

Online Supplement: Consider the Source (and the Message): Supreme Court Justices and Strategic Audits of Lower Court Decisions

1 Justice Vote Coding Details

We follow Spaeth's Expanded Burger Court Database (2001) and code “Join-3” votes and votes to “note probable jurisdiction” (in appeals) as votes to grant. Our results do not change if we recode Join-3 votes as missing data. Relatedly, we code “dismiss” votes and votes to “dismiss for want of jurisdiction” (also in appeals) as votes to deny. This coding scheme means that we fall 198 votes short of the theoretical maximum for a nine-member body voting on 358 petitions (i.e., $358 \times 9 = 3222$). 66 of these missing values arose because fewer than nine justices sat on the Court (i.e., vacancy or non-participation) or because Justice Blackmun's docket sheets had missing entries. The remaining 132 missing values were votes to call for the views of the Solicitor General, votes to hold over the petition to a later date, or some other action that is not directly mappable onto a dichotomous framework. Rather than make arbitrary coding rules for these votes, we simply counted them as missing data. Similarly, rather than make a subjective decision about the coding of petitions where the outcome was to grant, vacate, and remand, we opted to exclude them from our analysis.

2 Petition Outcome Analysis

Our signaling argument focuses on the relationship between a sender and a receiver. In the context of the Supreme Court, of course, the lower court decision (i.e., the signal) is received by each of the nine justices on the Court. As such, we analyze the agenda-setting decision as one being made by each justice in relation to his/her ideological configuration with the lower court. This unit of analysis also capitalizes on the new justice vote data that were unavailable when Cameron, Segal, and Songer initially proposed their signaling theory.

Some of the basic signaling predictions can still be analyzed at the Court-level, however. In what follows we change our unit of analysis to the outcome in each petition. Our dependent variable is whether the Court granted review in each of the 358 petitions included in our sample (1 = grant; 0 = deny). We continue to model this outcome as a function of the same petition-related factors identified in our justice-level model. The signaling hypotheses are operationalized through the inclusion of the variables Lower Court Liberal and Lower Opinion Median, and their interaction.¹

The table below reports parameter estimates for this model. Again, as the model contains an interactive term, we turn to predicted probabilities to further explicate the substantive nature of our results.

¹ During the terms of our analysis (1986-1993), the *aggregate* preferences of the Court -- as measured by the preferences of the median justice -- changed very little. As a result, we do not need to control for the ideological leanings of the Court as they remained more or less constant. We note our approach is substantively identical to the one utilized by Cameron, Segal, and Songer (2000, 110), who contend that the Court's criminal procedure output remained (roughly) constant from January 1972 through September 1986.

Table 1

Variable Name	Coefficient	Robust S.E.
Alleged Conflict	0.181	0.438
Weak Conflict	0.539	0.377
Strong Conflict	2.109*	0.367
U.S. Supports Petition	1.296*	0.389
U.S. Opposes Petition	-0.036	0.376
Lower Reversal	0.799*	0.295
Lower Dissent	0.377	0.355
Lower Strike	1.686*	0.713
Lower En Banc	0.128	0.605
Lower Unpublished	-1.607	0.829
Amicus Brief	0.386*	0.151
U.S. Law Week Article	0.231	0.307
Lower Court Liberal	0.380	0.306
Lower Opinion Median	-0.459	0.676
Lower Court Liberal x Lower Opinion Median	-0.267	0.965
Constant	-2.837*	0.440
Observations	358	
Log Likelihood	-165.431	

Below we calculate the predicted probability that *the Court* grants review in a case, conditional on the ideology of the lower court panel that decided the case and the ideological direction of that panel's specific decision. We find that the Court was most likely to grant review in cases decided by a liberal panel in a liberal direction. At the same time, the Court was least likely to grant review in a case decided by a conservative panel in a conservative direction ($p = 0.03$). Given the conservative nature of the Court during 1986-1993, both of these results are unsurprising.

Panel Ideology	Opinion Direction	
	Liberal	Conservative
Liberal	0.12	0.08
Conservative	0.07	0.05

We also find some -- albeit weaker -- evidence that the Court as a whole engaged in the same differential auditing initially documented by Cameron, Segal, and Songer (2000). Consider the first row of the table below, for example, where the Court had a 0.12 probability of granting review when a liberal panel decided a case in a liberal direction, but had only a 0.08 probability of granting review when the same panel reached a conservative outcome. The Court also appears to be (slightly) more likely to grant review when a conservative panel reaches a liberal versus a conservative ideological outcome.²

² Note that the p -values for these two preceding comparisons are 0.16 (direction difference for liberal panel) and 0.31 (direction difference for conservative panel). Accordingly, we read them as being mildly supportive of the Cameron, Segal, and Songer hypothesis.

3 Summary Statistics

Variable	Mean	Std. Dev.	Min.	Max.
Alleged Conflict	0.796	0.403	0	1
Weak Conflict	0.271	0.445	0	1
Strong Conflict	0.307	0.461	0	1
U.S. Supports Petition	0.135	0.342	0	1
U.S. Opposes Petition	0.241	0.428	0	1
Lower Reversal	0.415	0.493	0	1
Lower Dissent	0.243	0.429	0	1
Lower Strike	0.04	0.197	0	1
Lower En Banc	0.057	0.232	0	1
Lower Unpublished	0.063	0.244	0	1
Amicus Brief	0.385	1.090	0	9
U.S. Law Week Article	0.307	0.461	0	1
Justice-Supreme Court Median Distance	0.359	0.291	0	0.944
Lower Court Liberal	0.495	0.500	0	1
Lower Opinion Median	0.090	0.289	-0.554	0.581
Justice JCS Score	-0.015	0.43	-0.743	0.603
Observations	3240			

4 Counterfactual Results Across Justice Ideology

In our paper, we present the predicted probability that two justices -- a conservative and a liberal -- vote to grant review conditional on the ideology of the lower court panel and the ideological direction of the lower court decision in the case seeking review. These values were selected for ease of exposition and are presented in Figure 1 in the paper. To examine the extent to which moderates or less extreme ideologues behave in a similar manner, we repeated our simulations for the entire range of the JCS scores observed on the Court during the terms of our analysis.

These results are presented in the figure that appears below. Each panel within the figure shows the *difference* in the predicted probability a justice votes to grant review for a specific pairing of counterfactuals, which are identified above each panel. The thick line represents the median difference and the shaded area denotes the confidence interval around those estimates. When the shaded area crosses the dashed line horizontal line, no statistically significant effect exists.

The top panel, for example, shows the probability difference, conditional on a justice's ideology, between the justice voting to grant review in a petition where the lower court panel was liberal and decided the case liberally versus where the lower court panel was conservative and decided the case conservatively. Negative values (those below the dashed line) denote a justice is more likely to grant review in the conservative/conservative pairing. Conversely, positive values (those above the dashed line) indicate a justice has a higher chance of voting to grant in the liberal/liberal pairing. As the figure shows, liberal justices are much less likely to review liberal cases decided liberally than conservative decisions by conservative judges. We observe the mirror relationship for conservative justices. They are much more likely to review

liberal decisions by liberal judges than conservative decisions by conservative judges. The moderates, on the other hand, appear less likely to take such factors into consideration, though most of the ideological spectrum evinces behavior consistent with our expectations.

Next, we examine what happens when we fix the direction of the lower court decision as liberal and let the panel composition change from liberal to conservative (the second panel from the top). We observe that liberal justices are less likely to vote to audit liberal decisions rendered by liberals and that conservative justices are more likely to review such decisions. Only the extremely conservative justices, however, are more likely to review to a statistically significant degree. These justices give a pass to conservative lower court judges who render liberal decisions.

If we instead fix the lower court panel to be composed of a majority of liberal judges and let the disposition fluctuate from liberal to conservative (the third panel down), we see that liberal justices are less likely to review the liberal outcome while conservatives are much more likely to review such outcome than the liberal panel rendering a conservative outcome. The difference between the two is in the expected direction and statistically significant throughout the majority of the ideological range. Extreme liberals and moderate to extreme conservatives behaved exactly as we expected. The liberals were less likely to review a liberal decision by liberal judges than a conservative decision by liberal judges. Conservative justices, on the other hand, were much more likely to review a liberal decision by liberal judges than a conservative decision by liberal judges.

Finally, we examine what happens when we fix the panel to be conservative and allow the disposition to change from conservative to liberal (the bottom figure). We observe that the extreme liberal justices are more likely to review the conservative/conservative pairing than the conservative liberal pairing. That is, these justices are more likely to give the conservative panel rendering a liberal decision a pass. Much of the remaining range of ideology shows a non-significant result until we reach the moderately extreme conservatives. At that point, the conservatives become much less likely to review a conservative case by conservative judges than a liberal case by conservative judges.

