Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court

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Conventional wisdom holds that the American people are woefully ignorant about law and courts. In light of this putative ignorance, scholars and other commentators have questioned whether the public should play a role in the judicial process—for example, whether public preferences should matter for U.S. Supreme Court confirmation processes. Unfortunately, however, much of what we know—or think we know— about public knowledge of the Supreme Court is based upon flawed measures and procedures. So, for instance, the American National Election Study, a prominent source of the conclusion that people know little if anything about the U.S. Supreme Court, codes as incorrect *the reply that William Rehnquist is (was) a justice on the U.S. Supreme Court; respondents, to be judged knowledgeable, must identify Rehnquist as the Chief Justice of the U.S. Supreme Court (which, of course, technically, he was not). More generally, the use of open-ended recall questions leads to a serious and substantial underestimation of the extent to which ordinary people know about the nation's highest court. Our purpose in this paper is to revisit the question of how knowledgeable the American people are about the Supreme Court. Based on two national surveys— using more appropriate, closed-ended questions—we demonstrate that levels of knowledge about the Court and its justices are far higher than nearly all earlier surveys have documented. And, based on an experiment embedded in one of the national surveys, we also show the dramatic effect of question-form on estimates of levels of knowledge. Finally, we draw out the implications of political knowledge for the degree to which people support the U.S. Supreme Court. Our findings indicate that greater knowledge of the Court is associated with stronger loyalty toward the institution. We conclude by reconnecting these findings to "positivity theory," which asserts that paying attention to courts not only provides citizens information, but also exposes them to powerful symbols of judicial legitimacy.*

One of the old chestnuts of political science is that the American mass public is remarkably ignorant of courts, including the U.S. Supreme Court. For instance, an oft-cited survey in 1989 reported that 71% of the respondents could not name a single member of the Supreme Court; in contrast, 54% of the same sample was able to name the judge on the television show "The People's Court" (Judge Wapner; see Morin 1989). Similarly, a Zogby poll found that 77% of the American people were able to identify two of Snow White's Seven Dwarfs; only 24% could name two Supreme Court justices.[1] Evidence of this sort is typically used to document—and decry—the public's woeful levels of knowledge when it comes to the judiciary.

Many important implications flow from the finding of widespread ignorance among the mass public. Some argue that analysts should therefore focus their energies mainly (if not exclusively) on the views and expectations of elite publics. Perhaps more politically significant are the often-heard pleas to reduce the role of the mass public in selecting judges—whether in the process of nominating and confirming federal judges at the national level or in the election of judges in the states. In this view, if the American people are irretrievably ignorant of law and courts, elites—preferably legal elites—should be given the task of determining who should, and should not, be a judge. Thus, a panoply of crucial political considerations rides on the back of the empirical finding of mass ignorance.

From a more theoretical vantage, an important finding from earlier research is that knowing about high courts goes along with enhanced esteem for the judiciary (e.g., Gibson, Caldeira, and Baird 1998). This is a robust finding, since it is based on surveys conducted in about two dozen countries (see Gibson

[1]See http://www.zogby.com/Soundbites/ReadClips.dbm?ID=13498 (accessed 12/20/2006).

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2008). From this perspective, low knowledge of courts is politically significant since it threatens the legitimacy of judicial institutions.

Even though widely accepted, the image of the American people as ignorant about courts rests upon a remarkably thin layer of empirical evidence. And, as we will demonstrate in this analysis, the measurement approach used to document mass ignorance is itself seriously flawed. Because, as we have suggested, important theoretical and policy implications flow from our understanding of the political competence of the American people in this realm, it is crucial that the empirical record be thoroughly examined and evaluated, and, if necessary, set straight.

Consequently, our purpose here is to revisit the question of the ignorance of the American mass public about the U.S. Supreme Court. In doing so, we rely primarily upon two data sets. The first is a nationally representative telephone survey conducted in early 2001 in the midst of the controversy over the Supreme Court's decision in *Bush v. Gore.* Because that survey most likely captures public knowledge of the Court at its apogee, we follow with a more extensive, nationally representative, three-wave panel study conducted in 2005–2006. The first interview in that panel (t_1, 2005) was conducted face-to-face; the follow-up interviews were via telephone during the debate over whether Judge Samuel Alito should be confirmed to the U.S. Supreme Court (t_2, 2006) and several months thereafter (t_3, 2006). We know of no other data bases that address the issue of knowledge of the nation's highest court in so thorough a fashion. (See Appendices A and B for the details of these surveys.)

Our contributions here go considerably beyond the quality of the data on which we rely. By using closed-ended indicators of judicial knowledge, we take a different operational tack than have many previous researchers. In doing so, we follow an extensive body of literature indicating that knowledge is more reliably and validly measured using closed-end multiple-choice questions (for a summary see Mondak 2006). Our empirical findings run deeply contrary to most extant research: the American people know orders of magnitude more about their Supreme Court than most other studies have documented. And, although knowledge of the Court was indeed particularly high during the litigation surrounding the disputed presidential election of 2000, our findings from the 2005 survey reveal only a slight diminution in the levels of information people hold about the Court. Moreover, knowledge is quite stable over time and does not merely reflect information gained (and perhaps not retained) during salient judicial controversies. Empirical findings such as these have never before been reported.

We also investigate how knowledge about the Supreme Court shapes attitudes and preferences. According to positivity theory, developed by Gibson and Caldeira (2009a), those who know more about the Supreme Court should be distinctive in the views they hold about courts and judges; the circumstances associated with higher levels of information and knowledge also contribute to the extension of legitimacy to the Supreme Court. This hypothesis we also test in this article.

We conclude by suggesting that the American people may be more competent than is ordinarily thought at performing the role in the socio-legal process assigned them by democratic theory. Those who lampoon ordinary people for their supposed ignorance and who would rearrange the legal system to compensate for this perceived incompetence ought, we submit, to consider carefully our arguments and results.

Assessing Public Information about the Supreme Court

A conversation with virtually any judge in the United States (and, in our experience, all judges in Europe) about whether judges ought to be politically accountable inevitably elicits the view that the American people know much too little about judges, law, and courts to be able to exercise their democratic duty to provide oversight (e.g., Kritzer 2001). Evidence is often marshaled to document the woeful levels of knowledge ordinary people have about things judicial and legal, and the conclusion typically drawn is that the legal system ought to be more insulated from that ignorance. Based on the belief that the American people are irretrievably ignorant when it comes to law and courts, a variety of interest groups has taken on the charge of limiting the role of the mass public in the legal system.[2]

Some have situated this critique of citizen ignorance within the larger context of intellectual and academic elitism. Lupia (2006), for instance, argues that contemporary criticisms of mass political ignorance are misplaced because research tends to focus on measuring what scholars think citizens *ought to know*, rather than what is practically *necessary to know* about politics. He asserts: "Until critics can offer a

[2]Many interest groups and organizations seek to minimize the role of ordinary people in the selection and retention of judges at both the state and federal levels. We count the American Bar Association in this group.

transparent, credible, and replicable explanation of why a particular set of facts is necessary for a particular set of socially valuable outcomes, they should remain humble when assessing the competence of others" (2006, 22).

Another important voice in dissent is that of Caldeira and McGuire (2005), who argue that public knowledge of courts is more nuanced and complicated than typically thought. For instance, citizens tend to know about court decisions of local interest and that directly affect them (e.g., Hoekstra 2000, 2003); highly salient controversies often penetrate the consciousness of the American people (e.g., contentious battles over nominations to the U.S. Supreme Court—see Caldeira and Smith 1996, and Gimpel and Wolpert 1996); and most black Americans know that Clarence Thomas is a justice on the U.S. Supreme Court. Thus, blanket indictments of the American people for knowing little or nothing about law and courts are far too simplistic.

As we have noted, one consequence of the belief that the American people are congenitally ill-informed is that many elites question whether ordinary people should play much role in the nomination and confirmation of justices to the U.S. Supreme Court. Perhaps more significant is that, according to positivity theory (e.g., Gibson, Caldeira, and Spence 2003), ignorance of the judiciary is associated with the failure to distinguish courts from ordinary political institutions; and the failure to acknowledge that courts are in some sense nonpolitical institutions undermines judicial legitimacy. Following our reconsideration of the empirical evidence on knowledge, we will have more to say about this theory; but a considerable body of research now documents the relationship between being knowledgeable about courts and extending those institutions respect and legitimacy (e.g., Gibson, Caldeira, and Baird 1998). Thus, if the conventional wisdom about Americans' political ignorance is wrong, myriad consequences for the structure and function of the judiciary follow. The empirical question of mass ignorance therefore has broad implications for normative theories of democracy and the American judiciary.

Empirical Evidence of Mass Ignorance

The Conventional Wisdom

How ignorant are the American people? A highly influential survey finding is the claimed inability of the American people to identify the (then) Chief Justice of the United States, William Rehnquist. The American National Election Study (ANES), for instance, regularly asks the following question: "Now we have a set of questions concerning various public figures. We want to see how much information about them gets out to the public from television, newspapers and the like." What about "William Rehnquist—What job or political office does he NOW hold?" This question is embedded in a list of other items asking about leaders such as Dennis Hastert, Dick Cheney, and Tony Blair. In the postelection survey of 2004, only 27.9% of the respondents correctly identified Rehnquist as the Chief Justice, a figure that compares dismally to the Vice President (84.5%) and Tony Blair (62.0%), although it is considerably higher than the percentage able to identify Dennis Hastert as Speaker of the House (9.3%). If the American people cannot get such basic and elementary facts right, how can they be trusted to select their political and legal leaders and hold them accountable for their actions?[3]

Beyond the ANES data are a number of studies by the mass media and interest groups, all of which point to low levels of information and knowledge.[4] For instance, according to a survey conducted by Findlaw in 2005, only 43% of the American people can name at least one justice who was serving on the U.S. Supreme Court at the time.[5] Unfortunately, however, details on the methodologies of such studies are rarely presented—for example, it is not clear whether these results are in response to an open-ended or closed-ended question—rendering suspect the value of such polls.

In general, the research literature on the legal and judicial knowledge of Americans is not particularly robust. By any accounting, the recall approach, on which so much rides, suffers from a number of striking flaws and limitations. Open-ended questions requiring the recall of factual information are among the most demanding measures of political knowledge (Lupia 2006). No frame of reference is provided. Or

[3]It is fairly common to find law review articles that cite the ANES findings as evidence of the deplorable ignorance of the American people about the judicial process. For examples, see Herzog (2005), Gewirtzman (2005), and Somin (2004).

[4]For a collection of polls on knowledge of the Supreme Court, see William Ford's blog at http://www.elsblog.org/the_empirical_legal_studi/2006/02/supreme_court_a.html [accessed 12/20/2006].

[5]According to the survey, Sandra Day O'Connor is the most widely recognized justice, with 27% of the sample able to recall her name. The new Chief Justice Roberts was recalled by only 16% of the respondents. See http://public.findlaw.com/ussc/122005survey.html (accessed 10/22/2006).

worse, as in the entire ANES survey, the interview is defined by a partisan/political context—and therefore we wonder whether the frame of partisan politics makes it difficult for some to switch from that context to a single individual associated with the judicial system.

But these are not the only limitations plaguing this approach to measuring political knowledge. Most worrisome, in one instance, the ANES required its interviewers to code the accuracy of the respondents' answers to the knowledge question during the interview itself,[6] apparently using quite stringent criteria.[7] Thus, if one replies that William Rehnquist is "the Chief Justice of the U.S. Supreme Court," the interviewer would, according to ANES coding rules, record the answer as "correct" (even though the official title of the leader of the Court is the "Chief Justice of the United States"). Also according to the ANES rules, references to Rehnquist as a Supreme Court judge who is the head honcho or main guy or the main one are scored as incorrect.[8] According to these strict procedures, only 10.5% of the respondents "correctly" identified Rehnquist in the 2000 ANES.

In addition to the closed-ended responses, however, the interviewers recorded the respondents' verbatim answers in all years except 2004. These responses are of some interest for assessing the degree of knowledge people have about politics and the national judiciary. For instance, if one were to accept answers in the 2000 ANES that identify Rehnquist as a Supreme Court judge/justice without reference to his role as Chief Justice, the figures change dramatically: An additional 22.5% of the respondents fall into this expanded knowledgeable category.[9] If identifying Rehnquist simply as a judge is counted as correct, this percentage grows even more. It is still true that a majority of the respondents cannot say what Rehnquist's job is in response to the open-ended query, but the way the ANES codes this variable significantly underestimates the knowledge of the American people.[10] Indeed, by our analysis of the open-ended ANES data, 71.8% of the respondents coded as giving incorrect replies (this excludes the sizeable portion of respondents saying they don't know Rehnquist's job) could be considered to have given "nearly correct" answers. Of these 349 respondents, 91 identified Rehnquist as a Supreme Court justice, 54 as a Supreme Court judge, and for 61 the only recorded reply was "Supreme Court." Indeed, the ANES data are so problematic that we conclude that they support only the simplest and grossest inferences (e.g., we are prepared to accept the conclusion that more Americans can recall the name of the Vice President than the Chief Justice of the United States).[11]

Moreover, from the more general vantage of survey research, open-ended questions such as these constitute rigorous and difficult tests of public knowledge. A more reasonable, perhaps fairer, approach is to determine whether people can *recognize* the names of justices, rather than whether citizens can be *remember* their names (e.g., Tedin and Murray 1979).[12] After

[6]According to an e-mail communication with Pat Luevano of ANES (January 31, 2007), in nearly all surveys since 1986, the ANES interviewers were required to record the verbatim responses of the interviewee. These replies were then coded as correct or incorrect by either SRC or ANES staff. In 2004, however, in-the-field coding by interviewers took place. The coding instructions were:

"We are strict regarding acceptable answers: We will accept ONLY 'Chief Justice'—'Justice' alone is definitely *NOT* acceptable. (The court must be 'the Supreme Court'—'Chief Justice of the Court' won't do. Note: applies only if R would specifically say 'the Court,' a rare phrasing, rather than 'the Supreme Court'). If unsure whether correct, code as best you can and record R's response as a remark."

According to Luevano, very little verbatim material was recorded in 2004, so it is not possible to review the coding decisions of the interviewers.

[7]Jeffery Mondak in a personal communication first suggested to us that there might be considerable coding problems in the ANES data (see also Mondak 2001).

[8]Moreover, the interviewers are told that the "DK KEY IS NOT ALLOWED FOR THIS QUESTION" but in fact large numbers of respondents are recorded as making "no attempt to guess," and virtually every respondent has successfully claimed a *de facto* "don't know" reply prior to hearing the Rehnquist question. Thus, with this approach to measuring knowledge, error variance is introduced because the respondents differ in their understandings of the availability of the "don't know" option with any given question in the interview.

[9]This analysis is based upon our categorization of the open-ended replies recorded by the interviewers. Dave Howell at ANES was quite helpful in providing the data necessary to conduct this analysis.

[10]It is not clear to us how seriously the interviewers took the instruction to record the verbatim responses, since there seems to be considerable variability across respondents in the amount of detail noted. Consequently, we doubt that these open-ended data can be subjected to a sustained, serious analysis, even if one can have substantial confidence in the general conclusion that the ANES estimates of political knowledge are quite biased.

[11]The leaders of the ANES have recognized the difficulties with their past efforts at coding the responses to open-ended questions (the knowledge items and others as well) and have issued a statement on the matter. See http://www.electionstudies.org/announce/newsltr/20080324PoliticalKnowledgeMemo.pdf.

[12]Prior and Lupia (2006) show that open-ended measures of knowledge significantly under-estimate the true levels of information within the mass public. Their experiments reveal that respondents register much higher knowledge scores if (a) an incentive for giving the correct answer is provided (thereby encouraging the respondents to devote more energy to trying to answer the questions), and (b) knowledge is reconceptualized not as the ability to recall facts from memory, but rather as the ability to find information by consulting reliable sources.

all, it is difficult to envisage an actual political scenario in which it would be necessary for citizens to be able to recall a judge's name without any prompting. The external validity (or "mundane realism"[13]) of the ANES measure is low in the sense that the question seems to posit a set of circumstances that is quite foreign to the experiences of most Americans (see Lupia 2006).[14]

Thus, the principal methodology used to document the ignorance of the American people is flawed in both conceptualization and operationalization. Even more worrisome is the way in which the ANES implements these measures. We need another approach to measuring knowledge of the judiciary.

2001 Closed-Ended Results

Even were the ANES coding scheme improved, we would have serious reservations about the utility of open-ended questions that ask respondents to recall information in the context of an interview which, we contend, never has a real-world political context. More useful approaches rely upon closed-ended multiple-choice questions (see Mondak 2001; Tedin and Murray 1979). Our 2001 national survey adopted such a measurement strategy.

In our 2001 survey, conducted in the midst of the dispute over the Supreme Court's decision in *Bush v. Gore*, we asked several questions about knowledge of the Court. For instance, we queried our respondents about three structural and functional attributes of the Supreme Court: how the justices are selected, the length of their terms, and which institution has the "last say" when it comes to interpreting the Constitution. Table 1 reports their replies. Since the same questions were asked in both 2001 and 2005, we report data from both surveys.

Remarkably large percentages of Americans correctly answer these questions about the Court. In 2001, nearly three out of four knew that the justices of the Court are appointed; and, despite having to choose from among the Court, the Congress, and the President, more than 60% answered that the Supreme Court has the ultimate "say" on the Constitution. Only 13.6% of the respondents got none of these questions correct; 44.4% answered all three accurately. Were the respondents doing nothing more than simply guessing at the answers to these questions, we would expect only 8.25% to answer all three questions correctly (.50 × .50 × .33). Our data thus suggest that Americans are far more knowledgeable about the Supreme Court than many scholars and commentators suggest or imply and than most previous researchers have reported.[15]

The evidence from the 2001 survey indicates that people know far more about the Supreme Court than

TABLE 1 Knowledge of the U.S. Supreme Court 2001, 2005

	Percentages (Rows Total to 100%, except for rounding errors)		
	Correct Answer	Incorrect Answer	Don't Know
Justices are appointed			
2001	73.9	10.4	15.7
2005	65.4	14.9	19.7
Justices serve a life term			
2001	66.4	16.1	17.4
2005	60.5	19.5	20.0
Court has "last say" on the constitution			
2001	60.7	28.4	10.9
2005	56.8	27.7	16.0

Note: 2001 N ≈1418. 2005 N ≈1000.
The questions read:
Some judges in the U.S. are elected; others are appointed to the bench. Do you happen to know if the justices of the U.S. Supreme Court are elected or appointed to the bench?
Some judges in the U.S. serve for a set number of years; others serve a life term. Do you happen to know whether the justices of the U.S. Supreme Court serve for a set number of years or whether they serve a life term?
Do you happen to know who has the last say when there is a conflict over the meaning of the Constitution – the U.S. Supreme Court, the U.S. Congress, or the President?

[13]Aronson et al. (1990) distinguish between "experimental realism" (the content of an experiment being realistic to the subjects so that they take the task seriously) and "mundane realism" (the similarity of the experimental context and stimuli to events likely to occur in the real world—in short, verisimilitude). An open-ended question of the type used by ANES seems to profit from neither type of realism, but especially not from mundane realism.

[14]And, after all, even Richard Nixon, as he was about to nominate Rehnquist to the Supreme Court, had difficulty remembering the Assistant Attorney General's name, referring to him instead as "Renchburg" (see, for example, Dean 2001)!

[15]Kritzer's survey work (2001, 37) is an important exception to this generalization. He found that the average number of correct answers in reply to six Supreme Court knowledge questions is 3.15. For instance, large proportions of the American people knew that the Supreme Court does not use juries and that it is not obliged to hear all cases brought before it, information that strikes us as much more relevant and politically significant than knowing the names of some sitting justices. In contrast, only 19.8% knew the name of the Chief Justice.

is typically supposed. But perhaps this is not surprising since the survey was conducted during a period of American politics in which the Court may well have been as salient as at any time in its history. Media coverage of the Court and its decisions was massive, the political stakes in the dispute were as high as they get, the political and legal issues generally accessible to ordinary people (e.g., voting rights), and the drama was unsurpassed. A survey conducted in the heat of such an important political battle risks providing an atypical view of the knowledge of the American people, even if such a survey suggests that people can learn about the Supreme Court when it becomes important and relevant to do so.

We therefore repeated many of these questions in a survey we conducted in 2005 (see Appendix B for details), and these results are also reported in Table 1. The data reveal that knowledge as indicated by all three questions declined from 2001 to 2005. Yet, the decline is small; and even in 2005, substantial majorities of Americans held correct information about their Supreme Court.[16] Thus, it seems that people learn from salient controversies involving the Supreme Court, but that the knowledge of a substantial proportion of Americans does *not* depend upon an attention-catching controversy.

The final set of questions assessing knowledge of the Court focuses on its decisions.[17] We asked the 2001 respondents whether they knew if the Court had issued decisions in three areas of public policy: abortion, the voting rights of black Americans, and the maximum tax rate people have to pay on their income. Table 2 reports their answers.

Once more, the data indicate a substantial amount of knowledge about the Court. Two-thirds of the respondents know that the Court has made decisions on abortion and black voting rights; and even 42% know that the Court has *not* made decisions on the maximum income tax rate (a very difficult test indeed). We do not necessarily claim that Americans have a great deal of substantive knowledge about the Court's involvement in these issues; but only 13% of the respondents got all of these questions wrong, even if only 26% got all of them right.

TABLE 2 Knowledge of Supreme Court Decisions, 2001

	Percentages (Rows Total to 100 % except for rounding errors)		
Has Court Made Decisions On . . .	**Correct**	**Incorrect**	**Don't Know**
Abortion (Has ruled)	68.4	7.0	24.6
Rights of Black Americans (Has ruled)	65.6	9.0	25.4
Maximum Income Tax Rate (Has not ruled)	41.7	12.3	46.1

N ≈1418.
Note: The correct answer to each question is shown in parentheses.

With data from closed-ended questions, we draw dramatically different conclusions about how informed the American people were in both the 2001 and 2005 surveys. However, whether question form actually "caused" these results can still be debated, given the *post hoc* nature of our data and analysis we have adduced. More direct, and causally persuasive, evidence is available from an experiment we conducted in a survey fielded in 2006.

The 2006 Question-Wording Experiment

In the last wave of our study of the Alito confirmation (conducted several months after the confirmation fight was concluded), we included an experiment on the way in which political knowledge is measured. The respondents were randomly assigned to one of two conditions: (1) knowledge was measured via short answer, open-ended questions, or (2) knowledge was measured by closed-ended, multiple-choice questions. In both instances, we asked about three political figures: William Rehnquist, John G. Roberts, Jr., and Bill Frist.

When asked what job or political office John G. Roberts, Jr., now holds, only 7.0% of the respondents replied "Chief Justice of the United States Supreme Court"; another 8.1% said he was a Supreme Court justice. Fully 74.2% of the respondents did not know who Roberts was (and most could not even formulate a guess). This finding comports well with conventional wisdom about the ignorance of the American people.

[16]Kritzer (2001) reports a similar finding about change in opinions pre- and post-*Bush v. Gore*.

[17]Based on a survey conducted in St. Louis, Missouri, Franklin and Kosaki (1995) examine awareness of individual Supreme Court decisions, focusing on the role of the mass media in promoting awareness and how the media interacts with the characteristics of individual citizens. They document a great deal of variability in awareness of different Court rulings, much of which can be attributed to the extent of media coverage of the decisions. They also rely upon the familiar two-step flow of information, with elites playing an important mediating role. See also Franklin, Kosaki, and Kritzer (1993), who conclude that awareness of Court decisions is relatively high.

A second question asked about the job or office of "William Rehnquist, who is now dead." Although only 12.1% of the respondents correctly said that Rehnquist was the Chief Justice of the U.S. Supreme Court, another 30.1% said that Rehnquist was a Supreme Court justice. Obviously, since at the time of the survey Roberts was a newly minted Supreme Court justice, while Rehnquist had served on the Court for 35 years, the recently deceased Chief Justice was much more likely to be in the respondents' accessible memories.

At the same time, information about the identity of Bill Frist was not much more widespread. Only 11.6% correctly identified him as Majority Leader of the U.S. Senate, with another 4.2% replying that Frist is a Senator. If citizens are too ill-informed to play a responsible role in the judicial process, perhaps they are also too ill-formed to be involved in selecting and evaluating legislators as well. Thus, this portion of our experiment strongly confirms the conventional wisdom about the ignorance of the American people, with the slight caveat that their ignorance is not limited to the judicial branch.

Only 7.0% of the respondents hearing the open-ended versions of the question replied that Roberts is the Chief Justice. But, when the other half of the sample (randomly assigned) was asked to identify the Chief Justice from a list of three names, 46.3% correctly selected John G. Roberts, Jr.[18] When asked to identify the Majority Leader from a list of three names, 43.7% correctly identified Frist.[19] Finally, 71.1% of the respondents were able to identify Rehnquist as the former Chief Justice when presented with three names.[20] According to these data, people are *vastly* more knowledgeable about politics than is typically portrayed. Thus, in the political knowledge experiment, there is enormous variance that depends upon whether open-ended or closed-ended questions are asked of the respondents; and, given random assignment to question format, we are entitled to considerable confidence that the *cause* of the answers we recorded is the form of the question asked.[21]

We contend that the open-ended recall measures of political knowledge are not particularly useful or valid indicators of the level of information ordinary Americans hold about politics.[22] In the end, we agree with Mondak's conclusion that: "Researchers have explored numerous considerations regarding item format, but the bottom line is that multiple-choice questions are highly resistant to response sets, meaning that use of multiple-choice questions maximizes our capacity to form valid inferences regarding respondents' levels of knowledge" (2001, 228).

Temporal Stability: The Role of Context

Earlier research has documented that the percentage of respondents correctly answering political knowledge questions increases as an election approaches (e.g., Johnston, Hagen, and Jamieson 2004). The data reported above on the relative salience of Rehnquist and Roberts suggest a similar contextual phenomenon: the longer information is available in a political system, the more likely are citizens to acquire it. Finally, our data on the 2001 election also suggest that context matters (see also Kritzer 2001).

Consequently, it is reasonable to hypothesize that the Alito nomination raised levels of information about the Court among the mass public. Our panel survey is particularly well-designed for assessing this hypothesis since we asked knowledge questions during the t_1, t_2 , and t_3 interviews, with the t_2 survey conducted during the debate over whether to confirm Judge Alito.

Is knowledge at the individual level stable over time? Figure 1 provides the descriptive frequencies on the items asked in the 2005 and 2006 panel surveys.

[18]The two foils were "J. Harvie Wilkinson, III," and "Theodore Olson."

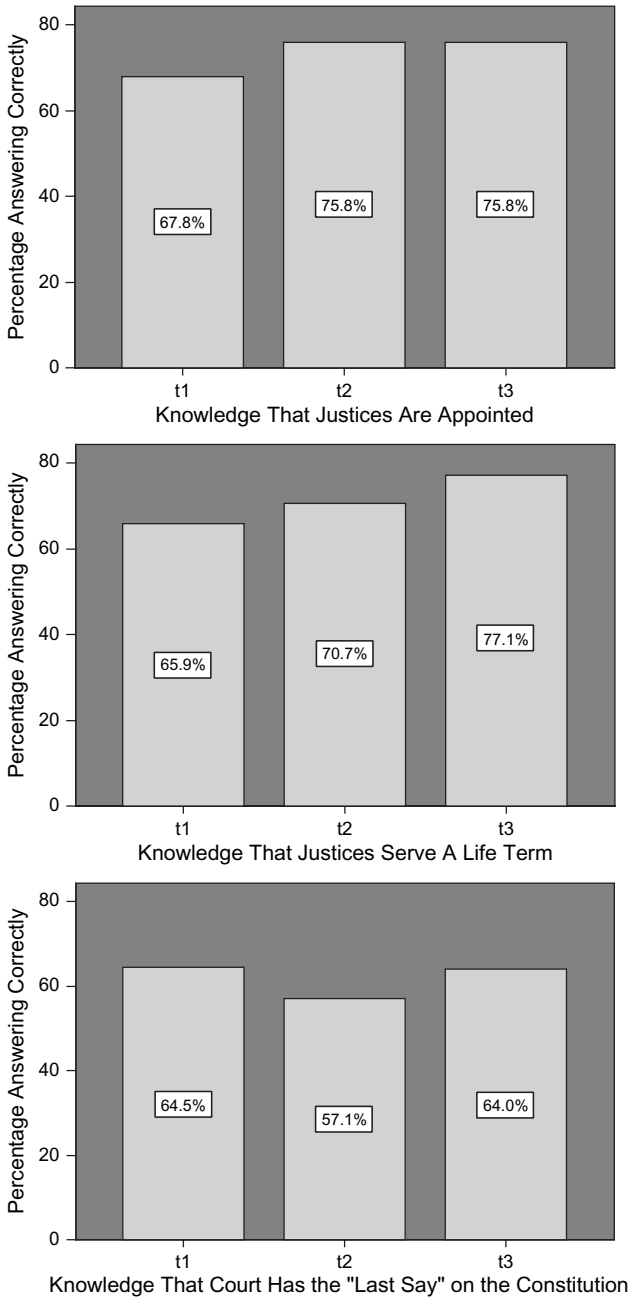
[19]The two foils were "Mitch McConnell" and "Ted Stevens."

[20]The two foils were "Lewis F. Powell" and "Byron R. White." Our view is that these are reasonably difficult tests of knowledge. We could have provided, for instance, foils that were completely unrelated to the Court; doing so would have made the questions easier. We acknowledge, however, that we also could have designed an even more difficult test by using sitting justices as the foils. Whatever the foils, we strongly doubt that the observed difference of 30.1% versus 71.1% in correctly identifying Rehnquist would be reduced to statistical or substantive insignificance.

[21]In the closed-ended version of the questions, we randomly varied the order in which the names were presented to the respondents. In no instance is a chi-square test for differences in the distribution of correctly identifying the name statistically significant.

[22]At a later point in the t_3 interview, we asked the respondents to tell us which of three definitions of judicial activism they considered correct. The percentages identifying the concept as meaning "that judges rely on their own judgments of what is fair in the case rather than allowing the constitution, the legislature or prior Court decisions to dictate what the outcome of the case will be" according to the number of correct answers to the knowledge items are: 54.5, 64.3, 79.7, and 74.3, from 0 to 3 correct answers, respectively. These findings contribute to our confidence in the validity of the knowledge indicator.

FIGURE 1 Change in Levels of Knowledge across the 2005–2006 Panel Survey



Of the individuals interviewed at all three waves in the panel survey, the mean number of correct answers to the three Court questions in the first survey was 2.13; in 2006, the means were about the same—2.15 at t_2 and 2.27 at t_3 (with standard deviations of around 1.0). Thus, at the aggregate level little change occurred. One can see this pattern in the individual knowledge items as well (see Figure 1). There is some slight increase in knowledge over the course of the three interviews (most likely reflecting some degree of reactivity to the interviews), but generally the percentages change only marginally. Knowledge of the Court is high and was not appreciably raised by the Alito hearings.[23]

Perhaps these findings are influenced by the relative ease of the questions we asked of the respondents. Large majorities answered each of these three questions correctly at the t_1 interview, most likely reflecting the wide diffusion throughout society of information about the basic structure and function of the Court. Moreover, those who did not already know such basic information were unlikely to become very attentive toward the Supreme Court during the nomination process and therefore this opportunity to learn something about the institution passed them by.

Of course, aggregate-level stability often masks microlevel change. But, in this case, the correlations between the indicators of the numbers of correct court answers for each survey pair (t_1t_2, t_2t_3) are .60 and .71. Furthermore, 53.7% of our respondents did not increase or decrease their knowledge between the first and last interviews; 28.6% had more knowledge in 2006 than in 2005, but for 17.7% of the respondents, knowledge decreased from the initial interview to the last. This observed stability, of course, reflects in part a ceiling effect, since 52.1% of the t_1 respondents got all three answers correct.

Thus, these data indicate that the American people are better informed than indicated by conventional wisdom, that their level of information is not unduly shaped by salient but ephemeral events, and that at the individual level, political knowledge is quite stable. These findings add confidence to both the validity and reliability of our conclusions to this point.[24]

The Consequences of Knowledge for Loyalty toward the Supreme Court

Gibson and Caldeira have argued that some tendency exists for those more knowledgeable about the U.S. Supreme Court to be more supportive of the institution

[23]Earlier research has shown that confirmation hearings can be extremely visible to the American people. For instance, 95% of the American people held an opinion about whether Clarence Thomas ought to be confirmed to the U.S. Supreme Court. See Caldeira and Smith (1996), Gimpel and Wolpert (1996), Wolpert and Gimpel (1997), and Gibson and Caldeira (2009b).

[24]Of course, we do not contend that the measures reported in this article are perfect indicators of knowledge; nor do we contend that they are the only good measures available. We are continuing to refine our knowledge scales and urge others to experiment with developing more valid and reliable indicators of how much people know about law and courts.

("to know it is to love it"). They refer to this as "positivity bias" and suggest the following process.

- People acquire knowledge of the Court by paying attention to it.
- But paying attention imparts more than information; attentive citizens are simultaneously exposed to powerful symbols of judicial legitimacy, such as robes, privileged forms of address ("your honor"), etc. The lesson these symbols teach is that courts are different; they are not ordinary political institutions in the American political scheme.
- Thus, events that increase the salience of the Supreme Court increase citizen knowledge *and* institutional support.

To be clear, we are not necessarily arguing that information per se leads to heightened institutional loyalty. Rather, the circumstances leading to information also contribute to legitimacy. Thus, we hypothesize a connection between knowledge and institutional loyalty, but not necessarily a direct one.[25]

Testing this hypothesis requires that we develop a measure of loyalty to the U.S. Supreme Court. Our operationalization of institutional loyalty follows a substantial body of theorizing about and measuring mass perceptions of high courts (see Caldeira and Gibson 1992, 1995; Gibson 2007; Gibson, Caldeira, and Baird 1998; Gibson and Caldeira 1995, 1998, 2003).[26] That research conceptualizes loyalty as opposition to making fundamental structural and functional changes in the institution (see Boynton and Loewenberg 1973) and is grounded in the history of attacks by politicians against courts in the United States (see Caldeira 1987) and elsewhere (e.g., manipulation of their jurisdiction).[27] As Caldeira and Gibson describe it, those who have little or no loyalty toward the Supreme Court are willing "to accept, make, or countenance major changes in the fundamental attributes of how the high bench functions or fits into the U.S. constitutional system" (1992, 638; see also Loewenberg 1971). Loyalty is also indicated by a generalized trust that the institution will perform acceptably in the future. To the extent that people support fundamental structural changes in an institution, are willing to punish the institution for its policy outputs, and generally distrust it, they are extending little legitimacy to that institution. Conceptually, loyalty thus ranges from complete unwillingness to support the continued existence of the institution to staunch institutional fealty.

Following this body of research, we have measured institutional loyalty with a seven-item index.[28] We have computed a scale of institutional support (a continuous, interval-level measure) as the average response to these statements.[29] Cronbach's alpha for the seven-item set is a healthy .71.

The data provide moderately strong support for the hypothesis. The correlation between knowledge and Court support is .34, which is of course highly statistically significant (see Model I, Table 3). Those who know more about the Supreme Court are more likely to express loyalty toward the institution itself.

Although the primary purpose of this analysis is to explore the knowledge Americans hold about the Supreme Court—and not to give a full account of the processes by which institutional support is developed—we believe it useful to consider the influence of political knowledge on support within a multivariate analysis. Following Gibson (2007), and much earlier research (e.g., Caldeira and Gibson 1992), we hypothesize that Court support is a function of (1) broader support for democratic institutions and processes, including support for the rule of law, a multiparty system, political tolerance, and the relative value assigned to social order versus individual liberty, (2) knowledge, and (3) several control variables, including level of education, political efficacy,

[25]Throughout this analysis, we follow the body of work of Gibson and Caldeira (e.g., 2009a) in using the following concepts interchangeably: diffuse support, institutional loyalty, institutional commitment, and, most generally, institutional legitimacy.

[26]For a full explication of the conceptual and theoretical meaning of this concept see the discussion in Caldeira and Gibson (1992, 636–42). Here, we provide only an overview of the conceptualization since this is well-trodden territory.

[27]For a discussion of court-curbing efforts in the American case, see Friedman (2005, 314–15). For European examples, see Schwartz (2000).

[28]The propositions (replies on which were collected via a 5-point Likert response set) are:

- The right of the Supreme Court to decide certain types of controversial issues should be reduced.
- If the U.S. Supreme Court started making a lot of decisions that most people disagreed with, it might be better to do away with the Supreme Court altogether.
- The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.
- The U.S. Supreme Court gets too mixed up in politics.
- Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge.
- The U.S. Supreme Court has become too independent and should be seriously reined in.
- The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want.

[29]The analyses reported in this section are based entirely on the t_3 data since it was in that survey that these questions were asked.

TABLE 3 The Determinants of Institutional Loyalty

		Model I			*Model II*		
Predictor	**r**	**b**	**s. e.**	**β**	**b**	**s. e.**	**β**
Knowledge	.34	.04	.01	.34***	.00	.01	.02
Support for Liberty	.44	—	—	—	.16	.06	.17**
Support for a Multiparty System	.31	—	—	—	.10	.06	.10
Support for the Rule of Law	.42	—	—	—	.38	.08	.31***
Political Tolerance	−.02	—	—	—	.00	.04	.00
Level of Education	.38	—	—	—	.02	.01	.18**
Political Efficacy	.35	—	—	—	.32	.06	.28***
Ideological Self Identification	−.15	—	—	—	.00	.01	.02
Party Identification	.01	—	—	—	.01	.01	.11*
Whether Black	−.07	—	—	—	−.03	.03	−.05
Whether Hispanic	−.06	—	—	—	−.04	.03	−.06
Whether Asian American	.01	—	—	—	−.00	.05	−.00
Intercept		.38	.03		−.13	.08	
Standard Deviation— Dependent Variable		.19			.19		
Standard Error of Estimate		.18			.15		
R^2				.12***			.42***
N		257			257		

Note: Standardized Regression Coefficients (β): ***$p < .001$ **$p < .01$ *$p < .05$

race (three dummy variables), and ideological and partisan identifications (details on the measurement of these variables, see Appendix C).

When we regress the continuous index of support on these various predictors (see Model II, Table 3), we find that a considerable amount of variance is explained: $R^2 = .42$, which is of course highly statistically significant. In line with earlier research, the best predictors of Court support are democratic values, which alone can account for 29% of the variance in institutional support. The dominant value here, not unexpectedly, is support for the rule of law: Those more supportive of the rule of law are considerably more likely to express loyalty to the Supreme Court. Also in keeping with earlier research, political efficacy is associated with greater institutional support. As in Gibson's earlier analysis (2007), we also find quite weak to nonexistent relationships between party and ideological identifications and support for the Court: Democrats and Republicans, liberals and conservatives, support the Court alike.

Most important for our concern over the consequences of court knowledge, in the full multivariate equation the impact of knowledge on support is reduced to an insignificant and trivial effect. When we add level of education to the bivariate equation reported in Model I, the effect of knowledge on support is reduced ($\beta = .23$), but remains substantial. But, when the indicators of democratic values are next added to the equation (Model II), the direct effect of knowledge on Court support becomes minuscule.

With these results in hand, it is not difficult to fashion an understanding of the processes involved. Having political knowledge means one has some understanding of the nature of American democracy and the values that undergird it.[30] This knowledge most likely produces a differentiated view of American political institutions, perhaps even with the recognition that some institutions are established primarily to implement majority rule, while others are biased in favor of protecting minority (privileged and otherwise) rights. One element of the political learning that takes place is acceptance of the view that courts are different. They are different in part because the procedures they use to make decisions differ greatly from those employed by other political institutions. Courts and judges are not self-interested in the way, for instance, that members of Congress are (e.g., Hibbing and Theiss-Morse 2001). Thus, it appears to us that the causal flow runs as follows. People acquire information about the American political system. That information teaches that courts deserve respect

[30]The bivariate correlations between political knowledge and support for a multiparty system, rule of law, and individual liberty are .34, .27, and .49, respectively. No relationship exists between knowledge and political tolerance.

because they are different from other political institutions; they play a special role in the American democratic system. That cognitive view is reinforced by the symbols available to courts. Thus, those with greater knowledge extend more support (accounting for the bivariate relationship), mainly because they have learned about the value and nature of democratic institutions and processes in the United States (accounting for the multivariate results). Thus, knowledge has consequences for institutional legitimacy, albeit indirectly.

Discussion and Concluding Comments

Two of the findings of this research run strongly counter to existing understandings of public knowledge of law and courts. First, these respondents demonstrate relatively high levels of information about the Supreme Court. To our knowledge, few prior studies have documented this level of information about the Court. We contend that this finding is in part a function of the method by which knowledge is measured, and we are consequently critical of most earlier efforts to document what citizens know about the Supreme Court. When citizens are asked reasonable questions about what they understand about the Supreme Court, most can answer accurately.

Second, knowledge of the Supreme Court has important consequences for other attitudes toward courts. Most significant, those with the highest level of knowledge are those who distinguish the most between the judiciary and other political institutions. We do not assert that it is knowledge per se that creates these distinctive views, but rather that, when citizens get exposed to information about courts, they are simultaneously exposed to the legitimizing symbols of the judiciary, and the content of those symbols emphasizes the "myth of legality"[31] and the uniqueness of courts in the American democratic system. To know more about courts may not always be to love them, but to know them is to learn and think that they are different from other political institutions (and often therefore more worthy of trust, respect, and legitimacy). We contend that this process is one of social learning whereby citizens come to understand and appreciate the role of the judiciary in the American political system.

We certainly do not want to overclaim from our findings on how knowledgeable the American people are about the Supreme Court. The questions we asked are relatively easy ones; indeed, the evidence is that we did not ask enough hard questions, since there is so much bunching of the data at the highest level of knowledge. Nor are we at all certain that most Americans recognize and appreciate the distinction between institutions designed to cater to the preferences of the majority and those primarily serving the interests of minorities (even if these are typically privileged minorities).

But we *do* assert that the image of the American people as entirely bereft of information about courts, as ignorant of their role in the American democracy and their importance as makers of public policy, and as oblivious to the nature of judicial institutions and processes, most likely undercredits ordinary people. Certainly there is little in our data to suggest that the views of the American citizenry are too ill-informed to be worthy of serious consideration, both from the political process and from scholars of the judiciary. It seems that the American people may in fact know enough about law and courts to be able to perform their assigned function as constituents of the contemporary judicial system in the United States. This revisionist view of mass political ignorance is, we submit, worthy of much additional research.

[31]In referring to this as a "myth" we are only deferring to the term of art that has emerged in the literature (e.g., Baird and Gangl 2006). We suspect that most political scientists view legalistic depictions of Supreme Court decision making as generally empirically inaccurate, but we are not required in this analysis to accept or reject any particular view about how decisions actually get made on the Court.

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