

An Integrated Model of State Chief Justices' Governance Agenda

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Abstract

As head of the state judicial system, state chief justices engage in substantial policy making outside of the adjudicative process. Through a content analysis of State of the Judiciary addresses, we develop a five part typology to identify the chief justices' policy priorities for the state judicial system. Drawing upon behavioral, strategic, and neo-institutional theories of judicial behavior, we apply an integrated model to explain chief justices' governance agenda for their state judiciaries. We find chief justices are more likely to pursue traditional judicial governance goals of efficiently processing cases if they are appointed, conservative, selected by their peers, or there is an ideological gap between the chief justice and the rest of the court. Chief justices are more likely to pursue a more activist role of enhancing access to the legal system and in adopting proactive approach to family issues if they are elected and liberal.

Acknowledgements: We would like to thank Stephen Wasby and Sally Kenney for their helpful comments on earlier drafts of the paper.

To date, the governance of state judicial systems has been heavily influenced, and constrained, by the historical legacy of the judicial reform movement and its association with the progressive movement. By defining the oversight of the state judicial systems as judicial administration rather than governance, reformers sought to invoke ideas of technocratic neutrality to advance their reform agenda. As a result, much of the judicial administration literature is narrowly focused on improving the management practice and theory of courts (Hays and Graham 1993) and the extent to which the court unification agenda has been achieved.

Upon closer scrutiny, however, we see that the governance of judicial systems is an inherently political activity. State chief justices differ dramatically in the importance they place on administering their state's judicial systems. A survey of what percentage of chief justices' daily work schedule is spent on administrative duties found that while the average chief justice spent 50 percent of her time on judicial administration, the responses ranged from a high of 80 percent to a low of 20 percent (Feldman and Smith 2001). Moreover, the few studies of judicial administrative policy-making at the federal level have highlighted the willingness and ability of chief justices to pursue their own policy goals through administrative channels. In his capacity as the chief administrative officer of the federal courts, Chief Justice William Rehnquist reformed the federal rules and procedures of habeas corpus (Wasby 2001).

The unification of state court systems under chief justices has increased their opportunities and incentives to make policy outside of traditional adjudicative channels. The steady proliferation of national associations, such as the Conference of State Court Administrators, the Justice Management Institute, the Conference of Chief Justices, the National Center for State Courts, the State Justice Institute, and the Center for Court Solutions, is a testament to the increasing volume and importance of this new arena for judicial policy-making.

A US Department of Justice report on the organization of state courts opined, “The governance of the judicial branch is becoming a more substantial undertaking that merits close description” (Rottman, Flango et al. 2000).

By virtue of their formal and informal powers as the head of the state judicial system, state chief justices are well positioned to impose their policy preferences through their agenda-setting and administrative powers. They have considerable leeway to allocate resources, implement pilot courts or programs, propose studies of significant issues, and set the state judiciaries’ agenda with the legislature and governor. Viewing these decisions through a public administration framework obscures the political implications of budgetary, administrative, and symbolic decisions made by chief justices. We contend the chief justices’ governance agenda is best understood as another form of judicial politics, shaped by their personal views, the institutional structure of the courts, and the courts’ relationship with other branches of government. Through a content analysis of chief justices’ State of the Judiciary addresses, we develop a five part typology of their policy priorities and agenda for the state judicial system. The five categories are: protecting the institutional authority of the courts, enhancing the efficiency of the state judicial system, addressing family issues, improving the quality of and access to legal representation, and increasing the public confidence in the judicial system. Drawing upon behavioral, strategic, and neo-institutional theories of judicial behavior, we apply an integrated model to explain chief justices’ policy priorities in their State of the Judiciary addresses. In conclusion, we assess the methodological advantages that studying judicial governance offers for assessing the explanatory power of behavioral, strategic, and neo-institutional theories of judicial behavior.

The Governance of State Judicial Systems

State judiciaries have undergone a dramatic reorganization in the last forty years. The state court reform movement has transformed state judicial systems from a decentralized and fragmented structure characterized by significant local autonomy to a more unified structure with greater centralized control (Hall 1999). The court unification movement advocated giving administrative authority for state judicial systems to the chief justice of the court of last resort (Hays 1993).¹ The combination of centralization and increased professional staff has given chief justices greater capacity to make administrative decisions that affect the entire state judicial system.

The precise administrative relationship between the chief justice and state judicial system varies. The administration of the state judiciary is the sole responsibility of the chief justice in 36 states, the entire court of last resort in 13 states, and a judicial council in Utah. The chief justice's administrative position is established by the state constitution in 33 states, and a combination of state statutes and the constitution in the remaining states. Like the federal judiciary, most state judicial branches have a Judicial Council or Conference, consisting of the chief justice, other judges, members of the state bar, and appointees of the governor and legislature, which plays primarily an advisory role.

In their administrative capacity, chief justices are the primary rule and policy-making authority for the state judicial system. As head of the state judiciary, chief justices define priorities and recommend policy actions for legislators and administrators. The chief justice prepares the budget and is the primary judicial lobbyist and liaison with the executive and legislative branches (Weinstein 1977). However, even in states where they do not possess sole formal authority, the chief justices wield considerable influence over the direction of the state

¹ We use the terms Court of Last Resort and Supreme Court interchangeably.

judiciary. The chief justice typically appoints and oversees the state court administrator who is responsible for the day to day operations of running the state judiciary. Moreover, their symbolic position affords them considerable informal power to play a leadership role. The Conference of State Court Administrators contends, “(t)he chief justice should be the inspirational leader of the courts, setting forth a compelling, positive picture of the judicial system at its best. She or he must be the principle advocate for that vision (2003, 3).” While a state’s judicial system is the product of interactions between judges, lawmakers, court administrators, and other judicial branch actors, “future policy direction for courts are guided by judicial leadership in these interactions (Canon and Johnson 1999).”

State chief justices are less constrained in implementing their policy preferences through administrative measures than they are in their role as adjudicators. The legal model has identified how judges’ ability to impose their own policy preferences is constrained by the norms of impartiality (Resnik 1988), the rules of precedent (Carp and Rowland 1996), the facts of a given case, and the adversarial process itself (Baum 1997). Chief Judges of the United States Courts of Appeals, who have similar authority as state chief justices, have more influence in shaping the administrative agenda of their courts than the decisions of their fellow judges (Hettinger, Lindquist et al. 2003). The greater discretion of chief justices in implementing their policy preferences through administrative channels offers a more robust test of different theories of judicial behavior than looking solely at judicial decision-making.

Chief Justices’ Governance Agenda

Chief justices have a wide array of issues concerning the governance of their state judicial branch that they can choose to prioritize or not. Just as studies of presidents (Light 1982) and governors (Herzik 1991; DiLeo and Lech 1998) have used their annual addresses to

identify the executive's policy goals and priorities; we utilize the State of the Judiciary addresses to identify the governance priorities of state chief justices.

In virtually every state, the chief justice outlines his or her administrative accomplishments and priorities either in a State of the Judiciary address to the governor and legislature or the state bar association, or in a written Judiciary Annual Report to the legislature. The annual State of the Judiciary address is an important political event akin to the State of the Union address by the president or the State of the State address by the governor. The State of the Judiciary address is the primary forum for chief justices to tout their accomplishments, state their goals, and ask for the financial resources and legislative assistance necessary to realize their most critical programs. The audience—the governor, legislature, and state bar—represents the other strategic actors whose support or acquiescence is necessary to achieve those goals.

To identify the specific priorities of chief justices, we performed a content analysis of the chief justice's State of the Judiciary address or the section of the Judiciary Annual Report that outlined his or her goals and achievements for the court for the 2001-2002 legislative session. Eight states—Alabama, Illinois, Kentucky, Mississippi, Nebraska, Oklahoma, Oregon, and Pennsylvania—were omitted since their chief justice did not make an address. We reviewed each State of the Judiciary message and identified each discrete accomplishment or proposal identified by the chief justice. Each agenda item was entered into the dataset. Together, our 42 chief justices identified a total of 579 agenda items we then aggregated into 132 issue subcategories. Intercoder corroboration ensured that agenda items had been classified correctly. The resulting list of accomplishments and proposals represented each chief justice's agenda for the state's judicial system.

To model their agenda, we needed to develop a typology of the chief justices' priorities. Studies of governors' State of the State addresses have identified the governors' priorities using issue areas, such as education, crime, or highways (DiLeo and Lech 1998). Drawing upon the Conference of State Court Administrators' (2001, 2003) reports on judicial governance and our own analysis of the data, we identified five broad issue categories for state courts: preserving the court's institutional position, processing cases efficiently, enhancing the quality of and access to legal representation, promoting public confidence in the institution, and addressing family-related issues. Each of the 132 issue subcategories was then assigned to one of these five categories. Appendix A lists all of the issue subcategories in each of the five categories.

Our first category of judicial issues is institutional authority. The power of the judicial branch in our separated system is closely tied to its prestige and reputation (Baum 1998). As Publius remarked in the 78th *Federalist*, the federal judiciary holds control over neither the "sword" nor the "purse," and thus must rely on "judgment" as its means to achieve compliance. The same is true of contemporary state courts. The judicial branch must actively protect and enhance its institutional position. Every agenda item in the chief justice's State of the Judiciary address concerning requests for more resources and funding, greater judicial control over resources, judicial selection and elections, institutional communications, and judicial independence, was coded as an institutional issue.

The second category is judicial efficiency. With the dramatic increase in litigation over the past thirty years, court reformers have made the efficient and expeditious processing of cases a major priority for state courts. Judicial reformers have made William Gladstone's adage that "Justice delayed is justice denied" their battle cry (Hall 1999). Any agenda item touting the efficiency of their state's courts or identifying proposals for improving the efficiency through the

use of advanced case management techniques or special jurisdiction courts was coded as an efficiency issue.

The third category is legal representation. Part of the institutional mandate of state supreme courts is to enhance the quality of and access to legal representation in the state. All items related to improving the performance of the bar, such as attorney oversight, disbarments, licensing, and ethics, or improving access to legal representation, such as indigent defense, public defenders, or self-represented litigants, were categorized as legal representation issues.

The fourth category of our typology is public outreach. Each mention of promoting greater confidence in the institution, such as educating children and communities about the courts, making the courts more user-friendly, and engaging in judicial outreach activities was coded as an outreach issue. While the courts' desire to maintain its prestige in the public eye is clearly related to maintaining its institutional position, we contend that there is a theoretical distinction stemming principally from a difference in audience. The state courts' institutional agenda, we argue, is based on its relationship with elites, whereas its public outreach agenda rests primarily on improving its relationship with the public.

The final category we identified as family issues. Much of what state judiciaries do is regulate the private matters of families (Sapiro 1981). State courts are primarily responsible for addressing divorce, custody, juvenile delinquency, abandonment, domestic disputes, and so on. State judiciaries are increasingly changing how they address these issues by adopting problem-solving or therapeutic approaches, which focus on using intensive court interventions to change the underlying chronic behaviors rather than simply adjudicate the matter (Rottman and Casey 1999). All items relating to children, family courts, domestic violence, therapeutic courts,

juvenile justice, alternative dispute resolution, community courts, and diversity were coded as family issues.

Theoretical Explanations of Judicial Agenda-Setting

The literature on judicial behavior and decision-making provides a number of theoretical hypotheses that potentially explain state chief justices' governance agenda. We believe that explaining the policy preferences of state supreme court chief justices requires an integrated model of judicial behavior that incorporates attitudinal, strategic, and neo-institutional theories of judicial behavior (Flemming, Holian et al. 1998). The theoretical rationale and measurement is described in greater detail below.

Attitudinal Model

Attitudinal theories of judicial behavior suggest that judges use their powers to advance their own ideological and political preferences (Segal 1993). If we accept the attitudinal model's premise about judicial decision-making, we should expect that state chief justices should utilize their formal and informal powers as administrators of their state judiciaries to further their specific ideological and political goals. We include three measures of the chief justice's policy preferences based on ideology, gender, and socialization. First, we measure the ideology of the chief justices using the party-adjusted judge ideology measure (PAJID) (Brace, Langer et al. 2000). The PAJID scores take into account the ideology of state officials for appointed judges, and citizen ideology scores for elected judges. The chief justices varied from a low of 1.4 to a high of 94, with an average PAJID score of 36.5 (0 = most conservative, 100 = most liberal).

Second, Elaine Martin found that female judges have distinctive priorities than their male counterparts, even when controlling for ideology (1993). Female judges have been at the forefront of state court gender bias studies (Resnik 1996). The representational view suggests

that a female chief justice may use her powers to address issues that have been neglected by the historically male dominated legal system (Allen 1987). A dummy variable was coded 1 if the chief justice was a woman. In 2002, the number of female chief justices was at an all time high of fifteen.

Third, we also believe that the length of time a chief justice has served on the state Supreme Court might matter. Individual justices get socialized into the needs of that state judiciary, and are thus more likely to adopt an institutional perspective as the protector of the judicial branch. Accordingly, we include a variable—tenure—that measures how many years the chief justice has served. Our chief justices' tenure varied from 1 to 41 years, with an average of 12.6 years.

Strategic Model

Strategic theories of judicial behavior emphasize how justices and their courts' priorities are shaped by the threat of action from the executive and legislative branches (Murphy 1964; Epstein and Knight 1998). Chief Justice Rehnquist aptly noted this dynamic. "I am struck by the paradox of judicial independence in the United States; we have as independent a judiciary as I know of in any democracy, and yet the judges are very much dependent on the Legislative and Executive branches for the enactment of laws to enable the judges to do a better job of administering justice (1996, 1)." A chief justice's agenda may be shaped by his or her perceptions of the encroachment of the other branches onto what he or she views as the domain of the judiciary. For example, congressional efforts to mandate civil case management techniques for federal courts led to each court developing its own plan to "hold off" Congress (Wasby 1993: 126). We identify five strategic variables that may shape a chief justice's agenda.

The most important priority for the chief justice is to protect and enhance the institutional position of the court from encroachment by the legislative and executive branches (Murphy 1964). These branches can cut funding for courts, reduce their discretionary powers, limit jurisdiction, and even fail to enforce judicial rulings. Judges maintain the twin institutional goals of maximizing their independence from other branches and protecting their budgets (Baum 1997). Accordingly, we predict that institutional issues will be a chief justice's most important priority. We hypothesize that as institutional conflict between the judiciary and other branches increases, chief justices will place less priority on the other four categories of agenda issues. We measure institutional conflict as the percentage of all policy agenda items in the chief justice's State of the Judiciary address that are institutional issues. The amount of conflict varied from 0 to 83 percent of the chief justice's address, with an average of 23.4 percent.

Second, chief justices need to compete for financial resources (Douglas and Hartley 2003). We hypothesize that fiscal stress could have an impact of a chief justice's agenda by stimulating budget battles between the judiciary and the executive and legislative branches. We measure fiscal stress using the Rockefeller Fiscal Studies measure of real per capita percent change in state general fund tax revenue from FY 2001-02. In the period studied here, states were undergoing a period of significant fiscal stress with a decline in general fund tax revenues of 6.98 percent on average (Boyd and Jenny 2003).

Third, strategic models of judicial behavior suggest that judges' actions are constrained by their *perceptions* about what is acceptable to the other two branches (Eskridge 1991a; Eskridge 1991b). A chief justice might decide not to pursue her true priorities because she suspects they would be rejected by one of the other two branches. We include a measure of the ideological gap between the chief justice and the executive and legislative branches, measured as

the absolute value of the chief justice's PAJID score from the measure of state government liberalism (Berry, Ringquist et al. 1998). While the average ideological gap between the chief justice and state government was 10.8, it ranged from a low of 0 to a high of 72.5.

The three previous variables measure the constraints imposed by external political factors. However, chief justices are also potentially constrained, or emboldened, by the internal politics of the court. First, a chief justice who is ideologically out-of-step with his or her associate justices may feel either emboldened to pursue his or her priorities through administrative channels or feel constrained by the internal conflict. We measure the ideological gap between the chief justice and the rest of the court as the absolute value of the chief justice's PAJID score from the PAJID score of the rest of the court. While the average ideological gap was 23.9, it ranged from a low of .37 to a high of 72.5. Second, the research on tokenism suggest that minorities, in our case female chief justices, are unlikely to pursue their true priorities until there is a critical mass of other female associate justices (Kanter 1977a; 1977b). Thus, we include the number of female associate justices on the court. Five percent of states had no female justices, 38 percent had one, 31 percent had two, and 26 percent had three.

Neo-Institutional Model

Neo-institutional studies of state courts have emphasized how institutional rules, such as selection mechanisms for state judges and chief justices, shape the incentives and thus behavior of judges (Hall and Brace 1989; Brace and Hall 1990; Brace and Hall 2000). We identify four neo-institutional factors that may affect a chief justice's priorities. First, chief justices vary significantly in the extent to which they are accountable to the public through elections (Hall 1992; Hall 1995). This difference may affect their policy agenda. Consequently, we include

dummy variables for whether the justices face partisan or non-partisan elections, retention elections, or are appointed (Council of State Governments 2003).

Second, states also vary in how they select their chief justices. In 18 states, members of the high court choose the chief justice from the pool of already sitting associate justices; 7 states provide for popular election of chief justices; 15 states mandate gubernatorial and/or legislative appointment; 1 state empowers an independent judicial commission to make the selection; and 9 provide for random or rotating selection (Langer, McMullen et al. 2003). Scholars believe that chief justice selection mechanisms affect the vigor of judicial administration, although they disagree how. For example, some suggest that seniority hampers vigorous leadership by the chief justices whereas election by colleagues ensures the cooperation and support of other justices (Friesen, Gallas et al. 1971). We thus include dummy variables if the chief justice is selected by his or her peers on the court (16 states) or is appointed or elected directly to the position (19 states).

Third, the formal relationship between chief justices and state judiciaries also varies among the states. In 36 states, chief justices are established as the head of the judicial branch either by the state constitution (33 states) or by statute (3 states). Administration for the remaining states is the responsibility of either the entire state supreme court (13 states) or a judicial council (1 state) (Rottman, Flango et al. 2000). A chief justice who has constitutional or statutory responsibility as the head of the judicial branch is likely to feel different kinds of restraints compared to one whose agenda is vetted by others. Thus, we include a dummy variable coded 1 for chief justices who are the constitutional or statutory head of the judicial branch.

Fourth, Hall (1999) suggests the presence of an intermediate appellate court strengthens the policy-making capacity of state supreme courts by minimizing the sheer number of cases they must hear. Presumably, chief justices without an intermediate appellate court have greater constraints on their ability to pursue their agenda. We include a dummy variable coded 1 for the eleven states without intermediate appellate courts.

Modeling the Governance Agenda of Chief Justices

What we are trying to model is the relative importance of our five categories of judicial governance—judicial efficiency, public outreach, legal representation, family issues, and institutional authority—on a chief justice’s governance agenda. The dependent variable we are trying to predict is the number of agenda items in each of the five issue categories. The more agenda items, the greater the commitment by the chief justice to using the power of the courts to address that type of issue. Since the dependent variables are nonnegative integers, an event count model is the appropriate methodological choice. We use a negative binomial regression event count model since it allows the variance to be greater than the mean (King 1988; Long 1997). A poisson event count model would require the restrictive assumptions that a chief justice’s priorities are independent of one another. We ran separate event count models for each of the five categories.

Since the magnitude of the independent variables’ effect is difficult to assess in an event count model, we have chosen to present the impact of the independent variables using predicted probabilities to facilitate the substantive interpretation of our findings. Table 1 shows the impact of how discrete changes in the independent variables affect the predicted number of agenda items in each of the five categories. The predicted values were calculated using the coefficients from the negative binomial regressions, with all the variables set to their mean except for the

independent variable of interest (Long and Freese 2006). The predicted probabilities for the attitudinal and strategic variables show the impact of a one standard deviation increase in each independent variable since they are continuous. Since the neo-institutional variables are dichotomous, the predicted probabilities show the impact of changing each independent variable from 0 to 1. The numbers in Table 1 represent the number of agenda items in that issue area in the chief justice's State of the Judiciary address. The mean numbers of policy agenda items in each issue area are at the bottom of Table 1. The coefficients, standard errors, and P-values from the negative binomial regressions for each of the five categories are included in Appendix B.

Table 1 here

Discussion

Judicial Efficiency

State chief justices varied significantly in the administrative energies they devoted to enhancing efficiency and reducing case backlogs. While the average chief justice identified 3.24 efficiency issues, accounting for 23 percent of their agenda, Chief Justices Veasey of Delaware and Weaver of Michigan identified nine efficiency issues. On the other hand, the chief justices of five other states (VT, TX, TN, LA, AR) had none.

The first column of Table 1 shows the impact of the independent variables on the number of efficiency agenda items in the chief justice's State of Judiciary address. The predicted values were calculated using the coefficients from Table 1 in Appendix B. Positive numbers indicate the number of efficiency issues more than the mean number of efficiency priorities whereas negative numbers indicate the number of efficiency issues less than the mean. The results suggest that chief justices are more likely to emphasize efficiency issues when they are selected

by their peers, are the head of their state judiciary, and are farther from their court's ideological center.

These findings suggest that efficiency may be the governance issue most likely to produce consensus on an ideologically divided court. A chief justice whose ideology is one standard deviation from the center of the court identified .588 more efficiency agenda items than the average chief justice. Peer selected chief justices mentioned 2.021 more judicial efficiency issues than their counterparts who were appointed or elected directly to their position or were elevated through regular rotation procedures. The sizable impact of how chief justices are selected is consistent with Wasby's observation that chief justices are likely to be less aggressive when chosen by fellow colleagues (1992). Finally, chief justices, who are established by statutory or constitutional means as the head of the state judicial system, emphasized .986 more efficiency issues than chief justices who are not.

On the other hand, a chief justice is less likely to prioritize efficiency issues if he or she is liberal, elected, or is experiencing institutional conflict. Chief justices that face partisan, non-partisan, or retention elections are less likely to emphasize greater efficiency in their State of Judiciary addresses.² A state chief justice who is elected emphasized 2.046 fewer efficiency issues than the appointed counterparts. This is a sizable difference given the average chief justice only mentions 3.24 efficiency agenda items. A state chief justice, who is one standard deviation more liberal than the average chief justice, emphasizes .677 fewer efficiency issues.

² We initially ran all the models with separate dummy variables for partisan, non-partisan, and retention elections. If the coefficients for all three were similar, as they were for the efficiency, outreach, family, and institutional issues, we recoded the three dummy variables into a single variable for elected judiciary. If there were differences, as with the quality of legal representation, we included dummy variables for contested versus retention elections.

As we see in subsequent analysis, this difference reflects the tendency of liberal chief justices to pursue legal representation and family issues in their agenda.

Finally, as institutional conflict between the state supreme court and the other branches of government increases, the number of efficiency issues decrease by .604. As expected, reducing case backloads takes a backseat to protecting the institutional powers of the judicial branch for chief justices.

Legal Representation

Chief justices devoted almost 19 percent of their agendas to detailing efforts to improve the access and quality of legal representation in their states. The second column of Table 1 shows the impact of the independent variables on the number of legal representation priorities in the chief justice's State of Judiciary address. The predicted values were calculated using the coefficients from Table 2 in Appendix B. The findings reveal that chief justices' commitment to legal representation in the state is best explained by neo-institutional factors rather than attitudinal or strategic ones. Chief justices who were appointed or elected directly to their position or faced contested elections (defined as partisan or non-partisan elections), followed by those who were the head of the state judiciary, were more likely to devote more of their agenda to legal representation issues. Elected judges identified 2.413 more issues related to legal representation in the state judicial system.

Attitudinal factors had a more modest impact. More liberal chief justices identified .566 more priorities in the State of the Judiciary address related to legal representation. Issues such as indigent defense, improved public defenders offices, or providing assistance to self-represented litigants are consistent with a liberal judicial philosophy. Similarly, chief justices with more tenure have a greater awareness of the dimensions and importance of issues relating to legal

representation. Chief justices who had been on the bench one standard deviation more than the average chief justice advocated .743 more issues related to legal representation.

Finally, strategic factors also had an impact. Institutional conflict is the only variable that had a statistically significant and negative impact on the number of legal representation issues. A chief justice with institutional conflict one standard deviation more than the average chief justice made .798 fewer policy demands related to legal representation.

Public Outreach

Chief justices also varied in their commitment to promoting public outreach such as connecting with the community and building public confidence in the judiciary. The average chief justice made only 1.24 mentions of outreach issues, and outreach issues were only nine percent of all issues identified in chief justices' State of the Judiciary addresses. The chief justices of North Dakota and Rhode Island each made five references to outreach issues, while 18 chief justices—nearly 43 percent of our pool—made no references at all.

The predicted values calculated using the coefficients from Table 3 in Appendix B reveal that chief justices' commitment to public outreach in the state is best explained by neo-institutional factors rather than attitudinal or strategic ones. Chief justices in states without intermediate appellate courts were significantly more likely to prioritize outreach. Since states without intermediate appellate courts (DE, NV, NH, ND, RI, SD, VT, WY, ME, MT, WV) are also smaller on average, this difference probably reflects the greater opportunities and expectations for retail politics in smaller states. Elected judges identified .739 more outreach issues in their State of the Judiciary addresses than appointed judges, undoubtedly thinking about the value of these connections with the community for their next election. Chief justices who are the head of the state judiciary were also more likely to promote outreach issues.

The attitudinal and strategic factors had a more modest impact. Our findings suggest that as the chief justice's tenure increases, his or her willingness to address the public's confidence in the judiciary also increases. Also, chief justices are more likely to address the public during times of fiscal stress. A chief justice in a state with fiscal stress was one standard deviation greater than average, a 12.7 percent decline in state general fund tax revenues, identified .38 more outreach issues. This may indicate a willingness of some chief justices to "go public" to bolster their standing with the public in anticipation of budgetary battles with the legislature and governor.

Family Issues

Family issues are one of the largest components of chief justices' governance agenda, accounting for twenty-four percent of their agenda. There is significant variation among the 42 chief justices in our dataset. The average chief justice makes 3.79 references to family issues. Dana Fabe of Alaska made the most mentions with 11, while three chief justices, Kay McFarland of Kansas, Margaret H. Marshall of Massachusetts, and WH "Dub" Arnold of Arkansas, made no mention of family issues at all.

The predicted values for family issues calculated using the coefficients from Table 4 in Appendix B show the only attitudinal variable that had a statistically significant effect was the ideology of the chief justice. A chief justice who is one standard deviation more liberal than the average justice mentions .693 more family issues than the average chief justice. In contrast, as institutional conflict increases, the number of family issues on the chief justice's agenda decreases significantly. A one standard deviation increase in institutional conflict reduced the number of family issues by 1.39, a 36 percent reduction.

We had initially suspected that the presence of a female chief justice and more female associate justices would have a positive impact on the number of family issues on the chief justice's agenda. While the coefficients for female chief justice were positive and the number of female associate justices was negative, neither was statistically significant. Upon closer examination of the individual cases, we found that ten of the female chief justices had identified four or more family issues in their state of judiciary address, whereas four of the other female chief justices had two or fewer (KA, MA, SC, WI). We then ran a bivariate correlation between the number of family issues and institutional conflict for female and male chief justices. The correlation between institutional conflict and the number of family issues priorities for male chief justices was negative (-.245), but not statistically significant. In contrast, the correlation between institutional conflict and the number of family issues priorities for female chief justices was negative (-.736) and was statistically significant at the .01 level. Thus, in Model 2 in Table 4 in the Appendix, we included an interactive term for female chief justices * institutional conflict to examine whether institutional conflict has a disproportionate impact on female chief justices' support for family issues. With the inclusion of an interactive term for female chief justices * institutional conflict in Model 2, the coefficient for female chief justices is positive and the number of female associate justices is negative and both are statistically significant. This finding suggests there is an interesting relationship between the gender of the chief justice, institutional conflict and the importance of family issues on the chief justices' agenda. In the absence of institutional conflict, female chief justices are more likely to use their powers to prod the state judicial system to address family issues, even when controlling for ideology. However, female chief justices' support for family issues evaporates as institutional conflict increases, unlike their male counterparts. This finding is consistent with Kanter's research on tokenism in

the workplace (1977.) Female chief justices feel greater pressure to conform to traditional male-dominated institutional norms and practices when the visibility of their actions increases, in this case, the obligation to protect the institutional prerogatives of the judicial branch vis-a-vis the other branches, at the expense of family issues (Martin 2001).

The negative coefficient for the number of other female associate justices is puzzling. It may be that courts with more female justices are able to find other ways (the adjudicative process, for instance) to promote family issues. Or it may be that courts with more female justices have already addressed many of the family issues such as gender bias studies, domestic violence, or family courts in their state judicial system prior to the period studied here. Only a longitudinal analysis of chief justices' agenda could address this dynamic.

Institutional Authority

Preserving the court's institutional authority is a significant priority for chief justices. On average, twenty-four percent of the chief justices' agenda were institutional issues. The average chief justice identified 3.17 institutional conflict issues. This finding is consistent with a report on judicial governance by the Conference of State Court Administrators which concluded that "the judiciary must work on a continuous basis to cultivate positive institutional relationships with the other branches of government and other justice system constituencies (2001, 6)." As with the other dependent variables, there was significant variation among the judges. Eight judges made no references to institutional issues, whereas Kay McFarland of Kansas had the most issues with 17.

We had suspected that our strategic variables such as the ideological gap between the chief justice and the state government, particular fiscal pressures, and certain neo-institutional factors such as judicial elections, would be good predictors of the extent of institutional conflict.

Although the signs of the coefficients are in the right direction, none of our variables were statistically significant except for the tenure of the chief justice. Chief justices, who had served one standard deviation longer than the average chief justice (22 years), raised almost one more institutional issue than the average chief justice. As chief justices tenure (and presumably stature) increases, their ability and willingness to go head to head with the other branches increases.

There are two explanations for the lack of explanatory power of our models. First, it might be that the origins of institutional conflict over judicial independence, selection, and funding and institutions lie with political actors outside of the judiciary not accounted for in our models. Second, there may be conflict between the branches, but chief justices prefer to address these issues in private negotiations with legislative leaders and the governor, rather than highlight them in their visible State of the Judiciary address.

Conclusion

Chief justices engage in substantial policy making outside of the adjudicative process in their position as head of the state judicial system. Our results demonstrate that chief justices' governance agenda can be modeled as a political activity using existing theories of judicial behavior. They also offer insights into the relative explanatory power of the three main theories of judicial behavior. Elements of both the attitudinal and strategic theories explain the chief justices' governance agenda. More liberal chief justices focus on legal representation and family issues while conservative chief justices were more likely to address efficiency issues. Longer tenured chief justices are more likely to prioritize the judiciary's standing with the public, its institutional authority, and legal representation in the state. For the strategic model, the most important factor is institutional conflict. When the chief justice is battling with the other

branches over institutional issues such as funding or selection mechanisms, all other governance issues recede in importance. Maintaining the institutional prerogatives of the state judiciary is the foremost priority for all chief justices.

Neo-institutional theories, and specifically, selection mechanisms, were particularly salient in explaining the chief justices' agenda. Chief justices that are elected were more likely to address family issues, legal representation, and public outreach, and less likely to focus on efficiency issues. Chief justices who were chosen by their peers were more likely to focus on enhancing the efficiency of the state judicial system in processing cases, while chief justices appointed or elected directly to the position were more likely to devote more of their judicial agenda to improving legal representation and the public's confidence in the judiciary.

Our results also reveal when the chief justice will pursue the more traditional governance goals of efficiently processing cases or a more activist role of enhancing access to the legal system or in adopting problem-solving approaches to family issues. Chief justices are more likely to pursue the traditional role if they are appointed, conservative, selected by their peers, or there is an ideological gap between the chief justice and the rest of the court. Chief justices are more likely to pursue a more activist role for the courts if they are elected and liberal.

Our findings demonstrate the need for more research into judicial policy-making outside of the adjudicative process. First, our dataset is limited by virtue of it representing only a single moment in time: 2001-2002. We surmise that a chief justice's governance agenda should also change over time, like presidents' State of the Union addresses (Light 1982). Second, more research is needed into the conditions under which the chief justices' priorities are implemented.

Table 1 The Impact of Attitudinal, Strategic, and Neo-Institutional Variables on Chief Justices' Governance Agenda

Independent Variables		Predicted Number of Agenda Items in Chief Justices' State of the Judiciary Address				
		Efficiency	Legal Representation	Public Outreach	Family	Institutional Conflict
Attitudinal Model	Chief justice liberalism	-0.677	0.566		0.693	-0.234
	Female chief justice		-0.551		0.543	
	Tenure on bench		0.743	0.314		0.902
Strategic Model	Institutional conflict	-0.604	-0.798	-0.176	-1.390	
	Ideological gap between chief justice and state government					
	Fiscal stress			-0.380		-0.127
	Ideological gap between chief justice and Court	0.588	0.439			0.642
Neo-Institutional Model	# of females justices				-0.518	
	Elected judiciary	-2.046		0.739	1.156	0.895
	Partisan/Non-partisan elections		2.413			
	Retention elections		0.743			
	Head of state judiciary	0.986	0.718	0.712		
	Chief justice chosen by peers	2.021				
	Chief justice appointed or elected		2.515	0.358		1.415
No IAC			1.940		-0.232	
Mean		3.24	2.36	1.24	3.79	3.17
Maximum		9	8	5	11	17

Values represent predicted number of agenda items in each policy area in the chief justice's State of the Judiciary address. Predicted values were calculated using the coefficients from Tables 1-5 in Appendix B, and varying the independent variable of interest while holding the other variables constant at their mean. Bold numbers indicate the variable was statistically significant. Non-highlighted numbers indicate the variable was not statistically significant, but was included in the analysis. Blank cells indicate that the variable was not statistically significant and was excluded from the analysis.

Appendix A. Classification of Agenda Items in State of the Judiciary Address

Each discrete accomplishment or proposal identified by the chief judge was entered into the database and coded into one of the narrow topics below. Subsequently, each issue subcategory was classified as belonging in one of five broader categories: judicial efficiency, institutional authority, public outreach, legal representation, and family issues. For example, if the chief justice mentioned case management in their State of the Judiciary address, it was coded as 1 efficiency agenda item whereas any mention of attorney oversight was coded as 1 legal representation agenda item.

Judicial Efficiency	Institutional Authority
Case data Case management Handling complex civil litigation Court management Improving enforcement of court sanctions Improved management of criminal dockets Improving efficiency of courts Improve efficiency of limited jurisdiction courts Management issues Improve security of courts Use senior justices to reduce backlogs Use single justice assignments Increased use of technology Timeliness in handling cases Improving handling of low level criminal offenders Increase trial capacity Magistrate system, reform Create administrative law judges Drug treatment courts	Allow courts to reorganize judicial districts New buildings Grant courts power of discretionary review Concern about funding in budget crisis Constitutional reform Elections Emphasis on judicial independence Shift to state funding Interbranch communications Create Judicial Conference Judicial selection Legislative relations More flexibility in transferring resources More resources, judges, clerks, buildings Rational system for deploying staff Increase salaries Submit Judicial budget to legislature directly Unification of courts Lobbying legislature Impeachment & investigation Judicial conduct/ethics Appellate court boundaries Sentencing Defend budget cuts Court Fees Funding Retrieving fees from traffic tribunal

Public Outreach	Legal Representation	Family Issues
Connect with community	Attorney Oversight	Child Protection
Build public confidence in judiciary	Evaluation of justices	Children's custody issues
Educate children about courts	Fiduciary Advisory Committee	Domestic violence
Increase judicial outreach	Improved access to lawyers	Family courts
Televise proceedings	Improve indigent defense	family division
Court web site	Court interpreters and translators	family law
Make courts more user friendly	Jury reform	family law self help (accessibility)
Create Judicial Historical Society	multijurisdictional practice	gender bias
Celebrate veterans as judges	probation	juvenile justice
	public defenders	reentry court
	public service- loan forgiveness young attorney	sex offenders
	Assist self represented trust fund	therapeutic courts
	legal services, increase	Victims' Rights
	Appointments of lawyers and fiduciaries on non partisan basis	Adoptions
	Judicial college to improve judge skills	Mental issues/involuntary commitment
	Civil Legal Services for the Poor	ADA- equal access
	Increase DA salaries	Alternative justice forums
	Access to courts, Improved accessibility is good	Community courts
	electronic public access	Racial Bias/Confidence
		Racial diversity on bench

Appendix B

Table 1 Efficiency Agenda Items

		Coef.	Std. Err.	P> z 	
Attitudinal Model	Chief Justice liberalism	-0.01	0.00	0.02	**
	Intra-court conflict	0.03	0.01	0.05	**
Strategic Model	Institutional conflict	-1.02	0.54	0.06	*
	Elected judiciary	-0.61	0.24	0.01	***
Neo-Institutional Model	Head of state judiciary	0.36	0.23	0.12	
	Chief Justice chosen by peers	0.63	0.25	0.01	***
	Constant	1.15	0.41	0.01	

Dependent variable: number of efficiency agenda items in chief justice's State of Judiciary address

Method, Negative binomial regression

N= 42, Chi2 = 19.65, prob > chi2 = .003

* p<.10, ** p< .05, *** p < .01

Table 2 Legal Representation Agenda Items

		Coefficient	SE	P> z 	
Attitudinal Model	Chief Justice liberalism	0.01	0.00	0.00	***

	Female Chief Justice	-0.34	0.28	0.22	
	Chief Justice Tenure	0.05	0.01	0.00	***
Strategic Model	Ideological conflict	0.01	0.01	0.03	**
	Institutional conflict	-2.29	0.87	0.01	***
Neo-Institutional Explanations	Partisan/Non-Partisan elections	1.15	0.30	0.00	**
	Retention elections	0.41	0.32	0.20	
	Head of state judiciary Chief Justice appointed/elected	0.46	0.28	0.10	*
	Constant	1.29	0.26	0.00	***
	Constant	-1.33	0.82	0.10	

Dependent variable: number of legal representation agenda items in chief justice's State of Judiciary address

Method, Negative binomial regression

N= 42, Chi2 = 38.88, prob > chi2 = .000, Log likelihood = -64.839684

* p<.10, ** p< .05, *** p < .01

Table 3 Outreach Agenda Items

		Coef.	Std. Err	P> z 	
Attitudinal Model	Chief Justice liberalism	0.00	0.01	0.80	
	Chief Justice Tenure	0.04	0.02	0.08	*
Strategic Model	Ideological conflict				
	Institutional conflict	-0.91	0.96	0.34	
	Tax revenues	-0.07	0.02	0.00	***
Neo-Institutional Model	Elected Judiciary	0.91	0.49	0.06	*
	Head of state judiciary	0.85	0.43	0.05	**
	Chief Justice appointed/elected	0.37	0.42	0.38	
	No IAC	1.36	0.41	0.00	***
	Constant	-2.57	0.99	0.01	

Dependent variable: number of outreach agenda items in chief justice's State of Judiciary address

Method, Negative binomial regression

N= 42, Chi2 = 17.27, prob > chi2 = .002, Log likelihood = -55.72973

* p<.10, ** p< .05, *** p < .01

Table 4 Family Issues Agenda Items

		Model 1			Model 2		
		Coef.	Std. Err.	P> z	Coef.	Std. Err.	P> z
Attitudinal Model	Chief Justice liberalism	0.01	0.00	0.05 **	0.01	0.00	0.03 ***
	Female Chief Justice	0.14	0.21	0.49	0.67	0.25	0.01 ***
Strategic Model	Ideological conflict						
	Institutional conflict	-2.04	0.64	0.00 ***	-0.51	0.75	0.50
Neo-Institutional Model	Elected judiciary	0.33	0.22	0.13	0.29	0.21	0.17
	Female Justices	-0.15	0.11	0.14	-0.21	0.10	0.04 **
	Interactive FCJ* Institutional Conflict				-3.97	1.52	0.01 ***
	Constant	1.40	0.34	0.00	1.17	0.34	0.00
Chi2			24.31			32.92	
Prob > chi2			0.00			0.00	
Log likelihood			-84.33			-80.03	

Dependent variable: number of family issues agenda items in chief justice's State of Judiciary address

Method, Negative binomial regression

N= 42, Chi2 = 17.27, prob > chi2 = .002, Log likelihood = -55.72973

* p<.10, ** p< .05, *** p < .01

Table 5 Institutional Authority Agenda Items

		Coef.	Std. Err.	P> z
Attitudinal Model	Chief Justice liberalism	0.00	0.01	0.60
	Chief Justice Tenure	0.04	0.02	0.06 *
Strategic Model	Ideological conflict	0.03	0.02	0.17
	Tax revenues	-0.01	0.03	0.81
Neo-Institutional Model	Elected judiciary	0.32	0.44	0.46
	Chief Justice appointed/elected	0.47	0.38	0.22
	No IACs	-0.08	0.37	0.83
	Constant	-0.23	0.89	0.79

Dependent variable: number of institutional authority agenda items in chief justice's State of Judiciary address

Method, Negative binomial regression

N= 42, Chi2 =7.06, prob > chi2 = 0.4223; Log likelihood = -91.753351

* p<.10, ** p< .05, *** p < .01

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