

## ***SupremeCourtTV: The Legitimacy Implications of Televised Court Proceedings***

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**Abstract:** While policymakers debate televising Supreme Court proceedings (and the proceedings of the federal courts more generally), several state courts have been televising and broadcasting court proceedings for some time. We utilize the state-to-state variation in procedures governing televising court proceedings to begin to answer the empirical questions at the core of the debate: whether televising court proceedings affects court legitimacy. Recently, Iowa Supreme Court Chief Justice Cady testified to Congress that televising court proceedings causes citizens to “like and respect the court system” more than they would otherwise (Access to the Court 2011). Justice Scalia, on the other hand, suggested recently that televising Court proceedings would “mis-educate the American people” (Kopan 2012). Our findings offer a first cut at an empirical assessment of claims of the effect of televising court proceedings as requested by Justice Breyer in his address to the Midwest Political Science Association last year (Breyer 2012; see also Breyer six years earlier!). Our findings also have the potential to inform the ongoing policy debate on the desirability and utility of televising proceedings in the federal courts.

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### **Introduction**

The Justices of the U.S. Supreme Court are relatively invisible to the public (e.g. Casey 1974; Caldeira 1986) and the level of knowledge held by the public is often considered to be lacking (see, e.g., Dolbeare 1967, Murphy and Tanenhaus 1968, Sarat 1975, Morin 1989. But see Gibson and Caldeira 2010). This invisibility and lack of knowledge may well be due to the fact that most of the Court's work is done in private. While oral arguments are open to the public, they are not televised, and while the Court announces its decisions in open court accompanied by publicly-available written opinions, its decision making is done in closed conference to which not even their trusted advisors are allowed entry and the opinions they release are long and complex, unlikely to be read by the average person. Additionally, the Justices infrequently appear in public and are not often interviewed on television. Indeed, they are able to go about their lives largely anonymously (Greenhouse 1996, 2008). Greenhouse, in an article meant to make the Court more accessible to teens, tells the story of the day she saw a tourist give a camera to an elderly man while visiting the Court, asking if he would snap their photo. Justice White was happy to oblige (Greenhouse 2008).

Recently, the issue of whether or not to televise the Supreme Court's decision-making process has (again) come to the fore, gaining the attention of the Justices, Congress and the media, most recently related to calls to televise oral arguments in the cases considering the constitutionality of the Affordable Care Act (see, e.g., Mathewson 2012, Chemerinsky and Segall 2012, and Rosenthal 2011). The Supreme Court has been quite adamantly opposed to televising even its public oral arguments, and reacted to calls for televising the oral arguments in the ACA cases with a statement that the audio from oral argument would be released immediately, mentioning nothing of the request by C-SPAN to cover the arguments on television (Chemerinsky and Segall 2012, Liptak

2011). But at least some judges on the state courts think that televising even the justices' private conference might enhance court legitimacy (see, e.g., Cohen 2011), and others argue that the educative influences of televising are a compelling reason to adopt coverage. Robert Brown, an associate justice of the Arkansas Supreme Court, observed that "the primary motivation for state supreme courts to provide video of their oral arguments is to enhance public education about what appellate courts do" (2007, 8). In 2011 testimony before the Senate Judiciary Committee, Mark Cady, Chief Justice of the Iowa Supreme Court, claimed that "The more the public sees our courts operate, the more they like and respect the court system" (2011, 11). The public appears to be interested in televising oral arguments as well. According to a national poll by Fairleigh Dickinson University's *PublicMind*, 61% of Americans think putting the oral arguments on television would be "good for democracy" (Woolley and Peabody 2010, 1) and half of them said they would watch it. And, the House and Senate have, for the last 20 years, offered legislation every term to either allow or require the federal courts to televise their proceedings. While Congress' motivations are sometimes suspect (Mauro 2007), many scholars and judges agree that it would be a good thing for democracy. Judge Martin of the Sixth Circuit even *guarantees* televised oral arguments will yield positive, not negative, effects (Martin 2007)!

Despite these assertions, there appears to be little empirical evidence of the impact of the televising of court proceedings on the legitimacy of the state or federal courts despite Justice Breyer's calling for just that sort of information as early as 2006 (and apparently earlier given this quote from that 2006 article: "Perhaps because I have an academic background, I suggest that those who are interested in televising the proceedings of the Supreme Court should conduct some social-science research. Independent groups of serious researchers could survey public attitudes about television and the effect that introducing cameras into Congress has had on those attitudes. I have been suggesting this research for quite some time, and nothing has happened yet, but I think it

would be well worth collecting data before deciding to broadcast Supreme Court arguments” (Breyer 2006, 98)). Only two studies come close. Raymond (1992) conducted an experiment where the treatment group watched a trial and the control group had no such exposure. He concluded that there were no significant differences between the groups in confidence in the courts. And Roberts (1998), who argues that the “[OJ] Simpson trial had a significant impact on the public's confidence toward two important institutions (jurors and the police) in our criminal justice system” (639), basing that claim on questions asking respondents to retrospectively evaluate the effect of the trial, rather than on a panel survey. The OJ Simpson trial and the frustration with the impact of the resulting media circus on the judicial system (see, e.g. Cripe 1998-99) highlight the problem of evaluating the impact of the televising of court proceedings. To the extent there is an academic literature evaluating the impact of court proceedings being televised, it tends to focus on the effect of media coverage of significant trials (like the OJ Simpson trial) rather than on the trial itself, or focuses on the highly stylized (to put it gently) effect of programs like *Judge Judy*.

In this paper, we seek to ascertain the extent to which televising court proceedings might influence the regard in which the public holds the courts. Because we cannot observe the Supreme Court’s approval with and without cameras in the courtroom, we turn to the states and take advantage of the variation across states as to whether or not their supreme court’s proceedings are carried on their public access television station. We also use self-reported viewership of *CourtTV* as a measure of exposure to televised courts. Once we know what television coverage does to state court approval, we might have some additional information to bring to bear on the question of whether the U.S. Supreme Court ought to let the cameras roll. At least one justice, Justice Breyer, is interested in this question. We answer his call.

## **Legitimacy**

Research asserts that to know the Court is to love it (e.g. Kessel 1966; Gibson, Caldeira and Baird 1998; Benesh 2006; Gibson and Caldeira 2011), and the Supreme Court enjoys a noteworthy amount of institutional legitimacy and support (Caldeira and Gibson 1992; Gibson, Caldeira and Baird 1998; Gibson, Caldeira and Spence 2003b).<sup>1</sup> These high levels of support are important, given that no political institution rests upon institutional legitimacy to a greater degree than does the judiciary (Gibson and Caldeira 2009). Because the Supreme Court has neither the “power of the purse” nor “of the sword,” it is dependent upon voluntary compliance, which comes from its legitimacy (Gibson and Caldeira 2009). Consequently, it is very important to understand what might influence those high levels of legitimacy and support enjoyed by the Court (and what might undermine it).

The public generally considers the judiciary to be a different type of governmental institution, viewing it as mystical and insulated from politics (Casey 1974; Hibbing and Theiss-Morse 2002). One explanation for the Court’s relative popularity is that the Justices hide conflict in their decision making from the public, promoting that non-political reputation (Hibbing and Theiss-Morse 2002). Hibbing and Theiss-Morse (2002) claim that “if someone made a videotape of the justices vigorously debating in conference and showed it to everyone in the nation, people would

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<sup>1</sup> Easton (1975) distinguished between diffuse support and specific support, arguing that, when an institution possesses diffuse support, the public will continue to view it positively even when it disagrees with its policy outputs. Specific support captures short term satisfaction with the Court’s policy outputs (Easton 1975; Caldeira and Gibson 1992; Gibson, Caldeira, and Spence 2003b), while diffuse support is more enduring (Easton 1975). Many scholars have noted, though, that diffuse support may be derived from a series of pleasing behaviors by the Court and that, at some point, too much bad behavior could negatively impact the reservoir of good will toward the Court (see, e.g., Gibson 2012).

not feel warmed by the frank sharing of views, whether the exchanges were characterized by reciprocity or not” (201). People, simply, do not like conflict, especially conflict of a political nature.

In addition to the intellectual energy that has been spent on the Supreme Court, numerous scholars have examined legitimacy as it relates to lower courts as well. Bonneau and Hall (2009), for example, suggest (without demonstrating) that judicial elections foster legitimacy in state courts. Other analyses of lower court legitimacy find that experience with the court (as a juror or plaintiff) (Benesh 2006; Benesh and Howell 2001; Wenzel et al 2003), knowledge or education (Benesh 2006; Johnston and Bartels 2010), perceptions of court and judge fairness (Tyler and Rasinski 1991; Benesh 2006), type of media the respondent consults for information (Johnston and Bartels 2010), and whether the election of judges is partisan in each state (Benesh 2006; but see Wenzel et al 2003) are key determinants of lower court legitimacy.

### **Effects of Exposure**

Perhaps one thing televising institutional proceedings could do (and one reason proponents of televising oral arguments at the Supreme Court seek coverage) is to affect the amount of information the public has about the institution. In other words, proponents suggest that *knowledge* may be gained from viewing the institution in action. Of course, the more knowledgeable may be more drawn to viewing coverage of the proceedings anyway, and there are no guarantees that televised proceedings would be widely available, but regardless, this coverage may have some impact on knowledge and, through increased knowledge, effect court legitimacy. While most research has shown that knowledge has a positive impact on legitimacy (Gibson, Caldeira and Baird 1998; Benesh 2006; Gibson and Caldeira 2011), some would argue that coverage of oral argument does not provide the right sort of information about the Court’s operation and so would not serve to enhance attitudes about the Court as an institution (Whitman 2007). Lower court judges with experience

with televised trials, however, have argued that increased coverage and openness of the proceedings of the state courts has served to enhance their court's reputation as people come to recognize how hard and how well the people staffing these courts work. It seems obvious that this is an empirical question.

Gibson and Caldeira would, I think, agree with those supporting access as their research shows that knowledge derives from exposure to the courts and to their symbols, which increases support for the courts due to what they call the "positivity bias" (2009). They argue that those who are more aware of the Court and profess more knowledge about the Court are those with enhanced exposure to the Court, which concomitantly involves exposure to legitimizing legal symbols. The more knowledgeable or interested, then, are more frequently exposed to the legitimizing symbols of the courts (Gibson, Caldeira and Baird 1998; Gibson, Caldeira and Spence 2003a; Gibson and Caldeira 2009, 2011, Woodson et al. 2010). And the more fodder provided – including that gained via coverage of the Supreme Court in session – the more legitimacy afforded. Positivity bias suggests that exposure to courts will disproportionately engender positive feelings for the Supreme Court as an institution that safeguards and protects the law, as symbols reinforce that the courts are "different" and that "courts are worthy of more respect, deference and obedience" than other institutions of government (Gibson and Caldeira 2009, 9). This operates, according to Gibson and colleagues, via motivated political reasoning, which posits that symbols convey meanings to people via their long-term memory, and, while individuals are not equally susceptible to the framing effect of judicial symbols, all individuals are at least somewhat positively affected by them (Woodson et al. 2010).

When attention is paid to the Court during various times of political interest – judicial confirmations, oral arguments in significant cases, the announcement of important decisions – "judicial symbols proliferate" and may impact the ways in which people will process the information

relating to the event (Gibson and Caldeira 2009, 7) and that proliferation would be compounded by live video images of the Court in session. Court buildings are generally magnificent, calling to mind cathedrals or temples (the Supreme Court's building surely is); justices and judges wear long black robes; they are called "Your Honor" and generally sit above the lawyers and litigants during presentation of evidence or during oral arguments. In addition, Supreme Court justices, in writing or while announcing their opinions, can invoke a legalistic and symbolic frame – a "judiciousness frame" as Gibson and Caldeira call it (2009, 8) – so that they can support the notion that they are not acting politically, but rather that their decisions are compelled in some way by "the law." All of these things would mean that a member of the public, viewing the majesty that is the Supreme Court in oral argument, would come away impressed.

Of course, not all media attention is equal, as demonstrated by Johnston and Bartels (2010), who find that the kind of media people report using determines the affect their exposure to information about the Court has on the extent to which their image of the Court is enhanced or tarnished. According to their study, sensationalist media (political radio and cable television), which is more likely to report on the Court in a political way, "dampens the 'to know the Court is to love it' effect in a meaningful way" (Johnston and Bartels 2010, 271). Hence, the question is not simply one of whether or not to televise proceedings but also one of to what use the images obtained will be put. The *kind* of coverage may determine its effect. Mutz and Reeves (2005) test these propositions in an experimental setting, evaluating the effect of *uncivil* political discourse on political trust. Their experiment includes three conditions: exposure to an uncivil political debate (more precisely, two fictitious congressional candidates appearing on a political talk show), a control group with no exposure to political content, and exposure to a civil political debate. They find that the group exposed to the civil political debate has similar levels of trust to the control group, while subjects who view an uncivil political debate have significantly lower levels of trust. Their results

suggest that exposure to political debate offers the possibility to lower evaluations of public institutions. This confirms the Johnston and Bartels finding, as those outlets considered to be “sensationalizing” are exactly those outlets that promote this sort of uncivil political discussion of issues (2010). Perhaps oral arguments, as contentious as they can be, would serve to adversely affect trust in the same way.

And, increased knowledge borne of television coverage could also damage the institution, as many argue C-SPAN did to Congress, eroding the mythology surrounding the courts and ending the perceptions of the courts as non-political and infallible (Casey 1974; Benesh 2006; Sarat 1975). Exposure to the conflict inherent in the political process may decrease the approval levels of the institution that is being viewed. This is the reason, according to Hibbing and Theise-Morse, that the courts are viewed more positively than is Congress (2002). Showing Congressional processes, which look contentious, partisan, and, perhaps, petty but certainly also messy has arguably lessened public confidence in Congress as an institution of government.

But, despite a robust literature on congressional approval (see, e.g., Durr, Gilmour, and Wolbrecht 1997; Jones and McDermott 2008; Ramirez 2009; Rudolph 2002), the notion that televising of congressional proceedings might impact the overall evaluation of Congress has not been considered very carefully. The likely place to look for evidence on the effect of exposure to the raw material of political debate on support for institutions would be to evaluate the effect of the implementation and spread of C-SPAN on congressional approval. On a theoretical level, Durr, Gilmour and Wolbrecht note, “most individuals...spend very little time tuning in to C-SPAN, or availing themselves of various other means of learning about Congress. Instead, they rely on intermediaries” (1997, 187-189). They rely, as do later scholars, on a measure of the tone of media coverage of Congress rather than actual exposure as a predictor of congressional approval. At the

aggregate level, Hibbing and Theiss-Morse, in a look at the timeframe in which C-SPAN coverage was introduced (1979 for House proceedings, 1986 for the Senate) and spread, find that there was no observable trend—up or down—in congressional approval (1995, 33).

While Durr, Gilmour, and Wolbrecht make the plausible claim that the media shape the popular perception of congressional activity, the availability of C-SPAN does permit citizens the opportunity to view floor proceedings directly, opening the door for the possibility of an influence on congressional approval. Elving (1994) posits (but does not test) that many of the changes in Congress' interaction with the media in the 1980s, including the advent of C-SPAN, contributed to a decline in public support for the institution, saying “what the public sees, fairly or not, is an institution averse to action and, at times, hamstrung by its own housekeeping” (188). Reinforcing this perception, members of Congress are well-known for running for Congress by running against the institution, and C-SPAN facilitated this process by giving members an additional platform in which to attack the institution (Frantzich and Sullivan 1996).

Frantzich and Sullivan (1996) trace the development of C-SPAN and the arguments in Congress over whether or not to allow the cameras in. (See also Garay 1984.) The arguments catalogued will sound awfully familiar to those paying attention to the debate over televising Supreme Court oral arguments. They worried over grandstanding<sup>2</sup>; over misinformation and soundbites; over ignoring the real work of Congress in order to appear to be working on camera. However, frustration with the way the media covered the institution made C-SPAN's offer of gavel-to-gavel coverage seem much more attractive (Frantzich and Sullivan 1996).

While Frantzich and Sullivan devote two chapters to the impact of C-SPAN, they, like Elving, rely mostly on impressionistic analyses. They show, for example, that the length of debate did not change once C-SPAN started broadcasting, and they quote Members of the House and

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<sup>2</sup> One member of Congress, Tony Coehlo (D-CA) disputed this in a pretty funny quip: “Grandstanding was the public reason for opposition, nose picking was the real worry” (quoted in Frantzich and Sullivan 1996, 33).

various Senators as saying that speeches seemed to have gotten better with the coverage and that the use of visual aids certainly increased (Frantzich and Sullivan 1996). They also suggest that people watching C-SPAN have become more engaged, contacting their representatives and the president much more frequently than before coverage was offered. However, there is no evidence that the members spend more time on the floor to the detriment of committee work nor that members have enjoyed increased visibility. One C-SPAN executive quipped, “Judging from some of the crazy things these guys say on the floor, they have *got* to be oblivious to the cameras” (Frantzich and Sullivan 1996, 261-262).

There are also questions about the extent to which C-SPAN coverage actually bestows knowledge on viewers (if there are viewers out there). Members speak of the educative effect of C-SPAN and democratic theorists tout the public good that information about the workings of Congress offers, but C-SPAN can only educate if the audience is interested in watching, and, while the percentage of the population who report having viewed C-SPAN in the past year has risen over time, it is still not a huge percentage of the population (in 1994, the proportion viewing C-SPAN at least once in the past year reached its highest number of 43% (more recent numbers were not available)), and the audience is decidedly not representative, being comprised mostly of highly educated, politically active, wealthy, middle-aged men (Frantzich and Sullivan 1996).

However, there is some evidence that frequent C-SPAN viewers have a dimmer view of Congress, and that, more generally, those with more knowledge of Congress have less confidence in it (Frantzich and Sullivan 1996, Hibbing and Theiss-Morse 1995, 2002). Of course, “It is impossible to determine whether C-SPAN draws more disaffected people or whether it creates them” (Frantzich and Sullivan 1996, 249).

More recent work by Mondak and colleagues suggest that while the “familiarity-breeding-contempt” story has been commonplace among those considering Congressional approval, the

relationship is more complicated than that (2006). They suggest that the knowledgeable judge Congress via different criteria than do those who lack information and, hence, when one accounts for these differences in criteria, the knowledgeable end up to be no less supportive of the institution than are the ignorant (Mondak et al., 2006).

## **Research Design**

As noted, our goal here is to subject these claims about the potential deleterious effects of televising court proceedings to empirical examination. While we generally do think that more knowledge begets more “love” for courts – perhaps via the legitimizing judicial symbols seen in the decision making process that serve to propagate the mythology of the courts, reinforce attitudes already held by interested publics, activate attitudes of those regularly apathetic toward the court, and improve negative viewpoints of the courts through a positive exposure – some of the above literature suggests that such exposure may actually be damaging. In order to gain some empirical leverage over the question, we turn to the states to exploit the variation across states in institutional design and policies toward televising courts. In order to do so, we utilize a survey conducted by the Annenberg Center for Public Policy in 2006 on Judicial Independence. Researchers at Princeton Survey Research Associates International interviewed a nationally representative random sample of 1002 adults between August 3, 2006 and August 16, 2006 to obtain their attitudes on courts and other institutions of government. We replicate the model of state court confidence published by Benesh (2006), adding two measures relating to television coverage of courts. One measure is obtained from Rowley (2006) and is a measure of whether the public affairs television channel in each state covers the state supreme court or not (covers = 1). We use this as one way of testing the effect of televising court proceedings on public trust in the courts. In addition, the Annenberg survey asked respondents, “Please tell me how many days in the past week, if any, you did each of the following. How many days in the past week, did you watch actual court proceedings on Court

TV?” A more perfect question would have asked respondents whether they viewed court proceedings on the state’s public affairs channel, but this question is a reasonable approximation of the amount of coverage consumed by an individual respondent, and so should be able to provide us with a fairly decent test of the extent to which consumption of such coverage impacts legitimacy of state courts.

Like Benesh (2006), we include many additional influences on our dependent variable, taken from responses to the question, “Generally speaking, how much do you trust the courts in [state respondent lives in] to operate in the best interests of the American people – a great deal, a fair amount, not too much, or not at all?” Benesh’s question was admittedly a bit different: “What is your level of confidence in the courts in your community – no confidence at all, only a little confidence, some confidence, or a great deal of confidence?” One advantage of our question as compared with hers is the reference, specifically, to the state courts. In Benesh’s question, one could not be certain that the respondent was referencing state courts and not, say, the federal district courts in his or her response. However, though they are different, they are likely both tapping the same underlying attitude, which is some level of specific support for state courts. Gibson, Caldeira, and Spence (2003a) argue that caution should be used in relying on “confidence” in institutions as a measure of institutional loyalty, arguing that it is much more closely related to short- than to long-term affect toward an institution. In addition, Gibson (2011a) shows that questions tapping “trust” in courts are also more closely related to specific support than to diffuse support. Both confidence and trust, according to Gibson and colleagues, are performance measures, seeking respondent reaction to recent actions of court personnel. Diffuse support, of course, is much deeper than this, tapping into a reservoir of good will for the institution itself (Dahl 1957). Given that we are attempting to ascertain whether television coverage of courts influences people’s perceptions of them, it makes more sense for us to use a specific support measure given that specific, and not

diffuse, support is posited as being potentially malleable. Obviously, we could not discern the impact of a variable on the reservoir of good will, assumed to be long-term and enduring.

Our independent variables approximate as closely as possible (given our survey the questions) those used by Benesh (2006) in her analysis of confidence in state courts. She argues that experience, procedural justice, and institutional design influence confidence in state supreme courts, along with some demographic and other controls. We consider each in turn.

*Experience.* Under experience, Benesh looks to actual court experience (something that one might plausibly have at the state level), measuring whether someone has engaged with the state court in a low stake, high control setting (e.g., as a juror) or in a high stake, low control setting (e.g., as a plaintiff or a defendant) (Benesh and Howell 2001). Benesh expects that those with a low personal stake in the outcome but high control over that outcome (jurors) will gain an enhanced perception of the courts from their service, while those with a high stake in the outcome (money or jail time) and little control over it (plaintiffs and defendants) may come away with a depressed impression of the legitimacy of the courts. While we have a question asking whether the respondent has served as a juror in the last five years, we do not have a specific question on whether or not they served as a plaintiff or a defendant. Instead, we use a question that asks, “Besides jury duty, have you or an immediate family member gone to court or been part of a court process in the past five years?” and we use positive responses to that question to indicate that respondents have experienced a high stakes, low control court experience. (This is obviously not a perfect measure of the concept.) Benesh also considers indirect experience, via an open-ended question that asks whether the respondent has any other sources of information about the courts, coding answers that the respondent has an attorney friend, or knows a judge, or someone who served as a juror as a source of information to indicate that the respondent had an indirect experience with the court system. We

use a question that asks, “Are you or someone in your immediate family a lawyer or a judge?” Obviously, these questions are not exactly the same, though they likely tap the same underlying phenomenon of having some sort of insider knowledge of the courts, which should increase support for the courts. Finally, Benesh includes knowledge under experience, measuring knowledge via a respondent self-report (“Overall, how much would you say you know about the courts?”. We do the same. Our question reads, “How well do YOU feel that you understand the purpose and role of the court system?”

*Procedural Justice.* Citing the extensive work by Tyler (1994), Benesh uses two indices to measure the extent to which the respondent views the courts and the judges staffing the courts as employing fair decision-making processes. She has access to many more indicators of this concept than do we (see her note 14). We have only four questions that fit into the idea that the fairness of procedures may well influence a respondent’s confidence in state courts. Two reference “courts” and two reference “judges” and we factor analyze each (using principle components factor analysis), using the resulting factor score as our variable. The two court questions are posed in a positive way: “The courts are fair and objective in their rulings” and “In general, how well do you think your friends and neighbors understand the purpose and role of the court system in our government?” Each are coded dichotomously before being factor-analyzed. The two judge questions are posed in a negative way: “In general, to what extent do you think a judge’s ruling is influenced by his or her personal political views?” and “When judges run for office they usually have to raise money for their election campaign. To what extent do you think this affects a judge’s ruling once in office?” Again, we dichotomize and factor-analyze these responses. We expect that the court measure will be positively related to trust while the judge measure will be negatively related to trust.

*Institutional Design.* Next, Benesh considers whether or not judges elected in partisan elections are perceived differently from nonpartisan elected or unelected judges. We do as well, relying on the American Judicature Society's *Judicial Selection in the States*<sup>3</sup> to provide information on initial selection to the state's highest court, just as Benesh (2006) does.

*Demographics.* Benesh also adds demographic and other control variables, and we add them too. These include baseline confidence in institutions (we measure this as a factor score for responses seeking levels of trust in Congress, the President, and the Supreme Court), crime rate (we use the FBI's 2005 Uniform Crime Report measure of violent crimes per 100,000 per state), education (categorical, measuring the highest degree obtained), attention to news (we use a factor score of the number of days the respondent read a daily newspaper, watched local TV news, national TV news, or cable news (after dichotomizing the variables into at least once = 1, 0 otherwise), age (categorical), race (1=white, 0 otherwise), gender (1=male, 0 otherwise) and income (categorical).

Given that our dependent variable, seeking the extent to which the respondent trusts the state courts to operate in the interests of the public, has four categories (not at all (1), not too much (2), a fair amount (3), or a great deal (4)), we use ordered probit. And, the fact that there are multiple responses by respondents in a given state, counsels that we use clustered standard errors, clustered on state. The results of our analysis are in Table 1 and our most important result is graphically demonstrated, in Figure 1.

## **Discussion**

Our results, in Table 1, echo some of the results of Benesh (2006), though not all of them. Like Benesh, we find that procedural justice matters, as respondents who think judges are not fair (*pj\_judges*) like courts less and respondents who think that courts are fair (*pj\_courts*) like courts more.

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<sup>3</sup> Available online at <http://www.judicialselection.com/>. Visited December 28, 2012.

In addition, we find, as does Benesh, that baseline confidence in institutions (*baseline\_trust*) is a strong predictor of trust in state courts, as is education (*educate*). While Benesh finds that neither attention to the news (*news*) nor age (*age*) influences confidence, we find an effect for each, though the age variable only barely meets standard significance levels. While we both find self-reported knowledge (*selfknow*) to enhance support, we do not replicate Benesh's other findings with respect to experience; we find that neither jury service (*juror*) nor other experience (*highstake*) matters to trust while Benesh finds that jurors are more supportive and plaintiffs and defendants, less. Additionally, Benesh finds that courts with judges selected via partisan elections beget lower confidence levels while we find there to be no significant difference between respondents in partisan election states (*part\_elect*) and those in other states (though the coefficient is negative, as would be expected). Race (*race*), gender (*sex*), and income (*income*) are all insignificant in both analyses, as is the crime rate (*crime*).

Most important to us, however, are our additional measures, seeking to ascertain whether coverage of courts by television have any effect whatsoever on trust in the state courts, attempting to inform empirically the largely impressionistic debate about the potential effects of televising the Supreme Court's oral arguments. As seen in Table 1, our results end up to be mixed. While the mere existence of public affairs televising of state supreme court proceedings in a state (*pub\_affairs*) does not appear to affect trust in the courts to make decisions in the public interest, *CourtTV* viewership (*courttv*) does have an impact, though it is significant only at 0.07, just shy of conventional levels. As shown in Figure 1, as the number of days on which a respondent watches *CourtTV* increases, the likelihood of the positive realizations of the dependent variable decline, while the likelihood of the negative realizations increase. As a respondent consumes more *CourtTV*, she is less likely to have a favorable opinion about state courts, and more likely to have a negative one. Hence, in this analysis, we find, finally, some empirical verification of the claims made by those opposed to televising the U.S. Supreme Court's oral arguments. Extensive viewing of television coverage of trial

courts leads to lower levels of trust in state courts to make decisions that are in the public interest. Perhaps this would be the fate of the U.S. Supreme Court too, if people consumed what *SupremeCourtTV* (C-SPANIII?) might offer.

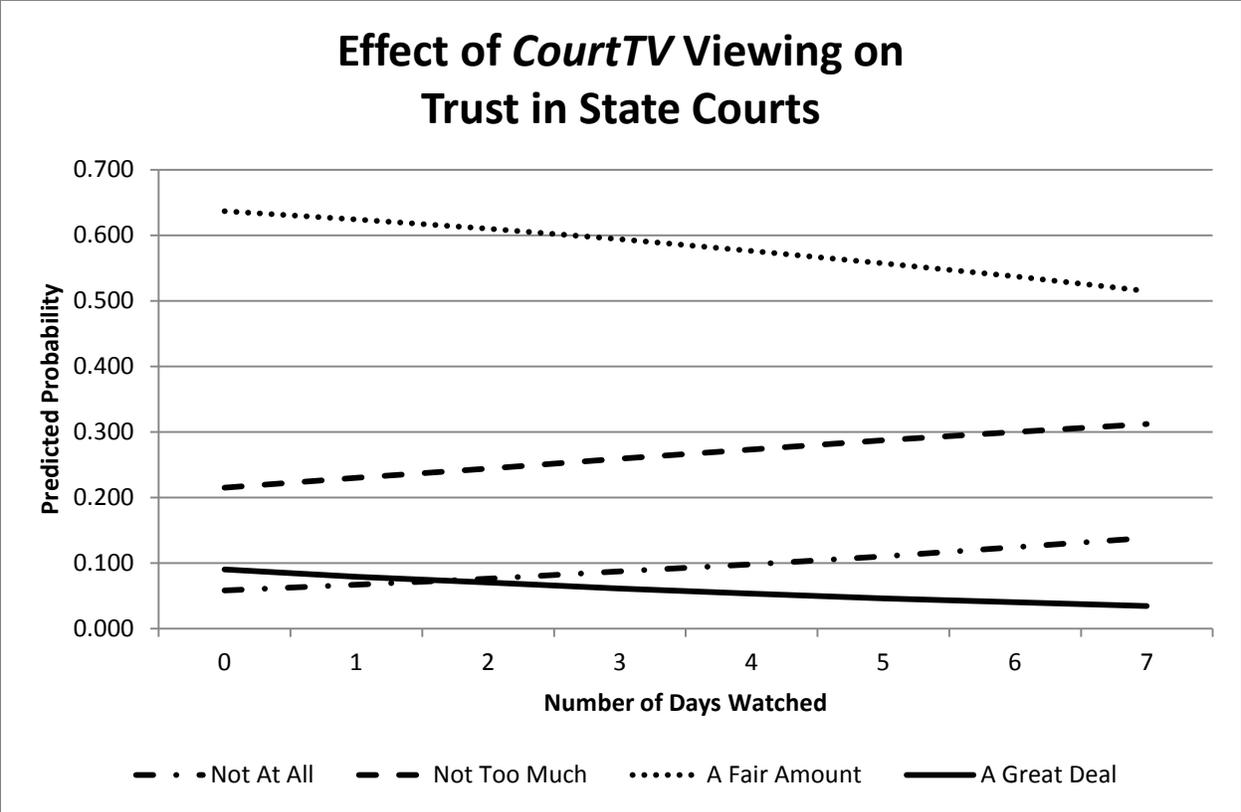
## Conclusion

The debate over televising the Supreme Court's oral arguments has continued over the past two decades, as, in every Congress for the last 20 years, there has been a bill introduced to allow or require such access. The argument is usually one of education; that people would learn about the institution were the oral arguments of the Court to be televised. However, the justices and others raise concerns about their safety (as their notoriety would increase), about the diminishing of the stature of the Court (as sound bites could be used to make the justices look foolish), and about the impact it would have on the parties to the cases (the justices and the lawyers might grandstand for the cameras). But, none of these claims have been subjected to any sort of empirical verification. We could surely at least understand what C-SPAN has done to Congress given that it has been televising it since the 1980s, but it is tricky to separate the interests of the audience from the effects of the medium. Here, we take advantage of the fact that some states allow coverage and others do not (32% of respondents lived in states that cover state court proceedings, while 68% of respondents lived in states that did not), and that some people view a lot of *CourtTV* and other people view none. (In the survey, 75% of respondents watched NO *CourtTV*, while 8% watched one day and another 8% watched it two days out of the past week. Two percent watched it every day.) But, our analysis only begins to answer the question of whether or not televised proceedings harm judicial institutions as well. Indeed, it would be interesting to ascertain whether viewing *CourtTV*, or for that matter court dramas like *Law & Order* (which was also asked about) enhance knowledge or not as posited by those who advocate television coverage. In addition, in these state

courts, at least we know that *CourtTV* covers trials, which obviously portray something close to the reality of court proceedings in the states, while some argue that televising oral arguments does little to educate the public given the small role they play in the Supreme Court's decision making process (Whitman 2007). Congress did not want television coverage of its institution either, at least at first. Eventually, they came around to the benefits they might derive from uninterrupted, unedited coverage of their institution. It remains to be seen whether the Supreme Court will similarly find something positive to commend coverage to it. The analysis here surely will not help C-SPAN make its case.

VARIABLES	Coefficients (Robust Std Errors)
juror	0.2205 (0.1658)
highstake	0.0482 (0.1166)
indirect	0.0274 (0.1360)
selfknow	0.1615* (0.0810)
pj_courts	0.1957** (0.0482)
pj_judges	-0.1137** (0.0432)
part_elect	-0.0110 (0.1156)
baseline_trust	0.3439** (0.0475)
crime	-0.0001 (0.0003)
educate	0.0753* (0.0327)
news	0.1176* (0.0581)
age	-0.1086† (0.0597)
race	0.1980 (0.1226)
sex	0.0852 (0.0893)
income	-0.0146 (0.0324)
<b>pub_affairs</b>	<b>-0.1098</b> <b>(0.1183)</b>
<b>court tv</b>	<b>-0.0683†</b> <b>(0.0375)</b>
_cut1	-1.002 (0.3625)
_cut 2	-0.038 (0.3298)
_cut 3	1.9081 (0.3378)
Observations	658

**Table 1. Ordered Probit of Trust in State Courts.** While trust in national institutions is the largest effect on trust in state courts, we also find that attention to the news, procedural justice, education, and self-reported knowledge also affect trust. In addition, we find that, while coverage on the state’s public affairs station does not influence trust, self-reported viewing of CourtTV decreases support for state courts. Robust standard errors in parentheses. \*\* p<0.01, \* p<0.05, † p<0.10, two-tailed tests. Pseudo R2 = 0.0980.



**Figure 1. Predicted Probabilities of Trust by *CourtTV* Viewing.** As the graph shows, higher levels of *CourtTV* viewership translate into an increased likelihood of negative opinions about the state courts and a decreased likelihood of positive opinions about the state courts.

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