

Jekyll and Hyde Questions from the Bench: Does the Emotional Nature of Supreme Court Justices' Questions Affect their Votes on the Merits?*

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Abstract:

Political actors can use public statements to aid them in the pursuit of policy. At the same time, beyond the mere act of speaking publicly, the content and type of the language used matters in a variety of political institutions. To date, however, these arguments have been applied only to the legislative and executive branches of government. In this paper we provide the first account of the role of public language on the U.S. Supreme Court. In particular, we seek to determine whether the emotional content of Supreme Court justices' questions and comments made during the only public portion of their decision-making process – oral arguments – helps explain the decisions they make. Using data from all oral arguments between 1979 and 2006 we find the justices' use of unpleasant language towards the attorney representing one side of a case makes it less likely that side will prevail on the merits. At the same time we find the use of positive language towards a side does not enhance the likelihood of winning.

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I. Introduction

Throughout David Friedman's argument for the ACLU in *McCreary v. ACLU* (2005) Justice Antonin Scalia made it abundantly clear he disagreed with the position that displaying the Ten Commandments in public schools and courthouses violates the Establishment Clause of the First Amendment. Admonishing Friedman in an exchange about the meaning of such displays Scalia noted that, "I don't think they're really saying that the particular commandments of the Ten Commandments are the basis of the Declaration of Independence. That's idiotic." Moments later, he used the same harsh language: "If that's what it means, it's idiotic. I don't think anybody is going to interpret it that way. You can't get the Declaration of Independence out of the Ten Commandments."¹ In posing these "questions" to Friedman, Scalia seemed to signal his clear belief that the First Amendment does not prohibit the public display of the Ten Commandments in either public schools or courthouses. Unsurprisingly, when the case was decided, Scalia authored a dissent in response to the majority that ruled the public display advanced religion in violation of the Free Exercise Clause.

Is Justice Scalia's highly emotional behavior in *McCreary* an anomaly or part of something more systematic? In other words, do Scalia and his colleagues on the Supreme Court, like other political actors such as presidents or members of Congress, use the public aspect of their decision making process to signal their preferences over decisions they make? To answer this question we draw insight from Mayhew (1974), who argues that members of Congress stake out positions on issues when they speak publicly about a particular law or policy. More importantly, we also draw insight from scholars who identify the linguistic nature of political

¹ To hear this case, navigate to http://oyez.org/cases/2000-2009/2004/2004_03_1693/argument. We note the active and highly unpleasant nature of this language as measured by Whissell's Dictionary of Affect in Language (Whissell et al. 1986, Whissell 1989).

actors' public statements to determine whether the emotional content of speeches affects decision-making processes. For instance, evidence suggests emotion in language plays a role in presidential speeches (Sigelman and Whissell 2002a, 2002b; Whissell and Sigelman 2001) and in rhetoric used by senators during impeachment trials (Sigelman, Deering, and Loomis 2000). Additionally, Quinn and his colleagues (2009) identify and evaluate the linguistic differences between Democrats and Republicans in Senate speeches on topics ranging from defense, to judicial nominations, to abortion rights.

Certainly this small, yet rich, literature suggests presidents and members of Congress use statements to support policies with which they agree, and the emotional nature of public statements plays a role in the policy decisions these political actors make. Interestingly, while scholars have analyzed whether Supreme Court justices' public statements – what we define as their questions and comments made during oral arguments of cases they decide – generally affect decisions they make (Johnson et. al. 2009), linguistic analysis has not yet been used to study the emotional nature of rhetoric justices invoke during these proceedings. To accomplish this task, we invoke Whissell's *Dictionary of Affect in Language* (1986, 1989) to analyze whether the emotive content of justices' questions and comments during oral arguments can be used to predict how the Court will decide cases it hears.

The paper proceeds as follows. The next section focuses on existing literature about the role of oral arguments generally, as well as on the existing studies that address whether justices' questions, and their emotional character, affect the decisions they make. The section concludes with the main hypothesis we seek to test in the remainder of the paper. Section three discusses the data and method we use to test our hypothesis and provides explicit insight into the *Dictionary of Affect in Language*, which we use to measure the emotional content of justices'

oral argument questions and statements. Section five discusses the results of our analysis. We conclude with a general discussion of our results and directions for future research.

II. The Influence of Oral Arguments on Case Outcomes

Scholars who study the Supreme Court disagree about whether oral arguments actually influence case outcomes. Those who emphasize an attitudinal approach to justices' decision making suggest these proceedings provide no real indication of who wins or loses a case (Segal and Spaeth 2002, 280). Others posit oral arguments provide justices with information and, in some cases, even offer them a "fresh perspective" when deciding how to vote (O'Brien 2008, 246). On this account, oral arguments influence case outcomes because they give justices an opportunity to clear up lingering questions from the briefs and to gauge what their colleagues think about the case (Johnson 2004; Wasby et al. 1976). This line of research also demonstrates that the quality of legal argumentation affects justices' decisions (Johnson, Wahlbeck, and Spriggs 2006; McGuire and McAtee 2007).

Despite these disparate perspectives, it seems reasonable to assume oral arguments, at the very least, have the potential to reinforce a justice's views about a case. Existing anecdotal evidence supports this conjecture as Supreme Court opinions often refer to information gleaned during these proceedings. In *Pleasant Grove City v. Summun*,² for example, Justices Stevens, Scalia, and Breyer each referred directly to the arguments in their respective separate concurring opinions. Further, Johnson (2004, 21) finds the infamous trimester scheme in *Roe v. Wade*³ stems directly from an oral argument exchange between attorney Sarah Weddington and Justice Byron White.

² 07-665 (2009).

³ 376 U.S. 254 (1973).

While scholars have analyzed the informational role oral arguments play for the Supreme Court, these studies do not determine whether justices actually “tip their hands” during these proceedings. However, evidence offered by the current Chief Justice, Court watchers, legal scholars, psychologists, and political scientists indicates justices use oral arguments as a means to communicate their initial thoughts regarding how the Court should decide a case.

Chief Justice John Roberts believes questions from the bench during oral arguments can be used to predict case outcomes. In fact, before he joined the Court, Roberts tested his hypothesis by tallying the number of questions asked of advocates in a small sample of these proceedings (Mauro 2007; Roberts 2005). Specifically, he counted the number of questions in the first and last case from each argument session during the 1980 and 2003 terms (a total of 28 cases) and found that eighty-six percent of the time the party receiving the most inquiries from the bench ultimately lost the case (Roberts 2005).

Court watchers echo the Chief Justice’s findings. Biskupic posits justices make points with questions they ask during oral arguments (2006, 7a). Greenhouse goes further and proposes it may be possible to predict the outcome of cases because the “tenor of the argument” often reveals justices’ intentions (2008a, 14). For instance, when the Court heard oral arguments in *Crawford v. Marion County Election Board*,⁴ Greenhouse speculated the justices’ “questioning indicated that a majority did not accept the challenger’s basic argument—that voter-impersonation fraud is not a problem.” For Greenhouse, the justices’ behavior also meant they wanted to dismiss the case. Specifically, she pointed out that Scalia spoke “with evident disapproval” during his questioning. Ultimately, Greenhouse suggests there is validity to the

⁴ 07-25 (2008).

hypothesis that the tone of oral argument questions can be used to predict outcomes – or at least some justice’s votes.

Despite the claims made by these esteemed Court experts, we do not know whether their findings are systematic. There is some limited evidence that suggests the findings are consistent across cases, across justices, and over time, however. In her response to the Supreme Court Forecasting Project (Martin et al. 2004) Greenhouse re-examined all of her oral argument stories from the 2002 term and reviewed her specific predictions in 16 cases (Greenhouse 2004). What she found was not a surprise to her, but may have been to the two groups competing against one another. Specifically, Greenhouse was able to predict the outcomes of more cases and votes of individual justices, based on her assessment of questions asked during the arguments, than either side of the forecasting project.⁵ She attributes her advantage over the computer based or expertise approach to the fact that hers were “postargument predictions” (2004, 782).⁶ This result, by one scholar’s account should, “cause many of us to reconsider explanations of judicial decisions that fail to take notice of these presentations” (Epstein 2004, 757).

In a slightly more systematic analysis, Shullman (2004) extends Greenhouse’s and Chief Justice Roberts’ findings by counting the number of questions justices asked in ten oral arguments during the October 2002 term. She then tallied the questions and divided them into categories: 1) the total number of questions, 2) questions asked per case, 3) number of questions asked of the party the justice voted with, and 4) number of questions asked of the party the

⁵ The Supreme Court Forecasting Project pitted legal experts against political scientists in a friendly interdisciplinary competition. The goal was to accurately predict the outcome of each argued case on the Supreme Court’s 2002 docket. The Project compares the relative accuracy of two different methods of prediction (computer generated predictions and expert predictions).

⁶ Greenhouse may have had another advantage, as well: she only made predictions in cases where she was “very sure” of herself (2008b). It remains to be seen how well she could have predicted cases if forced to make *some* prediction in all instances.

justice voted against. Her initial findings support the Chief's analysis that when the justices ask more questions of one side during the arguments, that side is more likely to lose the case.

Wrightsmen (2008) conducts a similar investigation but distinguishes between salient and non-salient cases—what he calls ideological versus non-ideological cases. He made this distinction to test the hypothesis that justices' questions should be more predictive of outcomes in salient cases. To test his hypothesis Wrightsmen assessed the degree to which justices' questions were sympathetic to one side or not in 24 cases (12 salient and 12 non-salient) from the 2004-2005 term. Wrightsmen's results also echo existing conclusions—the side asked the most questions at oral arguments usually loses the case.

Finally, we note, that both Shullman and Wrightsmen provide some initial evidence to account for how emotion in language affects Court decisions. Shullman scored each question in her sample from the “most helpful” to the “most hostile.” Her analysis demonstrates that when the justices ask more hostile questions to one side that party is more likely to lose. As she concludes, “[M]any of the justices pose hostile or argumentative questions to both sides, but it seems that more often they go easy on the lawyer for the party they support and only play devil's advocate to the lawyer for the party they oppose” (2004, 292-293). Wrightsmen reaches a similar conclusion, but adds a caveat. For him, the best way to determine winners based on justices' behavior during oral arguments is through a combination of question counts and the number of hostile questions asked of each party.

These conclusions are intriguing, but the findings are limited because they focus on so few cases (fewer than 25 in each analysis). As such, testing the hypothesis that emotion in language affects justices' decisions is ripe for a more systematic analysis. In the remainder of the paper we test this hypothesis by focusing on one main question: *When the Court directs*

more hostile language towards the petitioner's (respondent's) attorney, is the Court less likely to reverse (affirm) than to affirm (reverse)?

III. Data and Measurement

To answer this question we analyze all orally argued cases from 1979-2006. The phenomenon we seek to explain – who wins and loses a case on the merits – leads us to operationalize our dependent variable as 1 if the petitioner wins and 0 if the respondent wins (Spaeth 2009). Because this variable is dichotomous we estimate a logistic regression model.

While our dependent variable is easily explained, operationalizing our main independent variables is a bit more complicated. We begin by compiling the oral argument transcripts for all cases decided in our 27-term sample.⁷ These data include nearly 2900 oral arguments, 325,000 utterances from the justices, and 7.9 million words.⁸ With the most comprehensive dataset compiled to date, we are uniquely situated to provide a *generalizable* evaluation of how the emotive nature of the justices' questioning affects Court decisions.

For the terms in this sample we downloaded all available oral argument transcripts.⁹

With the aid of a basic computer program we then counted the number of questions asked by the

⁷ We will extend the analysis through the 2007 term once we have these data. Additionally, we will conduct an individual level analysis for all cases beginning with the 1998 term. That is, we will analyze the behavior of all justices at oral arguments (even Justice Thomas who rarely speaks) to determine whether there is variation in how they act during these proceedings and how they actually vote in a case.

⁸ By utterance we mean each time a justice speaks during the arguments. In the transcripts, the marker "QUESTION," regardless of whether the justice asks a question or makes a statement, precedes each speaking turn. Because we code every question and statement, we simply label them utterances. Sometimes, however, these utterances have little to do with the law or policy surrounding the case at hand. For instance, during the 2006 term, Justice Breyer offered this gem: "Sorry, I have laryngitis. Can you hear me all right?" (The case in question, *Hudson v. Michigan*, is available on Lexis at 2006 U.S. Trans Lexis 47). Our argument, of course, is that these non-substantive statements and questions made by the justices simply constitute random noise in our data.

⁹ Transcripts from the 1979 term onward are available through Lexis, though coverage in the early terms of the online series has some unexplained gaps. Transcripts covering the terms from 1969 (beginning of the Burger Court) through 1979 are available on microfiche, although there are gaps in these data, as well. As part of a related project, we ultimately plan to gather and process these data, as well. Prior to the Court's 1969 term, no systematic transcription exists. The nature of the pre-1969 cases that *were* transcribed varies depending on the source. The

justices and scored their emotional content. The former step allows us to control for the argument that the number of questions asked is a key predictor of who will win a case (see, e.g., Roberts 2005; Johnson et al. 2009). For the latter step, which addresses our main question of interest, we employ the *Dictionary of Affect in Language* (hereafter DAL) (Whissell et al. 1986; Whissell 1989) to gauge the emotional content of words used by the justices during oral arguments. As this represents one of the first applications of the DAL in political science research, we pause to provide some additional information about it.

Whissell (1994) argues that emotion in language can be described adequately and efficiently in terms of a two-dimensional space defined by the pleasantness and activation of words (see also Plutchik 1994; Russell 1978).¹⁰ She measures each dimension on a 3-point scale; words are unpleasant, neutral, or pleasant as well as passive, neutral, or active. According to Whissell (1994) very unpleasant words are defined as those that are highly unpleasant *and* highly active, while very pleasant words are defined as those that are highly pleasant *and* highly active.¹¹ Using this continuum allows scholars to determine the overall emotive nature of words. More importantly, by employing the Dictionary for analysis, “one could arrive at a description of the affective tone of the entire list or passage” (Whissell et al. 1986). This is clearly evident in the language (e.g., “idiotic”) used by Scalia in *McCreary*. Indeed, as footnote one suggests, this word is very unpleasant and active according to scoring by the DAL.

Court claims that the selection is “random” while CIS Publications (a subsidiary of Lexis) claims that selection includes “virtually every important case” from the terms between 1953 and 1969.

¹⁰ While Russell (1978) argues there may be a third dimension to language, Whissell (1986) suggests it would explain less than five percent of variance and so is not necessary for analysis.

¹¹ Whissell’s (1994) two-dimensional scale also categorizes unpleasant-passive words, which she defines as sad words. This category is not included in our continuum due to the rarity of sad word usage during Supreme Court oral arguments.

The version of the Dictionary we utilize includes a list of 8743 words along with ratings for each word's pleasantness and activation.¹² It is "an accurate description of English word-usage patterns" (Whissell 1999) and has proven a highly reliable and valid way to capture affect in language (Sigelman and Whissell 2002a; Dubois 1997; Whissell 1994).¹³ Additionally, it provides an objective and replicable measure of the emotional content of language.¹⁴

Using Whissell's Dictionary we analyze the content of justices' questions and statements during oral argument by counting the total number of very pleasant and very unpleasant words aimed at each attorney.¹⁵ Table 1 provides several examples of these word types. We then divide this number by the total number of words directed at each side, which gives us the proportion of very (un)pleasant words from the bench.

[TABLE 1 ABOUT HERE]

These proportions, then, allow us to create are our main independent variables. First, we employ *Very Unpleasant Words Difference*, which is the difference between the proportion of very unpleasant words used in questions asked of the petitioner and the number of very unpleasant words directed toward the respondent. It has a mean of about 0.00 with a standard deviation of roughly .01. Additionally, *Very Pleasant Words Difference* is the difference

¹² The DAL was collected in the latter half of the 1990s. More than 200 volunteers rated words on each of the scales. More than 186,000 different rating judgments were used to create the DAL. For a more detailed description of the process, navigate to <http://www.hdcus.com/manuals/wdalman.pdf>.

¹³ Indeed, it has been used to analyze a variety of language usage including situation comedies (Whissell 1998), Lennon-McCartney songs (Whissell 1996), William Blake poetry (Whissell 2001), psychology textbooks (Whissell 1997), television advertisements (Rovinelli and Whissell 1998), presidential radio addresses (Sigelman and Whissell 2002), and Inaugural Addresses (Whissell and Sigelman 2001). The point is that Whissell's dictionary is reliable (Whissell, Pelland, Weird, and Makarec 1986) and has construct validity (Whissell 1994; Dubois 1997).

¹⁴ Whissell (2001) suggests one main limitation to her Dictionary. Specifically, the scores are created in a context free way. That is, words are scored individually and not within the passage where they are used. Thus, the Dictionary is insensitive to complexities in writing like humor and irony.

¹⁵ We use Very Pleasant and Very Unpleasant words to test our hypothesis because these categories in Whissell's work are the most clearly comparable categories she provides.

between the proportion of very pleasant words focused on the petitioner versus the respondent. This variable also has a mean of about 0.00 and a standard deviation of roughly .01.¹⁶ Given our operationalization of both variables, positive numbers indicate more unpleasant or pleasant words used in the give-and-take with the petitioner. We therefore expect the coefficient for the unpleasant variable to have a negative sign in the model – meaning when more very unpleasant words focus on the petitioner it is less likely to win.

Because of Wrightsman’s finding that making a prediction about who will win should be based on both the number of hostile questions as well as on the total questions asked of a particular side, we also include *Question Difference*, which is the difference between the number of questions asked of the petitioner and respondent. We expect this variable to have a negative sign, which indicates that as more questions are asked of the petitioner, the Court is less likely to reverse the lower court decision.

Beyond our variables of interest, we control for a variety of alternative explanations. First, we include three variables to capture the effect ideology might have on the Court’s decision to reverse: *Martin-Quinn Median* measures the ideology of the median justice on the Court (Martin and Quinn 2002); *Lower Court Direction* is coded 1 for a liberal lower court decision and 0 otherwise; *Median Justice-Lower Court Congruence* is an interaction of the previous two variables. These variables allow us to determine whether the Court is more likely to reverse when the lower court’s decision stands in ideological opposition to the preferences of the Court. When the Court is relatively liberal, the MQ score of the median is negative. If the decision of the lower court is liberal (coded as 1), then the interaction term will be negative, which should depress the likelihood the Court will reverse because the median agrees with the

¹⁶ The actual means of these two variables are, respectively -0.0002 and -0.0005.

outcome below. Conversely, when the median is conservative (a positive MQ score), the interaction term will be positive, meaning it is positively related with the propensity to reverse as the median is not ideologically satisfied with the outcome below.¹⁷

Previous studies have also documented that when the Solicitor General (SG) participates in a case as *amicus curiae* the side the SG supports is significantly more likely to win (Caldeira and Wright 1988; Segal 1988; McGuire 1998). To control for the benefit litigants may get from the federal government's support we include two variables: ***Amicus SG Supports Petitioner*** and ***Amicus SG Supports Respondent***. The first is coded 1 if the federal government supports the petitioner and 0 otherwise. The second is coded similarly if the government supports the respondent or not. In our sample of cases the Solicitor General supported the petitioner 438 times and the respondent 243 times.

Finally, there is evidence that a litigant is more likely to win before the Supreme Court when it garners the support of one or more interest groups (Songer and Sheehan 1993; Collins 2004, 2008). As such, we also include two variables to account for this support: ***Pro-Petitioner Amicus Briefs*** and ***Pro-Respondent Amicus Briefs***. Each of these variables is the number of briefs filed on behalf of the petitioner or respondent respectively. In our model the former should yield a positive relationship with the petitioner's propensity to win, while the latter should lead to a negative relationship.

¹⁷ When the decision below is conservative (coded as 0), then the interaction term will equal zero and the effect will be accounted for statistically by the constitutive Martin-Quinn term.

IV. Results

We report the parameter estimates for our model in Table 2. Taken together, these results provide clear support for our main hypothesis. Indeed, the negative sign on the difference of very unpleasant words indicates that as the Court directs more unpleasant words towards the petitioner, the justices are less likely to reverse the lower court decision. This result holds even as we control for accepted alternative explanations for why the justices decide for one side over the other. Additionally, consistent with Wrightsman's finding, our model indicates that directing more very pleasant words towards the petitioner does not lead to an increased likelihood of reversal. Rather, the emotional nature of justices' utterances affects outcomes only to the extent that they direct more unpleasant statements towards the petitioner. Overall, the model does a good job of predicting whether the Court will vote to reverse, and it achieves a modest reduction in error over guessing the modal outcome (i.e., reverse).

[TABLE 2 ABOUT HERE]

The substantive effects of our key variables are strong.¹⁸ Figure 1 displays the effect of harsh language on the likelihood of reversal. When the difference in *Very Unpleasant Words* is at its mean value, there is a 0.62 probability of reversal.¹⁹ This is consistent with the Court's normal rate of reversal. However, when the Court uses relatively more harsh language towards the respondent, this same probability jumps nearly 20 percent to 0.74. Similarly, when the Court directs more harsh language towards the petitioner, the likelihood of reversal drops to an anemic 0.48 – a 23 percent decrease.

[FIGURE 1 ABOUT HERE]

¹⁸ The support of other outside *amici* also seems to affect the Court's decision, but only in one direction. If the petitioner has the support of additional *amici* there is an effect on the Court's propensity to reverse, but it does not reach the conventional level of statistical significance ($p > .05$). However, as the number of *amici* supporting the respondent increases, there is a significant increase in the likelihood the justices will affirm the lower court decision. While we do not know for sure why *amici* only seem to affect decisions to affirm, one plausible explanation is that the Court is already predisposed to reverse and therefore the justices do not need additional support from outside parties (beyond the SG) to push them toward doing so.

¹⁹ To generate the probabilities, we hold all other variables at their median values. Predicted probabilities and their confidence intervals were generated using the *spost* series of commands in Stata 10.

We are also interested in whether the difference in the number of questions from the bench affects case outcomes. Figure 2 provides such evidence. Indeed, if the difference between the questions aimed at each party is at its mean value (-0.19) there is a 0.62 probability the Court will reverse. When the Court asks two standard deviations more questions of the respondent than the petitioner this probability increases to 0.82. Similarly, if the justices ask more questions of the petitioner the probability of reversal significantly decreases. At two standard deviations above the mean, the probability of reversal drops to 36 percent. Finally, it drops to 16 percent when the difference in questions asked to the petitioner is at the maximum difference from questions asked of the respondent.

Beyond our variables of interest we note also that the control variables generally perform as expected. For instance, in line with existing literature, support of the federal government – through the U.S. Solicitor General – has a clear effect on case outcomes. Indeed, both Solicitor General variables are in the expected direction and statistically significant. Additionally, more general amicus support either increases or decreases the likelihood of petitioner success at the Court. Yet, despite these intuitive counter explanations for petitioner success, our main variables of interest exhibit a marked impact on who will win and who will lose on the merits.

[FIGURE 2 ABOUT HERE]

V. Discussion

The highly unpleasant and active language (“that’s idiotic” and “it’s idiotic”) used by Justice Scalia in *McCreary* (2005), and his eventual decision in this case, does not seem to be an anomaly. Rather, his behavior parallels his colleagues’ actions across more than 2900 cases over a 27-year time span. Indeed, our findings here indicate that when justices use unpleasant language to ask questions or make comments during oral arguments the side that incurs a greater proportion of harsh language is more likely to lose its case. More specifically, by taking advantage of Whissell’s *Dictionary of Affect in Language* we provide strong evidence that the affective component of justices’ language can be used to predict their votes at the merit stage. This, itself, is an important finding because it corroborates anecdotal evidence, allows

practitioners another means to evaluate whether they may win or lose their case, and demonstrates that even our nation's highest jurists are not immune from the influence of emotion on decisions they make.

Additionally, our analysis adds to existing work on oral arguments. While Johnson (2004) offers evidence that these proceedings help justices gather information about a case so they can reach decisions close to their most preferred outcomes, the findings here add an emotional layer to this process. In other words, justices may gather information but they do so with an emotional twist that can be used to predict how they may act once they decide on the merits. Because justices do not use emotional language in every utterance, and because not every word is emotionally charged, we humbly submit there is room for both processes. That is, justices can gather information and “tip their hands” in ways that help scholars, interested observers, and attorneys make strong predictions about who will win and lose on the merits of a case.

Finally, beyond the specific finding about the emotions of our Supreme Court justices, our findings corroborate work that analyzes the role of emotion in our elected institutions. Indeed, existing analyses of the executive and legislative branches have shown that the emotional nature of public statements is something scholars can and should understand. Here, we provide evidence that Supreme Court justices act in a similar manner. That is, justices sometimes use oral arguments to signal their preferences in a case. This leads us to suspect (as have others in our field) that justices share much in common with political actors even though they are unelected and therefore largely unaccountable to the public

Ultimately, our analysis adds to what scholars have demonstrated of other institutional actors—the linguistic characteristics of words provide clues about the emotional nature of language used by political elites, and their emotional nature, in turn, affects decisions. Here, in our institution of interest – the Supreme Court – we find that justices can be both Jekyll and Hyde (as they discuss a case at oral arguments). The take home point is that Mr. Hyde usually wins out over the more docile and kind, Dr. Jekyll.

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Table 1: Examples of Very Pleasant and Very Unpleasant Words (Scales range from 1-3)*

Very Pleasant Words	Pleasantness Score	Activation Score
Approve	2.90	2.30
Confidence	2.80	2.30
Guidance	2.75	2.25
Favorable	2.00	2.00
Respect	2.70	2.57
Very Unpleasant Words	Pleasantness Score	Activation Score
Abusing	1.25	2.81
Aggravating	1.00	2.22
Avoiding	1.22	2.00
Failed	1.00	1.50
Hostile	1.25	2.20

* The words here are all defined as being in the top (very pleasant words) or bottom (very unpleasant words) 10 percent of words in the Dictionary based on pleasantness and activation.

Table 2: Logistic Regression of Petitioner Success: 1979-2006

Variable Name	Coefficient (Robust S.E.)
Very Unpleasant Words Difference	-9.314* (3.410)
Very Pleasant Words Difference	6.247 (4.882)
Question Difference	-0.021* (0.002)
Martin-Quinn Median	-0.667* (0.213)
Lower Court Direction	0.159 (0.185)
Median Justice-Lower Court Congruence	0.260 (0.291)
Amicus SG Supports Petitioner	0.823* (0.121)
Amicus SG Supports Respondent	-0.937* (0.142)
Pro-Petitioner Amicus Briefs	0.063* (0.018)
Pro-Respondent Amicus Briefs	-0.075* (0.017)
Constant	0.702* (0.141)
Percent Correctly Predicted	67.5
Proportional Reduction in Error (PRE)	15.10
Observations	2893

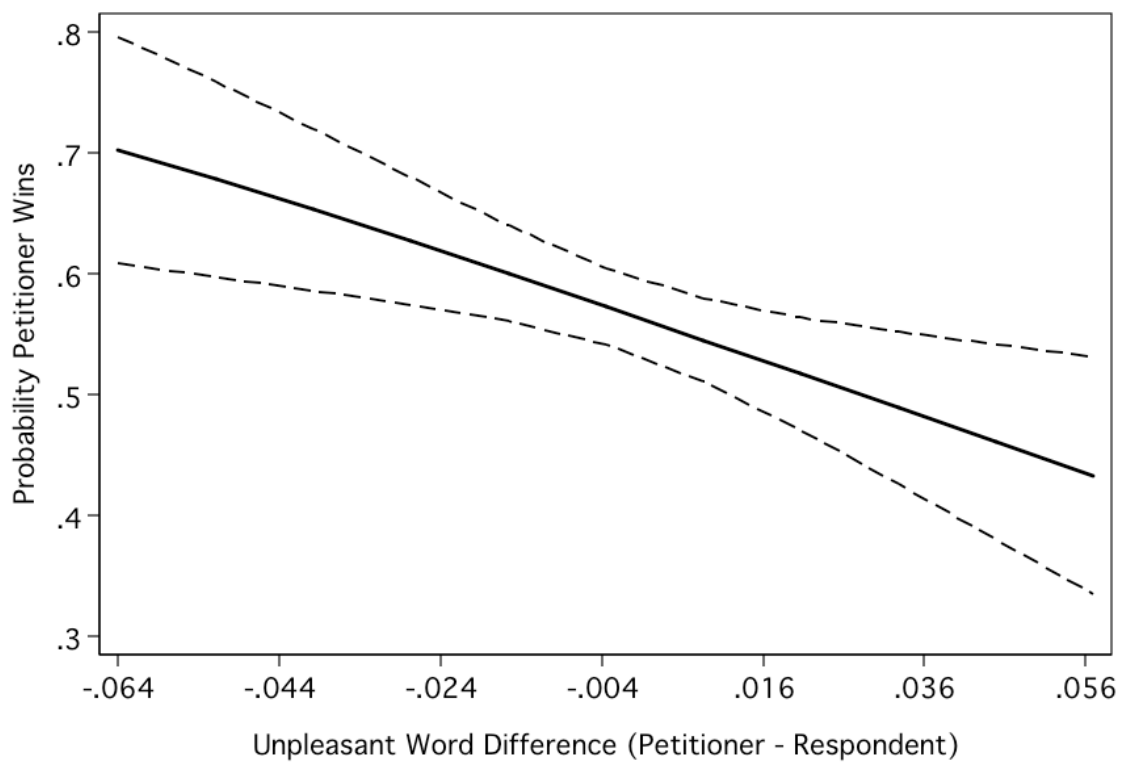
Figure 1: Influence of Unpleasant Word Usage on the Probability of Reversal

Figure 2: Influence of Question Difference on the Probability of Reversal