Agenda Setting in State Courts of Last Resort

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Abstract

Little academic research has been carried out on the agenda-setting process for judges, particularly in states. This study examines the rhetoric and agenda setting of judges in 47 state courts of last resort from 2005 to 2015. A content analysis of the end-of-the-year speeches delivered by the justices was performed to determine patterns and trends in rhetoric according to political party affiliation, region, proximity to the border, and method of appointment. It was discovered that the topics discussed by state chief justices did not vary over time; that agenda items differed slightly between Republican and Democratic justices; that there were limited differences between the issues discussed by judges in border and non-border states; that agenda items did not differ significantly according to region; that issues mentioned by U.S. Supreme Court justices and state justices differed; and that the method of seating justices did not influence agenda items.

All politicians, whether they are elected to office or appointed, must create a political message and then relay that message to their constituents. This communication of information and messages to the general public is referred to as political communication, and it has become a critical component of a public official's success. The ability and skill of public officials in communicating their intent can be vital to their accomplishments in office (Cohen, 1995; Whitford & Yates, 2003). Political communication and rhetoric has been defined as "the role of communication in the political process" (Chafee, 1975, p. 15). It comprises all forms of

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communication by public officials, including verbal and written political rhetoric that is intended to influence the political environment or to achieve specific objectives (McNair, 2011).

The majority of studies on political rhetoric and communication have focused on congressional and presidential speeches, with presidential speeches the most researched (Edwards, 1983; Teten, 2007; Whitford & Yates, 2003, 2009; Wood, 2007). Congressional rhetoric has been the focus of a smaller number of studies (Fenno, 1978; Marion & Oliver, 2017; Pearson & Dancy, 2011; Quail-Hill & Hurley, 2002). These studies provide additional insight into how legislative officials utilize criminal justice issues and for what reasons. Attention to judicial rhetoric lags well behind that devoted to presidential and congressional communication.

State and federal officials frequently incorporate crime issues into their political rhetoric, so studies of the political rhetoric of crime issues by public officials have become prevalent (Felkenes, 1992; Hill, Oliver, & Marion, 2010; Marion, 1992, 1994b, 1997; Marion & Oliver, 2012; Marion, Smith, & Oliver, 2009; Oliver, 2002, 2003; Oliver, Hill, & Marion, 2011). Elected and appointed officials discuss crime for several reasons. One is that they seek to reassure citizens that they have a solution to a crime problem causing great public apprehension, and at the same time to demonstrate that action is being taken to solve that problem. They can demonstrate to their constituents that they are doing something to keep families safe and lower their risks for victimization (Marion, 1992; Marion & Farmer, 2003). Additionally, public officials attempt to influence the public perception of the crime problem and increase support for proposed policies (Hill, Oliver, & Marion, 2011; Oliver, 2002, 2003). By framing crime in a specific way through their rhetoric, public officials can affect the way people feel about the issue.

Despite the rich literature on executive and legislative political communication, the rhetoric used by the judiciary has infrequently been the topic of detailed analysis in academic literature. The deficit of attention regarding judicial rhetoric is not surprising. The political culture, traditions, and roles of judicial actors differ from those of members of both the executive and legislative branches of government. Whereas presidents and legislators are expected to be responsive to the concerns and demands of their constituents, judges are primarily responsible for resolving legal disputes at trial and reviewing cases for errors (Sheldon, 1968). The main responsibility of judges is to interpret the law fairly, not to represent their constituents (Hojnacki, 2000). This means that presidents and members of Congress deliver public speeches throughout the year as they demonstrate their responsiveness to their voters, whereas judges, in an effort to appear neutral and objective, typically do not engage in public speaking activities.

Thus, while legislators and executives tend to deliver public speeches to their constituents on a regular basis, judges typically do not. This is true even though the majority of states utilize campaigns and elections to select judges at all levels.¹ Nevertheless, judicial candidates still do not mirror their legislative and executive counterparts' reliance on public speeches, addresses, and dissemination of campaign material, often leaving voters largely uninformed (Hojnacki & Baum, 1992). As a result, the judiciary remains the least visible branch of government at both the state and federal levels (Jacob, 1996). Although state court judges deliver public addresses less frequently than their legislative and executive counterparts, this does not mean that state judges never deliver public statements. On the contrary, state judges routinely summarize the business

¹ Thirty-eight states currently use elections to select high court judges.

of the court and outline the priorities of the current slate of justices. These messages are communicated through annual or biennial State of the Judiciary addresses.

It is important to study state judges for many reasons. First, state judges, unlike their federal colleagues, are closer to the people because their constituency base consists of state citizens. Because a majority of state justices are elected, there is an electoral connection in a majority of the states that is not present at the national level. This structural difference may result in state judges responding to the concerns of the voters in their state. Judicial communication provides state judges with a means of conveying their messages directly to the public. Prior research has demonstrated that state judges are responsive to public attitudes on certain salient issues (Brace & Boyea, 2008; Hall, 1987). As a result, the speeches delivered by state judges can function as a means of generating support by selectively highlighting certain issues and concerns (Hojnacki & Baum, 1992).

Second, according to the U.S. Constitution, states are responsible for addressing issues that do not fall under the enumerated powers of the federal government. For example, crime control is a police power reserved to the states, so crime control is a primary concern for state level officials (Marion, 1994b; Marion, Smith, & Oliver, 2009). Despite the expanded role that the federal government plays in crime control, state governments remain the primary governmental entities responsible for preventing crime and punishing offenders (Jacob et al., 1982). The courts, then, are responsible for reviewing the laws passed in the state legislatures to ensure that they are constitutional and fair. This also means that state high court judges play a prominent role in interpreting state laws, often providing the final word on important policy issues (Wilhelm, 2007). It is not hard to understand that the “policies made by state courts can have enormous economic, political, and social consequences” (Gibson, 2008, p. 59).

Third, litigants are far more likely to have their cases resolved in state court than in federal court. For example, the states remain the primary governmental actors responsible for the administration of criminal justice, and the majority of criminal cases are adjudicated at the state level. Given the important role that state judges play, it is critical that we recognize what issues judges discuss in their speeches as a way to identify what matters are salient to them, and which concerns they are placing on their agendas. Judicial rhetoric is also a way that justices signal their perception of what is important to the public and how they are shaping their dockets (Jacobi, 2008). Analyzing these speeches will provide a better understanding of judicial behavior.

A fourth reason to consider judicial rhetoric and agenda setting is the role of state high courts in the policy process. Most scholars assert that the main role of courts in the policy process is to review laws and policies to determine if they are constitutional (Cahn, 1995) and if they can withstand a judicial challenge (Dye, 2001). However, another perspective provides an alternative role for the court as an influence, placing courts at the beginning of the policy process in the agenda-setting stage (Langer & Brace, 2005; Shipan, 1997). Here, policymakers (state legislators or Congress) take into account the courts’ possible reaction to a proposed policy and modify their policy decisions to maximize their chance of success (Shipan, 1997; Wilhelm, 2007).

Given the important role that a state’s highest court plays in its government, the rhetoric of its leader merits further investigation. This study seeks to fill that void by analyzing judicial rhetoric by justices on the states’ highest courts. To date, no studies have been undertaken that assess the way in which state court judges engage in political communication. This study is the first systematic assessment of the use of judicial rhetoric by state judges. A preliminary analysis of judicial rhetoric

will help expand our knowledge by highlighting issues discussed by judges as well as explaining patterns of political communication in state high courts.

PRESIDENTIAL RHETORIC AND POLITICAL COMMUNICATION

In studies of political rhetoric, presidential political communication has garnered the most attention. Past research indicates that presidents have become more rhetorical over the course of time. Presidential speeches aimed directly at the public to influence Congress, the media, public opinion, and even administrative agencies have steadily increased in frequency (Edwards, 1983; Whitford & Yates, 2003, 2009; Wood, 2007). The practice whereby presidents use speeches to promote their policies with the public has been termed “going public” (Kernell, 1997; Ostrom & Simon, 1985, 1988; Ragsdale, 1984, 1987; Simon & Ostrom, 1988, 1989). Several reasons for the increased frequency of “going public” include technological advances, increases in institutional power, and an increase in pressure on the president by the public.

In addition, according to Article II, Section III of the U.S. Constitution, presidents are required to give a yearly State of the Union address in which they discuss issues they feel are important to the country. This speech is typically given in January, but that date is not mandated and is only traditional (Light, 1998). Presidents also give speeches throughout the year to the public in which they discuss issues of concern, but the State of the Union address is the most important and visible manifestation of this duty (Marion, 1992). The State of the Union address provides presidents with an opportunity to outline their agenda and to communicate their priorities directly to the public. Several studies have examined the content of presidential speeches, including the State of the Union address, in an effort to explain what information they contain as well as to determine how effective they are in influencing various actors (Cohen, 1995; Kessel, 1974).

Presidential rhetoric permits executives to reach out to other politicians, particularly members of Congress, and to the public so as to communicate their agenda and policy goals. In general, presidents use speeches to set the tone for their administration (Teten, 2007). Beyond that, presidents have many other goals when they speak to the public. First, presidents can highlight their accomplishments from the previous year as well as provide their assessment of people, events, and policies (Fersch, 1961). Second, the president can attempt to appease public demands for action. This is especially important after a critical event or national emergency. Third, presidents use their speeches to outline the agenda for the coming year and the remainder of their term (Hinckley, 1990; Pika & Maltese, 2004; Whitford & Yates, 2003, 2009; Young & Perkins, 2005). Presidents not only outline their agenda but also use rhetoric to increase support for their policies and legislative proposals, thereby affecting public opinion (Behr & Iyengar, 1985; Cohen, 1995, 1997; Edwards, 1983; Edwards & Wood, 1999; Hill, 1998; Iyengar & Kinder, 1987; Kernell, 1997; Light, 1998). In doing so, presidents are able to increase their popularity with the public (Cohen & Powell, 2005; Druckman & Holmes, 2004; Ostrom & Simon, 1985, 1988; Simon & Ostrom, 1988, 1989).

Through their rhetoric, presidents can attempt to influence congressional action as well. Research shows that presidents with high approval ratings are able to spur legislative action in Congress (Edwards, 2003; Wood, 2007). In many cases, the president is able to change the debate or deliberation about an issue (Whitford & Yates, 2003, 2009). Presidents can also influence

interest groups (Kingdon, 2010) and the media (Edwards & Wood, 1999; Hill, Oliver, & Marion, 2011; Wood & Peake, 1998), which can in turn affect policy.

PRESIDENTIAL COMMUNICATION AND RHETORIC ON CRIME ISSUES

Focusing on criminal rhetoric has permitted an exploration of political communication in a very specific way. Presidential communication and rhetoric on crime issues is the topic of multiple studies. The findings of these studies show that presidents have discussed crime over the years in many different ways (Marion, 1994a, 1997). One of the first presidents to discuss crime control issues at length was Lyndon Johnson (Caplan, 1973; Cronin, Cronin & Milakovich, 1981; Dilulio, Smith, & Saiger, 1995; Felkenes, 1992; Finckenauer, 1978; Marion 1994b; Potter, 1998; Scheingold, 1995). Since then, crime has been on the agenda of every president in some way.

Today, crime control and related issues, such as the legalization of marijuana, excessive incarceration, and the death penalty, have become issues that modern presidents must address at some point during their terms, and presidents often give speeches on crime or at least include crime in their speeches in some way. Other topics are described less often, or come and go, depending on the agenda of an individual executive. On the other hand, presidents consistently and frequently talk about crime and acknowledge the concerns that people have about violence and the safety of their family, friends, and communities (Marion & Oliver, 2013).

Extant research on presidential crime control rhetoric shows some interesting trends. In one study, an analysis of presidential speeches found that the top five issues discussed by presidents included drugs, treatment, guns, law enforcement, and grants to states, followed by research, corrections, courts, organized crime, international crime, exclusionary rule, capital punishment, and juvenile crime. However, the specific topics discussed varied by political party affiliation, the year in office, and individual president (Marion, 1994a). A more detailed analysis of presidential rhetoric on crime shows that President George H. W. Bush gave more speeches than any other president, followed by President Ronald Reagan (Marion, 1992).

Specifically, it seems that Democratic presidents make more specific crime proposals to Congress than do Republican presidents (Oliver, 2003). Analysis of the rhetoric of individual presidents on crime indicates that President Gerald Ford focused on gun control, the Law Enforcement Assistance Administration (a grant program), constitutional liberties, juvenile justice, law enforcement, and mandatory sentencing. Other issues for President Ford were criminal punishment, pre-trial diversion, correctional reform, drugs, and capital punishment (Felkenes, 1992). Marion (1997) found that President Bill Clinton discussed a wide variety of crime control issues during his time in office, ranging from gun control, law enforcement, and drug policy, which are not unexpected, to less fashionable issues, such as violence in the media, parental kidnappings, and the V-chip.

It has also become apparent that presidents are able to affect the public's opinion of crime through their speeches (Oliver, 2002). Specifically, when presidents speak about crime in their State of the Union addresses, changes in the public's concerns about a specific problem (or of crime in general) occur about a year later. Similar research on the presidential rhetoric on drugs has found that when presidents discussed drugs in their State of the Union speeches, the public's concerns about drug use increased (Oliver, Hill, & Marion, 2011). Another study, by Hill, Oliver, & Marion (2010), found that President George W. Bush was able to influence the public's opinions

of terrorism, homeland security, and crime in the period after the terrorist attacks on New York and Washington in September of 2011.

CONGRESSIONAL RHETORIC AND POLITICAL COMMUNICATION

Although some research on congressional rhetoric and its effect on policy or public opinion has been conducted to date, the main focus has been on the president. Unlike the president, members of Congress are not required to address their constituents on a regular basis. Additionally, because there are so many members of Congress, their speeches are not given as much attention in the press. Some members choose to speak publicly about issues often, whereas others are less likely to do so (Marion & Oliver, 2017; Pearson & Dancey, 2011).

Many speeches by members of Congress are given on the chamber floor and are thus referred to as "floor speeches." These help to establish a member's public image or maintain contact with their constituents at home (Fenno, 1978; Pearson & Dancey, 2011; Quaile-Hill & Hurley, 2002). However, a large portion of congressional speeches are given as part of committee hearings (Baumgartner & Jones, 2009; Deering & Smith, 1997; LeLoup & Shull, 2002). These are most often part of the legislative process and typically are not given as much publicity. The speeches have not been analyzed in terms of their content on crime-related issues in the academic literature. Nevertheless, congressional speeches allow members to signal to their constituents that they are working on their behalf as well as taking their concerns seriously. Members of Congress are able to claim credit for proposed policies and successfully passed legislation, and they can highlight their other accomplishments in an effort to enhance their public image.

JUDICIAL RHETORIC

Studies examining judicial communication lag well behind assessments of both executive and legislative communication. Although signaling between judges at different levels of the courts has been documented, an overall analysis of judicial rhetoric by state court judges has yet to be conducted. As a result, little research has been done on what issues judges discuss in their speeches and what effect their speeches have on the public. One study, by Pika and Maltese (2004), provides evidence to show that judicial rhetoric has had an effect on Congress, specifically with regard to additional judgeships. They find that during the Clinton administration, Congress approved only nine additional judicial positions, but that after criticism from Chief Justice William Rehnquist about the lack of approvals, the Senate began to confirm more nominees.

Another study, by Vining and Wilhelm (2012), examined the Year End Reports from 1970 through 2011. The authors discovered that the chief justices of the U.S. Supreme Court during this time discussed eight key issues: budgets, housekeeping, the need for additional judgeships, jurisdiction changes, legislative policies, salary and benefits, structural reorganizations, study requests, and vacancies in the courts. They showed that the number and type of issues discussed by the chief justices varied over time.

A third study, by Marion and Oliver (2017), focused on the communications of the chief justices of the U.S. Supreme Court. They analyzed the End of the Year Reports of the chief justices beginning in 1970, when Chief Justice Warren Burger gave the first State of the Judiciary speech, also known as the End of the Year Report. In this inaugural speech, Chief Justice Burger did not discuss any cases, but rather discussed major policy issues facing the courts. Since then, this speech

has become a tradition for the chief justice. Every year, the leader of the U.S. Supreme Court provides some information or analysis of issues of concern to the court. The content of the speech varies, depending on the chief justice (Vining & Wilhelm, 2012).

Marion and Oliver (2017) found that since 1970, the U.S. Supreme Court chief justices have discussed general topics such as budgets, salary/benefits, or vacancies in their annual speeches. Specifically, Chief Justice Warren Burger talked about corrections and prison reform, speedy trials, and alternative dispute resolution. Chief Justice William Rehnquist addressed the budget, court vacancies, additional judgeships, and salary/benefits. Chief Justice John Roberts discussed workload, but also drugs, immigration, firearms, and sex offenses. In sum, since 1970, the justices have discussed the criminal caseload, habeas corpus, alternative dispute resolution, and sentencing. It should be noted that habeas corpus was linked mostly to Rehnquist, and alternative dispute resolution to Burger. Sentencing can be linked to both Burger and Rehnquist. The current study expands on this earlier research and examines the content of the State of the Judiciary speeches delivered by the justices leading the highest courts of various states, an area that has remained unexplored until this study.

METHODS

To examine judicial rhetoric, we conducted a content analysis of State of the Judiciary speeches delivered by state high court justices to determine patterns and trends in the issues highlighted. Many previous studies have relied on content analyses of speeches as a way of examining the political agenda of governmental actors (Baumgartner & Jones, 1993; Cohen, 1995, 1997; Heck & Shull, 1982; Hesse-Biber & Leavy, 2011; Kessel, 1974; Light, 1998; Marion, 1992, 1997; Marion, Smith, & Oliver, 2009; Shull & Ringelstein, 1989).

The current study follows that same methodology. Frequency tables are then used to summarize our findings. The results provide descriptive data related to the types of issues discussed by state chief justices, as well as the frequency with which these issues are mentioned. This approach enables us to determine the primary agenda items that chief justices address each year. Because we collect information on judicial speeches across time, we are also able to determine if issues receive consistent attention from year to year. As a result, we use univariate statistics to create a portrait of the issues and concerns highlighted by state chief justices over time. Additionally, we are able to compare and contrast the judicial priorities of different states. Because of the various ways that state courts are structured, our results also outline the similarities and differences among courts operating under different institutional arrangements.

The unit of analysis is the yearly speech delivered by the chief justice of a state's highest court (supreme court, superior court). The chief justices use these speeches to relay their agenda to the public. Similar to the president's State of the Union speech, these speeches summarize the business of the previous year and signal the priorities for the coming year. The judicial speeches were collected for the years from 2005 to 2015 in 47 states.² Most states archive these speeches on their official state judiciary web pages. In some states, only the most recent speech is archived. In such cases, we consulted the National Center for State Courts website, which also contains an archive of End of the Year speeches. The State of the Judiciary speech is typically delivered

² Idaho, Oklahoma, and Vermont were excluded from this analysis because of incomplete records of their respective State of the Judiciary addresses.

annually, although in some states, it is delivered biennially. Thus, not every state in our analysis had one speech per year. Ultimately, we located and analyzed 316 state judiciary speeches.

Once the speeches had been located, we read them and recorded the top five issues in each speech, as many speeches included more than one topic.³ The justices' rhetoric codes fell into 31 categories. Similar concepts that had the same meaning were combined (e.g., prisons and corrections) to create the categories (Oliver, Marion, & Hill, 2014). In addition to recording the issues that the justices mentioned, we collected data on the states and courts included in our analysis. This information provided us with the ability to make comparisons between states. Thus, in addition to coding the content of the State of the Judiciary speeches, we determined the political party affiliation of each chief justice (Republican, Democrat, or Independent), the method by which each justice had been seated on the bench (i.e., elected or appointed), and the region of the country where the justice practiced.⁴

The data were analyzed in light of six hypotheses, described below:

1. Past research on presidential rhetoric on crime control issues has found that the issues presidents discuss vary over time (Marion, 1994b). It was theorized that as issues develop or emerge in society, presidents respond to those changes and alter their agenda items. It was expected that judges would follow the same pattern and that the topics judges mentioned would fluctuate over time.
2. Extant research indicates that Republicans tend to discuss crime more often and support more conservative approaches to crime control (i.e., increased or harsher punishments), and that Democrats tend to support more liberal approaches (rehabilitation) (Houston & Parsons, 1998; Marion & Oliver, 2013; Marion, Smith, & Oliver, 2009). Thus, it was proposed that this difference would also be seen in the patterns of judicial rhetoric and that the issues the justices discussed would be influenced by their political party identification. In other words, we expected that agenda issues mentioned by Republican justices would differ from those discussed by Democratic justices.
3. It was hypothesized that the issues discussed by state high court judges in border states would be different from the issues discussed by justices in non-border states. This is simply because the issues faced by border states (i.e., immigration) differ from those faced by non-border states. The states have different concerns, and the agenda items discussed by judges would be expected to reflect that.
4. Similarly, it was proposed that the agenda items discussed by state chief justices would differ according to the region of the country where they work. The logic was the same as that presented above; the states in different areas of the country face different issues, and the judicial agendas would be expected to mirror those differences.
5. Because federal and state judges have different judicial concerns, it was proposed that the rhetoric by state judges would include agenda items different from those

³ We coded top issues according to the order in which they were mentioned by the chief justice. The first five issues discussed were coded as 1. Any issues mentioned following the first five per speech were coded as 0.

⁴ We used the U.S. Census region codes to code regions.

mentioned by federal justices. Therefore, we expected a wider range of issues to be referenced by state justices than by the U.S. Supreme Court chief justice.

6. The final hypothesis was that the agenda issues discussed by appointed justices would differ from those discussed by elected justices. We anticipated that elected justices, who must face re-election, would be more responsive to the concerns of the public as a way to ensure their re-election (Canes-Wrone, Clark, & Park, 2010). Appointed justices, on the other hand, or those who do not have to face a re-election process, would promote different agenda items.

RESULTS

Table 1 shows the issues mentioned by state chief justices from 2005 to 2015.

Table 1: Issues Discussed by State High Court Justices (Number and Percent Mentions)

	N	%		N	%
Budget	196	54	Safety of Court Officials	31	9
Technology	189	14	Commissions	29	8
Efficiency	188	52	Judicial Selection	26	7
Stewardship/Access	147	41	Language/Interpreters	23	6
Housekeeping	131	36	Sentencing	18	5
Diversion Programs	108	30	Criminal Justice Issues	12	3
Vulnerable Populations	94	26	Recidivism	9	2
Public Outreach	67	18	Reorganization	5	1
Salary/Benefits	59	16	Vacancies	5	1
Drug Abuse	58	16	Corrections	5	1
Criminal Justice Reform	53	15	Civil Liberties Issues	4	1
Legal Professionalism	49	14	Other	4	1
Racial Equality/Diversion	47	13	Jurisdiction Change	3	.82
Juvenile Delinquency	46	13	Economic Issues	1	.28
Legislative Policies	41	11	Same-Sex Marriage	1	.28
Additional Judgeships	40	11			

As the table indicates, the agenda issues most frequently discussed by chief justices in all states were budgetary concerns, technology in the courtroom, efficiency of the courts (court backlogs), stewardship, and housekeeping issues.⁵ The topics least often mentioned were same-sex marriage, economic issues, the need for changes in jurisdiction, and issues surrounding civil liberties.

It was proposed in hypothesis 1 that the issues discussed by the state justices would vary over the time period of the study. Table 2 shows the top five issues discussed by state chief justices for each year, indicating both the number of times the topic was mentioned and the percentage of speeches referencing the issue.

⁵ We coded statements that involved routine business before the court as housekeeping issues. Examples of housekeeping issues included the number of cases decided the previous year, recognition of members of the community, and the resignation of a judge or attorney with a long history before the court.

Table 2: Top 5 Issues by Year, Number of Mentions and (Percent)

Year	Issue 1	Issue 2	Issue 3	Issue 4	Issue 5
2005	Budget 19 (59)	Technology 16 (50)	Efficiency 15 (47)	Housekeeping 13 (41)	Stewardship 11 (34)
2006	Stewardship 13 (52)	Efficiency 12 (48)	Budget 9 (36)	Housekeeping 9 (36)	Technology 6 (24)
2007	Efficiency 21 (60)	Budget 18 (51)	Technology 16 (46)	Housekeeping 15 (43)	Stewards./Diversion 12 (34)
2008	Technology 15 (56)	Budget 14 (52)	Efficiency 12 (44)	Housekeeping 9 (33)	Reform/Diversion 6 (22)
2009	Budget 19 (54)	Efficiency/Stewards. 7 (49)	Technology 14 (40)	Housekeeping 12 (34)	Divers/ Vul. Pop. 10 (29)
2010	Budget 21 (66)	Technology 20 (63)	Houskeep./Efficienc. 17 (53)	Stewards./Vul. Pop. 11 (34)	Reform/Diversion 8 (25)
2011	Budget 27 (69)	Efficiency 22 (56)	Housekeep./Techn. 18 (46)	Stewardship 16 (41)	Diversion 8 (21)
2012	Technology 20 (67)	Budget 18 (60)	Efficiency 17 (56)	Hous./Divers./Stew. 10 (33)	Vulnerable Pop. 9 (30)
2013	Budget 21 (56)	Technology 20 (54)	Efficiency 19 (51)	Stewardship 18 (49)	Housekeeping 13 (35)
2014	Technology 24 (69)	Efficiency 20 (57)	Stewardship 16 (46)	Diversion 15 (43)	Budget 13 (37)

Table 3 summarizes this information and shows the top subjects discussed, the years in which each subject was discussed, and the number of years in which the topic was mentioned.

Table 3: Top Issues Over Time: Summary

Topic	Years	Total
Budget	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11	11
Technology	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11	11
Efficiency	1, 2, 3, 4, 5, 7, 8, 9, 10, 11	10
Housekeeping	1, 2, 3, 4, 5, 6, 7, 8, 9	9
Stewardship	1, 2, 3, 6, 7, 8, 9, 10, 11	9
Diversion	5, 6, 7, 8, 10	5
Vulnerable Populations	6, 8, 11	3
Criminal Justice Reform	4, 6	2

The results demonstrate that the top five issues mentioned by the chief justices in their yearly speeches were limited to budget concerns, technology, efficiency, housekeeping, stewardship, diversion programs, vulnerable populations, and criminal justice reform.

Moreover, the data in Table 3 show that issues about court budgets were discussed in every year of the study. The discussions were pleas for additional funds to pay for court activities. The need for additional and updated technology was also mentioned every year. Efficiency was mentioned in every year but one, followed by housekeeping issues and the importance of stewardship, which were mentioned in nine of the eleven years of the study.

It is interesting to note that calls to reform the system (particularly to reform bail and place a greater emphasis on rehabilitation programs) appeared only in the later years of the study. The

same is true of the topics of diversion and the need to protect vulnerable populations. Nevertheless, the top issues mentioned by state justices during the time included in this study varied little.

The second hypothesis tested in the study was that Republican and Democratic chief justices would discuss different issues.

Table 4: Top Five Issues Referenced by Republican Chief Justices and Democratic Chief Justices

Topic	Frequency	Percent of Speeches
<i>Republican Chief Justices</i>		
Technology	92	54
Efficiency	91	53
Budget	86	51
Vulnerable Populations	56	33
Housekeeping	55	32
<i>Democratic Chief Justices</i>		
Budget	79	54
Efficiency/Technology	74	50
Diversion	60	41
Stewardship	59	40
Housekeeping	49	33

Table 5: Top Five Issues for Border States and Non-Border States

Topic	Frequency	Percent of Speeches
<i>Border States</i>		
Budget	19	66
Efficiency	13	45
Technology	12	41
Stewardship	12	41
Diversion	9	31
<i>Non Border States</i>		
Budget	177	53
Efficiency/Technology	177	53
Diversion	175	52
Stewardship	135	41
Housekeeping	125	38

As shown in Table 4, three topics were mentioned by both Republican and Democratic chief judges: efficiency, budgets, and housekeeping concerns. Additionally, the percentages of speeches in which the Republican and Democratic justices mentioned these topics were very similar. However, the topics mentioned by the justices of different parties did differ in a few respects. Republican justices mentioned the need for new technology as their first concern and the need for

the courts to assist vulnerable populations, whereas Democratic justices discussed the need for more diversion programs and stewardship. As a result, although some overlap was noted between the justices of different parties, the agenda items discussed were by no means identical.

The third hypothesis suggested that the issues discussed by judges in border states would differ from those discussed by judges in non-border states.

As shown in Table 5, the top five issues discussed by judges in border states were budget, efficiency, technology, stewardship, and diversion programs. The top five issues in non-border states (also shown in Table 5) included technology, budget, efficiency, stewardship, and housekeeping. Thus, four of the five top issues were the same (technology, stewardship, budget, and efficiency), the only exception being that housekeeping concerns were an agenda item for judges in non-border states whereas diversion was an issue for those in border states. Although border states may face a unique set of concerns, given their location, this fact did not result in border state justices emphasizing concerns much different from those emphasized by judges in non-border states; the top issues discussed were similar.

Table 6: Bottom Five Issues for Non-Border States

Topic	Frequency	Percent of Speeches
Economics	1	.30
Same-Sex Marriage	1	.30
Jurisdiction Change	3	.90
Civil Liberties Issues	4	1.20
Reorganization	5	1.50

Beyond the top issues highlighted by chief justices, some diversity in the issues mentioned did exist. Table 6 shows the issues that were discussed least often by the chief justices in non-border states.

These included economics, same-sex marriage and rights, jurisdictional change, civil liberties, and reorganization of the courts. None of these issues was discussed by justices in border states. In addition, the justices in border states did not mention corrections, sentencing, recidivism, vacancies on the court, and criminal justice issues.

The fourth hypothesis anticipated that agenda items discussed by state chief justices would differ according to the region of the country. These results are outlined in Table 7.

Table 7: Top Five Issues by Region, Number Mentions and (Percent)

Year	Issue 1	Issue 2	Issue 3	Issue 4	Issue 5
Northeast	Technology 37 (58)	Budget 34 (53)	Efficiency 32 (50)	Stewards./Access 28 (43)	Vulnerable Pop. 21 (33)
Midwest	Technology 70 (59)	Efficiency 56 (47)	Stewards./Access 51 (42)	Budget 49 (41)	Housekeeping 44 (37)
South	Budget 60 (61)	Technology 48 (49)	Efficiency 47 (47)	Housekeeping 45 (46)	Stewards./Access 37 (27)
West	Budget/Efficiency 53 (66)	Technology 34 (43)	Stewards./Access 31 (39)	Housekeeping 26 (32)	Vulnerable Pop. 20 (25)

Justices in all four regions mentioned the importance of, and need for, technology in the court system as either the first or second issue in their speeches. Concerns about budgets were the first topic in two regions (the South and West), second in the Northeast, and fourth in the Midwest. Similarly, concerns about the efficiency of the court system were mentioned as the top priority in the West but were second in the Midwest and third in the Northeast and South. The importance of stewardship and general housekeeping issues were the other topics mentioned by chief justices in each region of the country. The only issue not mentioned by judges in all four regions was the need to protect vulnerable populations, which was noted by justices in the Northeast and the West.

The fifth proposed hypothesis concerned the differences between the issues discussed by U.S. Supreme Court justices and those discussed by justices in the state highest courts. Previous research by Marion and Oliver (2017) found that the top issues discussed by the U.S. Supreme Court chief justices in their Year End Reports included the need for additional judgeships (41), salary/benefits of justices (34), jurisdiction change (28), budget (23), housekeeping (22) and structural reorganization (22). When they examined only issues directly pertaining to criminal justice, Marion and Oliver found that the U.S. Supreme Court justices discussed criminal caseloads (33), sentencing (19), corrections/prisons (17), probation and parole (15), drug cases (14), habeas corpus (10), pre-trial services (10), and alternative dispute resolution (10). These findings are summarized in Table 8.

It is clear that these agenda items are very different from those discussed by state chief justices. Returning to Table 1, the state chief justices mentioned budgets (196), technology (189), efficiency (188), housekeeping (131), and stewardship (147) most often. When these justices were compared with federal justices, the only two items that were the same were budgets and general housekeeping items. Moreover, the criminal justice issues most often mentioned by state high court justices were (in descending order) drug abuse (58), juvenile delinquency (46), sentencing (18), general criminal justice (12), and recidivism (9). These issues are also very different from those discussed by the federal justices.

Table 8: Top Issues by Federal and State Justices

Federal Justices (Vining & Wilhelm, 2012)	Federal Justices (Marion & Oliver, 2017)	Burger	Rehnquist	Roberts	State Judges
Budgets	Criminal Caseloads	Corrections/ Prison Reform	Budgets	Judicial Workload	Budget
Housekeeping	Habeas Corpus	Speedy Trials	Court Vacancies	Drugs	Technology
Additional Judges	Alternative Dispute Resolution	Alternative Dispute Resolution	Additional Judgeships	Immigration	Efficiency of Courts
Jurisdiction Changes	Sentencing		Salary/Benefits	Firearms	Stewardship/ Access to Justice
Legislative Policies				Sex Offenses	Housekeeping
Salary/Benefits Reorganization					Diversion Protecting Vulnerable Pop.
Study Requests					Public Outreach
Court Vacancies					Salary/Benefits

The sixth proposed hypothesis in the current study was that the issues discussed by appointed justices would differ from those discussed by elected justices. As Table 9 shows, the topics discussed by justices who are elected in partisan elections, elected in non-partisan elections, or appointed do not differ. The only five issues mentioned by all three groups are technology, budgets, efficiency, housekeeping, and stewardship.

Table 9: Top Five Issues for Partisan Elected Judges, Non-Partisan Elected Judges, and Appointed/Merit Appointment Judges

Topic	Frequency	Percent of Speeches
<i>Partisan Elected Judges</i>		
Technology	34	55
Budgets	29	47
Efficiency	25	40
Housekeeping	23	37
Stewardship	23	37
<i>Non-Partisan Elected Judges</i>		
Budget	60	55
Efficiency	55	51
Technology	52	48
Housekeeping	45	41
Stewardship	44	40
<i>Appointed Judges and Judges Who Merit Appointment</i>		
Efficiency	108	57
Budget	107	56
Technology	103	54
Stewardship	80	42
Housekeeping	63	33

DISCUSSION

The current study was an analysis of the political rhetoric of chief justices of the states' highest courts from 2005 to 2015. It aimed to determine the issues highlighted by chief judges and to identify any patterns in the agenda items they discussed. Of the six hypotheses proposed, support was found for two; the other four were not supported by our data.

First, the topics discussed by state chief justices did not vary over time, as had been proposed. Many issues were mentioned every year or almost every year by the states' highest justices, including budgets, technology, efficiency, housekeeping, and stewardship. Three issues—criminal justice reform, diversion, and the need to protect vulnerable populations—appeared only during the later years of the study. This finding does not support the proposed hypothesis and contradicts findings on presidential rhetoric on crime (Marion, 1994b). However, the results are similar to findings on gubernatorial office holders, which indicated that the crime-related issues discussed by governors remained consistent over time (Marion, Smith, & Oliver, 2009). The similar findings may show that judges and governors are less likely to respond to political whims than one might think.

The second hypothesis also was not supported by the analysis. Republican and Democratic justices did consider different topic areas to some extent, but not as much as one might think. Justices in both parties mentioned efficiency of the courts, the need for increased budgets, and housekeeping issues in their speeches. These issues pertain to the need to increase the flow of information in the courts and to increase the productivity and organization of the courts. Republicans were more likely to focus on technology as a way to accomplish this goal. Another critical topic for Republican justices was the need to protect vulnerable populations. On the other hand, Democratic justices focused on two issues that Republicans did not: diversion programs and stewardship. It is not surprising that they would see the need for more diversion, as this is a more liberal approach to punishment (Thielo, Cullen, Cohen, & Chouhy, 2015). It is also not surprising that Democrats would seek to improve access to the courts. Conservative approaches to legal interpretation often focus on the need to be faithful to the law as it is written, whereas liberal judges frequently invoke the need to ensure that everyone has equal access to justice.

These findings should not be surprising in light of previous work indicating that Republican presidents did not discuss crime more frequently than Democratic presidents. In other words, members of both parties mentioned crime with equal frequency (Marion 1992, 1994a). The current findings support these earlier findings, despite not supporting the proposed hypothesis.

The third hypothesis, that the issues discussed by judges in border states would differ from those mentioned by justices in non-border states, was not supported by the analysis. Four of the five top issues were the same (technology, stewardship, budget, efficiency) for border state and non-border state justices. However, it was of note that justices in states along the border did discuss the need for diversion policies. This could be the result of the more frequent occurrence of immigration-related and drug-related crimes at the border.

The fourth hypothesis, that judicial agenda items would differ according to the region of the country, was not supported by the findings. For the most part, the justices in different parts of the country discussed the same issues: technology, budgets, court efficiency, and stewardship. Only one issue stood out from the others: the importance of policies to protect vulnerable populations from becoming victims of crime. This issue was mentioned by state court justices only in the Northeast and West.

The fifth hypothesis proposed that the agendas of U.S. Supreme Court justices would differ from those of state justices. The results indicated that this was true both for general issues and for more specific criminal justice issues. This finding supports the contention that the issues on which the state courts and the federal government focus differ, and that their constituencies differ.

Some interesting points can be made here. Only two topics were mentioned by the state justices that were also mentioned by federal justices: court budgets (the need for additional funds) and salaries/benefits for justices and court personnel. These two topics are obviously related. Another topic mentioned by state justices was efficiency, which again is intimately related to salary and budgets. It should be noted that the only topics that were similar in the judicial speeches of state and federal justices were related to the process of meting out justice and the costs of doing so, rather than to specific criminal justice issues that might be of interest to citizens. In other words, justices do not discuss subjects such as violence, human trafficking, or drug use; instead, they are more concerned with informing the public about the day-to-day difficulties they face as they attempt to run the courts as needed.

The last proposed hypothesis was that topics discussed would differ depending on how a justice was seated (i.e., elected versus appointed). This hypothesis was not supported here. The results show that how individuals become judges do not affect the issues that they discuss in their speeches. The top five issues mentioned by all three groups were technology, budgets, efficiency, housekeeping, and stewardship. This means that the idea that elected judges cater to the whims of the electorate may not hold true. In this case, the elected justices did not add items to their agendas to respond to voters, nor did they make comments to increase their public approval as a way to garner future electoral support. At the same time, appointed justices did not add items to respond to political officeholders. They did not seem to make comments based on political approval.

It is clear that agenda items in the political rhetoric of state high court justices did not vary greatly over time. One way to reconcile this finding is to consider that the justices are using their speeches as a way to communicate not only with the public but also with the other branches of state government. It could be that the chief justices are using their speeches as a means to inform the state legislature and the executive of the need for more money or better technology. In this sense, the purpose of the chief justices' speeches is to communicate not only with the public but also with the legislature and the executive. The speeches are still a form of agenda setting, but instead of setting their own agenda, they are attempting to influence the future agendas of the legislatures. Future research could attempt to determine whether a link exists between the topics mentioned by the justices and any proposals made in the legislature or proposed by the executive.

Future research into the content and effect of judicial rhetoric will improve our understanding of the effect of political communication on the public. For example, future analyses could demonstrate whether or not judicial comments affect public opinion in the same fashion as the rhetoric of presidents and members of Congress. More work is also necessary to acquire a better understanding of the effect of judicial rhetoric and judicial agenda setting on the crime control policies enacted by legislatures. This will require more research that considers other factors in addition to those included here, such as the ages, genders, and political party affiliations of the population within each state. As well, the political environment may affect political rhetoric (McNair, 2011). Yet another factor that could influence the content of political rhetoric is the increased media coverage of a politician's (and a judge's) actions. The public is more likely to be aware of issues in the courts and judicial decisions than ever before. This increased visibility in the media may have an effect on judicial rhetoric (Stanyer, 2007).

In sum, the results of the immediate study show that the topics discussed by chief justices at the state level did not vary over time. Republican and Democratic justices differed in the topics they discussed in their speeches. The issues discussed by judges in border states did not differ from those discussed in non-border states. Likewise, justices in different regions of the country focused on similar issues. The issues addressed by state justices did differ from those addressed by the Chief Justice of the United States. Finally, the method of judicial selection did not affect the agenda items provided by the justices. Future research can clarify these findings.

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