

**Campaign Support, Conflicts of Interest, and Judicial Impartiality:
Can the Legitimacy of Courts Be Rescued by Recusals?***

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ABSTRACT

Many legal scholars and observers perceive elected state courts in the U.S. as under siege by the politicization of judicial elections – by candidates for judicial office making policy pronouncements and promises, using ads attacking their opponents (often scurrilously), and, most important, by accepting campaign contributions and support from organizations litigating before the very judges these groups helped elect. Since no form of political capital is more valuable to courts than institutional legitimacy, the hypothesis that campaign activities undermine judicial legitimacy must be taken quite seriously.

Our purpose in this paper is to investigate citizen perceptions of the impartiality and legitimacy of courts. We focus on the residents of West Virginia, because that state has recently been a battleground for intense conflict over campaign support and perceived conflicts of interest and loss of impartiality. We employ an experimental vignette embedded within a representative sample of West Virginians to test hypotheses about several factors that might affect perceived judicial impartiality: (1) campaign contributions and support; (2) the size of such support; (3) whether the judge accused of holding a conflict of interest withdraws from the case; and (4A) if not, whether that judge's vote was crucial to the outcome, and (4B) if so, whether the party providing the campaign support wins or loses the lawsuit. Our theoretical objectives in this paper are to assess the determinants of citizens' views of judicial impartiality, following earlier research on how campaigning affects such perceptions. More practically, we test the hypothesis that recusals can rehabilitate a judge and/or court from perceptions of a conflict of interest. In almost every respect, our findings are not as expected. Perhaps most important, contributions offered *but rejected by the candidate* have similar effects to contributions offered and accepted. And, although recusal can rehabilitate a court/judge to some degree, the effect of recusal is far from the complete restoration of the impartiality and legitimacy of the institution. We are also surprised that about one-third of the respondents are unfazed by the most conflicted circumstance our vignette imagines. We attribute that finding to the "reservoir of goodwill" enjoyed by courts and to the framing effects flowing from pre-existing loyalty to the judiciary. The processes by which citizens form and update their opinions of judges and courts are certainly complicated, but seem at least to involve pre-existing attitudes, expectations of judges, and perceptions of contextual factors, as our analysis of conditional influences demonstrates. Finally, our findings indicate that several of the assumptions of the majority in the recently decided *Caperton v. Massey* are empirically inaccurate, at least from the viewpoint of the citizens of West Virginia.

For the elected high courts of the American states, the relationship between candidates for judicial office and campaign contributions from litigants and groups is a matter of great concern. Specifically, do campaign contributions by litigants and groups create the appearance – and perhaps even the reality – of bias and partiality, thereby undermining the courts’ institutional legitimacy? Campaign contributions may foster the appearance (at least) of a *quid pro quo* relationship between the donor and the recipient; such a relationship makes fair and impartial decision making seem to be impossible, thereby undermining legitimacy and support. Of course, these concerns about campaign contributions attach to all political offices, not just the judiciary. Yet, the problem is especially pungent for courts because decisions are made in individual cases by individual judges, and because courts are unusually reliant upon their institutional legitimacy, their principal source of political capital.

Two complicating factors exacerbate this problem of contributions and judicial legitimacy. First, even if direct campaign contributions to candidates can be controlled by public policy, regulation of third-party involvement in judicial elections seems nearly impossible under the current constitutional regime. Second, the presumed solution to conflicts of interest – the conflicted judge’s recusal¹ from the case – turns out to be voluntary and discretionary under nearly all circumstances. If a judge with a seeming conflict of interest does not recuse, for whatever reason, few legal alternatives are available.

Moreover, no extant research addresses the question of whether recusals successfully rehabilitate the judgment in the instant case, the judge who recused, and/or the institution itself. Do citizens accept that the conflicted judge’s public withdrawal from a case renders the votes of the remaining judges fair and impartial? Do citizens believe that a judge with an obvious and acknowledged conflict of interest in a case can be fair and impartial in other cases in which the conflict is not obvious? And do recusals taint an entire court, especially if recusals become commonplace and widespread among the members of a court?

¹Recusal is “the process by which a judge is disqualified on objection of either party (or disqualifies himself or herself) from hearing a lawsuit because of self-interest, bias, or prejudice.” *Black’s Law Dictionary* 1990, 1277.

The traditional assumption is that conflicts of interests can be neutralized by recusals, and that such recusals have no lasting debilitating effects on the decision, the judges, or the court. We know of no empirical literature, however, buttressing those assumptions.

In the scheme of judicial politics, recusals may seem to be a small issue. Campaign contributions are not. Although the literature is certainly fragmentary, a handful of recent studies has demonstrated the quite negative consequences of campaign contributions in general for the institutional legitimacy of courts (e.g., Gibson 2008a, 2008b, 2009a). The American people seem not to be bothered by statements of policy positions and even policy promises by judicial candidates, or by the use of advertisements attacking opponents. But campaign contributions are another matter. *Without* arguing that the issue is idiosyncratic to the judiciary, a strong case can be made that the most alarming threats to perceived impartiality and fairness are the contributions and support given to candidates for judicial offices by groups and especially those who litigate before the courts they seek to shape.

From a more theoretical vantage, the campaign contributions and support crisis presents a fecund opportunity for understanding how citizens form their impressions of the political and legal institution that govern them. Much is known about judicial legitimacy in general (e.g., see the voluminous writings of Gibson and Caldeira, as in their 2009a book), but little about how citizens update their views in response to judicial decisions and controversies.² Indeed, extant research on citizen attitudes toward courts is overwhelmingly static in design; the malleability of attitudes is rarely investigated.

The purpose of this paper is therefore to determine how citizen perceptions of judicial impartiality and fairness are formed and updated. The context for the analysis is an experiment embedded within a

²An exception to this assertion concerns the literature on public reactions to *Bush v. Gore*. In a comparison of data from a survey conducted at the height of the controversy with survey data from 1995 and 1987, Gibson, Caldeira, and Spence (2003a) found no evidence whatsoever that the court's legitimacy took a dip owing to its decision. Other scholars report similar findings; for instance, Price and Romantan (2004, 953) draw the following conclusion from their research: "On the whole our findings are consistent with the hypothesis that the election — even with the vituperative disputes in its wake — served to boost public attachment to American political institutions." Others (e.g., Yates and Whitford 2002, Kritzer 2001, Gillman 2001, and Nicholson and Howard 2003) reach a similar conclusion.

survey of a representative sample of the residents of West Virginia, conducted in 2009. Employing the methodology of experimental vignettes (short stories) incorporated within a representative sample, this study profits substantially from both internal validity (causal inference) and external validity (generalizability). The experiment abstracts from and manipulates aspects of an actual dispute over judicial impartiality in the West Virginia Supreme Court of Appeal. Drawing on *Caperton v. Massey* (2009)³, our vignette concerns whether the failure of a judge to withdraw from deciding a case involving a party who expended considerable resources in getting that judge elected to the bench creates the appearance of bias and partiality, thereby undermining public confidence in the judiciary. By stylizing that case as a formal experiment, we are able to examine how different aspects of the controversy affect citizens' judgments of fairness and impartiality. We also investigate conditional effects on the experiment, testing hypotheses about how the hypotheses perform under conditions of knowledge of the actual case, pre-existing attitudes toward the West Virginia Supreme Court, and other factors.

The most general conclusions from our analysis are that campaign contributions to judges do indeed threaten perceptions of judicial impartiality; recusal is only a weak palliative for conflicts of interests created by contributions; and the mere offering of campaign contributions, even when rejected by the candidate, seems to create perceptions of bias and partiality. We are also surprised that about one-third of the respondents are unfazed by the most conflicted circumstance our vignette imagines; this we attribute to the “reservoir of goodwill” enjoyed by courts and to the framing effects flowing from pre-existing loyalty to the judiciary. We begin our analysis by situating this study in the literatures on campaigns and the legitimacy of courts.

³At the time of the interviews, the case was undecided by the U.S. Supreme Court. Indeed, we were out of the field before oral argument on the case was heard by the Court.

Campaign Activity and the Legitimacy of Courts

Legions of commentators complain about the impact of campaign activity on the perceived impartiality and hence legitimacy of elected state courts.⁴ Few of these complaints, however, cite empirical evidence because practically no such evidence exists. Even the research on campaign effects on citizen attitudes in other institutional contexts has little to say about this issue because legitimacy is rarely one of the consequences receiving scholarly attention.⁵

Indeed, most research testing Legitimacy Theory⁶ hypotheses is static, making it difficult to determine how campaign activities affect popular attitudes (for an exception see Gibson et al. 2008). Conversely, the limited research adopting a dynamic framework largely ignores campaign activity, either because it focuses on federal courts or because it was conducted in an era before judicial campaigns became politically significant. For example, scholars have analyzed aggregate time series (e.g., Caldeira 1986; Marshall 1989, Mondak and Smithey 1997), generational or cohort change (e.g., Gibson and Caldeira 1992), change in response to major court decisions (Gibson, Caldeira, and Spence 2003a; Franklin and Kosaki 1989; Kritzer 2001), a few true panel studies have been conducted (e.g., Murphy and Tanenhaus 1990; Hoekstra 2000, 2003), some recent work has tried to develop a formal model of opinion change (e.g., Mondak and Smithey 1997), and of course several scholars have attempted to induce change in the experimental laboratory (most notably, Mondak – e.g., 1993, and Hoekstra 1995). Unfortunately, many of these efforts are seriously hampered by the lack of valid measures of court legitimacy extending

⁴For instance, Iyengar (2002, 697) opines that: “The spread of negative campaigning in judicial races is likely to have adverse consequences for the court system. The motives of judicial candidates will be cast into doubt, and public esteem for the judiciary will suffer. Not only will candidates for judicial office be equated with ordinary politicians, but the impartiality, independence, and professionalism of the judiciary will also be called into question. Large-scale advertising in state judicial elections will further politicize state courts in the eyes of the public.”

⁵Instead, researchers are more likely to consider vote intentions and perceptions of candidates and parties. For an exception, focusing on trust in government, see Geer 2006, Chapter 7.

⁶For an exposition of Legitimacy Theory see Gibson and Caldeira 2009a, and Tyler 2006.

over time (see Gibson, Caldeira, and Spence 2003b on the deficiencies of the readily available “confidence” measure), and by research designs that do not allow the assessment of individual-level attitudinal change. Extant theory and data sources are simply not up to the task of providing many useful insights into how legitimacy is formed or acquired and how it is reinforced or eroded. Much more research, especially based on longitudinal data, is essential. Many fear that campaign activities are an important source of change in citizen attitudes, but not much rigorous analysis of this hypothesis has been reported.

Can Campaign Activities Change Views of Judicial Impartiality and the Legitimacy of Courts?

Few studies have investigated the question that defines this section of this paper. Indeed, so far as we are aware, only a handful of studies has ever addressed campaign effects with rigorous data. Those studies have generated a mix of findings, including some disconcerting ones.

Gibson and Caldeira (2009a) examined the impact of the advertising campaigns mounted in support of or opposition to the nomination of Samuel Alito to the U.S. Supreme Court. Perhaps the most important finding of that research is that the campaigns by interest groups favoring and opposing the confirmation of Alito seemed to have undermined the legitimacy of the Court itself. The campaigns were politicized and taught the lesson that the Court is just another political institution, and as such, is not worthy of high esteem. Since that study was based on a three-wave panel design, allowing the measurement of change in attitudes toward the Supreme Court, its findings are uncommonly persuasive.

Other research has shown that public attitudes toward the U.S. Supreme Court are remarkably resistant to alteration by the decisions of the Court. We know, for instance, that the justices’ controversial ruling in *Bush v. Gore* did not undermine the Court’s legitimacy (Gibson, Caldeira, and Spence 2003a, Kritzer 2001, Nicholson and Howard 2003, and Yates and Whitford 2002); indeed, it may have even enhanced it (Gibson 2007). That research, although not based on panel data, suggests that even highly

controversial decisions need not detract from the legitimacy of the U.S. Supreme Court.

Of course, it is an open question whether studies of attitudes toward the U.S. Supreme Court can be generalized to the state judiciaries.⁷ State courts of last resort are far less salient than the U.S. Supreme Court, with the likely consequence that institutional attitudes at the state level may be more malleable. Perhaps campaign activities uniquely shape state court attitudes.

One study of campaign activity in state court races is relevant to the question of whether judicial campaigns undermine legitimacy. In a recent article, Gibson (2008a) utilized an experimental "vignette" that exposes the respondents to different types of campaign activities, including policy speech (i.e., in the post-*Republican Party of Minnesota v. White* era). His analysis indicates that the alarmists are most likely wrong about judicial legitimacy being undermined. When citizens hear issue-based speech from candidates for judicial office, court legitimacy does not suffer. Many Americans are not at all uncomfortable when candidates for the bench tell them how they feel about the socio-political issues decided by courts these days. Policy talk in particular does not undermine institutional legitimacy.

Gibson's research indicates that policy speech during campaigns may not be damaging to institutional legitimacy; however, he also found that the receipt of campaign contributions can indeed threaten legitimacy. For many citizens, contributions to candidates for judicial office imply a conflict of interest, even a *quid pro quo* relationship between the donor and the judge, which undermines perceived impartiality and legitimacy. These conclusions from Kentucky have been subsequently replicated in a national survey (see Gibson 2009a). It is important to note, however, that the judiciary is not distinctive on this score: Gibson finds that campaign contributions to candidates for the state legislature also imply a conflict of interest and therefore can detract from the legitimacy of legislatures as well.

The experiment also reveals that attack ads undermine judicial and legislative legitimacy. The

⁷Although scholars typically recognize the importance of state courts as makers of public policy, only a handful of studies of the legitimacy of these courts exists. See, for examples, Walker 1977, Lehne and Reynolds 1978, Fagan 1981, Flanagan, McGarrell, and Brown 1985, Olsen and Huth 1998, Wenzel, Bowler, and Lanoue 2003, Overby et al. 2004, Benesh 2006, and Cann and Yates 2008.

effect is not as great as that observed for campaign contributions, but citizens exposed to negative advertisements during campaigns extend less legitimacy to the political and legal institutions involved.

Thus, as far as threats to the perceived impartiality and legitimacy of courts are concerned, campaign contributions are the primary culprit,⁸ and this conclusion applies with equal force to courts and legislatures. Little is unique about the judiciary on this score.

Theory: Individual Differences

How can we understand the variability in the judgments citizens reach about whether judges can make fair and impartial decisions? Although a full-blown theory has not been developed yet, we believe we understand some of the basics of the process.

Citizens' assessments of institutions begin with the expectations they hold of those institutions and their incumbents, and citizens vary in the nature of the expectations they embrace (e.g., Gibson 2009b). For example, one's assessment of President Bush's performance might be contingent upon whether one expects the president to take all necessary actions – without regard for strict legality – to protect the safety of the nation. Others, however, may expect the president to conduct all of his efforts strictly in line with what is legally authorized. Expectations may come from many sources, including social learning. With regard to the courts, many Americans seem to learn that, although the judiciary is one of the three branches of government, it is in some sense different from the other branches. This makes expectations of judges distinctive, for at least some citizens.

The performance of institutions is judged according to citizens' expectations. The satisfaction of

⁸We find no shortage of interest groups complaining about the ubiquity of campaign contributions. Rarer are those who acknowledge salutary effects of such contributions. Bonneau and Hall (2009), for instance, argue that campaign spending has the valuable effect of providing voters more information about judicial candidates, thereby increasing the number of voters who actually cast their ballots in judicial races (e.g., roll-off is reduced). They further speculate that institutional legitimacy may be enhanced because elections provide voters “with a greater sense of ownership in the outcomes of these races.” See Gibson et al. 2008 for evidence in support of this speculation. At the same time, however, there is little reason to expect that all actors understand and react the same to campaign contributions.

expectations over time gives rise to a more general loyalty to the institution. As with interpersonal friendships, citizens may come to trust an institution, to be willing to extend it the benefit of the doubt. Some refer to this as the development of a “running tally” (e.g., Taber, Glather, and Lodge 2001), which suggests a process of incrementing and decrementing some sort of favorability counter according to experience. The key point is that these orientations toward an institution represent the accumulated residue of past experiences and therefore are, to a considerable degree stable, for most citizens.

Loyalty toward an institution, in turn, frames how citizens evaluate the future performance of the institution – these general commitments to the institution affect how citizens perceive and judge individual actions and decisions (e.g., Gibson and Caldeira 2009b).⁹ Each new opportunity for updating attitudes is therefore twice dependent upon existing orientations toward the institution: First, through framing processes, and second through incrementing. New experiences are therefore neither judged independently of the past, nor uniformly by different citizens.

It is easy to see why Easton (1975) refers to this sort of institutional support as a reservoir of goodwill, and also why such a reservoir is crucial to institutional efficacy. Institutions that must please citizens with every encounter have limited degrees of freedom and uncertain stability. All constituents of an institution cannot be pleased all of the time; there must be winners and losers in all policy debates, and, on occasion, institutions must adopt positions that are unwelcome even by the majority of the citizenry. This is especially true of courts, which in the American system are tasked with a counter-majoritarian function. Without some degree of loyalty toward the institution, no means of cushioning the impact of adverse decisions and actions is available.

According to this theory, the expectations citizens hold of courts interact with both perceptions of events, cases, and decisions and with pre-existing institutional loyalty, thereby determining perceptions of

⁹Extant research on framing effects is large and includes: Druckman (2004), Entman (2004) and Chong and Druckman (2007a). For a review of the literature, see Chong and Druckman (2007b).

reality. In order to arrive at a judgment, citizens juxtapose perceptions with expectations. Whether a particular judicial behavior constitutes some sort of conflict of interest that undermines the expected process of decision making can only be assessed by knowing something about the behavior, the expectations a citizen holds, and the pre-existing level of support the individual extends to the institution.

Thus, this theory posits that pre-existing attitudes interact with contextual factors in determining citizens' perceptions of whether judges' actions are fair and impartial. Contextual factors can be readily modeled via experimental vignettes.

The Experimental Vignette and Its Associated Hypotheses

We have attempted to model the contextual elements of a campaign contribution controversy within an experimental vignette embedded within a representative survey.¹⁰ We begin with a discussion of the methodological desiderata associated with constructing the vignettes.

Realism and Experimental Vignettes

The vignette we employ in this research is modeled after the dispute in West Virginia over whether Justice Brent Benjamin ought to recuse himself from deciding a case in which a private individual associated with one of the parties, Don L. Blankenship (CEO of A. T. Massey Coal Co., but acting in his private capacity), spent a great deal of money (more than \$3 million) in a successful effort to get Benjamin elected to the West Virginia Supreme Court of Appeals. An important advantage of using the vignette methodology is that the context of a dispute can be disassembled and the elements investigated

¹⁰ Vignettes are a particularly useful means of incorporating the context of judicial campaigns within survey research. These short stories can reveal processes of reasoning perhaps not even directly accessible to the respondents themselves (Robinson and Darley 1998, 417) and have been used widely in the past (e.g., Gibson and Gouws 1999, Gibson 2008a, 2009a). For the purposes of the questions addressed in this paper, experimental vignettes—especially when embedded in representative surveys—provide an optimal methodology (on experimentation in political science, see Kinder and Palfrey 1993).

individually through manipulations in the vignette. For example, one manipulation in this experiment concerns whether the judge recuses himself. In this fashion, one can test hypotheses about the degree to which various factors influence assessments of the impartiality of judges and the legitimacy of courts.

For a vignette to be meaningful to respondents (sometimes called mundane realism¹¹), the stories must incorporate some degree of realism (see Druckman and Lupia 2006). Grounding the vignettes in actual events provides verisimilitude, therefore increasing the chances of reliable and meaningful replies from the respondents. Asking questions about a fanciful set of circumstances (or, worse, about obvious counter-factuals) is unlikely to elicit meaningful replies from survey respondents.

At the same time, extreme fidelity to real-world events in the vignettes is worrisome because the stories may stimulate respondents – or, worse, *some* respondents – to remember real-world events and incorporate them into their responses. In this sense, the investigators can lose control over the stimuli. Of course, there is always a tradeoff involved: As Gaines, Kuklinski, and Quirk put it (2006, 12): “Put simply, either there is a likelihood of contamination from real-world experience or the survey experiment explores a nonexistent or politically irrelevant phenomenon.”

We have unabashedly cast our lot in this experiment with verisimilitude and therefore model the vignette after the actual conflict. Some of the facts of the case are altered, including the name of the judge, the names of the companies involved in the litigation, and the size of the judgment against the company appealing the lower court decision. And, of course, some of the “facts” presented in the vignette are directly at odds with the actual case – for example, in one version of the vignette, our judge actually recuses. Finally, after presenting our experimental findings themselves, we also report the results of controlling for the respondent’s awareness of the actual dispute, as well as other conditional variables.

¹¹Aronson et al. (1990) distinguish between experimental realism (the content of the experiment being realistic to the subjects so that they take the task seriously) and mundane realism (the similarity of the experimental context and stimuli to events likely to occur in the real world — in short, verisimilitude). Because the issue of campaign finance is quite salient to the American people, this experiment has a great deal of both types of realism (see Persily and Lammie 2004).

Because those aware and not aware of the actual controversy do not differ in their reactions to the vignette (see the analysis below), the experimental results warrant considerable confidence.

The Dependent Variable and Hypotheses

The dependent variable for our analyses is whether the respondent believes that the recipient of the campaign support¹² can serve as a fair and impartial judge and whether the West Virginia Supreme Court itself is a legitimate institution. Our most general hypothesis is that perceptions of fairness, impartiality, and legitimacy are influenced by the actions of supporters and judges in instances in which there is at least the appearance of a conflict of interest brought about by campaign support. The factors we hypothesize will influence citizens' perceptions follow.

Type of Campaign Support. From the point-of-view of constitutional and statutory law, vast differences exist between *independent* expenditures in campaigns and *direct* campaign contributions. The former are more difficult to regulate; the latter, less difficult. We opened the vignette with the following assertion: "A few years ago, Justice Anderson was elected to the West Virginia Supreme Court by the voters of West Virginia. The Court is located in Charleston." The respondents were then randomly assigned to one of three campaign support conditions (emphasis added):

1A. In that election, Anderson was supported by the head of the Acme Insurance Company, *who gave campaign contributions* which allowed Anderson to pay for TV ads urging voters to elect him.

1B. In that election, Anderson was supported by the head of the Acme Insurance Company, *who independently paid for TV ads* urging voters to elect Justice Anderson.

¹²In the actual dispute, CEO Blankenship provided minimal *direct* contributions to Benjamin's campaign. The issue of recusal concerns not so much the direct contributions as the money Blankenship spent as an independent organization ("And For the Sake of the Kids"). In the experiment, we manipulate the nature of the contribution. In general, we will use the term "support" to refer to both contributions and independent expenditures on behalf of helping a candidate win an election.

However, Anderson had nothing to do with the ads and did not directly receive campaign contributions from the head of the company.

1C. In that election, Anderson was supported by the head of the Acme Insurance Company, who *offered to give him campaign contributions* so that Justice Anderson could pay for TV ads urging voters to elect him. However, *Justice Anderson decided NOT to accept* the campaign contributions from the head of the company.

We hypothesize that the conflict of interest – and hence perceptions of partiality and illegitimacy – is greatest with direct campaign contributions, least when the judge explicitly rejects the contribution, with the independent campaign support condition claiming the middle ground between the two extremes.

Size of the Contribution. Much has been made in *Caperton v. Massey* of the size of Blankenship’s support for candidate Benjamin. To test the effect of the size of the contribution on citizen perceptions¹³, we incorporated the following manipulation within the vignette:

2A. The [support/contributions] [provided/offered] by the head of Acme Insurance [was/were] *relatively small and therefore unlikely to have had much impact* on the outcome of the election.

2B. The [support/contributions] [provided/offered] by the head of Acme Insurance [was/were] *quite large and therefore likely to have had some impact* on the outcome of the election.

Thus, rather than focusing on a particular dollar amount, we framed this variable in terms of the likelihood the campaign support would influence the outcome of the election. We hypothesize both a direct effect of the likely efficacy of the support as well as an interaction with the nature of the support.

Recusal. We modeled Judge Anderson’s response to the request for a recusal with the following

¹³The interest group Justice at Stake conducted a nationally representative “Financial Limit Survey” of those claiming to be registered voters from February 12-15, 2009. We purchased a copy of the data set and have conducted our own analysis of the survey results. Their data indicate that the size of the contribution has practically no influence on citizens’ perceptions of conflicts of interest.

elements of the vignette:

3A. As a result of the [support/contributions] by the head of Acme, Justice Anderson was asked to step aside and not be involved in the Court's decision on this case. Justice Anderson agreed, and *did not participate or vote in the case*.

3B. As a result of the [support/contributions] by the head of Acme, Justice Anderson was asked to step aside and not be involved in the Court's decision on this case. Justice Anderson disagreed and *cast his vote on the case anyway*.

The obvious hypothesis is that the effects of recusal depend upon the degree to which a conflict of interest is perceived to exist by virtue of the campaign support provided by the head of the company: where a conflict of interest exists, recusal will rescue the legitimacy of the court.¹⁴ Several interactive and conditional hypotheses are also explored below.

Case Outcomes. We also hypothesize that the impartiality of the decision and the legitimacy of the institution are little affected by who wins the lawsuit. This is a classic procedural justice hypothesis (e.g., Tyler and Huo 2002) in the sense that legitimacy is hypothesized to be dependent upon processes of decision making rather than outcomes. As in reality, this manipulation depends on what happens in the recusal condition. If the judge withdraws from the case, the respondents are told one of the following:

4A.1. Without Anderson participating, the remaining justices on the West Virginia Supreme Court decided that *Acme must pay forty million dollars* to the other company.

4A.2. Without Anderson participating, the remaining justices on the West Virginia Supreme Court decided that *Acme does not have to pay forty million dollars* to Zenith.

Under the condition in which the judge does not recuse, we assigned the respondents to one of the following vignette versions concerning whether the judge's vote was dispositive in the case:

¹⁴On the basis of accepting the accuracy of this hypothesis, interest groups such as NYU's Brennan Center are promoting strict recusal standards. See, for example, Sample, Pozen, and Young 2008.

4B.1. The Court's decision is that Acme Insurance does not have to pay forty million dollars to Zenith. Justice Anderson *cast the deciding vote* on the decision.

4B.2. The Court's decision is that Acme Insurance does not have to pay forty million dollars to Zenith. Justice *Anderson's vote on the decision was not crucial* since nearly all of the other justices voted that the Acme does not have to pay Zenith.

The obvious hypothesis is that when the suspect judge's vote determines the outcome, the decision will be tainted and perceived impartiality and institutional legitimacy will suffer.

Summary. The experiment is therefore a 3x2x2x2 design, with respondents assigned to hear one of 24 vignette versions. The version hypothesized to generate the highest level of illegitimacy is the one in which large campaign contributions are given, but the judge does not recuse, and his vote is dispositive¹⁵:

A few years ago, Justice Anderson was elected to the West Virginia Supreme Court by the voters of West Virginia. The Court is located in Charleston. In that election, Anderson was supported by the head of the Acme Insurance Company, who gave campaign contributions which allowed Anderson to pay for TV ads urging voters to elect him. The contributions provided by the head of Acme Insurance were quite large and therefore likely to have had some impact on the outcome of the election. Some years after that election, a lawsuit between the Acme and Zenith insurance companies came before the West Virginia Supreme Court. Acme Insurance was asking the Court to decide that it did not have to pay Zenith forty million dollars. As a result of the contributions by the head of Acme, Justice Anderson was asked to step aside and not be involved in the Court's decision on this case. Justice Anderson disagreed and cast his vote on the case anyway. The Court's decision is that Acme Insurance does not have to pay forty million dollars to Zenith. Justice Anderson cast the deciding vote on the decision.

The version hypothesized to be least threatening to judicial legitimacy is:

¹⁵We consider below the specific vignette version that most closely represents the case of *Caperton v. Massey* (2009).

A few years ago, Justice Anderson was elected to the West Virginia Supreme Court by the voters of West Virginia. The Court is located in Charleston. In that election, Anderson was supported by the head of the Acme Insurance Company, who offered to give him campaign contributions so that Justice Anderson could pay for TV ads urging voters to elect him. However, Justice Anderson decided NOT to accept the campaign contributions from the head of the company. The contributions offered by the head of Acme Insurance were relatively small and therefore unlikely to have had much impact on the outcome of the election. Some years after that election, a lawsuit between the Acme and Zenith insurance companies came before the West Virginia Supreme Court. Acme Insurance was asking the Court to decide that it did not have to pay Zenith forty million dollars. As a result of the contributions by the head of Acme, Justice Anderson was asked to step aside and not be involved in the Court's decision on this case. Justice Anderson agreed, and did not participate or vote in the case. Without Anderson participating, the remaining justices on the West Virginia Supreme Court decided that Acme must pay forty million dollars to the other company.

Table 1 reports the various elements of the experiment vignette.

[PLACE TABLE 1 ABOUT HERE]

RESEARCH DESIGN

We embedded this experiment within a representative survey of the residents of West Virginia, conducted in February/March 2009. The survey under analysis here is the first interview in a two-wave panel study. The survey was conducted by Schulman, Ronca, and Bucuvalas, Inc. (SRBI), using Computer Assisted Telephone Interviewing (CATI). Within households, the respondents were selected randomly. The interviews averaged just under 17 minutes. The American Association for Public Opinion Research (AAPOR) Cooperation Rate #3 is 40.5 % and an AAPOR Response Rate # 3 is 28.6 % (see AAPOR

2000). The final data set was subjected to some relatively minor post-stratification and was also weighted by the size of the respondent's household.

The last vignette was administered on February 25, 2009, about a week before oral argument was heard by the U.S. Supreme Court in *Caperton v. Massey*.¹⁶ To assess whether the timing of the interview had an impact on our results, we examined the relationship between the interview date and knowledge of the *Caperton* case.¹⁷ Knowledge is not significantly related to time ($p > .05$) and the correlation between date of interview and knowledge is only .02. Especially given the very brief fieldwork period, we feel justified in not controlling for the date of interview in any of the analysis that follows.

Why West Virginia and what limits on generalizability flow from this research design? We acknowledge that we cannot claim that our findings from a single state can be generalized to the rest of the American states. Of course, no single state can ever be thought to be representative of the American states, as recognized, for instance, by Gibson (2008a) in his research on Kentucky.¹⁸ West Virginia uses partisan elections (statewide) to select the five justices of the Supreme Court of Appeals for 12 year terms, and judicial contests have in the past been fierce. Only a handful of American states uses partisan elections to select their judges. So while we do not argue that state politics are idiosyncratic to each of the fifty American states, we are aware that we are not entitled to claim the right to generalize our findings beyond the context of West Virginia.

¹⁶Since the U.S. Supreme Court decided the case nearly three months after the close of the fieldwork for this survey (June, 2009), it is of course impossible for the Court's ruling to have influenced any of the responses in this survey.

¹⁷The question asked as the last query in the survey read: "There have recently been some reports in the news about conflict on the West Virginia Supreme Court. The dispute is about Don Blankenship, the head of the Massey Coal Company, and some money he spent to help elect Brent Benjamin to the West Virginia Supreme Court. Some have suggested that Justice Benjamin should remove himself from deciding cases involving Massey Coal. Before just now, have you heard anything about this issue?"

¹⁸While we acknowledge that West Virginia and Kentucky differ in many important ways, we nonetheless note that Gibson was able to replicate most of his Kentucky findings (2008a) within a nationally representative survey (2009a).

ANALYSIS

The Basic Vignette Results

The various components of the manipulations combine to produce 24 versions of the vignettes.¹⁹ The respondents were randomly assigned to only a single version of the vignette. Slight (and inevitable) imperfections in the CATI assignments to vignette version result in cell sizes for the vignette versions that range from 41 to 45 respondents. In terms of the simple assessments of whether Judge Anderson can serve as a fair and impartial judge for West Virginia (see the text of the question reported in the next paragraph), the percentages believing so range from 22.9 % to 86.8 %, which is substantial variation indeed. Clearly, the respondents' assessments regarding fair and impartial judging are quite sensitive to the contextual factors are incorporated in this experiment.

For explicating our analysis, we rely in part on this simple measure of the judge's perceived impartiality and fairness because the responses to this question are easily understood. For analytical purposes, however, we employ an index that summarizes the responses to the fairness question and two other queries measuring the legitimacy of the court and institution. Following earlier research (e.g., Gibson 2008a, 2009b), we have measured perceptions of impartiality and judicial legitimacy via a three-item index. The respondents were asked to react to the following statements after hearing the vignettes (but before the manipulation checks).

- Do you strongly believe Justice Anderson can serve as a fair and impartial judge for West Virginia, somewhat believe he can be fair and impartial, somewhat believe he cannot be fair and impartial, or strongly believe he cannot be fair and impartial?
- Assume for the moment that all judges on the West Virginia Supreme Court were

¹⁹The manipulations were subjected to a standard manipulation check analysis, with our results reported in Appendix A. Generally, this analysis supports the conclusions that the manipulations were indeed perceived as they were intended to be perceived.

selected in the same circumstances as Justice Anderson. Would you consider the West Virginia Supreme Court as a very legitimate institution, a somewhat legitimate institution, not a very legitimate institution, or not legitimate at all?

- How likely are you to accept decisions made by Justice Anderson as impartial, fair, and legitimate? Are you very likely, somewhat likely, not too likely, or not at all likely to accept decisions made by Justice Anderson as impartial, fair, and legitimate?

These three items are strongly intercorrelated, as indicated by an excellent Cronbach's alpha of .76 (mean inter-item correlation = .52). When factor analyzed, a single, strongly dominant factor emerges (the eigenvalues of the first two extracted factors are 2.04 and .57, respectively). For ease of interpretation, we scaled this index from 0 to 1, with higher scores indicating greater impartiality and legitimacy. To reiterate, for expository purposes only, we use the single-item indicator of perceived impartiality, whereas for purposes of hypothesis testing, we employ the continuous index as the dependent variable.²⁰

The Simple Effects of the Manipulations

The first hypothesis we test is that different types of campaign support produce differing perceptions of impartiality and legitimacy. In fact, the data strongly support this hypothesis: $r = -.23, p < .000$. Figure 1

²⁰Our vignette is modeled after the dispute involving Caperton, Massey, and Justice Benjamin, but of course we vary the attributes of the case to determine the causal influence of various factors on perceived impartiality and legitimacy. Nonetheless, one of our vignette versions very closely parallels the actual lawsuit. In the real dispute, Blankenship provided independent support, but only minimal direct campaign contributions, in his effort to help elect Benjamin. The support was large (more than three million dollars), and most believe that Blankenship's advertisements had some impact on the outcome of the election. Obviously, Justice Benjamin did not recuse himself (hence the appeal to the U.S. Supreme Court), even though his vote was crucial to the outcome (the decision overturning the verdict against Massey Coal was decided on a 3-2 vote, with Benjamin serving as the Chief Justice in the case and casting his vote in favor of Massey Coal). This fact pattern is represented in our vignette version 7. The average perception of impartiality and legitimacy for this version is .50 (on a scale ranging from 0 to 1). Interestingly, this is *not* the most damaging scenario in the set of vignettes: the index means range across the 24 versions from .32 to .71. Indeed, 56.8 % of the respondents assigned to the "*Caperton v. Massey*" version of the vignette asserted that they believed the judge *could serve* as a fair and impartial arbiter. Note, however, that because this is only a single version of the vignette, the number of respondents in this condition is fairly small.

reports the relationship between the type of support and perceptions of fairness and impartiality.

[PLACE FIGURE 1 ABOUT HERE]

The data in the figure clearly demonstrate the negative consequences of campaign contributions for perceptions of judicial fairness and impartiality. Under the condition of campaign contributions, less than a majority of the respondents (41.4 %) perceive impartiality; this figure climbs to 66.4 % under the condition in which the judge rejects the campaign contributions.²¹ As expected, the effect of campaign support that is independent of the judge and his wishes is to diminish perceived impartiality, but only slightly (declining from 66.4 % to 58.5 %; the difference on the continuous index across these two conditions is, however, weakly statistically significant: $p = .002$, $r = .12$). This is an important finding: Independent electoral support, irrespective of the judge's wishes, undermines institutional legitimacy to at least some degree. Of course, other things are going on in the vignettes so the only conclusion that should be drawn at this point in our analysis is that campaign contributions do indeed pose a threat to the impartiality, fairness, and legitimacy of elected state courts and judges.

One remedy for the conflicts of interest created by campaign contributions is for the conflicted judge to withdraw from the case. In the experiment, the simple direct effect of the judge recusing is to increase perceived impartiality ($p < .000$, $r = .18$). However, the substantive implications of recusals can best be understood in conjunction with the degree to which the campaign activity created a conflict of interest. These data are reported for the summary index in Table 2.

[PLACE TABLE 2 ABOUT HERE]

This table reports the mean legitimacy score for the conditions resulting from the interaction of campaign support and recusal. The question these data are designed to answer is whether recusals are a viable means of remedying conflicts of interest. Within each level of campaign support, we test the hypothesis that recusals enhance the legitimacy of the court.

²¹This finding is quite similar to Gibson's findings in both Kentucky (2008a) and in a nationally representative sample (2009a).

The simplest scenario is the one in which a recusal seems not to be required, inasmuch as the candidate for office has refused the campaign contribution. Under that condition, the recusal nonetheless increases legitimacy, and substantially so ($p < .000$, $r = .24$). When the judge refuses the contribution and withdraws from the case, the highest level of perceived legitimacy of any condition in the table is observed ($\bar{x} = .69$). Indeed, the statistical effect of the recusal is greatest under this condition of refusing the campaign contributions.

The effect of withdrawal when a contributions conflict clearly exists is also fairly substantial ($p < .000$, $r = .21$), with recusing associated with higher levels of legitimacy. It is noteworthy, however, that the increase in perceived impartiality, while significant, is only to a modest level ($\bar{x} = .51$), which is lower than the mean in any other condition in which the judge withdraws from the case, and is equivalent to the level of legitimacy when *support* is given, but the judge does *not* recuse ($\bar{x} = .51$). Thus, recusal rehabilitates legitimacy, but it does not restore it to the level when no conflict of interest exists.

We observe the weakest effect of recusal under the condition of independent support from the third-party group: $p = .012$; $r = .14$ (see Table 2, above). Because the judge had little to do with the campaign activity by the independent group, failure to recuse depresses perceived legitimacy and impartiality only weakly. Under the failure to recuse condition, the difference between support and refused contributions is not statistically significant at ($p > .05$), although the difference when the judge does withdraw is significant ($p < .000$).

In terms of the percentages of respondents accepting the judge as a fair and impartial decision maker (as noted, a specific component of the legitimacy and impartiality index), the effect of recusing when campaign contributions are given is to raise the figure from 33.7 % to 48.6 %. This increase is, as we noted, statistically significant. Nonetheless, *only about one-half of the respondents accept the judge as fair even when he withdraws from the case*. In this sense, recusal does not unequivocally rehabilitate the judge from his conflict of interest. At the other extreme, fully one-third of the respondents do not question the judge's impartiality when contributions are given but the judge does not recuse. This is, as expected,

the smallest percentage perceiving impartiality in any of these conditions; nonetheless, we find it remarkable that such a large proportion of citizens fail to question his impartiality when the judge refuses to withdraw from a case involving a seeming conflict of interest due to campaign contributions.

To test the remaining hypotheses, Table 3 reports a single integrated equation that estimates the direct effects of each of the manipulations. To reiterate, the dependent variable – perceptions of impartiality and legitimacy – varies from 0 to 1. For the contributions manipulation, the omitted category is the condition under which the judge rejects the contributions. For the influence of the judge on the outcome in the case, the omitted condition is recusal by the judge. The intercept therefore reflects the legitimacy score under the conditions of: (1) the judge rejecting the contributions, (2) which were too small to influence the outcome of the election, and (3) the company associated with the contributions loses, (4) while the conflicted judge recuses. Thus, this condition is most beneficial for impartiality and legitimacy and it is fitting therefore that the intercept is quite large (.68). The effects of our manipulations are typically to subtract from this relatively high level of legitimacy.

[PLACE TABLE 3 ABOUT HERE]

Does the efficacy of the campaign support affect these relationships? Across all vignette versions, the effectiveness of the support has little impact on perceived legitimacy ($b = -.01$). Even within each type of campaign support, whether the contribution is likely to influence the outcome of the election has nothing to do with perceptions of impartiality and legitimacy. Nor is this variable influential under the different conditions of campaign support and recusal. The only hint of a relationship is when the judge receives support via independent expenditures and does not step aside in the case. Here, perceived impartiality and legitimacy is weakened, although the effect does not achieve statistical significance, and a comparable effect is not observed when campaign contributions (instead of mere support) are given to the candidate (data not shown). Whether the support is likely to influence the outcome of the election is not a crucial variable for most West Virginians when they form their impression of their state judiciary. Outcomes seem to matter much less than process.

In collegial courts, judges who fail to withdraw from a case do not necessarily affect the case's outcome; our experiment therefore manipulated whether Judge Anderson's vote was crucial to the outcome of the case. We hypothesize that the damage to perceived impartiality and legitimacy is exacerbated when the judge's vote determines the outcome. This manipulation, of course, pertains only to the vignettes in which the judge refuses to recuse and therefore participates in the Court's decision.

The coefficients in Table 3 reveal that the effect of voting in the case is to lower perceived legitimacy, and that if the judge's vote is the crucial vote in the case, it produces an additional negative influence on public views of the Court. Whether the conflicted judge's vote determines the outcome influences public perceptions ($b = -.15$), and perceived impartiality does not fully recover simply because the conflicted judge's vote has no actual influence on the case's outcome ($b = -.09$). Both coefficients are highly statistically significant. Further analysis reveals that the effect of this factor depends upon the type of campaign support the judge received during the election campaign. When campaign contributions are given and the judge's vote is decisive, perceptions of impartiality and legitimacy plummet.

The next hypothesis we consider has to do with the outcome of the case. In some versions of the vignette, the company associated with the campaign support wins; in others, it loses. We hypothesize that, to the extent that procedural concerns dominate judgments, whether the company wins or loses has few consequences for perceptions of judicial impartiality and legitimacy.

Across all vignette versions, the effect of winning is negligible ($b = .01$). This result, however, depends on the nature of the campaign support, with the effect being strongest ($r = .14$) when the company is said to have given campaign contributions. Under the conditions of campaign support, the effect of winning is not significant ($p > .05$); and when the judge refuses the contributions, who wins the lawsuit also makes little difference ($p = .060$). Thus, the outcome of the case has some impact on perceived legitimacy, but the effect is not substantial and depends upon the nature of the campaign support.

Finally, the strongest influence on institutional legitimacy (as reflected in the largest standardized

and unstandardized regression coefficients) is associated with the acceptance of campaign contributions ($b = -.17$). The only other factor approaching this level of impact on public perceptions is the judge's vote being crucial to the case's outcome.

The effects reported in Table 3 are direct effects. As we have noted, some of the most interesting hypotheses, however, go to the interactive influences of the various elements of the experiment. The most obvious such hypotheses is that the influence of these factors on perceived legitimacy is contingent upon the nature of the campaign contribution given. Table 4 reports these relationships.

[PLACE TABLE 4 ABOUT HERE]

The coefficients in this table confirm many of the conclusions from the analyses above. For instance, irrespective of the type of contribution or support (or no support), neither the efficacy of the contribution nor the outcome in the lawsuit (whether the contributing company won) affects citizens' judgments.

Perhaps the most interesting finding from Table 4 concerns the impact of whether the judge's vote was crucial to the outcome. The strongest negative effect of not recusing and being the deciding vote in the case is associated with the vignettes in which the judge is offered support, but rejects it. From these data, it seems that the *mere offer of support* is sufficient to contaminate the judge. If a judge who accepts contributions is required to withdraw from the case owing to public perceptions, then these data suggest that judges who are simply offered such support should also withdraw. Roughly similar conclusions pertain, but with lesser impact, when the judge does not recuse but also does not cast the deciding vote in the case. Our original hypothesis was that the effect of campaign support would increase monotonically from rejecting support to accepting contributions.²² Table 4 indicates that the hypothesis must be rejected: Independent campaign support has only weak deleterious effects; being close enough to a corporation to

²²From the analysis of the efficacy of the manipulations (see Appendix A), we discover that a rejected campaign contribution nonetheless creates a perceived conflict of interest for nearly one-half of our respondents. Since we did not anticipate this condition being associated so widely with perceptions of a conflict of interest, we can not pursue this matter issue in further detail.

be offered campaign support, whether it is accepted or not, threatens judicial impartiality and legitimacy.²³

Conditional Effects

We hypothesize that the vignette has different consequences for different types of respondents. In particular, we posit that the effects of the vignettes are conditional upon (1) knowledge of the actual controversy, (2) more general political and judicial knowledge, (3) general and diffuse support for the West Virginia Supreme Court, and (4) the nature of the expectations the respondent holds for the West Virginia judiciary.

The Conditional Effect of Knowledge. We queried the respondents about whether they had heard anything about the actual lawsuit (see footnote 17). As it turns out, 47.1 % claimed to be aware of the dispute. We hypothesize that awareness enhances the effects of the various experimental stimuli.

When the knowledge dichotomy and the associated interactions terms are entered into the basic equation (shown in Table 3 above), the increment in R^2 achieves statistical significance – the full equation is able to account for a little more than two additional percent of the variance in perceptions of impartiality and legitimacy; but, none of the individual regression coefficients for the interaction terms achieves statistical significance ($p > .05$). The only coefficient approaching significance – the interaction of knowledge and whether the judge’s vote was not crucial to the outcome – indicates that among those knowledgeable of the case, the effect of the judge’s non-determinative vote is to reduce perceived impartiality and legitimacy (as compared to recusal) more than among those not knowledgeable ($p = .07$).

²³We have tested for interactive effects using a single integrated equation that includes both the linear influences of the variables and all of the interactions. In the saturated model of two-way interactions, the statistical test for the increase in R^2 indicates no significant increase associated with the interaction terms as a set. Only a single interaction term – that between independent campaign support and the vote of the judge being critical to the outcome – even approaches statistical significance ($p = .08$, $b = .11$), and, with that single exception, no regression coefficient exceeds .10. When different interactions terms and/or sets are entered individually into the equation, none of the Part Coefficients is statistically significant. Two-way interactions can therefore be safely ignored in the analysis that follows.

This effect is not great, but perhaps can be understood as indicating that awareness of the case and its context make the judge's participation more damaging irrespective of whether it determines the outcome of the case. The less knowledgeable perhaps assume that not being crucial to the outcome of the case renders any conflict of interest unimportant. Still, we should emphasize that the effect is weak and not statistically significant, and, of course, it does not pertain to the more extreme scenario modeled by the interaction between knowledge and the judge's vote being determinative of the outcome in the case.

We also asked several question measuring more general knowledge of the West Virginia judiciary, including:

- knowledge that the Court is elected – 42.4 % answered correctly
- that the justices serve fixed, not life, terms – 50.7 % answered correctly
- that the Supreme Court has the “last say” on the meaning of the West Virginia constitution – 42.2 % answered correctly

Overall, 25.1 % of the respondents got none of the three questions correct; 17.4 % answered all three correctly. The average number of correct responses is 1.35 (standard deviation = 1.04). Again, we hypothesize that the effect of knowledge is to exacerbate the damaging effects of the conflict of interest.

As with case knowledge, the analysis reveals no interactive effects with general judicial knowledge. The increment in R^2 is not statistically significant, and none of the individual coefficients even approaches significance.²⁴

These findings about knowledge and information can be understood in two ways. First, they seem to indicate something about the validity of the vignette itself. That completely uninformed respondents would react to the stimuli in the same way as the knowledgeable suggests that sufficient information was provided in the vignette to enable the respondents to understand the circumstances and context of the controversy.

²⁴Table available from the authors upon request.

More substantively, those more knowledgeable about judicial affairs are, generally, no less or more offended by the seeming conflict of interest in this dispute. This may indicate that knowledge is not closely connected to the expectations one holds of judges, although this hypothesis is addressed more directly below. In any event, the less knowledgeable react to the vignette in much the same way as the more knowledgeable; knowledgeable respondents apparently did not mobilize and rely upon information about the case that was not presented in the vignette.

Diffuse Support for the West Virginia Supreme Court. A well-established literature exists on the importance of citizen support for courts (e.g., Gibson and Caldeira 2009a) and how that support ought to be measured (e.g., Gibson, Caldeira, and Spence 2003b). Following that literature, we measured support for the West Virginia Supreme Court with seven statements²⁵ and constructed an index of institutional support as simply the number of supportive replies given in response to these questions. Support for the Court is directly correlated with perceptions of impartiality and legitimacy in the vignette at .24.

When court support and its interaction terms are entered into the basic equation (Table 3), one statistically significant interaction effect is observed: As support for the Court increases, the effect of receiving the campaign contributions diminishes. Over the range of the support index (0 through 7), the

²⁵The propositions read:

If the West Virginia Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether.

The right of the West Virginia Supreme Court to decide certain types of controversial issues should be reduced.

The West Virginia Supreme Court can usually be trusted to make decisions that are right for the state as a whole.

Judges of the West Virginia Supreme Court who consistently make decisions at odds with what a majority of the people in the state want should be removed from their position as judge.

The West Virginia Supreme Court gets too mixed up in politics.

The West Virginia Supreme Court ought to be made less independent so that it listens a lot more to what the people want.

The West Virginia Supreme Court may not always make decisions I agree with, but I trust it much more than most other political institutions in our state.

effect on perceptions of impartiality of accepting the campaign contributions (b) varies from -.258 to -.048, with the latter coefficient being indistinguishable from zero.²⁶ Holding supportive attitudes of the Court seems to inoculate the judge in the respondents' eyes from the deleterious effects of campaign contributions. To the extent that court support implies trust and a willingness to give the institution and its justices the benefit of the doubt, it seems that supportive citizens believe that judges will judge fairly, irrespective of any contributions they may have received.²⁷

Expectations of the Judiciary. Following the work of Gibson (2009b) and Gibson and Caldeira (2009a), we have measured the expectations citizens hold of the West Virginia Supreme Court of Appeal. Table 5 reports the replies of our respondents.

[PLACE TABLE 5 ABOUT HERE]

As we have seen in earlier surveys, the expectations citizens hold of the judiciary vary. On some matters, there is widespread agreement – large majorities expect courts to protect those without power and to strictly follow the law; a small minority wants their judges to base their decisions on their party affiliations. On other items, such as whether to refuse campaign contributions, the respondents are split. Indeed, on five of the attributes on which we questioned the respondents, considerable disagreement can be found. And, it is clear from these data that a sizeable constituency exists in West Virginia in favor of a fairly politicized model of judging.

Our interest in this analysis focuses on one expectation in particular: whether judges should

²⁶These calculations are based on an observed regression coefficient of .030 when only the contributions interaction term is entered into the equations. When all of the court support interaction terms are entered, the coefficient for receiving contributions is .037, which of course means that the negative effects of receiving campaign contributions are reduced even further among those most supportive of the court.

²⁷One of our questions asked the respondents about whether judges ought to be believed when they state that they are capable of making fair and impartial decisions. The correlation of the responses to this statement and court support is .24.

refuse to accept campaign contributions. We hypothesize that the vignette will be evaluated quite differently by those viewing the acceptance of campaign contributions as inappropriate. We therefore entered this variable (dichotomized – “very important” versus otherwise) and the associated interaction terms in the basic equation modeling the experiment (as reported in Table 3, above)

The addition of the expectation variable to the equation increases R^2 significantly; an additional 3.7 % of the variance in perceived impartiality and legitimacy is explained. When the interaction of expectations and the vignette condition under which the campaign contributions are accepted is entered, R^2 also increases significantly, with a change of .014. Finally, none of the interactions between the other elements of the experiment (including the receipt of independent contributions) and expectations achieves statistical significance (and the change in R^2 when these variables are entered as set is not significant).

Expectations of judges matter directly for perceived impartiality ($\beta = -.11$), with those expecting judges to reject contributions ascribing less impartiality, irrespective of the version of the vignette. The conditional effect demonstrates how expectations interact with reality. When the citizen expects judges not to accept campaign contributions, but then are told in the vignette that Judge Anderson does accept the contribution, the additional knock on perceived legitimacy is: $b = -.15$ ($\beta = -.18$), which is highly statistically significant. Expectations regarding contributions affect all citizens, but their impact substantially interacts with the expectations citizens hold of their judiciary.

DISCUSSION AND CONCLUDING COMMENTS

This foray into the vignette data supports at least three types of conclusions: theoretical, methodological, and policy-oriented. We begin our discussion with the theory.

We distinguish in this research between general orientations toward judicial institutions – which we often refer to as “institutional loyalty,” but which is synonymous with “diffuse support” and very similar to traditional conceptualizations of “legitimacy” – and evaluations of specific courts and

institutions. The latter we have hypothesized are influenced by a variety of contextual factors, such as whether the judge is offered campaign support by a party litigating before that judge. The former may be more stable, but ultimately we can easily imagine a feedback loop through which general attitudes would be shaped over time by accumulated experiences. Finally, our model of attitude updating and change posits framing effects in which citizens' pre-existing attitudes toward courts interact with and shape assessments of individual events.

Our primary focus in this paper has been on constructing and testing hypotheses about how events and contexts affect citizens' judgments whether a judge and/or a court can make fair and impartial decisions, that, because they are made in a procedurally correct fashion, are legitimate and worthy of being accepted and acquiesced to. We suspected that citizens' perceptions of impartiality and legitimacy are indeed shaped by contextual factors, and we were correct. The vignette we designed to model various contextual influences was successful in the sense that we observed wide variability in fairness judgments across the 24 versions of the vignette.

The vignette was effective in shaping citizens' opinions in part because of its verisimilitude: The vignette captured and effectively represented key aspects of empirical reality. We are indebted to the participants in *Caperton v. Massey* for providing a lawsuit with such a rich set of contextual factors. Our analysis demonstrates that many of the elements of this case can be abstracted and manipulated and that when we do so, citizens' assessments of impartiality and legitimacy are affected.

We are pleased to find that the vignette, although grounded in a live dispute, is not overly contaminated by reality. Respondents who had heard of the legal controversy reacted to the vignette in much the same way as those previously oblivious to the case. The vignette was real enough to make sense to the respondents, but not real enough for the respondents to mobilize individual information from their memories and rely on that information in forming their judgments. This, we believe, enhances the validity of the experiment by providing greater control over the experimental stimuli.

Many specific empirical findings emerge from this analysis, although perhaps the most important

has to do with our basic understanding of the threats to judicial legitimacy from different types of campaign contributions and support. In all of our analysis, we have posited that the “baseline” condition is one in which the judge refuses support from the contributor. In many important respects, that turns out to be an erroneous assumption. The failure to recuse from a case has just as great an impact on perceived impartiality in the condition of offered but rejected campaign support as it does in the accepted support scenario. It may well be that respondents assume some sort of relationship between the judge and the donor is necessary in order for *the contribution to even be offered in the first place*. Of the three campaign support scenarios we presented to the respondents, the effect of failing to recuse is actually least pronounced under the independent support condition (the Massey condition) and, indeed, the effect under that scenario of the judge refusing to withdraw from the case is actually surprisingly small. Perhaps what we have discovered is the effect of a different sort of variable – having a relationship with a company versus being completely independent of it – that is an important ingredient of the contributions/support manipulations. And this speculation is reinforced, by the way, by the failure of the efficacy of the contribution to have much impact on assessments of the impartiality of the judge. Citizens seem to be making inferences about whether the judge is actually capable of making a principled decision or not. Contributions, *ipso facto*, do not necessarily undermine the integrity of the judiciary.²⁸

We are also impressed by the proportion of the population that does not perceive a threat to impartiality and legitimacy even under the most compromising combination of events. In none of the 24 vignettes does the perception of impartiality fall much below one-third of the respondents. This too is a somewhat surprising finding – *Caperton v. Massey* is assumed by many to represent the “Perfect Storm” of judicial conflicts of interest, yet one-third of our respondent are unfazed by circumstances even more extreme than those of *Caperton*.

A portion of this finding can be attributed to the prophylactic effects of pre-existing support for

²⁸We note in passing that Judge Benjamin claims to have voted *against* Massey Coal in a majority of the cases in which Massey had an appeal before the high court.

the court. Citizens high in institutional support seem to interpret the elements of the vignette in ways that discount the conflict of interest and leave intact the belief that the judge can serve as a fair and impartial arbiter. We suspect that many who strongly support courts are prepared to believe that judges have a great deal of integrity and that by virtue of their training and other factors, are capable of putting aside incidental factors and making decisions entirely on the merits of the lawsuit. We believe we observed a similar phenomenon in public reactions to the U.S. Supreme Court decision in *Bush v. Gore*. Much additional research is required to develop a more complete understanding of how institutional support frames perceptions of judicial activity.

Expectations are an important part of the framing process. Our research agenda has not yet unraveled all of the interconnections of institutional support, political knowledge, expectations, and judgments of fairness and impartiality, but we have shown that the same judicial activity has different effects on citizens holding different expectations of judges. Since this and other research has shown unexpectedly broad support for a relatively politicized view of judging – or least for a model of judging that includes more parts of accountability than of independence – we are convinced that the effects of few judicial actions can be assumed *a priori* to undermine impartiality and legitimacy. The expectations model is not very complicated, or even innovative, but it does stand as an important corrective to the assumption of uniform consequences of judicial actions.

Recusal is thought by many to be a palliative for the ills of conflicts of interests. Our research indicates that recusals can elevate judicial legitimacy, but that *the effect of recusals is not to restore the court/judge to the level of support that exists when no conflict of interest is present*. Perhaps this is not an entirely surprising finding – perhaps recusal is no more than the best available action under the circumstances – but our research implies that even when conflicts are mitigated by recusal, impartiality and legitimacy nonetheless suffer. We suspect that this negative effect is exacerbated when many judges recuse and when recusals are commonplace, because citizens draw larger and more general conclusions about the relationships between public office holders and donors.

This analysis has only scratched the surface of the puzzle of perceptions of impartiality and legitimacy. We posit that pre-existing support for a court gives rise to both perceptions and expectations, and that various feedback effects exist, but this understanding is simplistic and fails to say very much about why and how citizens make inferences about the impartiality of public office holders. We suspect that in an era of widely publicized strategic (i.e., insincere decisions) decision making in politics citizens are often wary of surface appearances. Judges are more likely than other politicians to profit from the benefit of the doubt, but citizens expect – indeed, demand – that judges act sincerely. We are skeptical that much of this has anything to do with pre-judgments and theories of open-mindedness (as in *White*). Instead, the bigger issue is whether a surreptitious relationship exists between the decision maker and private interests. A great deal more research is necessary in order to understand these complicated processes.

APPENDIX A

Manipulation Checks

It is axiomatic in experimental research that respondents do not always perceive experimental manipulations in the way the investigator intended. Consequently, we need to determine whether the elements of our vignette were accurately perceived. The stem used in assessing the respondents' understandings of the vignette read as follows: "Based on what you can recall from the story, using a score of 1-10 where 1 means NOT certain at all and 10 means VERY certain and choosing any number in between, please tell me how certain you feel about the following statements about Justice Anderson."

The respondents fairly accurately perceived the contributions/support of the company, with a highly significant ($p < .000$; $\eta = .36$; $r = -.36$) difference across the three conditions in the degree of certainty about whether contributions/support were provided for Judge Anderson. When the certainty scale is collapsed – with scores of 6 or higher indicating relative certainty – we find that 72.4 % of the respondents given the accepted contributions treatment were fairly certain about the stimulus. Certainty under the support condition was lower (52.0 %). For the treatment in which the judge refused the contributions, 58.4 % were relatively certain that contributions were not received.

Although not specifically checking one of the manipulations, we also asked the respondents how certain they were that the judge "had a conflict of interest in the lawsuit." As expected, perceptions of a conflict were highest under the condition of campaign contributions ($\bar{x} = 7.80$, $s = 3.10$). Perhaps not as expected, relatively high conflict was perceived under the campaign support condition ($\bar{x} = 6.86$, $s = 3.16$), and even when the contribution was refused ($\bar{x} = 5.97$, $s = 3.36$). The percentages of respondents fairly certain (scale score greater than 5) that a conflict existed are 74.6, 62.0, and 49.4, for contributions, support, and contributions rejected, respectively. The medians for the three conditions are 10.0, 8.0, and 5.5, respectively. Thus, for nearly one-half of the respondents, a *rejected* campaign contribution nonetheless creates some degree of conflict of interest between the contributor and the judge.

Large differences are observed in the degree of certainty that the contribution/support received (or offered) was substantial ($p < .000$; $\eta = .32$). Based on the categorized version of the certainty scale, nearly twice as many respondents in the large contributions condition judged the contributions to be substantial (66.7 % versus 37.5 %).

Similarly, most respondents understood the recusal manipulation ($p < .000$; $\eta = .35$), with 61.8 % of those told that Anderson did not withdraw from the case certain that he actually voted on the decision, compared to 30.6 % of those hearing the story of recusal. Among the former, whether the judge's vote was crucial to the outcome in the lawsuit was accurately perceived ($p < .000$; $\eta = .36$); among the latter, the respondents correctly perceived how the court without Anderson decided the lawsuit ($p < .000$; $\eta = .28$).

Generally speaking, the manipulations were accurately perceived by the respondents (even if some ambiguity on this point is created by the use of ten-point response sets for the checking questions). Across all of the manipulations, using a score of 6 or higher on the certainty scale as a measure of the accuracy of the perception, we find that the mean number of correct perceptions (of four) is 2.5 (median = 3.0). These results suggest that the details of the story were relatively easy for most respondents to comprehend.²⁹

²⁹Those who claim to have previously heard of the Caperton dispute were slightly more accurate in their perceptions of the manipulations ($p = .010$). The relationship is not at all strong, however ($\eta = .08$).

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Table 1. Vignette Manipulations and Versions

Campaign Contributions

Strong conflict –
Contributions from litigants

A few years ago, Justice Anderson was elected to the West Virginia Supreme Court by the voters of West Virginia. The Court is located in Charleston. In that election, Anderson was supported by the head of the Acme Insurance Company, who gave campaign contributions which allowed Anderson to pay for TV ads urging voters to elect him.

Moderate conflict –
Campaign Support

A few years ago, Justice Anderson was elected to the West Virginia Supreme Court by the voters of West Virginia. The Court is located in Charleston. In that election, Anderson was supported by the head of the Acme Insurance Company, who independently paid for TV ads urging voters to elect Justice Anderson. However, Anderson had nothing to do with the ads and did not directly receive campaign contributions from the head of the company.

No conflict –
Refused contributions

A few years ago, Justice Anderson was elected to the West Virginia Supreme Court by the voters of West Virginia. The Court is located in Charleston. In that election, Anderson was supported by the head of the Acme Insurance Company, who offered to give him campaign contributions so that Justice Anderson could pay for TV ads urging voters to elect him. However, Justice Anderson decided NOT to accept the campaign contributions from the head of the company.

Efficacy of the Contribution

Little Effect on Outcome

The support provided by the head of Acme Insurance was relatively small and therefore unlikely to have had much impact on the outcome of the election.

Effect on Outcome

The contributions offered by the head of Acme Insurance were quite large and therefore likely to have had some impact on the outcome of the election.

Recusal

Refuses to Step Aside

Some years after that election, a lawsuit between the Acme and Zenith insurance companies came before the West Virginia Supreme Court. Acme Insurance was asking the Court to decide that it did not have to pay Zenith forty million dollars. As a result of the support by the head of Acme, Justice Anderson was asked to step aside and not be involved in the Court's decision on this case. Justice Anderson disagreed and cast his vote on the case anyway

Agrees to Step Aside

Some years after that election, a lawsuit between the Acme and Zenith insurance companies came before the West Virginia Supreme Court. Acme Insurance was asking the Court to decide that it did not have to pay Zenith forty million dollars. As a result of the contributions by the head of Acme, Justice Anderson was asked to step aside and not be involved in the Court's decision on this case. Justice Anderson agreed, and did not participate or vote in the case.

No Recusal, Whether Vote is Crucial

Not Crucial

The Court's decision is that the Acme Insurance does not have to pay forty million dollars to Zenith. Justice Anderson's vote on the decision was not crucial since nearly all of the other justices voted that Acme does not have to pay Zenith.

Crucial

The Court's decision is that Acme Insurance does not have to pay forty million dollars to Zenith. Justice Anderson cast the deciding vote on the decision.

Recusal, Decision by the Court

Company Wins, Not Pay

Without Anderson participating, the remaining justices on the West Virginia Supreme Court decided that Acme does not have to pay forty million dollars to Zenith.

Company Loses, Must Pay

Without Anderson participating, the remaining justices on the West Virginia Supreme Court decided that Acme must pay forty million dollars to the other company.

Table 2. The Impact of Recusal Under Varying Types of Campaign Support

Campaign Support/Recusal	Impartiality & Legitimacy		
	Mean	Std. Dev.	N
<i>Contributions^a</i>			
Doesn't Recuse	.38	.29	163
Steps Aside	.51	.31	175
<i>Support^b</i>			
Doesn't Recuse	.51	.31	165
Steps Aside	.59	.25	176
<i>Refused Contributions^c</i>			
Doesn't Recuse	.56	.30	165
Steps Aside	.69	.24	162

^a $p < .000$; $r = .21$.

^b $p = .012$; $r = .14$.

^c $p < .000$; $r = .24$.

Table 3. The Effects of the Manipulations on Perceptions of Impartiality and Legitimacy

Manipulation/Condition	r	Regression Results		
		b	s.e.	β
<i>Campaign Support^a</i>				
Independent Support	.03	-.07	.02	-.11 **
Accepts Contributions	-.22	-.17	.02	-.28 ***
Efficacy of Contribution	-.03	-.01	.02	-.02
<i>Influence of the Judge on the Outcome^b</i>				
Voted, vote was crucial	-.16	-.15	.03	-.21 ***
Voted, vote was not crucial	-.06	-.09	.03	-.13 ***
Outcome in the Lawsuit	-.10	.01	.03	.02
<i>Equation</i>				
Intercept		.68	.02	
Standard Deviation – Dependent Variable		.30		
Standard Error of Estimate		.28		
R ²				.09 ***
N		1007		

^a The excluded category is: The judge refuses to accept the contributions.

^b The excluded category is: The judge recused (did not participate in the decision).

Significance of standardized regression coefficients: *** $p < .001$ ** $p < .01$ * $p < .05$

Table 4. The Conditional Effects of Campaign Contributions

Manipulation/Condition	Rejects Contributions			Independent Support			Accepts Contributions		
	b	s.e.	β	b	s.e.	β	b	s.e.	β
Efficacy of Contribution	-.00	.03	-.00	-.02	.03	-.04	-.02	.03	-.03
<i>Influence of the Judge on the Outcome^b</i>									
Voted, vote was crucial	-.19	.04	-.30 ***	-.08	.04	-.12	-.17	.05	-.23 ***
Voted, vote was not crucial	-.10	.04	-.16 *	-.10	.04	-.15 *	-.06	.05	-.09
Outcome in the Lawsuit	.03	.04	.05	.03	.04	.04	-.03	.05	-.04
<i>Equation</i>									
Intercept	.67	.03		.59	.03		.53	.04	
Standard Deviation – Dependent Variable	.28			.28			.31		
Standard Error of Estimate	.27			.28			.30		
R ²			.07 ***			.02			.06 ***
N	327			342			338		
Significance of standardized regression coefficients: *** $p < .001$ ** $p < .01$ * $p < .05$									

Table 5. Expectations of the Characteristics of a Good Supreme Court Justice, West Virginia 2009

Characteristic	% Rating It Very Important	Mean ^a	Std. Dev.	N
Protect people without power	77.2	3.67	.72	1413
Strictly follow the law	74.1	3.64	.72	1408
Respect existing decisions	49.0	3.26	.92	1408
Stay as far away from politics as possible	49.2	3.20	.96	1413
Refuse to accept campaign contributions	49.2	3.17	.99	1410
Refuse to state policy positions during campaigns	50.1	3.15	1.06	1409
Represent the majority	45.1	3.04	1.08	1410
Base decisions on party affiliations	18.9	2.02	1.18	1410

The items read:

“Now I would like you to focus on thinking about the characteristics of a good Supreme Court judge, that is, what a good judge ought to be like. First, how important would you say it is for a good West Virginia Supreme Court judge to . . .

Be especially concerned about protecting people without power from people and groups with power.

Strictly follow the law no matter what people in the country may want.

Respect existing West Virginia Supreme Court decisions by changing the law as little as possible.

Stay as far away from politics as possible.

Refuse to accept any campaign contributions from anyone — individuals, groups, and political parties.

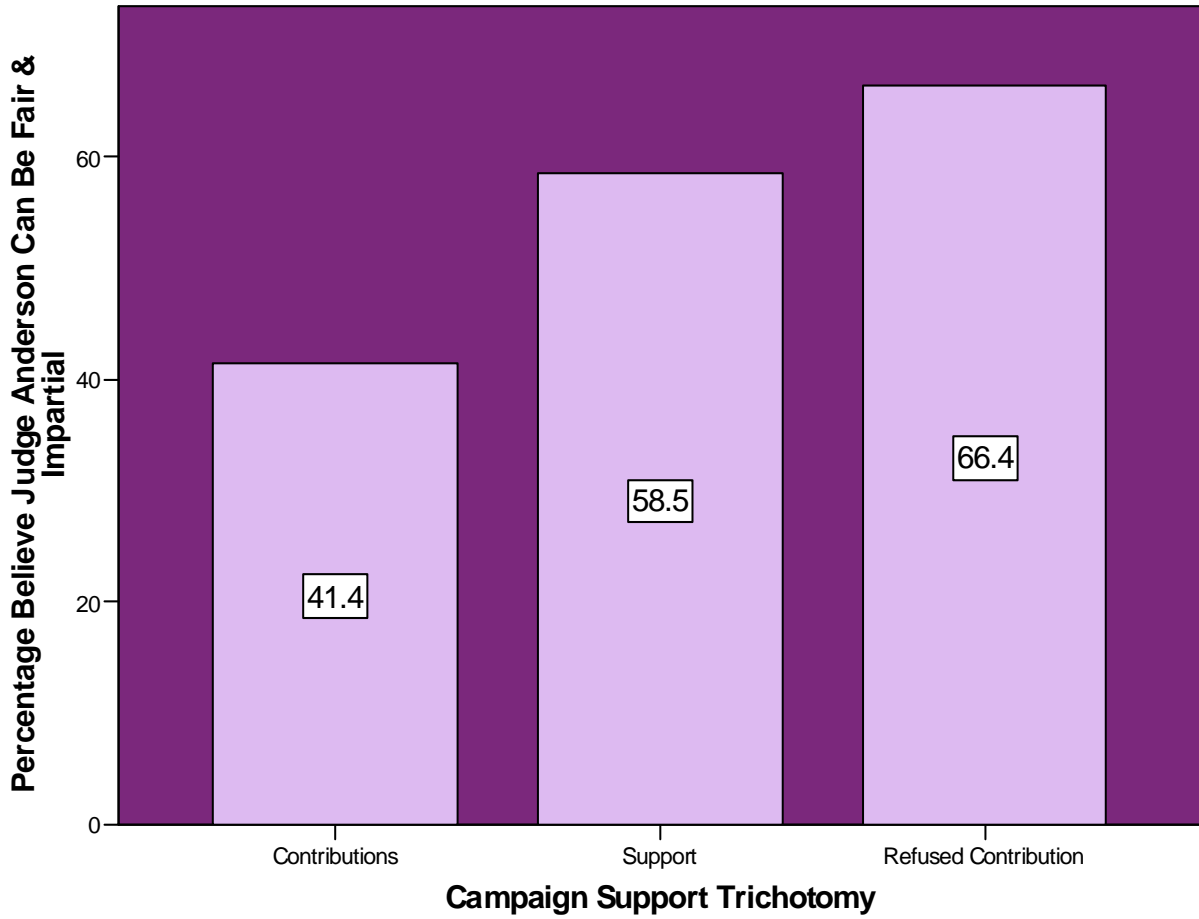
Refuse to state how they stand on important legal and political issues as part of their campaigning for a position on the West Virginia Supreme Court.

Be involved in politics, since ultimately they should represent the majority.

Base their decisions on whether they are a Republican or a Democrat.”

^a The response varies from (1) Not at all important/Don't know to (4) Very important. Thus, higher mean scores indicate greater ascribed importance to the characteristic.

Figure 1. The Impact of Campaign Contributions on Perceptions of Judicial Fairness and Impartiality



Note: N = 1007