

A Response to a Critique of Our Study on In-Group Bias*

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For our study of in-group bias, we analyzed the votes of 4,519 Justices in 516 cases. For each case we (or the U.S. Supreme Court Database) coded nine variables, three of which are of interest in this response: the Justices' votes (for or against), the speaker (liberal or conservative), and the law (liberal, conservative, or neutral). This amounts to 1,548 coding decisions for just these three variables—excluding the threshold decision of whether to include a case in the study and not counting separately the nine votes per case.

Of these 1,548 decisions, the author says he examined (by some unspecified mechanism, not random selection) about one quarter of them and challenges 36—or about 9%. If we in fact had a 9% error rate in our data, we might worry. But it turns out that of the 36 challenges, 29 are not errors but coding disagreements of one form or another. We provide explanations in [Appendix C](#) so suffice it to note here that several trace to the author's attempt to substitute his coding rules for ours. For example, he asserts that three cases shouldn't be in our study because he doesn't think they implicate freedom of expression. What he thinks, though, wasn't our definition for inclusion. We selected cases based on the Supreme Court Database's issue area definitions. Now the author might not like these definitions. That's fine; he's free to write his own and then go through all the Supreme Court's decisions since 1953 to determine the cases that do and do not meet his new definition. But he's not free to condemn our work for failing to meet his self-imposed definition (whatever it might be).

Another common misstep on the author's part is to conflate ideology and partisanship. Were he devising the coding rules, it seems that he would always code, for example, a challenge to an election law brought by a Democrat as liberal (and a Republican, as conservative). But that's not our approach. In these kinds of cases, a challenge motivated to bring about greater inclusion in the political process is liberal regardless of the challenger's partisan label.

The upshot is that our coding procedures reject over 80% of the author's allegations, meaning his critique reduces to about 2% of our coding decisions, extrapolating over his non-random audit percentage.¹ Although we think a few of these are debatable, we are happy to concede, and have corrected the dataset to reflect the changes he desires. We have also rerun the analysis. The results do not change in any substantively or statistically significant way (see Appendix A), nor do the results of the summary of our study reported in the *New York Times* and other outlets (see Appendix B).

The other parts of the critique amount to amateur social science, grand and unsubstantiated inferences, questionable assertions, and the like. Why these things appear in a purportedly serious piece of scholarship, we can only speculate. But we're not in the business of doing that.

*The original papers and the critique are available [here](#).

¹We corrected 7 cases for a total of 15 corrections: 4 to the speaker and 11 to votes. Because we don't count votes 9x in computing the number of coding decisions we made (if we did, the percentage of purported errors would be even smaller as the denominator would be much larger), we don't overcount votes here either.

Appendix A.

Table 2 in “Do Justices Defend the Speech They Hate?” (the research paper)

The Original Table

Variable	Mean	S.D.	Bayesian 95%	
Justice Level				
Ideology	0.446	0.495	-0.752	1.250
Case Level				
Liberal Speaker	-1.502	0.354	-2.213	-0.819
Liberal Law	-0.431	0.491	-1.399	0.531
Conservative Law	-0.302	0.324	-0.949	0.325
Burger Court	0.372	0.286	-0.185	0.934
Rehnquist Court	0.796	0.341	0.129	1.469
Roberts Court	-0.017	0.552	-1.102	1.067
Pro-Expression Lower Court	-1.067	0.241	-1.545	-0.600
Federal Law	-0.479	0.227	-0.924	-0.035
Expressive Speech	-0.360	0.321	-0.987	0.268
Written Speech	-0.104	0.286	-0.669	0.454
Association Claim	-0.581	0.288	-1.148	-0.022
As Applied Challenge	-0.252	0.222	-0.689	0.183
Constant	0.544	0.466	-0.345	1.489
Ideology Interactions				
Liberal Speaker	3.381	0.476	2.49	4.356
Liberal Law	0.519	0.666	-0.848	1.843
Conservative Law	0.722	0.433	-0.074	1.715
Level 2 Variance Components				
(μ_{0jt}) – Intercept	3.884			
(μ_{1jt}) – Ideology	1.153			
R-Squared				
Intercept	0.199			
Ideology	0.710			
Pooling Factors				
Intercept	0.006			
Ideology	0.008			
PCP	0.795			
PRE	0.547			

The “Corrected” Table

Variable	Mean	S.D.	Bayesian	95%
Justice Level				
Ideology	0.545	0.401	-0.266	1.297
Case Level				
Liberal Speaker	-1.453	0.357	-2.147	-0.740
Liberal Law	-0.316	0.493	-1.288	0.650
Conservative Law	-0.237	0.313	-0.850	0.376
Burger Court	0.393	0.286	-0.165	0.951
Rehnquist Court	0.858	0.338	0.195	1.520
Roberts Court	-0.090	0.546	-1.166	0.973
Pro-Expression Lower Court	-1.069	0.239	-1.539	-0.604
Federal Law	-0.455	0.227	-0.903	-0.010
Expressive Speech	-0.325	0.318	-0.948	0.302
Written Speech	-0.075	0.288	-0.648	0.485
Association Claim	-0.597	0.288	-1.166	-0.035
As Applied Challenge	-0.231	0.223	-0.671	0.204
Constant	0.370	0.448	-0.504	1.255
Ideology Interactions				
Liberal Speaker	3.531	0.465	2.604	4.442
Liberal Law	0.446	0.683	-0.832	1.839
Conservative Law	0.480	0.412	-0.306	1.261
Level 2 Variance Components				
(μ_{0jt}) – Intercept	3.909			
(μ_{1jt}) – Ideology	1.097			
R-Squared				
Intercept	0.194			
Ideology	0.727			
Pooling Factors				
Intercept	0.006			
Ideology	0.008			
PCP	0.796			
PRE	0.549			

Appendix B.

Table 1 in “Do Justices Defend the Speech They Hate” (the version reporting a summary of the findings)

Justice	% Support for Free Expression Claim		Number of Votes
	<i>Liberal Speaker/Speech</i>	<i>Conservative Speaker/Speech</i>	
Thomas	23.1*	65.4	104
Scalia	20.7*	65.2	161
Alito	9.1*	53.9	24
Roberts	15.4*	64.3	27
Kennedy	43.2*	67.7	143
O’Connor	30.6*	50.7	190
Breyer	40.0	38.1	87
Souter	60.3	51.1	103
Ginsburg	53.2	40.0	92
Stevens	62.8*	46.9	260

The “Corrected” Table

Justice	% Support for Free Expression Claim		Number of Votes
	<i>Liberal Speaker/Speech</i>	<i>Conservative Speaker/Speech</i>	
Thomas	21.6*	64.2	104
Scalia	19.6*	66.7	161
Alito	9.1*	46.2	24
Roberts	7.7*	64.3	27
Kennedy	42.5*	68.3	143
O’Connor	31.4*	49.3	190
Breyer	38.6	37.2	87
Souter	59.7	50.0	103
Ginsburg	56.5	39.1	92
Stevens	64.0*	45.8	260