

Section C — Project Description¹

In 2002, the United States Supreme Court ruled that, owing to the First Amendment to the Constitution, judges could no longer be prohibited from expressing policy positions during electoral campaigns for state judicial offices (*Republican Party of Minnesota v. White* 536 U.S. 765 (2002)). The majority based its opinion in part on the view that speech about the qualifications of candidates for public office is essential to electoral processes in democratic politics. Although such candidates are not now permitted *every* type of speech (promises about how one would judge specific cases are legitimately proscribed, at least at the moment), this Supreme Court decision has opened the door for free-wheeling discussions of legal policy issues by both incumbents and challengers for judicial offices. As a consequence, judicial elections now focus on judges' ideologies and judicial policy making far more than in the past.²

At the same time, interest groups and legal activists have become increasingly desirous of influencing the outcomes of state judicial elections. This stems partly from the relative inactivity of the U.S. Supreme Court (which now issues fewer than 100 full opinions per year), and partly from the realization that state judicial policies can have enormous economic, political, and social consequences (as in so-called tort reform; see for example Baum 2003). As a consequence, we have witnessed in the last few years an unprecedented injection of money into state judicial elections (e.g., the activism of the U.S. Chamber of Commerce and the Trial Lawyers Associations; see for example Echeverria 2001), with campaign spending reaching all-time highs. The confluence of broadened

¹I acknowledge with gratitude the extremely valuable contributions my graduate students — Ryan Black, Christina Boyd, Michael Malecki, and Marc Hendershot — have made to the preparation of this proposal. I also appreciate the support of Steve Smith and the Weidenbaum Center, and the assistance of Glory Lucy in preparing this proposal.

²For a quite useful review of the relevant literature, with many illustrations from specific contests, see Baum 2003.

freedom for judges to speak out on issues, the increasing importance of state judicial policies, and the infusion of money into judicial campaigns has produced what may be described as the “Perfect Storm” of judicial elections. This storm has fundamentally reshaped the atmosphere of state judicial elections. Furthermore, the storm is gathering strength and is spreading across the nation.

No better illustration of this phenomenon can be found than in the judicial elections of 2004. According to the Brennan Center at NYU Law School, an all-time high of \$21 million dollars was spent on advertising in state Supreme Court elections in 2004, an increase of almost 20 % as compared to 2000 (Brennan Center, Press Release 2004a).³ A total of 181 ads was produced, with 42,096 airings in 15 states. Over 10,000 airings were shown in each of four states: Ohio, Alabama, West Virginia, and Illinois.

It is not just the number of ads shown that has attracted so much attention; rather, some of the ads’ content has broken new ground in campaigning for state supreme courts. For instance, an ad for Gordon Maag in the 2004 Supreme Court race in Illinois had the following text:

[Announcer]: Multi-national corporations, HMOs, and the insurance industry are spending millions to buy Lloyd Karmeier a seat on the Supreme Court.⁴ They know Lloyd Karmeier will continue to support them as they outsource American jobs and eliminate healthcare for workers and retirees. Law enforcement, teachers and working families choose Gordon Maag because they know Maag can’t be bought. Gordon

³Through the Campaign Media Analysis Group (CMAG), all advertisements for candidates running for office are captured from the public airwaves and analyzed. Analysis of the ads, as well as copies of the “storyboards” (television images captured every few seconds, and the full text of the ad and the “paid for by” information) are available on the Brennan Center website. The “storyboards” for all ads in the 2004 elections can be found at http://www.brennancenter.org/programs/buyingtime_2004/storyboard_2004_index.html

⁴At this point in the advertisement, the logos of Pfizer, Allstate, Honeywell and other corporations are shown on the screen.

Maag: Making the law work for working families. [PFB]: Justice for all PAC

With this new style of free-for-all judicial elections⁵ has come a blizzard of commentaries on the likelihood of extremely dire consequences of this apparent politicization of state courts. Many commentators fear the worst, believing the very legitimacy of law and courts may be eroded as people come to see law and courts as little more than ordinary politics (and therefore worthy of their contempt and disrespect). Indeed, the original justification for the now unconstitutional Minnesota prohibition on campaign speech is grounded precisely in the desire to protect the legitimacy of the state judiciaries (but see Dimino 2003). Minnesota contends that legitimacy requires the appearance of impartiality, that the appearance of partiality can undermine the confidence citizen express toward their courts (legitimacy), and that legitimacy is crucial to the effective functioning of courts.⁶ For instance, one legal scholar opines:

When judicial decisions are seen as politicized rather than independent, or as done in the service of a special interest group or to advance judges' self-interest rather than in a neutral and independent spirit, the sense of fairness and justice that is the binding force of the Rule of Law becomes exhausted and the system is weakened.

Disobedience and avoidance of legal obligations can be expected to rise in direct proportion to declining respect for law. As respect for the fairness of law diminishes,

⁵I acknowledge that at early as 1992 Hojnacki and Baum (1992) were writing on the “new-style” judicial campaigns (focusing on elections to the Ohio State Court in 1986 and 1988). Ohio has indeed long been a state with politicized judicial elections, in part owing to the strength of unions in that state. What makes present judicial elections even more “new-style” is the Supreme Court ruling allowing candidates to discuss judicial policy issues, and the dramatic increase in spending in these contests. One interest group claims: “If 2000 was the turning point for special interest influence on judicial elections, 2004 was the the tipping point. **The problem is no longer limited to a few perennial battleground states: it’s spreading across the country, and no state that elects judges is safe.**” Justice at Stake Campaign, 11/09/04, emphasis in original.

⁶See Brief and Appendix for Respondents 2002. See also the amicus briefs which make even more forcefully arguments about judicial legitimacy.

greater government force must be used to ensure obedience (Barnhizer 2001, 371, footnotes omitted).

Barnhizer continues: “There can be no question that the single most important source of judicial corruption is created by the need for campaign funding This is such a threat to the perceived legitimacy of the one part of our government that has managed to retain some shred of public respect that it must be stopped” (Barnhizer 2001, 427). Alarm bells are being sounded throughout the U.S., announcing the imminent demise of legitimacy in the country’s state courts (on the politicization of judiciaries worldwide, see Tate and Vallinder 1995).⁷

To date, however, precious little empirical evidence has been produced to document the decline of state court legitimacy.⁸ Although a couple of national surveys have been conducted on public attitudes toward courts, these are of little value when it comes to analyzing state judiciaries (and they all lack rigorous conceptualizations and operationalizations of the concept legitimacy; nor are they longitudinal surveys, making inferences about change risky).⁹ Indeed, most research on state judicial elections is conducted at the macro-level, focused on votes (e.g., Jackson and Riddlesperger

⁷Numerous interest groups are actively involved in the intense political struggle over how judges will be selected and which interests will be most influential in shaping the state high courts. See for instance the Justice at Stake Campaign. <http://www.justiceatstake.org/> [accessed 12/28/2004]. We are in the process of collecting information on all groups active in judicial campaigns and in advocating for changes in methods of selecting state judges. To date, we have identified dozens of such organizations.

⁸For example, it is interesting to note how little empirical evidence is actually adduced in the Barnhizer article. For instance, the following statement refers to entirely anecdotal evidence: “Both actual judicial integrity and citizens’ perceptions of the fairness of the judicial office are being diminished by the politicization of the judiciary” (2001, 375). [See also p. 385]

⁹Some surveys have been conducted by interest groups with a strong stake in the outcome of the survey (e.g., Justice at Stake Campaign, Frequency Questionnaire, <http://www.justiceatstake.org/files/JASNationalSurveyResults.pdf> [accessed 12/27/2004]). As might be expected in such surveys, few questions frame judicial accountability in a favorable way, and even fewer address any of the negative consequences typically associated with non-partisan elections and Missouri system selection systems.

(1991) rather than at the micro-level, focused on individual citizens (for notable exceptions to this see Baum 1988-89). Several states have conducted surveys on how citizens evaluate the performance of their courts (see Kritzer and Voelker 1998 and Voelker and Kritzer 1996), but none of these surveys goes beyond short-term public satisfaction with judicial performance to address basic commitments to the legitimacy of state courts of last resort (and of course all of these are now quite dated, and all predate the *Minnesota v. White* Supreme Court decision). Thus, an enormous (and enormously important) lacunae exists in our knowledge of how citizens feel about their state courts, and whether judicial elections (new-style or old) have anything to do with how people judge their courts.

This new-style of judicial elections also intersects with pressing theoretical concerns in research on the legitimacy of judicial institutions. Most such research is static in nature, therefore precluding investigations of the origins of judicial legitimacy and the factors that reinforce or undermine the legitimacy of courts. Several bits of theory exist (e.g., the theory of “positivity bias” – see below), and cross-sectional analysis has suggested insights into processes of change (e.g., inter-generational change), but, to date, very little research has been able to tackle the difficult question of how and why exogenous factors shape the legitimacy of courts (for an exception see Hoekstra 2003).

The purpose of this proposed research is therefore to assess the impact of this new style of judicial campaigning on the legitimacy of law and courts. Based on a three-wave panel survey of a representative sample of citizens of one to three states (see below), the project focuses on the 2006 elections for judges of the state courts of last resort. In brief, the surveys will allow the assessment of perceptions of the legitimacy of law and courts well prior to the 2006 election, perceptions of the campaign process in the midst of the election, and perceptions of legitimacy after the election. The central hypothesis of the research is that those who are exposed to advertisements portraying candidates for judicial office as ordinary politicians rather than impartial and independent arbiters are

more likely to experience a decline in their willingness to extend legitimacy to the state's legal system and courts. The study takes advantage of the all-important ability to know which survey respondents were potentially exposed to which specific judicial advertisements (with what specific content) by use of the CMAG/Brennan data on campaign advertisements (i.e., respondents will be matched to the media market within which they reside). Never before has research focused so comprehensively and rigorously on the question of the impact of judicial campaigns.

Thus, this project addresses an extremely important issue of public policy—to what degree does the Supreme Court decision in *Republican Party of Minnesota v. White* contribute to undermining the legitimacy of state courts where judges are selected through elections? In addition, however, the project represents an unprecedented effort to investigate one of the most pressing unanswered questions in the theoretical and empirical literature on institutional legitimacy: Where do attitudes toward institutional legitimacy originate and how do citizens update and change their views on legitimacy? This project therefore promises enormous contributions to both the policy debate and the scientific literature on judicial legitimacy and power. It is to that scientific literature that I turn next.

THEORIES OF INSTITUTIONAL LEGITIMACY

Conceptual Landscape. Considerable agreement exists among social scientists and legal scholars on the major contours of Legitimacy Theory. For instance, most agree that legitimacy is a normative concept, having something to do with the right (moral and legal) to make decisions. “Authority” is sometimes used as a synonym for legitimacy. Institutions perceived to be legitimate are those with a widely accepted mandate to render judgments for a political community. “Basically, when people say that laws are ‘legitimate,’ they mean that there is something rightful about the way the laws came

about . . . the legitimacy of law rests on the way it comes to be: if that is legitimate, then so are the results, at least most of the time” (Friedman 1998, 256).

In the scholarly literature, legitimacy is most often equated with “diffuse support.” Diffuse support refers to “a reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants” (Easton 1965, 273). Diffuse support is institutional *loyalty*; it is support that is *not* contingent upon satisfaction with the immediate outputs of the institution. Easton’s apt phrase – a “reservoir of goodwill” – captures the idea that people have confidence in institutions to make, in the long-run, desirable public policy. Institutions without a reservoir of goodwill may be limited in their ability to go against the preferences of the majority.¹⁰

Legitimacy becomes vital when people disagree about public policy. When a court, for instance, makes a decision pleasing to all, discussions of legitimacy are rarely heard. When there is conflict over policy, then some may ask whether the institution has the authority, the “right,” to make the decision.¹¹ Legitimate institutions are those recognized as appropriate decision-making bodies *even when* one disagrees with the outputs of the institution.¹² Thus, legitimacy takes on its primary importance in the presence of an *objection precondition*. Institutions like courts need the leeway to be

¹⁰Comparativists (e.g., Tsebelis 2000; Alivizatos 1995) often focus on courts as “veto players” and have acknowledged that legitimacy is a necessary resource if courts are to play this role.

¹¹Tyler and Huo (2002, xiv) define legitimacy as: “the belief that legal authorities are entitled to be obeyed and that the individual ought to defer to their judgments.”

¹²No better example of this can be found than in the reactions to *Bush v. Gore* (e.g., Gibson, Caldeira, and Spence 2003b, and Yates and Whitford 2002). Legitimacy may be thought of as an element of the “informal institutions” that are so important to the functioning of courts (see Helmke and Levitsky 2004).

able to go against public opinion (as for instance in protecting unpopular political minorities).¹³ Thus, a crucial attribute of political institutions is the degree to which they enjoy the loyalty of their constituents; when courts enjoy legitimacy, they can count on compliance with (or at least acquiescence to) decisions running contrary to the preferences of their constituents.¹⁴

The Dynamics of Opinion: A Theory of the Origins of Court Legitimacy. The single most important lacunae in the existing literature on institutional legitimacy is the lack of understanding of change. With the exceptions I discuss below, nearly all research in the field is based on cross-sectional analysis. And even most of the limited dynamic analysis that exists examines aggregate patterns of change, not individual-level change. Here, I propose a three-wave panel survey as a means of assessing how attitudes toward institutions are formed and how they are updated on the basis of perceptions of judicial campaigns.

Some earlier research has indeed considered the dynamics of opinion toward the court. 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 2003b; Franklin and Kosaki 1989; Kritzer 2001); a few true panel studies have been conducted (e.g., Murphy and Tanenhaus 1981; 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

¹³Scholars sometimes refer to this leeway in the context of the Rule of Law. Legitimacy provides the political capital enabling courts to rule according to the dictates of legal principles, rather than according to the demands of their constituents. For an elaboration of this idea, see Gibson 2004e.

¹⁴The literature addressing the diffuse support for American courts is voluminous. A fairly inclusive set of citations to that research can be found at Gibson and Caldeira 2003d. Notable studies of court legitimacy include: Tyler 1990, Tyler and Mitchell 1994, Mondak and Smithey 1997, Grosskopf and Mondak 1998, Gibson, Caldeira and Baird 1998, Hoekstra 2003, and the various publications of Gibson and Caldeira in both the U.S. and non-U.S. contexts.

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 over time (see the discussion in Gibson, Caldeira, and Spence 2003c of the deficiencies of the readily available “confidence” measure). Extant theory and data sources are simply not up to the task of providing insights into how legitimacy is formed or acquired and how it is reinforced or eroded.¹⁵

Thus, to date, no comprehensive theory of how legitimacy for law and courts emerges has been produced. There are, however, several extremely fecund facts emerging from the literature that can serve as the building blocks of such theory.

1. Long ago, Casey (1974) demonstrated that the more one knows about law and courts, the *less* realistic are perceptions of judicial decision (i.e., the more one is likely to believe in the theory of mechanical jurisprudence). Something about being exposed to information about courts contributes to people embracing this traditional mythology of judicial decision making (see also Scheb and Lyons 2000, who refer to this as the “myth of legality”; see also Brisbin 1996).

2. More recently, Hibbing and Theiss-Morse (1995) have shown that greater awareness of the Supreme Court leads to *more* support for it, whereas greater awareness of the Congress is associated with *less* support for that institution. Kritzer and Voelker (1998) make a similar argument. Again, something about being exposed to the institution increases support for it, and there is apparently something unique about exposure to judicial institutions.

3. Caldeira and Gibson (1992, 1995) have shown in several contexts that greater awareness of

¹⁵At the level of the individual citizen, only a tiny number of longitudinal studies have investigated how information about the Supreme Court affects overall evaluations of the institution. Perhaps the best of these studies is Hoekstra’s analysis (2003) of local reactions to Supreme Court opinions directly affecting the local community. As innovative as her study is, however, it suffers from several major limitations, the most important of which is that her measure of support for the Court is not a valid measure of institutional legitimacy.

judicial institutions is related to a greater willingness to extend legitimacy to courts. Gibson, Caldeira, and Baird (1998) have confirmed this finding in research in roughly 20 countries.

4. Caldeira and Gibson (1995) have suggested that the legitimacy of courts is *not* undermined by the disagreeable opinions issued by the institution. This is in part related to the ability to shirk responsibility for decisions by reference to the dictates of precedent. If more knowledgeable people are more likely to accept the theory of mechanical jurisprudence, just as they are more likely to be attentive to courts, then it follows that they are also more likely to be persuaded by the justices' denial of responsibility for the decision.

5. Gibson, Caldeira, and Spence (2003) have posited a mechanism by which these findings can be integrated. They suggest a "positivity bias," which means that exposure to courts is typically associated with exposure to the legitimizing symbols of courts (robes, decorum, media deference, etc.), thereby contributing to legitimacy. Even when the initial stimulus for paying attention to courts is negative (as *Bush v. Gore* was for many), judicial symbols enhance legitimacy, which shields the institution from attack based on disagreement with its decision. The 2000 U.S. presidential election provides a powerful and compelling example of this process (see also Yates and Whitford 2002; Kritzer 2001). Thus, ironically, disagreement with court decisions may increase exposure to legitimizing judicial symbols, which in turn enhances the perceived legitimacy of the court.

6. At this point, more speculation is required about how this process evolves. I begin by positing that citizens do not naturally differentiate between the judiciary and the other branches of government. That courts are special and different is something that must be learned. Thus, those most ignorant about politics are likely to hold views of courts and other political institutions that are quite similar — courts are not seen as special and unique.¹⁶

¹⁶This conjecture is certainly true of many countries other than the United States, as in the former East Germany, for instance (see Markovits 1995).

Exposure to legitimizing judicial symbols begins a process of distinguishing courts from other political institutions. The message of these powerful symbols is that “courts are different,” and owing to these differences, courts are worthy of more respect, deference, and obedience — in short, legitimacy.

However, just as citizens come to see courts as different due to the influence of exogenous legitimizing symbols, citizens may also come to understand courts as quite like other political institutions if that is the message to which attentive people are exposed. Indeed, this is precisely the most worrisome consequence of the politicized style of judicial elections: To the extent that campaigning takes on the characteristics of “normal” political elections, courts will be seen as *not* special and different, with the consequence that their legitimacy may be undermined. At the most general level, I hypothesize that those who become aware of and attuned to judicial campaigns in politicized judicial elections will a) judge courts and other political institutions similarly, and b) will therefore extend less legitimacy to courts.¹⁷ Consequently, politicized judicial campaigns may seriously disrupt the normal supply of judicial legitimacy by portraying judges as nothing more than ordinary politicians, and the effects may be strongest among the most attentive portion of the populace.¹⁸

¹⁷In the past, judicial controversies were not especially harmful to legitimacy because the controversies were enveloped in legitimacy-conferring symbols. Today, however, campaigns reinforce the view that courts are just like any other political institution, and that therefore their claims to impartiality, independence, and fairness are not *prima facie* valid.

¹⁸Space constraints preclude a full discussion of the voluminous literature addressing the effects of campaigns on citizens, although a few points bear emphasis. First, the literature on the consequences of negative campaigns is certainly mixed, although it seems transparently obvious that candidates for political office *believe* such campaigns to be effective (as do the critics of negative advertising). Ansolabehere and Iyengar 1995 (and other studies) document a significant drop in voter turnout associated with negative ads (presumably due to “tuning out” of the electoral process), and Mendelberg (2001) shows that the infamous “Willie Horton” ad framed many issues in racial terms. However, in a very important meta-analysis of the research literature, Lau et al. (1999) conclude that negative campaign ads have little effect, although they acknowledge that virtually no research examines the long-term implications of such ads (p. 860), as in the consequences for institutional legitimacy. Furthermore, judicial campaigns have several attributes that render them different than other campaigns for public

Theories of Individual-Level Change. A theory of change must include two components. First, a theory of cross-sectional differences is necessary. Such a theory provides an explanation of why citizens differ in their attitudes at any given point in time. For instance, Caldeira and Gibson (1995) have shown that the tendency to extend legitimacy to courts is in part a function of support for democratic values more generally. That theory has proven to be quite valuable in understanding and predicting individual difference in attitudes toward courts.

Second, a theory of *change* must also be grafted onto the cross-sectional theory. For instance, it is unlikely that changes in levels of legitimacy are due to alterations in support for democratic values inasmuch as the latter is usually thought to be formed early in life and resistant to change (e.g., Gibson 1995). The cross-sectional theory must identify causal factors that are themselves subject to exogenous influences.

Bendor, Diermeier, and Ting (2003) have recently proposed a simple but powerful theory that can be modified and made useful for understanding change in levels of legitimacy. The model posits that citizens are “adaptively rational,” by which they mean that people are susceptible to basic processes of reinforcement learning: They then add “aspirations” to the model. Aspirations are essentially expectations against which experiences are measured; the relationship between expectations and experiences defines encounters as either successful and unsuccessful. Over time, aspirations adjust to experience. In short, “adaptation combines reinforcement learning and endogenous aspirations” (2003, 263).

Citizens hold expectations of judicial institutions that interact with experiences such as exposure to campaign messages. Of course, the primary experience upon which this research focuses involve exposure of politicized judicial campaigns. Learning about state courts is a dynamic process

office. Thus, beyond contributing to the literature on judicial elections, this research may well add an important dimension to on-going efforts in other sub-fields to assess the impact of negative campaigning.

involving the interaction of experiences and aspirations.

A Note on the Visibility/Invisibility of State Courts. It is often assumed that law and courts are practically invisible to ordinary people, most of whom are uninformed about judicial contests (e.g., Griffen and Horan 1979; Baum 1988-89, 2003). As Morin (1989) notes, more Americans can name the judge on the television show “The People’s Court” (Judge Wapner) than can name a member of the U.S. Supreme Court (an oft-cited finding that has become part of the conventional wisdom about courts and their publics). If in fact Americans know nothing about law and courts, then there may be limited value to a survey of people’s perceptions of and reactions to judicial campaigns.¹⁹

On the other hand, in some of our earlier work on attitudes toward the U.S. Supreme Court, we demonstrate that, if asked the correct questions, knowledge of law and courts is remarkably high. For instance, Gibson, Caldeira, and Spence (2001) report that fully 73 % of a representative sample of the American people know that U.S. Supreme Court justices are appointed to their position. Two-thirds realize that Supreme Court justices serve for a life term, and 61 % are aware that the Court has the “last say” on the constitution. Furthermore, roughly two-thirds of the American people know that the Court has made rulings on the right to have abortions and on the rights of black Americans. Nearly 80 % know that there is an African American on the Court, and 88 % of those can identify Clarence Thomas as the justice. Similar numbers know that the Court has a woman on the bench, with 77 % of those respondents able to identify Sandra Day O’Connor as a female Supreme Court justice. It is certainly true that most Americans cannot name a single member of the U.S. Supreme Court when asked to do so in an open-ended question (i.e., the respondent is entirely responsible for generating the name, as in the American National Election Study), but difficult questions such as

¹⁹Kritzer and Voelker note that court systems in a number of states have commissioned public opinion polls “with an eye toward finding ways to improve the quality of service delivery and public support” (1998, 59). So obviously the court systems themselves believe that the views of their constituents are important and not entirely void of content.

these vastly under-estimate the level of information people hold about their legal system. Americans apparently know far more about their courts than most scholars realize (and this may be in part due to the advent of descriptive representation on the courts).

Moreover, the new style of judicial campaigning may well change entirely the degree of attentiveness of Americans to their state courts.²⁰ Before the Supreme Court ruling in *Republican Party of Minnesota v. White* (2002), Americans could hardly be faulted for failing to pay attention to insipid and vapid judicial campaign messages. Now, however, campaigns address eye-catching issues such as tort reform, crime and criminal justice, and charges of being “bought” by special interests. It would not be surprising to find therefore that this sea-change in the style of campaigning is associated with a concomitant rise in the salience of state judiciaries.²¹

Summary: Thus, to address the impact of the new-style of judicial elections on the legitimacy of law and courts in the American states requires a pre- / post- research design centered on a politicized judicial election. Such a design is described in the next section of this proposal.

RESEARCH DESIGN

In this section of the proposal, I address the means by which data can be collected to address the

²⁰Hojnacki and Baum (1992) demonstrate that even in the 1980s in Ohio, at least some judicial races were extremely salient to voters (e.g., almost as salient as the race for the U.S. Senate, p. 927). The essential ingredient for making voters aware of these contests is clearly having the money necessary for advertising in the mass media. And as I note below, the survey contemplated by this proposal will ask about campaign ads respondents had an opportunity to see since the actual ads broadcast (collected by the Brennan Center/CMAG) will be available and will inform that construction of the survey questions.

²¹For whatever it is worth, I note that the 2001 national survey of registered voters conducted by the Justice at Stake Campaign asked a variety of questions about the performance of state judges and courts, with only tiny proportions of “don’t know” answers given by the respondents. It is also interesting to note that fully three-fourths of the respondents claim to “almost always” or “sometimes” vote in judicial elections, and over half of the total sample asserted that they had either “some information” or “a great deal of information” about the candidates in the last judicial election in the state.

important theoretical issues raised by politicized judicial election campaigns.

Site Selection: Ideally, this project would be executed in several states so as to allow examination of the effects of system-level characteristics on elections and institutional legitimacy. For instance, one might reasonably be interested in comparing states with partisan, non-partisan, and retention elections, since the type of electoral system most likely influences the nature of judicial campaigns (as well as the substantive decisions judges make – see Hall 2001).

But due entirely to cost considerations (i.e., the “sticker shock” that reviewers at NSF often experience), the proposal budgets for only a single state.²² Additional states can easily be added to the extent that this project is judged worthy and program funds are available.²³

We have conducted a systematic review of state judicial elections to be held in the next few years. I first decided to focus on contests in 2006, in November, since these are the types of elections most likely to generate popular interest and attention.²⁴ The next criterion involves the number of judges running for election, and especially the likelihood that some races will be “open” (i.e., without an incumbent running). Finally, expert judgments as to whether the elections are likely to be competitive will also be used to select the research site(s).

²²In political science, some of the most important empirical and theoretical findings have been generated by studies of limited geographical scope. Perhaps no better example can be provided than the numerous Huckfeldt and Sprague findings based on a sample of residents of South Bend, Indiana. In studies of law and social science, having representative samples of the entire nation are actually the exception rather than the rule. See for instance the quite influential work of Ewick and Silbey (1998).

²³Were NSF only able to fund this research in a single state, I would seek funding elsewhere for the addition of more research sites. NSF funding would provide influential leverage in raising additional resources for a multi-state study.

²⁴Of course, site selection criteria can limit the generalizability of the findings, and doing the survey in several states would broaden the external validity of the research. As the same time, however, one would not want to “waste” a great deal of resources conducting this research in a state in which judicial elections are of very low visibility. So trade-offs are always required.

Texas presents an interesting possibility as a research site.²⁵ As of the beginning of 2005, the 2006 election for the Texas Supreme Court will involve three incumbents (Jefferson, Hecht, Owens) and two open seats (position #4 and #8).²⁶ But Texas also has a nine-member “supreme court” for criminal appeals (The Court of Criminal Appeals of Texas). Three of the incumbents on the court will be on the 2006 ballot (Holcomb, Hervey, and Keller), and of course additional vacancies between now and 2006 may materialize.²⁷ Thus, it is certain that at least eight races for the Texas supreme courts will take place in 2006.²⁸ From the point-of-view of descriptive representation (which I hypothesize raises the visibility of elections), it is noteworthy that black, Hispanic, and female candidates will be standing for election/re-election in 2006 in Texas.²⁹

²⁵Earlier research on judicial politics in Texas includes Jackson and Riddlesperger 1991, Thielemann 1993, Champagne 1986, 1988, 2000, and especially Champagne and Cheek 2002 and Cheek and Champagne 2004. Thielemann reports that in the 1988 elections for the Texas Supreme Court, the average total contributions to the 11 candidates was \$820,000 (1993, 475). See also Becker and Reddick 2003. See also the bar-sponsored poll of public attitudes toward the Texas judiciary conducted in 1998: <http://www.courts.state.tx.us/publicinfo/publictrust/index.htm#resident> [accessed 12/27/2004]. Obviously there will be advantages to repeating some of the questions from that survey to determine how opinions (in the aggregate) may have changed over time.

²⁶Given past practices, it seems likely that the governor will make interim appointments for these positions so these seats might not be entirely open. However, other seats (e.g., Priscilla Owens’) may be.

²⁷Much has been written about the tension between deciding fairly in death penalty cases and facing the wrath of an enraged constituency (e.g., Bright and Keenan 1995). As important as these issues are, the missing ingredient in criminal cases is typically interest groups willing to spend large sums of money. (The exception, of course, is the retention election in 1986 for the justices voting against the death penalty in California— see, for example, Wold and Culver 1987.) Issues of civil litigation invariably attract the big money. Indeed, the races for the Court of Criminal Appeals can provide an interesting contrast to the Texas Supreme Court contests since, historically, criminal court judges have attracted few campaign contributions and have therefore spent little money on advertising (see Schotland 2001, 881).

²⁸Hall reports (2001, 320) that Texas is the third most competitive state when it comes to state Supreme Court elections, trailing only Pennsylvania and Ohio.

²⁹Note as well that the Texas Supreme Court amended the Texas Code of Judicial Conduct in August 2002 to conform it with *Republican Party of Minnesota v. White* (2002), thereby allowing Texas judges and candidates for judicial office to discuss policy issues. See <http://www.supreme.courts.state.tx.us/MiscDocket/02/02916700.PDF> [accessed 12/31/2004]

At present, of course, it is unclear how many of these seats will be seriously contested, and this is one reason why I have not selected the specific state for this analysis. To ensure that the research site presents the greatest utility for testing the theory, I plan to empanel a three-person Advisory Board immediately after this proposal is funded.³⁰ The purpose of the board is to ensure that experts on state judicial elections agree that the choice of state(s) is the most theoretically and empirically fecund.

But have the Texas high courts already lost their legitimacy? It may be that the Perfect Storm has already swamped Texas and therefore that mass legitimacy has already been compromised. Although this is the sort of question I want the Advisory Board to address, some limited evidence indicates that earlier campaigning for the high courts of Texas have not eroded legitimacy. Though the questions used are certainly of limited value, a 1998 survey conducted by the Texas Supreme Court, the Texas Office of Court Administration, and the State Bar of Texas, indicated that most Texans had positive views of the Texas courts, with only 27 percent holding negative impressions. A large majority believe they would be treated fairly if they had a case before the Texas courts.³¹ A large majority (70 %) also preferred that judges be elected by the people (see Texas Office of Court Administration 1998, 1999). Thus, at least some evidence indicates that Texas judicial elections have not had a deleterious effect yet on court legitimacy (although all evidence is of course prior to the Supreme Court decision in *Republican Party of Minnesota v. White* (2002)).

Campaign Advertisements for State Courts of Last Resort. This project takes advantage of a relatively recent development in the analysis of campaigns for public office — the ability to capture

³⁰I hope that the Director of the Law and Social Sciences Program would also serve on this panel.

³¹Perhaps a surprising finding from this survey is that fully three-quarters of the sample had been in a Texas courtroom at some point in their life (mainly for jury duty). Moreover, fully 83 % of the total sample correctly answered that most judges in Texas are elected by the people.

campaign advertisements from the public airwaves.³² The Brennan Center at the NYU Law School analyses these and makes them available on their web sites during the course of the campaign.³³

Many uses can be made of these data. First, it will possible to know how many advertisements were actually produced and aired for each candidate. Second, the content of these ads will be analyzed, as in determining whether each ad is potentially threatening to the legitimacy of the state judicial and legal systems. Third, since the ads identify the organizational sponsor, I will be able to identify which interest groups are actively participating in the election. Finally, our survey questions will be specifically tailored to the ads running in the media market in which the respondent is located.³⁴ These data are thus an invaluable (and unprecedented) addition to this project.

The Survey: To address effectively the issues motivating this research a panel survey is essential. The value of a panel survey is that it allows the assessment of individual change over time (something not possible with repeated cross-sections³⁵), and the crucial dependent variables (the perceived legitimacy of state law and courts) are measured outside the campaign season (and thus are

³²These data are collected by CMAG and distributed by the Brennan Center. As part of the litigation before the U.S. Supreme Court on the Bipartisan Campaign Reform Act, I extensively analyzed these data, and therefore have great familiarity with how they might be most effectively used.

³³During the 2004 election season, The Brennan Center released weekly, real-time reports on television advertising in state Surpeme Court elections. For details, see http://www.brennancenter.org/presscenter/releases_2004/pressrelease_2004_0908.html . However, according to my discussions with Deborah Goldberg at the Brennan Center, it is entirely unclear that the Center has plans to do so again during the 2006 campaign season. Thus, I have included in the budget funds for the purchase of these data directly from CMAG in 2006.

³⁴And, in a similar fashion, it will be possible to identify those respondents exposed to no campaign advertisements. By doing so, the effects of such ads can be more precisely estimated by excluding those respondents who were not exposed to the campaigning. Of course, care must be taken with this strategy since newspaper reports, radio advertisements, cable tv, and other information sources are not captured with this research methodology. Nonetheless, this will be one of the first studies ever that will be able to include reality, perceptions of reality, and reactions to reality within a single research design.

³⁵This point is made and illustrated in the context of analysis of both cross-sectional and panel data on anti-Semitism in Russia in Gibson and Howard 2004.

not contaminated with variance properly assigned to the independent variables – the campaign stimuli). Since the central hypotheses of this research concern the effects of campaigns on individual citizens, no other research design would produce probative data.

The survey contemplates interviews in January 2006, October 2006, and January 2007.³⁶ In the first interview, we will measure a variety of attitudes toward the legitimacy of law and courts, including 1) the degree to which legitimacy is extended to the state high court and to the state legislature³⁷; 2) attitudes toward the rule of law³⁸; 3) attitudes toward various types of judicial selection systems, including expectations and preferences regarding judicial independence and the accountability of courts³⁹; 4) knowledge and awareness of law and courts (e.g., Gibson, Caldeira, and Spence 2001a); 5) experimental vignettes (see below); and 6) a variety of demographic and experiential variables.⁴⁰ The initial interview will last approximately 20 minutes.⁴¹ Because institutional

³⁶If the survey is conducted in Texas, a Spanish version of the questionnaires will be produced. I have had extensive experience in constructing multilingual questionnaires (e.g., in South Africa, my surveys are conducted in as many as eight languages – see Gibson 2004a), and have always found the process recommended by Brislin (1970), with some modifications, to be extremely effective and useful. See also Behling and Law 2000. One advantage of focusing on a limited number of states is that different Spanish dialects will not have to be used, as they must in national surveys (e.g., Texas is overwhelmingly Mexican-American Spanish).

³⁷On the value of cross-institutional analysis, see Gibson, Caldeira, and Spence forthcoming, and Gibson and Caldeira 1998.

³⁸The rule of law continuum is conceptualized as ranging from universalism to particularism. For my earlier efforts on measuring this concept see Gibson 2004a, Chapter 5; Gibson 2003; Gibson and Gouws 1997; and Gibson and Caldeira 1996.

³⁹Some of the questions we used to measure expectations and perceptions of the European Court of Justice have proven to be useful. See, for example, Baird 2001.

⁴⁰This proposed survey differs considerably from the survey we conducted in 2001 in the context of the litigation over the presidential elections (e.g., Gibson, Caldeira, and Spence 2003b). Nonetheless, that questionnaire (see <http://artsci.wustl.edu/~legit/jancodebook2.pdf> [accessed 12/29/2004]) illustrates how much can be accomplished within a 20 minute inter-view.

⁴¹The first and second surveys will be subjected to formal pretests (including, as is always my practice, extensive statistical analysis of the pretest data). The third instrument will not, since it will be

legitimacy is so central to this research, an overview of its measurement might be useful.

Measuring Institutional Legitimacy. We have written extensively on how the legitimacy of courts ought to be measured⁴², with our most recent thoughts on the matter published in 2003 in the *American Journal of Political Science* (Gibson, Caldeira, and Spence 2003c). In that article, we discuss alternative measures of attitudes toward courts, and then we present a useful measure of loyalty toward (or institutional support for) high courts.⁴³ The six indicators we use to measure institutional loyalty are:

If the U.S. 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 Supreme Court to decide certain types of controversial issues should be reduced.

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

The decisions of the U.S. Supreme Court favor some groups more than others.

The U.S. Supreme Court gets too mixed up in politics.

The U.S. Supreme Court should have the right to say what the Constitution means, even

comprised of questions already asked (in order to assess individual-level change). An exception, of course, would depend upon whether a new experiment is included in the third interview.

⁴²Generally, this research has found its way into the best political science journals. See our earlier work on measuring and analyzing institutional legitimacy — for examples, Gibson 2004a, Gibson, Caldeira, and Spence forthcoming, 2003b, 2003c; Gibson and Caldeira 2003d, 1996; and Gibson, Caldeira and Baird 1998.

⁴³It is probably obvious by this point, but we equate several terms: institutional legitimacy, diffuse support, and institutional loyalty. This is the same concept Caldeira and Gibson (1992) refer to as “institutional support.” For a full explication of the conceptual and theoretical meaning of this concept see the discussion in Caldeira and Gibson (1992, 636-642). Here, I provide only an overview of the conceptualization since this is well-trodden territory.

when the majority of the people disagree with the Court's decision.

Because this project (like any project measuring change) profits so greatly from measures of high reliability and validity, the existing indicators will be supplemented with at least an equal number of new questions.⁴⁴ Most likely, these measures will address support for extreme forms of “court curbing” — as in sharply reducing and restricting the jurisdiction of the courts, reducing their independence, and schemes such as “court packing.” The new measures will be extensively pretested and vetted prior to the initial survey.

Experimental Vignettes. My colleagues and I have devoted considerable effort to using experimental vignettes embedded in representative surveys to understand various aspects of socio-legal processes.⁴⁵ One primary advantage of the methodology is that it allows strong claims to both internal validity (strong causal inferences) as well as external validity (generalizability – see Gibson, Caldeira, and Spence 2002a). With these strengths, it is hardly surprising that experiments embedded in representative surveys are now quite the rage in political science.

In the State Court Legitimacy Survey, a vignette will be designed to address the issue of the impact of campaigning on the perceived fairness and impartiality of the judiciary. Though the vignette is not yet developed, it will most likely examine the conditions under which various types of campaign activity detract from perceived judicial impartiality. Crucial here are such independent variables (i.e., experimental manipulations) as campaign contributions, the use of so-called attack

⁴⁴Obviously, one reason for maintaining the original indicators is to be able to compare to earlier research on the legitimacy of courts in the U.S. and throughout the world. In the context of the U.S. Supreme Court, we speculated that: “The development of additional measures might focus on (a) punishing the justices and the institution for the decisions it makes, (b) other radical alterations in the institution (e.g., making the justices directly accountable to the president through fixed, renewal terms), and (c) general statements about how much leeway the institution should be given before holding it accountable for its decisions” (2003c, 364).

⁴⁵For an acclaimed example of the use of vignettes in surveys see Gibson 2002a.

ads, and the degree to which judges are seen to prejudge issues likely to come before their court.⁴⁶

Vignettes require extensive developmental work and multiple pretests; this will be one of the primary activities for the Fall of 2005.

Subsequent Interviews. The second interview, to be conducted during the last few weeks of the election campaign, will focus primarily upon the independent variables in the research — perceptions and judgments of the election. For example, several questions will assess exposure to and evaluation of judicial campaign ads. In order to understand more fully how judicial campaigning affects attitudes, questions will also be asked about the state-wide races taking place at the time of the election. I anticipate that this interview will last on the order of 15 minutes.

The final interview will be conducted approximately one year after the initial interview (January 2007). This interview will repeat most of the questions from the initial survey (so as to be able to assess individual-level change), as well as asking retrospective questions about the election (e.g., perceptions of the fairness of the outcome). This interview will last approximately 20 minutes. It may be that sufficient time will be available on this interview (e.g., demographic variables will not need to be re-collected) that a new experiment can be included in this survey, based on issues that arise during the 2006 campaign.

A host of challenging technical issues surrounds survey research these days, so it is fortunate that I have had extensive experience with every aspect of survey design and implementation, in the

⁴⁶For instance, Friedland (2004, 564) discusses how the following three campaign statements by a judge differ with regard to the due process rights of litigants.

I don't think there is any constitutional right to same-sex marriage.

If elected, I promise to interpret our state constitution as protecting a right to physician-assisted suicide.

We can't let terrorists and the fear they create tear our society apart. We need to elect judges, like me, who will worry less about the Constitution and more about locking up suspected terrorists.

We must put our safety first.

Whether statements such as these affect the perceived impartiality (and hence legitimacy) of courts can be readily and rigorously investigated through experimental vignettes.

United States and elsewhere throughout the world. Perhaps the single most important issue to address within the confines of NSF space limitations is the projected response rate for the survey.⁴⁷

Response Rates. Response rates in the United States are plummeting, causing concern about representativeness⁴⁸ and substantially increasing the costs of surveys. In this instance, several measures will be taken to boost the response rate as much as possible: (1) incentives will be paid to the respondents⁴⁹; (2) between the first and second interviews, efforts to maintain contact information for the respondents will be implemented; (3) a large number of callbacks will be used in order to contact the respondents. In addition, post-stratification (which has become commonplace in survey research) will be employed to weight the data. Our target response rates (using AAPOR definitions of the rates) are 50 % for the initial survey, and 70 % for the two subsequent followup interviews. I have imposed a goal of 1,000 subjects interviewed in all three surveys. With these response rates, the initial sample size must therefore be 2,041.⁵⁰

Analysis. I have had considerable experience with analyzing panel survey data (e.g., Gibson 2002b; Gibson and Gouws 2003), but proposal space constraints allow only the most cursory discussion of

⁴⁷I should note that I teach Survey Research at the advanced graduate level at Washington U.

⁴⁸However, in a widely cited article, Keeter et al. (2000) demonstrate that extraordinary efforts to boost response rates in fact generate results that are little more representative than samples created through ordinary efforts. See also Curtin, Presser, and Singer 2000, Merkel and Edelman 2002, and Groves, Presser, and Dipko 2004.

⁴⁹Singer, Hoewyk, and Maher (1998) show that providing incentives has few negative consequences for survey responses.

⁵⁰By way of comparison, the highly influential *Political Action* Panel reported response rates ranging from 65 % in The Netherlands to 40 % in West Germany (Jennings, van Deth, et al. 1989, Table A.1, 376). Gibson (1996) reports analysis of Russian and Ukrainian panel data based on a response rate of 52 %, and Gibson and Caldeira (1996, 1998) analyze panel data with a rate of between 30 % and 76 % across the countries of the European Union.

how these data will be analyzed.⁵¹ Generally, speaking the analysis will take the following form.

$$Y_{t3} = a + b_1 Y_{t1} + b_2 X_{t2} + b_3 (Y_{t1} \cdot X_{t2})$$

where Y_{t3} = respondent attitudes and attributes at time 3

Y_{t1} = respondent attitudes and attributes at time 1

X_{t2} = respondent exposure to and perceptions and evaluations of campaign advertisements

$Y_{t1} \cdot X_{t2}$ = the interaction of time 1 predispositions and time 2 perceptions (since many relationships are surely conditioned by the degree of exposure, etc., to campaign advertisements).⁵²

A variety of other statistical methods will be used (selection bias models, where the selection criterion is exposure to campaign material – see Gibson, Caldeira, and Spence 2002), LISREL and Confirmatory Factor Analysis (since multiple indicators will be used for the various concepts), Two-Stage Least Squares (to dissect reciprocal causality – see Gibson 2004a, 2004b, 1996), experimental methods (e.g., Gibson 2002a), and Structural Equation Modeling (e.g., Gibson 2002b).⁵³

Data Dissemination and the Research Community: This is obviously a large project that will take a number of years to complete. Therefore the standard practice of making the data available to the research community only after the project is finished seems inappropriate. Consequently, I am making a fairly bold proposal regarding the dissemination of the data collected. *I pledge to make each wave of the panel study available to the research community within six months of the end of the*

⁵¹A host of technical issues are implicated in panel analyses, such as panel attrition, post-stratification, and complex weighting. Since I have always weighted data myself (rather than relying on weights produced by survey firms), I have had considerable direct experience with all of these issues.

⁵²As Granato and Wong (2004) argue, campaign material is most likely to influence citizens whose attitudes have not yet crystallized. Given the relatively low salience of judicial elections, it therefore seems likely that judicial races are ones in which campaigning is likely to have the greatest effect on attitudes. However, as Zaller (1991) and McGuire (1986) have argued, a tension exists here between getting the attention of citizens and changing their attitudes.

⁵³Of course, prior to the analysis of the central hypotheses of this research, a variety of issues of measurement must be addressed. I have had considerable training in and experience with psychometrics.

field period. I do this as a resource to the law and social science community, and due to the considerable cost of this project. I will release the data through the project web page, and will announce the availability of the survey through various list-servers.

Participant Interviews. Over the course of this project, I will also attempt to interview the candidates for judicial office, as well as the leaders of interest groups active in the campaigns. These telephone interviews are unlikely to produce a great deal of systematic data, but they will likely add at least some context to the book to be written about the project. For instance, after the election, it is possible that some of the candidates might be willing to discuss their campaign strategies as well as their own perceptions about the impact of the campaign on the legitimacy of law and courts.⁵⁴

Washington University in St. Louis has agreed to give me a one-course reduction in the Fall of 2006 should this proposal be funded. This will allow me sufficient time to concentrate most of my efforts on monitoring the election. My teaching will consist of a single graduate seminar which will concentrate entirely on “The Politics of Selecting Judges in the American States.” Seminar participants will work on various aspects of the problem of judicial accountability and independence.

RELATIONSHIP TO OTHER WORK IN PROGRESS

This research reflects the confluence of several of my research interests. Obviously, I have thought and written extensively on the legitimacy of law and courts, in a variety of contexts. I have also had broad experience analyzing data on campaign advertisements. In the past several years, I have conducted roughly two dozen public opinion surveys, including panel surveys in Western Europe,

⁵⁴During the course of the 2006 election, I will also conduct a web-based survey of Texas law professors. The survey will focus on the preferences, expectations, and perceptions relative to the elections and judicial selection systems in general. For instance, the professors will be asked a variety of rating questions, as in rating the professional qualifications of candidates, the nature of the campaign they mount, etc. The value of these data is similar to that of typical expert-judgment surveys.

Russia, and South Africa. My research has long sought to understand the interaction of contextual and individual-level factors in politics; in this research, campaigns for state judicial office is a crucial contextual variable. Finally, the project I am just finishing now (on historical land dispossessions in South Africa) is a survey-based study (elite and mass samples) concerning a variety of issues of popular conceptions of justice and the adjudication of conflicts among justice principles. This grounding in the psychology of justice judgments and legitimacy is directly relevant to the justice and impartiality component of this proposed research.⁵⁵

RELATIONSHIP TO NSF EVALUATION CRITERIA

According to NSF's Grant Proposal Guide, research proposals are to be judged according to two criteria: (1) "What is the intellectual merit of the proposed activity?" (2) "What are the broader impacts of the proposed activity?" It is appropriate to address these issues directly and explicitly (albeit, summarily).

Intellectual Merit. Legitimacy Theory is a crucial component of contemporary thinking about the role of courts in American society, ranging from macro-level theories about the ability of courts to bring about social change (e.g., Rosenberg 1991) to micro-level theories about the willingness of citizens to comply with law (e.g., Tyler 1990), and broader issues of judicial independence and accountability (e.g., Kramer 2004; see also Friedman 2004). In a divided society like the U.S., courts must be able to persuade people to accept outcomes with which they strongly disagree, and most

⁵⁵Among social and political psychologists, the psychology of legitimacy and justice have become terribly important and interesting research questions. On the former, see Jost and Major 2001. Miller 2001 describes how the justice sub-field has emerged. See also Sanders and Hamilton 2001 for legal applications of justice theory. Note also that I will give the Keynote Address at the "Justice Preconference" at the Society for Personality and Social Psychology Annual Meeting, New Orleans, January 20-22, 2005. See Gibson 2005.

scholars acknowledge that legitimacy is a crucial component of that process.⁵⁶

In addition, research on the state courts is becoming increasingly sophisticated and prominent (e.g., Hall 1987, 1992, 1995, and especially 2001; Brace and Hall 1995; Brace, Langer, and Hall 2000), as befits the growing importance of these institutions in the American political process. Indeed, the entire issue of the consequences of methods of selecting judges is central to the Law and Society field.⁵⁷

Finally, no research of this rigor and scope has ever been conducted on the origins of judicial legitimacy (more broadly) and the impact of campaigning on legitimacy (specifically). Indeed, while some research has analyzed the influence of exogenous events (e.g., court decisions) on attitudes toward courts (e.g., Hoekstra 2003), I know of no empirical projects examining the influence of electoral campaigns on institutional legitimacy. And undoubtedly, the research design itself is entirely unprecedented, ranging from the three-wave panel survey to the use of CMAG data on actual broadcast advertisements.⁵⁸ Finally, the timing of this project is propitious, in part because various forces have come together to create sea changes in state judicial campaigns, and in part because to wait much longer to initiate research such as this risks *post-ceding* rather than preceding any changes

⁵⁶Courts are typically said to have neither the power of the “purse” (control of the treasury) nor the “sword” (control over agents of government coercion). Thus, courts are unusually dependent upon voluntary compliance with their rulings. In several papers, we have investigated the relationship between perceptions of institutional legitimacy and willingness to accept unfavorable court decisions. See Gibson 2004a, 1991; Gibson, Caldeira, and Spence forthcoming; and Gibson and Caldeira 2003d, 1995.

⁵⁷I might add that I am currently directing the dissertation of a student (Marc Hendershot) who is analyzing the selection process for federal District Court and Circuit Court of Appeals judges.

⁵⁸I realize that Hojnacki and Baum report analysis based on a three-wave “partial panel design” (1992, 930). The difference between their design and mine is that their first-wave interview was conducted in context of the election, so that information about voter attributes well prior to the election is not available. Neither did their article focus on individual-level change, nor on institutional legitimacy.

in the legitimacy of these institutions.⁵⁹

Broader Impact. Of course, the central question of this research — whether the new style of judicial campaigning threatens the legitimacy of state judiciaries — is of enormous practical import. In the Supreme Court opinions in *Republican Party of Minnesota v. White* (2002), several justices complained that the root problem with the state judiciaries is not campaign styles, but the very method of using elections to select judges. Attacks on state systems of electing judges are likely to intensify in the near future.⁶⁰ This research will make terribly important theoretical and empirical contributions to that debate.⁶¹

Though normative considerations are typically outside the purview of an NSF proposal for scientific research, I should mention that the issues addressed in this research are intensely debated on normative and ideological grounds. The debates focus on the tension between judicial accountability and the independence of the courts (e.g., Hall 2001; Baum 2003; Carrington 1998), two desiderata that seem to be locked in zero-sum competition, as well as on perceptions of liberals that a con-servative majority in the U.S. seeks to reign in judicial independence and subjugate judges to the will of the current majority. Much of that discussion makes various assumptions about factual matters (e.g., the preferences of ordinary people); this project will therefore make an important

⁵⁹It is for this reason that a state like Ohio might not be the best choice for this type of research.

⁶⁰My graduate students and I have already begun collecting data on attempts in the states to replace elections as the method of selecting judges with an alternative system. As it turns out, since World War II, these are fairly common. For instance, in 2000 the Arkansas electorate voted to adopt Amendment 80, which formally changed Arkansas' judicial selection method from partisan to nonpartisan elections. But the referendum itself was a partisan affair. We have discovered instances in which changes from partisan elections were rejected (e.g., Ohio 1987), but no recent instances in which a state has changed *to* partisan elections. We anticipate that efforts to amend state constitutions on judicial selection will intensify as the “evils” of judicial elections become more widely perceived.

⁶¹Note that several graduate students have worked closely with me in preparing this proposal. My hope is that this collaboration will extend through the preparation of one or more dissertations.

empirical contribution to that debate (just as Hall's 2001 *American Political Science Review* article does).

RESULTS FROM PRIOR NSF SUPPORT

Though it may not seem so at first glance, this proposal is "most closely related" to my earlier NSF grant: "Reconciliation or Retribution?: The Effect of Truth Processes on Perceived Fairness and the Legitimacy of Law" (99-06576, \$264,501, 1999 – 2001). That project, based on face-to-face interviews conducted in 2001 with over 3,700 South Africans, sought to determine whether "truth" (the collective memory produced by South Africa's Truth and Reconciliation Commission) leads to "reconciliation." The relevance of that project to this current proposal is that "reconciliation" is conceptualized as a multidimensional concept comprised of political tolerance, support for human rights, interracial tolerance, and the extension of legitimacy to the political institutions of the new dispensation in South Africa. Thus, an entire chapter of the book produced by that research is devoted to the legitimacy of South Africa's parliament and Constitutional Court.

To date, the publications from this project include:

Gibson, James L. 2004. *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* New York:

Russell Sage Foundation. This book was also published in a paperback edition in South Africa by HSRC Press.

Gibson, James L. 2004. "Does Truth Lead to Reconciliation? Testing the Causal Assumptions of the South African Truth and Reconciliation Process." *American Journal of Political Science* 48 (#2, April): 201-217.

This article is the successor to a paper presented at the 2001 Annual Meeting of the American Political Science Association that received the *Sage Paper Award for the Best Paper in the Field of*

Comparative Politics Presented at the Annual Meeting of the American Political Science Association, 2001. Comparative Politics Organized Section, APSA.

Gibson, James L. 2004. "Truth, Reconciliation, and the Creation of a Human Rights Culture in South Africa." *Law and Society Review* 38 (#1): 5-40. [Lead article.]

Gibson, James L. 2002. "Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa." *American Journal of Political Science* 46 (#3, July): 540-556.

This article is the recipient of the McGraw Hill Award (recognizing the best journal article on law and courts written by a political scientist and published during the previous calendar year), 2003.

Law and Politics Organized Section, American Political Science Association.

Gibson, James L. 2004. "Overcoming Apartheid: Can Truth Reconcile a Divided Nation?" *Politikon: South African Journal of Political Studies* 31 (#2, November): 129-155. [Lead article.]

Papers currently under review or in process include:

Gibson, James L. 2004. "Do Strong Group Identities Fuel Intolerance? Challenges to Social Identity Theory From South Africa."

Gibson, James L. 2003. "Taking Stock of Truth and Reconciliation in South Africa: Assessing Citizen Attitudes Through Surveys." In *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*.

Gibson, James L. 2004. "The Truth About Truth and Reconciliation in South Africa."

Gibson, James L. 2004. "Enigmas of Intolerance: Fifty Years after Stouffer's *Communism, Conformity, and Civil Liberties*."

A number of convention papers and presentations from this project are reported in Section D, the Bibliography for this proposal.

The data from this survey have been archived at ICSPR (#4030). The data have also been

published and distributed (by the Institute for Justice and Reconciliation, in South Africa) as:

Gibson, James L. 2002. "Truth and Reconciliation Survey 2001." Compact Disk. Cape Town (South Africa): Institute for Justice and Reconciliation.

Finally, my research on democratization has just recently been recognized by Decade of Behavior Award (see <http://www.decadeofbehavior.org/index.cfm>)