Your Honor’s Misdeeds: The Consequences of Judicial Scandal on Specific and Diffuse Support

Abstract

Legitimacy is a bulwark for courts; even when judges engage in controversial or disagreeable behavior, the public tends to acquiesce. Recent studies have identified several threats to the legitimacy of courts, including polarization and attacks by political elites. We contribute to the scholarly discourse by exploring a previously unconsidered threat: scandal, or allegations of personal misbehavior. We argue that scandals could undermine confidence in judges as virtuous arbiters and erode broad public support for the courts. In three survey experiments, we draw on real-world judicial controversies to evaluate the impact of scandal on specific support for judicial actors and their rulings and diffuse support for the judiciary as an institution. We demonstrate that scandals erode individual support but find no evidence that diffuse support is diminished. These findings may ease normative concerns that isolated indiscretions by controversial jurists may deplete the vast “reservoir of goodwill” foundational to the courts.

During Brett Kavanaugh’s 2018 U.S. Senate confirmation, several women accused the Supreme Court nominee of sexual misconduct. These allegations prompted investigations that raised questions about Kavanaugh’s personal fitness to serve on the Court. Upon Kavanaugh’s confirmation, elected officials and legal scholars expressed lingering concerns that Kavanaugh’s alleged misconduct would not only taint his reputation, but imperil public attitudes toward the Court. Senator Dianne Feinstein, the Senate Judiciary Committee’s ranking member, lamented that “[c]onfirming Brett Kavanaugh in the face of credible allegations of sexual assault... undermines the legitimacy of the Supreme Court.”[[1]](#footnote-1) Similarly, New York University law professor Wendy Weiser opined that Kavanaugh would “harm the actual credibility, legitimacy, and authority of the U.S. Supreme Court... [i]f half the country believes one of [its members] committed sexual assault and lacks integrity...”[[2]](#footnote-2)

As the sole unelected branch of the American federal government, the judiciary relies on strong public perceptions of its legitimacy to ensure acceptance of and compliance with its rulings (Caldeira and Gibson 1992). While scholars have long considered legitimacy stable and enduring, recent studies identify threats to the judiciary’s diffuse support, including political polarization (Bartels and Johnston 2013; Armaly and Enders 2021), attacks from and politicization by extra-judicial actors (Armaly and Lane 2022; Rogowski and Stone 2021), and rendering of unpopular decisions (Christenson and Glick 2015). As threats mount, pundits share unease that courts may lose legitimacy and be perceived as another partisan institution.

Justice Kavanaugh’s confirmation proceedings highlight yet another peril for judicial legitimacy—scandal, or allegations of personal misbehavior. Unfortunately for the courts, the allegations of Kavanaugh’s misconduct are not an isolated instance of scandal, as numerous judges in the U.S. and abroad have been accused of improprieties in the modern era.[[3]](#footnote-3) While existing studies show scandal damages executives’ and legislators’ reputations and electoral success (Basinger 2019; Doherty, Dowling, and Miller 2011), they seldom consider how scandal impacts institutional support, which for judges—unlike elected officials—is the fundamental source of political authority (Caldeira and Gibson 1992). Therefore, we must focus on whether scandals pose risks to judicial legitimacy.

We examine whether scandals erode public support for the federal judiciary through three survey experiments that leverage both stylized and real-world instances of scandal. Our experiments randomize whether featured judges experience scandalous allegations. Across all experiments, we find scandals diminish public support for individual judges, but we find no evidence scandals undermine specific support for court rulings or diffuse support for judicial institutions. These results are consistent across respondents irrespective of their partisan alignment with featured judges. This suggests, unlike other threats to legitimacy, members of the public may not react to judicial scandal through a partisan lens.

This article contributes to our understanding of judicial accountability and legitimacy. Our findings indicate the public sanctions individual judicial actors when they engage in unbecoming conduct. The public holds errant judges accountable through their disapprobation but does not appear to sanction the courts writ large. These results may ease fears of judicial observers concerned that scandals pose another threat to diffuse support upon which the judiciary relies.

**Judicial Scandal as a Threat to Public Support**

While legitimacy is important for all well-functioning political institutions, it is essential for the judiciary—lacking a democratic mandate and relying on others for compliance and enforcement (Caldeira and Gibson 1992). While public approval of the judiciary’s day-to-day performance—specific support—may oscillate, diffuse support has traditionally been considered stable, drawing on a “reservoir of goodwill” generated by public fidelity to and socialization into democratic norms and values (Gibson and Nelson 2014). However, diffuse support is not impervious; under certain conditions, judges or extra-judicial actors can weaken legitimacy. For instance, political polarization makes the public less acquiescent to courts when rulings deviate from individuals’ preferences (Bartels and Johnston 2013). When elites attack or politicize courts, the public alters its perceptions of legitimacy given their partisan alignment with relevant actors (Armaly and Lane 2022; Rogowski and Stone 2021). Court decisions can harm diffuse support when judicial policy outcomes diverge from public preferences (Christenson and Glick 2015).

Scandals may pose similar dangers to courts’ public support. While established threats to legitimacy consider environmental factors and actions by judges and other elites, scandals concern personal behavior. Public perceptions of the judiciary’s legitimacy stem, in part, from the notion of judges being “appropriate, proper, and just” (Tyler 2006, 376). Legal professionals have long emphasized the importance of judges’ personal integrity to sustain “public confidence” in courts, with the American Bar Association exhorting judges in its judicial conduct guidelines for over a century to avoid even “the appearance of impropriety” (Geyh 2007). Further, the second canon of the Code of Conduct for United States Judges, which binds lower court federal judges, demands judges “should avoid impropriety and the appearance of impropriety in all activities,” because “public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.”[[4]](#footnote-4) A recent nationally representative survey substantiates the judiciary’s emphasis on judges’ personal integrity, with respondents indicating a judicial nominees’ most important trait is “moral character” (Krewson and Schroedel 2020, 1437).

Research on political scandals indicates that indiscretions harm personal reputations by providing the public negative signals about officials’ underlying character (Doherty, Dowling, and Miller 2011). For instance, scandals hinder congressional candidates’ electoral performance by damaging perceptions of integrity (Basinger 2019). However, few studies consider whether individualized scandals have institutional impact. One exception, Bowler and Karp (2004) find Americans offered more negative evaluations of their member of Congress and Congress as an institution if their member was implicated in the House banking scandal and they reported hearing about the scandal. Scandals’ potential to erode legitimacy poses greater perils for courts than other institutions because courts rely more heavily on legitimacy to derive power. Additionally, given federal judges’ life tenure, it is difficult for voters or elected officials to remove blights on the bench; scandalized judges who refuse to resign could sap diffuse support over time.

We posit judicial scandals have negative consequences for public support for individual judges, their decisions, and judicial institutions. Just as scandals sully the reputations of elected officials, allegations of personal misconduct may lead the public to doubt and distrust whether a judge has sufficient integrity. The public may express less faith in rulings associated with scandalized judges, whose dubious character can undermine otherwise principled legal decisions. Both of these phenomena illustrate how scandal could diminish specific support for judicial actors or their opinions. Further, if scandals shake public confidence in judges as paragons of integrity, the public may question whether judges are as “appropriate, proper, and just” as they believed and whether the institutions through which judges exercise power deserve broad deference (Tyler 2006, 376). Thus, we also expect scandal permeates from implicated jurists to taint the judiciary’s diffuse support.

**Research Design**

Studying the effects of institutional actors’ behavior on public opinion poses inferential challenges. Ideally, we could observe public opinion towards the judiciary in the presence and absence of specific allegations of scandal towards a jurist, ceteris paribus, to determine whether such accusations induce different levels of specific and diffuse support. These ideal conditions elude us; we cannot observe the counterfactual where a scandalized jurist does not face allegations, or vice versa. While panel data could enable researchers to explore the effect of a single scandal on perceptions of the courts, repeated measures of specific and diffuse support among the same respondents are “woefully scarce” (Gibson and Caldeira 2009, 5), and seldom are panels serendipitously timed to capture responses before and after an unforeseen event that could affect opinions towards courts, such as scandalous revelations (but see Armaly and Lane 2022).

Acknowledging these challenges, we utilize three survey experiments to examine scandal’s effects on specific and diffuse support. Our designs include realistic scenarios involving judges who attract public attention and vary whether a judge faces scandalous allegations. Through random assignment, we can isolate the causal effects of scandal on public attitudes toward courts. To enhance generalizability, each experiment focuses on a distinct context wherein the public might encounter news of judicial scandal; so long as our experiments yield substantively similar results, we can discount that certain situational details that vary across scenarios (e.g., time since a scandal occurred, a judge’s position in the judicial hierarchy) underlie our findings.

Further, our survey experimental design promotes external validity (Gaines, Kuklinski, and Quirk 2007). First, by basing our treatments on real-world cases of judicial scandal, we ensure that our stimuli mirror the range of misconduct to which the public is exposed. Second, while our first two experiments are stylized and measure only the immediate effects of scandal, our third experiment leverages Justice Brett Kavanaugh’s alleged misconduct to assess whether those accusations affect present-day perceptions of the Court. This experiment incorporates the real-world political milieu to examine whether the presence of a justice associated with a well-known scandal exerts long-term effects on public support.

**Study 1: Supreme Court Nominations**

Our first experiment examines how scandals emerging during the Supreme Court confirmation process affect public support. Nominations present a prime opportunity to uncover a nominee’s past improprieties that would threaten confirmation, making them a salient context in which the public encounters scandalous allegations that might erode the Court’s support.

We fielded this experiment in January 2020 on Amazon’s Mechanical Turk with approximately 1,400 respondents. Our vignettes provide a stylized account of a federal judge’s Supreme Court nomination. All respondents read about the judge’s background and confirmation process and are told that the judge was ultimately confirmed several years ago. Supplementing this common content, respondents are randomly assigned details about the Senate’s vetting process and any allegations of scandal.[[5]](#footnote-5) Respondents in the control condition are apprised that senators questioned the judge during a hearing, whereas respondents in our three treatment conditions read that the vetting process uncovered evidence of past improprieties.[[6]](#footnote-6) Our treatments draw on three of four scandal types in Basinger et al.’s (2013) typology—ethical, sexual, and financial—and each treatment is based on real-world scandals associated with nominees or sitting judges.[[7]](#footnote-7)

We queried respondents about their attitudes toward the nominee and the Supreme Court. To gauge specific support, we asked respondents to indicate their level of approval of the nominee. To measure diffuse support, we asked respondents to express their level of agreement with six statements about the Court’s institutional design from Gibson, Caldeira, and Spence (2003).

**Study 2: Scandal’s Impact in Lower Courts**

Our second survey experiment explores how allegations of scandal directed at sitting federal judges affect public perceptions of the judiciary. While incumbent judges rarely face the same scrutiny they experience during confirmation, allegations of misbehavior sporadically arise and capture national attention, sometimes prompting resignations or impeachment proceedings.

We fielded this survey experiment in August 2020 through Lucid Theorem with approximately 1,650 respondents. Our design mirrors Study 1. All respondents read a stylized news article wherein a sitting DC Circuit Court of Appeals judge pledges to remain on the bench despite recent personal news that might prompt resignation or retirement. Respondents in the control condition read the judge intends to remain despite a cancer diagnosis, while respondents in the treatment conditions read the judge vows to continue serving despite allegations of ethical, sexual, or financial misconduct. Finally, we present respondents with outcome questions analogous to Study 1 to measure specific and diffuse support.

**Study 3: Scandal’s Enduring Effects on the Supreme Court**

Our third study leverages Brett Kavanaugh’s role on the Supreme Court to investigate the long-term effects of scandals on specific and diffuse support. The sexual assault allegations at the center of Justice Kavanaugh’s confirmation were particularly salient such that public awareness of the accusations Kavanaugh faced was high.[[8]](#footnote-8) An experiment focusing on Justice Kavanaugh enhances the external validity of our results because it takes full advantage of the environment in which respondents experience the political world and incorporates respondents’ exposure to scandal two years prior to examine potential long-term effects.

We fielded our survey experiment in August 2020 through Lucid Theorem with approximately 850 respondents. Our experiment provides respondents with a stylized article describing the Supreme Court’s April 2020 ruling in *Ramos v. Louisiana*.[[9]](#footnote-9) To evaluate how increasing the salience of Justice Kavanaugh influences the Court’s public support, we randomized the opinion author. In the scandal condition, Justice Kavanaugh wrote for the majority, and in the control condition, we ascribe the opinion to Justice Neil Gorsuch— another conservative justice appointed by President Donald Trump who faced no allegations of scandal.[[10]](#footnote-10)[[11]](#footnote-11) After reading the vignette, we ask respondents to indicate their specific support for the ruling and their level of agreement with the six-statement diffuse support battery from Studies 1 and 2.

**Results**

We present our results in Figure 1. Point estimates in the left panel indicate the effect of the treatments relative to the control condition on specific support for the judge or opinion featured in each of our experiments using a dichotomized version of our outcome measures. Point estimates in the right panel indicate the effect of those treatments on diffuse support for the judiciary using a scale constructed from Gibson, Caldeira, and Spence’s (2003) six-statement battery.[[12]](#footnote-12) Treatment effects in the left panel can be interpreted as percentage point differences in respondents’ approval of the featured judge or opinion, whereas treatment effects in the right panel indicate differences in diffuse support on a 0-1 scale.

Turning to specific support, we observe consistently negative effects of scandal on respondents’ evaluations of the judges in the Supreme Court nomination and lower court experiments. For instance, the approval rating of the judge in our Supreme Court nomination experiment is between 24 and 46 percentage points lower when the judge faces scandalous allegations relative to the control condition. Differently, Justice Kavanaugh’s authorship of the majority opinion in our Supreme Court opinion experiment led to a small, though not statistically distinguishable, increase in approval for the opinion relative to when authorship was attributed to Justice Gorsuch. Our results indicate that scandal exerts negative effects on the public’s specific support for individual judges, but do not provide evidence that specific support for a ruling is affected by a scandalized jurist’s association with it.



Figure 1: **Effect of Scandal on Specific and Diffuse Support.** Linear regression coefficients for treatments effects (see legend) in our Supreme Court nomination, lower court, and Supreme Court opinion experiments on specific (left) and diffuse support (right) relative to the corresponding control conditions. We measure specific support as a binary indicator of approval for the judge or opinion. We measure diffuse support on a 0-1 scale.[[13]](#footnote-13) Positive (negative) values along the x-axis reflect higher (lower) levels of support. Bars around point estimates represent 95% confidence intervals.

We observe markedly different results in Figure 1’s right panel concerning scandal’s effect on diffuse support. Across the seven treatments in our three experiments, six manifest null effects, and the seventh—Study 2’s sexual scandal—exerts a statistically distinguishable but substantively small decrease in diffuse support of 0.05. Thus, while the public sanctions scandal-ridden jurists for personal misdeeds, we find scant evidence that those misdeeds damage judicial institutions.[[14]](#footnote-14) Taken together, these findings are reassuring; the sporadic presence of scandal-ridden individuals does not appear to upend broad support for courts.

**Conclusion**

Modern politics pose wide-ranging hazards for courts’ public support—including scandals. Though our findings demonstrate that the public evaluates scandalized judges negatively, we find no evidence of broader institutional repercussions of scandal. That the public appears to differentiate individual instances of judicial scandal from judicial institutions is normatively reassuring. When scandals inevitably manifest, individuals express displeasure with the accused, which may generate pressure for sanction, but we find no evidence that this displeasure alters the public’s faith in the courts’ legitimacy. However, this dynamic would lose its normative luster if scandalous behavior among judges became more common, as the public should hold accountable institutions whose personnel repeatedly engage in unbecoming conduct. Future work should probe the public’s tolerance for judicial scandal, as the public may (and should) diminish its reservoir of goodwill for the courts if scandal becomes pervasive.

Our article brings attention to how personal attributes of judges and other elites, including past instances of scandal, may influence public evaluations of their respective institutions. Though we do not find evidence that scandal damages the judiciary’s diffuse support, we foresee myriad opportunities to probe the relationship between elites and public support for institutions. For instance, scandal’s effect on institutional support may hinge on the public’s prior level of support; while the federal judiciary’s reservoir of goodwill may shield it from sporadic scandals, scandals may damage legitimacy for institutions with weaker baseline support, such as Congress (Bowler and Karp 2004). Further, some studies consider how contextual details of scandals, such as recency, relationship to elites’ official duties, notoriety of the scandalized elites, and how elites respond to allegations of misbehavior, condition support for the accused. Future work should explore how such details moderate scandal’s effect on diffuse support for courts alongside other political institutions (e.g., Miller and Reeves 2021; Pereira and Waterbury 2019). Finally, researchers should consider how elites’ characteristics, like their expertise and ability to descriptively represent the polity, inform the public’s support for institutions more broadly. When the attributes of elites in key institutions diverges from public expectations, institutional support might suffer.

**References**

Armaly, Miles T, and Adam M Enders. 2021. “Affective Polarization and Support for the US Supreme Court.” Political Research Quarterly p. 10659129211006196.

Armaly, Miles T, and Elizabeth A Lane. 2022. “Politicized Battles: How Vacancies and Partisanship Influence Support for the Supreme Court.” American Politics Research.

Bartels, Brandon L., and Christopher D. Johnston. 2013. “On the Ideological Foundations of Supreme Court Legitimacy in the American Public.” American Journal of Political Science 57(1): 184–199.

Basinger, Scott J. 2019. “Judging Incumbents’ Character: The Impact of Scandal.” Journal of Political Marketing 18(3): 216–239.

Basinger, Scott J., Lara Brown, Douglas B. Harris, and Girish Gulati. 2013. “Preface: Counting and Classifying Congressional Scandals.” In Scandal!: An Interdisciplinary Approach to the Consequences, Outcomes, and Significance of Political Scandals, ed. Alison Dagnes, and Mark Sachleben. 7 ed. Bloomsbury.

Bowler, Shaun, and Jeffrey A. Karp. 2004. “Politicians, Scandals, and Trust in Government.” Political Behavior 26(3): 271–287.

Caldeira, Gregory A., and James L. Gibson. 1992. “The Etiology of Public Support for the Supreme Court.” American Journal of Political Science 36(3): 635–664.

Christenson, Dino P., and David M. Glick. 2015. “Chief Justice Roberts’s Health Care Decision Disrobed: The Microfoundations of the Supreme Court’s Legitimacy.” American Journal of Political Science 59(2): 403–418.

Doherty, David, Conor M. Dowling, and Michael G. Miller. 2011. “Are Financial or Moral Scandals Worse? It Depends.” PS: Political Science & Politics 44(4): 749–757.

Gaines, Brian J., James H. Kuklinski, and Paul J. Quirk. 2007. “The Logic of the Survey Experiment Reexamined.” Political Analysis 15(1): 1–20.

Geyh, Charles G. 2007. “Preserving Public Confidence in the Courts in an Age of Individual Rights and Public Skepticism.” In Bench-Press: The Collision of the Courts, Politics, and the Media, ed. Keith Bybee. Stanford University Press.

Gibson, James L., and Gregory A. Caldeira. 2009. Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People. Princeton University Press.

Gibson, James L., and Michael J. Nelson. 2014. “The Legitimacy of the US Supreme Court: Conventional Wisdoms and Recent Challenges Thereto.” Annual Review of Law and Social Science 10: 201–219.

Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. “Measuring Attitudes Toward the United States Supreme Court.” American Journal of Political Science 47(2): 354–367.

Krewson, Christopher N., and Jean R. Schroedel. 2020. “Public Views of the US Supreme Court in the Aftermath of the Kavanaugh Confirmation.” Social Science Quarterly 101(4): 1430–1441.

Miller, David, and Andrew Reeves. 2021. “Pass the Buck or the Buck Stops Here? The Public Costs of Claiming and Deflecting Blame in Managing Crises.” Journal of Public Policy. Published ahead of print May 17, 2021.

Pereira, Miguel M., and Nicholas W. Waterbury. 2019. “Do Voters Discount Political Scandals Over Time?” Political Research Quarterly 72(3): 584–595.

Rogowski, Jon C., and Andrew R. Stone. 2021. “How Political Contestation Over Judicial Nominations Polarizes Americans’ Attitudes Toward the Supreme Court.” British Journal of Political Science 51(3): 1251–1269.

Tyler, Tom R. 2006. “Psychological Perspectives on Legitimacy and Legitimation.” Annual Review of Psychology 57: 375–400.

1. Feinstein, Dianne [@SenFeinstein]. “Confirming Brett Kavanaugh in the face of credible allegations of...” Twitter, October 6, 2018, https://twitter.com/SenFeinstein/status/1048679204571766784?s=20. [↑](#footnote-ref-1)
2. Edelman, Adam. “‘Cloud.’ ’Legitimacy crisis.’ ‘Taint.’ Legal experts on Kavanaugh joining the court.” NBC News, October 7, 2018, https://www.nbcnews.com/politics/supreme-court/cloud-legitimacycrisis-taint-legal-experts-kavanaugh-joining-court-n916731. [↑](#footnote-ref-2)
3. See Appendix A for examples of judicial scandal in American and comparative contexts. [↑](#footnote-ref-3)
4. The canon’s commentary notes that it “applies to both professional and personal conduct.” “Code of Conduct for United States Judges.” Judicial Conference of the United States. Effective March 12, 2019. https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges. [↑](#footnote-ref-4)
5. To credibly manipulate whether Democratic President Barack Obama or Republican President George W. Bush nominated the judges in studies 1 and 2, we utilized fictitious names. Varying the nominating president allows us to account for the possibility that copartisanship conditions the effects of scandal on attitudes toward the courts (Bartels and Johnston 2013). Supplemental analyses do not find conditional effects by respondents’ co-partisanship with the nominating president (see Tables SI.6 and SI.7). [↑](#footnote-ref-5)
6. See Appendix B for vignette and question wording. [↑](#footnote-ref-6)
7. The fourth type of scandal—political—usually involves campaign finance violations or the misuse of congressional resources. Since federal judges have life tenure and are unelected, this scandal type is irrelevant. [↑](#footnote-ref-7)
8. See Appendix B.3.1 for a discussion of contemporary opinion polls. [↑](#footnote-ref-8)
9. In *Ramos v. Louisiana*, the Supreme Court incorporated to the states the Sixth Amendment’s requirement that guilty verdicts for criminal trials must be unanimous. We use this case because it was decided in the latter half of the Court’s term, dealt with a legal issue that is easy for the public to understand and not strongly polarized, and included both Justices Gorsuch and Kavanaugh in the majority. This last feature enables us to plausibly attribute the majority opinion to either justice without loss of external validity. In fact, Gorsuch authored the majority opinion, which Kavanaugh joined; our debriefing materials informed respondents of the true opinion author. [↑](#footnote-ref-9)
10. To promote external validity, we modeled our vignettes after media reports of recent Court rulings, which rarely include personal details about the justices (e.g., allegations against Kavanaugh). As respondents would experience in the real world, our treatment is the mere attribution of the majority opinion to Kavanaugh. See Appendix B.3.1 for elaboration on the comparability of Gorsuch and Kavanaugh and how our design probes scandal while preserving external validity. [↑](#footnote-ref-10)
11. To explore whether the effect of Kavanaugh’s scandalized past might be moderated by the decision’s level of support, we also randomized whether the decision was unanimous or divided. In Table SI.6, we interact the opinion author with the Court’s vote; this analysis does not provide evidence of a heterogeneous effect. [↑](#footnote-ref-11)
12. Following Gibson, Caldeira, and Spence (2003) we dichotomize respondents’ answers to indicate support for the judiciary, sum the dichotomous indicators, and re-scale the measure to range between 0 and 1. [↑](#footnote-ref-12)
13. See Footnote 12 [↑](#footnote-ref-13)
14. See Appendix C.4 for elaboration of null findings. [↑](#footnote-ref-14)