Appendix for: The Predictability of Judicial Interruptions at Oral Argument in the Australian High Court

Tonja Jacobi, Patrick Leslie and Zoë Robinson

August 2023

Appendix A: Summary statistics

We present summary statistics at the case-justice level separated by Chief Justice reign. Brennan was Chief Justice, 1995-1998 (our data beginning 1995); Gleeson, 1998-2008; French 2008-2017; Kiefel 2017-2023 (our data ends in 2020).

TABLE A1: SUMMARY STATISTICS

	Brennan (N=859)	French (N=2398)	Gleeson (N=3744)	Kiefel (N=1113)	Overall (N=10211)
justiceCaseInterrupted					
Mean (SD)	2.47 (3.26)	1.74 (2.28)	3.52 (4.09)	1.43 (2.10)	2.60 (3.43)
Median [Min, Max]	1.00 [0, 26.0]	1.00 [0, 21.0]	2.00 [0, 45.0]	1.00 [0, 16.0]	1.00 [0, 45.0]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
justiceCaseInterruptor					
Mean (SD)	11.1 (12.4)	7.92 (10.2)	15.5 (16.0)	5.86 (7.26)	11.5 (13.7)
Median [Min, Max]	8.00 [0, 122]	5.00 [0, 138]	11.0 [0, 169]	3.00 [0, 51.0]	7.00 [0, 169]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
JusticeInterruptsCounsel					
Mean (SD)	10.9 (12.3)	7.85 (10.2)	15.1 (15.7)	5.78 (7.21)	11.2 (13.5)
Median [Min, Max]	8.00 [0, 122]	5.00 [0, 138]	11.0 [0, 163]	3.00 [0, 51.0]	7.00 [0, 163]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
JusticeInterruptedByJustice					
Mean (SD)	0.178 (0.524)	0.0676 (0.269)	0.395 (0.787)	0.0764 (0.370)	0.231 (0.615)

	Brennan (N=859)	French (N=2398)	Gleeson (N=3744)	Kiefel (N=1113)	Overall (N=10211)
Median [Min, Max]	0 [0, 5.00]	0 [0, 2.00]	0 [0, 7.00]	0 [0, 6.00]	0 [0, 7.00]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
PanelSize					
Mean (SD)	5.61 (0.931)	5.78 (0.948)	5.89 (0.962)	5.91 (1.16)	5.83 (0.987)
Median [Min, Max]	5.00 [3.00, 7.00]	5.00 [3.00, 7.00]	6.00 [3.00, 7.00]	6.00 [3.00, 7.00]	5.00 [3.00, 7.00]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
HoursArgument					
Mean (SD)	5.29 (4.27)	4.42 (2.79)	5.06 (3.38)	4.21 (2.71)	4.78 (3.26)
Median [Min, Max]	4.10 [0.367, 24.6]	3.85 [0.883, 16.7]	4.27 [0.350, 27.1]	3.75 [0.367, 13.8]	4.08 [0.350, 27.1]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
scIdeolScore					
Mean (SD)	0.598 (0.275)	0.418 (0.239)	0.385 (0.310)	0.464 (0.225)	0.428 (0.283)
Median [Min, Max]	0.804 [0.0540, 0.849]	0.308 [0.0960, 0.849]	0.228 [0.0540, 0.849]	0.382 [0.228, 0.833]	0.270 [0.0540, 0.849]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
ALP_CJ					
Mean (SD)	1.00 (0)	1.00 (0)	0 (0)	0 (0)	0.401 (0.490)
Median [Min, Max]	1.00 [1.00, 1.00]	1.00 [1.00, 1.00]	0 [0, 0]	0 [0, 0]	0 [0, 1.00]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
Experience					
Mean (SD)	8.77 (5.17)	6.49 (4.76)	7.20 (4.11)	6.16 (3.38)	7.01 (4.41)
Median [Min, Max]	9.19 [0.120, 17.3]	5.58 [0.0986, 17.6]	6.90 [0.178, 16.7]	5.35 [0.159, 13.3]	6.49 [0.0986, 17.6]
Missing	6 (0.7%)	0 (0%)	6 (0.2%)	0 (0%)	2109 (20.7%)
Female					
Mean (SD)	0.136 (0.343)	0.405 (0.491)	0.0991 (0.299)	0.435 (0.496)	0.239 (0.427)
Median [Min, Max]	0 [0, 1.00]	0 [0, 1.00]	0 [0, 1.00]	0 [0, 1.00]	0 [0, 1.00]

	Brennan (N=859)	French (N=2398)	Gleeson (N=3744)	Kiefel (N=1113)	Overall (N=10211)
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
specialisation_case_match					
Mean (SD)	0.463 (0.499)	0.434 (0.496)	0.471 (0.499)	0.394 (0.489)	0.449 (0.497)
Median [Min, Max]	0 [0, 1.00]	0 [0, 1.00]	0 [0, 1.00]	0 [0, 1.00]	0 [0, 1.00]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
Area					
Civil Rights and Vulnerable Persons	61 (7.1%)	283 (11.8%)	499 (13.3%)	173 (15.5%)	1016 (10.0%)
Common Law	116 (13.5%)	403 (16.8%)	743 (19.8%)	111 (10.0%)	1373 (13.4%)
Criminal Law and Procedure	171 (19.9%)	520 (21.7%)	747 (20.0%)	326 (29.3%)	1764 (17.3%)
Economic Relations	225 (26.2%)	627 (26.1%)	918 (24.5%)	169 (15.2%)	1939 (19.0%)
International and Maritime Law	31 (3.6%)	35 (1.5%)	69 (1.8%)	0 (0%)	135 (1.3%)
Procedure and Ethics	56 (6.5%)	107 (4.5%)	203 (5.4%)	71 (6.4%)	437 (4.3%)
Public and Constitutional Law	199 (23.2%)	423 (17.6%)	565 (15.1%)	263 (23.6%)	1450 (14.2%)
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)
justiceCaseWords					
Mean (SD)	1460 (1430)	915 (834)	1870 (1700)	808 (806)	1400 (1440)
Median [Min, Max]	1120 [4.00, 10200]	702 [2.00, 8570]	1420 [1.00, 16500]	568 [3.00, 10900]	980 [1.00, 16500]
Missing	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2097 (20.5%)

Appendix B: The impact of speech on case outcomes

Results from a previous analysis of oral argument and its effect on case outcomes are reproduced here to demonstrate association between behaviour in oral argument and case outcomes.[1] In Table A2, we use logistic regression to measure the change in the probability of a justice voting for either appellant or respondent, which is a yes or no dichotomous variable. We show the significance and direction of each of our six key variables—words spoken, questions asked, and comments made to either appellant or respondent—to predict the probability of voting for each. We include controls (Year, Panel Size, Hours Argument, Ideology Score, Chief Justice, Experience, and Female) as well as fixed effects for issue area and Chief Justice. In the first three models, the dependent variable records whether a justice voted for the appellant, with explanatory variables measuring different forms of judicial activity that appellant advocates may face—respectively, words, comments, and questions. The pattern is reversed for models 4–6, in which the same behaviors directed to respondents are examined. We expect negative and significant coefficients for all six key variables, indicating that a justice will engage in more activity during the time of the advocate that the justice ultimately votes against. The results are clear. Even when we control for various potentially confounding factors, the more words, comments, and questions that a justice addresses to a party (be it appellant or respondent), the more likely the party is to fail to secure the vote of that justice. In each model, the coefficient is highly statistically significant (p<0.01).

---

[1] From: Jacobi, T., Robinson, Z., Leslie, P. (2022) Comparative Exceptionalism? Strategy and Ideology in The High Court of Australia, Forthcoming: American Journal of Comparative Law.

TABLE A2: ORAL ARGUMENT AND INDIVIDUAL JUSTICE VOTING CHOICE

	Voted for Appellant			Voted for Respondent		
	Model 1	**Model 2**	**Model 3**	**Model 4**	**Model 5**	**Model 6**
Justice Case Words to Appellant	-0.0002***					
	(0.00003)					
Justice Case Comments to Appellant		-0.009***				
		(0.001)				
Justice Case Questions to Appellant			-0.013***			
			(0.002)			
Justice Case Words to Respondent				-0.001***		
				(0.00004)		
Justice Case Comments to Respondent					-0.018***	
					(0.002)	
Justice Case Questions to Respondent						-0.027***
						(0.002)
Controls & Fixed Effects	✓	✓	✓	✓	✓	✓
N	9040	9040	9040	9040	9040	9040
Log Likelihood	-6029.729	-6037.447	-6024.583	-5930.582	-5995.211	-5972.889
AIC	12101.460	12116.890	12091.170	11903.170	12032.420	11987.780

Note: ***p < .01; **p < .05; *p < .1