[redacted]
Research Statement

Overview

My research focuses on the United States Supreme Court. Since being promoted in 2014, I have redirected my research in several ways. Specifically, whereas my pre-tenure research largely took an inward-facing perspective on the Court, I have expanded the scope of my post-tenure work to include a significant outward component to it. This is manifested both in terms of the substance of my research itself and also in the audiences to whom this work is targeted.

Starting with my pre-tenure activity, my research sought to gain insight into the Supreme Court's decision-making process. It took the perspective that justices are, much like other political actors, seekers of policy who must contend with a variety of institutional rules and constraints. To that end, it examined judicial behavior at various stages of the decision-making process, such as agenda setting and oral arguments. As for my audiences, I focused primarily – though not exclusively – on communicating with scholars of American politics and judicial politics, who are, by and large, political scientists. To that end, the bulk of my work appeared in mainstream political science journals.

Since my 2014 promotion to associate professor I have expanded and, I believe, enhanced both the substance and form of my scholarship to include additional outward facing elements. On substance, my theoretical orientation continues to posit justices as seekers of policy but it expands the scope of where I examine this behavior. This means I consider the inner-workings of the Court (as I have done in the past) as well as how the Supreme Court engages a variety of outside actors and audiences through, in particular, its written opinions.

I have also sought to expand my own research audience to include a broader community of scholars from the legal community and, to a lesser extent, the general public. I have done so by continuing to publish in political science journals while also expanding my reach to interdisciplinary outlets, law journals, and more general audience venues such as newspaper editorials and blogs. In the remainder of this statement I elaborate on my post-tenure research activity and describe ongoing and future research projects.

Post-Tenure Research

I have expended the substance of my research beyond a singular focus on the Supreme Court's internal decision-making process to include work that seeks to examine how the Court operates in the broader political world it inhabits. I have done so primarily with two lines of work that look to the content of Supreme Court opinions. The first of these lines begins with the well-known idea that the Supreme Court lacks the formal ability to enforce its own decisions. Because the Court wants compliance from government officials, lowers courts, and the public, it must adapt to the audience with whom an opinion is targeted. Building from that idea, my work (joint with [redacted] examines one key tool the Court always has its disposal: the rhetorical clarity of its majority opinion [1, 2, 3]. This work argues that the Court can use clarity to enhance compliance. Indeed, opinions that are easier to understand make the implementation job easier for a sympathetic audience and, when faced with a hostile audience, make it easier to identify non-compliance. To measure clarity, we consider dozens of existing measures of textual readability to develop and then experimentally validate a measure that

leverages the distinctive linguistic features of an opinion text. We then deploy that measure in a multitude of contexts. The results are consistent throughout: The Court alters the clarity of its opinions when it has reason to anticipate potential compliance concerns. This holds true when it speaks to the lower federal courts, federal agencies, state governments, and the public writ large. Moreover, we show that the clarity-compliance linkage is more than perceived – it is real. Circuit court judges are more likely to comply with clearer opinions than they are with unclear ones. Additionally, members of the general public are also more compliant with clearer opinions than they are unclear ones.

My second line of opinion-based research examines the legal authority contained in the Court's majority opinions and, specifically, its decision to include foreign legal materials. This work emanates from one of my earliest publications as a PhD student, which reviewed two books that provided strictly normative takes on whether the Court should engage in the practice of citing foreign legal materials [4]. Nearly a decade later, I returned to provide the very empirical analysis my earlier review article found lacking. These efforts examined both the conditions under which the justices "borrow" from other countries and, additionally, which countries they are most likely to look to [5, 6]. Justices tend to turn to foreign materials to prop up their most controversial opinions, such as those that overturn existing precedent or that invalidate acts of Congress. This work finds that justices of all ideological stripes engage in borrowing (contrary to the conventional wisdom that it is only left-leaning justices). We also find that the Court is attentive to public mood, being more likely to import foreign materials as the public becomes increasingly liberal in nature. As for the question of which countries the Court borrows from, it tends to be, perhaps unsurprisingly, countries with whom the U.S. has more in common politically and economically.

In addition to examining the Court's written opinions, I have also investigated another, perhaps less obvious, way in which Supreme Court justices engage broader audiences – through their travel. Federal law requires justices to disclose and report any travel for which they received reimbursement for travel-related expenses. Leveraging those data, we examine a decade's worth of travel that span across 900 plus domestic trips that covered roughly 800,000 miles [7]. The vast majority of these trips were engagement based, with fully 75 percent of them involving speeches given by a justice. As to where they go to speak, we find that justices' travel is related to a need to fulfill job-related responsibilities (e.g., circuit supervision) and personal motives (e.g., home state or location of an alma matter). There also exists, however, an ideological component to the travel choices justices make. Liberal and moderate justices are more likely to travel to ideologically agreeable states than they are those with a disagreeable population – though we fail to find a similar relationship for the conservative members of the Court.

Beyond studying how the Court and the justices engage external audiences, I have also assessed communicative and persuasive activity between litigants and the Court within the decision-making process. Some of this work is a continuation of my pre-tenure research areas. Building on my interest in the Office of Solicitor General, for example, one article examines how successful alumni of the OSG are when compared to other attorneys who never worked for the OSG [8]. We do so because such attorneys frequently make the leap from government work to private practice and are able to command hefty hourly fees for their counsel. Our study shows, however, that contrary to the conventional wisdom, former OSG attorneys offer no unique advantage over other attorneys with similar levels of experience.

Oral argument is a second area of continued research interest. It is significant as it represents the only truly public way in which the Court publicly engages the litigants during its decision making process. The rest takes place either behind closed doors or in writing. In this vein, my work looks to oral argument to empirically scrutinize conventional wisdom about both contemporary changes to the process as well as the impact of institutional changes from earlier in the Court's history. As to contemporary changes, since becoming the Chief Justice in 2005, [redacted] tenure has been noteworthy for the higher levels of verbal sparring the justices engage in during their (typically) hour-long sessions. Data from the first decade of oral argument on the [redacted] tend to corroborate this account, showing both significant activity by the justices and a tendency for all members to be "caught" interrupting a colleague [9].

In addition to informing contemporary understanding of the role of oral argument, my work also examines how historical changes altered the flow of the proceedings. In 1972, Chief [redacted], on his own accord, altered the physical shape of the bench from being a straight line to the wing-shape that continues to exist today. [redacted] was motivated by the same feature commentators observe on the [redacted] today: the justices' tendency to interrupt each other. Using data from oral argument, my work shows that [redacted] interior design decision was successful and the ability to better see and hear each other subsequently reduced interruptions on the Court [10].

Although oral argument is the most public aspect of the Court's decision-making process, in terms of the sheer volume of information transmitted, the written briefs submitted by the litigants before oral argument dominate. The briefs provide litigants with their first chance to persuade the justices as to how the case should be decided. My work shows that these first impressions are important and have a lasting impact on how the justices evaluate arguments in a case [11, 12]. Just as justices' rhetoric in written opinions matters for their ultimate goal – achieving compliance with the Court's decision – the words litigants use in their briefs influence their own goals – winning a justice's vote. Our key finding is that litigant briefs that deploy emotional language are perceived as less credible and, as a result, end up being less persuasive than their more restrained counterparts.

Another common thread that unites much of my recent work is the focus on analyzing textual information as a primary data source. This trait is shared by many of the aforementioned studies, including the research on rhetorical clarity in Supreme Court opinions [1, 2, 3], usage of foreign materials in opinions [5, 6], what transpires during oral argument [9, 10], and the role of emotional language in litigant briefs [11, 12]. In another application of this general approach, my work seeks to determine whether the Chief Justice, who conventional wisdom suggests is responsible for maintaining collegiality on the Court, is able to do so in the Court's written opinions [13]. These results suggest, however, that modern chiefs have struggled as social leaders. For example, majority opinions written by chiefs tend to contain more disagreeable words and fewer agreeable words than opinions written by associate justices. Nor does the presence of the Chief in a majority coalition tend to have an appreciable impact on the tone of the opinion itself.

Opinion content, of course, is only one way of observing the level of harmony or agreement on the Court. A second and more readily observable form is the basic vote outcome in a case. When the Court sits with an even number of justices, such as it did during the vacancy following the death of [redacted] it risks ending up deadlocked in 4-4 split. Such an occurrence is problematic as though it yields a winner in the instant case (the judgment of the lower court is affirmed), the case fails to create a legal precedent and can preserve potentially

harmful circuit splits over the legal question. In an analysis of the occurrence of equally-divided courts, however, I find the Court is largely able to suppress its internal conflicts and actively avoids ties (if at all possible), particularly in cases involving a circuit split or where the executive branch is involved [14].

Overall, the substance of my research can be seen as both a continuation of the ideas, themes, and methods I worked on before promotion and also as taking on a number of new topics. As I note earlier, a second distinctive element in my post-tenure research activity is the way I go about distributing my work. In particular, I have sought to expand the impact of my work by publishing it in areas outside of what would be considered traditional political science journals. To be sure, I still identify myself – quite proudly – as a political scientist and make what I believe to be meaningful contributions to my discipline's literature [1, 5, 11, 13, 14, 21]. However, I also believe my work can provide insight to legal scholars and the general public, as well. To that end, I have expanded my audience by publishing in law reviews [3, 6, 8, 9, 16, 17, 20, 22], interdisciplinary journals [2, 7, 10], and publicly-oriented outlets, such as newspaper editorial pages [23] and blogs [12, 15, 18, 19]. These efforts build upon my faculty affiliate status I enjoy with the MSU College of Law and a number of positive experiences I have had working with the College of Law, which include teaching a teaching a class and organizing an interdisciplinary conference.

Research Pipeline

My current and planned research branches out from the work that I've already completed both before and subsequent to my promotion. Here I describe two of the larger projects (see also "Summary of Research in Progress"). One of these projects examines how aspects of a justice's personality influence decision making. This work, joint with [redacted], is highly interdisciplinary in that it draws extensively from decades of research in social and political psychology. In particular, we examine how personality traits, the so-called "Big Five" of openness, conscientiousness, extroversion, agreeableness, and neuroticism, intersect with an individual's motives, which include the need for achievement, affiliation, and power. Though scholars have, in recent years, shown an increased interest in studying personality traits of political elites (e.g., members of congress), our work will be some of the first to examine judicial personality and the most comprehensive in terms of thinking beyond traits alone. Its findings, then, will speak not only to important theoretical debates in the judicial literature but will also offer general insights into study of elite personality in any political context. The main output from this work will be a book-length manuscript, which is currently under an advanced contract with Cambridge University Press. We anticipate and are on track (as of July 2017) to deliver our manuscript to them in fall 2017.

A second major undertaking relates to my multi-year National Science Foundation grant with [redacted] (SES-1556270). Since March 2016, we have been engaged in a significant data collection effort related to the Supreme Court's conference meetings. These are the private meetings (no clerks or staff allowed) that occur shortly after oral argument and are when the justices gather to discuss and cast preliminary votes in a case. Because they are private, the only records of what was said during them come from notes taken by the justices. We are digitally photographing those records and transcribing the hand-written comments to generate a digital corpus of what took place during these meetings. To make transcription possible, we have partnered with Zooniverse, an NSF-funded platform that engages the public in crowd-sourced

scientific research projects. By the end of fall 2017 we will have gathered all available conference notes and will be in the early stages of the transcription stage of the project – a process we estimate will take between two to three years, depending on the level of volunteer activity.

Once the data are finished, they will be made available for public use. Beyond providing access to an important, rich, and novel data source, we will also use these data to address a variety of theoretical, empirical, and substantive questions about the Court and law. This is possible because conference notes can uniquely inform us about a justice's preliminary legal and policy positions in a case. This is noteworthy because existing data provide information about judicial votes (i.e., reverse or affirm), but say nothing about why a justice voted in a particular way. Such a distinction is important because although case outcomes matter for the litigants, the Court's real contributions to policymaking come, as I note above, from the opinions themselves. I anticipate that this line of work will yield a number of article-length manuscripts and an eventual book-length treatment of the topic.

References

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[8] [redacted]. 2016. "The Success of Former Solicitors General in Private Practice: Costly and Unnecessary." Michigan State Law Review 2016(2): 325-367.