



CELEBRITY JUSTICE

SUPREME COURT EDITION

Richard L. Hasen

IT IS NOT YOUR IMAGINATION. Supreme Court Justices are in the news more than ever, whether they are selling books, testifying before Congress, addressing a Federalist Society or American Constitution Society event, or just talking to a Muppet on Sesame Street.¹ The number of books about the Court and particular Justices continues to grow. A website (www.scotusmap.com) is now devoted to tracking the Justices' movements as they crisscross the country (and the world) speaking to various audiences. Justice Ruth Bader Ginsburg is even promoted on T-shirts as the "Notorious R.B.G.,"² a riff on the name of famous rap artist Notorious B.I.G. She will soon be the topic of a biopic starring Natalie Portman.³

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¹ *Supreme Court Justice Sonia Sotomayor Visits 'Sesame Street' to Talk About Careers*, HUFFINGTON POST, Nov. 11, 2012, www.huffingtonpost.com/2012/11/11/supreme-court-justice-sonia-sotomayor-sesame-street_n_2113625.html.

² Dahlia Lithwick, *Justice LOLZ Grumpy as Notorious R.B.G.*, SLATE, Mar. 26, 2015, www.slate.com/articles/double_x/doublex/2015/03/notorious_r_b_g_history_the_origins_and_meaning_of_ruth_bader_ginsburg_s.html; see also notoriousrbg.tumblr.com.

³ Lanie Goodman, *Natalie Portman on Directing Her First Film and Playing Ruth Bader Ginsburg*, WALL ST. J., Speakeasy Blog, May 19, 2015, blogs.wsj.com/speakeasy/2015/05/19/natalie-portman-on-directing-her-first-film-and-playing-ruth-bader-ginsburg/.

That Supreme Court Justices have become celebrities is not news.⁴ Indeed, Justices' public statements about same-sex marriage (Justice Ginsburg thinks the public can handle it⁵) or *Bush v. Gore* (Justice Antonin Scalia urges Democrats to "get over it"⁶) often get extensive coverage, and extrajudicial comments on issues in pending cases sometimes lead to (usually unsuccessful) calls for judicial recusal.⁷ However, until now no one has quantified the number of publicly reported events and interviews or which Justices engage in the most reported extrajudicial speech.

Using an original dataset of reported instances of Supreme Court Justices' extrajudicial appearances and interviews from 1960 to 2014,⁸ I find that the amount of reported extrajudicial speech has increased dramatically, especially in the past decade. Research identified 192 publicly reported appearances or interviews between 1960 and 1969. This number fell by more than half (to 91) in the 1970s. But in the last decade (2005-2014), it rose to 744, an eight-fold increase since the 1970s. The number nearly doubled in each successive decade between the 1970s and the 2000s. While some of the increase may be due to research limitations as to older news sources, most of the discrepancy appears due to the great increase in

⁴ See Richard A. Posner, *The Supreme Court and Celebrity Culture*, 88 CHI.-KENT L. REV. 299 (2013); Tal Koppan, *The Not-So-Reclusive Justices*, POLITICO, Jun. 28, 2013, www.politico.com/story/2013/06/supreme-court-justices-public-appearances-93583.html; Richard Wolf, *Justices Rock the Road, If You Can Find Them*, USA TODAY, Dec. 26, 2014, www.usatoday.com/story/news/politics/2014/12/26/supreme-court-scalia-kagan-travel-speeches/20267589/.

⁵ Greg Stohr & Matthew Winkler, *Ruth Bader Ginsburg Thinks Americans are Ready for Gay Marriage*, BLOOMBERG, Feb. 5, 2015, www.bloomberg.com/news/articles/2015-02-12/ginsburg-says-u-s-ready-to-accept-ruling-approving-gay-marriage-i61z6gq2.

⁶ Scott Lemieux, *Sorry, Still Not Over Bush v. Gore*, THE AM. PROSPECT, Jul. 19, 2012, prospect.org/article/sorry-still-not-over-bush-v-gore (quoting Justice Scalia's "get over it" comment on Piers Morgan's CNN show).

⁷ See, e.g., Emma Margolin, *Calls Increase for Justice Ginsburg to Recuse Herself in Same-Sex Marriage Case*, MSNBC, Feb. 16, 2015, www.msnbc.com/msnbc/calls-increase-ginsburg-recuse-herself-same-sex-marriage-case; Amanda Marcotte, *Justice Scalia Should Recuse Himself from the Abortion Clinic Buffer Zone Case*, SLATE, Apr. 23, 2014, www.slate.com/blogs/xx_factor/2014/04/23/abortion_clinic_buffer_zone_case_justice_scalia_should_recuse_himself.html.

⁸ The dataset is available as an Appendix at: electionlawblog.org/wp-content/uploads/Hasen-Celebrity-SCOTUS-Research-data-final.xlsx.

the number of reported public appearances by Justices, driven in part by the swelled number of media outlets looking to interview and report on the Justices.

Further, not all Justices are created equal when it comes to Celebrityhood. John Marshall Harlan had only four reported appearances or interviews between 1960 and 1971, while four current Justices have each had over 150 reported appearances or interviews: Stephen Breyer (214), Ruth Bader Ginsburg (194), Antonin Scalia (178), and Clarence Thomas (174). Dividing the number of appearances by the number of years a Justice was on the Court from 1960 until 2014 yields a “Celebrity Index.” In that Index, Justice Sonia Sotomayor scores the highest (at 13.0 annual reported appearances), followed by Justice Breyer (at 10.7). Nine of the top ten Justices in the Index are current Supreme Court Justices.

This Essay proceeds in three parts. Part I sets out the evidence of the rise of Celebrity Justices and the variations among Justices. Part II discusses methodological concerns. Part III briefly reflects on whether the rise of the Celebrity Justice is good or bad. I argue that the answer is mixed, but the trend of public appearances and interviews likely will continue to grow in coming years thanks to a drastically changed media landscape and a politicized Court.

I.

CELEBRITY JUSTICE: THE EVIDENCE

Justices regularly appear in public when they sit for Supreme Court arguments or announce Supreme Court decisions. But due to the ban on cameras in the courtroom and the delayed release of argument audio, Justices are not as well known to the public as other public officials, such as Senators and Members of the House of Representatives.

Justices are life-tenured government officials and have no need for public appearances for purposes of reelection or reappointment. Why do Justices engage in extrajudicial speech at all? Professor Christopher Schmidt offers the following taxonomy of reasons: “the personal” (as in autobiography), “the interpersonal” (observations about the Justices’ colleagues, sometimes to dish on those colleagues), “the educational” (Justices as civics teachers), “the institutional” (defending the Supreme Court as an

institution), and “the jurisprudential” (engaging questions about interpretation and the role of the Court).⁹

Justices have long testified before Congress over issues of Court administration or other topics, and they have given speeches to bar associations and conferences of lower court judges. These days, however, Justices’ extrajudicial speaking is much more likely to garner press coverage and Justices are more likely to speak directly to journalists. They do so for the reasons Professor Schmidt gives and also for a more prosaic reason: to sell books. Some books have become bestsellers and gained Justices significant royalties.¹⁰ As Adam Liptak notes, Justices rarely give interviews to journalists when they are not selling books.¹¹ Or at least not until recently.

The phenomenon of Justices speaking to a broader public is not new. Justice William O. Douglas gave a 30-minute televised interview in 1958 to Mike Wallace about issues related to freedom of expression.¹² He also appeared that year on the game show *What’s My Line?*, where celebrities guessed his profession and identity.¹³ However, Justice Douglas’s appearances then were quite unusual. He was perhaps the first real Celebrity Justice, especially active in the 1960s, helping to pull up the overall numbers for that decade. Professor Schmidt describes as quite rare Justice Hugo Black’s decision to give a long television interview in 1968, and he reports that Justice Black insisted that an exchange about his former membership in the Ku Klux Klan be cut from the interview.¹⁴ Today, television appear-

⁹ Christopher W. Schmidt, *Beyond the Opinion: Supreme Court Justices and Extrajudicial Speech*, 88 CHI.-KENT L. REV. 487, 495-509 (2013).

¹⁰ Tony Mauro, *Sotomayor Reports \$1.9 Million in Income from Royalties*, BLOG OF LEGAL TIMES, June 7, 2013, legaltimes.typepad.com/blt/2013/06/sotomayor-reports-19-million-in-income-from-book-royalties.html; *Thomas Said to Ink Seven-Figure Book Deal*, CHI. TRIBUNE, Jan. 9, 2003, articles.chicagotribune.com/2003-01-09/news/0301090338_1_harpercollins-supreme-court-thomas.

¹¹ Adam Liptak, *Court is ‘One of Most Activist,’ Ginsburg Says, Vowing to Stay*, N.Y. TIMES, Aug. 24, 2013, www.nytimes.com/2013/08/25/us/court-is-one-of-most-activist-ginsburg-says-vowing-to-stay.html?hp&_r=0&pagewanted=all.

¹² ABC, *The Mike Wallace Interview with William O. Douglas*, May 11, 1958, www.c-span.org/video/?288556-1/mike-wallace-interview-william-o-douglas.

¹³ The video of the *What’s My Line?* segment is posted at www.youtube.com/watch?v=2B9wM4gATvM.

¹⁴ Schmidt, *supra* note 9.

ances by sitting Justices are far from unusual: Justices Scalia, Sotomayor, and Thomas all have spoken with the CBS newsmagazine *60 Minutes*.¹⁵

To quantify the frequency of reported Supreme Court Justices' extrajudicial appearances, research assistants and I tracked down reported public appearances or interviews of sitting Supreme Court Justices between 1960 and 2014. I did not count appearances before 1960, even if a Justice was on the Court in the earlier period. Nor did I count appearances of Justices in this time period if they took place after a Justice left the Court. My aim was to count reported appearances or interviews, not the news stories about them. So multiple stories about a single appearance or interview counted as a single reported appearance. When a Justice did a single public event reported during a visit (say on a college campus), I generally counted it as a single event. If there were multiple events in the same visit that garnered separate press coverage, I counted each.

Crucially, if an event garnered no contemporaneous press coverage, it did not count, even if a public appearance could be verified through later information (such as financial-disclosure reports posted at the OpenSecrets.org website).

The main data source was the "Proquest: Historical Newspapers database," which contains full-text articles from significant newspapers,¹⁶ supplemented by many other online sources including Google News, YouTube, C-SPAN, and the Supreme Court's own website listing of some post-2000 speeches by the Justices.¹⁷ Researchers searched databases for each Justice's name and included keywords such as "speech," "public speech," "public appearance," and "interview."

The data show a big drop in reported public extrajudicial appearances from the 1960s to the 1970s, followed by sharp increases from the 1970s to 2014, as illustrated in Figure 1 and Table 1.

¹⁵ Justice Thomas appeared in 2007 (www.cbsnews.com/news/clarence-thomas-the-justice-nobody-knows/). Justice Scalia appeared in 2008 (www.cbsnews.com/videos/justice-scalia-on-life-part-1/). Justice Sotomayor appeared in 2013 (www.cbsnews.com/videos/justice-sotomayor-prefers-sonia-from-the-bronx/).

¹⁶ See www.proquest.com/products-services/pq-hist-news.html.

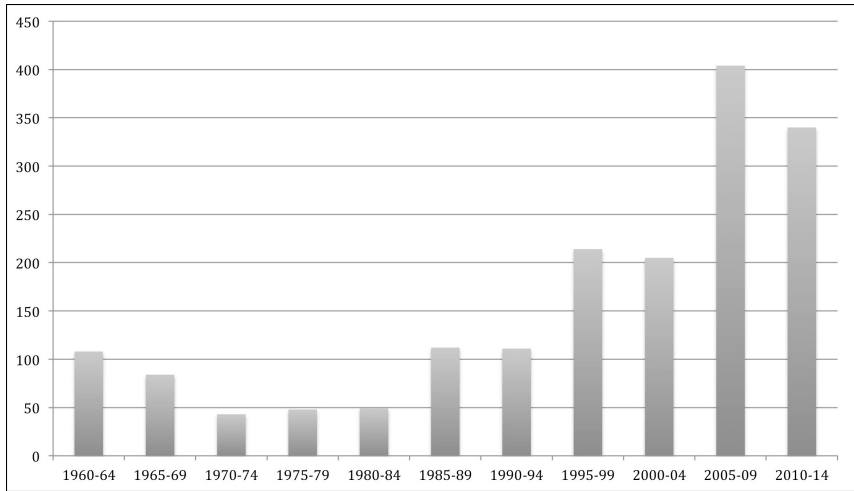
¹⁷ See www.supremecourt.gov/publicinfo/speeches/speeches.aspx.

TABLE 1
NUMBER OF PUBLICLY REPORTED APPEARANCES/INTERVIEWS
OF SUPREME COURT JUSTICES, 1960-2014

Period	Total Reported Appearances/ Interviews
1960-64	108
1965-69	84
1970-74	43
1975-79	48
1980-84	49
1985-89	112
1990-94	111
1995-99	214
2000-04	205
2005-09	404
2010-14	340
1960s	192
1970s	91
1980s	161
1990s	325
2000-09	609
[2005-14	744]

Publicly reported appearances dropped by half from the 1960s (192) to the 1970s (91). They then about doubled in the 1980s (161) and again in the 1990s (325) and again in the 2000s (609). The number of reported appearances in the 1970s (91) is less than one-eighth the number in 2005-2014 (744). There was a decrease between 2005-2009 (404) and 2010-2014 (340), raising the possibility that we have already reached peak Celebrity Justice, but I would not count on it, for reasons given in Part III.

FIGURE 1
NUMBER OF PUBLICLY REPORTED APPEARANCES/INTERVIEWS
OF SUPREME COURT JUSTICES, 1960-2014



What explains the drop from the 1960s to 1970s, followed by the rise that began in the mid-1980s? The data cannot tell us. Perhaps some of it has to do with personality. In the 1960s, Justice Douglas, Justice Goldberg, and Chief Justice Warren engaged in a fair bit of extrajudicial speech, perhaps because they had experience as politicians and public figures before serving on the Court. The rise in the 1980s might have begun with Justice Scalia and other Justices' eventually feeling a need to respond to some of the controversial things he had to say. Some of the change could be due to the Chief Justice. Chief Justice Burger discouraged oral dissents, and perhaps extrajudicial speech as well.¹⁸

While the overall number of reported extrajudicial appearances has increased dramatically, the increase has not been distributed equally among the sitting Justices. Some Justices are much more likely to engage in public appearances than others, although all of the current Justices have more recorded public appearances than just about all of their predecessors.

¹⁸ Christopher W. Schmidt & Carolyn Shapiro, *Oral Dissenting in the Supreme Court*, 19 WM. & MARY BILL RTS. J. 75, 108 (2010).

Table 2 lists each Justice's number of reported appearances between 1960 and 2014 while serving as a Justice, the number of years (rounded) the Justice served on the Court within that period, and a "Celebrity Index," which divides the number of appearances by the number of years.

TABLE 2
CELEBRITY INDEX: AVERAGE ANNUAL NUMBER OF
PUBLICLY REPORTED APPEARANCES/INTERVIEWS
BY EACH SUPREME COURT JUSTICE, 1960-2014
(ranked from highest to lowest)

Justice	Total Reported Appearances/ Interviews	Years on Court, 1960-2014	Celebrity Index
Sotomayor	65	5	13
Breyer	214	20	10.7
Goldberg	31	3	10.33
Ginsburg	194	21	9.24
Thomas	174	23	7.57
Scalia	178	28	6.36
Alito	52	9	5.78
Roberts	51	9	5.67
Kennedy	139	27	5.15
Kagan	20	4	5
Burger	74	17	4.35
Fortas	16	4	4
Rehnquist	130	34	3.82
Clark	25	7	3.57
Douglas	56	16	3.5
Warren	29	9	3.22
Stevens	61	35	1.74
O'Connor	37	24	1.54

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Justice	Total Reported Appearances/ Interviews	Years on Court, 1960-2014	Celebrity Index
Souter	27	19	1.42
Marshall	31	24	1.29
Brennan	37	31	1.19
Blackmun	26	24	1.08
Frankfurter	3	3	1
Powell	12	15	0.8
Whittaker	2	3	0.67
White	16	31	0.52
Black	6	12	0.5
Stewart	8	22	0.36
Harlan	4	12	0.33

Consider a few notable features of these data. First, the Chief Justices are not at the top. Earl Warren (3.22), Warren Burger (4.35), and William Rehnquist (3.82) are in the middle of the pack, and John Roberts (5.67), while high by historical standards, is near the bottom among current Justices. I expected Chiefs would be more likely to get coverage for speaking about the Court and Court administration, but perhaps they feel a need to hold back from other types of public appearances which can garner more publicity.

Further, while Justice Sotomayor (13.0 reported appearances per year) has come out at the top of the Celebrity Index, she has been on the Court for a relatively short time. The period coincides with the release of her autobiography and a book tour, and it is uncertain if she will keep the same pace of public appearances in future years. She has, however, made it her personal mission to bring the story of the Court more to the general public, earning her the title of “the People’s Justice” from Professor David Fontana.¹⁹ She alone among the Justices has chosen to drop the ball in

¹⁹ David Fontana, *The People’s Justice?*, 123 YALE L.J. F. 447 (2014), yalelawjournal.org/forum/the-peoples-justice.

Times Square on New Year's Eve,²⁰ although both she and Justice Alito have thrown out the first pitch at major league baseball games.²¹

Justice Thomas places fifth, with about 7.5 annual reported appearances. Although he almost never speaks at oral argument, he is evidently not shy to speak in public settings.

The biggest surprise to me was Justice Breyer's second-place finish, with a total of 214 reported appearances and an annual rate of 10.7 appearances. I expected Justice Scalia or Ginsburg to beat him, because their appearances tend to be more controversial. Indeed, Professors Sandy Levinson and David O'Brien have speculated that Justice Scalia's willingness to get out and talk about issues before the Court and about his judicial philosophy led other Justices to do the same.²² This shows a limitation of treating all publicly reported extrajudicial appearances as equally relevant. When it comes to flash, Justices Scalia and Ginsburg appear to act more as Celebrity Justices than Justice Breyer, despite the latter's greater frequency. It is hard to imagine anyone wearing a Justice Breyer T-shirt, whether tied to a rapper (think "Grandmaster Steve") or otherwise.

Nine of the top-ten Celebrity Justices are current Justices. This shows how the trend of press coverage has increased over time. The one former Justice in the top ten, Arthur Goldberg, averaging 10.33 annual reported appearances in his 3 years on the Court, comes in third. Many of the news stories describe speeches Justice Goldberg made to Jewish groups, especially about issues of anti-Semitism.²³

The three most recently retired Justices were less-active speakers while

²⁰ Emma G. Fitzsimmons, *Sotomayor to Lead Countdown to New Year in Times Square*, N.Y. TIMES, Dec. 29, 2013, www.nytimes.com/2013/12/30/nyregion/sotomayor-to-lead-countdown-to-new-year-in-times-square.html.

²¹ Kevin Sherrington, *After Tossing First Pitch in Arlington, Supreme Court Justice Samuel Alito Reveals a Bit About His Love of the Game*, DALLAS MORNING NEWS, Jun. 19, 2013, www.dallasnews.com/sports/texas-rangers/headlines/20130619-sherrington-after-tossing-first-pitch-in-arlington-supreme-court-justice-samuel-alito-reveals-a-bit-about-his-love-of-the-game.ece; Jack Curry, *Justice Sotomayor Throws Out First Pitch*, N.Y. TIMES Bats Blog, Sept. 26, 2009, bats.blogs.nytimes.com/2009/09/26/justice-sotomayor-throws-out-first-pitch/.

²² Koppan, *supra* note 4 (quoting Professors Levinson and O'Brien).

²³ See, e.g., AP, *Goldberg Welcomes Israeli-German Ties*, WASH. POST TIMES HERALD, May 28, 1965, search.proquest.com/news/docview/142602779/1433D3C589045F6EFD/285?accountid=14509.

on the Court, with Justice David Souter at 1.42 reported appearances per year, Justice John Paul Stevens at 1.74, and Justice Sandra Day O'Connor at 1.54. Justices O'Connor and Stevens have been very active since leaving the Court, sometimes engendering controversy,²⁴ but these appearances are not included in the Index.

II. METHODOLOGICAL CONCERNS

No doubt my methodology for creating the Celebrity Index is not perfect. Here I briefly consider three objections.

(1) *Missing Data, Especially from Earlier Periods.* Unquestionably, this research has not uncovered every appearance or interview by a sitting Supreme Court Justice covered in the U.S. press during 1960-2014. Data are biased toward the most recent period, where much news is digitized and easily searchable in databases such as Google, but, at least when it comes to newspapers, a major source of information in the pre-Internet era, the Proquest Historical Database is wide-ranging and easily searchable. The fact that I found more than double the number of reported instances in the 1960s compared to the 1970s is a good indication that the problem is not primarily with the availability of data in earlier periods. Thus, I am confident I have found most appearances of Justices which were publicly reported by major newspapers. Further, a number of older television appearances of Justices during earlier periods have now been captured and placed in searchable websites, such as C-SPAN's. Thus, while some data are undoubtedly missing from the earlier period, there is no reason to believe that such gaps could explain the enormous disparities between the earlier and later periods.

²⁴ See AP, *Retired Justice O'Connor Draws Criticism Over Political, Judicial Activities*, Apr. 10, 2011, www.foxnews.com/politics/2011/04/10/critics-fault-retired-justice-oconnor-political-judicial-activities/. Justice Stevens created some controversy when he released a book, *SIX AMENDMENTS* (2014), calling for constitutional amendments, and testified to a Senate committee about a constitutional amendment to overturn *Citizens United*. Noah Bierman, *Justice Stevens Reaffirms Dissent on Campaign Finance*, May 1, 2014, www.bostonglobe.com/news/nation/2014/04/30/john-paul-stevens-taking-another-run-putting-his-imprint-constitution/RkBF4veWWMk0AiT3Pon5I/story.html.

It is important to recognize, however, that I am measuring *reported* appearances and not *actual* appearances. Many Justices were actively giving speeches which garnered no press coverage. For example, I found over 30 speeches by Justice Brennan reprinted in law reviews. These speeches (listed in my online appendix) were excluded from Justice Brennan's count because I could not find contemporaneous press reports. Similarly, as noted above, recent financial-disclosure forms show that Justices still make appearances that produce no contemporaneous press coverage.

(2) *Quality Not Quantity of Appearances Matters for Celebrity*. When Justice Douglas appeared on *The Mike Wallace Interview* in 1958, the public might have viewed it as more of a cultural event than would be a recent *60 Minutes* interview. There were fewer television networks and news outlets overall, but each appearance could have packed more celebrity impact. Further, Justice Douglas spoke so much more than many of his colleagues that his celebrity status could have loomed even larger. Even so, this phenomenon is counterbalanced, at least in part, by the changing media landscape. Part of a Justice's celebrity comes from the number of news stories (not measured by my study), and the Justices' ubiquity today contrasts with the relative scarcity of earlier coverage about them. When Justice Sotomayor ran into Hillary Clinton signing books at a Costco in Virginia in 2014, it made national news.²⁵ Further, some Justices today, such as Justices Scalia and Ginsburg, appear more willing to say controversial (and newsworthy) things, which may make them more likely to attain celebrity status. Further, by counting a Muppet appearance the same as giving a lecture on purposivist statutory interpretation, I have not captured how different types of events might contribute to a Justice's celebrity stature.

(3) *The List Is Biased Toward Justices Who Write Books*. Many of the reported appearances were made in connection with books written by the Justices, including Justices Breyer, Sotomayor, Scalia, and Thomas. But that is not a glitch in the celebrity rankings; the very writing of books and going on book tours adds to the nature of the Celebrity Justice. The book tours are a relatively new thing. Chief Justice Rehnquist wrote some books,²⁶ but he

²⁵ David Taintor, *Sonia Sotomayor Greets Hillary Clinton at Book Signing*, MSNBC, Jun. 14, 2014, www.msnbc.com/msnbc/sonia-sotomayor-greets-hillary-clinton-book-signing.

²⁶ One of his most famous books is WILLIAM H. REHNQUIST, *CENTENNIAL CRISIS: THE DISPUTED ELECTION OF 1876* (2007), a provocative topic given his own role in the dis-

seemed more comfortable speaking to historical societies than signing books at Costco.

In sum, I am confident that the counting of these reported public appearances and interviews tells us something about the changing role of Supreme Court Justices over time. Certainly the Justices are getting more press stories written about them than before, dramatically so compared to earlier decades. And some Justices have been engaging in more of these activities than others.

III.

THE COSTS AND BENEFITS OF CELEBRITY JUSTICE

A full discussion of the role of the Justice as a public figure is beyond the scope of this paper, but here I address whether the rise of the Celebrity Justice is desirable and likely to continue.

Celebrity Justice is a double-edged sword. The Justices' extrajudicial speech arguably serves educative and civic functions. Supreme Court decisions affect every American, on issues ranging from privacy to security to protection of our rights to the quality of our democracy. Yet its proceedings are opaque, in some ways deliberately so. Its decisions are necessarily written in legal language, making the Court's work all but inaccessible to most Americans. Getting the Justices out there explaining what the Court does and why their positions sometimes differ serves a great public purpose. Whether it is Justice Scalia explaining his philosophy of originalism,²⁷ Justice Thomas speaking to a group of high school students about his upbringing from poverty,²⁸ Justice Sotomayor inspiring young children to believe they can grow up to do anything,²⁹ or Justice Ginsburg speaking

puted 2000 presidential election culminating with the controversial decision in *Bush v. Gore*, 531 U.S. 98 (2000).

²⁷ C-SPAN classroom has helpfully posted a video of a Justice Scalia talk with questions for student discussion. www.c-spanclassroom.org/Video/382/Justice+Scalia+on+Constitutional+Interpretation.aspx.

²⁸ Gina Holland, *Thomas: Black Students Must Think for Selves*, AP, May 21, 2003, online athens.com/stories/052103/new_20030521042.shtml#.VVVieZNVhHw.

²⁹ HUFFINGTON POST, *supra* note 1.

out on gender equality,³⁰ Justices can inspire, infuriate, and spark debate.

On the other hand, the controversies that Justices spark can undermine public confidence in the Supreme Court. Liberals are incensed when Justice Scalia tells them to “Get over” *Bush v. Gore*. Conservatives believe Justice Ginsburg says too much about pending cases and should recuse herself. Justice Samuel Alito’s appearances before conservative groups raising funds have caused liberals to criticize him.³¹ Seeing the Justices mocked on *The Daily Show* for their extrajudicial speech might cause some to lose faith in the institution (although others may gain a newfound appreciation).

It is hard to know what to make of the public-confidence argument. Confidence in the Court has indeed declined in recent years,³² but there is no easy way to tie this to the role of the Celebrity Justice or to other factors. Whether the net benefits of a more accessible set of Justices out educating the public outweigh any costs to public confidence is too hard to say. It may be that some public appearances add to the public’s confidence in the Court and its decisions while others detract. Everyone may favor a Justice giving a sober speech on constitutional interpretation, but not snippy answers in a question-and-answer session.

There also seems a partisan element to the public’s views of appearances. Liberals may find conservative Justices’ appearances at a Federalist Society event as undermining the rule of law, and conservatives may find liberal Justices’ appearances at an American Constitution Society event the same way. It probably does not help that only conservative Justices speak at the annual Federalist Society events and only liberal Justices at the

³⁰ Ariane de Vogue, *Justice Ginsburg Speaks About Gender Equality*, ABC NEWS, Nov. 18, 2011, abcnews.go.com/blogs/politics/2011/11/justice-ginsburg-speaks-about-gender-equality/.

³¹ Jonathan Turley, *Alito Criticized for Participation in Another Conservative Fundraiser*, JONATHAN TURLEY.COM, Nov. 16, 2010, jonathanturley.org/2010/11/16/alito-criticized-for-participation-in-another-conservative-fundraiser/.

³² Around 60 percent of respondents approved of the job of the Supreme Court in the early 2000s, a number which fell to 46 percent by 2014. Disapproval rose from 29 percent in 2000 to 48 percent in 2014. Gallup, *Job Approval of Supreme Court*, www.gallup.com/poll/4732/supreme-court.aspx (last visited May 19, 2015). See also Karlyn H. Bowman & Andrew Rugg, *Public Opinion on the Supreme Court*, AEI Public Opinion Series (updated June 2012), www.aei.org/wp-content/uploads/2012/06/-possupreme-courtjune-2012_162919650849.pdf.

American Constitution Society.³³ This might signal to the public that we have a more politicized Court.

In thinking about the normative value of *Celebrity Justice*, it is worth considering why the Justices have become celebrities. Judge Richard Posner offers three possibilities: first, public intellectuals, including the Justices, have greater access to the media thanks to changes in the media landscape and the rise of social media; second, the Justices have more time on their hands to be celebrities because the Court's workload has decreased; third, with the resulting increase in leisure time, Justices can pursue extracurricular activities with financial incentives, such as "book deals with big advances" which necessitate public book tours.³⁴ Books are especially attractive, not only for their financial benefits but because they are one of the few potential outside activities for Justices which do not raise the potential for conflicts of interest.

Judge Posner is right that all of these factors push the Justices more into the celebrity role, but there is more to the growing nature of their celebrity.

Justices could decline to write books (or at least to go on book tours). They could turn down invitations to give lectures or participate in events where they answer questions. What Justices cannot do is limit the dissemination of information that is publicly available. The Justices are learning what professors, police officers, and others already learned long ago: once people have access to the Internet and a smartphone, anything spoken

³³ Although Justice Elena Kagan proclaimed as dean of Harvard Law School "I love the Federalist Society!," Jim Lindgren, *Elena Kagan: "I LOVE the Federalist Society! I LOVE the Federalist Society!"*, VOLOKH CONSPIRACY, May 10, 2010, volokh.com/2010/05/10/elena-kagan-i-love-the-federalist-society-i-love-the-federalist-society/, I could find no record of a sitting, liberal Supreme Court Justice addressing the Federalist Society annual meeting or a sitting conservative Supreme Court Justice addressing the American Constitution Society annual meeting. Justice Breyer has spoken at local Federalist Society lawyer events. See the 2007 annual report of the Federalist Society, at page 9, www.fed-soc.org/library/doclib/20080501_2007AnnualReport.pdf. Further, in December 2006 and May 2012, Justices Breyer and Scalia spoke at events on constitutional interpretation co-sponsored by the two organizations. Videos of the events are posted at: www.fed-soc.org/multimedia/detail/a-conversation-on-the-constitution-with-supreme-court-justices-stephen-breyer-and-antonin-scalia-event-audio and www.youtube.com/watch?v=_4n8gOUzZ8I, respectively.

³⁴ Posner, *supra* note 4, at 300-02.

publicly is capable of being recorded or memorialized, distributed on social media, and eventually picked up by a wide audience. Even if Justices are not trying to become “public intellectuals” (as Judge Posner puts it), their every public move is now scrutinized like never before.

There is an audience of people obsessed with the workings of the Supreme Court, who hang on each word (especially the out-of-Court words) of the Justices. Whether those words are tea leaves for how the Court will decide cases – think of the stir created over whether Justice Ginsburg emphasized the word “Constitution” during a same-sex marriage she performed before the Court decided a major same-sex-marriage case³⁵ – the Justices are powerful, compelling figures whose moves are tracked and whose sentences are parsed by thousands of SCOTUS groupies on their smartphones and tablets. In short, whenever they choose to leave the cloistered halls of 1 First Street in Washington, D.C. to speak to any group on the record for any purpose, they have become Celebrity Justices.

Further, the Justices seem to find it harder to remain in their cloistered halls. Perhaps there is a new equilibrium of Celebrity Justice. Once a few Justices are out there speaking and interacting with the public, other Justices feel the urge to do the same.

Justices also have political and ideological reasons to speak out. The increased politicization of the United States and the Court has led at least some Justices to defend their rulings and their judicial philosophy against charges of bias. Justice Ginsburg recently spoke with the *New York Times* to attack her colleagues for being part of an “activist Court.”³⁶ Justices also preach to the faithful – as noted, some conservative Justices speak regularly to conservative groups and some liberal Justices speak regularly to liberal

³⁵ See Maureen Dowd, *Presiding at Same-Sex Wedding, Ruth Bader Ginsburg Emphasizes the Word ‘Constitution’*, N.Y. TIMES, First Draft Blog, May 18, 2015, www.nytimes.com/politics/first-draft/2015/05/18/presiding-at-same-sex-wedding-ruth-bader-ginsburg-emphasizes-a-key-word/. A few years earlier, before the Court decided a constitutional challenge to the Affordable Care Act, commentators read much into a comment Justice Ginsburg made about “broccoli.” Orin Kerr, *If You Really Want to Read the Tea Leaves from Justice Ginsburg’s Speech at the ACS . . .*, VOLOKH CONSPIRACY, Jun. 19, 2012, volokh.com/2012/06/19/foolishly-reading-the-tea-leaves-of-justice-ginsburgs-speech-at-the-ac/; see also Rick Hasen, *With Justice Ginsburg, Is Today’s “Constitution” Yesterday’s “Broccoli?”*, ELECTION LAW BLOG, May 18, 2015, electionlawblog.org/?p=72557.

³⁶ Liptak, *supra* note 11.

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groups. They have become public gladiators in a national fight over the Court and its jurisprudence.

The Court will not soon run out of controversial cases or issues. Nor apparently, will it soon run out of Justices willing to step into the public spotlight to educate, dish, defend, cajole, sell books, entertain, or just bask in the celebrity spotlight.

