RESEARCH NOTE

Why "Go Public"? Presidential Use of Nominees to the U.S. Courts of Appeals

LISA M. HOLMES
University of Vermont

In recent years, presidents have utilized public appeals on behalf of their nominees to the U.S. Courts of Appeals with increasing regularity. In this study, I examine the timing, audience, and themes of these presidential speeches from 1977 to 2004. I find that presidents have tended to discuss circuit court nominees who are vulnerable to defeat in the confirmation process before narrow audiences consisting of sympathetic groups or campaign supporters. Presidents discussed nominees in an effort to influence Senate behavior, but more so to court favor with like-minded groups and link nominees to electoral politics. These findings indicate that presidents have begun to insert their nominees into public political discourse for their own political gain, rather than to help their nominees secure confirmation.

The process by which judges are appointed to the U.S. Courts of Appeals has changed dramatically in recent years. Confirmation obstruction and delay of these nominees have steadily increased since the mid 1990s (Goldman 2003). The increased involvement of interest groups and the extent of partisan strife concerning lower court appointments have resulted in a situation where "confirmation battles are played out on a battleground where compromise is always difficult and often impossible" (Goldman et al. 2005, 261).

The evolution of the increased politicization of the lower court appointment process can be traced back to the Carter presidency. Jimmy Carter's interest in furthering diversity and merit selection agendas through appointments to the lower courts represented a significant turning point in the history of judicial appointment politics (Allison 1996; Goldman 1997; Hartley and Holmes 2002). In addition, interest groups began to

Lisa M. Holmes is an assistant professor of political science at the University of Vermont. Her research primarily involves judicial staffing politics at the state and federal level, including judicial appointment politics, diversity on the courts, and the decision to leave the bench, and has been published in a variety of journals.

AUTHOR'S NOTE: I would like to thank the editor and the anonymous reviewers for their helpful comments.

focus more effort on lower court appointments during the Reagan administration (Bell 2002; Goldman 1997; Scherer 2003). The politics surrounding appointments to the courts of appeals became further contentious in the wake of the failed nomination of Robert Bork to the Supreme Court in 1987 (Holmes, Shomade, and Hartley 2007; Martinek, Kemper, and Van Winkle 2002).

Recent presidents, therefore, have had to deal with increasing politicization and conflict in an effort to secure confirmation of their nominees to the courts of appeals. A leading theory used to explain the rise of conflict in the lower court appointment process focuses on the efforts of those responsible for selecting and confirming judges to utilize these appointments to court favor with their partisan activists and interested groups (Scherer 2005). According to this theory, politicians have shifted their focus on lower court appointments away from patronage interests in favor of policy-oriented interests. As such, Scherer (2005) argues that presidents and senators have developed a number of elite mobilization strategies intended to "score points" with their elite constituents.

One such elite mobilization strategy is the insertion of lower court appointment politics into campaign rhetoric. According to the theory of elite mobilization, however, presidents are not engaging in public rhetoric in the hopes of improving the confirmation prospects of their nominees. Rather, they do so in an effort to appeal to a narrow constituency of activists and interest group members who are particularly motivated by lower court appointment politics. In this article, I provide a systematic analysis of presidential use of rhetoric concerning nominees to the U.S. Courts of Appeals from 1977 to 2004. Based on elite mobilization theory, the expectation is that presidents utilize public rhetoric primarily to court their elite constituents rather than in an effort to influence the outcome of the confirmation process.

Presidential Use of Public Appeals on Behalf of Judicial Nominees

Little research has been conducted on the particular topic of presidential use of public appeals concerning judicial nominees, and of the research that has been conducted, much has focused on presidential interest in supporting Supreme Court nominees. Presidents routinely discuss their nominees to the U.S. Supreme Court, and such public support has been found to help these nominees secure Senate confirmation (Johnson and Roberts 2004, 2005; Maltese 1995). As for lower court appointments, Scherer (2005) finds that they have received some attention in presidential and senatorial election campaigns. In a previous study, I found that Presidents Bill Clinton and George W. Bush have discussed their nominees to the courts of appeals far more frequently than did their predecessors, with presidents being more likely to employ this tactic when confronted with a hostile Senate or on behalf of nominees who were "nontraditional" or who were the subject of interest group opposition (Holmes 2007). I found evidence, however, that extensive presidential support of a nominee decreased the likelihood of confirmation.

These studies on the president's public rhetoric concerning judicial nominees coincide with the research on presidential leadership. Many studies of presidential power have focused on the president's ability to influence public opinion in an effort to achieve

their legislative agenda. Presidents are now expected "to defend themselves publicly, to promote policy initiatives nationwide, and to inspirit the population" (Tulis 1987, 4). Samuel Kernell (1997) argues that the realities of the modern political climate require that presidents forgo bargaining with those in Congress in favor of appealing publicly for support of their legislative agenda.

Mobilizing the public to communicate to Congress is risky, however, because a president must not only gain the public's support, but must generate action from a generally inattentive public (Edwards 1989). Therefore, Edwards (2003) argues that presidents may go public not to influence a change in public opinion generally, but to "preach to the converted" in order to solidify or structure the opinions of their core supporters or particular elites. This conclusion was echoed by Cohen (2005), who found that in the "age of new media," presidents target their messages to narrow publics or interest groups, rather than "go national" in an effort to activate the mass public.

Edwards's (2003) emphasis on directing presidential remarks to receptive audiences and utilizing public appeals to influence elites is consistent with Scherer's (2005) emphasis on the central role played by organized groups in the modern lower court appointment process. Given the heightened interest of outside organizations in judicial appointments, presidential attention to lower court nominees may be directed not toward influencing public opinion in general, but may be directed at these interested elites. In addition, recent attention to the placement of judicial nominations in electoral politics may indicate that presidents are utilizing their nominees to rally their supporters and criticize their opponents for electoral gain (Scherer 2005).

Research on presidential behavior in the judicial appointment process, however, has yet to take full advantage of scholarship on presidential leadership through public appeals. As the federal courts of appeals have become more influential over the creation of legal policy (Songer 1991; Songer, Sheehan, and Haire 2000), it comes as no surprise that presidents have begun to appeal publicly in support of their nominees to these courts. Far less is known concerning what presidents hope to achieve when making reference to their nominees. By examining the timing, audience, and themes of presidential remarks about nominees to the courts of appeals, this study provides needed insight into presidential tactics in the modern judicial appointment process.

Hypotheses and Data

According to the theory of elite mobilization, presidents utilize their judicial nominees to court favor with their elite constituents and interested groups (Scherer 2005). Relying on this theory, the expectation is that presidents will time and tailor their public discussion of judicial nominees to serve the goal of elite mobilization, rather than solely in the hopes of securing confirmation for their nominees. To test the theory of elite mobilization in the context of presidential public support of nominees, hypotheses were developed concerning three aspects of presidential speeches about nominees: the timing of the speech, the audience for the remarks, and the thematic content of the speech.

With respect to the timing of a president's remarks on behalf of a judicial nominee, presidents solely interested in helping their nominees secure confirmation by the Senate would be expected to time their support to assist nominees when such support would be most beneficial to them in the confirmation process. Previous research on judicial appointment politics has determined that most of the delay that accompanies the confirmation process occurs prior to the initiation of hearings before the Senate Judiciary Committee and that, once reported out of committee, nominees are typically confirmed relatively quickly by the full Senate (Goldman 2003; Slotnick and Goldman 1998). Thus, most of the nominees who are not confirmed are defeated prior to the initiation of hearings before the Judiciary Committee. Presidents interested in going public in order to help nominees in the confirmation process would be expected, therefore, to focus their efforts at supporting nominees who are waiting for hearings to begin. On the other hand, presidents interested in utilizing circuit court nominees to appeal to their elite constituency may achieve that goal by discussing nominees at any stage of the confirmation process, including those who have completed that process. Thus, following the theory of elite mobilization, the hypothesis here is that presidents will make reference to nominees at all stages of the confirmation process, including those who have been successfully confirmed or have been withdrawn by the president, rather than support only those who are most vulnerable to defeat given where the nomination stands in the confirmation process.

The theory of elite mobilization also dictates that presidents will tailor their public support of nominees to particular audiences of partisan activists and interest groups. The general public, it is argued, is still largely uninterested in appointments to the lower judiciary (Scherer 2005). Therefore, with respect to the audience for the presidents' remarks about nominees, the hypothesis is that presidents will discuss their circuit court nominees to narrow audiences of partisan activists or interested groups, rather than to a broader audience through the mass media.

Last, if presidents are attempting to appeal to their elite constituents through their comments about lower court nominees, they should focus the content of their remarks on issues that will be of particular interest to their elite supporters rather than in a concerted effort to influence Senate behavior. The third hypothesis, concerning the theme of presidential remarks about circuit court nominees, is that presidents will tailor their comments to achieve goals other than Senate confirmation of nominees. Their comments, instead, should be of particular interest to their elite supporters.

Data on presidential speeches referring to all individuals nominated to the U.S. Courts of Appeals from 1977 to 2004 were collected from *The Weekly Compilation of Presidential Documents* and *The Public Papers of the Presidents*.[1] All presidential speeches, press conferences, and remarks with reporters were searched.[2] A nominee was considered

1. Nominees to the U.S. Court of Appeals for the Federal Circuit were excluded because of the Federal Circuit's status as a specialized jurisdictional court (Carp, Stidham, and Manning 2004).

2. With respect to a president's discussion of nominees in exchanges with reporters or at news conferences, occasionally the name of an individual nominee was first broached by a reporter, not initiated by the president. Although an argument could be made to exclude these cases from the analysis, in each case the president chose to respond to the question and provided a detailed response to the reporter's question. Therefore, these cases were kept in the analysis.

to have been mentioned publicly if that person's name (or description, if the description was sufficiently specific to make it clear to whom the president was referring) was discussed in the context of his or her appointment to the court of appeals. Mention of a nominee in any context outside of the appointment process was excluded. This coding scheme serves to identify instances where a nominee was mentioned publicly by the president to make some comment about that individual's nomination or confirmation to the court of appeals.

Results

Throughout the period of this study, presidents discussed 33 different nominees to the courts of appeals across a total of 87 speeches. Given that presidents often discussed more than one nominee in a particular speech, there were a total of 139 mentions of individual nominees from 1977 to 2004. Although Presidents Carter, Reagan, and George H. W. Bush each discussed some of their court of appeals nominees publicly, nominees became a more frequent source of public comment during the Clinton administration. President Clinton discussed 13 different nominees to the courts of appeals over the course of 28 speeches. Throughout his first term in office, President George W. Bush discussed nominees with even more frequency—discussing 13 nominees in 49 separate speeches.

Considering how often a president discusses nominees to the courts of appeals does not shed light on what the president is hoping to accomplish with these comments, however. The context of the speech is important and is determined by a number of things, including when the speech was made, to whom the speech was directed, and the content of the remarks made. This study now turns to an analysis of the timing of presidential remarks about nominees to the courts of appeals.

The Timing of Remarks Concerning Court of Appeals Nominees

Examining the timing of presidential remarks concerning circuit court nominees serves to identify when presidents discuss nominees relative to the nominees' status in the judicial appointment process. Following the theory of elite mobilization, presidents are expected to discuss nominees at all stages of the confirmation process rather than constrain their remarks to those at the earliest stage of the process.

Throughout the period of this study, presidents have expended most of their effort discussing nominees who were being considered by the Senate, often prior to the initiation of hearings by the Senate Judiciary Committee. Of the 139 distinct comments about judicial nominees made by presidents, 64 (or 46.0 percent) were made concerning nominees waiting for hearings to begin.[3] On only 2 of these occasions did a president

3. For this part of the analysis, it was necessary to use presidential mention of individual nominees within a speech as the unit of analysis, rather than the speech itself. Because presidents often make reference to multiple nominees within a single speech, they at times make reference to nominees who are at different stages in the confirmation process during a single speech. Thus, for the timing of presidential remarks analysis, I rely on the 139 distinct references to nominees across the 87 speeches contained in the study. Last, of the 64 comments that presidents made in reference to nominees awaiting hearings, 2 were made on behalf of nominees prior to their referral by the president.

discuss a nominee prior to referral to the Senate. In addition, another 39 comments (28.1 percent of all mentions) concerned nominees for whom hearings had been held but who had yet to be reported out of committee. Thus, most of the time when presidents made reference to circuit court nominees, they did so on behalf of those most in need of support in terms of their status in the confirmation process. Nearly 75 percent of the time, presidents acted in support of those yet to be passed through the Senate Judiciary Committee, although in all but 2 cases, the president waited to discuss these nominees until after they had been sent to the Senate for consideration.

In a substantial proportion of cases, however, presidents extended public support on behalf of nominees who were further along in the confirmation process. In 26 (18.7 percent) of the cases in the analysis, the president made reference to a nominee who had been referred by the Judiciary Committee but who had yet to be voted on by the full Senate. Nominees experience relatively less delay—and are rarely defeated—at this stage of the confirmation process (Goldman 2003; Holmes, Shomade, and Hartley 2007; Slotnick and Goldman 1998). Presidential interest in publicly supporting nominees at this late stage in the confirmation process, therefore, would not appear to be motivated to assist those in danger of confirmation failure. However, it is notable that the 26 mentions presidents made of nominees at this stage of the confirmation process were all made on behalf of nominees subject to a filibuster in the Senate.[4] Thus, these particular nominees were more vulnerable to failure than many others awaiting a vote in the full Senate.

Presidents have occasionally discussed nominees who have completed the confirmation process. Of the 10 (7.2 percent of the total cases) mentions of nominees no longer involved in the confirmation process, all but 3 were made on behalf of nominees who had been successfully confirmed by the Senate. Presidents Carter, Reagan, and Clinton each extended some effort to discuss successful circuit court nominees in order to claim credit for the qualifications or diversity of their appointments or to criticize those in the Senate for the treatment of specific nominees. The 3 times when a president discussed a failed nominee occurred during the George W. Bush administration, when President Bush discussed Miguel Estrada in 3 speeches well after Estrada's nomination had been formally withdrawn in September of 2003.

The results indicate that presidents rarely attempt to prime the public by drawing attention to an individual prior to his or her referral to the Senate. Presidents extend a good deal of their effort on behalf of nominees who are at vulnerable stages in the confirmation process, although they do not discuss only those individuals who may be most benefited by such public attention as a result of their standing at the early stages of the confirmation process. Although infrequent, the occasional use of a confirmed or failed nominee by the president in a public forum is suggestive that presidents do not always discuss a nominee in the hopes of helping secure confirmation for that individual. Rather, invoking the names of nominees who are no longer being considered by the Senate is intended to achieve other goals. Further evidence of the variety of purposes intended by

4. These 26 mentions were made on behalf of 10 nominees. I determined whether or not a nominee was subject to a filibuster using Scherer's (2005, Table 8-2) identification of nominees subject to cloture motions.

presidents when discussing their nominees to the courts of appeals can be determined by examining the audiences to which presidents give these messages.

The Audience Receiving the Comments

Between 1977 and 2004, presidents have discussed court of appeals nominees in a number of different contexts before a variety of audiences (see Table 1). Although presidents occasionally made reference to nominees to a broad audience through a news conference, radio address, or comments made to reporters, these messages were typically targeted to narrower audiences consisting of campaign supporters, organized groups, or women or ethnic minorities. Throughout the time frame of this analysis, presidents extended more effort at discussing their nominees to these sorts of narrow audiences, rather than to a broader audience through a press conference or other media event. Overall, only 20.7 percent of presidential speeches concerning judicial nominees were given to a broader audience through the media, with Republican presidents making such remarks somewhat more frequently than did Democratic presidents.

Across all presidents, speeches concerning judicial nominees were given most frequently at campaign rallies, with slightly more than half of all speeches given by Republican presidents occurring at campaign rallies. Discussing circuit court nominees at campaign events, however, is a very recent tactic, with President Bush giving all 29 of the speeches made by Republican presidents at campaign events (often in order to highlight a nominee from the state where he was campaigning). Although Presidents Carter and Clinton mentioned their nominees at a handful of campaign events, regular presidential reference to specific circuit court nominees at campaign events has only occurred during the current Bush administration.

Democratic presidents, on the other hand, have discussed their specific nominees most frequently when speaking to organized groups and to audiences consisting of females or minorities. Although this tactic was employed most frequently by President

TABLE 1
Audience for Presidential Remarks on Court of Appeals Nominees, 1977-2004

Audience for the Speech	*Republican Presidents*	*Democratic Presidents*	*All Presidents*
Campaign event	29	4	33
	(50.9%)	(13.3%)	(37.9%)
Organized group	3	10	13
	(5.3%)	(33.3%)	(14.9%)
Female or minority audience	9	11	20
	(15.8%)	(36.7%)	(23.0%)
Media	14	4	18
	(24.6%)	(13.3%)	(20.7%)
Other	2	1	3
	(3.5%)	(3.3%)	(3.4%)
Total	57	30	87

Note: Column percentages are in parentheses.

Clinton, President Carter as well gave one of his two speeches concerning a nominee to an organized group. Although to a lesser extent, Republican presidents made occasional reference to judicial nominees when speaking before female or minority audiences. Both Presidents Reagan and George W. Bush focused some of their attention on their female or minority nominees when speaking before these audiences.

The data provided in Table 1 indicate that recent presidents have made occasional use of the mass media to discuss their nominees to a wider audience. However, they have been more likely to discuss their nominees before narrow, targeted audiences of campaign supporters, organized groups, or audiences consisting mostly of women or minorities. Although discussing nominees to narrow audiences was a tactic employed most often by Presidents Clinton and George W. Bush, their predecessors as well tended to tailor their occasional remarks about specific nominees to narrow audiences. These findings are consistent with Cohen's (2005) finding that, in the age of new media, presidents are more likely to target narrow groups rather than appeal broadly to the mass public, as well as Edwards's (2003) discussion of presidential appeals to elites and core supporters.

The Themes Used in Shaping the Message

In addition to considering the intended audience of a president's remarks concerning his nominees to the courts of appeals, the substance of the president's comments provides insight into the purpose of appealing to the audience in this way. As such, I examined the language utilized by presidents when speaking publicly about their nominees. To do so, I analyzed the content of presidential remarks concerning judicial nominees specifically, excluding any consideration of the content of other aspects of the president's speech or the audience the president was addressing. In this way, I was able to determine the themes utilized by presidents when discussing their nominees separately from other themes expressed in different portions of the speech and as distinct from the audience for the speech.

In analyzing the content of presidential remarks about court of appeals nominees, I identified four themes that arose most often throughout the speeches: language directed at influencing the treatment of nominees in the Senate; explanations of the qualifications or experience of the president's nominees; emphasis on the race, ethnicity, or gender of nominees; and efforts to link nominees to electoral politics. In coding which themes a president was intending to forward in reference to one or more specific nominees, the following coding scheme was utilized. Language directed at Senate treatment of one or more nominees was that which made specific reference to an action the president encouraged to be undertaken by the Senate. Examples of such language included presidents' statements that "I expect that this nominee will be confirmed quickly," "I urge the Senate to vote on this nominee," and similar statements expressing explicit advice on how the nominee should be treated by those in the Senate.

In order to be coded as highlighting the qualifications or experience of a nominee, the president's language must have made explicit reference to the nominee's rating, academic pedigree, or experience. Generic statements concerning a president's "excellent" or "highly qualified" nominees were insufficient—some detail concerning specific

characteristics of the nominee's background was necessary. Similarly, in order for a president's remarks to be coded as emphasizing the race, ethnicity, or gender of a nominee, the president must have made explicit reference to the nominee's race, ethnicity, or gender. Discussing a person of color before an audience of the same racial group, for example, was not coded as the president emphasizing the nominee's race unless the president drew specific attention to that issue in his remarks.

Last, language linking nominees to electoral politics was coded as that which explicitly linked the nominee to an upcoming election. Simply mentioning a nominee during a campaign event was not sufficient. One example of language that was coded as linking a nominee to an election was President Bush's statement at a reception for Senate candidate John Sununu in Manchester, New Hampshire in 2002 that "I wonder if the other candidate in this race would stand up and support the judicial nominees of a President George W. Bush. For the sake of a strong judiciary, we need John Sununu in the United States Senate."

Data on the language utilized by presidents when referring to court of appeals nominees in public remarks are included in Table 2. Note that presidents will often extend more than one theme about a nominee during the course of their remarks (in one speech, a president may make comments about his nominee's qualifications and then relate the nominee to an upcoming election); thus, adding together the various themes forwarded by presidents sums to a greater number than the number of speeches made referencing nominees.

As can be seen in Table 2, the most common theme expressed by presidents in remarks about court of appeals nominees throughout the period of this study was the encouragement of particular action in the Senate. Nearly 60 percent of all speeches concerning nominees made some reference to this theme. However, other themes have also been expressed regularly by presidents when making their public appeals concerning nominees. Nominee qualifications and experience were discussed in 56 percent of all speeches, with the nominee's race, ethnicity, or gender being highlighted in 46 percent of speeches, and 33 percent of all speeches relating nominees to an upcoming election.

TABLE 2
Themes Utilized in Presidential Speeches on Court of Appeals Nominees, 1977-2004

Themes Utilized by the President	*Republican Presidents*	*Democratic Presidents*	*All Presidents*
Influencing Senate	39	13	52
	(68.4%)	(43.3%)	(59.8%)
Nominee qualifications/experience	27	22	49
	(47.4%)	(73.3%)	(56.3%)
Nominee diversity	12	28	40
	(21.1%)	(93.3%)	(46.0%)
Campaign	19	10	29
	(33.3%)	(33.3%)	(33.3%)
Other	0	1	1
	(0.0%)	(3.3%)	(1.1%)
Total number of speeches	57	30	87

Note: Percentages of speeches incorporating the theme are in parentheses.

The themes addressed by a president differed according to the political party of the president, however. Both Democratic presidents in the study clearly emphasized the diversity of their nominees more often than did Republican presidents, with nominee race, ethnicity, or gender being discussed in more than 93 percent of speeches made by Democratic presidents. Although far less frequent, it is notable that Republican presidents at times drew explicit attention to the diversity of their nominees, focusing on nominee diversity in just over 21 percent of their remarks. President Ronald Reagan showed some interest in touting the gender diversity of some of his specific nominees, and George W. Bush has shown a good deal of interest in highlighting his efforts at diversifying the bench, with particular emphasis on his efforts at placing Miguel Estrada on the DC Circuit Court of Appeals.

Discussion of a nominee's experience or qualifications has likewise been more prevalent in remarks made by Democratic presidents, whereas Republicans have focused most of their remarks around the theme of influencing Senate behavior. With respect to the theme of linking nominations to electoral politics, presidents of both political parties have utilized this approach to a similar extent, with 33 percent of speeches including reference to electoral politics. It is noteworthy, however, that the electoral theme did not exist in any presidential remarks concerning judicial nominees prior to the Clinton administration. Therefore, although presidents of both partisan persuasions have been similarly inclined to link the status of their circuit court nominees to the electoral process, this represents a recent shift in how presidents frame their rhetorical comments about judicial nominees. In addition, President Clinton relied on electoral rhetoric as often as has President Bush, even though Clinton discussed his nominees at only a handful of campaign events. Even though he has discussed nominees frequently at campaign events, President George W. Bush has tended to highlight a nominee from the state where he was campaigning rather than draw a specific correlation between his nominees and an upcoming election.

A thorough analysis of the timing, audience, and themes of presidential remarks indicates that presidents attempt to achieve a number of different goals when discussing their nominees to the courts of appeals. Presidents may utilize discussion of specific nominees when appealing to elite members of interest groups. They may use such comments to rally their supporters to "become more active on behalf of a candidacy or policy proposal" (Edwards 2003, 244). Or, they may utilize them to claim credit for the diversity of their nominees, particularly when speaking to audiences that would be most receptive to a president's interest in furthering diversity. Finally, they may indeed utilize their nominees in an attempt to influence senatorial action on behalf of the nominee discussed.

Conclusions and Areas for Future Research

Nominees to the federal courts of appeals have become more important to a president's legacy through the creation of legal policy and more contentious with respect to confirmation politics. In turn, presidents have discussed their nominees to the courts

of appeals with increasing frequency. The context of these references does not always appear to be aimed toward shifting mass public attitude toward a nominee or securing confirmation for that specific individual. Rather, presidents often utilize these nominees in public discourse to achieve other goals, including appealing to organized groups, women and minorities, or partisan campaign supporters. As such, I find a good deal of support for the theory of elite mobilization as it pertains to increasing presidential interest in extending public support to court of appeals nominees. Much of this public support is spent on nominees who are vulnerable to defeat in the confirmation process. Thus, presidents appear to be discussing these nominees to some extent to assist their confirmation prospects, but even more so to draw attention to their most vulnerable nominees in order to court favor with their interested elites.

These are significant shifts in presidential strategy within the judicial appointment process that may further broaden the politicization of that process. One important implication is that presidents may find some benefit to having a certain number of troubled nominees languishing in the confirmation process. These nominees can be used by the president when appealing to sympathetic groups, core supporters, or partisan allies. As such, a president may have little incentive to reconsider problematic nominations or bargain with those in the Senate to confirm these nominees if the president can continue to capitalize on troubled nominees, even those who are no longer involved in the confirmation process. Similarly, those in the Senate may find similar purchase in emphasizing their reluctance to cooperate with the president over those nominees most disfavored by interested groups and campaign supporters. If and how those within the Senate have altered their public tactics concerning appointments to the courts of appeals is worthy of consideration. As organized groups and political elites have become more interested in the lower court appointment process, everyone charged with filling these positions may find some benefit in exploiting the contention within the appointment process to their own political advantage.

As such, it should come as little surprise that the compromise reached in the Senate in May of 2005 that led to the confirmation of three of President Bush's most controversial circuit court nominees (while allowing the continued Democratic filibuster of two others) was brokered by a group of "moderates, mavericks, and senior statesmen" in the Senate (Hulse 2005) without the involvement of the White House (Cannon 2005) and to the disapproval of many ideological interest groups (Kirkpatrick 2005). Members of the Bush administration and more ideologically extreme members of the Senate may resist compromise because they sincerely want to achieve their ideal vision of the federal judicial. The gridlock and contention that results from refusing to compromise may be outweighed by the political hay one is able to make because of the gridlock.

The ramifications of increased presidential use of court of appeals nominees for political gain may extend beyond the appointment process itself. When a president utilizes judicial nominees in the public arena for electoral or other political purposes, he insinuates his own nominees into public political discourse. Doing so, he risks affecting what his listeners may think of the appointment process, as well as the judges it produces. The long-term ramifications of the increased public discourse concerning court of appeals nominees on public perception of the judiciary are worthy of future consideration.

In recent years, we have seen a great deal more attention given to court of appeals nominees by their appointing presidents in public speeches. This increased attention is understandable, given the heightened gridlock and conflict seen in the confirmation process recently. However, presidents utilize these nominees for a variety of purposes, many of which do not coincide with an effort to secure their confirmation. Continued examination of presidential tactics in the lower court appointment process and the ramifications of these tactics on appointment politics, presidential-senatorial relations, and public perception of the judiciary is warranted.

References

Allison, Garland W. 1996. Delay in the Senate confirmation of federal court nominees. *Judicature* 80: 8-15.

Bell, Lauren Cohen. 2002. Senatorial discourtesy: The Senate's use of delay to shape the federal judiciary. *Political Research Quarterly* 55: 589-608.

Cannon, Carl M. 2005. The uncompromising Mr. Bush. *Washington Post*, May 29, p. B1.

Carp, Robert A., Ronald Stidham, and Kenneth L. Manning. 2004. *Judicial process in America*, 6th ed. Washington, DC: CQ Press.

Cohen, Jeffrey E. 2005. Presidential going public in an age of new media. Paper presented at the annual meeting of the American Political Science Association, September 1-4, Washington, DC.

Edwards, George C. III. 1989. *At the margins: Presidential leadership of Congress*. New Haven, CT: Yale University Press.

———. 2003. *On deaf ears: The limits of the bully pulpit*. New Haven, CT: Yale University Press.

Goldman, Sheldon. 1997. *Picking federal judges: Lower court selection from Roosevelt through Reagan*. New Haven, CT: Yale University Press.

———. 2003. Unpicking Pickering in 2002: Some thoughts on the politics of lower federal court selection and confirmation. *University of California Davis Law Review* 36: 695-719.

Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Sara Schiavoni. 2005. W. Bush's judiciary: The first term record. *Judicature* 88: 244-75.

Hartley, Roger E., and Lisa M. Holmes. 2002. An invigoration of "consent?" The increasing Senate scrutiny of lower federal court nominees. *Political Science Quarterly* 117: 259-78.

Holmes, Lisa M. 2007. Presidential strategy in the judicial appointment process: "Going public" in support of nominees to the U.S. Courts of Appeals. *American Politics Research* 35: 567-94.

Holmes, Lisa M., Salmon A. Shomade, and Roger E. Hartley. 2007. The confirmation obstacle course: Signaling opposition through delay. Unpublished manuscript in author's possession.

Hulse, Carl. 2005. Compromise in the Senate: The overview. *New York Times*, May 24, p. A1.

Johnson, Timothy R., and Jason M. Roberts. 2004. Presidential capital and the Supreme Court confirmation process. *Journal of Politics* 66: 663-83.

———. 2005. Pivotal politics, presidential capital, and Supreme Court nominations. *Congress & the Presidency* 32: 31-48.

Kernell, Samuel. 1997. *Going public: New strategies of presidential leadership*, 3d ed. Washington, DC: CQ Press.

Kirkpatrick, David D. 2005. Deal draws criticism from left and right. *New York Times*, May 24, p. A6.

Maltese, John Anthony. 1995. Speaking out: The role of presidential rhetoric in the modern Supreme Court confirmation process. *Presidential Studies Quarterly* 25: 447-55.

Martinek, Wendy L., Mark Kemper, and Steven R. Van Winkle. 2002. To advise and consent: The Senate and lower federal court nominations, 1977-1998. *Journal of Politics* 64: 337-61.

Scherer, Nancy. 2003. The judicial confirmation process: Mobilizing elites, mobilizing masses. *Judicature* 86: 240-50.

———. 2005. *Scoring points: Politicians, activists, and the lower federal court appointment process*. Stanford, CA: Stanford University Press.

Slotnick, Elliot E., and Sheldon Goldman. 1998. Congress and the courts: A case of casting. In *Great theatre: The American Congress in the 1990s*, edited by Herbert F. Weisberg and Samuel C. Patterson. New York: Cambridge University Press.

Songer, Donald R. 1991. The circuit courts of appeals. In *The American courts: A critical assessment*, edited by John B. Gates and Charles A. Johnson. Washington, DC: CQ Press.

Songer, Donald R., Reginald S. Sheehan, and Susan B. Haire. 2000. *Continuity and change on the United States Courts of Appeals*. Ann Arbor: University of Michigan Press.

Tulis, Jeffrey K. 1987. *The rhetorical presidency*. Princeton, NJ: Princeton University Press.