The Justices Have No Robes:

An Ethnography of the United States Supreme Court's Court Watchers

By Anna Selbrede

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Public Policy Preceptor: Daniel Sonnestuhl

Public Policy Second Reader & Anthropology Paper Supervisor: Darryl Li

Anthropology Second Reader: Natacha Nsabimana

Anthropology Preceptor: Martin Doppelt

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Abstract

The United States Supreme Court's legitimacy depends upon maintaining a black box around its decisions, distancing itself from the public to prove its independence. Experts fill this gap, traditionally translating Court happenings for the public in a reverent manner that reinforces its image. However, a new group of legal journalists, professors, and practitioners on Twitter upends these norms. I conduct a virtual ethnography of this new legal community which I call the "court watchers." After 6 months of Twitter monitoring and 11 interviews, I find that court watchers reframe the legitimacy of the Court through their discourse, uncovering that the justices "have no robes." Expertise and irreverence combine to allow watchers to push past traditional deference and acknowledge an unspoken understanding of the Court's processes. By refusing to support the pretense that the Court is separate from politics, watchers can advocate for procedural reforms to create a truly legitimate court.

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Introduction: The Court Watchers

"Here is my response to [Justice] Alito, who demands to be seen as apolitical while acting politically, who demands civil discourse while he smears his critics, and who describes the press as sensational for rejecting his mischaracterizations of verifiable facts."[1]

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In October 2021 to an audience of 350,000 followers, *The Atlantic* journalist Adam Serwer launched a Twitter attack on United States Supreme Court Justice Samuel Alito. Supreme Court journalists, lawyers, law professors, and even members of the general public erupted into a Twitter frenzy, expressing support for Serwer and decrying what many perceived as a breach of convention on Justice Alito's part. Although I didn't follow Serwer at the time, my feed that day was plastered with retweets, quote tweets, and links to his article from multiple users. "Adam Serwer is living the dream, carrying out a public beef with Alito," said one user.[2] New York Times commentator Jamelle Bouie quoted "Jack the Ripper" lyrics to summarize the altercation (Fig. 1).[3]

Figure 1. *Jamelle Bouie shares Adam Serwer's Atlantic article.*

Serwer's October tweet was actually the final blow in a series of attacks between him and

[1] Adam Serwer [@AdamSerwer].
[2] poorly hidden account [@poorlyhiddenact], "Adam Serwer Is Living the Dream, Carrying out a Public Beef with Alito."
[3] b-boy bouiebaisse [@jbouie], "Adam's out Here like 'when You Wanna Make Hits, You Make 'Em like This/They Ain't like This They Don't Hit, They Miss' Https://T.Co/TufPlyEO29."

Justice Alito. In early September 2021, Serwer wrote an article in *The Atlantic* entitled "Five Justices Did This Because They Could," outlining the Supreme Court's unsigned order to allow Texas' 6-week abortion ban to continue.[4] In the short article written for a non-expert audience, Serwer described the order and its implications, detailing how the Court's five most conservative justices (all appointed by a Republican president) made this decision through problematic use of the "shadow docket." The shadow docket is a nickname for the emergency docket, an accelerated decision-making process outside of the Court's typical format that skips oral arguments entirely. It is intended for emergency appeals, allowing justices to issue unsigned orders acting quickly to prevent imminent or irreversible harms. According to Serwer, this process has been abused in support of political ends, validating Republican policies while striking down Democratic ones ever since Fall 2020 when conservative justices first gained a supermajority on the Court.

Within the next month, in a speech made at Notre Dame University about the shadow docket, Justice Alito quoted Serwer's piece directly, along with names of other journalists, in an atypical reference to media outside the Court. He claimed that Serwer's characterization of the decision was false and part of a broader scheme to undermine the legitimacy of the Court itself by promoting the impression that the Court is influenced by politics. While Justice Alito's speech was livestreamed, per the justice's request, full recordings and transcripts were not published. However, one clip preserved on Twitter by Slate journalist Mark Joseph Stern summarizes Justice Alito's argument:

> The catchy and sinister term 'shadow docket' has been used to portray the Court as having been captured by a dangerous cabal that resorts to sneaky and improper methods to get its ways. And this portrayal feeds unprecedented efforts to intimidate the court or damage it as an independent institution.[5]

[4] Serwer, "Five Justices Did This Because They Could."
[5] Litman, Murray, and Shaw, "Troll World Tour," 21:48-13:00.

Serwer responded with the article that caused the Twitter frenzy, calling out Justice Alito's attacks as hypocritical and political for hundreds of thousands of followers, reaching over 21,000 likes in the process.[6] Justice Alito's speech remained private per his request, but Serwer's characterization of the situation spread widely on social media. Especially on Twitter, Serwer had a platform in a manner that even Justice Alito did not.

Contrary to the more typical manner of Supreme Court reporting which remains more distant and would not attack a justice directly, Serwer used his final word to speak truth to the great power of a Supreme Court justice. Responses to Serwer's tweet showed overwhelming indignation at Justice Alito for his unconventional attacks, and admiration for Serwer's equally unconventional blow. Serwer, and the myriad of followers who uplifted his article, challenged Justice Alito's characterization of the Court as apolitical despite the conventional view (which Justice Alito alluded to) that the sheer act of this reporting undermined the Court. Typically the Supreme Court and its justices receive a degree of deference and reverence from those surrounding it, especially elite journalists like Serwer.

The Court is positioned above the fray politically, intended to guide and constrain government on behalf of the people and make decisions based upon the Constitution, rather than external pressure from journalists or political parties. In keeping with this ideal, the nine justices on the Court seldom discuss substantive concerns regarding the Court itself, let alone get into direct arguments with a journalist on the topic. However, in the Serwer-Alito conflict, Justice Alito broke this norm by responding to the journalists and quoting Serwer directly. With likes and retweets expanding his reach, Serwer's indignation spread past the typical Supreme Court-interested crowd, facilitating a wide degree of engagement with, and understanding of, the

[6]Adam Serwer [@AdamSerwer].

Court's inner workings. As a result of the confrontation, with such scathing remarks from a popular journalist on a medium that thousands of people viewed, a great number of individuals gained a window into the Court, its processes, and its critics, potentially even questioning the Court's independence, all guided by Serwer himself.

Serwer represents a part of the legal community of over 200 professors, journalists, and practicing attorneys— which I dub the "court watchers"— that regularly reports on and discusses Supreme Court news. I focus on the subset of the watchers who use Twitter for this commentary, sometimes using the hashtags #AppellateTwitter and #SCOTUSTwitter. Excepting the legal journalists, most watchers speak only in their personal capacities, backed by knowledge acquired through years of professional experience. Watchers speak to their peers over Twitter, but also accumulate broader followings from non-expert individuals interested in the Supreme Court. As they become more well known, many reach even greater audiences on and off social media.

As Serwer demonstrates, watchers have a powerful platform since they are one of the only sources that can comprehend the dense legal opinions and convoluted processes of the Court and translate their significance to a wider audience. Unlike the other two branches of government, the Supreme Court does not send out press releases or defenses of its work, apart from the decisions in particular cases. Justices sometimes may speak in public, but they rarely speak on questions before the Court itself, and Justice Alito's speech is one of the rare exceptions. This distance from the public leaves a gap in understanding which the watchers fill, making their opinions more impactful. Yet, apart from a few blog posts describing the #AppellateTwitter or #LawTwitter communities[7] or recommending legal Twitter to law

[7] Acello, "#AppellateTwitter Lawyers Chat, Help One Another and Even Develop Business."
Bashman, "An Introduction to #AppellateTwitter—It's Worth a Look."
Greene, "Tweet Talk: Lawyers on How Twitter Helps and Hinders Their Business."

students,[8] current literature centers solely on the Court itself or just print news sources, not accounting for the role these watchers have begun to play on Twitter. In this thesis I examine the watchers' activity on Twitter directly, considering how their tweeting establishes the authority to speak irreverently about the Court and reframe its legitimacy for a wide audience, like in the Serwer-Alito conflict. In order to do this, I ask: who are the court watchers, what are they doing, and how do they reframe or undermine the legitimacy of the Court through their commentary?

After an overview of theoretical grounding, historical background, and my methodology, I answer these questions in four sections. First, I explain who the watchers are, how they tend to interact on Twitter, and how great of an audience they reach. Second, I describe how the watchers enact their expertise on the Supreme Court, breaking down court news and translating it for an audience. Third, I examine the watchers' unique irreverence toward the Court which connotes a new attitude toward its legitimacy. Finally, I demonstrate how expertise and irreverence combine to ensure watchers can push past deference and acknowledge an unspoken understanding of the Court's political processes— that the justices "have no robes."

Theoretical Background: Legitimacy, Black Boxes, and Those Poised to Explain Them

Watchers play an important role: linking a court that rarely speaks for itself to the public that it makes decisions for. Relative to the other two branches of government, the Supreme Court is uniquely positioned because maintaining its legitimacy requires an independence that necessarily distances justices from the public. Legitimacy is a component of policy enforcement for each branch of government, ensuring that individuals will follow decisions even if they do

Moran, "When Raffi Melkonian Started #AppellateTwitter, He Didn't Know It Would Become a Strong Community."

[8] Macklai, "Into the World of #LawTwitter."

not agree with them. (As James Gipson explains, "legitimacy is for losers."[9]) For the legislative and executive branches, legitimacy is maintained through elections which ensure that a majority (sometimes plurality) of the public supports its representatives' actions. However, the Supreme Court grounds its legitimacy differently from the other two branches because justices seek to uphold an ideal of independence by insulating themselves from public pressure instead of being responsive to it. Through this principled decision-making, justices can claim they make decisions based on "the law" rather than politics. If the voting public accepts that the Court holds the "perceived rightful authority to render rulings for the nation" and that it is "appropriate, proper, and just" in its manner of doing so, then it is considered legitimate.[10] If this public does not believe the Court has rightful authority, it can elect new representatives or put pressure on current ones to overturn or overrule a Court decision, or even more broadly alter its duties.[11]

To uphold this legitimacy, justices follow norms reinforcing the institution of the Court, a key component of which is independence. Bartels defines independence as when "a court can rule free from coercion by other political actors [so] the decision reached reflects its sincere policy preferences.[12] Policy is used here to mean an actor's (here, justice's) genuinely preferred outcome, rather than policy based on partisan politics. To reinforce the ideal of independence, justices on the Court separate themselves from the public by refusing to speak publicly outside of legal opinions on cases before them during their tenure. On an even more basic level, video streaming or recording is not even allowed in the Supreme Court chambers during oral argument, so one can only listen in through livestream (a practice started only recently because of the

[9] Gibson Lodge, and Woodson, "Losing, but Accepting: Legitimacy, Positivity Theory, and the Symbols of Judicial Authority," 839.
[10] Bartels and Johnston, *Curbing the Court: Why the Public Constrains Judicial Independence*, 8.
[11] Clark, "The separation of powers, court curbing, and judicial legitimacy."
[12] Bartels and Johnston, *Curbing the Court: Why the Public Constrains Judicial Independence*, 7.

COVID-19 pandemic).

This secrecy creates a form of Bruno Latour's black box. Riaz Tejani has considered legal black boxes' role in upholding the autonomy of law in tort law. Tejani focuses on the autonomy of law, which is the quality it holds to differentiate it from culture: Law as "exceptional" and not "merely a variant of larger systems of symbol and practice."[13] Understanding legal autonomy as a social fact "fabricated and maintained through relationships between institutions and actors,"[14] Tejani finds that "legal black boxes are the site at which law fabricates its own autonomy and where knowledge of such fabrication is occulted–hidden behind expert knowledge and practice."[15] This same occulting is used to fabricate legitimacy for the Supreme Court. Justices have preconceived opinions and judicial philosophies, but by distancing themselves from obvious public or partisan pressure, they hide those decision-making processes behind the expert practices of appellate law. By leveraging the benefits of these legal black boxes in which the base assumption is that the Court is following appropriate substantive and procedural forms, the justices can appear independent and therefore legitimate. Even though and *precisely becaus*e the justices do not host press conferences or post about themselves on social media to explain decisions, their authority is implicitly justified. But also because the justices rarely speak directly to the public, news reporting — and, as of recently, Twitter and podcast commentating — are some of the sole resources which provide information on the Court to the voting public. These conditions establish the opportunity for commentators with a particular kind of expertise and platform to explain the Court's decisions to a non-expert public.

Research has considered the role of the news media in general on public perceptions of

[13] Tejani, "Little Black Boxes: Legal Anthropology and the Politics of Autonomy in Tort Law," 131.
[14] Tejani, "Little Black Boxes: Legal Anthropology and the Politics of Autonomy in Tort Law," 130.
[15] Tejani, "Little Black Boxes: Legal Anthropology and the Politics of Autonomy in Tort Law," 157.

legitimacy. In a study on TV news and its effect on legitimacy, Slotnick and Segal found that the Court's "reputation and the peoples' willingness to follow the Court's rulings depend in large measure on the availability of information about [it]."[16] Studies have found links between news focused on legal guidelines and perceived fairness on one hand[17] and sensational reporting and decreased public approval on the other.[18] Gibson and Caldeira's "positivity bias" is a major theory in the literature, finding that, on average, individuals who are more knowledgeable about the Supreme Court tend to be more supportive of it as an institution.[19] They do not claim that this is a direct effect, but that:

> Paying attention [to the Court] imparts more than information; attentive citizens are simultaneously exposed to powerful symbols of judicial legitimacy, such as robes, privileged forms of address ("your honor"), etc. The lesson these symbols teach is that courts are different; they are not ordinary political institutions in the American political scheme.[20]

These symbols of legitimacy create the appearance of independence which is theorized to support legitimacy, so the black robes, for example, create a black box to hide the politicians wearing them and instead present a perfect, distant and impartial body.

However, social media has added to and altered the manners that the public takes in information, and despite their important roles, watchers (both reporters such as Serwer, and other watchers who are non-reporters) are currently understudied in the literature. Davey has warned about the decrease in legal journalism tied to the broader transformation towards digital news which tends to skew more sensationalist,[21] but the same studies have yet to examine the role

[16] Slotnick and Segal, *Television News and the Supreme Court: All the News That's Fit to Air?, 5.*
[17] Baird and Gangl, "Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness."
[18] Hitt and Searles, "Media Coverage and Public Approval of the U.S. Supreme Court."
[19] Gibson and Caldeira, "Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court."
[20] Gibson and Caldeira, "Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court," 437.
[21] Davey, "The Future of Online Legal Journalism: The Courts Speak Only through Their Opinions," 575.

social media plays in this news dissemination or in affecting legitimacy. Through the social media format, as Lili Levi highlights, "The creation of news has [...] been recast as a fundamentally social endeavor, in which the reporter is only one part of a community."[22] While a reporter may report in a way that tends to uphold symbols of legitimacy, watchers' discourse may complicate Gibson and Caldeira's positivity bias theory because they provide similar reporting but also pair it with commentary that uncovers and undermines symbols of legitimacy. Serwer, for example, is willing to claim Justice Alito is political and explain his partisan influences in detail. In the legal field, then, the court watchers are a fundamental part of this new community with a new thread of discourse, meriting further study.

Historical Background: The Court v. Those Who Contest It

Raising legitimacy in the face of an unpopular ruling is not a new phenomenon, but contestations of the Court's legitimacy have recently grown more intense. Gipson's claim that "legitimacy is for losers" can be extended to explain why the individuals affected negatively by a decision regularly employ rhetoric attacking the Court's legitimacy by contesting the independence and ideology of justices after unfavorable rulings are released. Recent notable instances on both sides include responses to cases legalizing same-sex marriage or altering campaign finance regulations.[23] In both examples, the losing party contested the Court's right to hear that particular type of case and proposed constitutional amendments to override the outcomes or strip the court of its jurisdiction, while simultaneously using the case they did support to praise the Court for upholding its mandate and the rule of law.[24] This hypocritical rhetoric can sometimes extend past a single decision or subject and attack the legitimacy of the

[22] Levi, "Social Media and the Press," 1549.
[23] Fallon, *Law and Legitimacy in the Supreme Court*.
[24] Bartels and Johnston, *Curbing the Court: Why the Public Constrains Judicial Independence*, 6.

Court overall. Typically, the Court withstands these critiques with a relatively unwavering approval rating, but in the past years the Court's circumstances have changed and criticisms have grown more intense.

Recently, Democrats have called for long-term court reform, including expanding the Court or stripping it of jurisdiction in certain cases.[25] In 2021, these concerns even reached President Biden, who appointed a Presidential Commission on the Supreme Court to study reform proposals.[26] The commission met throughout 2021, culminating in a nearly 300 page report which many watchers characterized as a "research project"[27] since it took barely any substantive positions (Fig. 2). Other watchers highlighted that it still raised the idea of reform in public consciousness,[28] but the Twitter consensus seemed to view it ultimately as a waste of time. Despite this, the mere existence of a presidential commission is striking in a political world where court reform is taboo.

Figure 2. *Slate Reporter Mark Joseph Stern shares the Presidential Commission's final report.*

The most recent serious consideration of court reform occurred in the 1930s when Franklin Delano Roosevelt proposed court packing legislation in response to a series of Supreme Court decisions which had struck down parts of his newly passed New Deal. Roosevelt framed the legislation which would allow him to add justices to the court as an "action to save the Constitution from the Court and the Court from itself."[29] While Roosevelt did receive some

[25] Vladeck, "Why Many of the Supreme Court's Critics Are Trying to Save the Court From Itself."
[26] The White House, "Presidential Commission on SCOTUS."
[27] Mark Joseph Stern [@mjs_DC].
[28] Andrew Crespo [@AndrewMCrespo].
[29] Feldman, *Pack the Court! A Defense of Supreme Court Expansion*, 46.

support, even proponents of the New Deal did not all endorse the plan, and opponents warned about the end of an independent judiciary because it would be politicized. The Senate Judiciary Committee wrote for example that the legislation would expand "political control over the judicial department," and "by applying 'force to the judiciary,' the plan's 'ultimate effect would [be to] undermine the independence of the courts.'"[30] Ultimately, the legislation was never passed. However, within a month of Roosevelt announcing his proposal, the Supreme Court issued decisions upholding New Deal legislation similar to what they struck down earlier. Although there is not a consensus on whether Roosevelt's plan was the direct cause, commentators and reporters still recognized the significance of the decision-making shift that had occurred, calling it the "Roberts' Switch" or the "switch in time that saved nine."[31] Both proponents and opponents of the plan made claims about the legitimacy of the Court in order to support their positions, and warned of the impact political pressure could have on the Court through the plan's passage, although the "Roberts' Switch" still likely came as a result of Roosevelt's proposals.

Since Roosevelt, court reform has not been a serious priority, but over time and a series of political events in more recent history, concerns about the Court have heightened. There is no consensus on the exact catalyst for this tension. According to many Republicans, the catalyst was the Democratic senators' refusal to confirm Robert Bork to the Supreme Court in 1987. President Ronald Reagan had nominated him to fill moderate Justice Lewis Powell's seat, hoping to use his strong Conservative-leaning judicial ideology to fulfill Conservatives' goals of walking back earlier decisions.[32] However, where Conservatives saw a qualified candidate, Liberals noted his

[30] Feldman, *Pack the Court! A Defense of Supreme Court Expansion*, 51.
[31] Feldman, *Pack the Court! A Defense of Supreme Court Expansion*, 50.
[32] Baugh, *Supreme Court Justices in the Post-Bork Era: Confirmation Politics and Judicial Performance*, 7.

record of writing and ruling against established Supreme Court precedent, taking a strong stance against the right to privacy established in *Griswold v. Connecticut* and even questioning the Civil Rights Act of 1964 for infringing on the rights of White business owners.[33] Eventually, the Senate voted 42-58, rejecting his nomination.[34] Following the rejection, Conservatives accused Bork's opponents of politicizing the nominations, by voting against a candidate based on his ideological and policy views— choosing based on politics to reject a justice intended to be nonpartisan— rather than his credentials as a future justice. Opponents explained that they could not confirm a nominee who did not support precedent and the rule of law. Regardless, this rejection with the largest defeat margin in Supreme Court confirmation history began a new era of confirmation hearings, where candidates avoid and flat out refuse to provide positions on precedents and future cases, declaring they have no ideology at all.

Post-Bork, polarizing language explicitly placing nominees on a political and ideological spectrum has grown more typical. Despite the same political pressures from presidents choosing ideologically similar nominees, the style of nomination hearings changed to avoid discussions of particular views, even if the ideological basis for appointments has remained. During her confirmation hearings, Justice Ruth Bader Ginsburg stated that she would provide no "hints or forecasts" on matters which could come before the Court,[35] in order to remain impartial in her role as a future justice. Chief Justice John Roberts built upon that, famously framing his role on the Court at the outset of his confirmation hearing in 2005 by analogizing justices to umpires. He stated that that "Umpires don't make the rules, they apply them...Nobody ever went to a ball

[33] Baugh, *Supreme Court Justices in the Post-Bork Era: Confirmation Politics and Judicial Performance*, 11.
[34] Baugh, *Supreme Court Justices in the Post-Bork Era: Confirmation Politics and Judicial Performance*, 16.
[35] *Hearings on the Nominations of John G. Roberts, Jr. to be Chief Justices of the Supreme Court of the United States Before the S. Committee on Judiciary,* 8.

game to see the umpire,"[36] establishing that he would not respond to questions on particular cases to reveal any ideology, since there was no ideological leaning to be found in his decision making. Despite this appearance of independence, presidents have still nominated ideologically similar candidates who likely will support partisan agendas, and reporting on the Court continues to refer to justices as liberal, conservative, or moderate based on their decision-making.

Even with these confirmation hearing practices, fights in the Senate continued when the Republican-majority Senate retaliated post-Bork by refusing to confirm more moderate Democratic-nominated nominees, claiming that they disapproved of the choice just like the Democrats did against Bork. Following Justice Scalia's death in 2016, President Obama nominated Merrick Garland to fill his seat in March 2016. Departing from typical procedures which would have seen the vote through, the Republican-led Senate refused to even hold a confirmation hearing, claiming that the next presidential election would be held too soon thereafter.[37] Once President Trump took office, he nominated Neil Gorsuch to fill the seat, but Democratic senators filibustered his confirmation. For the first time in Supreme Court confirmation hearings, Senate Republicans invoked the "nuclear option," voting to eliminate the filibuster for the nomination and ultimately confirming Justice Gorsuch 54-45.[38] By September 2020 when Justice Ruth Bader Ginsburg died unexpectedly, President Trump had nominated two justices to the Court. Senate Republicans pushed one last Conservative nominee through their process just months before the 2020 election, allowing Justice Amy Coney Barrett to be seated and ignoring their earlier policy set in response to the Garland nomination.

Democrats have raised legitimacy concerns about the Court in response to these last-

[36] *Hearings on the Nominations of John G. Roberts, Jr. to be Chief Justices of the Supreme Court of the United States Before the S. Committee on Judiciary,* 55.
[37] Killough and Barrett, "GOP Triggers Nuclear Option on Neil Gorsuch Nomination."
[38] "U.S. Senate: Supreme Court Nominations (1789-Present)."

minute procedural changes to fill the Court with conservative picks, even as Republicans claim their actions are retaliation for similar moves from the Democrats. With Justice Barrett seated on the Court, the new 6-3 conservative supermajority has created a more obviously politicized court, inspiring a wave of concern. Since Justice Barrett's confirmation, the Court has already ruled in favor of Conservatives in pivotal cases, effectively banning abortions in Texas through the shadow docket decision, reinstating President Trump's "Remain in Mexico" order, and striking down President Biden's eviction moratorium.[39] Regardless of the legal reasoning behind the decisions, the obviously pro-conservative rulings appear far too political for much of the public to support. In just one year, a poll found that public support for the Court dropped from 66% in September 2020 to 49% the next year, with Democratic respondents primarily contributing to this decrease.[40] In the context of heightened concerns over politicization of the Court and newer, more intense calls for reform, it is useful to study the court watchers and their discourse on legitimacy to evaluate these claims and understand the process contributing to them.

Methodology: Watching the Court Watchers

"Present company excluded, if someone is scrolling far back into your Twitter feed, they are typically looking for something negative."

—Anonymous younger watcher, ~10-15K followers[41]

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Twitter is a fast-paced information source for watchers to report on and discuss recent news, but tweets are ephemeral and difficult to search as an archive. I had bookmarked certain tweets from the above interlocutor only to realize months later that they were deleted, as my

[39] Durkee, "Supreme Court's Approval Rate Plunges Amid Abortion Debate, Poll Finds."
[40] Durkee, "Supreme Court's Approval Rate Plunges Amid Abortion Debate, Poll Finds."
[41] Anonymous appellate practitioner #1, interview with the author, March 2022.

interlocutor explained to me that she deleted anything a prospective employer might find objectionable once she started the job search. To experience and understand the community of the court watchers, then, ethnography is the ideal method. Using real-time engagement, I could see tweets from individuals I had extended contact with, and I was knowledgeable enough to understand references and jokes as they came up. Thus, my primary method was through virtual ethnography, documenting my Twitter experience as a watcher of the watchers and centering my fieldsite on legitimacy discourse.

Between September 2021 and February 2022, I conducted virtual fieldwork through Twitter on the court watchers and the content they published, which I supplemented with interviews of 11 watchers conducted in February and March 2022. As a pre-law undergraduate student who wanted to keep up with the Supreme Court and its decisions but did not always understand them well on my own, I was already a member of many watchers' audiences before beginning my research. A typical mindless Twitter scroll would regularly yield a variety of interactions between lawyers I looked up to, discussing the latest court news and its implications. On other days, I would listen to Supreme Court podcasts while cleaning my apartment, feeling like I was laughing along with experts who certainly did not know who I was. In order to generate and organize data that I could refer to for this research, starting in November 2021, I slowly converted my random downtime-based scrolling into a more standardized system typical of virtual ethnography. During this time, I also regularly consumed other non-Twitter Supreme Court news from my own life as a pre-law student such as podcasts, news articles, events, and the rare statement from a Supreme Court justice. My intention was to "study up," directing my attention to the Court itself through the lens of the watchers.[42] Broadly, I looked for concerns and

[42] Nader, "Up the Anthropologist: Perspectives Gained from 'studying up.'"

opinions about the Court that the watchers made within remarks about current events.

My primary method was through virtual ethnography, documenting my experience as a watcher of the Twitter watchers and centering my fieldsite on the court watchers' Twitter discourse. Scholars have successfully applied ethnographic methods to Twitter and other social network spaces by framing their research as an approach to culture in an environment that is constructed online. To support her ethnography of academic Twitter, Bonnie Stewart writes that "ethnography offers a means to examine the practices, knowledge, and life-worlds of members of a specific culture, whether familiar or exoticized, mediated or face-to-face."[43] She explains that these cultural practices do occur online in the current moment, and even that these "digital technologies have…indeed become sites of cultural practice on their own."[44] Despite the cultural practices being contained entirely online, Stewart explains that they are cultural practices nonetheless, allowing for ethnographic study without physical presence. Drawing from this definition, anthropologists and sociologists have completed ethnographies on Twitter of the hashtag #Ferguson,[45] Black meme creators,[46] medical students,[47] and IT professionals.[48] As Waldecker et al. explain in their research on teenagers' social media use, "What 'being there' and 'first-hand impression' entail, however, depends on the type of media and the type of activity or culture being studied."[49] Despite not having a physical area to enter into and physical activity to participate in, Waldecker could follow their participants in creating a social media

[43] Stewart, "Twitter as Method: Using Twitter as a Tool to Conduct Research."
[44] Stewart, "Twitter as Method: Using Twitter as a Tool to Conduct Research," 251.
[45] Bonilla and Rosa, "#Ferguson: Digital protest, hashtag ethnography, and the racial politics of social media in the United States," 6.
[46] Williams, "Black Memes Matter: #LivingWhileBlack With Becky and Karen."
[47] Chretien et al, "A Digital Ethnography of Medical Students Who Use Twitter for Professional Development."
[48] Talip et al., "Digital Ethnography as a Way to Explore Information Grounds on Twitter."
[49] Waldecker et al., "Media Ethnography and Participation in Online Practices," 10.

account, navigating an interface for a particular goal, and even attempting to delete it.[50] This process still constituted the "being there" and "first-hand impression" of ethnography needed to answer their research question. In a similar way, the watchers' community is based almost entirely on Twitter interaction, so I focused my studies there.

Using social media as a field site complicates the conception of a bounded site to investigate. As Alice Marwick explains, Twitter is not perfectly bounded to meet the traditional definition of field site as a "*space*," but rather, Jenna Burrell's "networked field site" approach can effectively account for its linked, transient nature.[51] Building on Burrell's premise that Twitter is one part of the "network composed of fixed and moving points including spaces, people, and objects,"[52] I constructed my own site through interconnected networks over time. To create my virtual fieldsite, I used my own Twitter account and personal conceptions of what makes a court watcher to define the community to monitor. From scrolling through my regular feed, I added accounts of people I identified as court watchers to a private Twitter "list," which allowed me to see tweets, retweets, and replies from the accounts I put on the list. This list grew over time as I found new accounts interacting with those I already had on the list, and as Twitter recommended to me more names that I recognized or who seemed relevant. I made sure to account for users who clearly court watchers even if they had views against my own beliefs about the court, and I noted trends and thoughts on the watchers as my list grew.

Starting in December, I continued to scroll through my own regular feed to add new accounts to the list, but I also monitored the list as my fieldsite. I followed a similar, but accelerated, monitoring procedure to Stewart's ethnography of academic Twitter,[53] opening my

[50] Waldecker et al., "Media Ethnography and Participation in Online Practices," 17.
[51] Marwick, "Ethnographic and Qualitative Research on Twitter."
[52] Marwick, "Ethnographic and Qualitative Research on Twitter," 5.
[53] Stewart, "Twitter as Method: Using Twitter as a Tool to Conduct Research."

app regularly to scroll through my feed which included the list and my regular feed, making field notes about the experience in a running document. When I found a tweet that felt particularly important or wanted to comment on it specifically, I would bookmark it on Twitter for future reference. I also continued my regular process as a "lurker"—the colloquial term for someone who will react to messages on social media but rarely produces one's own content—by "liking" tweets that I would have wanted to if I were not conducting research. Keeping in mind the theory of Twitter as just one node of a network of multiple field sites, I would tap through entire conversations or article links as they felt useful even if they linked outside of Twitter. Accounting for new and external information over time more directly matched the nature of Twitter as an artificially and imperfectly bounded system.

Throughout the fieldwork process, I kept an open mind on the content I was monitoring, but still made sure to note how I was defining the court watchers, how the watchers defined themselves and their audience, and what they said about the Court. I looked for moments of translation or analysis, especially relating to customs and norms of the Court, notions of the public, and mentions of legitimacy and politics. Separate from research for analysis purposes, I continued to stay up to date on Supreme Court news outside of watchers' conversations. In addition to reading regular news, I made sure to read about the few outputs directly from justices, such as Justice Breyer's book *The Authority of the Court and the Peril of Politics* and Justice Alito's speech at Notre Dame University, both from late September 2021. I also watched public meetings of President Biden's Commission on the Supreme Court. These Zoom meetings were a special instance of well-respected, academic court watchers meeting to discuss court reform.

After nearly three months of virtual ethnography, I added on to my research by interviewing certain watchers. My reach here was constrained more by practicality than by

research goals, but I successfully reached out to 11 watchers through contacts I had from previous jobs or friends, snowball sampling, and Twitter direct messaging individuals I had no contact for but was very interested in speaking to. I conducted 30- to 45-minute interviews by phone or Zoom focused on supplementing the public presence of watchers with the thoughts that may not be openly stated, working to "understand participants' meaning making processes."[54] Like Marwick, I asked subjects about particular tweets they wrote or interacted with. I made sure to leave conversations open for new themes, but maintained a consistent general framework. I recorded and transcribed the interview if given permission.

My primary limitation here came from the nature of Twitter itself. Since I mainly monitored Twitter, I necessarily missed content from those whose opinions were published and shared less often, likely from older academics who are not as popular on Twitter or who were never on Twitter to begin with. This limitation mimics the limitations of Twitter as an information sharing platform overall, since ultimately the rest of the watchers' audience also missed the same voices. Similarly, while there are some "private"[55] accounts who participate in the Twitter community, I did not include them in my research even if they accepted my follow request since their choice to remain private signaled their intention to prevent publication. As interlocutor Joe Mead explained, many watchers (including himself) choose to go "private" or stop tweeting about the Supreme Court once they begin litigating in front of it or working for the government.[56] Thus, there are accounts I did not access who could have an important role but clearly did not wish to be studied.

[54] Marwick, "Ethnographic and Qualitative Research on Twitter," 4.
[55] Private account settings on Twitter allow only accepted followers of the accounts to see their tweets, ensuring that their content cannot be spread to individuals the account does not vet and accept first. Typically, this means that tweets from these users cannot go viral.
[56] Email message to author, February 28, 2022.

The Watchers and Their Platform

"When I walked into the Supreme Court, there were dozens of people from Twitter there waiting as I got into the courtroom. We had a party after the argument at a dive bar in DC that some friends from Twitter had arranged. It was really a nice experience…I don't think that is a typical first argument experience for a lawyer, where you show up and there are dozens of friends waiting for you-- a lot of people who you haven't met, but you know from their little avatar."

—Raffi Melkonian, "so-called 'Dean'" of #AppellateTwitter, 50K followers[57]

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The defining action which makes an individual a court watcher is following and commenting on legal content. While this may occur on many different media and about various subtopics in law, I focus on the subset of court watchers who discuss the US Supreme Court through Twitter. These individuals are almost always lawyers, law professors, or legal journalists. Although there was disagreement between responses on the boundaries of this group, all of my interlocutors agreed that there is a legal community on Twitter, stating explicitly that they would use the term in some form. The rules of engagement within the group are similar to a typical Twitter community centered on one topic: watchers follow their topic regularly and tweet during big events like oral arguments or days when decisions are released, they joke about news and life, and of course they post pictures of pets and food.

Sharing and commenting through Twitter forms an anthropological public made up by the court watchers. The concept of a "public"— separate from the voting population used to define the Supreme Court's legitimacy— describes the manner by which Twitter enables and reconstitutes human interactions. Francis Cody writes that a public exists when there is "mass

[57] Zoom interview with the author, March 7, 2022.

circulation among strangers who inhabit a social imaginary," where a process of "entextualization" allows "a unit of discourse" to be "detached from one context of enunciation and placed into others to create an effect of circulation, often across media channels."[58] Cody cites Bruno Latour to explain that publics can be mediated through more than just the typical print literature as originally conceptualized, listing many potential "material infrastructures of communication" that can mediate publics, including "virtual worlds."[59] Twitter as a medium fits this definition of a public, as users can tweet something which is mass circulated to strangers in a manner that is very quickly detached from the original user's page and instead quoted or retweeted to others. From just one interaction, thousands of users can view one individual's content in the context of their own feed and understandings. Twitter broadly creates a "social imaginary" in this manner, since individuals are aware of this mass mediation. This awareness is why individuals will put out requests for help from the "hive mind" of Twitter, asking if anyone can find a particular article, if they know of a lawyer in a certain area, etc.

Twitter's platform allows the court watchers to come together within the broader Twitter public to create a smaller public that understands itself more directly as a collective. The most obvious method of sharing between strangers is through hashtags, which as Bonilla and Rosa explain in their ethnography of hashtag activism, "have the interdiscursive capacity to lasso accompanying texts and their indexical meanings as part of a frame."[60] Bonilla and Rosa, for example, find that #Ferguson has an indexical capacity to point toward and filter messages generally referencing the location or an event. Twitter can then collect tweets with these tags into one particular searchable location, creating a sense of space that one can "visit." Hashtags like

[58] Cody, "Publics and Politics," 42.
[59] Cody, "Publics and Politics," 46-47.
[60] Bonilla and Rosa, "#Ferguson: Digital protest, hashtag ethnography, and the racial politics of social media in the United States," 6.

#LawTwitter, #AppellateTwitter, and #SCOTUSTwitter similarly index a concept or idea; in this case, a public that discusses law generally, appellate law and practice, or the Supreme Court. They have the added benefit of being newly created hashtags rather than a city *and* an event. Rather than just #Law or #SCOTUS, the hashtags have been *created* for this indexical power.[61] One can therefore follow the hashtag itself or search for it regularly in order to find strangers to follow, with the understanding that they are likely members of the public if they use the hashtags.

Besides hashtags, key users or topics of discussion prompted by the Twitter algorithm help watchers find and follow each other, connecting them to the group. A user may come across just one interesting tweet, decide to follow the user who wrote it, and then realize over time that they are interested in other users in the similar space, slowly constructing the same collective without the immediacy of a hashtag. Although tweets from private accounts cannot be stumbled across in this way, the great majority (89%) of Twitter users have public accounts, and the same is true for the watchers.[62] Since anyone can see practically any tweet and interact with it as equals in the open Twitter space, content is shared and spread over and over again, allowing my list of watchers to grow constantly as I find new accounts and other new ones are recommended to me. Bonnie Stewart characterizes this structure as one "based on a logic of virality rather than entrenched hierarchy,"[63] since typical barriers to access are removed by the virtual space to make it as easy as possible to spread information. On Twitter, algorithms are geared toward sharing a tweet out more and more, working to make it go viral.

Many of the court watchers who are most active in the space participate in the non-legal

[61] Raffi Melkonian is credited anecdotally for being the creator of the #AppellateTwitter hashtag.
[62] Mcclain et al., "The Behaviors and Attitudes of U.S. Adults on Twitter."
[63] Stewart, "Twitter as Method: Using Twitter as a Tool to Conduct Research," 252.

discourse which forms a closer-knit community. Twitter enables this interaction because of context collapse, where the social media platform forces users to publicize the same content to every follower, rather than tailoring speech to the different imagined audiences who make up their followings.[64] Since watchers do not create separate professional and informal accounts, they typically use just one account to discuss the Supreme Court and also their personal lives and interests. As a result, watchers engage on wholly unrelated topics from live tweeting the Super Bowl to debating latke side dishes[65] to posting a personal best on the latest wordplay game (Fig. 3).[66] These extra bits of personal information shared publicly allow for social interaction on a friendly level, creating bonds over social media more akin to an in-person friendship. Sometimes Twitter enables these friendships to be lopsided, where a watcher who tweets regularly but does not follow back the individual watching them can feel more like a celebrity than a friend. In my experience as a researcher, I was ecstatic to hear back from watchers who agreed to interview because while they knew nothing of me, I viewed them practically as celebrities. But many of the other users on Twitter do establish their presence on the platform and reach out to others, forming new relationships between watchers in a public

Figure 3. Law Professor Sara Warf uses a meme format to make fun of the most-loved word games on #LawTwitter.

[64] Marwick and boyd, "I Tweet Honestly, I Tweet Passionately: Twitter Users, Context Collapse, and the Imagined Audience."
[65] Steve Vladeck [@steve_vladeck]. "Just like French Fries and Hot Dogs. If They're Good Enough, They Don't Need Condiments. And Yes, I Will Die on This (Condiment-Free) Hill."
[66] Sara Warf [@SaraBWarf].

space. The community is constructed as individuals connect publicly, so others see their relationships and build on them.

The content that I saw as an ethnographer, and the content the watchers see between each other, is still mediated through Twitter as a platform. Because of the Twitter algorithm, even as information mass circulates, it does not necessarily reach the entire voting public and instead tends to stay in certain networks. As Nick Seaver explains, algorithms are "intrinsically cultural,"[67] and the Twitter algorithm carries its own biases and processes which are yet to be fully understood. Regardless of current understanding, this process of disseminating information works in a manner that differentiates social groups and only sometimes allows information to be spread between them. Cody writes that attention to "regimes of circulation" accounts for the manner that discourse moves "along predictable social trajectories" rather than in a single homogeneous way.[68] As a result, the watchers can become a community that sees and re-shares similar content, but if another Twitter community does not typically view that content, the watchers' content may never reach that second community at all. An interlocutor mused about how he gained over 5,000 followers, noting that tweets always get more views when they have an image, or have something funny or interesting in them.[69] This marketing helps to bring tweets outside singular regimes of circulation, but they only do so based on coding meant to target the most likable (or comment-able) tweets rather than ones that may be the best for explaining legitimacy. In these cases, a tweet can get more likes and views within the watcher's followership, and then Twitter's algorithm may work more intensely to push the tweet outside the community entirely.

[67] Seaver, "Algorithms as Culture: Some Tactics for the Ethnography of Algorithmic Systems," 10.
[68] Cody, "Publics and Politics," 43.
[69] Anonymous appellate practitioner #2, interview with the author, March 2022.

Enacting Expertise, Explaining Legitimacy

"I use my Twitter for the educational aspect, broadly conceived. I want to inform people about what the court is doing and provide explanations of the decisions and arguments that are accessible to a wider range of audiences than say a law review article…in a tone that is more accessible than stilted..to make it accessible to particular audiences. [I also want to] illustrate to people that expertise comes in different forms and voices, that….You can do legal analysis and still have views on what the court is doing."

—Leah Litman, Co-Host of Strict Scrutiny *Podcast, 50K followers*[70]

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Watchers have a special role as the few experts who can understand the Supreme Court's outputs and inform each other and outsiders on their significance. They follow Court news regularly, tweeting advance warnings about the opinion most likely to be announced that day, or analyzing clips from a recent oral argument. Scrolling for just a few minutes during a particularly important argument or immediately after a relevant opinion is released will yield multiple tweets breaking the news, explaining it, debating it, and outlining its implications. In order to do this, watchers first have to position themselves as experts in the field. Building on Gregory Matoesian, E. Summerson Carr defines expertise as an enactment rather than a quality which can be held, explaining that "to be an expert is not only to be authorized by an institutionalized domain of knowledge or to make determinations about what is true, valid, or valuable within that domain; expertise is also the ability to 'finesse reality and animate evidence through mastery of verbal performance.'"[71]

The self-appointed nature of most court watchers means that they must establish their

[70] Interview with the author, March 10, 2022.
[71] Carr, "Enactments of Expertise," 19.

own expertise on Twitter in order to gain any platform at all. Since all Twitter accounts start with zero followers, no matter how many degrees a watcher holds or arguments they have made before the Supreme Court already, in order to reach a high following, thousands of individual users must see the account and actively decide to click follow. To demonstrate their expertise, watchers' Twitter biographies will include their affiliations as professors or journalists, and sometimes even a quote about them, such as Dan Epps' characterization from Pete Buttigieg as a "smarter legal mind than mine" (Fig. 4).[72] These pages are the only regularly-accessible descriptions of each watcher on Twitter, so a quick description of their official qualifications serves as immediate justification for a statement. Many practitioners who have argued before the Supreme Court have a sketch of themselves arguing before the Court as their background photo, (Fig. 5)[73] similarly validating their elite status as an appellate litigator who must already know something about the Court. These enactments worked on me as a researcher, since I realized only late in my research that I had been discounting watchers' accounts that had high followership but were entirely anonymous—with a nonsensical name and handle such as @LawyerCat_. Although these accounts do play a role in

Figure 4. *Law Professor Dan Epps' Twitter profile.*

Figure 5. *Appellate practitioner Sean Marotta's Twitter profile.*

[72] Dan Epps [@danepps].
[73] Sean Marotta [@smmarotta].

the watchers' community, they did not carry the same authority as experts because I could not identify them as experts.

Watchers also enact their expertise "verbally," through tweets that can legitimize their status if others accept them as credible. One of my interlocutors described to me that one of her primary uses for Twitter is to write explanations which can set up her public image as an expert in a particular topic area.[74] Following the format of a Twitter thread typical for the watchers tweets, the young professional would explain in just a few sentences what the Supreme Court was considering in an upcoming case, highlighting the importance of it and the implications which lead into a law review article she is drafting. My interlocutor explained that she is "using the fact that there are a couple of cases in front of the Court to create a public image of [herself] as someone who knows and thinks about this subject, so that when the law review article [which she is currently drafting] comes out, [she] ha[s] more of an audience and people expect it from [her] and engage with [her] on it."[75] Through this virtual speech act, my interlocutor is able to mimic other more established watchers and signal her knowledge of this topic, purposely taking a stance which will gain her a reputation even if she may not have a perfect quote or image on her profile page. The sheer number of followers that the watchers have helps to demonstrate the effectiveness of their enactments of expertise: watchers I grew accustomed to seeing tweet daily tend to have 10,000-50,000 followers, users who have accepted the pitches put out and actively decided to tap "follow" and listen.

With their expertise established, watchers have the foundation to translate legitimacy and its implications as it has been threaded throughout dense legal opinions and processes. Susan Gal defines translation specifically in the contexts of translating from an expert to a group of non-

[74] Anonymous appellate practitioner #3, interview with the author, March 2022.
[75] Anonymous appellate practitioner #3, interview with the author, March 2022.

experts, outlining a similar process to what the watchers do here.[76] She writes that in translations between different groups, "each side tailors or streamlines its own talk to appeal to the imagined interests and expectations of the other," noting for example that sometimes "interactional means" such as particular terms or arguments "signal refined, careful, and therefore trustworthy procedure" while the same means could also be "obfuscatory, uncertain, or condescending to laypersons."[77] Watchers tend to signal their expertise while translating court opinions by linking directly to their sources and using but then explaining key professional terms. As one younger watcher I spoke to explained:

> I try to have insights that are accessible to those who are aware of the Supreme Court, have a general sense of why it's important and why it matters, but maybe don't have a legal degree, or think about politics through other lenses….I try to have screenshots of the specific part of the brief that I find surprising, or the oral argument transcript, or a direct quote. That's to be useful so that people know this is what I'm talking about.[78]

In addition to acknowledging that she speaks to a broader audience, my interlocutor explains that direct links provide the evidence to support a more accessible form of understanding. She further explained that she thinks she receives less pushback or attacks from random users on Twitter because of her use of credible sources. Providing direct quotes along with explanations effectively demonstrates her expertise.

Law Professor Steve Vladeck is perhaps the most well-known watcher who translates how the shadow docket affects the legitimacy of the Court. In a tweet following a Court decision which explicitly referenced "worn-out rhetoric about the 'shadow docket,'" he quotes and re-explains the situation in terms of legitimacy (Fig. 6).[79] Vladeck redefines the "worn-out rhetoric"

[76] Gal, "Part Two Commentary: Processes of Translation and Demarcation in Legal Worlds."
[77] Gal, "Part Two Commentary: Processes of Translation and Demarcation in Legal Worlds, 228.
[78] Anonymous appellate practitioner #1, interview with the author, March 2022.
[79] Steve Vladeck [@steve_vladeck].

with a concise list of four steps which he sees harming the Court, attaching an image of the quote he is responding to but also linking his testimony before Congress to assert his credibility by providing a greater source. Step four in this process is the implication for legitimacy of the Court, since ultimately the shadow docket leads it to "thereby [appear] partisan." Through this tweet, Vladeck can link one decision to a broader conclusion about the Court's processes, presenting a new interpretation from a paragraph of a Court opinion and using it to identify what undermines legitimacy: politicization.

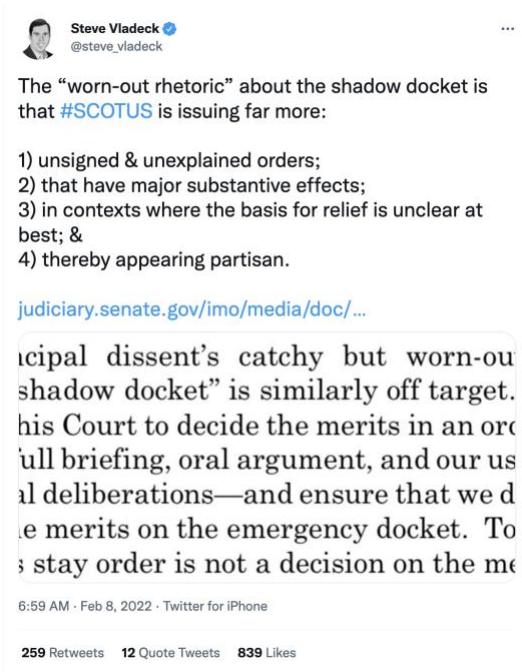

Figure 6. *Law Professor Steve Vladeck screenshots part of a recent Supreme Court case and refutes it. He also links his testimony before the Senate on his concerns about the shadow docket.*

Irreverence Backed by Expertise

Figure 7. *Law Professor Leah Litman shares a tweet about Justice Breyer's retirement.*

On January 26th, I found out two things from my Twitter feed: first, that Justice Breyer had retired, and second, that "bullying works." Democrats were in a precarious position, with control of the presidency

Figure 8. *Supreme Court news blogger Jay Willis shares an article explaining why it is acceptable to call for Justice Breyer to retire. His caption references the fact that Justice Breyer eventually did retire.*

and a bare minimum Senate majority. With a growing fear of them losing control in the 2022 midterms, many politicians had called for Justice Breyer to retire while the Democrats still had their control in order to prevent another Justice Ginsburg situation later. Watchers had joined in these calls, with some even explicitly calling for "bullying" until Justice Breyer gave in and retired. This rhetoric celebrating retirement *and* bullying is just one example of the casual, irreverent tone watchers take on Twitter, uncharacteristic for their roles as experts in the field.

Mikhail Bakhtin's theory of the carnivalesque can help to explain how the watchers subvert norms and authority in their tweets. Citing Bakhtin, Polly Bugros McLean and David Wallace theorize political blogs as 21st century extensions of carnival culture, stating that "Carnival is a time of laughter and openness leading to a type of communication that is aimed at creating an 'atmosphere of freedom, frankness and familiarity' [....] It is in this carnivalesque atmosphere that bloggers can unmask the sacred and subvert what is authoritative, rigid, or serious through discussions and opinion postings."[80] McLean and Wallace's blogs provide similar opportunities for public discourse to ones that the watchers have: in the carnival setting, communication flows more freely with fewer limits. Space is created for familiar language, where it is acceptable for a recently-tenured law professor to casually call Justice Breyer "steve [sic]," in what appears to be a text message shorthand note complete with emojis (see Fig. 7).[81] Despite Justice Breyer's status as a senior justice on the nation's highest court, both Litman and Willis speak familiarly about him (or to him), asking their audiences to treat him not as an impartial magistrate, but instead as a friend who can be influenced. The taglines in Willis' article even explicitly state that Justice Breyer is a politician who should be publicly criticized (see Fig.

[80] McLean and Wallace, "Blogging the Unspeakable: Racial Politics, Bakhtin, and the Carnivalesque," 1520.
[81] Leah Litman [@LeahLitman].

8),[82] bringing him down from his Supreme Court pedestal by recognizing him as simply another politician.

Figure 9. *Law Professor Anthony Michael Kreis shares a meme about the political nature of the Supreme Court.*

Twitter in particular opens the possibility to share memes, bringing in humor and subverting more somber discourse on the Court. In late November 2021, Georgia State law professor Anthony Kreis capitalized on the popular meme format of the week to poke fun at the debate over the political nature of the Court (Fig. 9).[83] Relative to the original meme format he pulls from, where one bus passenger in the image is happy and one is sad, here both are sad. Kreis implies that this situation is because regardless of belief about a political court, groups on both sides are worried about the Court and its effects.

Through carnivalesque tweets, watchers set themselves apart from typical media by regularly reporting on and explaining Court news *without* couching their speech in legitimating rhetoric and instead actively subverting it. In this way watchers "unmask the sacred."[84] NYU law professor Melissa Murray tweeted in early Fall 2021 about the irony of Justice Kavanaugh's obvious partisanship through an image paired with news of him testing positive for COVID-19 (Fig. 10).[85] Rather than reinforcing respect for the Court by including a professional headshot, Murray tweeted an embarrassing, awkward image of him sticking his tongue out at a camera while wearing workout attire— certainly not the embodiment of justice or a picture-perfect

[82] Jay Willis [@jaywillis].
[83] Anthony Michael Kreis US 🧡 UA [@AnthonyMKreis].
[84] McLean and Wallace, "Blogging the Unspeakable: Racial Politics, Bakhtin, and the Carnivalesque," 1520.
[85] Melissa Murray [@ProfMMurray].

representation of an apolitical institution. The photo is a striking contrast to the black robes and somber expressions that appear in traditional news about the Court. Murray captioned it with "your daily reminder that the Supreme Court is not political," pretending to reinforce statements like those made by Justice Alito while clearly demonstrating that she sees the opposite. Through tweets like this, watchers make a claim that the Court is political, but they also do so with a tone that opposes Gibson's and Caldeira's symbols of legitimacy. While a typical news reporter may regularly explain Supreme Court opinions and processes to the public in some way, watchers differentiate themselves through this format and their claims.

Figure 10. *Law Professor Melissa Murray shares news about Justice Kavanaugh testing positive for COVID-19, commenting on the political nature of the Court.*

Yet, these carnivalesque tweets are still paired with substantive commentary and analysis of the Court. Professor Leah Litman of the University of Michigan Law School tweeted during oral argument in the vaccine mandate cases in January 2022 about a statement Justice Kagan made which explains why the mandate is reasonable (Fig. 11).[86] Litman signals explicitly that she is listening to the argument to prepare for her podcast and quotes it directly to provide her source, but also includes a GIF to show her reaction and even refers to the arguments as "idiocy" in the process. Here, she is contesting the Court based on its substantive decisions, since according to her, upholding vaccine mandates is an accurate interpretation of precedent.

[86] Leah Litman [@LeahLitman].

However, her attitude comes through a GIF mocking the justices who would strike down the vaccine mandate, which might be considered disrespectful. It is Professor Litman's status as an expert law professor that allows her to get away with this mockery within the circle of the court watchers.

Figure 11. *Law Professor Leah Litman tweets about an oral argument, including a GIF to show her reaction.*

It is important to note still that not all watchers follow or endorse this tone, and in general, legal professors and journalists tend to be more willing to contest the Court, as opposed to practitioners. One watcher I spoke to who does litigate before the Court explained that she values her role critiquing the Court, but she is willing to give it up if (or when) a job requires it.[87] Raffi Melkonian, "Dean" of #AppellateTwitter and a well-known appellate litigator on the 5th circuit explained that he will only very rarely critique the Court on substantive matters.[88] On qualified immunity, for example, he will explain the absurdity of decisions since he is "so convinced that that doctrine is false and needs to be rejected. And also, like, it's so made up that [he] think[s] it is just bad judging to have created it." But on most other topics, he explained:

> It doesn't surprise me that the super high end legal practitioners in DC don't criticize justices particularly. Like they won't say, you know, Justice Gorsuch or Justice Kagan is full of crap about this particular case, because how can you say that and then you have to go convince them the next week? It just doesn't work. So I think [for] practitioners…it's not ethical to criticize the judges that way, because you're

[87] Anonymous appellate practitioner #1, interview with the author, March 2022.
[88] Zoom interview with the author, March 7, 2022.

harming your clients.[89]

Because of the need to convince individual justices as a Supreme Court lawyer, many watchers will not contest the Court at all, despite the fact that practically all of my interlocutors assured me they would have comments to make about individual justices and their capacities as justices if not for this ethical barrier. As a result, the primary watchers making irreverent arguments in addition to commenting and reporting are law professors and journalists.

The Justices Have No Robes: Undermining Majesty, Redefining Legitimacy

"I don't think you can have a full, rigorous, accurate understanding of the Supreme Court without understanding what it's doing from a power and political lens. I think I have a leash to do that because people seem to take me seriously intellectually. I've read the brief, I listened to oral argument, and I think that it's lawless and dumb."

—Anonymous younger watcher, ~10-15K followers[90]

Much like Adam Serwer's Fall 2021 articles, watcher and Counsel at the Brennan Center for Justice Madiba Dennie explained the implications of the Court's shadow docket decision in the fall through an article and a tweet (see Fig. 12).[91] In her article, she wrote that "The Court's eager reliance on procedural flimflam to deny a legal right to millions of people betrayed a shocking unfaithfulness to the law.…There's no reason to assume it will stop there," raising a series of questions leading to "if the Court does not exist to respect rights, why does it exist and why should it be respected?"[92] Dennie here raised the same concerns that Serwer did, uncovering the reality of a Court pretending it is apolitical and independent but that constantly follows processes that skew towards one partisan preference. She took it further by explicitly contesting

[89] Zoom interview with the author, March 7, 2022.
[90] Anonymous appellate practitioner #1, interview with the author, March 2022.
[91] Barred and Boujee [@AudreLawdAMercy].
[92] Dennie, "The Justices Have No Robes."

legitimacy, questioning whether the Court merits the respect and autonomy it has now, given this politicized state. Her conclusion and title effectively summarize the work that she, Serwer, and other watchers undertake in their discourse: when they discuss Court news, watchers undermine rather than underscore Gibson and Caldeira's symbols of legitimacy, speaking from an expert platform with an irreverence that refuses to reinforce justices' pretense that the Court is separate from politics. Borrowing Dennie's phrase, the watchers demonstrate that "the justices have no robes."

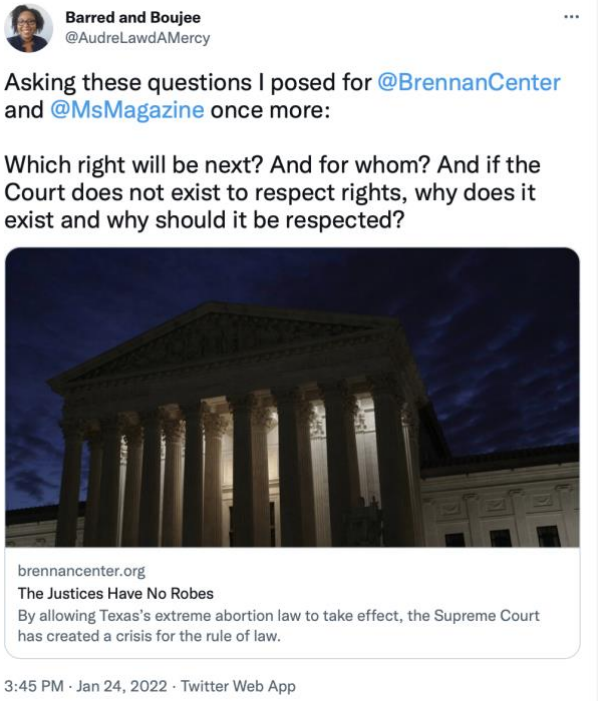

Figure 12. *Madiba Dennie, Counsel at the Brennan Center for Justice, shares her article on the Supreme Court's shadow docket decision.*

This commentary paired with foundations of expertise creates a new kind of discourse about the Supreme Court that redefines legitimacy without entirely undermining it. One watcher explained to me that she believes this kind of irreverent discourse on Twitter is important to uncover and demonstrate the real nature of the Court.[93] She noted that law students in particular tend to have been "indoctrinated in some ways to think that the Court is doing law instead of just the exercise of raw power,"[94] pointing to her own understanding of the Court as the truth which others on Twitter discuss but many others do not know. To convey this information to her audience, she said "There's value in sophisticated, accurate, rigorous Supreme Court commentary that is uninhibited by some of the more rigid professional norms that the legal

[93] Anonymous appellate practitioner #1, interview with the author, March 2022.
[94] Anonymous appellate practitioner #1, interview with the author, March 2022.

community has been defined by for a long time."[95] Through Twitter she is able to be more blunt about the Court and specific justices, writing in a way that reaches broader audiences and explains the real situation to them. That real situation could be, for example, the hypocrisy in ruling in opposite manners on very similar redistricting cases, resulting in maintaining a conservative majority and redoing a liberal majority (see Fig. 13).[96] The professional response may be to simply tweet the news without commentary, but watchers step in to highlight the problem. Through these tweets, they explain that the Court's justification may not always be based on law, and in many cases the motivating factor really is just politics. As the co-hosts of the Strict Scrutiny podcast explain it, "no laws, just vibes."[97]

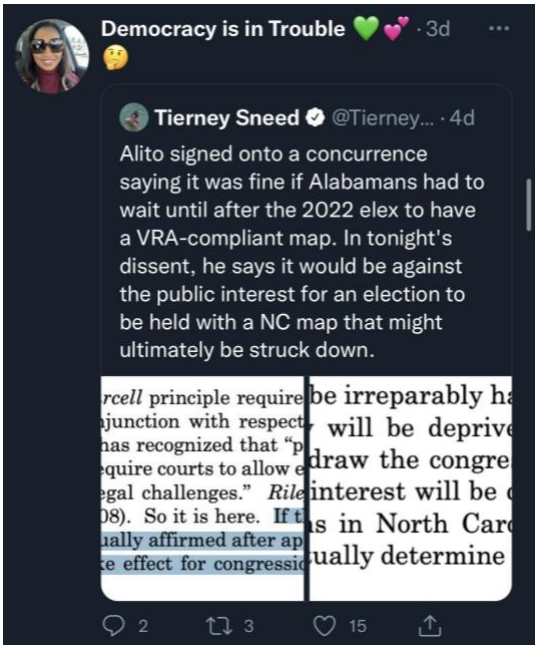

Figure 13. *Law Professor Franita Tolson shares a CNN reporter's analysis of Justice Alito's recent decisions.*

This tweeting bluntly highlights the obvious but never-discussed truth of the Court to an audience, forming a new understanding of it. Watchers demonstrate that it is actually possible (and imperative according to some) to treat the justices as individual politicians rather than as a legal entity which must always be deferred to. These tweets recognize the Court for what it is, reaching into the black box to uncover the political pressures which are constantly present and explaining when there has been too great of a partisan influence in a decision. At the same time, however, the watchers still do not seek to undermine the Court, despite what Justice Alito may

[95] Anonymous appellate practitioner #1, interview with the author, March 2022.
[96] Democracy is in Trouble 💚❤️ [@ProfTolson].
[97] Litman Murray, and Shaw, "No Laws, Just Vibes."

claim. Watchers are not fringe commentators intending to undo the institution— instead, they are well regarded academics and journalists (even sometimes practitioners) who engage with the Court regularly enough to know what is truly "lawless and dumb." To them, the question is how to ensure an institution which will inherently be affected by politics still operates effectively. As Professor Vladeck explained in an October 2021 article explaining the Court's concerning shadow docket decisions, "my criticisms are not an attempt to exacerbate that crisis, but to impel the justices to avoid it."[98] Watchers here are not redefining legitimacy as a term, but they are redefining how to achieve a legitimate court. Rather than accepting decisions without question, watchers read the opinion, research the law, and explain the political pressures that are motivating the court, all in order to push for a better institution.

The watchers tweet their critiques to an open platform, but the actual impact of this tweeting remains unclear. Since the beliefs of the American voting public are the grounding for the Court's legitimacy, it is important to consider just how far the court watchers' tweeting can spread, and the limitations of the research completed so far. Tweets like Adam Serwer's and Steve Vladeck's reach thousands of followers, so content can reverberate past just one community, but it does not always do so. It appears that tweets will be spread across Twitter more if they are favored by an algorithm and are easy to understand, but it remains difficult to appropriately assess the reach of the watchers' through the methods used here because I do not conduct an ethnography of circles outside of the court watchers. Following the watchers' accounts for an extended period of time explains which public is tweeting, but it remains to be determined concretely which publics are viewing these tweets and how they respond.

[98] Vladeck, "Why Many of the Supreme Court's Critics Are Trying to Save the Court From Itself."

Conclusion: Access and Understanding

Legal scholars, journalists, and practitioners have formed a Twitter community with an expert platform that bridges the gap between the American public and the Supreme Court's outputs. The court watchers stand in a unique position not only as translators and experts in this politically relevant field, but also as a community that is publicly accessible. In few other circumstances are members of the general public invited to listen in on jokes, debates, memes, and personal discussions between high-profile, elite experts. These qualities make the court watchers interesting both anthropologically and politically.

Compared to traditional news reporting, the court watchers speak more casually and irreverently about the Court, refusing to ignore its political nature and contesting its legitimacy in the process. They call for a reconsideration of the Court and an understanding that it is not legitimate when it acts in a politicized manner. Depending on the Twitter algorithm or the watchers' followerships, these understandings can be shared across the watchers' communities and breach into a broader public discourse, although it is important to note that this group still does not reach the entire American voting public.

Watchers have the potential to reconceptualize the Supreme Court and potentially support new grounds for court reform with a platform that did not even exist even 15 years ago. Understanding watchers' interactions with each other, and the ways they legitimize themselves, empowers us to better understand their interactions with the audience outside their space. This analysis lays the groundwork for future studies which can examine the impact of this community and its expertise, as we continue to search for ways to establish a truly legitimate Supreme Court.

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