

POST-COLUMBINE: JUVENILE OFFENDERS AND THE STATE SUPREME COURTS*

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Recent research finds elected state court justices are constrained from implementing policy preferences by electoral necessity; however, the research lacks a consideration of how judges' perceptions of issue salience might also restrict judicial voting choice. I examine the voting behavior of state supreme court justices in cases where juveniles are tried as adults decided before and after the Columbine incident and find elected justices show an increase in conservative voting after Columbine. The results suggest that the ability of retention methods to structure judicial behavior is partially a function of issue salience.

Much has been written about the impact of state judicial selection and retention methods on judicial behavior, with scholars consistently finding that elected justices are restricted from attitudinal voting because they must be reelected (Hall and Brace, 1989; McCall, 2005, 2008) and must raise sufficient funds to run a successful campaign (McCall and McCall, 2007b). While these studies have laid the foundation for analysis of the constraints institutional arrangements can place on individual behavior, lacking is a consideration of how changes in the political environment might be filtered through institutions to exert pressure on state court justices. Specifically, does the ability of elections to structure judicial behavior differ depending on the judge's perceived salience of any given issue? Are justices able to place greater emphasis on personal policy preferences when they believe the public is not watching and less when they believe the public is watching? The purpose of this article is to examine the influence of judicial institutions on judicial behavior in a changing political environment.

Accordingly, this research examines the voting behavior of justices on state courts of last resort controlling for the institutional and political variables that may influence decision-making practices. Consistent with past research, I first question if elected justices vote differently than appointed justices. Second, expanding on the literature, I examine if the political context surrounding any case, specifically the judge's perception of the importance of a given topic, is a relevant factor in judicial decisions that should be incorporated within analyses of elected state court judges' behaviors.

To this end, I study the voting behavior—specifically, a justice's tendency to cast a vote favoring a juvenile offender—of justices from state supreme courts in randomly selected cases where juveniles have been tried as adults litigated between 1991 and

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2007.¹ The time frame allows for an evaluation of cases litigated before and after the April 1999 shooting at Columbine High School in Littleton, Colorado in which two juvenile gunmen murdered thirteen people before killing themselves. As President William Clinton stated, “What happened in Littleton pierced the soul of America” (Watson, 2002), and it propelled the problem of juvenile offenders into the public spotlight. I use cases litigated before and after Columbine to test hypotheses regarding how factors such as issue salience expand or constrict the boundaries within which elected justices render decisions. The research design allows for a study of differential voting by appointed and elected justices operating within a changing political environment.

LITERATURE REVIEW

In the last two decades, scholars have made great strides in evaluating the determinants of judicial behavior on state supreme courts. Most research concentrates on delineating the import of judicial elections by questioning if states’ retention methods structure judicial behavior (Hall and Brace, 1989; McCall, 2005, 2008). Early works, using death penalty cases as units of analysis, indicate that dissent rates among elected and appointed judges varied because elected justices were more inclined to suppress dissent in cases that might illicit public reaction to minimize the possibility of electoral defeat (Hall and Brace, 1989).² Expanding the analysis, McCall (1999) found elected justices also suppress dissent in abortion and antitrust cases, a finding that suggests elected justices reduce dissent not only in cases likely to garner significant public interest (abortion) but also in cases in which public attention might be minimal (antitrust).³

Others question if the behavior of elected justices is further structured by the need to raise campaign contributions. Ware (1999) noted a strong correlation between campaign contributions and judicial decisions in Alabama; similarly, Waltenburg and

¹ Massachusetts, New Hampshire, and Rhode Island are excluded because justices there do not face retention. States using retention elections are also excluded because the possibility of judicial defeat is very low, and, thus, judicial behavior stemming from the fear of electoral defeat might be more limited. Admittedly, even with the exclusion of relatively uncompetitive retention elections, considerable differences exist in the competitiveness of partisan and nonpartisan judicial races from the various states. It is possible that the patterns detected here might be stronger in a highly competitive state like Ohio where over six million dollars were spent on judicial races in 2004, than in a less-competitive state like Oregon, where only \$300,000 was spent on judicial races in 2004 (both Ohio and Oregon use nonpartisan judicial elections to retain their judges). Further research on judicial voting patterns might consider teasing out these differences, but detecting voting patterns among judges from states with different levels of judicial competitiveness is beyond the scope of this research. Finally, juvenile cases from 2007 were randomly selected and updated only through March to avoid any impact the Virginia Tech massacre (where 33 people were killed on campus in April 2007) might have on results.

² Vines (1962), Wold and Culver (1989), and Baum (1995) also study dissent. Vines finds judges are unwilling, through dissenting or concurring opinions, to give disenfranchised individuals the ability to use supplemental opinions as vehicles to mobilize the populace. Wold and Culver conclude low voter information benefits incumbent justices in elections, a finding replicated by Baum.

³ Admittedly, antitrust cases are important to businesses making monetary contributions to the elections of state-high-court justices, a factor that might contribute to the suppression of dissent.

Lopeman (2000) found a relationship between contributions and decisions in Alabama, Kentucky, and Ohio. Statistically significant connections have been detected between contributions and votes in Texas in cases dealing with individuals vs. businesses (McCall, 2001), business vs. business (McCall, 2003b), and all tort cases (McCall and McCall, 2007b). The Texas studies control for judicial ideology and suggest that justices vote *against* their policy preferences to accommodate the preferences of campaign contributors, strongly indicating judicial behavior is structured by elections.⁴

Scholars also posit elected justices are more punitive in criminal justice cases than appointed justices to avoid a “soft-on-crime” label. Indeed, many elected judges believe that the path to getting and staying on the bench lies with a tough-on-crime persona. Former Oregon Supreme Court justice Hans Linde once noted:

Every judge’s campaign slogan, in advertisements and on billboards, is some variation of “tough on crime.” The liberal candidate is the one who advertises: “Tough but fair.” Television campaigns have featured judges in their robes slamming shut a prison cell door. . . . Most judges may see themselves as umpires between the state and the citizen, but many citizens regard judges as part of law enforcement, and plenty of candidates will offer themselves for that role. A conscientious judge who imposes less than the maximum possible sentence in cases evoking public outrage invites a bidding war with future opponents (originally quoted in Champagne, 2001:1396).

Examples of television commercials run during the state supreme court races in 2008 echo Linde’s point. Judge Deborah Bell Paseur (Alabama) campaigned that her years as a cop ensured that she would send criminals to jail; Greg Guidry (Louisiana) argued he would stand up for justice by putting drug criminals behind bars; and Justice Maureen O’Connor (Ohio) boasted that she had made Ohio a place where you could sleep easier because she harshly punished rapists, gangsters, and drunk drivers. Given the prevalence of tough-on-crime messages in judicial races, it seems clear that candidates for judicial office believe that appearing to be tough on crime is a winning campaign strategy.⁵

While judicial campaign strategies are revealing, the real question for academic research, and the one addressed by this article, is if elected justices abide by their campaign rhetoric and are actually more punitive when dealing with crime than appointed justices. Indeed, McCall’s work indicates elected justices are more conservative in their voting patterns in police brutality cases (2005) and some types of domestic violence cases (2008), while McCall and McCall (2007a) note similar behavioral patterns

⁴ Traut and Emmert (1998) find ideology, not retention elections, to be central to the decision-making process of California state supreme court justices in death penalty cases. Traut and Emmert’s work is not directly relevant because this study does not use cases from states using retention elections.

⁵ Television Commercials, Brennan Center for Justice. Story boards are available at www.brennancenter.org; Deborah Bell Paseur, Alabama 2008 (“Paseur Tough Smart”); Maureen O’Connor, Ohio 2008 (“Peaceful Night”); Greg Guidry, Louisiana 2008 (“Kuhn Smear Squad”).

in search-and-seizure cases. Huber and Gordon (2004) find evidence that elected trial court judges in Pennsylvania are more punitive in their sentencing patterns as their reelection draws near, supporting the notion that elected justices adjust their behavior to address electoral needs.

Others have also found elected judges more punitive in capital cases than appointed judges (Burnside, 1999; Bright, 1997; Uelmen, 1992). Bright and Keenan describe Alabama judge Bob Austin's 1988 decision to refuse a continuance in a death penalty case two weeks before his election as politically motivated (1995:787-89). The California Supreme Court is accused of incorrectly upholding death sentences following the 1986 defeat of Justice Rose Bird. Bird was defeated for voting to overturn several capital sentences (Bright, 1997). United States Supreme Court justice John Paul Stevens argues that judges who promise to be tough on crime ought to recuse in all criminal justice cases (Weiss, 2006). Weiss (2006) contends defendants' due-process rights are likely violated in elected states because, as another court watcher noted, "In the current political climate, judges undoubtedly realize that by upholding the Bill of Rights in controversial cases, they may be signing their own political death warrants" (Bright, 1997:325).

The literature indicates elected justices are constrained in their voting choices by electoral necessity. The next logical question is whether or not justices might feel more or less constrained in voting options depending on not only the institutional context under which they operate, but also the political context surrounding any given case. To date, the potential for a variable political context to further structure judicial behavior has not been evaluated. For instance, there was no incident bringing police brutality cases into the public limelight during the time frame of McCall's work (2005), nor did issues surrounding search-and-seizure laws garner differential attention by the electorate during the years examined by McCall and McCall (2007a). However, if electoral necessity structures behavior, then one might expect to see differences in decisions by elected justices as an issue garners more public attention.

I ask if the strength of electoral constraints changes with judges' perceptions of issue importance. Accepting that elected judges generally rule more conservatively in criminal justice cases, I posit that elected judges decided cases in a more punitive manner when dealing with juvenile defendants after Columbine than they did before because the tragedy focused public attention on the problem of youth violence and increased the potential electoral cost of ruling for youth offenders. Judges post-Columbine might fear that opponents could more readily cast their votes for juveniles as too dangerous for society, using the specter of another Columbine as an electoral tool, leading incumbent elected judges to vote against juveniles at higher rates after Columbine than they did before.

RESEARCH DESIGN AND RESULTS

Before turning to model specifics, the use of cases surrounding Columbine warrants discussion. Namely, concerns over increases in juvenile violence before Columbine led

states to enact legislation requiring harsher treatment of juvenile offenders. Therefore, one could reasonably argue that factors other than Columbine explain judicial behavior. I agree that the actual increase in youth violence in the late 1980s and early 1990s and changes in state laws regarding the treatment of youth offenders are likely to have impacted judicial behavior in cases litigated during the 1990s, but argue that those factors cannot adequately explain the increase in punitive responses to juvenile crime exhibited by elected judges at the start of the 21st century, as explained in the next section.

Choosing Columbine. Although numerous school shootings occurred before Columbine, none are as engrained in the collective public psyche as is Columbine.⁶ It is, after all, the date of the shootings in Littleton that continues to be most widely memorialized, primarily because the Columbine tragedy represented at the time the most deadly case of school shooting (and one of the most violent acts by juveniles) in U.S. history. Indeed, the mass murder at Columbine commanded the highest level of public interest of all news stories in the U.S. during that decade (Pew Research Center for the People and the Press, cited in *St. Louis Post-Dispatch*, 1999). Media attention continued long after the shootings, with coverage of various resulting lawsuits and other related stories (CNN, 1999, 2000). In fact, nearly as many Americans closely followed the Columbine story (70 percent) as they did the events surrounding September 11 (74 percent) (Watson, 2002).

Moreover, markedly different attitudes and policies regarding school security emerged in the wake of Columbine, partially in response to the Federal Bureau of Investigation's publication of its threat assessment of school shooters just months after the Littleton shootings (FBI, 1999) but also as a result of parents demanding schools take steps to avoid becoming a Columbine (Sutter, 2009). Schools increasingly turned themselves into "near-fortresses" and routinely practiced lockdown drills, where children pull down window shades, lock doors, and huddle in the darkest parts of the classroom (Sutter, 2009). Critics of enhanced school security called the actions a "knee-jerk" reaction to a rare event. However, Columbine brought unprecedented attention to the issue of juvenile violence and concerns about the prevalence of dangerous youths likely spilled over into other aspects of society, including the rulings of elected judges.

⁶ Despite the decline in the actual rate of school violence after 1992 (National Center for Education Statistics and Bureau of Justice Statistics, 2002), a series of dramatic crimes during the late 1990s heightened concern about youthful violence. In 1996 a teacher and two junior-high-school students in Moses Lake, Washington were shot and killed by a 14 year old. Several months later a 16 year old killed his mother and then shot nine of his fellow students (two fatally) in Pearl, Mississippi. A few months later a 14 year old in West Paducah, Kentucky killed three and wounded five others by firing on them at the local high school. In 1998 in Jonesboro, Arkansas a 13 year old with a still younger accomplice killed a teacher and four junior-high-school students. Shortly afterwards, another young teenager killed a teacher and wounded two students in Edinboro, Pennsylvania. A few months later a 15 year old in Springfield, Oregon killed his parents and two students, and wounded 22 others at the high school. In 1999 teenagers Eric Harris and Dylan Klebold used assault weapons and homemade bombs to attack Columbine High School, killing a teacher, twelve students, and then themselves, triggering broad insecurities about juvenile violence and leaving an indelible mark on American society (France, 2009). For chronologies, see *Washington Post* (2000).

When it comes to public policy and juvenile violence, Columbine has been called an “axial event” that divides experiences into a before and an after (Watson, 2002:3).

Nonetheless, others might be tempted to cast any increase in the punitive quality of judicial decisions simply as a rational response to increased violence by juveniles. However, this reasonable expectation runs counter to the observed patterns of criminality by youths because most estimates depict a *considerable drop* in juvenile offenses after the mid-1990s (see Appendix A). For example, “the juvenile Violent Crime Index arrest rate reached a historic low in 2004, down 49% from its 1994 peak” (Puzzanchera, 2009:5). The murder rate involving teen offenders plummeted about 70 percent from 1993-95 to 2001-03, more than doubling the decline in the rate of murders committed by adults (Baum, 2005:9). The total number of arrests involving those under the age of 18 dropped considerably after the late 1990s; indeed, the number of juvenile arrests decreased more (or increased less) than adult arrests for almost all major types of crimes from 1998 to 2007 (FBI, 2008:Table 32). If judges were more punitive following Columbine, that finding cannot be explained by crime rates because crime by juveniles decreased after the mid-1990s.⁷

It is true that there has been a broader movement toward a “get-tough” posture aimed at juveniles in the justice system. During the late 1980s and 1990s, responding to increases in juvenile violence, most states enacted legislation (e.g., reducing minimum-age requirements, mandating waiver to adult court in certain instances) that made it easier to try juveniles as adults (Griffin, 2008).⁸ However, this did not mean necessarily that more juveniles were sentenced to adult prison or that judges became inundated with due-process claims by youthful offenders. Indeed, both the number of prisoners under the age of 18 years and the number of new admissions of such prisoners declined after the mid-1990s (Snyder and Sickmund, 2006).⁹

⁷ To test the alternative hypothesis that crime rates alone are related to punitive judicial behavior, I regressed the entire data set against the direction of the judge’s vote, but also included the rates of violent crime among juveniles along with the other independent variables noted in Table 1. The Violent Crime Index variable was in significant, as one would expect given the lack of consistent directionality. See Appendix A for further analysis.

⁸ Since 1997, nearly all states (about forty-six for the last decade) provide juvenile court judges some discretion to waive cases, that is, to transfer them to criminal court. During the early 1990s, states also tended to give more power to prosecutors through “direct file” provisions that allow them to decide whether certain cases will be pursued in juvenile or criminal court. Over the years, there has been an increase in the types of cases that can involve presumptive waivers (where the burden is on the juvenile to rebut the transfer) and mandatory waivers. States have made more offenses eligible for transfer, including some as a direct response to Columbine (Griffin, 2008). By the late 1990s, thirty-one states had statutes that automatically tried juveniles as an adult if that juvenile had previously been prosecuted as an adult. A decade later the number was only slightly higher at thirty-four states. See Griffin (2008) and Griffin, Torbet, and Szymanski (1998) for more detail on changes in the laws dealing with juvenile trials and prosecutorial and judicial discretion regarding the transfer of juveniles to criminal court.

⁹ These types of changes did not, as noted, result in higher numbers of juveniles in prison nor greater numbers of new admissions after the mid-1990s. Consequently, although the legal changes may account for some of the voting variations among appellant justices during the early part of the 1990s, the impact of the changes are less likely to be strongly manifested in the later part of the 1990s and on. Nonetheless, I do run a model using the rate of the juvenile prison population to test an alternative hypothesis that the increase in the number of youths tried as adults resulted in more conservative judicial patterns over time. As with the violent crime index, estimates of the number of juvenile prisoners (total and new admissions) fail to reach statistical significance when regressed in the full model, 1991-2007. (See also, Appendix A.)

I suggest that because actual crime rates did not increase during the latter half of this study, any increase in punitive judicial decisions may stem from judges' fears that juvenile violence could become an election issue. In this sense, Columbine crystallized various sentiments among the electorate about juvenile violence, allowing these concerns to be easily tapped later.¹⁰ Consistent with the tough-on-crime postures taken regularly by elected judges, getting tough on juvenile offenders protects elected judges from attacks by challengers and public-interest groups that might use Columbine as a tool to suggest the incumbent is soft on crime. Beyond the general tough-on-crime posture that strategic elected judges might take, Columbine provides a context in which the necessity of getting tough on juveniles can easily be understood and on which the justice can easily be criticized for failing to heed "the warnings of Columbine" by casting liberal votes.

Model Specifications. I coded the disposition of 530 votes from state supreme court decisions selected at random from the Westlaw database using the search parameter "juvenile tried as adult" decided between January 1991 and March 2007. These cases were then separated into cases decided before and after the 1999 Columbine tragedy and regressions run on the split data sets. The dependent variable is the direction of the justice's vote and is coded 1 if the justice votes for the liberal position, defined as a vote for the juvenile, and 0 if the justice votes for the conservative position (see Table 1). Because the dependent variable is dichotomous, I use logit to conduct statistical analysis.

As noted, the use of this time frame allows for a consideration of the impact of a judge's perception of the increased importance of juvenile violence as an electoral issue after Columbine. However, it is not the case that I expect elected judges to exhibit liberal voting patterns before Columbine and conservative voting patterns after Columbine. Rather, general fears of being labeled soft on crime should still result in conservative voting patterns for elected justices even before Columbine. I argue the influence of elections will be more pronounced after Columbine and, therefore, further restrictive of attitudinal voting by justices.

I rely heavily on the literature regarding the voting behavior of state supreme court justices (McCall, 2005; Hall and Brace, 1989) and the attitudinal model (Segal and Spaeth, 1993) for the selection and justification of my independent variables. Although this analysis primarily seeks to discern the impact of Columbine on the deci-

¹⁰ A direct measure of public perception is not included in the model in part because of a lack of reliable, regular indicators of concern for juvenile crime or support for trying juveniles as adults. Questions tapping concern about juvenile criminality are periodically asked in local surveys, but not annually to a national sample. Several survey questions have routinely addressed broader concerns for crime more generally (e.g., most important problem facing the nation, is crime getting worse), but these broader estimates of sentiment are a poor fit with this study because these are not specific to juvenile criminality. Moreover, many of these measures of attitudes regarding crime declined after the 1990s (see Appendix A), and such patterns would not predict or explain why elected judges might exhibit a more conservative tendency in deciding due-process cases against the interests of youthful defendants. In other words, a judge's fear that interest groups can mobilize the electorate against a judge's liberal juvenile ruling is not based upon current public perceptions of "most important issues facing the nation" but, rather, the ability of Columbine to create a framework in which liberal rulings can be placed.

Table 1
Description of Independent Variables

Variable	Variable Description
Dependent Variable	
Direction of Justice's Vote	= 1 if vote for criminally accused; 0 otherwise.
Independent Variables: Institutional	
Elected	= 1 if retained through election; 0 otherwise.
Job Requirements	= Composite variable measuring state residency and legal experience requirements.
Job Training	= Composite variable measuring the number of required hours of initial job training and yearly continuing education.
Court of Appeals	= 1 if intermediate court of appeals; 0 otherwise.
Geographic Selection	= 1 if district-based selection; 0 otherwise.
Term Length	= Number of years of a justice's term.
Independent Variables: Attitudinal	
Ideology	= Brace, Langer, and Hall's PAJID measure.
Independent Variables: Political	
Retention Year	= 1 if case occurs during a retention year; 0 otherwise.
Independent Variables: Legal	
Major Crime	= 1 if the juvenile commits murder or sexual assault; 0 otherwise
Final Ruling	= 1 if the ruling is a final ruling; 0 otherwise

sion-making behavior of state supreme court justices, I include legal, electoral, and institutional variables described below for more complete model specifications. All variables, unless otherwise noted, are dummy variables coded 1 if the attribute is present and 0 otherwise (see Table 1).¹¹

Institutional Variables. The institutionally rich differences between state supreme court systems provide a forum for investigating the conditions under which institutions structure judicial behavior.

¹¹ I do not consider state legal changes as independent variables in the bifurcated models because this study analyzes the behavior of appellant judges facing juvenile due-process claims, not the treatment of juveniles by trial courts judges or prosecutors.

Elected: Like others (Hall and Brace, 1989), I posit that elected justices should feel greater pressure to be tough on crime than their appointed counterparts and, thus, expect that elected justices will be more inclined to vote conservative in criminal justice cases, controlling for all other factors. The method of retention variable is coded 1 if the justice is elected, excluding merit elections, and 0 if the justice is appointed. I posit that elections (coded 1) will have a negative impact on the probability of a liberal vote, and thus, I anticipate a negative sign on the variable's coefficient.

Term Length: State supreme courts employ a wide range of term lengths intended to produce variations in levels of judicial accountability. Justices with shorter term lengths face the public at shorter intervals, and consequently, their votes can be more easily recalled during elections. I posit that justices with shorter term lengths are more inclined to render conservative decisions out of fear that their liberal votes are more likely to be remembered by the electorate. This variable is coded in years, and I expect that longer term lengths will have a positive impact on the probability of a liberal vote.

Intermediate Court of Appeals: Although not all states have one, the existence of an intermediate court of appeals tends to increase justices' discretion in case selection. Greater control over the court docket might lead justices to choose cases in which they can portray a tough-on-crime stance. I include a Court of Appeals variable, coded 1 if the vote is cast in a state with an appellant court and 0 if the vote is cast in a state without an appellant court, and anticipate that the presence of an appellant court will reduce the chances of a liberal vote (producing a negative coefficient value), indicating that justices are more likely to take cases in which they anticipate a conservative case outcome and thus add to their tough-on-crime credentials.

Job Training and Continuing Education: Some states require justices to undergo job training and continuing-education exercises. I include a composite job-training variable measuring both the level of initial job training required to become a judge and level of continuing education needed to maintain a judicial post. Although the precise nature of the training exercises differs by state, this education is intended to socialize new justices with court norms and to ensure professionalism (Rottman et al., 1998). Judges who had not held a prior elected post may not understand the potential for electoral defeat, and a strong system of judicial indoctrination to court practices could protect these judges from the electorate. In criminal justice cases, stronger court norms (a higher value on the composite variable) might lead to more conservative court behavior, and thus, I anticipate this variable to show a negative relationship to liberal votes.

Geographic Selection Mechanism: Some states select candidates by district while others use statewide selection mechanisms. I posit that district-based selection, as opposed to statewide selection, will result in more conservative votes. Primarily, if the

justice is selected via the district, the potential for evaluation of the justice's voting position is greater because the justice's constituency is smaller. This increase in potential scrutiny should discourage votes that can be perceived as soft on crime. This variable is coded 1 if the selection is district based and 0 otherwise, and I expect the variable will produce a negative coefficient.

Legal and Residency Requirements: The legal and residency requirements to be a justice on the high court vary by state, and I include, as a composite variable, legal and residency judicial requirements. Some states simply require that justices reside in the state and hold a law degree, while others demand justices live in the state for ten years and possess ten years of legal experience. States with a more selective process for filling judicial seats might be less likely to select minority judges. This restriction on the types of judges chosen, and particularly the potential for a lack of minority judges, might lead to more conservative courts because research (McCall, 2003a; Collins and Moyer, 2008) has shown that the presence of minority judges could lead to panels with greater liberal tendencies. Thus, I posit that judges from states using more selective processes for filling judicial spots (a higher value on the composite variable) will render more conservative votes, and this will lead to a negative variable coefficient and a lower probability of liberal votes.

Attitudinal Variable—Ideology: The attitudinal model (Segal and Spaeth, 1993) is the dominant paradigm used to explain judicial behavior on the federal courts, and the notion that judges' ideologies are also related to state court judicial decisions is suggested by the literature (Traut and Emmert, 1998). Consequently, I include Brace, Langer, and Hall's (2000) Party Adjusted Judicial Ideology scores as a measure of judicial ideology. The PAJID matrix runs from 0 to 100 with 0 indicating most conservative and 100 representing most liberal. The scores control for justices' party identifications, and I expect justices with higher liberal scores to be more likely to rule for the liberal position, resulting in a positive impact value.¹²

Political Variable—Retention Year: I include a dummy variable coded 1 if the case occurs during a retention year but before retention occurs, and 0 otherwise, to control for political context. If a justice chooses to advocate a policy preference that might be perceived as soft on crime, this vote influences retention chances less at the beginning of term. Thus, I posit that cases litigated before retention (coded 1) are less likely to result in liberal votes, suggesting a negative coefficient sign.

¹² Brace et al. (2000) create a measure of judicial ideology for each state supreme court justice by weighting the citizen ideology scores of Berry et al. (1998) by the justices' partisan affiliations. The PAJID scores consider judge partisanship, and a score of 50 indicates a moderate justice in California and in Texas. The PAJID measure allows for replication, controls for citizen ideology, and performs better than partisanship (Brace, Langer, and Hall, 2000). See Brace, Langer, and Hall (2000) for a description of the scores' derivation. The scores from 1991-2000 were obtained from Brace, Langer, and Hall's original data, while scores from 2001-05 were obtained from Langer's updated data set (2001-06). New justices selected in 2006 for whom PAJID scores were unavailable are not included here.

Legal Variables. The legal facts surrounding any case are likely to influence judicial decisions and are, thus, a necessary component of judicial behavioral analysis.

Major Crime: Although juveniles may commit a variety of crimes, I expect justices are more likely to rule against the defendant juvenile in murder and sexual assault cases. Thus, I include a “dummy” variable coded 1 if the crime charged is either a murder or sexual assault and 0 otherwise and expect major crimes to have a negative impact on the probability of a liberal vote.

Final Ruling: Schotland, Cheek, and Champagne (2000:10) suggest that not all votes are equal and recommend behavioral studies differentiate between votes for “technical rulings on jurisdiction or procedure” from those handing down final verdicts. Based on this work, I include a dummy variable coded 1 if the case is a final verdict or directs a lower court to act in accordance with the high court’s ruling and coded 0 if the case is remanded back to a lower court for further consideration following a procedural or jurisdictional directive by the high court. I expect a negative coefficient on this variable, indicating justices are less likely to rule for juvenile offenders in cases handing down final verdicts, again generally fearful of being labeled as soft on crime (see Table 1).

Results. Using logit, I test the influence of the independent variables listed in Table 1 on the direction of justices’ votes from cases litigated before and after Columbine. Both the pre- and post-Columbine models are statistically significant. Because logit coefficients are not easily interpreted, I present the full regression results for both models in Appendix B but provide only impact scores for significant variables in Table 2 to facilitate discussion. Variables that were significant in one model but not the other are included in Table 2 as well, with an “NA” indicating that the variable was insignificant where appropriate.

The impact score indicates the relative influence each variable has on the likelihood of a liberal vote and, as noted, can only be calculated for significant variables (statistically significant variables appear to influence the direction of judicial votes; insignificant variables appear unrelated to judicial behavior). Impact scores, as constructed here, assume that any juvenile defendant has a 50-50 chance of obtaining a justice’s vote and measure the movement from that null assumption, either higher if it is a positive impact or lower if it is a negative impact. A positive impact score of +0.10, therefore, indicates that the chances of a liberal vote have increased from 50-50 to 60-40 for a single positive unit change in the variable. The sign on the impact score is also the sign on its corresponding coefficient for the models (see Appendix B).

Starting first with results from cases litigated before Columbine, most of the institutional variables are significant and appropriately signed (see Table 2). Importantly, elected justices appear less likely than their appointed counterparts to render liberal decisions. Consistent with the notion that elected justices may be concerned with

Table 2
Impact Scores for Significant Variables on Voting for a Liberal Outcome,
Pre- and Post-Columbine*

Variables Institutional	Pre-Columbine Impact Scores	Post-Columbine Impact Scores
Elected	-0.34	-0.42
Job Requirements	-0.02	+0.12
Job Training	+0.01	NA
Court of Appeals	+0.26	NA
Geographic Selection	NA	-0.47
Term Length	-0.03	NA
Attitudinal		
Ideology	-0.18	NA
Political		
Retention Year	NA	-0.29
Legal		
Major Crime	-0.27	-0.43
Final Ruling	-0.38	-0.48

* I calculate the impact of each variable using the procedure described in Segal and Spaeth (1993). The impact is calculated by measuring the difference in the probability of a vote for the plaintiff when the variable is present as opposed to when it is absent (Segal and Spaeth, 1993:144). I use a baseline of a 0.50 prior probability of a vote for the plaintiff.

appearing soft on crime, even before Columbine the influence of elections is substantial. The impact score indicates that if a juvenile defendant has a baseline 50-50 chance of obtaining a justice's vote, the probability of a liberal vote drops by 34 points if the justice is elected rather than appointed. Given the chronology of school and juvenile offender shootings before Columbine, changes in state laws regarding the treatment of juveniles, the increase in juvenile violent crime rates in the late 1980s and early 1990s, and the general move to be tough on crime exhibited by elected justices during the same time frame, this finding is expected. Further research might attempt to discern if patterns detected here existed in the 1980s before the problem of juvenile violence took on national prominence.

In addition to the Elections variable, the Court of Appeals variable produces a significant and positive coefficient before Columbine, suggesting justices from states with an intermediate court of appeals are more likely to render liberal decisions. This variable does not produce results consistent with expectations and indicates that as justices had more discretion in case selection, they took cases that allowed for liberal rulings. The other institutional variables, while mostly significant, have smaller coefficients and do not exert a great deal of impact on the outcome.

The legal variables are both negative and exert a significant impact in the pre-Columbine regression. Justices appear less likely to rule for juvenile defendants

committing violent crimes or in cases handing down final rulings. The ideology variable behaves opposite expectations. Together, the pre-Columbine model finds elected justices are constrained in their voting patterns by the electoral necessity and by the legal facts of a case, consistent with past research. However, the positive coefficient on the Intermediate Court of Appeals variable suggests less fear of the electorate in juvenile cases pre-Columbine than might otherwise be expected. The model is significant and correctly predicts 78.6 percent of votes and reduces error by 12.8 percent.

Alone, the results of logit on cases litigated before Columbine are useful in finding that elections restrict elected justices' policy choices. However, when these results are compared to results from cases litigated after Columbine, the importance of treating Columbine as an "axial" event (Watson, 2002:3) becomes clearer. First, the Elections variable remains significant and produces a larger negative impact than in the pre-Columbine model (see Table 2). While the variable is significant to only the $p < .10$ level (see Appendix B), the smaller number of votes during this time frame might account for this finding. The impact of the variable is very large at -0.42 . Namely, assuming a juvenile offender generally has a 50-50 chance of obtaining a justice's vote, the probability of a liberal vote decreases by 42 points if the justice is elected; this is eight points lower than before Columbine.

Moreover, the behavior of the Geographic Selection, Court of Appeals, and Retention Year variables also indicates that the potential for Columbine to become an election issue might have further restricted judicial behavior; thus, changing political environments are important components of behavioral studies. The Geographic Selection variable, which was insignificant in the pre-Columbine model, produces a significant and negative coefficient in the post-Columbine model. After Columbine, when public awareness of the problem of juvenile offenders increased, justices selected via the district (as opposed to statewide selection) and for whom the possibility of public scrutiny is higher were significantly less likely to cast votes that can be perceived as soft on crime. Indeed, the impact of the Geographic Selection variable at -0.47 is the highest of any variable other than the Final Ruling variable. Again, assuming a juvenile offender has a 50-50 chance of obtaining a justice's vote, the probability of a liberal vote decreases by 47 points if the justice is selected by the district over statewide selection. Moreover, the positive and significant Court of Appeals variable from the pre-Columbine model is now insignificant and negative. This result might indicate that justices with discretion after Columbine started taking cases that were more likely to lead to conservative rulings. Because the variable is insignificant, conclusions cannot be confidently drawn, but the pattern of results is noteworthy.

The Retention Year variable in the post-Columbine model also produces a significant and negative impact, signifying that as retention approaches, justices are more inclined to hand down conservative decisions. This result, coupled with the Elected, Geographic Selection, and Court of Appeals variables, paints a picture of elected judges whose behavior is highly constrained in juvenile cases after Columbine. Justices appear aware of the potential for the issue of juvenile violence to mobilize the

public and are thus more restricted in the implementation of personal policy preferences by the institutional organization of the state court system, as well as the issue's increased importance. Finally, the Legal Variables remain significant and negatively signed. Here as well, however, the magnitude of the variables increases, perhaps further restricting the behavior of justices. The model is significant and correctly predicts 85.5 percent of votes while reducing error by 23 percent. The post-Columbine model correctly predicts nearly 7 percent more of the vote and reduces more error than the pre-Columbine model.

DISCUSSION AND CONCLUSIONS

The results of this analysis add to our understanding of judicial decision making on state supreme courts, as well as to our understanding of the pressures elections might have on elected judges. To start, elections appear to structure judicial behavior in cases where juveniles are tried as adults, both before and after the 1999 shootings at Columbine High School. In both time frames, elected justices were significantly less likely to hand down votes in favor of the juvenile offender even after controlling for the legal case facts.

After Columbine the effects of other institutional features, not just elections, become more pronounced. The Elected variable remains significant and negative and produces a higher coefficient value in the post-Columbine data, although admittedly, confidence in the results would be greater if the variable had garnered a higher level of statistical significance. Moreover, the Geographic Selection and the Retention Year variable are both significant and appropriately signed. The results support the notion that justices might engage in more sophisticated voting decisions when the salience of an issue increases. It might be that justices are more careful when rendering policy decisions after Columbine, taking case timing and district selection methods into account, because the issue has garnered much more public attention.

Overall, the results support the importance of elections to the behavior of justices. Coupled with previous findings that elections matter in death penalty (Hall and Brace, 1989), abortion and antitrust (McCall, 1999), sexual harassment (McCall, 2003a), police brutality (McCall 2005), and Fourth Amendment (McCall and McCall, 2007a) cases, and generally in sentencing decisions (Huber and Gordon, 2004), this type of research builds the case that there are tangible consequences to electing judges for the state courts. The more nuanced analysis of judicial behavior conducted here further indicates differences in judicial behavior as issues become more salient, suggesting that judicial behavior is dynamic and responsive to changing public perceptions of issue importance. While this is not a surprising finding, it is indicative of judges on state courts who act like politicians more than perhaps previously thought. **jsj**

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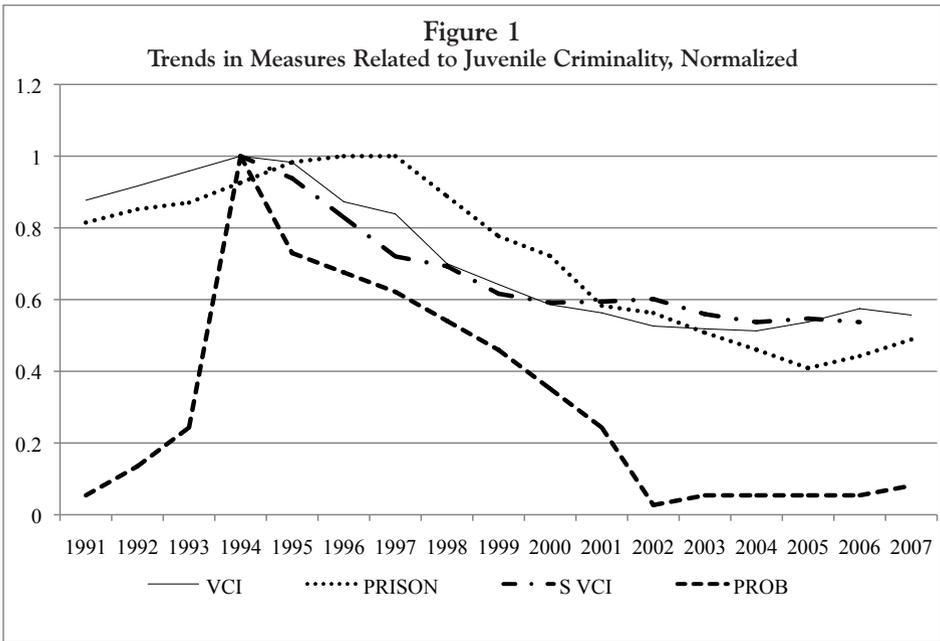
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APPENDIX A

REVIEW OF SELECT ALTERNATIVE EXPLANATIONS FOR A “GET-TOUGH” POSTURE AFTER 1999

Several measures would not predict the increased tendency of judges to take a “get-tough” posture after the 1990s because juvenile crime and related levels often declined during and after the late 1990s. Figure 1 illustrates sample trends, each normalized so that 1.0 represents the peak year for the relevant series.



* VCI = national juvenile Violent Crime Index rate; S VCI = median state juvenile Violent Crime Index rate; PRISON = total number of inmates in state prisons under the age of 18; and PROB = percentage of respondents (nationally) reporting crime as the most important problem facing the U.S.

National Juvenile Violent Crime Index (VCI): National juvenile arrest rates (1991-2007) regard the number of arrests for violent crimes (murder/non-negligent manslaughter, robbery, forcible rape, and aggravated assault) per 100,000 persons age 10 to 17. These are the crimes for which a juvenile is most likely to be tried as an adult (Hartney, 2006:5). However, rates for most juvenile offenses (e.g., property crimes) also declined after the mid- or late 1990s.

Median State VCI (S VCI): Using available state-level data for juvenile arrest rates (67.4 percent available for years 1994-2006), the median state rate declined from a high in 1994 in most subsequent years (see Puzzanchera, Adams, and Kang, 2008).

Juvenile Prisoners (PRISON): The number of youthful prisoners rose during the 1980s and continued to increase until 1996 when the total peaked (5,400) at twice the level posted in

1987. Subsequent declines brought the total to just over 2,200 youthful prisoners in 2005. Data regard the number of prisoners (nationally) under the age of 18 in state prisons (1991-2007) as determined by the National Prison Statistics program and the Survey of Inmates in State Correctional Facilities, and reported in the *Sourcebook of Criminal Justice Statistics* (multiple years). The number of new admissions of youths to state prisons (not shown) follows a similar path of rising during the early 1990s and then dropping sharply (Snyder and Sickmund, 2006).

Opinion: Crime as Important Problem (PROB): The Gallup organization routinely asks respondents what they think is the most important problem facing the country. The percent responding "Crime/Violence" jumped dramatically in 1994 (37 percent) and remained relatively high until 2002; rates have been very low (1-3 percent) since (see *Sourcebook* 2008: Table 2.1), replaced by terrorism following the 9/11/2001 terrorist attacks, war following the start of the second war in Iraq, and the economy following the onset of the recession in the middle of the decade. Some other measures (not shown) of opinion (e.g., crime is getting worse in the U.S.; crime is extremely/very serious) have ticked upward in recent years. However, most increases have been modest and levels for 2005-07 are usually no higher (and often lower) than those posted in the early 1990s.

Alternative Models: Regression analysis incorporating juvenile violent crime rates (VCI) into the model (without dividing cases into pre- and post-Columbine) failed to find such rates to be significant and otherwise underperformed the Columbine model. I found similar, insignificant results when using measures of juvenile prisoners (PRISON and new admissions), and perceptions of crime as an important problem (PROB).

APPENDIX B

EFFECTS OF INDEPENDENT VARIABLES ON VOTING FOR A LIBERAL
OUTCOME IN STATE SUPREME COURTS IN CASES WHERE
JUVENILES ARE TRIED AS ADULTS, PRE- AND POST-COLUMBINE*

Variables	<i>Pre-Columbine</i>		<i>Post-Columbine</i>	
	Coefficient	(RSE)	Coefficient	(RSE)
Institutional				
Elected	-1.65***	(0.44)	-2.43*	(1.45)
Job Requirements	-0.09*	(0.51)	0.47**	(0.30)
Job Training	0.03**	(0.01)	-0.03	(0.05)
Court of Appeals	1.17***	(0.37)	-0.96	(0.74)
Geographic Selection	0.18	(0.35)	-3.66***	(1.14)
Term Length	-0.12***	(0.04)	-0.25	(0.14)
Attitudinal				
Ideology	-0.75**	(0.34)	0.59	(0.80)
Political				
Retention Year	0.49	(0.33)	-1.33*	(0.74)
Legal				
Major Crime	-1.19***	(0.30)	-2.61***	(0.65)
Final Ruling	-2.05***	(0.29)	-3.75***	(0.92)
Constant	2.69**	(0.88)	4.25	(2.83)
Chi Square	139.67***		95.06***	
Correctly Predicted	78.6%		85.5%	
Nagelkerke R Squ.	.431		.634	
Reduction of Error	12.8		23.0	
Degrees of Freedom	10		10	
Number of Votes	378		152	

* Dependent variable is justice's vote in favor of the rights of the criminal defendant. Entries are logistic regression coefficients; significance levels are based on log-likelihood chi square. As per the procedure described in Kmenta (1986:439), I regress each independent variable against all other independent variables to measure the degree of multicollinearity present in this sample. The results indicate multicollinearity is not a major factor in the results. * $p < .10$, ** $p < .05$, *** $p < .01$