

## Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness

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*The tendency of the media to depict the Supreme Court as inherently apolitical, some scholars argue, is part of the reason that many believe in the "myth of legality" in which the Court is perceived to operate above the ideological skirmishes of everyday politics. Our experimental analyses show that citizens react more negatively to press reports of a politically motivated Court than they do to coverage portraying a Court that strictly follows legal guidelines. Interestingly, our results also suggest that it is not so much the perceived absence of political wrangling among justices but rather it is the presence of legal guidelines driving the outcome that is the source of the perception of fairness.*

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**KEY WORDS:** media framing, judicial process, procedural justice, legitimacy, Supreme Court

"Ordinary administration of criminal and civil justice is above all others the most powerful, most universal and most attractive source of popular obedience and popular attachment . . . being the most visible guardian of life and property, and contributes more than any other circumstance to impressing upon the minds of the people affection, esteem, and reverence toward the government," *Federalist Papers* 17, p. 85

The constitutional framers foresaw deep and widespread reverence among citizens for the Supreme Court. Indeed scholarly analyses of public attitudes toward the Court provide strong support for the notion (Hibbing & Theiss-Morse, 1995; Mondak, 1990; Mondak & Smithey, 1997), indicating that much of the

public believes that the institution typically operates above the ideological bargaining and compromise of everyday politics (Casey, 1974; Scheb & Lyons, 2000). A commonly advanced explanation for the popularity of the Supreme Court relative to other institutions is that media coverage of Court activities is largely apolitical with little or no discussion of the underlying rationale for the decisions it renders (Franklin & Kosaki, 1995; Hibbing & Theiss-Morse, 2002, 1995; Spill & Oxley, 2003). In contrast, the media obsessively scrutinizes political deliberations in Congress (Hetherington, 1998; Hibbing & Theiss-Morse, 1995). Hibbing and Theiss-Morse (2002) suggest that the media's focus on political conflict is one reason that many citizens are critical of the bargaining and compromise in the lawmaking process.

There is considerable scholarship examining public opinion of the Court (Caldeira & Gibson, 1992, Gibson, Caldeira, & Baird, 1998, Hoekstra, 2000, 2003), the political nature of the Court (Epstein & Knight, 1998; Maltzman, Spriggs, & Wahlbeck, 2000; Segal & Spaeth, 1993), and how individual Court decisions influence the public's confidence in the institution (Grosskopf & Mondak, 1998). Additionally, numerous scholars have examined media coverage of the institution (Clawson & Waltenburg, 2003; Spill & Oxley, 2003). However, there is comparatively little work examining the connection between media coverage of the Court and its influence on public opinion. This is our goal in this paper. We examine the link between the content of news reports about Court rulings and public assessments of the fairness of its decision-making processes. More specifically, we examine the question of what happens, if anything, to citizens' assessments of the fairness of the Court's deliberative processes when its inherent political nature—its own brand of bargaining and compromise—is made apparent in the information environment.

To address the question of whether and how media coverage of Court processes affects opinions about the Court, we present respondents with experimental vignettes that manipulate coverage of the Court's decision making process in a hypothetical Court case. Half of the respondents receive a news report of a Court decision in which the decision-making process is represented as purely legalistic. In these vignettes, the justices' ideological leanings and motivations and how they might have influenced each member's ruling are not discussed. In contrast, the other half of the respondents receives a news story in which the justices' ideological preferences, compromises, and bargaining strategies are salient in the reporting. In other words, to examine whether public esteem for the Court is rooted in the misperception that Court procedures are relatively immune to the politics of bargaining and compromise, we portray the Court's decision-making process in a manner resembling more typical media coverage of congressional debates. This design, moreover, permits us to address the question of whether it is the perceived *absence* of ideological bargaining and compromise on the Court that leads to such relatively high public regard for the institution or rather the *presence* of guiding legal principles.

Most previous work on this subject has examined the connection between perceptions of procedural fairness and support for courts (Gibson, 1989, 1991; Mondak, 1993; Tyler & Rasinski, 1991) or compliance with courts (Gibson & Caldeira, 1995). Alternatively, many scholars focus on the public's perception that the Court is legalistic (Casey, 1974; Baird, 2001; Scheb & Lyons, 2000) or on the tendency of justices to frame their decisions as legalistic to garner increased legitimacy (Epstein & Knight, 1998; Tyler & Mitchell, 1994). Our paper differs in that it does not assume which kind of procedure is perceived as fair; rather it examines both questions of whether process perceptions as derived from press reports influence public assessments as well as how different kinds of coverage of Court procedures affect citizen perceptions of fairness.

Of course, we already know that the belief in the "myth of legality," whereby justices are perceived to consider only the law when making their decisions, is prevalent. This is, in part, because justices work to perpetuate the myth, deliberately trying to present themselves to the public through the media as legal scholars and authorities rather than politicians (Rose, Mishler, & Haerpfer, 1998; Tyler & Mitchell, 1994). We also know that people who perceive judicial procedures to be largely legalistic tend to offer more positive assessments of the Court. Scheb and Lyons (2001), for example, find that people who believe that the Court abides by the "myth of legality" voice more positive attitudes toward the institution relative to those who believe justices can be influenced by political factors. Drawing on this work as well as research demonstrating that the print media typically portrays Court deliberations as largely apolitical and predominantly legalistic in nature (Spill & Oxley, 2003), we expect that exposure to news stories in which judicial bargaining and compromise is salient will undermine belief in the fairness of Court procedures.

### Experimental Design

We used a two-by-two between-group factorial design involving four fictional news stories—or vignettes—about a Court decision-making process and ruling. In each of our four vignettes, we present media coverage of how the Court deliberated the constitutionality of a highly charged civil rights issue. How the media portrayed the Court's decision-making process as well as the Court's ultimate decision was altered across the conditions.

In half of the vignettes, the deliberations are characterized as primarily debates over legal principles, representing the "Legalistic Court" condition. Previous decisions that the Court considered in coming to its decisions are mentioned, and an objective legal commentator suggests that legal factors guided the outcome. In the other half of the articles, the deliberations are portrayed in a manner common to legislative debates in which the decision is said to involve ideological and political disagreement among the justices. An objective legal commentator

**Table 1.** Experimental Conditions

	Outcome Manipulation	
Procedural Manipulation	Legalistic Court *	Legalistic Court *
	Court Upholds Anti-Terrorist Bill	Court Strikes Down Anti-Terrorist Bill
	Political Court *	Political Court *
	Court Upholds Anti-Terrorist Bill	Court Strikes Down Anti-Terrorist Bill.

suggests in the article that bargaining and compromise informed the ruling. We henceforth refer to this condition as the “Political Court” condition.<sup>1</sup>

Additionally, the Court’s ruling on the constitutionality of the decision was altered across the conditions. The particular piece of legislation in question was described as an antiterrorism bill that “gives police new and expanded powers to track, punish and detain suspected terrorists for seven days.” The Court was reported to have upheld the legislation in half of the vignettes, and to have struck it down in the other half. The four experimental conditions are summarized in Table 1.<sup>2</sup>

Our primary hypothesis can be summarized as follows: *Subjects who receive the Political Court vignettes will offer significantly more negative assessments of the fairness of the judicial procedures producing the decision compared to those who receive the Legalistic Court ones, regardless of the outcome of the ruling.*

In order to test this hypothesis, we conducted the experiment in the spring of 2002 at a large research university. A packet of experimental materials was distributed randomly to students in several political science classes participating in the study. The experimental packets consisted of an introductory questionnaire asking subjects for their opinions on a range of political issues. The packets also

<sup>1</sup> The vignettes are presented in the appendix. We modeled our “Political Court” vignettes on the politically charged coverage of the *Bush v. Gore* (2000) decision in which some media reports took the unusual steps of discussing both the political predispositions of the justices as well as “insider” revelations and speculation of the content of the judicial deliberations. Our review of *New York Times* and *Washington Post* coverage of the case turned up several articles and editorials in which the reports discussed the contentious deliberations and presented the rationales for justices’ separate opinions in some detail. Though in most other cases reporters do not typically have the degree of access to the details of deliberation represented in the *Bush v. Gore* case or in our vignettes, our goal was to create an information environment that could address the question of what IF the media covered the politically motivated decision making that we know occurs on the Court in a similar way that reports often cover political wrangling among members of Congress.

<sup>2</sup> Critics have suggested that it may be because the “Political Court” vignettes are a little longer and more sensational in tone than the “Legalistic Court” vignettes that people respond significantly differently to our manipulations. However, we argue that while the critique of different length and tone is fair, our vignettes mirror “real-life” differences in coverage. We find that when news reports politicize court procedures, the articles are indeed longer and more sensational in tone compared to when a purely legally oriented discussion of court procedures is presented.

included one of the four vignettes summarized in Table 1 as well as a follow-up survey with questions assessing respondents' perceptions of the deliberations presented in the vignettes they were asked to read.<sup>3</sup>

### Measures

The dependent variable for the primary hypothesis is *perceived procedural fairness*. This was measured with a Likert scale in which subjects were asked, "How fair do you think the process through which the Supreme Court justices reached this decision was in this instance?" Perceptions of procedural fairness are the foundation of assessments of institutional legitimacy (Gibson, 1989, 1991; Mondak, 1993; Tyler & Rasinski, 1991) as well as compliance with the Court's decisions (Gibson & Caldeira, 1995). Thus, in measuring perceptions of procedural fairness we are getting at the question of how media framing can influence legitimacy assessments.

Furthermore, Likert scales were included to test the manipulations, or the extent to which respondents paid attention to the information contained within the experimental vignettes. Our measure of the perceived dominance of legalistic procedures was assessed with the question, "To what extent do you think that justices on the Court used legal considerations as opposed to their ideological beliefs in rendering their decisions?"<sup>4</sup> The perception that justices bargained and compromised in the process was assessed with, "To what extent do you think that members of the Court engaged in bargaining and compromise to reach this decision?"<sup>5</sup> Here we draw on work by Hibbing and Theiss-Morse (2002) demonstrating that citizens dislike conflict as well as bargaining and compromise in the lawmaking process. Thus, we do not expect that perceived bargaining and compromise in the Court's decision making will be evaluated as positively as justices described as dutifully debating the merits of various legal positions. Rather we expect perceived bargaining and conflict on the Court to generate negative assessments, a proposition we test in our empirical analyses.

### Results

The first question to address is whether the experimental manipulation worked. Did subjects perceive the Court deliberations to be defined by legal

<sup>3</sup> A total of 395 students completed the experiment. Precautionary measures were taken to make sure no student participated more than once. Among the subjects, 48% were women. Forty-seven percent identified as Democrats, 36% as Republicans, and 17% as Independents. 89% were white.

<sup>4</sup> Because we suspect that the perception of legalistic decision making is prevalent, we juxtaposed legalistic decision making with ideological decision making in the question so that people are offered an alternative to what they already perhaps perceive as legalism in the process.

<sup>5</sup> In the survey, the question of whether people perceived justices to bargain and compromise followed the question measuring perceptions that legal versus ideological drove the decisions. The survey can be obtained at [http://sobek.colorado.edu/~bairdv/Quex\\_vignettes.htm](http://sobek.colorado.edu/~bairdv/Quex_vignettes.htm).

considerations in the “Legalistic Court” vignettes and by strategic considerations in the “Political Court” vignettes as expected? To test this, we conducted means tests on the procedural manipulation treatment with both the perception that the Court was legalistic and the perception that the justices bargained or compromised with one another.

Among people who received the “Political Court” vignettes, the mean score for perceptions of bargaining and compromise on the Court was higher than the mean score of perceptions of legal considerations (.69 vs. .55;  $p < .01$ ). Likewise, those who received the “Legalistic Court” vignettes were significantly more likely to perceive legal consideration driving the Court’s decision-making process relative to perceptions of bargain and compromise (.71 vs. .39;  $p < .01$ ). The perception that legal considerations played a role in the judicial decision-making process is relatively strong across both conditions.<sup>6</sup> The prevalence of the myth of legality in public discourse (Davis, 1994; Oxley & Spill, 2003; Slotnick & Segal, 1998) is a likely explanation. Respondents who read the Political Court vignettes may not only consider the salient information presented to them in the stories but also draw on their prior images of judicial decision making as informed by legal factors. Thus, they are more likely to believe that both political and legal considerations played a role.<sup>7</sup> Both manipulation checks are statistically significant, however, so we can be assured that the vignettes worked.

### *Perception of Fairness of the Process*

Our hypothesis addresses the impact of the procedural manipulation treatment on assessments of the fairness of the Court’s decision-making procedures over and above the role the decision that the Court came to plays. We expect that people who received the Political Court vignettes will offer significantly more negative evaluations of the fairness of the procedures relative to those who receive the Legalistic Court vignettes, regardless of the outcome. We begin to examine whether this is the case first by running an ordinary least-squares (OLS) analysis<sup>8</sup> of the impact of the procedural manipulation treatment and the outcome on the

<sup>6</sup> Across both conditions, a majority of respondents believed that justices followed legalistic considerations as opposed to their ideological beliefs either “very much” or “somewhat.”

<sup>7</sup> In order to test this possibility, we created a dummy variable to measure the extent to which the respondent took legal and political considerations into account in making decisions. If the respondent believed that both legal and political procedures were present in the Court’s decision making, she was coded as one. If she took one or the other into account or neither, she was coded zero. Next, OLS analysis was used to estimate the impact of the procedural manipulation treatment on the perception that the Court used both legal and political procedures. The results provide strong evidence that those who received the Political Court vignettes were much more likely to see both political and legal considerations as components of the judicial decision-making process relative to those who received the Legal Court vignettes.

<sup>8</sup> Readers may be aware that ordinary least squares is not appropriate for ordinal dependent variables. In this case, the results using ordinal probit and OLS are identical. Therefore, for ease of presentation and interpretation, we present the results using OLS.

**Table 2.** The Effect of the Outcome and Political Court Manipulation on Levels of Perceived Fairness

	Perceived Procedural Fairness
Procedural Frame	
Political (1) Legalistic (0)	-.08 (.02)*
Outcome Frame	
Not Uphold (0) Uphold (1)	-.13 (.02)*
Ideology	.14 (.05)*
Knowledge	-.01 (.06)
Gender	
Male (1) Female (0)	.08 (.02)*

\*p < .05

*Note.* Coefficients are ordinary least squares coefficients with standard errors in parentheses. Number of observations = 376.

Both are statistically significant to .001.

*Perceived Procedural Fairness:* How fair do you think the process through which the Supreme Court justices reached this decision was in this instance? (The responses, “not at all fair,” “not very fair,” “somewhat fair,” and “very fair,” were coded 0, .33, .67, and 1 respectively from a four-point scale.)

The following variables have no impact on perceptions of fairness: interest in politics, perceptions of external efficacy, and party identification.

perception that the judicial procedures were fair. We include a number of control variables to examine the extent to which the framing of the decision-making process and outcome influenced fairness evaluations while taking into account such factors as ideology, political knowledge, and gender.<sup>9</sup> The results are presented in Table 2.

The results indicate that both the procedural manipulation treatment and outcome significantly affect perceptions of procedural fairness, even controlling for ideology, political knowledge, and gender. As expected, receiving information that justices bargain and compromise produces more negative evaluations of Court procedures relative to when the process is portrayed as guided largely by legal factors. The results lend strong support for the notion that there is an important link between how the media covers Court decision-making processes and public perceptions and evaluations of the institution.

<sup>9</sup> Ideology is a self-placement scale, coded as follows: Extremely Liberal (0), Liberal (.25), Moderate (.5), Conservative (.75), and Extremely Conservative (1).

Political knowledge is measured as the number of correct answers to the following three questions: (1) Whose responsibility it is to determine if a law is constitutional or not? (2) Who is the current President of Russia? (2) How much of a majority is required for the U.S. Senate and House to override a presidential veto?

Not surprisingly, the outcome manipulation also has a significant impact on people's perception of procedural fairness.<sup>10</sup> When the Court rules against the constitutionality of the bill that allows detaining, respondents are more likely to perceive the process is fair. Both the procedural manipulation treatment and outcome variables are significant at the .001 level in their impact on the perception of the fairness of the procedure.

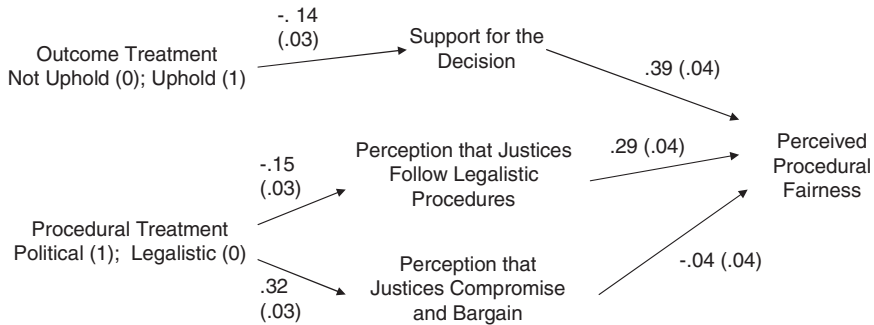
Additionally, both ideology and gender also significantly predicted perceptions of procedural fairness in our analyses. Those identifying as liberals were more likely to evaluate the Court decision-making process as fair, independent of framing or outcome. Likewise, men were more likely than women to perceive the process as fair. Next, we move on to the question of whether it is preferences for legalistic procedures or negative attitudes toward bargaining and compromise or both that largely explain respondents' preferences for Court deliberations resembling the myth of legality. Our data permits us to examine this question.

### **Pathway Analysis: Which Procedural Perception Leads to Fairness Evaluations**

If our assertion is correct that subjects' responses to the different types of media coverage of court rulings have a significant impact on evaluations of procedural fairness, then the procedural manipulation treatment should only have an impact on the dependent variable through one or both of the following pathways: (1) perceptions of whether justices followed legalistic procedures or (2) they bargained and compromised with one another to achieve their ideological goals. Testing which of these perceptions actually leads subjects to perceive that the process is fair addresses the question of *why* those who received the Political Court vignettes were less supportive of the process. Is it because people love legalistic procedures? Or alternatively, is it because people despise bargaining and compromise? In other words, is it the presence of legalism or the absence of political processes that matters for people's fairness evaluations?

In order to address these concerns, we employ pathway regression analysis controlling for process perception and outcome. We expect respondents' perceptions of which procedure the justices followed to act as intervening variables between the procedural manipulation treatment they received and evaluations of fairness. Furthermore, if the outcome affects people's fairness assessments, as

<sup>10</sup> When our measure of support for the decision is included in the analysis, it does not affect the significance of either the procedural manipulation treatment or outcome variables. This is not surprising because the sample is composed of undergraduate college students, and we suspect that students may be more likely than the general public to support civil liberties for detainees. We are agnostic about whether the vignettes have an impact on this opinion as we are not investigating attitude change.



**Figure 1.** Pathway Analysis of Procedural Perceptions and Support for the Decision

Note: Coefficients are ordinary least squares coefficients with standard errors in parentheses.

*Perceived Procedural Fairness:* How fair do you think the process through which the Supreme Court justices reached this decision was in this instance?

*Support for the Decision:* On the whole, how close is your position on this issue to the decision reached by the Supreme Court?

*Perception that Justices Compromise and Bargain:* To what extent do you think that members of the Court engaged in bargaining and compromise to reach this decision?

*Perception that Justices Follow Legalistic Procedures:* To what extent do you think that the justices on the Court used legal considerations as opposed to their ideological beliefs in rendering their decisions?

suspected, then subjects’ agreement with the ruling should also act as an intervening variable between the outcome treatment and fairness assessments. If the process matters, then we should find that the process perceptions maintain their direct effect, even when controlling for the effect of people’s agreement with the decision. The results of the path analysis are presented in Figure 1.

Not surprisingly, agreement with the decision has an impact on the perceived fairness of the process. Respondents were much more likely to believe the decision was very fair when they agreed strongly with the decision, as compared to not agreeing with it at all. Nevertheless, the results also indicate that procedural perceptions matter over and above agreement with the ruling. Respondents who perceived that justices largely followed legal procedures are much more likely to evaluate the process as fair compared to those who did not perceive legal procedures to be predominant in the deliberations, independent of the outcome. Perceptions that justices bargain and compromise, however, do not have a significant negative impact on assessments of procedural fairness. The path analyses seem to indicate that subjects reward the Court for its perceived legalism but do not punish it when it is perceived to bargain and compromise.<sup>11</sup>

<sup>11</sup> A Sobel test (Baron & Kenny, 1986; Sobel, 1982) is conducted to gauge the presence of mediation between the treatments and the perceptions of fairness. The mediating variables presented here are: (1) support for the decision, (2) perception that justices compromise and bargain, and (3) the perception that justices follow legalistic procedures. Mediation is present when all of the following conditions are met: (1) the treatment significantly affects the mediator, (2) the treatment significantly

This is surprising evidence given that the reason offered for the Supreme Court's popularity over Congress is because people are not supportive of processes inundated with bargaining and compromise. The finding that people are no less likely to be supportive of the judicial process even if they perceive its political nature casts some doubt on that explanation. The perception that justices sometimes bargain and compromise does not necessarily in and of itself lead to diminished fairness evaluations if the information environment also leads respondents to believe that legal considerations played a role in the decision-making process. Consistent with our broader argument, the results from the analyses point to the strength of the citizen beliefs in the myth of legality as often bolstered in media coverage of Court deliberations. The prevalence of the myth seems to shield the Court from public disregard even in the face of an information environment that covers how political considerations can sometimes undermine and even violate the predominance of legal considerations in judicial deliberations.<sup>12</sup>

### Discussion and Implications

We began with the question of how exposure to different kinds of news coverage of the Court's decision-making processes might affect citizen sentiment toward the Supreme Court's procedures. In particular, we examined the role that the information environment can play in facilitating or detracting from the myth of legality and consequently the media's subsequent impact on assessments of Court

affects the dependent variable in the absence of the mediator, (3) the mediator has a significant unique impact on the dependent variable, and (4) the effect of the treatment on the dependent variable shrinks upon the addition of the mediator to the model. According to MacKinnon and Dwyer (1994) and MacKinnon, Warsi, and Dwyer (1995), the formula for calculating the Aroian test of the Sobel model is  $z\text{-value} = a*b/\text{SQRT}(b^2*sa^2 + a^2*sb^2 + sa^2*sb^2)$  where  $a$  is the effect of the treatment on the mediator,  $b$  is the direct effect of the mediator while controlling for the treatment.  $sa$  and  $sb$  represent the standard errors of  $a$  and  $b$ , respectively. The  $Z$  statistic for whether support for the decision mediates the outcome treatment is  $-4.34$ , which is statistically significant to  $.001$ , suggesting that it is a mediator. Not surprisingly, the  $Z$  statistic for the perception that justices compromise and bargain is not statistically significant. The  $Z$  statistic for whether the perception that justices follow legalistic procedures is a mediator variable from the procedural treatment is  $-4.32$ , which is statistically significant to  $.001$ . Therefore, it mediates the relationship between the political court treatment and the perception of fairness.

<sup>12</sup> An alternative explanation for the findings is that people are responding positively to the unanimous nature of the ruling described in the Legalistic Court vignettes relative to the embattled ruling described in the Political Court vignettes. Thus, it might be argued that individuals' documented aversion to political conflict (Durr, Gilmour, & Wolbrecht, 1997) and preference for political consensus (Hibbing & Theiss-Morse, 2002) are activated as much as concerns about the presence of the myth of legality. However, the myth of legality by definition implies a great degree of consensus among justices on the Court. If there is a single legally correct ruling as the myth of legality would suggest, then there should be little disagreement among justices on the Court. A Court deliberation in which justices disagree about whether there is a single correct legal ruling or what it should be—one that is said to require bargaining and compromise—implicitly undermines the myth of legality. Nevertheless, questions measuring perceptions of consensus versus conflict in Court deliberations and how it influences assessments of fairness would be usefully addressed in future research.

procedures. Our analyses confirm our expectations that the myth of legality, which is often bolstered by media coverage, is integral to widespread positive public regard for the Court relative to Congress. When people do not perceive legal decisions to dominate, they are less likely to voice positive attitudes toward the Court.

Some scholars have argued that “the fictive idea of principled legality” (Brisbin, 1996) is a crucial source of the Court’s institutional legitimacy (Fiscus, 1991). The evidence presented here substantiates the principal role that perceptions of a Court guided predominantly by legal considerations play with respect to positive public regard toward the Court. The results suggest that the Court has an advantage over Congress with respect to how it is portrayed in the media and understood by the public. Perhaps if more media coverage focused on the constitutional procedures that guide and direct the lawmaking process—in the manner that reporting of the Court tends to focus on how legal precedent shapes rulings—Congress would be less vulnerable to the common albeit mistaken attack that its politics consistently violate the nature and spirit of the constitution (Hibbing & Theiss-Morse, 1995). The prevalence of the myth of legality and its support in public discourse does seem to give the Court an advantage over Congress in this way.

Additionally, our findings also suggest that if the media were consistently to portray the Court as a site of political bargaining and compromise, we might expect a decline in public support for the institution over time (Bartels, 1993; Zaller, 1992). Hibbing and Theiss-Morse (2002) have recently argued the opposite. They contend that it is the perceived self-interested nature of bargaining and conflict among members of Congress that is troublesome to Americans, not bargaining and compromise *per se*. Thus, they suggest that because members of the Court are not perceived to be influenced by special interests and their own material ends, the Court would remain relatively immune to public disregard even in the face of greater coverage of the politics of judicial decision making. In contrast, our results suggest that perceptions of fairness are adversely affected when people receive information about a politically charged Court, indicating a likely decline in public support for the institution if citizens came to see judicial deliberations to be as politically driven as they do the congressional lawmaking process. Indeed, given that the Court relies on its persuasive power to be effective, our analyses suggest that media reports over time could directly affect the effectiveness and ultimately the power of the Court.

In the end, our normative position is that it is a positive finding that individuals become more critical in evaluating Court decisions when they are presented with information that accurately reflects the Court’s procedures. A critical, vigilant citizenry is necessary in evaluating the Court, as much as Congress or the President. As people receive images of the Court that are more consistent with how it really works, their assessments are, as they should be, founded more on reality rather than myth.

## APPENDIX: The Vignettes

### *Experimental Treatment: Not Uphold and Political Court*

Below is an article discussing a Supreme Court decision that might appear in a newspaper. Please read the article carefully and, then, respond to the questions in the survey that begin on the next page.

Washington D.C.—The Supreme Court today struck down the antiterrorism bill passed by Congress and signed into law by President George W. Bush following the September 11 terrorist attacks in New York City and Washington D.C. In an embattled ruling, a divided Court declared unconstitutional the legislation that had given police new and expanded powers to track, punish, and detain suspected terrorists for seven days or more. Civil liberties groups had opposed the legislation, arguing that it has the potential to violate the civil liberties of the nation's immigrant population.

Justice Stevens, a leader of the liberal coalition on the Court, wrote in his majority opinion that, "This legislation allows people to be detained by the authorities without being told why they are being detained. People cannot defend themselves against a crime if they do not know the nature of the accusation. I would support detaining for up to seven days to protect national security, but only if the accused are informed of the crimes with which they are charged, which this legislation does not require."

Lynn McCafferty, a Stanford University law professor, said that the majority ruling came after weeks of bargaining and compromise among the Justices.

"Justices Stevens and Ginsburg actually argued that any amount of time over 24 hours should not be allowed," McCafferty said. "But, Justice O'Connor, who often walks the ideological fence dividing the Court, refused to join the majority opinion without establishing a signal that more detention time would be justified in the case of such a threat to national security. She wanted to send a signal to legislators that they were willing to accept longer detentions under the condition that the accused be informed of all charges. In so doing she orchestrated a compromise among the Justices."

Justice Scalia, one of the Court's most outspoken conservatives, wrote in his dissenting opinion, "Immigrants, whether they are legal or illegal, do

not have the same rights as American citizens, and we should not hold their rights to be sacred above national security concerns. Seven days is a reasonable time to detain immigrants before proceedings must begin; the inconvenience endured by possibly innocent detainees for seven days is worth the benefit of bringing terrorists to justice.”

“The Justices spent weeks in conference sessions debating the trade-offs between civil rights concerns and security issues that this legislation raises,” McCafferty said. “In the end, the civil rights concerns came out on top. On a different day, in a different sort of compromise, it might have been the other way around and security concerns may have prevailed.”

*Experimental Treatment: Uphold and Political Court*

Below is an article discussing a Supreme Court decision that might appear in a newspaper. Please read the article carefully and, then, respond to the questions in the survey that begin on the next page.

Washington, D.C.—The Supreme Court today upheld the antiterrorism bill passed by Congress and signed into law by President George W. Bush following the September 11 terrorist attacks in New York City and Washington D.C. In an embattled ruling, a divided Court declared constitutional the legislation that gives police new and expanded powers to track, punish, and detain suspected terrorists for seven days. Civil liberties groups had opposed the legislation, arguing that it has the potential to violate the civil liberties of the nation’s immigrant population.

Justice Scalia, a leader of the conservative coalition on the Court, wrote in his majority opinion, “Immigrants, whether they are legal or illegal, do not have the same rights as American citizens, and we should not hold their rights to be sacred above national security concerns. Seven days is a reasonable time to detain immigrants before proceedings must begin; the inconvenience endured by possibly innocent detainees for seven days is worth the benefit of bringing terrorists to justice.”

Lynn McCafferty, a Stanford University law professor, said the Court’s decision came after weeks of bargaining and compromise among the justices.

“Justices Scalia and Thomas actually supported allowing for indefinite detention until the authorities cleared the matter,” McCafferty said. “They wanted to send a signal to legislators that they were willing to accept longer detention terms. However, Justice O’Connor, who often walks the

ideological fence dividing the Court, refused to sign on to the decision to uphold the antiterrorism bill until the other Justices agreed to a compromise establishing a seven-day restriction.”

The dissenting opinion, written by Justice Stevens, one of the Court’s most outspoken liberals, wrote in his dissent that, “This legislation allows people to be detained by the authorities without being told why they are being detained. People cannot defend themselves against a crime if they do not know the nature of the accusation. I would support detaining for longer than 24 hours to protect national security, but informing a person of the crime of which they are accused is more central to the constitution than trial by jury or the right to counsel.”

“The Justices spent weeks in conference sessions debating the trade-offs between security issues and civil rights concerns that this legislation raises,” McCafferty said. “In the end, the security issues came out on top. On a different day, in a different sort of compromise, it might have been the other way around and civil rights may have prevailed.”

#### *Experimental Treatment: Uphold and Legalistic*

Below is an article discussing a Supreme Court decision that might appear in a newspaper. Please read the article carefully and, then, respond to the questions in the survey that begin on the next page.

Washington D.C.—The Supreme Court today unanimously upheld the antiterrorism bill passed by Congress and signed into law by President George W. Bush following the September 11 terrorist attacks in New York City and Washington D.C. An uncommonly united Court declared the legislation that gives police new and expanded powers to track, punish, and detain suspected terrorists for seven days or more constitutional by a 9–0 ruling.

Chief Justice Rehnquist wrote in the Court’s opinion that, “The Constitution does not provide immigrants, whether they are legal or illegal, with the same rights as American citizens, and the Constitution requires that we balance national security concerns with rights of citizens.”

Lynn McCafferty, a Stanford University law Professor, said that legal principles guided the Court’s decision.

“The right course of legal action was so clearly laid out before the Justices with respect to precedent cases that we expected the Court to

come to this unanimous decision,” McCafferty said. “In 1976, a unanimous Court ruled that Congress has broad power over immigration and naturalization and regularly makes rules regarding aliens that would be unacceptable if applied to citizens. The Court then effectively ruled that there is no constitutional duty to provide aliens with the welfare benefits provided to other citizens. During times of serious crisis, such as the wartime that we find ourselves in today, this Court has often given broad powers to Congress to deal with the crisis effectively.”

“The Justices had no choice but to hold true to the constitution and the Court’s previous decisions,” McCafferty said.

*Experimental Treatment: Not Uphold and Legalistic*

Below is an article discussing a Supreme Court decision that might appear in a newspaper. Please read the article carefully and, then, respond to the questions in the survey that begin on the next page.

Washington D.C.—The Supreme Court today unanimously struck down the antiterrorism bill passed by Congress and signed into law by President George W. Bush following the September 11 terrorist attacks in New York City and Washington D.C. An uncommonly united Court declared the legislation that gives police new and expanded powers to track, punish, and detain suspected terrorists for seven days or more unconstitutional by a 9–0 ruling.

Chief Justice Rehnquist wrote in the Court’s opinion that “The government cannot deport resident immigrants who have been convicted of certain crimes without giving them a court hearing.” The decision goes on to say, “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Constitution protects.”

Lynn McCafferty, a Stanford University law Professor, said that legal principles guided the Court’s decision.

“The right course of legal action was so clearly laid out before the Justices with respect to precedent cases that we expected the Court to come to this unanimous decision,” McCafferty said. “There’s just no legal grounds for this legislation. In 1971, this Court found that aliens who reside in the United States pay taxes, support the economy, and contribute to society in other ways, and therefore, they qualify for being protected from arbitrary arrests, just as citizens should expect to be protected.”

Just last year, in *Janet Reno v Kim Ho Ma* the Court ruled that immigrants could not be detained indefinitely, beyond the length of time that they would have otherwise served in prison.

“The Justices had no choice but to hold true to the constitution and the Court’s previous decisions,” McCafferty said.

### ACKNOWLEDGMENTS

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