THE SUPREME COURT AND MYTH: AN EMPIRICAL INVESTIGATION

GREGORY CASEY *University of Missouri—Columbia*

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The mass public is often depicted as indifferent to and unaware of many facets of political life which elites deem essential to understanding the political process (Converse, 1964: 209-14, 231-41; Key, 1964: 182-85, 199-202). Yet despite its indifference to political reality as defined by elites, the general public does hold its own version of political reality — albeit a more emotional, more symbolic, and less concrete reality than elites view (Prothro and Grigg, 1960: 276-94; Edelman, 1967: 1-7, 12-19, 178-81; Berger and Luckmann, 1966: 31-34). Popular perceptions of the United States Supreme Court follow this pattern: on the one hand, most observers take for granted that the public appreciates the Court on a symbolic or mythical plane while, on the other hand, most research concludes that the masses lack factual information on this institution.

Works on the Supreme Court have almost unanimously contended that the American public views it as more legitimate than other branches and agencies of government. Indeed, the term "legitimate" is only a mild expression in comparison with the exuberant terms to be encountered in this literature which often calls upon words such as "sanctify," "deify," "worship," and "sacerdotalize" to describe the public's regard for the Court. The foundation for the Court's purported legitimacy can aptly be examined under the rubric of political myth, which Lasswell and Kaplan define as society's more firmly accepted political perspectives. Myth comprises two facets: a political doctrine and miranda. The political doctrine consists of beliefs, or

credenda, which specify and serve as rationale for the structure of power; the miranda are symbols of sentiment and identification which kindle enthusiasm and emotional support for power (Lasswell and Kaplan, 1950: 116-19; Merriam, 1934: 113). Myth captivates by impressing people with the mystique of power; it makes acceptable the displeasing, demanding, and forceful face of power by transfiguring it with a halo of ideology and ceremony which gives the public a sense of security, participation, and aesthetic satisfaction (Merriam, 1934: 102-13). In brief, political myth transforms political institutions from instruments of naked power to legitimate authorities capable of proclaiming and implementing policies without use of force (Dahl, 1970: 41-44; Merelman, 1966: 550-555; Easton, 1965: 289-93, 295-301; MacIntosh, 1963: 625-26).[1]

It is a commonplace that the Supreme Court's lack of means of enforcing its edicts makes legitimacy, and hence myth, particularly crucial for it. In commenting on public opinion toward the Court, most authors have assumed that the public's perspectives amount to a myth, but for the most part their observations have been based more on impressions of what the public thinks than on systematically collected data. This study uses survey data to examine the views which the public expresses about the Court, and to evaluate whether or not those views constitute a myth. The data set is taken from a survey which the Public Opinion Survey Unit of the University of Missouri-Columbia conducted in May and early June, 1968. Professionally trained interviewers polled a probability cluster sample of adults in the state of Missouri (N=866). Although the results are technically generalizable only to its statewide population, Missouri's considerable regional and social heterogeneity permits some confidence in taking it as a better cross-section of the country than would be many other states in the Union.[2]

While commentators have maintained that Americans' view of the Supreme Court is mythic, survey research has contrastingly shown that the mass public is generally unaware of basic facts on the Court's structures and activities. In 1954, for instance, only 19% of the public could correctly identify the three branches of federal government (Lane and Sears, 1964: 61). In 1965, Kessel found that Seattle residents displayed low levels of information on the Court (1966: 171-75) and although Dolbeare reported that Wisconsinites appeared in 1966 to distinguish the three branches, he also found them quite unaware

of the Court's policy outputs (1967: 197-98). Only Murphy and Tanenhaus' national sample in 1966 showed even moderate levels of information; 65% could express some notion of the Court's role, 49% could name at least one Justice, and 45% could recall some recent Court action (1972: 41). The discrepancy between Murphy and Tanenhaus' results and others' findings could stem from true differences in the populations sampled and/or from different conceptual and operational definitions of the Supreme Court's visibility. Yet, although differing on the extent to which the masses lack Court-consciousness, all the findings agree on two points: the masses are less aware of concrete facts on the High Court than are elites, and the mass public exhibits considerable variation within itself, with some social sectors exhibiting greater consciousness than others (Murphy and Tanenhaus, 1972: 42).

More significant than the extent to which the Court is unknown to the masses, however, are the consequences of its escaping their notice. MacIver and Edelman have suggested that a political institution can heighten its legitimacy by showing to its public symbols and ceremony rather than revealing its true nature, its concrete reality. Symbols can elevate the institution, setting it up as special, remote from ordinary skills and practices, difficult to check against daily experience, and unapproachable by the common man (MacIver, 1947: 45; Edelman, 1967: 6-12; Edelman, 1971: 21-24; Berger and Luckmann, 1966: 87-88). Myth sustains mystique, which shelters an institution from the public eye and permits it to manipulate people. But if the mask of myth falls, people can see more clearly what is going on. If an institution's involvement in raw political decision-making becomes visible, people may develop contempt for it. In contrast, invisibility and distance from the mass public sustain myth and thus legitimacy.

Divers commentators, such as Max Lerner (1937: 1314-15), Richard M. Johnson (1967: 33-35, 39-41), Jack Ladinsky and Allan Silver (1967: 136-39), Kenneth M. Dolbeare (1967: 204-05), Paul Mishkin (1965: 62-63, 66-69), and Michael Petrick (1968: 15-17), have asserted that the Supreme Court's relative invisibility is responsible for the endurance of its legitimacy. These scholars' common thesis is that the High Court's myth together with its essentially non-democratic ideology of judicial review flourish in the shade, but might wither in the bright glare of public attention. In their view, visibility would jeopardize the Court's mystique and cause a decline in its legitimacy.

Secluded as it is, the Court does have means of securing publicity: its Justices might make headlines for their personal accomplishments and/or peccadilloes, and its rulings can make news for it directly. But the Justices' newsworthy activities are infrequent and, ordinarily, discreet, and thus appear unlikely to affect judicial mystique adversely.[3] Most of the Court's decisions are routine and involve not broad public policy considerations but narrowly-defined, specialized issues (Blawie and Blawie, 1965: 582-83, 592; Hakman, 1966: 33-34, 47). Some rulings nonetheless become controversial issues (Hakman, 1966: 47) and such controversy might threaten the judicial myth by making the Court's activities more visible.

Robert Dahl (1957: 280, 293-95, and 1972: 207-09), Herbert Wechsler (1961: 27), Max Lerner (1937: 1313-15), and Learned Hand (1958: 69-72) suggest that the Court risks its legitimacy when it intrudes or stumbles on highly-charged and emotion-laden political issues. Charles Hyneman (1964: 256-59) and Felix Frankfurter (1962: 267) point out the danger that judicial activism would cause public confidence in judicial impartiality to wane, and Martin Shapiro (1963: 600-01) and Alpheus T. Mason (1962: 1388-1403) contend that the judicial myth has indeed lost much of its one-time force. Data analyzed by Richard L. Engstrom and Michael W. Giles show that the Court's legitimacy does indeed fall when one facet of the myth loses its credibility: ninth-graders who believe that the Supreme Court operates in accord with the symbolic norm of fairness are significantly more supportive of the Court than those who perceive that it is inconsistent with fairness (Engstrom and Giles, 1972: 633-34). All these observations and findings proceed either directly from the proposition that visibility endangers legitimacy, or by deduction from the two premises that (a) myth sustains legitimacy and (b) visibility imperils myth.

Other observers, while agreeing on the threat to judicial myth, argue that myth is not necessary (or desirable) for judicial legitimacy. Justice William O. Douglas (1949: 754), Alpheus Mason (1962: 1406), Arthur S. Miller (1965: 176, 188-89), Arthur S. Miller and Alan W. Scheflin (1967: 278-79), and James P. Levine and Theodore L. Becker (1973: 236) are among those who feel that the Court can brave the limelight, expose its true nature, and depend on the popular understanding of its rulings on their merits which it would thereby engender for its legitimacy. The weight of scholarly and juridical opinion nonetheless commends to the Court a "low profile" strategy for maximal legitimacy (Ulmer, 1973: 293).[4]

In theorizing on how visibility affects the public's beliefs in the judicial myth (and hence the Court's legitimacy) most scholars and jurists have not had the benefits of systematically-collected survey data. Many of their ideas on the prevalence and qualities of the judicial myth have perforce been derived from notions of the Supreme Court popular in their own social milieu — *i.e.,* the attitudes of their colleagues, families, friends and other opinion leaders (including trusted journalists). Unfortunately, these sources are not necessarily a reliable indicator of mass opinion of the Court, and dependence on them may have led some academic observers far astray from the reality of the public's perspectives. Analysis of survey data can test three assumptions, pervasive in this literature, which have heretofore been based in large measure on impressions of what the public thinks.

First, scholars have assumed that the mass public holds mythic orientations toward the High Court, whereas such orientations may be current only in the social and cultural circles frequented by scholars and opinion elites. Secondly, they have assumed that their reconstructions of the content of the judicial myth adequately reflect the thought patterns of the public. Yet various authors have reconstructed the myth quite differently and there is little agreement on which symbols represent the Court to the public and on which political formulas legitimate its power at popular levels.[5] Survey data can serve to check these reconstructions; this survey uses an open-ended question (which permitted respondents to associate freely various roles and qualities with the Supreme Court) to tap public perceptions of this institution. Thirdly, discussion of whether judicial visibility undermines or weakens the myth depends on the first two assumptions of the myth's existence and of its qualities. These data measure the Court's visibility to the public by measuring awareness of its involvement in politically controversial issues; visibility's effect on myth can thus be explored empirically.

To test these assumptions on judicial myth, the analysis follows four paths of investigation. (1) The first concerns how widely myth is diffused throughout society: does it reach the mass public, or is it less widespread, perhaps reaching only elites? (2) Secondly, if not all hold mythic views, among which social sectors are they accepted? (3) To what degree are the non-symbolic aspects of the Supreme Court — that is, the institution which on occasion formulates public policy — visible to

the mass public? Further, for which social sectors is this reality more visible? (4) Finally, is invisibility of the powerful facet of the Supreme Court functional for acceptance of the judicial myth, and is visibility detrimental thereto? The following four sections of this paper address each of these four questions in turn.

I. DIFFUSION OF MYTH

Socialization studies indicate that knowledge of elements of judicial myth is widely diffused among youth. Easton and Dennis and Hess and Torney reported that grade schoolers' esteem for the Court rose, and that they increasingly distinguished it as more knowledgeable than other institutions as they approached high school age. The grade-schoolers also maintained belief in the Court's infallibility, even while coming to see other political objects (*viz.*, the President, the Senator, the Government) as more fallible. Concomitantly with growth in acceptance of the Court's myth, awareness of its political significance also increased; that is, the pupils also came to view the Court as more powerful and more active in making important decisions (Hess and Torney, 1967: 38-59; Easton and Dennis, 1969: 262-69, 376-79). Teachers, presumably an important agent of socialization into attitudes towards the Court, also combined these mythical and power-laden perspectives. They saw the Court as the most active among political objects, but also elevated it in rating it the most knowledgeable and least fallible. Although they viewed the Court as appreciably more fallible than did their eighth-grade charges, nevertheless their adulthood brought the teachers less disillusionment regarding it than regarding the President, the Government, and so on (Hess and Torney, 1967: 45, 48-9).

The Court's edge on glory in American culture is thus evident in the lofty qualities of knowledge and infallibility which these two important sectors of opinion attribute to it. Yet they also attribute the traits of power and activity to the Court. Lest this lead to the conclusion that the Court is viewed both in association with its miranda/credenda and as an instrument of naked power, it should be noted that although the Court rates high on the power and activity dimensions, other more clearly political institutions surpass it by far. When faced with a brace of pictures and asked to pick the two which best represented government, few pupils and teachers chose the picture of the Supreme Court; few believed it "makes the laws" and only insignificant percentages felt it "does most to run the country"

(Hess and Torney, 1967: 34-41). The respondents' willingness to view the Court as powerful and active does not then necessarily mean that they see it as mythic.[6] A further problem of representativeness of the data base remains, however. Teachers and young pupils should both be suspected of unrepresentativeness — teachers because of their position of community leadership and greater education, and young pupils, because adolescence and adulthood may yet work substantial changes in their belief structures, causing them to expand, revise, or even forget what they have earlier learned about the Supreme Court. Though these socialization studies provide important insights on how the Court fits into other values in American political culture, they leave unanswered how the broader public visualizes and conceives of the Court.

The survey data analyzed here are a representative sample of the broader public and can address this question. These data can also test some of the theories on the content of the Supreme Court's myth. Various scholars' reconstructions of the myth have placed emphasis on different credenda and miranda. Lerner's classic interpretation in 1937 suggested that the Court's control over the meaning of the Constitution through judicial review and the notion of judicial neutrality were pre-eminent (1937: 1293-1312). Later observers have cited other symbols. Johnson has noted the legitimizing effect of the concept of legal certainty, the related impression of insulation from politics, and the dramatic, hushed atmosphere of the appellate courtroom (1967: 27-39). Petrick has added the professional expertise of bench and bar, judicial protection of cherished freedoms, and the charismatic overflow from judges' high social standing (1968: 12-17). Ladinsky and Silver (1967: 139-41) have distinguished two categories of judicial miranda: those highlighting expertise (symbols of achievement, validating the judiciary as a bureaucracy) and those stressing majesty (ascriptive symbols, validating the judiciary as unique). Though rich and perceptive, these theories are lacking in the empirical confirmation which would be necessary to conclude that the mass public (or any sector within it) sees the Supreme Court in terms of particular symbolic configurations (Miller and Scheflin, 1967: 275-77, 295-97).

This poll used the following open-ended question to tap the public's notions of the Supreme Court:

> *What would you say the Supreme Court's main job in government is? That is, what is it supposed to do?*

Probes allowed each respondent a maximum of three comments. This item allowed the subjects to express freely their thoughts on the Court's role. Most answered descriptively, telling what the Court seemed to them to do, but some responded normatively, speaking about what the Court ought to do (and occasionally upbraiding it for failing to abide by its assigned role). A preliminary scan of 250 of the responses made clear that most could be sorted easily into fairly distinct categories. Some comments made no mention of any element of myth, while others associated the Court with a general class of symbol or credendum, such as the Constitution, law, judicial miranda/ credenda, or civil rights/ liberties. Within these broad categories, subtler nuances suggested subcategories; a few alterations and additions resulted in 28 code categories which accommodated all 958 comments made by respondents. Three persons coded all comments; in the few instances of intercoder disagreement, the response in question was moved from a more specific to a less specific subcategory within the same general class of response.[7] Table 1 gives the broad response categories with frequencies and examples.

Lerner's theory on the Constitution's importance as a legitimating symbol for the Supreme Court seems incorrect for Missourians in 1968 — only 8.1% of the responses associated the Court with the Constitution (Category A). Some respondents brought up the quality of constitutionality or constitutional fitness as a criterion for good laws without direct reference to the document itself (Examples B1, B2). If these comments, amounting to 8.5% of the total (N=81), are also considered to invoke the Constitution as a mirandum, a total of only 16.6% of the responses would associate the Supreme Court with the American system's premier political symbol.[8]

Lerner had also maintained in 1937 that the popular mind believed in mechanical jurisprudence. One tenet of mechanical jurisprudence has it that the Court compares statutes to the Constitution and rejects those not in accordance, a view which necessitates a static concept of the Constitution. To see whether mechanical jurisprudence endures, responses using the word "Constitution" were further broken down into those with wording indicating a static conception of it (example A1) and those expressing a more dynamic interpretation (example A2). More than half the remarks (5.0% of total, N=48) mentioning the Constitution were static in their conception of it, indicating that the credendum of mechanical jurisprudence lives on.

TABLE 1: COMMENTS ON THE SUPREME COURT

In answer to the question: "What would you say the Supreme Court's main job in government is? That is, what is it supposed to do?"

Comment category	Meaning of comment	Frequency	
A.	Invokes the Constitution "To enforce the Constitution of the United States." (A1) "To interpret the Constitution." (A2)	8.1%	(78)
B.	Invokes law "It's supposed to see that the laws are constitutional." (B1) "What laws are constitutional and what are not." (B2) "Enforce laws." (B3) "They are supposed to give an interpretation of the laws." (B4) "Interpret the actions of Congress; yes, serve as the balance." (B5) "Uphold the laws of the land." (B6)	30.2%	(289)
C.	Invokes judicial functions, court-like miranda/credenda "No matter how many courts a trial goes through, the Supreme Court has the final say." (C1) "I think they settle matters other courts can't." (C2) "Handles the cases that no one else can decide." (C3) "Wise and fair judgment of cases that are brought before them." (C4)	30.4%	(291)
D.	Invokes civil rights, liberties, freedoms to safeguard people "Not favor certain majorities like big wheels; all have equal rights in the Constitution and see that the people are protected, look into the laws, rights of individuals." (D1) "The main job is to see that equal rights is performed." (D2) "Protect rights of individual against infringement by Congress and the states." (D3) "When it renders decision-point of national law—they have final decision. It's our last stand. The individuals and groups' last recourse to justice in this country." (D4)	7.3%	(70)
E.	Invokes ceremony, rectitude, need for qualifications. "It's a position demanding the utmost in morality, guidance, integrity, and legal training." (E1) "When they inaugurate President, the Chief Justice does that." (E2)	1.0%	(10)
F.	Invokes general decision-making functions "I guess they're supposed to rule everything." (F1) "See that everything goes all right." (F2) "Sets the laws for the government." (F3) "Makes decisions concerning the welfare of the people." (F4) "I think it should pass laws." (F5)	23.0%	(220)
	Total	100.0%	(958)

(N.B.: This table is a frequency distribution of respondents' comments on the Court's role. Some respondents made no comments and some gave multiple responses, so the total of comments does not correspond to the total of respondents.)

"Law" loomed large in the public's understanding of the Court, although not necessarily in the way that theorists have specified. Fully 30.2% of the comments associated the Court with this symbol (category B). Of these, 8.5% (examples B1 and B2) talked of law in the light of its constitutional qualities,

linking the Court to two mutually reinforcing positive symbols. The remaining 21.7% invoked only the notion of law. Of these, 9.8% alluded to law in vague, general terms only (example B3), 5.9% described it as dynamic and adaptive (B4), 3.2% saw it as making the Supreme Court the source of balance (B5), and only 2.7% referred to law in wordings which indicated a static conception (B6). Johnson and Frank have maintained that the symbol of law helps legitimate the Court because law has, in the public eye, the qualities of certainty and predictability. Law by its existence then would reassure people by fulfilling their quest for certainty. Yet only a moderate proportion of these comments seem to associate the Court with such a notion of law. Comments such as examples B3 and B4 do not proclaim the notion that law gives certainty: while remarks like B3 are too general to be interpreted in this way, those like B4 explicitly exclude the quality of certainty by refering to law as dynamic or flexible. Only comments such as example B6 — a mere 2.7% of all remarks — can readily be interpreted to ally the notion of legal certainty with the Court. Comments such as example B1, stressing the Court's role in checking the constitutional propriety of "law" or "laws" could also, if constitutional propriety is presumed to imply certainty and constancy, be interpreted as linking the Court to the need for certainty in the law. Making this presumption (which may not be warranted) adds 8.5% to the 2.7% which can reasonably be interpreted as expressing the concept of legal certainty, yielding a total of 11.2% of all comments which bring out legal certainty in some way as a symbolic attribute of the Supreme Court. This notion's rather limited popularity — even when liberally measured — excludes it from consideration as a mass legitimating formula for the Court.[9]

The next category of comments (30.4%) dwelled on the High Bench's court-like features and functions (category C). Most of these remarks described the Supreme Court as the highest court, as an appeals court, as a court which steps in to settle questions which other (or lower) courts cannot, or as a court making final decisions. Some 5.0% were vaguer, conceiving of the Court as a trial courtroom of sorts (such comments described the Court's activities as involving "big trials" or simply stated that it decided cases brought before it). Johnson had suggested that the majestic image of a hushed, temple-like appellate courtroom contributed to the Supreme Court's legitimation. But these comments do not support this view, for

none brings up the mirandum of the appellate courtroom atmosphere. Insead, either they refer to court-like qualities of the Supreme Court abstractly, without invoking the concerete imagery that would indicate that respondents have in mind the symbolic appurtenances of the appellate courtroom, or they speak of the Supreme Court as a court like any trial court. The Supreme Court is the least physically visible branch and television cannot broadcast images of it in its glorious setting, but television series such as *Perry Mason* may have popularized images of the trial courtroom which unsophisticated people may project onto the Supreme Court.

This set of comments also fails to relate the Supreme Court with the notions of legal certainty and predictability. Instead of yearning for reassurance that the Supreme Court will ascertain how a stable corpus of pre-existing law fits new situations, people making these remarks appear unconcerned with the substance of law. They seem instead to be looking to the Supreme Court as a source of final answers to quash conflicting viewpoints and to settle unresolved questions. They want the reassurance that there will be an authority to provide solutions — but there is no indication that they expect the solutions to derive from earlier solutions already honored as law, or from natural or organic law. It should be noted that comments in category C validate the Supreme Court by defining it as a court, rather than by adorning it with other symbols (*e.g.*, the Constitution, law, or the quality of constitutionality). For people making category C comments, the Court (and lower courts) may symbolize the continuity of society itself, playing an architectonic role by integrating all institutions in a meaningful whole (Berger and Luckmann, 1966: 76-77). For the respondents making comments in categories A and B, the Constitution or "law" may symbolize this continuity.

Some comments (category D) referred to the Court's policy outputs in recent years in broad terms, describing its function as protecting minority rights and freedoms, civil rights and/or liberties, and generally watching out for individuals and the "people." The incidence of these libertarian and populist remarks affirms Petrick's contention that the judiciary can reinforce its legitimacy by serving as a guardian of cherished values. But in view of the risks the Warren Court is believed to have taken in furthering these values, they were salient to only an ironically and disappointingly small portion of the judicial audience. It is notable that comments on civil rights

far outnumbered comments of problems of federalism (N=5, 0.6%; these remarks not tabulated separately in Table 1), suggesting that people associate the Court much more with current trends in policy output than with issues it handled prominently in an earlier constitutional era but which are no longer as exposed to public view.

One other small category of comments also associated positively-vested symbols with the Court. Some respondents saw the Supreme Court in the light of the ceremonial facet of its work or of the integrity of its personnel (category E). The comments in category E came the closest of any to referring specifically to the prestige of the position of Justice, but the infrequency of their occurrence casts some doubt on Petrick's suggestion that the popular mind confers the "charisma" of judges on courts as institutions.

Finally, 23% of the comments (category F) did not associate the Court with miranda. These remarks attributed to the Supreme Court such general decision-making roles as passing bills/laws, making key decisions, keeping the wheels of government turning, ruling everything, and solving problems. Although crude and inarticulate in comparison to comments in other categories, these responses should not be dismissed as qualitatively inferior. Their significance lies primarily in that they indicate awareness of the Supreme Court but stop short of symbolizing or mythifying it.[10] They are also notable in that they indicate an impression of the Court primarily as a political institution, an institution openly and visibly making political decisions and exercising social choices, comparable to the Congress or other institutions of government. Many political scientists hold the somewhat similar, though more informed and articulate, view that the Court is in politics, making political decisions and refereeing the competing claims of interest groups for legal gains (Hakman, 1966: 15-24). Disseminating this political image of the Court to the common man would, from the vantage point of Court observers such as Dahl, Wechsler, Lerner (and others cited *infra*), threaten the Court's myth and consequently lower its legitimacy. The question whether respondents who do not mythify the Court refrain from doing so because the Court's involvement in political controversy has become particularly apparent to them is treated in Part IV.

Altogether, 77.0% of the comments (categories A through E) associate the Court with miranda and/or credenda. Of these, about three-fifths (categories A, B, D, and E; 47.6% of the total)

relate the Supreme Court to a symbol external to it (the Constitution, law, liberties, equality, or balance), while the remaining two-fifths (category C; 30.4% of the total) mention no symbols other than the judicial function itself, justifying the Court on its own terms. If comments making no mention of other symbols (category C) are combined with the comments making no mention of symbols at all (category F), a slim majority (53.4%) of the remarks can be said to invoke no external miranda in conceptualizing the Supreme Court, which suggests that the Court may be able to stand on its own rather well. Only a minority (46.7%) of the responses (categories A, B, D and E) gives expression to the available positive symbols which have been regarded as legitimators of the Court's authority. Academic observers' reconstructions of the judicial myth thus appear to be poor characterizations of the mosaic of popular conceptions of the High Bench. In return for their acceptance of its authority, many members of the general public may quest after credenda and miranda much less than elite commentators have been prone to believe. This is perhaps a further illustration of Converse's proposition that belief systems which appear obvious and necessary to elites break down in the process of transmission to the common people (Converse, 1964: 209-215; Lane and Sears, 1964: 61-62).

Up to this point, statistics have been based upon the total number of responses rather than on the total number of respondents. (Using the total number of comments as the statistical base facilitated discussion of the various symbols and beliefs associated with the Court while avoiding the complex problem of single respondents making multiple comments.) At this juncture, the statistical base shifts to the total number of respondents for two reasons. First, this shift makes it possible to assess the diffusion of the judicial myth. Secondly, it also makes possible comparison of the results of this poll with those reported by Kessel and by Murphy and Tanenhaus.

Diffusion of the Myth

Comments on the Court were ventured by 74.4% of the respondents; the remaining 25.6% (222) declined to answer or pled ignorance. The latter respondents are considered largely oblivious to the Court — it is for them an invisible branch of government, not a salient reality.[11] Do then all 74.4% of the sample making comments hold a mythic perspective on the Supreme Court? Fully 50.2% (N=435) of the sample associated the Court only with miranda or credenda (giving only responses

in categories A-E). Another 14.3% (N=124) did not view the Court in connection with its miranda or credenda (giving only category F responses). A final, small group of respondents (9.8%, N=85) "crossed planes" by giving multiple responses, at least one of which made mention of miranda/credenda and at least one of which did not. All respondents who mentioned miranda or credenda at all were considered to mythify — *i.e.*, to partake of the mythic perspective on the Supreme Court. Thus a majority of 60.0% (N=520) sees the Supreme Court in the glow of its symbols and credenda. Since three-fifths of this representative sample freely give expression to some manifestation of the judicial myth when asked about the Supreme Court's place in the scheme of things, the conclusion that the Court's myth enjoys widespread diffusion is certainly justifiable.

Comparison with Earlier Findings

These results appear in line with those reported by Murphy and Tanenhaus and by Kessel, whose instruments posed similar questions. Kessel found that 30.7% of his sample saw the Court's job as interpreting law or the Constitution (1966: 174), and 37.1% of the Missouri sample saw it this way.[12] Murphy and Tanenhaus noted that 39.7% of their respondents conceived of the Court's function as interpreting law or the Constitution or protecting civil liberties and ensuring equality (1968b: 365), and 44.8% of the Missourians gave comparable responses. These similarities, despite some differences in coding procedures, offer some reassurance that all the surveys have tapped the same phenomenon.

II. THE SOCIAL BASES OF MYTH-HOLDING

Lerner's classic interpretation in 1937 distinguished between lower and middle class perceptions of the Court. At that time, the "common man's" attitude struck him as more reverential, while the attitudes of the propertied classes and (to a lesser extent) of the middle class seemed more blasé and coldly realistic (1937: 1291, 1314-19). He saw the Court as a symbol which helped subdue the lower classes by keeping them in a state of awe while it worked as an institution to enrich the middle and upper classes who realized its bias and saw through its pretenses. Lerner also expressed the foreboding that the working class was on the verge of rebelling against the High Bench as a symbol (1937: 1318-19). Some survey evidence suggests that his premonition may even then have been in the process of becoming true. Throughout the period 1935-37, labor union

members, reliefers, Democrats, and Roosevelt supporters were much likelier than lawyers, Republicans, and Roosevelt critics to favor limiting the Court, to feel that it had gotten in the way of the people's will, and to favor Roosevelt's Court-packing plan (Cantril, 1951: 148-51). The Court may have at an earlier point beguiled the lower more than the middle class, but by the mid-1930's the lower class seems to have been disenchanted while the middle class apparently closed ranks behind this institution. More recent findings indicate that the working class is less aware than the middle class of other political institutions and concepts (Converse, 1964: 209-15; Lane and Sears, 1964: 61-62), so a similar pattern may hold for the Court. Moreover, Murphy and Tanenhaus have shown that education and politicization, two traits positively associated with higher social status, enhance awareness of the Court's role (1968b: 364-67). The incompatibility among Lerner's classical statement, survey data from the 1930's, and more recent research results suggested further investigation of the social sources of myth. The literature had reported on several other demographic factors' relationship to the diffusion of myth, and these also were included in the present study.[13]

For the purpose of exploring its demographic correlates, mythholding was treated as a nominal variable having four values. The first of the four types of orientation towards the myth was mention of only credenda or miranda (*i.e.*, giving only category A-E responses); as seen earlier, half the sample held this exclusively mythic view of the Court. The second orientation was a mixed mythic and non-mythic view for the 9.8% who "crossed planes," both associating the Court with its credenda/miranda and expressing the non-mythic outlooks in category F. These respondents, though positively attuned to the myth, were not pooled with the group holding exclusively mythic views because their voicing category F comments indicates awareness of the Court as a political institution which might dilute their appreciation of its mythic qualities. They were kept in a separate category in case they might be less supportive of the Court than other respondents. Third were the 14.3% of the respondents making only non-mythic comments, and fourth were the oblivious respondents who made no remarks on the Court at all. The relation between this variable and a battery of other factors was then investigated, with the results given in Table 2.

Education emerged as the strongest correlate of mythify-

TABLE 2: CORRELATES OF MYTH-HOLDING

Variable	Cramer's V	
Education[a]	.240	
Subjective Social Class[b]	.207	
Politicization[c]	.199	
Newspaper Readership[d]	.156	
Location of Residence[e]	.134	
Gender	.126	
Generation[f]	.101	
Partisan Identification[g]	.080	X^2 not significant
Ideology[h]	.059	X^2 not significant
Race	.058	X^2 not significant

a. Educational attainment is trichotomized into: those with a grade school diploma or less, those with some high school experience or high school completion, and those with some college experience or beyond.

b. Subjective social class is a dichotomous variable: those who classify themselves as middle or upper class, and those who describe themselves as lower or working class.

c. Politicization is a four-point scale; see Appendix A for details on its derivation.

d. Newspaper readership is a four-fold category: those who do not read a newspaper regularly, those who read only a weekly regularly, those who read an outstate daily regularly, and those who read a metropolitan daily or a prominent out-of-state daily regularly.

e. Residence is a trichotomous variable: St. Louis and Kansas City metropolitan dwellers (both suburban and city); outstate medium-sized city inhabitants and small town folk; and farm dwellers.

f. Generation is a five-fold category: those above 75 (in 1968), and those in the age ranges 60-74, 45-59, 30-44, and 18-29.

g. Partisan identification is trichotomized into Democrats, Republicans, and Independents. Independents include "leaners," those who feel slightly closer to the Democratic or Republican party.

h. Ideology is a four-point scale of liberalism-conservatism; see Appendix B for derivation.

ing; as expected, it works to inculcate the myth and to stamp out ignorance and disregard for the Court. In one sense this confirms the results of the socialization studies — if grade school implants the myth, further education should root it even more deeply. But in another sense it throws doubt on the durability of the judicial myth as transmitted in grade school, for the sooner people quit school, the likelier they seem to consign the Supreme Court to oblivion.[14]

Higher social status also makes myth-holding likelier, which casts doubt on Lerner's proposition that the lower classes are more awestruck. Those who see themselves as lower or working class are much less likely to mythify the Supreme Court, mildly likelier to express only a non-mythic perception, and much likelier to be oblivious. Moreover, at all levels of education and politicization, lower class identifiers mythify less than middle class identifiers.[15] Although the breakdown in the Supreme Court's spell over the common man which Lerner foresaw may simply have occurred in the intervening years, these data taken together with the survey data from the 1930's make it more likely that Lerner was mistaken in 1937: the middle and upper

classes then, as now, may have been the conscious repositories of the judicial myth. This does not entirely refute Lerner's point, for he suggested that one should:

> dig into their minds and even below the threshold of their consciousness . . . to find that Constitution and Court are symbols of an ancient sureness and comforting stability (1937: 1291).

Whatever subconscious awareness the lower class has of these symbols fails to surface in survey data. Although in-depth interviews and projective tests might be expected to unearth its presence, Robert Lane found Court-worship virtually non-existent in his in-depth interviews of fifteen common men (1962: 147).

Education's influence on myth-holding presents a particular problem. Some college experience enhances the tendency to mythify. Yet, whereas the Hess-Torney and Easton-Dennis socialization studies found that pupils in the late primary grades expressed both mythic and non-mythic perceptions of the Court, adults in this sample with less than a college education are in large measure not even consciously aware of the institution. Either these adults never learned about the Court in school (suggesting ineffective teaching or different curricula when they were of school age), or they acquired only such superficial and shallow beliefs that they were prone in the absence of reinforcement to forget what once they knew.

It is possible to test the forgetting hypothesis by controlling for the recency of formal instruction — *i.e.*, age or generation. Respondents between 60-74 had been somewhat less likely than younger cohorts to mythify the Court and those in the 75+ bracket were much less likely to do so; if myth-holding lessens for all elderly regardless of educational attainment, forgetting must be taking place. Similarly, if forgetting is causing ignorance of the myth, the less-educated young will have had less time to forget and so should mythify more than their elders with equal levels of educational attainment. On the other hand, if ignorance derives from failure ever to learn about the Court while in school, both the less-educated young and old should be less aware than the better-educated of their generations. The results, in Table 3, disconfirm the forgetting hypothesis: the less educated young and old both mythify less than the better-educated middle-aged and elderly, and those over sixty do not mythify notably less than younger persons with equal educational attainment. Generation is thus seen to be an extraneous factor, and grade school training appears unavailing

TABLE 3: EDUCATIONAL LEVEL AND GENERATION BY MYTHIC IMAGES OF THE SUPREME COURT

(Cell figures are Percent Expressing Only Mythic Images of the Supreme Court)

Generation (Age Cohort)	Educational Level: Low (Grades 0-8)		Medium (Grades 9-12)		High (Grade 13+)
18-29	28.6% (2)		37.1% (33)	**	76.1% (25)
30-44	34.8% (16)		46.5% (67)	**	77.0% (47)
45-59	32.0% (24)	*	57.7% (64)	*	77.1% (37)
60-74	33.6% (36)	**	73.0% (27)		60.0% (18)
75+	37.0% (17)		58.3% (7)		60.0% (6)

*difference of proportions significant at .05 level
**difference of proportions significant at .001 level

in implanting a *lasting* mythic appreciation of the Court. Despite the findings that grade schoolers grasp several mythic judicial qualities, these data suggest that they forget if not reinforced by a continued education (or by other conducing factors, such as high politicization). Indeed, middle-aged people at the medium educational level (some or all high school) mythify more than similarly educated youth, which hints that settling down and experience may transmit the judicial myth better than educational institutions.[16]

Reviewing the findings in Parts I and II, it can be seen that, although the judicial myth by no means extends to the entire public, it does reach the great majority of people aware in any way of the High Bench. Moreover, those who accept the judicial myth are disproportionately from the more advantaged strata of society — socially, politically, and educationally. Acceptance by these influential societal sectors undoubtedly gives the myth its cultural dominance and explains the emphasis on the Court in the (only superficially effective) civics curricula of grade schools. Furthermore, the myth's cultural eminence puts respondents not expressing mythic views squarely in their place: these are *not* extraordinarily perceptive observers who have on their own reached the view of the Court held by the many political scientists who have unmasked the "true" Supreme Court and found there a political branch. Instead, they are only imperfectly socialized individuals who have failed to absorb society's symbols and beliefs. Given the predominance of mythic perceptions of the Court in better educated circles, it is also little wonder that many scholars have believed the myth more widespread and elaborately articulated

than these data show it to be. From their social vantage point they have only had to look for myth-holders to find them.

What is perhaps most interesting is that no single socializing factor appears able to bring about an enduring absorption of the Supreme Court's myth. Education is the positive force which probably puts most effort into inculcating the myth, yet grade school training does not socialize pupils permanently. Other favorable influences seem necessary if an appreciation of the Court's role is to take root, and these data suggest that these other influences are successful even in teaching the myth to adults untouched by their schools' attempts to indoctrinate them in childhood. The overall social environment is crucial: high political interest, middle-class identification, daily newspaper readership, and some college experience admit people to a social world for which the cult of the Supreme Court is real. This social world appears better able to transmit and sustain the myth than formal institutions of education.

III. THE VISIBILITY OF THE SUPREME COURT

This section examines the visibility to the public of the Supreme Court's policy-making facet, which involves it in controversial decisions and behavioral demands on the people and their leaders. The visibility of judicial decisions is defined conceptually and operationally and correlates of visibility are sought.

Impact of Judicial Decisions

Insofar as the Court's decisions have impact — attaining publicity, motivating political actors to move towards compliance (or defiance), and stirring controversy — the mass public should have opportunities to become more familiar with the judicial presence. Yet, not all the activist Warren Court's rulings have so much as been perceived at mass levels of society, let alone stirred great controversy within the mass public. Murphy and Tanenhaus' 1964 and 1966 data, Kessel's 1965 data, Dolbeare's 1966 data, and these 1968 data indicate little recent change in the public's awareness of the Supreme Court's involvement in different issues. Civil rights (or its variant formulation, segregation in the schools) and school prayers were in that order and in each data set the two most widely perceived issues. The reapportionment decision was better known than the criminal procedure decision(s) in Kessel's and Dolbeare's surveys but criminal procedure and obscenity had overtaken reapportionment in visibility by the time of the 1968 Missouri survey.[17]

Those of its recent edicts which have brought the Supreme Court fame (or infamy) clearly concern controversies which Joseph Gusfield (1963: 16-19, 166-88) and Bernard Berelson 1954: 184-89) have called "status" or "style" issues. Such issues involve clashes of faraway symbols more than immediate possibilities of gain or loss and are highly combustible because they irritate moral sensibilities and excite emotional fervor among concerned members of the public. In contrast, "class" or "position" issues involve tangible stakes having immediate effect on the material self-interest of the audience, are more susceptible to compromise and settlement and thus less durable and less incendiary. Rulings on such matters as prayer, segregation, and obscenity heighten and lessen the prestige of competing symbols which stand for contending life-styles, so it is not surprising that they should attract much more public attention than rulings on economic issues such as railroad mergers, anti-trust law, and the like.[18]

The reapportionment cases have lacked salience for the general public despite the excitement they have caused political elites. Although ultimately touching on the balance of power between urban and rural areas, these decisions do not appear to have sparked status frictions in the same way as did the prayer and school segregation decisions.[19] Perhaps redistricting is too complex, too grounded in numbers, to be readily appreciated by the mass public in a symbolic way. Complex issues pertaining to the structure of government may be difficult to publicize and so pass unnoticed by the masses; the resultant apathy may give policy elites the latitude to work out acceptable solutions. This appears to have occurred with reapportionment, and may partially explain the relatively smooth implementation of the "one man, one vote" rule (Becker, 1969: 93-94).

Visibility and its Correlates

Knowledge of the Supreme Court's work is cumulative — *i.e.*, people aware of its lesser-known decisions are highly likely to be informed on its better publicized ones, and people unmindful of its better known decisions are highly likely to be unaware of its lesser-known ones. Accordingly, many acceptable Guttman scales (*i.e.*, coefficient of reproducibility $> .9$, coefficient of scalability $> .6$) could be created by using different subsets of the items measuring awareness of the Court's decisions, and it was possible to define visibility as a single dimension of perception. The three item subset whose CR (coefficient of reproducibility) and CS (coefficient of scalability) were

highest (CR=.966, CS=.870) was chosen to represent visibility operationally. This scale put awareness of the school segregation decision(s) in the position of least difficulty, awareness of the defendant's rights case(s) next in difficulty, and correct awareness that the Supreme Court had not ruled on medicare in the most difficult position. Scale scores ranging from "0" (for lowest awareness/familiarity) through "3" were then assigned each respondent.[20]

The relationships of a series of other factors to knowledge of the Supreme Court's activities was then investigated. The literature had reported several positive relationships. Lerner suggested that the middle classes were more knowledgeable about the Court's operations than the working class (1937: 1291, 1314-19). Dolbeare found that the better-educated, the more politically efficacious, and Republicans were more aware (1967: 201). Murphy and Tanenhaus' findings were confirmatory on education and political knowledge/interest, although disconfirmatory on party identification (1968b: 363-64). Other expectations were that whites would be more aware than blacks (Murphy and Tanenhaus, 1968b: 368) and that daily newspaper readers would be more so than weekly readers and non-readers.[21]

The data in Table 4 confirmed Dolbeare's and Murphy-Tanenhaus' findings that politicization and education enhance attentiveness to Court decisions. Moreover, greater general attentiveness to current events, measured by extent of newspaper readership, coincides with greater heed for judicial activities. However, many non-readers (64%) know of at least one decision (*i.e.*, score "1" or higher), indicating that issues which gain the Court renown (or notoriety) are so salient that they come through even to people virtually isolated from the printed word — perhaps by stirring conversations and/or by being memorable even when transmitted by the electronic media. This may be in the nature of status issues. Lerner's hypothesis was also confirmed: the middle class is more aware of what the Court is doing, while the working/lower class is more in the dark.[22]

The last two factors canvassed, partisan identification and race, bore no relation to knowledge of court decisions. Missouri Republicans in 1968 are not significantly better informed than Democrats, differing in this respect from Dolbeare's Wisconsin Republicans in 1966, and Missouri blacks are not significantly less aware than whites, differing again from blacks in Murphy

TABLE 4: CORRELATES OF KNOWLEDGE OF THE SUPREME COURT'S DECISIONS

(Low score=low knowledge, high score=high knowledge)

Variable	Kendall's Tau
Politicization (high score=high politicization)[a]	+.328
Education (high score=high education)[b]	+.248
Subjective Social Class (low score=middle class)[c]	−.190
Newspaper readership (high score=reader of a daily; low score=non-reader)[d]	+.171
Gender (low score=male)	−.149
Location (high score=metropolitan dweller)[e]	+.109
Generation (low score=youth)[f]	−.092
Ideology (high score=liberal, low score= conservative)[g]	−.062
Partisan Identification (low score=Democrats, high=GOP)[h]	+.053
Race	Not significant

a. Politicization is a four-point scale; see Appendix A for details on its derivation.

b. Educational attainment is trichotomized into: those with a grade school diploma or less, those with some high school experience or high school completion, and those with some college experience or beyond.

c. Subjective social class is a dichotomous variable: those who classify themselves as middle or upper class, and those who describe themselves as lower or working class.

d. Newspaper readership is a four-fold category: those who do not read a newspaper regularly, those who read only a weekly regularly, those who read an outstate daily regularly, and those who read a metropolitan daily or a prominent out-of-state daily regularly.

e. Location of residence is trichotomized into: St. Louis and Kansas City metropolitan area dwellers (suburban and city); outstate medium-sized city inhabitants and small town dwellers; and farm dwellers.

f. Generation is a five-fold category: those above 75 (in 1968), and those in the age ranges 60-74, 45-59, 30-44, and 18-29.

g. Ideology is a four-point scale of liberalism-conservatism; see Appendix B for its derivation.

h. Partisan identification is a trichotomous variable: Democrats, Independents, and Republicans. Independents include "leaners": independents who feel slightly closer to the Democratic or Republican party.

and Tanenhaus' national samples. Since metropolitan dwellers were more aware and blacks more likely to live in the metropolitan centers, suspicions arose that blacks might be as aware as whites because of their location. Contrasting urban whites with urban blacks canceled out the effects of location, yet brought out no racial differences, from which it can be concluded that none existed in Missouri in 1968, even though racial differences had appeared nationally in 1966.[23]

The factors which enhanced the visibility of Supreme Court decisions were themselves inter-correlated, inviting further investigation with control variables. Most combinations of predispositional factors were cumulative, *i.e.*, two factors together would heighten or depress visibility more than one factor working alone. This aided in specifying the most attentive sectors of the population. Males who are highly politicized, well-educated, who think of themselves as middle-class, and who read daily newspapers are most likely to be well-informed on the Court's decisions. By contrast, apolitical, poorly-educated females who

consider themselves working class and who read no daily newspapers are most likely to be oblivious to decisions. The sexual differences did not disappear with other correlates held constant: in most categories of politicization, education, subjective social class and even generation, women remained less aware than men.

This exploration largely corroborates the relationships reported in the literature, with the exceptions of Dolbeare's finding that party identification made a difference (not in these data) and Murphy and Tanenhaus' conclusion that the Court was less visible to blacks. In these data it is equally visible to both races. Other than these discrepant findings, the most notable result turned up in this section is that the social strata most likely to mythify the Supreme Court are also the strata most likely to be familiar with its controversial decisions.

IV. DOES VISIBILITY DISPEL MYTH?

The many commentators who have recommended restraint to the Supreme Court have done so largely out of fears of the consequences of activism for the judicial mystique and ultimately for the legitimacy of judicial review. Are their fears grounded? Does familiarity with the controversial rulings which the Supreme Court has issued undermine its myth?

The process which would engender disbelief is cognitive dissonance or imbalance: one cognitive element, the positive association of the Supreme Court with miranda such as the Constitution, law, etc., would clash with the other, the negative association of the Court with substantial and painful demands for social and behavioral change in the here and now (Lane and Sears, 1964: 44-53; Festinger, 1957: 6, 19-20; Johnson, 1967: 3-10; Merelman, 1966: 548-61). Two means for people aware of this clash to reduce their dissonance would leave the myth intact: some might strengthen their association between the Court and cherished symbols, allow this association to dim their realization the Court has made controversial rulings, and eventually convert to a favorable opinion of the rulings; others might reconcile a controversial ruling with their symbol-laden vision of the Court by differentiating the ruling, viewing it as an exception. Another means of relieving the dissonance would not, however, leave the myth intact: here, people would form the opinion that the Court is meddling in politics and dissociate it from the valued symbols, dispelling the myth. This last pattern would produce part of the outcome that the commentators who recommend restraint have worried about.

Although their greatest concerns have been about judicial activism causing the mass public to reject the judicial myth, an important consideration about the nature of mass public opinion suggests that dissonance (and its feared result) might not even afflict the mass public. Philip Converse has shown that "constraint," or functional interdependence of cognitive elements, characterizes elite opinion much more than mass public opinion. The multitude of humans are quite capable of simultaneously holding two logically (or otherwise) contradictory beliefs without realizing or bringing to a head the conflict between them. Elites are by contrast much likelier to realize the conflict and to agonize over it in the course of trying to reduce their dissonance, while the masses may never even reach a state of dissonance (1964: 207-14).[24] Thus, even if the general public does not dissociate the Supreme Court from its credenda and miranda upon discovering that it makes controversial decisions, elites may do so, which would justify the worries that have been expressed.

Many reasons then come forward to justify expectations that Supreme Court visibility will cause the myth to ebb, at least, or particularly, at elite levels. On the other hand, there is also cause to formulate the alternative hypothesis that familiarity with the Court's controversial decisions could co-exist comfortably with acceptance of the judicial myth. First, the social strata most likely to mythify the Court are also those most informed of its rulings. While this observation cannot justify inferring that the myth-holders are the most aware, there are added grounds for such suspicions in Murphy and Tanenhaus' report that awareness of its rulings and recognition of the Court's "constitutional" role are positively related (1968b: 365), and in the realization that the two factors are components of the same underlying construct (Supreme Court salience).

Awareness of Court activism is operationally defined as recall knowledge of its rulings and is measured by the same Guttman scale used in Part III to measure the visibility of controversial court decisions. Myth holding is defined as associating the Court with its miranda and credenda. The data in Table 5, showing the relation between visibility and myth for the entire sample, provide more support for the alternative than for the original hypothesis. The respondents most knowledgeable about judicial decisions are most rather than least likely to mythify the Court; and as knowledgeablility declines, mythifying declines instead of rising. Obliviousness to the Court rises

TABLE 5: SUPREME COURT VISIBILITY AND MYTH-HOLDING

Level of Supreme Court Visibility to Respondent	Respondent's Orientation to the Judicial Myth: Mythic Only	Mixed: Mythic and Non-Mythic	Non-Mythic Only	Oblivious	Total
Unaware (score "0")	22.7% (35)	6.5% (10)	11.7% (18)	59.1% (91)	100% (154)
Low (score "1")	39.5% (115)	10.7% (31)	18.2% (53)	31.6% (92)	100% (291)
Medium (score "2")	65.1% (237)	11.3% (41)	13.5% (49)	10.2% (37)	100% (364)
High (score "3")	84.2% (48)	5.3% (3)	7.0% (4)	3.5% (2)	100% (57)
	Cramer's V=.267				N=866

as knowledgeability falls. (This bears out Murphy and Tanenhaus' finding that awareness of the Court's work coincides with appreciation of its myth.) Since respondents less aware of its decisions are less likely to mythify, clarity in perceiving what the Court is doing cannot be said in and of itself to undermine a mythic view of the Court.

Are elites bothered by this conflict? Defining elites as the most politicized respondents, visibility's effect on myth-holding was examined for two subsets: (1) the more politicized 39.6% (N=343) of respondents, a category made up of those who scored either "2" or "3" on the politicization scale; and (2) the most politicized 11.3% (N=98), including only those scoring "3" on politicization. For neither subset was the relationship between visibility and myth materially altered. Even elite respondents very aware of the Court's politically controversial decisions mythify the Court, and with declining awareness, elite respondents mythify less and become more oblivious. In sum, neither the mass public nor elites seem disturbed by the purported conflict between judicial activism and retention of the myth.

The myth emerges from this analysis far sturdier than expected. It stands somewhat more independently of non-judicial miranda and credenda (such as the Constitution) than Lerner, Johnson, and Petrick had believed. It does not appear to have greatly weakened, contrary to Shapiro's and Mason's understandings. It dominates influential social sectors' beliefs about the Court more than Lerner had supposed. Most significantly, it is much less vulnerable to court entanglement in controversial matters than Dahl, Lerner, Hand, Frankfurter, Johnson, Ladinsky and Silver, Petrick, and Mishkin have con-

tended. Furthermore, the strength of the myth's hold makes the suggestions by Douglas, Mason, Miller, Schefflin, and Levine and Becker that the Supreme Court jettison its myth and function instead on the merits of its rulings alone appear risky and overly presumptive of the mass public's need and capacity for consistency.

Whence this extraordinary strength, so unforeseen in light of Murray Edelman's proposition (1967: 5-9) that familiarity breaks the spell cast by symbols and myth? In his more recent work, Edelman puts more stress on the invulnerability of myth, when it is socially and governmentally cued, to empirical disproof (1971: 1-10, 46-48, 50-52, 174-180). Berger and Luckmann also see social inertia as endowing myth and symbols, once they are established, with a self-sustaining and self-legitimating quality (1966: 105-7). The judicial myth appears to partake of these qualities. It is both socially and governmentally cued: acquisition of the myth, as has been seen, is more a product of social environment than of education, and the Supreme Court is itself part of governmental authority. Moreover, elite acceptance of the myth makes the judicial miranda and credenda the basis for public discourse about the Court, providing further reinforcement throughout concerned and attentive sectors of society.

Loosening the people's inertial acceptance of the myth would, following Edelman's and Berger and Luckmann's views, become possible if governmental leadership were to present an alternative set of symbols — but in recent times the people have seldom been given this opportunity. Proposals to curb the Court have tended away from bills broadly aimed at diminishing its powers toward measures which would bound it only incrementally. Each successive Court-curbing era has seen more mellowed proposals, as though the past failures of broader bills have cooled the political branches' zeal to tame the Court (Nagel, 1965: 941-43). Unsuccessful attempts at Court-curbing may actually strengthen the myth as their protagonists withdraw from the field of battle, leaving the Court's dominion unharmed and its authority undiminished.

In one instance when governmental leadership made so bold as to introduce a plan to adjust the High Court's status, it enlisted fairly widespread (though by no means consensual) public support. President Franklin Roosevelt is the only popular leader in recent times even to approach offering an alternative, though his Court-packing plan stopped far short of

shearing the Court's authority away. Acceptance of the myth may have been waning at this time, as Lerner feared and as the Fortune poll discovered when it asked twice in 1936-37: "Do you think the Supreme Court has recently stood in the way of the people's will or do you think it has protected the people against rash legislation?" An average of 41.2% believed the Court had protected the people, an average of 22.4% thought it had gotten in the people's way (Cantril, 1951: 148-51) — indicating not inconsiderable disillusionment with the myth. From this beginning, and using different tactics with Congress, Roosevelt might have been able to provide enough anti-Court cues to shape an anti-Court movement which could have dethroned the existing myth by forcing it to compete with a new system of beliefs and symbols about the Court. But he drew back, leaving the Court's authority basically unchallenged (possibly thus cuing greater respect for it). Government cues in 1937 started reinforcing the Court's aura once again and the myth, though probably ruffled, emerged safely.

Barring collapse of the attitudes and structures in society and government which emit cues favorable to it, the judicial myth has good prospects. The mosaic of specific popular beliefs which elevate the Court may change (a current Court's policy specialization, such as the Warren Court on civil rights, is likely to work its way into the myth) or even wither somewhat (the current crisis in legal machinery might imperil the sanctity of some of the associated symbols), but does not appear likely to suffer from the Court's future meanders in political thickets. This is apparently another case in which scholars, jurists, and other elite commentators have searched for justifications and validations for authority in symbols (hence the scholarly output on the particular symbolic configurations which edify the Court) and in strict role definitions (hence the controversy on neutral principles) while the general and even the politicized public accept authority and its legitimating myth as givens.

NOTES

[1] Members of society who do not share in mythic perspectives on an institution would by definition be less likely to defer to that institution's policy directives affecting them. This dichotomy between mythic and non-mythic perspectives on an institution is paralleled by a typology of institutional significations set forth by Peter L. Berger and Thomas Luckmann. In these authors' view, institutions can be objectivated, reified, and/or legitimated, depending on how they are understood by the public. Objectivated institutions are those which the public appreciates as "objective reality, as undeniable fact" (1966: 60). Reified institutions are those which the public has objectivated to the extreme of no longer seeing them as a human product. They become fixated, take on "an ontological status independent of human activity" and are assimilated to necessity and fate (1966: 89-91). Legitimated

institutions are those whose objectivated and reified meanings are explained by and integrated with the meanings attached to other institutions and processes. Legitimation can occur at various levels—the incipient level of simple affirmation that "this is how things are done," the rudimentary level of proverbs and maxims, and the more developed level of explicit theory (1966: 92-5). The degree of deference paid to an institution would depend on how it is seen by the public: reified institutions would command more respect than those merely objectivated, and the more legitimated institutions would have a similar advantage over less legitimated ones. Berger and Luckmann's distinction between legitimated institutions which are reified and those which are merely objectivated is somewhat analogous to the distinction made here between institutions associated with miranda and credenda and those which are not. Of course, analysis of such distinctions must be applied not only to the whole public, but to its various sectors.

[2] Missouri has areas of Southern, Midwestern and even Northern political culture, many different ethnic groups, and its two metropolitan centers form a distinct cultural contrast with its outstate areas as well as with each other (Dohm, 1971: *passim;* Elazar, 1966: 13-22, 79-111).

[3] When involved in scandal an associate Justice appears able to call public attention to himself (former Justice Fortas' forced resignation is a case in point) but otherwise the associate Justices are grey eminences, eclipsed in the popular mind by the Chief Justice. Murphy and Tanenhaus found in 1966 that Chief Justice Warren was the best known figure on the Court; whereas 40% of their sample could name at least one Justice, 43% could name Warren (Murphy and Tanenhaus, 1969: 549).

[4] Murphy and Tanenhaus point to the reception which the legal community accorded Alpheus T. Mason's biography of Chief Justice Stone as an example of how powerfully jurists believe that invisibility is the best way for the Supreme Court. The book was quite current when it was published (five of Stone's brethren still sat on the Bench) and rather revealing. Considerable criticism thus arose in legal circles, much of it based on the preference for keeping the reading public outside the inner sanctum (1972: 85). Ulmer has also given examples of this preference for secrecy (1973: 289-92).

The impulse for secrecy may be part of a larger syndrome affecting lawyers and judges. Jerome Frank has argued that the legal community unconsciously perpetuates the myth of judicial impartiality and non-intervention in policy formulation to keep from facing the tension-provoking fact that law is mutable (1930: 32-37). Watson and Downing, working with lawyers' attitudes towards the Missouri plan, were able to substantiate Frank's proposition partially. Their study found that lawyers were prone to perceive appellate courts as purely legal and non-political, but perceived trial courts as subject to political pressures (1969: 254-57). In another study, Giles looked at how lawyers, law students, and the mass public rated the Supreme Court's job performance. He found that the law students and young lawyers rated the Court highly but that veteran lawyers (those admitted to the bar before 1965) were not significantly different from the mass public. Giles' finding is however based on a low return rate (1973: 482-86) and in any event does not speak to the point of how lawyers perceive the Supreme Court (or appellate courts) so it may not conflict with Frank's observation as partially borne out in Watson and Downing's data.

[5] In Berger and Luckmann's framework, the difference between what the public actually thinks of the Supreme Court and scholars' interpretations of the public's thought patterns would be one of level of legitimation *(see* note 1). The public would partake of rudimentary legitimation, having at its command slogans and facile explanations of the Court, while scholars would legitimate it theoretically. In reconstructing the public's appreciation of the Court, scholars have to fill in gaps, making explicit what is inchoate and unspoken, whereupon arises the possibility of distorting the public's view in the directon of scholarly theories.

[6] The subjects' admiration for the Court might have overflowed, causing them to impute to it other qualities viewed as prestigious (power and activity), or perhaps causing response set in answering the ratings questicns. The item requiring respondents to differentiate political institutions' relative power and impact on the nation is probably a better measure of how political they think the Court is.

[7] The code categories and subcategories were established in the interests of preserving as fully as possible the subtleties in the remarks. For instance, some respondents used the term "Constitution" while others referred to this concept indirectly by using the adjectival form "constitutional." Since the Constitution has been regarded as so potent a symbol in American political culture (Devine, 1972: 115-19), responses using the noun form were kept in a subcategory distinct from those using the adjectival form, on the hypothesis that reference to the document itself would associate the Court with a more powerful mirandum than references to the quality of constitutionality.

[8] Several other remarks which mentioned the Constitution by name were nevertheless coded into other categories if the Constitution seemed incidental to the thrust of the comment's meaning. Example D1 given in Table 1 is illustrative.

[9] Frank has suggested that legal certainty is a valued symbol for legal and judicial elites but not necessarily for ordinary citizens (1930: 46). Yet none of the three judges or lawyers who turned up as respondents in this sample voiced this notion of the Court's role, either.

[10] In Berger and Luckmann's terms, these responses would represent objectivated appreciations at an incipient level of legitimation. In contrast to the many comments in categories A-E which seem to assign the Court ontological status as guardian of Constitution, laws, cherished rights, etc., many of these remarks appear to view the Court as an institution not beyond human control in that it does things that other institutions and everyday people do.

[11] An alternative explanation would be that these respondents did entertain a non-mythic notion of the Court but chose not to divulge their knowledge. Two reasons support the explanation given in the text over this alternative: (1) some interviewers reported encountering many respondents who expressed themselves on the Court with great difficulty and who were unable to answer questions on it out of obvious ignorance, and (2) in anticipation of findings discussed in Part II, those who gave no answer to the query on the Court's job were among the least educated and least politically interested.

[12] The percentages quoted here are based on the first comments of all respondents for the sake of comparability with Kessel's and Murphy and Tanenhaus' figures.

[13] Besides social class, education, and politicization, whose hypothesized ties to myth-holding have already been mentioned, several other variables were included in the exploration either because they had been brought up in the literature or because it was anticipated that they might relate in some way to myth-holding. Race was included because of conflicting findings in the literature. Working with the same data set, Murphy and Tanenhaus reported that Negroes were particularly oblivious to the Supreme Court (1968b: 368), while Hirsch and Donohew found Negroes much more favorable to the Court even when holding constant for several control variables (1968: 559-62). Ideology was included because Murphy and Tanenhaus found it was related to perceptions of and feelings toward the Court (1968b: 367; 1968a: 41-42), even though Dolbeare and Hammond suggested that ideology had no or little relation to approval of the Court's performance (1968: 26). Age/generation was included because of conflicting results on its bearing on attitudes toward the Court; although Dolbeare and Hammond found no relation (1968: 26), Kessel found generational differences in perceptions and evaluations of the Court 1966: 186) and nationwide Gallup polls taken in 1967 and 1968 brought out generational differences in rating the Court's job performance and in feelings that it was impartial as opposed to favoring one group more than another. Younger people evaluated the Court more highly and perceived it as more impartial and were also likelier to express opinions. [The 1967 survey is reported in *Polls* 3 (#3, 1968), p. 79, and the 1968 results are found in the *New York Times*, July 10, 1968.] Partisan identification has also been cited as a correlate (Cantril, 1951: 148-51; Dolbeare, 1967: 201, 205; Dolbeare and Hammond, 1968: 21-3; Murphy and Tanenhaus, 1968b: 371). Finally, gender and residential location were also considered, with the expectation that women and outstaters would be either more oblivious or more prone to mythify while men and city dwellers would be more inclined to non-mythic perceptions, even though Dolbeare and Hammond reported no relation between gender and approval of the Court (1968: 26).

[14] Politicization and newspaper readership also enhance mythification. The most politicized (scale score "3") are overwhelmingly myth-holders (79%) and the least politicized (scale score "0") are overwhelmingly oblivious (55%), while respondents in the two middle categories are slightly likelier to have only non-mythic perceptions. Respondents reading no paper or only a weekly are quite similar in being largely oblivious, while readers of daily newspapers are largely myth-holders. Readers of outstate dailies are somewhat more oblivious than readers of metropolitan or prominent out-of-state dailies. Coinciding closely with newspaper readership is location: metropolitan dwellers mythify more, outstate townfolk and farm dwellers mythify less and are more oblivious. Men mythify slightly more than women, and women are somewhat more oblivious to the Court. These latter two findings countered expectations that women and outstaters would mythify more: men and city dwellers, though perhaps more sophisticated on other matters, are not more inclined to a factual, non-mythic perspective on the Supreme Court. Mild generational differences also emerged: respondents between 60 and 74 mythify less and are more oblivious than younger age cohorts and those 75 and over are appreciably more oblivious even than those between 60 and 74.

The remaining factors had little bearing on myth-holding. In the case of race, which was virtually irrelevant, these results paralleled those of Hirsch and Donohew but diverged markedly from those presented by Murphy and Tanenhaus. Contrary to Murphy and Tanenhaus' conclusion that Negroes were particularly unaware of the Court in 1966, these 1968 data indicated that whites were more oblivious (though not significantly more) than blacks! Outstate residents were more oblivious but Negroes were much likelier to live in the metropolitan areas; did Negroes' predominantly urban location then account for their being as apt to symbolize the Court as whites? If so, urban blacks should have been less attuned to the Supreme Court than urban whites—but no racial differences occured in the metropolitan setting either. The discrepancy between these results and Murphy and Tanenhaus' findings might be explained in one or both of two ways: first, their national sample may have included a higher proportion of rural blacks who may have been less aware (and whose presence in the black subgroup could have lowered its overall awareness), and secondly, the growing black political consciousness in the years 1966-68 may have heightened this group's awareness of the Supreme Court as well.

[15] Further exploration with control variables revealed that most combinations of predispositional factors were cumulative—*i.e.*, two factors together heightened myth-holding more than either factor standing by itself. This is best seen in the way in which education and politicization jointly influence mythification. While 87.5% of the highly politicized respondents with some college experience mythify the Court, only 17.5% of the apolitical respondents without high school experience do so. However, high politicization compensates for lack of education, and vice versa; the highly politicized (scale score "3") but less educated respondents are equally as likely to voice a mythified notion as the better educated but less politicized (some college, but scores "1" and "2"). In much the same way, the following combinations of variables had cumulative impact: education and subjective social class, education and newspaper readership, subjective social class and politicization, subjective social class and newspaper readership, and politicization and newspaper readership.

[16] The sexual differences did not hold up with other variables held constant. Women under 45 are on a par with men in mythifying the Supreme Court and although women over 45 are less likely to mythify than men over 45, this difference is statistically significant ($p<.05$) only in the age bracket 60-74. Adding education as a control variable further reduced the difference: only women aged from 60 to 70 with some college experience are significantly ($p<.05$) less prone to mythify than their male counterparts. It would be interesting to speculate that some event in the experience of this generation of well-educated women, who came of age as the suffragette movement mobilized and worked towards passage of the 19th Amendment, may have provoked its lessened idealism of the Supreme Court.

[17] While Murphy and Tanenhaus reported that redistricting and criminal defendant rights were almost equally visible in 1964, their 1966 data made clear reapportionment's fadeout and the rise of defendant's rights (1968b: 362). Technical problems in measuring visibility should be

noted at this point. Kessel and Murphy-Tanenhaus used an open-ended question to measure the visibility of judicial decisions, while Dolbeare's Wisconsin survey posed a series of structured items which served as the model for those used in this survey. Respondents were queried: "Do you happen to recall whether the Supreme Court made a decision in recent years on . . .?" The consistency of response patterns indicated that while open-ended questions give a more conservative estimate of the visibility and salience of Court decisions, they also bear the important disadvantage of classing more respondents as ignorant on the issues (Murphy and Tanenhaus' response rate on open-ended questions did not exceed 47%). In contrast, closed-ended questions calibrate awareness levels of a considerably higher proportion of the sample (thus enabling scale construction to differentiate levels of visibility more finely) at the same time that they do not appear to overestimate visibility. Although it might be feared that the subjects would guess rather than betray ignorance when faced with such questions, causing exaggeration of visibility, the percentage of respondents choosing the "don't know" alternative was surprisingly high, varying from 21% to 66% in the 1966 Wisconsin sample and from 19% to 65% in the 1968 Missouri sample (Murphy and Tanenhaus, 1968b: 362; Dolbeare, 1967: 199-200; Kessel, 1966: 175).

[18] Although the Court seems to have gained greatest attention for its rulings on status issues in this recent era (the last years of the Warren Court), such issues are not its only heralds. In other eras it has dealt primarily with class or economic issues, and its decisions on these matters appear also to have propelled it to the forefront of the public mind (as in the period 1935-37). Accordingly, the new Court might change focus and shy away from troublesome status issues, whereupon class issues could fill the void: environmentalism has some "class" traits and consumerism and the energy crisis are almost archetypical "class" issues. Such a shift might be due partially to intention of the Justices and partially to an observed tendency for class issues to eclipse status concerns in periods of economic recession (Gusfield, 1963: 16-18; Berelson, 1954: 184-5; Hofstadter, 1963: 83-6). Structured questions designed to measure awareness of judicial decisions could fail to detect a shift in popular concern from "status" to "class" rulings if the investigator deemed class issues innocuous and omitted items tapping recall of them. Open-ended items such as Murphy and Tanenhaus employed would be more appropriate means of looking for such a changeover.

[19] Murphy and Tanenhaus have also noted the general non-salience of the reapportionment decisions (1968a: 36). Chester Newland (1964: 27-28), suggests that this is at least partially attributable to advance press coverage of Baker v. Carr, 369 U.S. 186 (1962).

[20] Responses were recoded as correct (if respondent recalled correctly that the Court had or had not rendered a decision) or as incorrect (if respondent recalled incorrectly, did not recall, or declined to answer). Respondents with one inconsistent response were assigned the perfect scale score which altering their inconsistency would have yielded; in the case of the response pattern (—+—), a score of "2" was assigned. Frequencies for each score were: "0"—154 (17.8%); "1"—291 (33.6%); "2"—364 (42.0%); "3"—57 (6.6%).

[21] Further factors taken into account were gender, generation, location of residence, and ideology, with the following guiding expectations:

Men's awareness would exceed women's;

younger persons' knowledge would be greater than that of the elderly (the surveys cited in note 13 noted that the elderly were more likely not to know or not to answer questions about the Court, from which it could be inferred that aging coincides with attenuated attention to the judiciary);

urban dwellers would be more aware than country and small town folk (in that urban dwellers are enmeshed in a network of communications both formal and informal which might provide them more messages, they might be expected to be more aware of judicial events);

and conservatives would be more informed than moderates or liberals (since the Warren Court decisions chafe against conservatives' sensibilities more than against liberals, it might be anticipated that conservatives would be likelier to know).

[22] Men are more knowledgeable than women, metropolitan dwellers more so than outstaters, and the elderly, especially those over 75, are less

aware than younger age cohorts (the principal difference is that those over 60 are likelier to score "0" and less likely to score "1" and "2" than younger respondents). Ideology also had the anticipated relationship with awareness of judicial activities: conservatives and moderate conservatives are very well-informed on court rulings regardless of their level of politicization, but moderate liberals and liberals are much less attentive. Conservatives may have been suspicious enough of the Warren Court to monitor it closely, while liberals may have been vaguely aware that it had not crossed them and thus may have felt less need to pay it close heed.

[23] Again, this could be due either to differences in the samples or to the spurt in black political consciousness in the period 1966-68, or to both. *See* discussion in note 14.

[24] Norman R. Luttbeg has demonstrated however that the mass public is equally as constrained as elites on local issues; he suggests that this finding does not necessarily disconfirm Converse's thesis, for the mass public may be better able to maintain consistency on local belief systems out of greater experience with local questions (Luttbeg, 1968: 398-409). The public's inexperience with the Supreme Court suggests then that it would display minimal constraint among cognitive elements on the Court.

CASES

Baker v. Carr, 369 U.S. 186 (1962).

APPENDICES

A. Politicization Scale

A Guttman scale of politicization was developed from responses to three questions on political interest and activities. The least difficult item was passed if respondent had entered into a discussion of the war in Viet-Nam with anyone; the middle item was the extent of respondent's interest in the presidential campaigns (those very much interested passed, those only somewhat or not much interested failed); the most difficult item was passed if respondent had tried to convince someone to change his position on Viet-Nam. The CR and CS were acceptable (CR=.923, CS=.697). Respondents were assigned scale scores ranging from "0" for lowest politicization through "3". Respondents with one inconsistent or missing response were given the perfect scale score which altering their inconsistent or missing response would have yielded, except in the case of the response patterns (—+—) and (—+0), where a score of "2" was assigned. Frequencies for each score were: "0"—113 (13.0%); "1"—405 (46.8%); "2"—245 (28.3%) and "3"—98 (11.3%). Five respondents could not be assigned scale scores because they had more than one missing response.

B. Ideology Scale

A Guttman scale of ideology (liberalism-conservatism) was constructed from responses to items tapping preferences for increased, unchanging, or decreased federal involvement in three areas. Respondents passed the least difficult item if they thought federal aid to education should be increased or con-

tinued as is, but failed if they wanted it decreased. The middle item was passed if respondents wanted federal job training for the unemployed increased or continued, failed if they wanted it decreased; the most difficult item was passed if respondents wanted federal expenditures for slum clearance and housing increased, failed if they wanted it continued unchanging or decreased.

The CR and CS were acceptable (CR=.961, CS=.817). Respondents were assigned scale scores ranging from "0" (for most conservative) through "3" (for most liberal). Those with one inconsistent or missing response were given the perfect scale score which altering their inconsistent or missing response would have yielded except in the case of the response patterns (—+—) and (—+0) where a score of "2" was assigned. Frequencies for each score were: "0" (most conservative)—26 (3.0%); "1"—72 (8.3%); "2"—277 (32.0%); "3"—(most liberal) 408 (47.1%). Eighty-three respondents could not be assigned scale scores because they had more than one missing response. This scale was used despite its obvious tilt toward liberalism because the subset of items used to construct it had both the highest CR and CS and the lowest number of respondents to whom scores could not be assigned.

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