A Representative Institution.* Rowman & Littlefield.

Martin, Andrew D and Kevin M Quinn (2002). Dynamic ideal point estimation via Markov chain Monte Carlo for the US Supreme Court, 1953–1999. *Political analysis 10*(2), 134–153.

Martin, Andrew D , Kevin M Quinn, and Lee Epstein (2004). The median justice on the united states supreme court. *NCL rev. 83*, 1275.

Martín-Román, Ángel , Alfonso Moral, and Virginia Rosales (2023). Judges and Court Productivity: Evidence from Spanish Labour Courts.

Mason, Lilliana (2018a). Ideologues without issues: The polarizing consequences of ideological identities. *Public Opinion Quarterly 82*(S1), 866–887.

Mason, Lilliana (2018b). *Uncivil agreement: How politics became our identity.* University of Chicago Press.

Masood, Ali S and Benjamin J Kassow (2020). The sum of its parts: How Supreme Court justices disparately shape attention to their opinions. *Social Science Quarterly 101*(2), 842–860.

Masood, Ali S and Benjamin J Kassow (2023). What's in a Name: How US Supreme Court Justices Shape Law and Policy in the Lower Courts. *Law & Social Inquiry 48*(2), 463–488.

Meinke, Scott R and Kevin M Scott (2007). Collegial influence and judicial voting change: The effect of membership change on US Supreme Court justices. *Law & Society Review 41*(4), 909–938.

Merrill, Alison Higgins , Nicholas D Conway, and Joseph Daniel Ura (2017). Confidence and Constraint: Public Opinion, Judicial Independence, and the Robert Court. *Wash. UJL & Pol'y 54*, 209.

Miller, Susan L and Shana L Maier (2008). Moving beyond numbers: What female judges say about different judicial voices. *Journal of Women, Politics & Policy 29*(4), 527–559.

Mishler, William and Reginald S Sheehan (1993). The Supreme Court as a countermajoritarian institution? The impact of public opinion on Supreme Court decisions. *American Political Science Review 87*(1), 87–101.

Mishler, William and Reginald S Sheehan (1996). Public opinion, the attitudinal model, and Supreme Court decision making: A micro-analytic perspective. *The Journal of Politics 58*(1), 169–200.

Mondak, Jeffery J (1992). Institutional legitimacy, policy legitimacy, and the Supreme Court. *American Politics Quarterly 20*(4), 457–477.

Montgomery, Matthew D , Natalie C Rogol, and Justin T Kingsland (2019). Presidential Rhetoric and US Supreme Court Rulings: The Effect of Going Public on Citizen Evaluations of Institutions and Policy. *Presidential Studies Quarterly 49*(4), 870–897.

Moyer, Laura P and Ellen M Key (2018). Political opportunism, position taking, and court-curbing legislation. *Justice System Journal 39*(2), 155–170.

Moyer, Laura P , John Szmer, Susan Haire, and Robert K Christensen (2021). 'All eyes are on you': Gender, race, and opinion writing on the US Courts of Appeals. *Law & Society Review 55*(3), 452–472.

Musunuru, Anusha , David Proffitt, Reid Ewing, and William H Greene (2020). Poisson and negative binomial regression analysis. In *Advanced Quantitative Research Methods for Urban Planners*, pp. 74–94. Routledge.

Nash, Jonathan Remy (2022). Measuring judicial collegiality through dissent. *Buff. L. Rev. 70*, 1561.

Nelson, Michael J and Lee Epstein (2022). Human capital in court: The role of attorney experience in US Supreme Court litigation. *Journal of Law and Courts 10*(1), 61–85.

Nicholson, Stephen P and Thomas G Hansford (2014). Partisans in robes: Party cues and public acceptance of Supreme Court decisions. *American Journal of Political Science 58*(3), 620–636.

Olson, Mancur (1965). *Logic of collective action: Public goods and the theory of groups (Harvard economic studies. v. 124)*. Harvard University Press.

Ostberg, CL , Matthew E Wetstein, and Craig R Ducat (2003). Acclimation Effects on the Supreme Court of Canada: A Cross-Cultural Examination of Judicial Folklore. *Social science quarterly 84*(3), 704–722.

Ouyang, Yu and Richard W Waterman (2020). *Trump, Twitter, and the American democracy: Political communication in the digital age.* Springer Nature.

Owens, Ryan J and David A Simon (2011). Explaining the Supreme Court's Shrinking Docket. *Wm. & Mary L. Rev. 53*, 1219.

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.

Papandrea, Mary-Rose (2012). Moving Beyond Cameras in the Courtroom: Technology, the Media, and the Supreme Court. *BYU L. Rev.*, 1901.

Paschall, Collin and Casey Burgat (2022). Bosses Behaving Badly: Congressional Scandals and Office Staff. In *Scandal and Corruption in Congress*, pp. 151–169. Emerald Publishing Limited.

Patton, Dana and Joseph L Smith (2017). Lawyer, interrupted: Gender bias in oral arguments at the US Supreme Court. *Journal of Law and Courts 5*(2), 337–361.

Peppers, Todd C and Micheal W Giles (2012). Of plotted plants and political images: The Supreme Court and the State of the Union address. *Kan. JL & Pub. Pol'y 22*, 49.

Policinski, Gene (2014). Setting the Docket: News Media Coverage of Our Courts-Past, Present and an Uncertain Future. *Mo. L. REv. 79*, 1007.

Powell, Richard J (1999). Going public'revisited: Presidential speechmaking and the bargaining setting in Congress. In *Congress & the Presidency: A Journal of Capital Studies*, Number 2, pp. 153–170. Taylor & Francis.

Rice, Douglas R (2017). Issue divisions and US Supreme Court decision making. *The Journal of Politics 79*(1), 210–222.

Ritchie, Melinda N (2018). Back-channel representation: a study of the strategic communication of senators with the us Department of Labor. *The Journal of Politics 80*(1), 240–253.

Rogol, Natalie C and Matthew D Montgomery (2022). Snooze or Snub? How the Public Reacts to Judicial Attendance at the State of the Union. *Justice System Journal*, 1–23.

Rogol, Natalie C , Matthew D Montgomery, and Justin T Kingsland (2018). Going public: Presidential impact on Supreme Court decision-making. *Justice System Journal 39*(3), 210–227.

Rogowski, Jon C and Andrew R Stone (2021). How political contestation over judicial nominations polarizes Americans' attitudes toward the Supreme Court. *British Journal of Political Science 51*(3), 1251–1269.

Russell, Annelise (2018). US senators on Twitter: Asymmetric party rhetoric in 140 characters. *American Politics Research 46*(4), 695–723.

Russell, Annelise (2021a). Gendered priorities? policy communication in the US Senate. In *Congress & the Presidency*, Volume 48, pp. 319–342. Taylor & Francis.

Russell, Annelise (2021b). Senate representation on Twitter: National policy reputations for constituent communication. *Social Science Quarterly 102*(1), 301–323.

Rustad, Eirik and Øystein Sæbø (2013). How, why and with whom do local politicians engage on facebook? In *Electronic Participation: 5th IFIP WG 8.5 International Conference, ePart 2013, Koblenz, Germany, September 17-19, 2013. Proceedings 5*, pp. 69–79. Springer.

Schmidt, Christopher W (2012). Beyond the opinion: Supreme Court justices and extrajudicial speech. *Chi.-Kent L. Rev. 88*, 487.

Segal, Jeffrey A and Harold J Spaeth (2002). *The Supreme Court and the attitudinal model revisited*. Cambridge University Press.

Segal, Jeffrey A , Chad Westerland, and Stefanie A Lindquist (2011). Congress, the Supreme Court, and judicial review: Testing a constitutional separation of powers model. *American Journal of Political Science 55*(1), 89–104.

Sen, Maya (2017). Diversity, qualifications, and ideology: how female and minority judges have changed, or not changed, over time. *Wis. L. REv.*, 367.

Sheafer, Tamir (2001). Charismatic skill and media legitimacy: An actor-centered approach to understanding the political communication competition. *Communication Research 28*(6), 711–736.

Sherman, Mark (2018). Chief Justice John Roberts pushes back on President Trump's criticism of 'Obama judge'. *PBS NewsHour*.

Shipan, Charles R (2000). Acclimation effects revisited. *Jurimetrics*, 243–256.

Sill, Kaitlyn L , Emily T Metzgar, and Stella M Rouse (2013). Media Coverage of the US Supreme Court: How do journalists assess the importance of court decisions? *Political Communication 30*(1), 58–80.

Sinozich, Sofi (2016). Public opinion on the US Supreme Court, 1973–2015. *Public Opinion Quarterly 81*(1), 173–195.

Skowronek, Stephen (1997). *The politics presidents make: leadership from John Adams to Bill Clinton.* Harvard University Press.

Songer, Donald R and Kelley A Crews-Meyer (2000). Does judge gender matter? Decision making in state supreme courts. *Social Science Quarterly*, 750–762.

Songer, Donald R and Stefanie A Lindquist (1996). Not the whole story: The impact of justices' values on Supreme Court decision making. *American Journal of Political Science 40*(4), 1049–1063.

Steffensmeier, Darrell and Chester L Britt (2001). Judges' race and judicial decision making: Do black judges sentence differently? *Social science quarterly 82*(4), 749–764.

Street, John (2004). Celebrity politicians: Popular culture and political representation. *The British journal of politics and international relations 6*(4), 435–452.

Strother, Logan (2017). How expected political and legal impact drive media coverage of Supreme Court cases. *Political Communication 34*(4), 571–589.

Strother, Logan and Colin Glennon (2021). An Experimental Investigation of the Effect of Supreme Court Justices' Public Rhetoric on Perceptions of Judicial Legitimacy. *Law & Social Inquiry 46*(2), 435–454.

Sulkin, Tracy (2009). Campaign appeals and legislative action. *The Journal of Politics 71*(3), 1093–1108.

Swalve, Tilko (2022). Does group familiarity improve deliberations in judicial teams? Evidence from the German Federal Court of Justice. *Journal of Empirical Legal Studies 19*(1), 223–249.

Szmer, John J , Tammy A Sarver, and Erin B Kaheny (2010). Have we come a long way, baby? The influence of attorney gender on Supreme Court decision making. *Politics & Gender 6*(1), 1–36.

Tedin, Kent , Brandon Rottinghaus, and Harrell Rodgers (2011). When the president goes public: The consequences of communication mode for opinion change across issue types and groups. *Political Research Quarterly 64*(3), 506–519.

Tromble, Rebekah (2018). Thanks for (actually) responding! How citizen demand shapes politicians' interactive practices on Twitter. *New media & society 20*(2), 676–697.

Tulis, Jeffrey K (2017). The rhetorical presidency. In *The Rhetorical Presidency.* Princeton University Press.

Ulmer, S Sidney (1973). Social background as an indicator to the votes of Supreme Court justices in criminal cases: 1947-1956 terms. *American Journal of Political Science 17*(3), 622–630.

Unah, Isaac and Ange-Marie Hancock (2006). US Supreme Court decision making, case salience, and the attitudinal model. *Law & Policy 28*(3), 295–320.

Ura, Joseph Daniel and Patrick C Wohlfarth (2021). Greater public confidence in the US Supreme Court predicts more jurisdiction stripping. *Political Science Research and Methods*, 1–9.

Vinson, C Danielle (2017). *Congress and the media: beyond institutional power.* Oxford University Press.

Wahlbeck, Paul J , James F Spriggs, and Forrest Maltzman (1998). Marshalling the court: bargaining and accommodation on the United States Supreme Court. *American Journal of Political Science*, 294–315.

Wahlbeck, Paul J , James F Spriggs, and Forrest Maltzman (1999). The politics of dissents and concurrences on the US Supreme Court. *American Politics Quarterly 27*(4), 488–514.

Wanderer, Nancy A (2002). Writing Better Opinions: Communicating with Candor, Clarity, and Style. *Me. L. Rev. 54*, 47.

Wedeking, Justin (2010). Supreme Court litigants and strategic framing. *American Journal of Political Science 54*(3), 617–631.

Wedeking, Justin and Michael A Zilis (2018). Disagreeable Rhetoric and the Prospect of Public Opposition: Opinion Moderation on the US Supreme Court. *Political Research Quarterly 71*(2), 380–394.

Williams, Pete (2020). Rare rebuke from Chief Justice Roberts slams Schumer for 'threatening' comments. *NBC News.*

Williams, Pete (2021, April). Justice Breyer argues against expanding the Supreme Court. *NBC News*.

Williams, Ryan J and Jacob FH Smith (2018). Keeping up appearances: Non-policy court responses to public opinion. *Justice System Journal 39*(1), 54–74.

Wolf, Richard (2020). Supreme friends: Ruth Bader Ginsburg and Antonin Scalia's bond transcended politics.

Wood, Sandra L , Linda Camp Keith, Drew Noble Lanier, and Ayo Ogundele (1998). " Acclimation Effects" for Supreme Court Justices: A Cross-Validation, 1888-1940. *American Journal of Political Science*, 690–697.

Zilis, Michael (2015). *The limits of legitimacy: Dissenting opinions, media coverage, and public responses to Supreme Court decisions*. University of Michigan Press.

Zilis, Michael and Justin Wedeking (2020). The Sources and Consequences of Political Rhetoric: Issue Importance, Collegial Bargaining, and Disagreeable Rhetoric in Supreme Court Opinions. *Journal of Law and Courts 8*(2), 203–227.

Zilis, Michael A (2017). The political consequences of Supreme Court consensus: Media coverage, public opinion, and unanimity as a public-facing strategy. *Wash. UJL & Pol'y 54*, 229.

Zilis, Michael A (2021a). Cognitive Heuristics, Inter-Institutional Politics, and Public Perceptions of Insulated Institutions: The Case of the US Supreme Court. *International Journal of Public Opinion Research 33*(1), 76–98.

Zilis, Michael A (2021b). *The Rights Paradox: How Group Attitudes Shape US Supreme Court Legitimacy*. Cambridge University Press.

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