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# On Estimating Personality Traits of U.S. Supreme Court Justices

## *Online Appendix\**

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\*Replication materials are available at the *Journal of Law and Courts* Dataverse website (<https://dataverse.harvard.edu/dataverse/jlc>).

## Assessing the Validation of SCIPes Beyond Ideology

In the article, we note a general lack of consistency between the SCIPe trait estimates and other, non-ideology measures. That statement builds upon analysis from our published work. More specifically, we examined six other indicators to assess trait validity: the justice's lifespan (age at time of death), number of children (logged), marriage length, relationship satisfaction, job performance (qualifications), and job satisfaction (Court tenure, logged).

As a preliminary matter, it is important to recognize that the psychology literature is voluminous. Thus, when trying to summarize the literature's findings about how a personality trait should correlate with a given indicator, meta-analyses are instructive. When a meta-analysis is unavailable, published studies—especially those with large samples—can guide the search for benchmark correlations. Black et al. (2020) detail many of the challenges with such an enterprise.

With six indicators and five traits, there are 30 total possible comparisons. The goal of this validity exercise is to see if the correlation between the SCIPes are consistent (or not) with the literature. To clarify our coding rules, we coded as consistent whenever either of these two conditions were met: (1) The correlation between the SCIPes and the indicator is significant *and* the direction of the correlation is the same as at least one out of two studies in the literature (or two out of three) that has examined the same correlation. The significance cutoff we use is  $p < 0.20$ ; or (2) The correlation between the SCIPes and the indicator is *not* significant and that is the same as at least one out of two studies in the literature (or two out of three). Non-significant correlations are those where  $p > 0.20$ . If it fails to meet either of those conditions, it was coded as not consistent.

Table 1 summarizes these results. A "YES" in the table indicates that the correlation of the SCIPe trait was consistent with the relationship found in the literature. Results are coded from Chapter 3 of Black et al. (2020).

These results largely show that the SCIPes are not clearly valid. For conscientiousness, only one of the six indicators is consistent with the literature. For agreeableness, three

Table 1: Summary of SCIPEs Validation with Other Indicators

	Conscientiousness	Agreeableness	Neuroticism	Openness	Extraversion
Age at Death	no	YES	YES	no	YES
Number of Kids	no	no	YES	no	no
Marriage Length	YES	YES	no	no	no
Relationship Satisfaction	no	no	YES	YES	no
Job Performance	no	YES	no	no	YES
Job Satisfaction	no	no	no	no	no

out of six are consistent with the literature. Neuroticism shows only two out of six that are consistent, openness exhibits only one out of six, and extraversion finds two out of six; though, we should note that two findings for extraversion were both of the null variety. In total, nine out of 30 are consistent with what we find in the literature. Only one measure, agreeableness, comes close.

### Agenda-Setting Analysis Control Variables & Results

Unless otherwise indicated, the source of information we use to code these variables is the cert pool memos written for each petition.

*U.S. Supports Grant.* This variable reflects cases in which the Solicitor General (SG) recommends that the Court grant review to a petition, acting as either the petitioner or amicus curiae in favor of review. Given the notable influence of the U.S. government and SG on the Court’s decision making (e.g., Black and Owens 2012; Wohlfarth 2009), we account for cases in which the SG has taken a favorable position on a petition. We code the variable as 1 when the SG supports the grant of review, 0 otherwise.

*U.S. Opposes Grant.* This variable reflects instances when the SG recommends that the Court deny review to a petition, acting as either the respondent or amicus curiae opposed to review. We code the variable as 1 when the SG opposes review; 0 otherwise.

*Intermediate Court Reverses.* We account for instances where the U.S. Court of Appeals reversed the decision of the lower court (usually a trial court). Justices might be more inclined to review such cases, given the disagreement between the trial and appellate courts. *Intermediate Court Reverses* receives a value of 1 when the Court of Appeals reversed the court below it; 0 otherwise.

*Intermediate Court Dissent.* The presence of a dissent in the lower court often sends a strong signal to justices about the importance of a case. Circuit court judges tend not to dissent. Their refusal is partly a function of time constraints (they hear so many cases per year that they cannot dissent often) and partly a function of norms against dissenting. Whatever the reason, it is clear that a dissent signals something important. And so circuit court decisions accompanied with a dissent signal a greater need for Supreme Court review. Thus, we control for cases with dissent in the appellate court, coding *Intermediate Court Dissent* as 1 when the pool memo writer notes a dissent in the lower court; 0 when the memo writer does not mention dissent.

*Intermediate Court Judicial Review.* We also account for cases where the appellate court exercised judicial review by striking a federal statute. Justices might perceive a greater need to review such cases (Black and Owens 2009). We code *Intermediate Court Judicial Review* as 1 if the pool memo writer noted the lower court's exercise of judicial review of a federal statute; 0 otherwise.

*Intermediate Court Unpublished.* Judges on federal appellate courts may use a brief, unpublished opinion to dispose of easy or mundane cases that lack precedential value. The High Court is unlikely to review such decisions because they tend to be of little legal or policy value. We code *Intermediate Court Unpublished* as 1 when the pool memo writer noted that the Court of Appeals' opinion was unpublished; 0 otherwise.

*Amicus Briefs.* A major indicator of legal importance is the number of amicus curiae briefs filed in support of, or opposition to, a petition (Caldeira and Wright 1988). Greater interest by interest groups should reflect a petition that is more salient and thus a better candidate for review by the Supreme Court. We code *Amicus Briefs* as the total number of amicus briefs filed at the agenda-setting stage, as recorded in the cert pool memos.

*U.S. Law Week Article.* Another indicator of legal importance—and thus perhaps a sign that a petition is more certworthy—occurs when the legal periodical *U.S. Law Week* publishes a summary of the Court of Appeals decision that a party appealed to the Supreme

Court. We code this variable as 1 if the periodical included coverage about the appellate court's decision; 0 otherwise. As this information is exogenous to the cert pool memo, we used LexisNexis to gather data for it.

*Merits Outcome Closer.* We include a variable to control for a justice's potential desire to review a case for strategic, policy-based reasons. We assign *Merits Outcome Closer* a value of 1 if the voting justice's policy preference is ideologically closer to the expected merits outcome (if the Court were to decide the case) than to the status quo; 0 otherwise. To code this variable, we rely on the Judicial Common Space (JCS) (Epstein et al. 2007), which offers the ideal points of Supreme Court justices on the same ideological scale as federal circuit court judges. We identify the expected merits outcome using the ideal point of the Court's median justice. To identify the status quo, we use the JCS scores of the circuit court judges who reviewed the case. Given a unanimous three-judge panel decision, we identify the status quo as the JCS score of the median panel judge. When the lower court decision involved a dissent or special concurrence within a three-judge panel, we code the status quo as the midpoint between the two judges in the majority. If the lower court decision was rendered en banc, we identify the status quo as the median judge in the en banc majority. And, when district court judges sat by designation on the circuit panel, we follow Giles et al. (2001) and code the district court judge's ideal point consistent with the norm of senatorial courtesy.

Table 2: The Conditional Impact of Justice Conscientiousness and Lower Court Conflict on Supreme Court Agenda Setting

	BOWW		SCIPE	
	(1)	(2)	(3)	(4)
Conscientiousness	-0.49*	-0.51*	-0.25*	-0.30*
	(0.18)	(0.20)	(0.14)	(0.14)
Strong Conflict	1.76*	1.84*	1.60*	1.68*
	(0.16)	(0.18)	(0.13)	(0.14)
Weak Conflict	0.77*	0.85*	0.54*	0.63*
	(0.17)	(0.18)	(0.14)	(0.15)
Alleged Conflict	0.04	0.04	-0.09	-0.09
	(0.18)	(0.19)	(0.15)	(0.16)
Conscientiousness x Strong Conflict	0.28	0.28	-0.08	-0.05
	(0.20)	(0.21)	(0.14)	(0.14)
Conscientiousness x Weak Conflict	0.43*	0.40*	-0.33*	-0.28*
	(0.21)	(0.22)	(0.15)	(0.16)
Conscientiousness x Alleged Conflict	0.24	0.23	-0.26	-0.23
	(0.23)	(0.24)	(0.16)	(0.16)
Openness	-0.005	0.04	-0.05	-0.05
	(0.08)	(0.08)	(0.14)	(0.15)
Extraversion	0.18*	0.14	0.11	0.18
	(0.10)	(0.10)	(0.18)	(0.19)
Agreeableness	0.17*	0.23*	0.26	0.26
	(0.08)	(0.08)	(0.17)	(0.18)
Neuroticism	0.24*	0.21*	-0.60*	-0.69*
	(0.07)	(0.08)	(0.23)	(0.25)
U.S. Supports Grant		0.91*		0.90*
		(0.13)		(0.12)
U.S. Opposes Grant		-0.21*		-0.21*
		(0.11)		(0.11)
Intermediate Court Reverses		0.39*		0.38*
		(0.09)		(0.09)
Intermediate Court Dissent		0.30*		0.29*
		(0.10)		(0.10)
Intermediate Court Judicial Review		1.65*		1.61*
		(0.22)		(0.22)
Intermediate Court Unpublished		-0.39*		-0.37
		(0.23)		(0.24)
Amicus Briefs		0.21*		0.21*
		(0.05)		(0.05)
U.S. Law Week Article		0.22*		0.22*
		(0.10)		(0.10)
Merits Outcome Closer		0.39*		0.57*
		(0.10)		(0.10)
Constant	-1.76*	-2.68*	-1.59*	-2.57*
	(0.15)	(0.20)	(0.11)	(0.15)
<i>N</i>	3024	3024	3024	3024
$\chi^2$	351.86*	483.33*	325.29*	492.79*

*Note:* Table entries are coefficients from a logistic regression model with robust standard errors in parentheses; \* denotes  $p < 0.05$  (one-tailed). The dependent variable indicates whether each justice cast a vote to grant certiorari, among a random sample of 360 paid, non-death penalty petitions (1986-1993 terms) that were appealed from a federal court of appeals and made the Court's discuss list. Models 1 and 2 include the Black, Owens, Wedeking, & Wohlfarth (BOWW) personality estimates while Models 3 and 4 specify the Hall et al. (2021) SCIPE scores.

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