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# The Legal Double Standard: Gender, Personality Information, and the Evaluation of Supreme Court Nominees

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## ABSTRACT

In the last several decades a wide literature has developed around gendered perceptions of political leaders. However, to date, the lion's share of this literature has examined elected officials. Here we argue that a similar effect can be found in perceptions of judges and judging. Using two survey experiments, we argue that the core quality by which judges are evaluated, “judiciousness,” is gendered masculine. In essence, when individuals are asked to evaluate nominees, personality and character information is used differently depending on the gender of the nominee. In particular, female nominees face a double standard, failing to benefit equally from positive personality information while male nominees enjoy greater support. Thus, even if female nominees are successful in obtaining Senate confirmation, they face a steeper hill to climb with how people perceive their judiciousness than a similarly qualified male nominee would.

## KEY WORDS

Gender; supreme court nominees; evaluations; personality; judiciousness

## Introduction

After President Obama nominated Sonia Sotomayor to the US Supreme Court, the nomination was immediately praised as “bold” and Sotomayor was cast as “empathetic” and “brilliant.” But within days, stories had come to light in the media that Sotomayor's style during oral arguments was combative and more than one lawyer who had appeared before her on the Second Circuit Court of Appeals referred to her as “mean.” By contrast, President Reagan's nominee of Antonin Scalia enjoyed praise throughout the confirmation process of his “congeniality” and “good sense of humor” despite similar reports of a combative questioning style during oral arguments. One lawyer reported arguments in front of Scalia as being an “exhilarating experience” (ABA Report 1987, 115).

This comparison is instructive. While much of the elite and media discourse surrounding the nomination of Supreme Court justices focuses on their qualifications and ideologies, the comments on Sotomayor and Scalia make clear a third factor is also relevant: a nominee's personality, or judicial temperament. This assessment of how fit a nominee's personality is for the process of judging, also known as “judiciousness,” is often a key component of how nominees are framed and evaluated and is even an explicit consideration in the ABA's rating of judicial nominees. It is also one of the only parts of the process that is malleable. Unlike conventional factors such as prior experience and education, which are fact-based and tangible, judicial temperament is something that can be framed. Someone who is talkative is either “verbose” or “gregarious.” Someone who is empathetic is either “compassionate” or “soft.” Thus, how we evaluate a person's traits is

a function of our preexisting beliefs and stereotypes about a person and the information we use to construct this view.

The comparison between Sotomayor and Scalia is then instructive for another reason: the gender differences apparent in what was said about each nominee. We argue that how judicial nominees are evaluated on subjective and perceived qualifications such as judiciousness, temperament, and personality should be a function of everyday gender stereotypes and the information a person receives about a nominee. In other words, the same information about the traits of male and female nominees should function differently depending on the nominee's gender.

In short, we argue and find that because American's conception of "judiciousness," and by extension their perception of the judicial system in general, is gendered. Specifically, the subjective personality qualities that make a nominee more or less "fit" to serve as a Supreme Court justice are gendered masculine. Because of this, male nominees who display those traits reinforce existing stereotypes and are thus rewarded with higher evaluations of their qualifications and competence. By contrast, women who display the masculine traits of judiciousness are stereotype-disconfirming and thus do not benefit when people learn about their temperament.

Beyond what it can tell us about how the public views the leaders of our court system, our results are instructive for another reasons. While citizens are not directly responsible for the success or failure of a judicial nominee, there is some evidence that Senators are responsive to state-level opinion about nominees (Kastellec, Lax, and Phillips 2010). Although we see this as important, we believe the problems of a gendered conception of judiciousness run deeper than the confirmation process. In particular, we believe that a gendered judiciary limits the entrance and advancement of women within the institution directly through assessments of their qualifications and competence, as we show here. In essence, public opinion of women nominees is one of many symptoms of a structural issue that disadvantages women within the judiciary.

We begin with a discussion of the literature on gender, political evaluations, and political institutions, drawing parallels and contrasts between work on elected officials and appointed positions. We then turn to explaining the two survey experiments we conducted to test our theory. The next section discusses the results of these experiments. Finally, we conclude with a broader discussion of the implications of our results and outline where scholars might go next in exploring their implications.

## Gender and public evaluations

While little scholarship examines the influence of gender on public opinion about Supreme Court nominees, we believe that the extensive work on gender and politics is instructive in many ways for our expectations. Although the era of widespread, explicit, hostile sexism in politics is likely over (although see Burden, Ono, and Yamada [2017] or Streb et al. [2008] for contrasting evidence), women still face an uphill struggle against masculine gendered institutions.

While there is some research to suggest that shared descriptive qualities can lead to greater support for nominees (Badas and Stauffer 2018), the preponderance of evidence suggests that women, as candidates and as jurists, face a number of barriers, both institutional and psychological, that restrict efforts at equal representation (Burrell 2014; J. Dolan, Deckman, and Swers 2016). Without discounting the importance of institutional factors such as the incumbency advantage (Jacobson 1983) or gendered candidate recruitment (Lawless and Fox 2010), we note here the disadvantages faced by women in the court of public opinion, as the focus of our study is on gendered differences in evaluations of nominees. In particular, women candidates face a double standard or "double bind" (Jamieson 1995), whereby women who attempt to gain power are

viewed as unfeminine, coupled with the belief that feminine traits are less than desirable for those with power.

This double standard extends to portrayals and perceptions of women in politics. Carlin and Winfrey (2009) demonstrate that both Hillary Clinton and Sarah Palin were stereotyped by the media according to Kanter's Kanter (1977) four sex roles. In addition to gendered media coverage of candidates, the way the public views candidate traits is heavily gendered as well. Extensive research demonstrates that certain political and leadership traits are more commonly associated with male or female candidates (Alexander and Andersen 1993; K. Dolan 2010; Huddy and Terkildsen 1993; Kahn 1994; Lawless 2004; Sanbonmatsu 2002). More troubling, however, is recent research from Schneider and Bos (2014) showing that, in addition to gender differences in trait attribution, women candidates are subtyped from women, while male candidates are sub-grouped. In other words, male candidates are imbued with the positive stereotypes about male politicians, as well as traditionally positive stereotypes about men. Women candidates, on the other hand, enjoy the positive stereotypes about women candidates, but are viewed as distinct from the broader group of women.

These stereotypes about women politicians are pervasive, appearing early in children's socialization (Lay et al., 2019) and affecting perceptions of the "proper" role for women in politics (Eagly & Karau, 2002; Gervais & Hillard, 2011). We see similar stereotypes around women and leadership internalized early, with children showing gender bias in their drawings of business leaders (Miller et al., 2018).

This "double bind" extends beyond electoral politics. Nelson (2015) shows that, under certain circumstances, women judges are seen as less competent, but more empathetic, than male colleagues writing similar decisions. The implication of this work is that stereotypes, such as those identified by Huddy and Terkildsen (1993) and Schneider and Bos (2014), are extended to the judicial decision-making realm.

Nelson's Nelson (2015) work is particularly important for our research because it demonstrates the downstream consequences of a gendered conception of judiciousness. If, as we argue, the subjective evaluation of judicial nominees is gendered masculine, then the women who do manage to make it to the bench are likely to continue to face a judiciousness deficit. What this looks like in practice is exactly what Nelson finds: an ascription of empathy to women judges, but not necessarily knowledge or fair-mindedness, particularly when the decision is seen as advantaging women.

The preponderance of evidence suggests that the double standard for men and women in politics is real and enduring. While most people are not explicitly against women serving in public office, subtle cognitive biases, reinforced by media portrayals, produce a system that benefits men more than women. We argue that a similar double standard exists for women nominees to the federal bench, especially the U.S. Supreme Court. Although Supreme Court nominees are not directly comparable to candidates, we can use the framework of the double bind to understand the advantages faced by male nominees and the disadvantages encountered by female nominees.

We begin, however, by noting that the uniqueness of the Supreme Court makes much of the candidate literature inapplicable to our purpose. By nature of the high levels of legitimacy granted to the Supreme Court (Gibson 2007; Gibson, Caldeira, and Baird 1998), we believe that nominees are granted, by extension, a certain amount of leeway by the American public. Nominees are not immediately viewed with skepticism *over their objective qualifications* for the position. That is, barring information to the contrary, the public assumes that nominees meet the baseline educational, professional, and technical qualifications to be an effective jurist. Moreover, modern nominees tend to have the highest level of objective qualifications possible, including first-class educations, extensive legal training, and exemplary records of scholarship or opinion-writing. What is more, these objective traits are just that: objective. Their implications are not malleable

and it is harder to frame subjective meanings of things like Ivy League law degrees, prior federal judicial experience, or years of legal practice.<sup>1</sup>

Where the double standard enters into the equation is in the evaluation of subjective qualifications, especially as they relate to personality or judiciousness/judicial temperament. Judicial temperament is an important aspect of the evaluation of Supreme Court nominees, it is talked about by presidents when they discuss their potential judicial nominees, it is asked about during Senate confirmation hearings, and is even one of the major categories that all federal nominees are evaluated on by the American Bar Associations Standing Committee on the Federal Judiciary. In the candidate evaluation literature, “temperament” takes the form of a greater focus on personality and individual traits rather than policy differences, with masculine traits resulting in greater perceptions of competence than feminine traits (Funk 1999; Huddy and Terkildsen 1993).<sup>2</sup>

We draw a parallel between personality/traits and the idea of judiciousness for nominees. Judiciousness, or being perceived as having good judgment, is the central characteristic upon which judges’ personalities are evaluated. Unlike politicians, whose roles are varied and whose leadership, charisma, and strength may be perceived as key features of their job, judges exist to do just that: judge. As such, their personality traits – how compassionate they are, how extroverted or combative they might be, how collegial or agreeable they are – are all weighed against how those traits can affect their judgment or judiciousness. For instance, when the ABA evaluates a nominee they evaluate judicial temperament (personality), integrity, and professional competence. While the latter is an objective qualification related to a judge’s CV and professional accomplishments, both temperament and integrity are related to a judge’s perceived personality. And like personality traits, judiciousness is a “subjective” or “malleable” qualification. Whether agreeableness makes you more or less judicious is open to interpretation in a way that “whether you went to Harvard” is not.

We argue that the gender of a Supreme Court nominee alters perceptions of personality and temperament, allowing male nominees to be uniquely advantaged by this type of information. A large body of literature notes not only that women are underrepresented in the legal profession (French 1999), but that lingering stereotypes and tokenism may lead to their legitimacy in the profession being questioned (MacCorquodale and Jensen 1993; Wald 2010). Even the language of judicial decision making is distinctly masculine (Finley 1989). As Nelson (2015) shows, this bias toward masculinity leads to opinions written by women facing a different standard than those faced by male authors. Gill, Kagan, and Marouf (2019) adds that scholars’ focus on why women differ from the “norm of male (judicial) behavior” may have disguised a pattern of gendered bias in how both male and female judges handle immigration appeals. In essence, even scholars have conceptualized judging as male and, when faced with female judges, have studied how they are different from that norm. This, along with numerous other factors including an historical legacy of a predominantly male judiciary (Palmer 2001a, 2001b; Smith 2005), combine to gender the judicial system and the Supreme Court as masculine.<sup>3</sup>

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<sup>1</sup>Of course, the broader literature on candidate evaluations has suggested that women’s professional accomplishments are often dismissed or diminished because of their gender. We do not dispute this. However, the unique homogeneity of Supreme Court nominees gives us reason to suggest that professional and objective qualifications would be less gendered here. In other words, because nominees are almost always not only the top of their profession, but they all have loosely the same qualifications mean that these objective qualifications are less useful in distinguishing between nominees. For instance, of the last 13 nominees (back to 1990) only three did not graduate from an Ivy League law school – and Harriet Miers, the only nominee not to graduate from a top 10 law school, withdrew her nomination over concerns about her qualifications.

<sup>2</sup>We note this is not a uniquely American fact, as similar dynamics exist in the Canadian context as well (Gidengil & Everitt, 2000, 2003; Tolley 2015).

<sup>3</sup>A large body of literature, as well as conventional wisdom suggests that the most important feature people consider when evaluating a nominee is neither qualifications nor judiciousness but is instead ideology. We agree and so do our data; partisanship is key. However, we believe judiciousness matters at the margins, both as a way of “softening the blow” of a counter-partisan nominee or to give additional motivation to support a co-partisan. We also believe, as we describe below, that trait evaluations can affect perceptions of judicial legitimacy which, of course, can affect judicial efficacy and independence.

This does not, of course, imply that the *trait* of judiciousness is gendered, only that the temperament and personality that people believe make a “good” judge is gendered. If we examine the traits of judiciousness that the American Bar Association’s (ABA) Standing Committee on the Federal Judiciary considers in their evaluations of judicial nominees, we find that many of the traits listed by the ABA are coded masculine, while very few are traditionally viewed as feminine.<sup>4</sup> We do not suppose, however, that the public pays a great deal of attention to the individual rankings produced by the American Bar Association. What we do believe, however, is that the American public takes cues from elites about how to evaluate politics, including judicial nominees (Lenz 2012). Politicians and the media, by framing discussions of nominees in terms of the masculine-coded ideal of judiciousness, produces elite discourse that is reflected in the general public’s views of what it means to be a qualified judge. Taken as a whole, the subjective evaluation of a prospective judge or justice likely emphasizes more traits that are traditionally masculine than feminine traits.

While no work examines judiciousness as a gendered concept explicitly, research suggests that, if the traits associated with what it means to be a “good judge” are gendered masculine, this is likely to disadvantage female nominees. In the realm of parenting and work, scholars have found that individuals who deviate from traditional sex roles are viewed more negatively than those who conform to sex roles (Deaux and Lewis 1984; Etaugh and Folger 1998; Jackson and Cash 1985). As previously discussed, Nelson (2015) demonstrated ways that a gendered court influenced evaluations of decisions and dissents. Furthermore, Huddy and Terkildsen (1993) show that masculine traits increased ratings of a candidates competence to a greater degree than feminine traits. We posit that a similar mechanism is at work for Supreme Court nominees. Thus, we argue that male nominees who display the personality and temperament of a “good judge” (as defined by elite discourse around judiciousness) will enjoy advantages that women nominees do not enjoy.

Our first hypothesis concerns the influence of information about temperament and personality on nominee evaluations. We expect that, compared to female nominees, male nominees will benefit more as respondents read subjective, personality-based information about the nominees (H1). That is, as respondents learn more about a nominee’s temperament and personality, they will evaluate male nominees more positively than female nominees. Additionally, we believe the gendered nature of judiciousness should only extend to subjective information. Thus, we expect that objective information (such as educational history) will affect evaluations of male and female nominees similarly (H2).

## **Stereotype consistent and inconsistent information**

The question remains, however, as to why we believe temperament and personality information exerts a stronger effect on male nominees than female nominees. While we established that the traits of judiciousness are generally coded masculine, it is incumbent on us to also show that this produces asymmetrical effects on candidate evaluations.

For this, we turn to work from social psychology on the effects of stereotypic and counter-stereotypic information. The consensus from the literature is that stereotype consistent information (in our case, information about the judiciousness of male nominees) is more easily encoded into memory and, therefore, more likely to be recalled and used in evaluation (Bodenhausen 1990; Bodenhausen and Lichtenstein 1987; Bodenhausen and Wyer 1985; Fiske et al. 1987). In addition, this reliance strengthens under conditions of high cognitive load.

While we make no claims that our experimental protocol is particularly cognitively demanding, it does replicate decision-making in a high-information context and should induce greater

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<sup>4</sup>For information about the traits, see Appendix Table A1.

cognitive load than a simple experiment relying on vignettes of nominees. This increased cognitive load should produce greater reliance on stereotypic information for respondents. Bodenhausen and colleagues (1990; 1987; 1985) document two potential processes for this increased reliance: stereotype consistent information is easier to comprehend because it fits with existing cognitive expectations or people simply ignore stereotype inconsistent information because it challenges existing beliefs.

Fortunately for our study, the underlying mechanism behind reliance on stereotype consistent information is less important than the empirical evidence suggesting reliance on consistent information, especially under conditions of cognitive load. We are ambivalent, therefore, on the process of reliance and instead simply note that respondents who are asked to evaluate nominees are likely to rely more on stereotype consistent information than stereotype inconsistent information.

This leads to our expectations regarding reliance on judiciousness information. To the extent that judiciousness in personality and temperament is gendered masculine, information about a male nominee's judiciousness is stereotype consistent, while information about a female nominee's judiciousness is stereotype inconsistent. We expect, therefore, that judiciousness information should be accepted and incorporated into evaluations of male nominees, while this same information should be ignored or devalued for women nominees. In particular, as respondents learn about a nominee's personality and temperament, this should improve evaluations of male nominees. In contrast, women nominees should see less benefit from this same information. We test these expectations with two survey experiments described below.

## Methods

### *Experimental design*

We utilize a relatively simple experimental design to uncover the presence of a gender-based double standard in the evaluation of Supreme Court nominees. Using two separate survey experiments conducted on Amazon.com's Mechanical Turk, we vary the sex of a hypothetical Supreme Court nominee by changing the first name used in the experiment ("James Walker" vs. "Mary Walker").

In the first study, conducted from May 8 to May 11, 2014, we recruited 473 respondents, of which 327 successfully completed the required tasks.<sup>5</sup> In the second study, conducted between March 25 and March 30, 2015, we recruited 2,518 respondents, of which 1,823 completed all required tasks. The key manipulation in our results is the random assignment of respondents to read and answer questions about either our hypothetical male (James) or female (Mary) nominee. Randomization was done through the Qualtrics survey suite randomization feature. Respondents were assigned to either the male or female nominee condition and then entered into a hypothetical media environment, described in detail below.

In both studies, respondents completed a questionnaire about their political attitudes and were then told they were going to be asked questions about a hypothetical Supreme Court nominee after learning more about that person. To begin, respondents read a short 1-2 sentence biography of the nominee. They were then told they would be given five minutes to learn about the nominee. Respondents did this using the Dynamic Process Tracing Environment (DPTE) developed by Lau and Redlawsk (2006). The DPTE simulates a constantly changing media environment where respondents are forced to choose between different and competing sources and types of information. We utilize this information tracking to demonstrate the varied influence of information type depending on the gender of the nominee.

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<sup>5</sup>As part of this experiment, an additional 474 respondents were recruited for a control condition which excluded information about the nominee's personality/subjective qualifications. These respondents are not relevant to the current investigation and are excluded from the analysis.



Once respondents clicked a link to enter the DPTE, they were given a short time to practice with the program and then proceeded to learn about their assigned nominee. Each subject saw a scrolling list of headlines about the nominee and were given five minutes to click on and read any story that interested them. Every three seconds, a new piece of information appeared at the top of the screen and the oldest headline scrolled off the bottom. Respondents could click on any headline, which would open the information to the full screen. During this time, headlines continued to scroll in the background, forcing respondents to prioritize certain types of information. In essence, respondents choose to spend time on the information that is relevant to their evaluations or that interests them and those choices come at the cost of viewing other information. Thus, what information respondents read gives us a glimpse of their priorities.<sup>6</sup> As part of this program, all information search activities are tracked, such that researchers know the order that information is accessed, the amount of time a respondent spent reading a piece of information, how many pieces of information a respondent read, and how frequently a respondent opened each piece of information. As such the researcher can assess how exposure to different information affects evaluations. We argue that exposure to personality information will lead to more positive evaluations of male nominees but will not have the same effect in the female nominee condition.

Respondents saw a variety of information about the nominee and were able to decide what headlines to click on.<sup>7</sup> We categorized the available information into three areas. First was information that concerned the ideology of the nominee. This information was explicitly political and referenced issues that are likely to come before the court. For example, a respondent might see a headline which read either “James Walker’s stance on abortion issues” or “Mary Walker’s stance on abortion issues” depending on whether they had randomly been assigned the male or female nominee treatment. If a respondent clicked on that story, they would read:

[James/Mary] Walker has a long judicial record supporting pro-choice causes. [He/She] has written more than 15 opinions on the court of appeals endorsing the central holdings in *Roe vs. Wade* and was the author of an opinion striking down a parental notification requirement for minors seeking an abortion.

Second was objective qualifications information, which provided information about the nominee’s schooling, professional background, and endorsements from groups. For instance, a respondent might encounter the headline: “James/Mary Walker’s educational background.” If they clicked on it, they would read:

After graduating from a small Jesuit high school near St. Louis, [James/Mary] Walker attended Stanford University where [he/she] completed degrees *summa cum laude* in political science and economics. [He/She] went on to graduate at the top of [his/her] class from Yale Law School before beginning a prestigious clerkship on the Supreme Court.

Finally, and of key interest for us, was information about the subjective qualifications and personality of the nominee. This information was presented as testimonials and descriptions of the nominee’s behavior on the lower courts and discussed their actions in terms of personality traits as described by the Big Five personality battery (McCrae and Costa 2003). These descriptions of the nominee’s temperament and judiciousness are what we argue are gendered masculine and create the double standard in nominee evaluations. As an example, a respondent might encounter a headline “Colleagues say [James/Mary] Walker is conscientious. If they chose to click on this headline they would read:

<sup>6</sup>Although the amount of information that a respondent viewed cannot be controlled, there was no statistically significant difference between the type of information a respondent chose to view when faced with a male vs. female nominee. Thus, it is not simply that respondents are more interested in certain types of information because of the gender of the nominee. Rather, they simply use available information differently.

<sup>7</sup>All information from the DPTE is available in the appendix.



[James/Mary] Walker has frequently been praised for [his/her] high conscientiousness and attention to detail. Coworkers say [he/she] is always prepared, exacting in [his/her] work quality, never shirks [his/her] responsibilities onto [his/her] colleagues. [James/Mary] Walker has also been known to stick to a strict schedule and have a strong preference for order and organization.

Respondents saw every headline at least twice over the course of their evaluation, although the order with which the headlines appeared is randomized. Thus, while information that appears early or late in the evaluation process may be cognitively prioritized, the randomized nature of the process ensures treatment group comparisons are unbiased.

Our independent variables consist of a count of the stories accessed by respondents, broken down by these three categories. Using this count, we can assess whether viewing more information about a nominee's subjective qualifications (for example) increases evaluations of the nominee's competence, *ceteris paribus*.

After completing the five minutes of learning in the DPTE, respondents were directed back to the survey and answered a number of questions about the nominee. In the first study, our key dependent variables are first, a single item question that asked whether the respondent supported, opposed, or neither supported nor opposed the nominee. Second we asked two multi-item indices measuring how warm or competent the nominee was.<sup>8</sup> In the second study, we use two single item scales. The first is a seven-point scale of support from "strongly oppose" to "strongly support" and the second is a six-point scale of how qualified the nominee is, ranging from "not qualified at all" to "completely qualified." These dependent variables capture traditional conceptualizations of support for a nominee as well as evaluations of the nominee independent of specific support.

### **Mechanical Turk**

We should not, however, fail to address the limitations of our Mechanical Turk samples. We fully recognize that these convenience samples are not easily generalizable to the general population, and we caution readers to understand our results in this context. We do believe, however, that this sample is useful for an experimental investigation of the role of gender in the evaluation of Supreme Court nominees.

In particular, numerous scholars have noted the usefulness of Mechanical Turk samples for experimental work (Berinsky, Huber, and Lenz 2012; Buhrmester, Kwang, and Gosling 2011; Mason and Suri 2012; Paolacci and Chandler 2014). Indeed, scholars have published experiments using Mechanical Turk samples to study a range of political and psychological features, including racial resentment and authoritarianism (Craig and Richeson 2014; Crawford et al. 2013; Crawford and Pilanski 2014; Hopkins 2015; Sheagley, Chen, and Farhart 2017). We readily admit that the Mechanical Turk subject pool is more liberal, more Democratic, and younger than the general population, but we believe that random assignment to experimental conditions allows us to make internally valid judgments about the differences between conditions even if we cannot generalize more widely.

This does not mean, however, that we should ignore key issues with these samples. Importantly, political knowledge or sophistication is consistently higher among Mechanical Turk workers than in the general population (Berinsky, Huber, and Lenz 2012; Huff and Tingley 2015). While political knowledge likely makes our respondents better able to understand and utilize information about Supreme Court nominees in making their decisions, we have no reason to believe that high knowledge respondents should exhibit greater gender bias than low knowledge voters. Similarly, Democrats and liberals (more prevalent in our samples than they are in the general population) should, if anything, exhibit less gender bias than Republicans or conservatives

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<sup>8</sup>All questions used as dependent variables can be found in the appendix.

**Table 1.** Treatment effects on nominee evaluations, Experiment 1.

	Competence	Warmth	Support
Female Nominee	0.01 (0.02)	−0.00 (0.03)	0.02 (0.05)
Constant	0.71* (0.01)	0.59* (0.02)	0.47* (0.04)
<i>N</i>	312	317	321
<i>R</i> <sup>2</sup>	0.000	0.000	0.001

Standard errors are in parentheses.

\*indicates *p*-value less than or equal to .05. + indicates a *p*-value less than or equal to .10.

who tend to endorse more traditional gender roles (Norrander and Wilcox 2008), making this a slightly conservative test of our hypotheses. Without discounting these concerns, we believe that a focus on differences between our experimental conditions, coupled with caution over generalizing our results, should help alleviate concerns about these samples.<sup>9</sup>

## Results

### Experiment 1

Beginning with our first experiment, we look at the three dependent variables of nominee evaluation: nominee support, warmth ratings, and competence ratings. We begin by regressing nominee evaluations on treatment assignment, with these results presented in Table 1. Interestingly, we find no main treatment effect on nominee evaluations based on the gender condition assignment. As Table 1 shows, individuals who saw a female nominee were no more or less supportive than those who saw a male nominee. While normatively encouraging (as we would hope that a nominee's gender should not result in worse evaluations), this does not absolve the public completely. As noted in our hypotheses, we expect the treatment effects to be conditional on the media environment.

To test this, we use OLS regression to predict evaluations as a function of the number of ideological, objective qualification, and subjective qualification/personality stories viewed by the respondent.<sup>10</sup> We also include interactions between these information counts and condition assignment to either the male or female nominee conditions. If our expectations are correct, we should see that respondents in the male nominee condition exhibit higher evaluations of nominees the more they view subjective qualifications (personality) information. In contrast, in the female nominee condition, we should see that subjective qualifications information has no effect on overall nominee evaluation (if the gender double standard exists). Of course, if the double standard does not exist, this could be seen either with subjective qualifications information having no effect in either condition or having the same effect (positive or negative) in both the male and female nominee conditions. Results from these regressions appear in Table 2.

As Table 2 shows, we see the expected pattern of results for one of the three variables (evaluations of the nominee's competence). In addition, the expected pattern also emerges for evaluations of the nominee's warmth, although the interaction term does not achieve traditional levels of statistical significance. However, we do not see the expected pattern with our three-category

<sup>9</sup>Although our samples do feature more women than men, we find no consistent differences in information usage moderated by respondent gender. In other words, our results remain the same for men evaluating men, men evaluating women, women evaluating men, and women evaluating women.

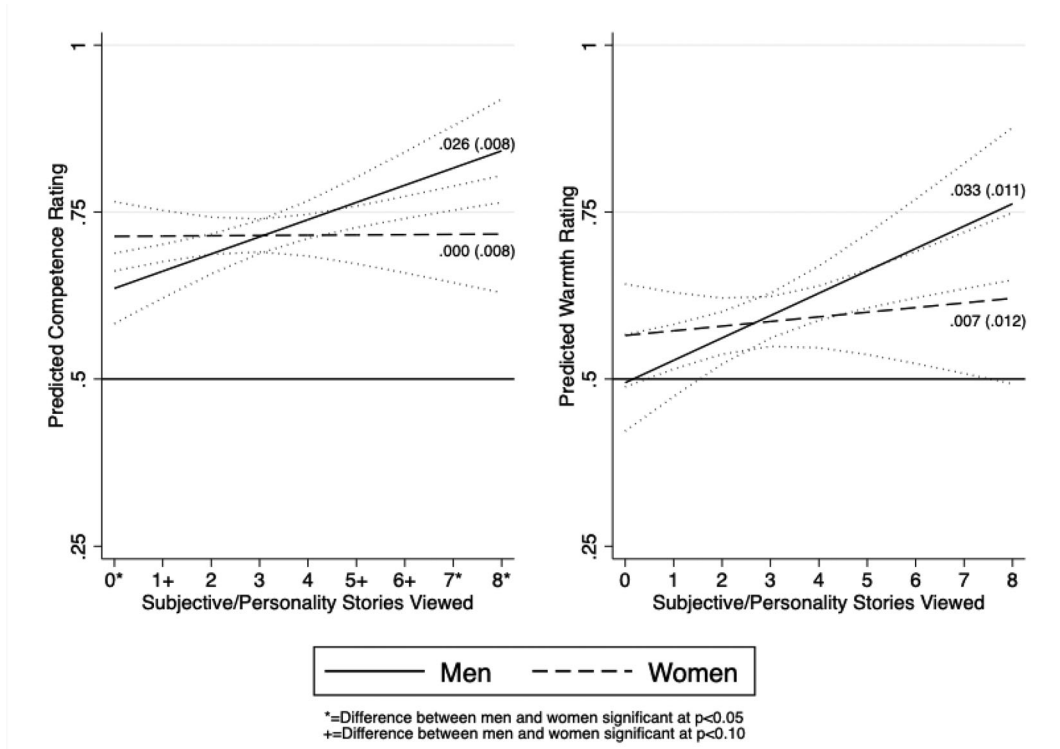
<sup>10</sup>We recognize that interacting treatment assignment with a non-randomized variable (stories viewed) eliminates our ability to make causal claims, so we are cautious to employ language suggesting correlations here, as opposed to causation. Furthermore, we are sensitive to concerns that gender stereotypes may encourage people to view fewer stories for female nominees than for male nominees, a la Ditonto 2019. We present tables A2 and A3 in the online appendix, which show that nominee gender has no effect on information search patterns.

**Table 2.** Information search effects on nominee evaluations, Experiment 1.

	Competence	Warmth	Support
Female Nominee	0.08 (0.06)	0.09 (0.07)	0.06 (0.16)
Ideological Stories Viewed	0.00 (0.00)	-0.00 (0.01)	-0.01 (0.02)
Ideological Stories x Female Nominee	-0.01 (0.01)	-0.00 (0.01)	-0.01 (0.02)
Objective Qualifications	-0.01 (0.00)	-0.01 (0.01)	0.00 (0.02)
Stories Viewed	0.01 (0.01)	0.00 (0.01)	0.02 (0.03)
Objective Stories x Female Nominee	0.03* (0.01)	0.03* (0.01)	0.04+ (0.02)
Subjective Qualifications/Personality Stories Viewed	-0.03* (0.01)	-0.03 (0.02)	-0.01 (0.03)
Subjective Stories x Female Nominee	0.62* (0.05)	0.54* (0.05)	0.45* (0.11)
Constant			
<i>N</i>	312	317	321
<i>R</i> <sup>2</sup>	0.050	0.033	0.026

Standard errors are in parentheses.

\*indicates *p*-value less than or equal to .05. + indicates a *p*-value less than or equal to .10.



**Figure 1.** Effect of subjective qualifications/personality stories on warmth and competence ratings, by experimental condition (Experiment 1).

Predicted effect of subjective information views on evaluations of male (solid) and female (dashed) nominees. Dotted lines indicate the 95% confidence intervals.

nominee support variable. To ease the interpretation of Table 2, Figure 1 presents a graph of the predicted evaluations of male and female nominees, conditioned on the number of subjective qualifications stories read, for warmth and competence ratings.

Figure 1 demonstrates first that Supreme Court nominees are generally viewed positively on both competence and warmth, with predicted ratings consistently above the midway point at all levels of information seeking. The upward trend in evaluations for male nominees, however, underscores the essence of the gender double standard. Reading more information about a nominee's judicial temperament correlated with significantly higher ratings for male nominees, while female nominees do not enjoy the same advantage. While women are not disadvantaged by these subjective stories, neither are they helped the way men are.<sup>11</sup>

Although no significant differences emerge between men and women for warmth ratings, we do see differences on competence. Interestingly, for those who viewed zero or one subjective stories, female nominees were actually perceived as more competent than male nominees. At zero stories viewed, female nominees are rated about 7.8 points more competent than male nominees ( $p < 0.04$ ). At the high end of the scale, however, female nominees are distinctly disadvantaged. For those who viewed seven stories, female nominees were rated 9.9 points less competent than male nominees ( $p < 0.04$ ) and at eight stories, they were rated 12.5 points less competent ( $p < 0.04$ ). Although only a small percentage of respondents viewed this many stories (3.7%), the effects are likely to compound over a longer period of time as respondents have more time to encounter information. Additionally, if we look at where there is a significant or marginally significant difference between men and women (5-8 stories viewed), we see that 16.5% of respondents viewed at least 5 of these stories.

Looking at the right side of Figure 1, we see that no significant differences emerge between men and women on warmth ratings. Nonetheless, the same pattern appears that we saw on the left side of the figure, with a significant positive slope for the effect of subjective/personality stories for male nominees and a relatively flat, insignificant slope for female nominees. These results suggest that a double standard exists among our respondents, whereby information about the judiciousness of a nominee is uniquely beneficial to male nominees. These results provide partial support for H1.

Interestingly, we find no evidence that ideological or qualification information has an effect on nominee support or evaluation. We imagine that this is partially due to these features being accounted for by partisanship or the nature of the Supreme Court. If we were to look at lower level courts, it is possible that these types of information may have an effect on evaluation. Nonetheless, they do not exert an effect in our first experiment, for either male or female nominees. This finding supports the null hypothesis posited in H2.

## Experiment 2

We replicated the experimental design and regression analyses with two alternative dependent variables (seven-point nominee support and six-point nominee qualified) in our second experiment. The major differences between the first and second experiment were that, in the second experiment, there was a greater variety of information available to respondents and there was an introductory information sheet about the nominee that each respondent read before entering the DPTE. The main treatment effects models appear in Table 3.

As we saw in the first experiment, there are no significant main effects for treatment assignment. Again, male and female nominees enjoy roughly equivalent evaluations among our respondents. As noted above, the possibility still exists that the effects of media exposure differ across treatment conditions. These results appear in Table 4.

<sup>11</sup>Interestingly, women nominees are not disadvantaged when no subjective qualification information is viewed. Thus, if nominees were asked purely about their objective qualifications, we would be less concerned about the consequences of our results. However, recent confirmation hearings underscore the importance of these subjective qualifications to the narrative around the nomination process, which our results show would benefit men over women.

**Table 3.** Treatment effects on nominee evaluations, Experiment 2.

	Qualified	Support
Female Nominee	–0.00 (0.01)	–0.01 (0.02)
Constant	0.72* (0.02)	0.54* (0.03)
<i>N</i>	1607	1593
<i>R</i> <sup>2</sup>	0.000	0.000

Standard errors are in parentheses.

\*indicates *p*-value less than or equal to .05. + indicates a *p*-value less than or equal to .10.

**Table 4.** Information search effects on nominee evaluations, Experiment 2.

	Qualified	Support
Female Nominee	–0.00 (0.03)	0.02 (0.04)
Ideological Stories Viewed	–0.00 (0.00)	–0.02* (0.00)
Ideological Stories x Female Nominee	0.01 (0.00)	–0.00 (0.01)
Objective Qualifications Stories Viewed	0.02* (0.01)	–0.01 (0.01)
Objective Stories x Female Nominee	–0.00 (0.01)	0.01 (0.01)
Subjective Qualifications/ Personality Stories Viewed	0.01* (0.00)	0.03* (0.01)
Subjective Stories x Female Nominee	–0.01+ (0.01)	–0.02+ (0.01)
Constant	0.64* (0.02)	0.57* (0.03)
<i>N</i>	1607	1593
<i>R</i> <sup>2</sup>	0.044	0.030

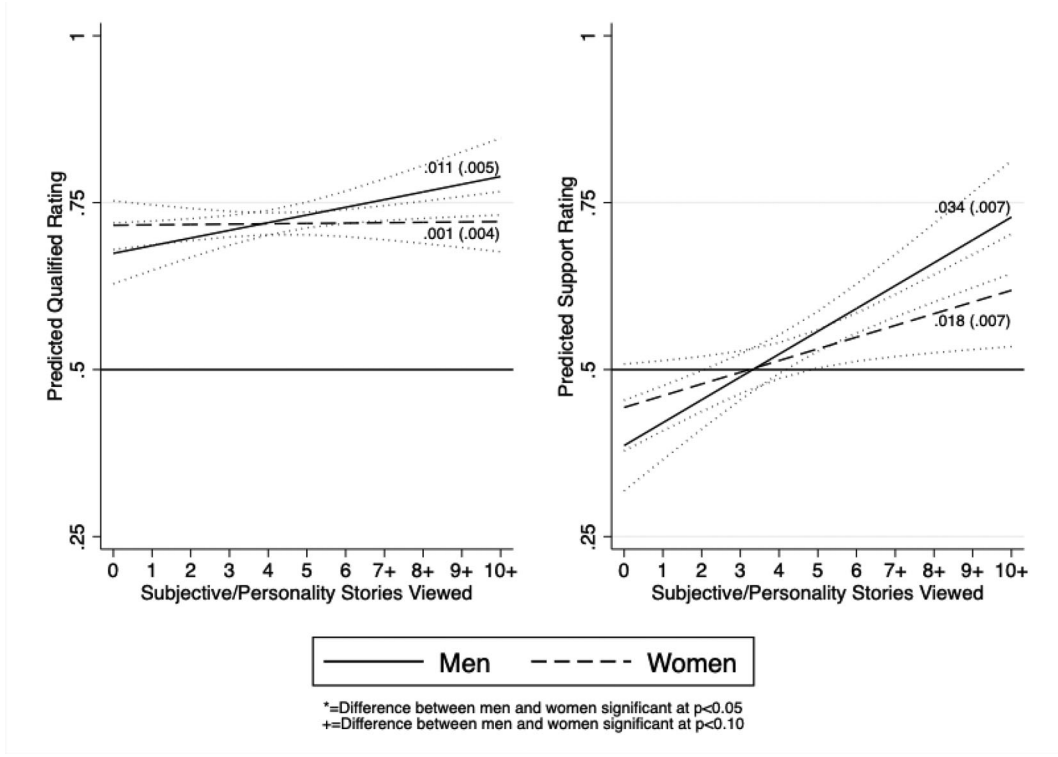
Standard errors are in parentheses.

\*indicates *p*-value less than or equal to .05. + indicates a *p*-value less than or equal to .10.

These results are again suggestive of a double standard which leads male nominees to benefit from subjective qualification information and female nominees to not. In the base condition (male nominee), increased viewing of subjective information correlated with higher ratings of perceived qualifications and expressed support. The interaction terms, however, show a decrease in the influence of subjective information for female nominees. Although the interactions are only significant at the  $p < 0.10$  level, the direction of the effects accords nicely with our expectations. As we did with Experiment 1, we graph the predicted evaluations, conditional on treatment assignment and subjective qualification/personality information, in Figure 2.

Figure 2 displays a familiar pattern of results. The left panel shows that the effect of information on qualification perceptions of female nominees is essentially zero, while male nominees benefit as respondents learn more about them. At high levels of information search, marginally significant differences emerge between male and female nominees. Subjects who viewed seven stories are predicted to evaluate that male nominee as 3.5 points more qualified than a similar respondent who viewed a female nominee ( $p < 0.09$ ). At ten stories, the gap grows to 6.7 points ( $p < 0.07$ ). Once again, while not exceedingly common, 12.7% of respondents read seven or more subjective/personality stories.

The right panel of Figure 2 presents a slightly different yet still consistent picture. Here, we see that both male and female nominees benefit in expressed support as the number of subjective qualifications stories viewed increases. Even in this case where female nominees benefit, however, male nominees benefit *more* from respondents viewing this information. Once again, at high levels of information search, male nominees enjoy higher levels of support than female nominees. At seven stories viewed, the difference between male and female nominees is 6.0 points



**Figure 2.** Effect of subjective qualifications/personality stories on nominee qualified and support ratings, by experimental condition (*Experiment 2*). Predicted effect of subjective information views on evaluations of male (solid) and female (dashed) nominees. Dotted lines indicate the 95% confidence intervals.

( $p < 0.08$ ), while at ten stories, the difference is up to 11.0 points ( $p < 0.07$ ). Again, the pattern underscores the challenges faced by female nominees in comparison to male nominees. Here again, we find support for H1. Turning to the null results expected for H2, we see a similar pattern to experiment one. When ideological or qualification information does matter, it does so in a universal, non-gendered way.<sup>12</sup>

## Discussion

Understanding how people evaluate a nominee's traits and personality is an important first step to understanding how people make decisions about judges and may offer insight into how evaluations of the courts and legal systems are made. While descriptive representation in institutions matters (Mansbridge, 1999, 2003), we understand that the nomination and confirmation process is largely a function of partisanship (as is support for nominees). However, perceptions of a judge's competence and qualifications cut to the core of public trust in the Court. Scholars have long understood the value of institutional legitimacy (Gibson 2007; Gibson, Caldeira, and Baird 1998; Scherer & Curry, 2010) and our results suggest that the effect of gender holds the potential to alter perceptions of judicial competence and qualifications, which in turn can reduce generalized trust and support in the Court.

<sup>12</sup>While the primary focus of this research is understanding the role of nominee identity on the public's evaluation, we understand the role that identity congruence may play. We investigated the role of respondent gender and respondent partisanship and found no significant interactions with our experimental treatments.

While our experimental data cannot address this question directly, we encourage future work that investigates the connections between perceptions of competence, qualifications, and institutional trust and legitimacy. Our results suggest that women face a double standard in the nomination process around the masculine constructions of judiciousness and subjective qualifications. While this likely has little effect on the votes of US senators for or against confirmation, the personalized nature of the nomination process is likely to highlight these subjective qualities. Women nominees, therefore, even if confirmed, begin at a disadvantage in perceptions of qualifications and competence compared to their male colleagues. This competitive disadvantage may translate into depressed diffuse support for the court as well as specific support for decisions authored by women justices. Additional work is necessary to understand the consequences of this double standard for legitimacy and trust.

That said, our results are not without their limitations. Experiments, by their very nature, are artificial. Further research should examine whether the disparities our results elude to play out in how actual nominees are evaluated by the press, by the elites who choose and confirm them, and by the interest groups who evaluate them. One particularly fruitful line of future research should explore how the American Bar Association's Standing Committee on the Federal Judiciary discusses the temperament of nominees to the federal bench, especially when they cast those nominees and under- or un-qualified. Despite the progress that has been made by women in the legal profession there is without a doubt more progress to be made. Our results uncover one among many hurdles women face in attempting to reshape the federal judiciary into a more representative body.

Additionally, our results do not indicate that women suffer from lower evaluations than men, as we find no main treatment effect. Furthermore, since respondents were free to choose how many stories to view, we cannot rule out an omitted variable driving both evaluations and information search. Thus, we encourage readers to view our results are primarily non-causal, as we did not manipulate the number of stories viewed experimentally.

Nonetheless, we believe our findings tell an important, if observational, story. Male nominees benefit when the media discusses subjective information about their personality. As the general public learns more about a man's personality, they evaluate that male nominee more positively. Women, on the other hand, enjoy no such advantage. While not hurt by subjective information, they are rarely helped in the same way that men are. As Supreme Court nomination battles become must-see television, the constant media coverage of a nominee's qualifications and ideology are likely to have little effect on public support, yet when the media begins to cover the nominee's personality, this appears to humanize male nominees, while doing nothing to help female nominees.

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