REMEDYING PUBLIC DISAPPROVAL OF THE SUPREME COURT: EXPANDING THE ROLE OF THE PUBLIC INFORMATION OFFICER

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ABSTRACT

Current public opinion polling of the U.S. Supreme Court is at an all-time low with a startling 60% disapproval rating. Couple this statistic with the fact that the Court speaks to the public almost exclusively through elaborate official documents that almost no one but trained lawyers can understand, and it is perhaps unsurprising that the public is disenchanted with the Court in the wake of recent high-impact decisions such as Dobbs *and* Students for Fair Admissions*. The explanation of these momentous decisions, among other rulings, to the public have been traditionally abdicated to the press, but with the modern landscape of American news media, this arrangement has become unsustainable if the Court wishes to get back to its traditionally healthy public opinion rating. This article suggests and explains a proposal for an expanded role of the Public Information Officer that includes similar duties to that of a press secretary in order to remedy the Court's historically low public approval rating.*

I. INTRODUCTION

Since 2020, when the U.S. Supreme Court held a 66% approval rating amongst the public,[1] public opinion has been going the wrong direction for the Court with a current approval rating of 40%. Moreover, the 2020 numbers have

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1. Charles Franklin, *New Marquette Law School National Survey Finds Approval of U.S. Supreme Court at 40%, Public Split on Removal of Trump from Ballot*, MARQ. UNIV. L. SCH. POLL (Feb. 20, 2024), https://law.marquette.edu/poll/2024/02/20/new-marquette-law-school-national-survey-finds-approval-of-u-s-supreme-court-at-40-public-split-on-removal-of-trump-from-ballot/ [https://perma.cc/5CX8-4VDM].

almost reversed with 60% of Marquette Law School's poll respondents explicitly stating they disapprove of the Court.[2] Though it had already been decreasing, public opinion of the Court took a notable plunge in May of 2022 after the leaked draft of the *Dobbs v. Jackson Women's Health Organization*[3] decision and has never recovered.[4] Critical statements from prominent politicians regarding the Court have also been considerably damning over the past few years, with stinging examples such as Senator Chuck Schumer famously stating on the steps of the Court, "[']You have released the whirlwind, and you will pay the price.[']"[5] To make matters worse, the press has shown no greater sympathy for the Court than either the public or politicians. One reporter, Jessica Pieklo of *Rewire News Group*, summed up the current press sentiment quite bluntly by stating, "[']There was a persistent belief before *Dobbs* that the Supreme Court is supposed to be a nonpolitical actor. . . . I think the leaked opinion created an opportunity for journalists to see behind the curtain, to see that the Court is, as the third branch of government, a political actor.[']"[6] Considering the grim outlook for the nation's opinion on the Supreme Court, it would seem noncontroversial to say that a change in the way of public relations would behoove the Court. This article suggests this change be made by expanding the role of the Court's Public Information Officer to include duties typically found within the prerogative of a press secretary, albeit tailored to the unique needs of the Court.

Press secretaries, or officers functioning in such a role, are utilized by members of Congress, the White House, and numerous offices and departments within the executive branch, to include the Department of Defense, the Department of Homeland Security, the Department of Education, and many others. These officers are in charge of creating and disseminating press releases, coordinating and managing media relations, and, perhaps most importantly, being an immediate point of contact to explain positions and decisions made by the offices they represent to the media who in turn relay the given explanations to the public.[7] It can then be said that the press is a proxy for the public, and press secretaries are the direct link between government decision-makers and the public's proxy. For the Court, the closest thing to a press secretary is the Public Information Officer, and to say the roles are close is more than generous.

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2. *Id.*

3. 597 U.S. 215 (2022).

4. Franklin, *supra* note 1.

5. Ariane de Vogue, *Chief Justice John Roberts Rebukes Chuck Schumer for Comments About Kavanaugh and Gorsuch*, CNN, https://www.cnn.com/2020/03/04/politics/schumer-roberts-threats-supreme-court/index.html [https://perma.cc/99CB-YEVF] (last updated Mar. 4, 2020, 9:06 PM).

6. Emily Russell, *Q&A: Rewire News Group's Editors on Abortion Coverage, Supreme Court Reporters, and TikTok*, COLUM. JOURNALISM REV. (Feb. 8, 2023), https://www.cjr.org/the_media_today/rewire_abortion_coverage.php (Interview by Emily Russell with Jessica Mason Pieklo, Executive Editor, Rewire News Group (Feb. 1, 2023)).

7. *See* Sarah Allen Gershon, *Press Secretaries, Journalists, and Editors: Shaping Local Congressional News Coverage*, 29 POL. COMMC'N 160, 161–62 (2012) (discussing several key functions of congressional press secretaries and several prominent methods they employ).

The Court's Public Information Office, led by the Public Information Officer (PIO), was first established in 1973 at the direction of Chief Justice Warren Burger.[8] Since the PIO's inception, it has been responsible for fairly mundane tasks, such as coordinating seating for members of the press, giving information on when Court proceedings will be held, and taking press inquiries, albeit rarely answering them.[9] The Public Information Officer has never functioned as a press secretary, but more of an usher and gatekeeper for members of the press.[10] This "stonewall" press strategy has not always been the case with the Court, however. This history is where one must first look to understand how the Court can evolve the PIO to address its distressful public approval rating.

This article examines a proposal for expanding the present PIO duties in four further sections. Section II lays out how the Court has made the public aware of its official decisions and opinions, or lack thereof, throughout its history. Section III discusses what exactly press secretaries' duties and practices are and how they are useful to the offices and officers they represent. Section IV spells out the specific proposal for the expanded PIO as well as responses to potential objections. Also discussed in this section is how two other major democracies, Canada and Israel, have either an officer who functions in a similar manner to the proposed expanded PIO (Canada) or have a more open forum for their Justices to elaborate to the press and public on how it is they decided the way they did and what the meanings of their official decisions and opinions are (Israel). Section V concludes the Article by reiterating why this public opinion issue is urgent for the Court and why this proposal to expand the PIO is the best solution.

II. HOW THE COURT SPEAKS: THEN AND NOW

In the modern era, the U.S. Supreme Court, as well as all other federal courts, only speak of active cases through official written materials and oral arguments.[11] There are the occasional speeches given by Justices from time to time that shed light on the thinking of Court members, but these are typically long after cases have been decided and out of the public's immediate attention. For example, Justice Scalia famously noted his thoughts on his decision to rule against flag burning laws over ten years after the cases had been decided when he stated at a talk at the University of Mississippi in 2003 that, "'I would have

8. Jonathan Peters, *Institutionalizing Press Relations at the Supreme Court: The Origins of the Public Information Office*, 79 MO. L. REV. 985, 995 (2014).

9. *Id.* at 997 (A journalist assigned to cover the Court during the tenure of the first PIO, Barrett McGurn, said of the officer, "'You'd have to break Barrett's arm to get him to do anything, because he didn't care about the press.'" (quoting Interview by Jonathan Peters with Lyle Denniston, Reporter, SCOTUSblog, in Wash. D.C. (May 17, 2011))).

10. *Id.* at 996 (stating that the first PIO thought of the office as "a place where reporters could get documentary materials and courtroom seating but not much else.").

11. *A Journalist's Guide to the Federal Courts*, ADMIN. OFF. U.S. CTS., https://www.uscourts.gov/statistics-reports/federal-court-media-basics-journalists-guide [https://perma.cc/WV4T-AXD2]; *see also* Barry Sullivan & Ramon Feldbrin, *The Supreme Court and the People: Communicating Decisions to the Public*, 24 J. CONST. L. 1, 14 (2022) ("The Journalist's Guide accurately reflects the traditional view, namely, that courts speak only through their public, in-court utterances or through their written opinions.").

been delighted to throw Mr. Johnson in jail. . . . Unfortunately, as I understand the First Amendment, I couldn't do it.'"[12] The Court's modern tradition of speaking only through official written materials and oral arguments, aside from the occasional comments long after case(s) have been decided, has not always been the case, however.

At the beginning of the Court's history, Court decisions were not published in official written documents but rather were primarily disseminated to the public by news reporters who were inside the Court at the time the Justices handed down their decisions.[13] However, even given the direct access to the Court and its members, news reports on Court decisions were often inaccurate and relied upon news reporters' ability to hear what was said and their limited knowledge of the law;[14] ironically similar to what happens in the present day during oral arguments. Along with newspaper reporters, there were also private reporters who cataloged the Court's decisions into volumes made to be sold for profit.[15] The Court eventually created the position of an official reporter in 1817, but access to the decisions of the Court remained in the hands of a relatively small number of people who had a need for the documents.[16] Perhaps unsurprisingly, these reports were not only difficult to obtain, but were also partially unreliable as they were riddled with errors.[17] Between the practical obstacles of news reporters inside the courtroom and the scant access to error-filled Court reports, news of Court decisions was less than ideal and far from able to give a clear picture of American law to the public.

At times during this early period of the Court, news reports would be so inaccurate that Justices would write their own press pieces to address the respective issues,[18] albeit anonymously, which is a far cry from the modern tradition of communicating the meanings of Court decisions. There are also instances of other Court officers addressing the press over reporting inaccuracies, such as a memo sent to newspapers by the clerk of the Court in 1793[19] regarding the decision in *Chisholm v. Georgia*.[20] Dealing with

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12. Michael A. Bailey & Forrest Maltzman, *Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court*, 102 AM. POL. SCI. REV. 369, 372 (2008) (quoting Antonin Scalia, Justice, Address at University of Mississippi (2003)).

13. *See* Sullivan & Feldbrin, *supra* note 11, at 15.

14. *Id.* at 17.

15. *Id.* at 15–16.

16. *See* Thomas J. Young, Jr., *A Look at American Law Reporting in the 19th Century*, 68 L. LIBR. J. 294, 296 (1975).

17. *See* Craig Joyce, *The Rise of the Supreme Court Reporter: An Institutional Perspective on Marshall Court Ascendancy*, 83 MICH. L. REV. 1291, 1297 (1985) (stating that one of the first judicial reporters in American history said of the early Court and American judiciary that American law at that point was "'soon forgot, or misunderstood, erroneously reported from memory.'" (quoting REPORTS OF CASES ADJUDGED IN THE SUPERIOR COURT OF THE STATE OF CONNECTICUT FROM THE YEAR 1785 TO MAY 1788 WITH SOME DETERMINATIONS IN THE SUPREME COURT OF ERRORS iii (1789))).

18. *See* Sullivan & Feldbrin, *supra* note 11, at 29 (recalling that Chief Justice Marshall responded to critics and misrepresentations of the Court's ruling in *McCulloch v. Maryland* by anonymously writing pieces in several outlets).

19. *Id.* at 18.

20. 2 U.S. (2 Dall.) 419 (1793).

inaccurate reporting was not just a problem for the early Court, however. For example, in 1921, reporters declared the result of a decision by Chief Justice Taft in a labor union case to be the exact opposite of what it was,[21] and, similarly, in 1935, the Associated Press published a piece that incorrectly interpreted the outcomes of the *Gold Clause* cases.[22] In more recent memory, both CNN and Fox News incorrectly reported[23] that the Court had struck down the individual mandate of the Affordable Care Act.[24] It is examples such as these that moved the Court to appoint a staff member to attend to the press, though what that job entails and is titled has varied over the years.

In 1936, the first person to be officially assigned to deal with members of the press at the Court was a staffer by the name of Ned Potter.[25] More or less, Potter was tasked with being a secretary in the general sense of the word. He provided documents for the press, coordinated their seating in the courtroom, and not much else.[26] What he absolutely did not do was act anything like a *press* secretary, which is to say he did not answer questions about legal matters before the Court nor those that had previously been before the Court, case selection, or any other official matter pertaining to the Court's legal analysis or decision-making.[27] The one caveat here is that towards the end of Potter's time in this liaison position, sometime before 1947, the Court finally began issuing the list of cases it would take up in the coming term.[28] Moreover, Potter was not a trained lawyer, nor a journalist, so the extent to which he could give comment on legal matters before the Court had he wanted to or been allowed to would have been quite dismal. This liaison position eventually morphed into its current form: the Public Information Officer.

As was previously mentioned, the PIO was established by Chief Justice Warren Burger in 1973. Similar to the liaison position that it originated from, the PIO would give no press releases, press conferences, or any answers to questions regarding legal matters before the Court.[29] Among the largest of changes that accompanied the creation of the PIO was the near complete stonewalling of reporters by the first occupant of the office's leadership, Barrett McGurn.[30] McGurn was exactly what Chief Justice Burger had in mind for the

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21. MICHAEL KAMMEN, A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE 358 (1986).

22. Perry v. United States, 294 U.S. 330 (1935); Nortz v. United States, 294 U.S. 317 (1935); Norman v. Balt. & Ohio R.R. Co., 294 U.S. 240 (1935); Everette E. Dennis, *Another Look at Press Coverage of the Supreme Court*, 20 VILL. L. REV. 765, 770 (1975) ("In 1935, shortly after the AP had misinterpreted a majority opinion in the *Gold Clause* cases and had issued a bulletin based on that misinterpretation, Chief Justice Charles Evans Hughes allowed reporters to have proofs of the opinions as the Justices began reading them aloud." (footnote omitted)).

23. Brian Stelter, *CNN and Fox Trip Up in Rush to Get the News on the Air*, N.Y. TIMES (June 28, 2012), https://www.nytimes.com/2012/06/29/us/cnn-and-foxs-supreme-court-mistake.html.

24. Sullivan & Feldbrin, *supra* note 11, at 3; 26 U.S.C. § 5000A.

25. Peters, *supra* note 8, at 989.

26. *Id.* at 990.

27. *Id.* at 989–90.

28. *Id.* at 990–91.

29. *Id.* at 996.

30. *Id.* at 997.

position: a loyalist to the institution of the Court and someone who would give as little information as possible, reliable or not, and would lean towards simply not answering press inquiries at all.[31] Perhaps put best, one reporter referred to McGurn as "'the palace guard."[32] While McGurn and Chief Justice Burger have long since been gone, their mark has held on the PIO. To this date, the PIO does not explain case outcomes, hold press conferences, or create press releases of any kind related to official legal matters before the Court.

While there are times throughout its history where the Court has spoken on legal matters outside of oral arguments and official documents, the only explanations for Court rulings in the modern era are found in official Court materials. Though some Justices will share their thought processes on cases that are years in the past, the only place to find a holistic and authoritative account of the Court's decision-making is in the published decisions themselves. There are a number of issues with this in terms of communicating the Court's thoughts and decision-making to the public, not the least of which is the legal jargon that few outside the profession can understand, the time it takes to fully understand the Court's published opinions and rulings, and the reliance on the modern American news media left to their own devices to relay the proper interpretation of Court decisions to the public. An interesting and viable solution to this problem is to consider expanding the role of the PIO to include the duties of a press secretary, though tailored specifically for the unique needs of the Court. But before such an evolution in the position can be fully discussed, it would be beneficial to review just what it is press secretaries do and why they are utilized by the other two branches of the federal government.

III. THE JOB OF PRESS SECRETARIES

Though the specific duties of a press secretary and how they carry out the job will depend on the person filling the role and the office and officer they represent, the job is generally thought to function as an advisor and a gatekeeper who will paint their employer in the best possible light and present to the press the optimal message for their needs.[33] Press secretaries, or staff members functioning as such, can be found at nearly all levels of government, aside from the judiciary, of course.[34] The reason for this is quite simple: officials do not have the time to adequately address the press personally, and, furthermore, the

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31. *Id.* at 997–98.

32. *Id.* at 997 (quoting Interview by Jonathan Peters with Richard Carelli, Former Reporter, Associated Press, in Wash. D.C. (May 16, 2011)).

33. *See* Edward J. Downes, *Hacks, Flacks, and Spin Doctors Meet the Media: An Examination of the Congressional Press Secretary as a (Potential) Public Relations Professional*, 10 J. PUB. RELS. RSCH. 263, 264–265 (1998); *see also*, WOODY KLEIN, ALL THE PRESIDENTS' SPOKESMEN: SPINNING THE NEWS—WHITE HOUSE PRESS SECRETARIES FROM FRANKLIN D. ROOSEVELT TO GEORGE W. BUSH 6 (2008) ("The style and manner in which news has been given out changes with every press secretary, but one thing they all have in common is the responsibility of serving and protecting their boss, the [P]resident, in the most effective way possible.").

34. *See* STEPHEN HESS, THE GOVERNMENT/PRESS CONNECTION: PRESS OFFICERS AND THEIR OFFICERS 7–9 (1984) (discussing differences in press secretaries serving throughout the executive branch.); *see also* Gershon, *supra* note 7, at 164. For their study, the author randomly selected 100 of the 435 members of the House of Representatives, and every one of them had press secretaries. *Id.*

image and message they wish to be impressed upon reporters is probably best left in the capable hands of a staff member whose daily work is devoted to just that.[35] As was mentioned, not all press secretaries carry out their duties in the same way, and the effectiveness of press secretaries depends on a variety of factors.

The effectiveness of a press secretary often depends on their relationships between themselves and the reporters they frequently deal with. This involves being personally familiar with reporters, having confidence, and having an understanding of the players within the journalism industry in that not all news outlets are created equal.[36] This necessarily means a press secretary must understand what specifically the public and the press want to know about at any given time.[37] Without understanding what it is that is presently of interest to reporters, a press secretary cannot function in their primary roles of advisor and gatekeeper to their assigned officer and office, nor would they be able to frame messages properly.

Indeed, whether presidential, congressional, bureaucratic, or any other type of press secretary, framing the message of the office is an imperative.[38] Usually presented with a negative connotation, the framing of messages is often referred to as "spin", and the press secretaries who are the best at it tend to be labeled as "spin doctors" or other not-so-flattering labels.[39] Naturally, some press secretaries put more spin on their messages than others, and some messages may require more spin simply because they revolve around topics sensitive to public opinion. It would be fair to say that a presidential press secretary will practice more spin than a press secretary for an office within the Department of Transportation or another rather mundane bureaucratic institution within government. Regardless of the office a press secretary represents, however, they must be able to effectively spin when they need to. Perhaps put best, Dana Perino, the final press secretary for President George W. Bush and now Fox News anchor, said:

> In my opinion, if we tell the truth and we can explain what the president's decision is, we are providing the information from our point of view. And other people have other points of view. Spin has become a verb with a negative connotation that basically describes what my job is. I do not necessarily think it is a negative word. My job is to make sure there is the best possible coverage of the president.[40]

There are other skills which are extremely helpful, but not strictly necessary, for a press secretary to be effective at their job. These social skills are rather hard to put a fine point on, such as affability, body language, and the ability to know people's strengths and weaknesses. Some effective press secretaries only have one of these skillsets, some have all of them, and no

35. *See* Downes, *supra* note 33, at 265.

36. HESS, *supra* note 34, at 21.

37. *Id.* at 38.

38. Downes, *supra* note 33, at 265.

39. KLEIN, *supra* note 33, at 6–8.

40. *Id.* at 7 (quoting Interview by Woody Klein with Dana Perino, Press Secretary (2007–2008), President George W. Bush (Sept. 12, 2007)).

particular combination can guarantee success.[41] Affability, for example, can help establish positive relationships with reporters on a press secretary's beat who they have to deal with on a regular basis. Body language can help show confidence and a familiar demeanor with those around, and it can show honesty as well.[42] Larry Speakes, one of President Ronald Reagan's press secretaries, though he never held the official title,[43] was famous for these traits. Speakes was the quintessential drawn-out Mississippian with a hefty southern accent, and he tended to be an easy-going character that reporters got along with, most of the time anyways.[44] Speakes had a fairly quick wit that allowed for good rapport with reporters during press conferences. After being asked a question regarding the AIDS epidemic in the latter part of 1982, Larry Speakes in his Southern twanged accent said to the inquiring reporter, "I thought I heard you at the State Department over there, why didn't you stay over there?" to which the reporter replied, "Because I love *you*, Larry!"[45] On a separate occasion, Speakes joked with a reporter who was being harsh towards someone from Mississippi by saying, "[D]on't you be on him. He's a nice fella. Talks funny, but he's nice."[46] Having said this, these rather intangible "people skills" do not guarantee success or that a press secretary will remain successful. At the end of the day, both press secretaries and reporters have a job to do, and that is what matters most. By the time Larry Speakes's tenure in the White House had come to an end, his good-will with reporters was all but shot regardless of his affability or personality.[47] In the midst of the Iran-Contra affair during the latter part of 1986, Speakes's last full year working in the White House, it had become abundantly clear to reporters that Larry was giving inaccurate information, being kept in the dark by the administration, and, furthermore, that he was no longer a reliable source of information.[48]

When given the best and most reliable information as well as being proficient at their duties, press secretaries are useful personnel for disseminating information to the press, and therefore the public, in a manner which is fitting and the most beneficial for the office and officer who they represent. It is no surprise that they can be found in virtually all congressional offices and the vast majority of executive branch offices. What *is* perhaps surprising, at least to those outside of the legal profession, is that no press secretary or any officer functioning as one can be found within the judicial branch of the U.S. government, most notably at the level of the Supreme Court. This is particularly

41. *See* HESS, *supra* note 34, at 19–23.

42. *See id.* at 19–21.

43. Michael D. Shear, *Larry Speakes, Public Face of Reagan Era, Dies at 74*, N.Y. TIMES (Jan. 10, 2014), https://www.nytimes.com/2014/01/11/us/larry-speakes-public-face-of-reagan-era-dies-at-74.html.

44. *See* HESS, *supra* note 34, at 19–21; W. DALE NELSON, WHO SPEAKS FOR THE PRESIDENT?: THE WHITE HOUSE PRESS SECRETARY FROM CLEVELAND TO CLINTON 224 (1998).

45. Brett LoGiurato, *The Stunning Way the White House and Reporters First Reacted to the AIDS Crisis*, BUSINESS INSIDER (Dec. 1, 2025, 11:21 AM), https://www.businessinsider.com/aids-larry-speakes-obama-bush-funding-2013-12.

46. HESS, *supra* note 34, at 19–20.

47. *See* NELSON, *supra* note 44, at 229–30.

48. *Id.* at 229.

astonishing when considering the duties of a press secretary and the aforementioned dismal public approval rating of the Court.[49] A plausible and viable solution for this low public opinion rating is the expansion of the Court's Public Information Officer to include certain duties performed by press secretaries. In order for this to work, however, the expansion will need to be specifically tailored to the unique needs and realities of the Court. For perhaps obvious reasons, a traditional press secretary simply would not fit within the modern American legal system, and especially not for the Supreme Court.

IV. PROPOSAL FOR EXPANDING THE ROLE OF THE P.I.O.

Before addressing the specifics of what this proposal for expanding the role of the Court's Public Information Officer will exactly look like and how it would serve the present needs of the Court, it would be beneficial to note how this would be simultaneously beneficial for the press. In 2012, BYU held a symposium addressing modern issues between the press and the Court.[50] The symposium noted several key issues in the press-Court relationship: those covering the Court often make comments or write stories pertaining to decisions and opinions they have not fully read or understood, press reports often lack crucial information regarding the Justices' decision-making, the press does not know which decisions and opinions will be released or when, and the Court does not believe journalists will report accurately or ethically.[51] All of these crucial issues could be resolved by a well-crafted and uniquely tailored expansion of the PIO, and public opinion of the Court may very well improve as a result. For clarity, this section will be broken into subsections to clearly denote the specifics of the proposal.

A. Explaining the Court's Official Decisions and Opinions

First and foremost, the proposed expansion of the PIO's role into the realm of a press secretary will require the PIO to be able to explain Court decisions and opinions to the press. If the press is to report timely and accurately as well as have a full understanding of decisions and opinions and how the Justices came to their conclusions, then this will be an absolute necessity. As it stands, no PIO in the Court's history has been a trained lawyer, which is by design.[52] At the PIO's inception, Chief Justice Burger did not want the PIO to address reporters on the content of Court decisions or opinions, and he certainly did not want them to give their personal opinion.[53] While it would still be entirely inappropriate to give personal opinions on Court decisions and opinions, addressing the content of Court documents will be exactly what the press secretarial duties of the proposed expanded PIO would necessarily entail. This would obviously require that not only the PIO be familiar with the press and its practices and practitioners, but that they also be a trained lawyer. The most obvious potential objection to this piece of the proposal would be precisely what

49. Franklin, *supra* note 1.

50. Symposium, *The Press, the Public, and the U.S. Supreme Court*, 2012 BYU L. REV. i (2012).

51. *Id.* at ii–iii.

52. Peters, *supra* note 8, at 996.

53. *See id.*

Chief Justice Burger was concerned with, namely that the PIO's statements could be seen as controlling legal material.[54] However, it could and should be stated by the proposed expanded PIO ad nauseum, as well as on the PIO's webpage, that any statements made by the PIO to the press are merely an effort to enhance public understanding of the complicated legal materials produced by the Court, are in no way controlling within American law, and that the only controlling legal materials are those decisions and opinions produced by the Justices themselves. On that note, a trained lawyer would know exactly how crucial it is to make this abundantly clear, and they would perhaps be more cautious of giving any possible impression that their statements are controlling within the law than any other person who might serve as the PIO precisely because of the fact they are a trained lawyer.

The ability of the proposed expanded PIO to explain to the press what the Court's decisions and opinions are has two key mutual benefits for the press and the Court. First, the PIO would be able to explain to the press in layman's terms what the Court says, which not only allows for the press to adequately understand Court decisions, but also allows the Justices to write as they see fit without having to worry, to the extent they ever have, about confusion within the press and public over legal jargon or lengthy analyses written with an elitist lexicon. Second, the PIO would not only be able to explain the legal meaning of what the Court says, but also the way the justices came to their conclusions. This could see a reduction in speculation amongst Court reporters and commentators, which understandably is mutually beneficial to both the Justices and the press. Logistically, this is quite feasible. The Justices deliberate and craft their decisions and opinions well ahead of when they are released, and the proposed expanded PIO would merely need to be allowed in the room as these events take place. Similar to a secretary taking notes, the PIO could ask questions and clarify their understandings with each individual justice as they are all in the same room hashing out the various matters before them. Of course, being that the PIO works in the same building as the Justices, they could also ask follow-up questions with Justices as needed after meetings have adjourned. Moreover, the PIO would have access to the final drafts of the Court's decisions and opinions well before they are to be released for public consumption. This leaves adequate time for a PIO serving in this proposed expanded role to fully understand inside and out the decisions and opinions as well as how the Justices arrived at their conclusions, confirm their understandings are correct, and to do so well before they address the press.

B. An Off-Site Briefing Space

Beyond being able to explain to the press the decisions and opinions of the Court, a PIO in this proposed expanded role would need a space to address reporters en masse like most other press secretaries. This would serve two key purposes. The first is so that there is no overt favoritism shown by the Court to certain news outlets. While news outlets are not equal in prominence or importance, it is always good practice to allow for a large number of reporters from all mediums and ideological persuasions to attend press conferences, and to give the impression that on any given day any reporter in the room may have

54. *Id.*

the opportunity to ask a question.[55] This ensures that what the Court says is heard by all corners of the public, and it also helps the PIO foster healthy relationships with the press, which will be vital to their job performance. The second key purpose for this dedicated briefing space is practical in nature. As is well known and bemoaned by Court reporters, no cameras are allowed in the Supreme Court building.[56] This is a firmly held policy that will likely never change as was perhaps best demonstrated when Justice David Souter stated, "'I think the case is so strong . . . that I can tell you the day you see a camera come into our courtroom, it's going to roll over my dead body.'"[57] With the nature of modern news, cameras will be a necessity. The logistics of where this briefing space is to be located and how it is acquired is beyond the scope of this Article, however, suffice it to say that if this proposal for an expanded PIO role was to ever be taken up seriously by the Court, then the required motivation would most likely be present to make this briefing space a reality.

The ability to explain Court decisions and opinions, how the Justices came to their conclusions, and having an adequate space to brief the press without violating the camera policy and the inherent need of privacy by the Court are the most crucial aspects of the proposed expanded PIO, but there are several ancillary expansions that could further serve to positively enhance the press-Court relationship, and thereby the Court's relationship with the public. These would require the Court to allow for the dissemination of information that previously has not been given, but the adoption of the proposed expansion of the PIO to function similarly to a press secretary may give the Court an incentive to change their policies. This information would include what decisions and opinions are to be handed down and when, as well as when rules are changed in the Court building.

C. Announcing Upcoming Court Decisions, Opinions, and Rule Changes

Allowing the proposed expanded PIO to announce what decisions and opinions will be handed down ahead of their release significantly serves the needs of both the press and the Court. First, the press benefits by seeing significant savings in crew costs. As the situation presently stands, news outlets must leave camera crews outside the Supreme Court for days on end waiting for high-profile decisions and opinions to come down, which is an incredibly expensive endeavor.[58] Second, this allows reporters time to prepare for stories

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55. *See* HESS, *supra* note 34, at 21 (noting that a reporter from the *Boston Globe* told him they expected a press secretary to "conduct himself in a manner that leaves each reporter with a sense that his turn will come.").

56. *See* Peters, *supra* note 8, at 986; *see also* Symposium, *supra* note 50, at iii ("Although the group was not unanimous in its view, many participants argued that their top priority for a change in Supreme Court policy would be for it to allow cameras to be present during oral arguments and any other proceeding at which public already is permitted.").

57. *On Cameras in Supreme Court, Souter says, 'Over My Dead Body'*, N.Y. TIMES (Mar. 30, 1996), https://www.nytimes.com/1996/03/30/us/on-cameras-in-supreme-court-souter-says-over-my-dead-body.html (quoting Justice David Souter, Remarks at House Appropriations Committee (1996)).

58. *See* Peters, *supra* note 8, at 1002 (noting the large expense news outlets incurred by having camera crews wait outside the Supreme Court for several weeks in anticipation of a high-profile opinion.).

regarding specific cases, which would allow for proper prior planning. This ability to plan ahead of time coupled with the explanatory briefing held by the proposed expanded PIO would give relief to reporters who have to create press reports on multiple decisions and opinions handed down in a single day. It would also increase the accuracy and quality of these press stories, which is something the Court desires.[59]

Giving the expanded PIO the mandate to announce rule changes to the Supreme Court building will also serve to enhance the press-Court relationship. One complaint in the past on the part of the press and the public is that they are not properly made aware of when rules change within the building and the courtroom itself.[60] For example, the notetaking rule has switched back and forth in the past between being permissible and impermissible.[61] In the 2002-2003 term, notetaking via pen and paper went back to being permissible when it was decided in a private conference amongst the Justices, but the rule change was not announced by the PIO or anyone else within the Court staff.[62] Reporters and members of the public only found out they were allowed to take notes when a member of the Court's security team told them so.[63] Having an expanded PIO announce such changes to the rules is a small courtesy with significant practical benefits to both the press and the public, and it costs the Court nothing to carry out.

D. Similar High Court Public Affairs Offices

This proposed expansion of the PIO may seem like a tall order considering the Court's history, tendencies, and general caution towards the press, but it is not impossible. Indeed, the high courts of several other major democratic nations have made similar adjustments to their corresponding public affairs offices. For example, the Supreme Court of Canada has an Executive Legal Officer who, among other duties, gives briefings to members of the press regarding decisions and opinions handed down by the Court.[64] These briefings lay out the basic issues at hand within a decision or opinion, what the arguments were within the case, and how the Justices came to their conclusions and what they were.[65] Similar to what has been proposed here for an expanded PIO, what the Executive Legal Officer does *not* do is opine on the decisions and opinions they are briefing the press on, nor do they practice the spin that most other press secretaries do.[66] Their job is merely to explain, not to speculate or to say what they think personally.

The Supreme Court of Israel also has methods of explaining decisions and opinions to the press outside of the official documents themselves. The Court in Israel releases same-day briefs to reporters which spell out the key facets of

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59. *See* Symposium, *supra* note 50, at ii–iii.

60. *See* Tony Mauro, *"In Other News . . .": Developments at the Supreme Court in the 2002–2003 Term that You Won't Read About in the U.S. Reports*, 39 TULSA L. REV. 11, 16 (2003).

61. *Id.*

62. *Id.*

63. *Id.*

64. *See* Sullivan & Feldbrin, *supra* note 11, at 53.

65. *Id.* at 55.

66. *Id.*

the decisions and opinions being released.[67] Furthermore, each Justice on the Israeli Court is permitted to write their own summary of the decision or opinion to be included in the brief to the press.[68] The press brief is not quite in laymen's terms, but it still demonstrates in short order what the Justices said and how they came to their conclusions. While this is not on the same level as the proposed expanded PIO or Canada's Executive Legal Officer, it is still a prominent example of a high court not having its work altered or interfered with by giving enhanced guidance to the press.

V. CONCLUSION

The U.S. Supreme Court has a major issue on its hands with public approval. The Court relies heavily on its public legitimacy in order for the other branches of government to abide by its rulings as it has no enforcement agency of its own.[69] Should the public's approval of the Court continue to plummet as it has been,[70] then the Court is in danger of losing the very legitimacy that grants it power. Research shows that the public's approval of the Court has largely been based off institutional and democratic values, not ideological performance.[71] The best way to increase the Court's public approval to its historically healthy levels is not by changing its decision-making by reading everchanging political tea leaves, but rather by positively altering its relationship with the press, and thereby the public as well. To do so, the Court's most effective option is to engage the press directly while preserving its political abstinence, and this can be done by implementing the proposal here for an expansion of the Public Information Officer's duties to include those typically performed by a press secretary. This option allows for the Justices to stay away from the political fray, but still directly explain to the public their decisions and opinions in an easily understandable and accessible way. If this proposed expansion of the PIO is to take place, the press would have a direct link to the Court without having to subject the Justices to any political interaction they rightly do not seek. Moreover, the Court would not risk political turmoil or missteps in what is and is not to be considered controlling within the law, as this proposed expansion of the PIO would make that position merely an explainer of what the Court says and does, not a political operative who spins messages to favor one party or another. It has been said that one of the most difficult aspects of being a presidential press secretary is that "'The press secretary

67. *Id.* at 71–72.

68. *Id.* at 72.

69. *See* James L. Gibson et al., *On the Legitimacy of National High Courts*, 92 AM. POL. SCI. REV. 343, 343 (1998); *see also* Christopher D. Johnston & Brandon L. Bartels, *Sensationalism and Sobriety: Different Media Exposure and Attitudes Toward American Courts*, 74 PUB. OP. Q. 260, 261 (2010) ("From a normative perspective, this support is essential, as the judicial branch possesses neither appropriations nor enforcement powers; it thus relies on the goodwill of other branches and institutions, and the public more generally, to implement its rulings, and is relatively impotent absent such support.") (citations omitted).

70. Franklin, *supra* note 1.

71. *See* James L. Gibson & Michael J. Nelson, *Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?*, 59 AM. J. POL. SCI. 162, 170 (2015).

always fights with one arm behind his back, trying to serve two masters.'"[72] In the case of this proposed expanded PIO, there would be no fight, and their only master would be what the Court declares in its official decisions and opinions.

72. NELSON, *supra* note 44, at 1 (quoting MARLIN FITZWATER, CALL THE BRIEFING! BUSH AND REGAN, SAM AND HELEN: A DECADE WITH PRESIDENTS AND THE PRESS 339 (1995)).