

Media Attention and Deliberation on the Supreme Court

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Abstract

The news media acts as a “watchdog” over political institutions by holding them accountable for their actions through critical commentary. Being that the Supreme Court rarely interacts directly with the public, the news media is the primary mechanism through which individuals become aware of the Supreme Court’s actions and decisions. Thus, for the Supreme Court, the news media’s role as a “watchdog” takes greater meaning than it does for institutions that often speak directly to the public. Considering this, along with the Supreme Court’s use of strategic presentation, we argue that news media attention to particular cases will influence the extent to which the Supreme Court deliberates on argued cases. We find support for our hypothesis in four contexts. First, cases with more news media attention take longer to produce a published opinion. Second, cases with greater media attention are more likely to be reargued. Third, cases with more news media attention produce a higher number of draft opinions before being published. Fourth, cases with more news media attention produce opinions with a greater share of cognitive mechanisms included in them. Our results have implications for the Justice’s use of strategic behavior and the potential constraints faced by the Court in its decision-making.

Keywords

Supreme Court, Media, Deliberation, Judicial Politics, Political Communication

On April 24th of 1985, the Supreme Court heard oral arguments in *Russell v. United States* (1985). The case involved a question of criminal procedure. On June 3rd of 1985, after just 40 days of deliberation and two draft opinions, the Court announced a unanimous decision ruling against Russell’s procedural claim. Yet, in the same term, the Court heard *Winston v. Lee* (1985). Like *Russell*, *Winston* was a case that dealt with criminal procedure. However, in this case, the Court conducted oral arguments on October 31, 1984, and did not announce an opinion until 140 days later on March 20th of 1985. Along the way, the Court circulated six draft opinions before releasing its final judgment. While the Court engaged in substantially more deliberation in *Winston* than it did in *Russell*, the result was the same: a unanimous decision against the defendant who was raising a question of criminal procedure.

Being that the *Winston* and *Russell* cases were similar along so many dimensions—they were argued during the same term, each argued a matter of criminal procedure, both were decided unanimously, and both upheld the status quo—what could potentially explain the difference in the amount of deliberation the Court engaged in to

reach these outcomes? One explanation is the difference in media coverage each case received at the time the Supreme Court announced it would hear the case. *Russell* received below average media attention, and the Court engaged in relatively little deliberation when deciding it. On the other hand, *Winston* received above average media attention, and the Court engaged in prolonged deliberation before announcing its opinion.¹ Considering the media’s status as the fourth estate and a watchdog of government institutions, and the Justice’s desire to engage in strategic presentation and control media narratives about their actions, we hypothesize that greater pre-decision media coverage of a case will induce the Supreme Court to engage in more deliberation before announcing a final decision.

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We find support for this hypothesis in four settings. First, we find that the Supreme Court takes longer to release opinions when there is greater pre-decision media coverage. Second, we find that the Court is more likely to hold a reargument when media attention is high. Third, we find that the Court circulates more draft opinions prior to announcing their final decision when pre-decision media coverage is high. Fourth, we find the Supreme Court's opinion includes a greater percentage of words indicative of cognitive mechanisms, which are associated with clear and rational arguments, when pre-decision media attention is high.

Our results have implications for the Supreme Court's use of strategic behavior and the media's position as a watchdog in politics and society. Specifically, we argue that existing research has demonstrated strategic interactions between the Court and the media in what we call active contexts. In active contexts, the Justices on the Supreme Court purposefully seek out media attention in hopes of having a particular message broadcasted. Examples of active media presentations would be granting interviews or giving public talks. Our results demonstrate that the Justices on the Court engage in more passive strategic interactions too. In this sense, the Justices do not seek out media attention but are aware of the media's attention and try to engage in behaviors that they believe will lead to better coverage of the Court. Our results also demonstrate that the media's status as a watchdog is strong and can induce behaviors in institutions that are not directly accountable to the public.

Legitimacy, Presentation, and the Media

When deciding cases, Justices are aware of their role as judge and steward of the law (Friedman 2006; Keck 2006). Nonetheless, they are strategic actors (Epstein and Knight 1998) who have multiple goals (Baum 1994). Among these goals is maintaining the Court's legitimacy by ensuring the public's trust and confidence in the institution as an apolitical actor (Caldeira 1986; Caldeira and Gibson 1992). Such goals are necessary as the Court lacks coercive authority to enforce its opinions. The Court must rely on public adherence to its decisions for institutional efficacy. It is therefore reasonable to see the Court act in a way that limits negative treatment of itself and its actions.

Legitimacy can be defined as the perception that government actors appropriately use their authority (Easton 1965; Tyler 2006). Many studies operationalize legitimacy by exploring citizens' attitudes and behaviors toward the institution (Gibson and Nelson, 2014) both in broad contexts and related to salient issues (Armaly and Lane 2022; Braman and Easter 2014; Badas 2019; Christenson and Glick 2015; Bartels and Johnston 2012).

The Justices are conscious of these attitudes and seek to ensure citizens hold the Court in high esteem. They can accomplish this through a series of strategic presentations, both passive and active.

The distinction between active and passive presentations is whether Supreme Court justices are intentionally seeking attention. Day-to-day activity of the Court is not in itself active presentation. In the normal course of business, Justices rarely engage the public or news media by seeking them out for attention. When there is intentional engagement, we say there is active behavior. This behavior is characterized by the Justices calling attention to their actions through carefully controlled presentations. Examples of active presentations would be giving speeches at law schools and professional associations or granting media interviews.

Each of these activities is a situation where the Justices on the Court actively seek out media attention and seek to engage with the media for the purposes of presenting the Court in a positive light. Commercially publishing books and doing television interviews have the potential, if not always the effect, of reaching a wider audience. Justices use these interviews to humanize themselves (Schmidt 2013). Justices Antonin Scalia and Ruth Bader Ginsburg often spoke of their friendship off the bench. Justice Elena Kagan speaks fondly about hunting with Justice Scalia. Justices Anthony Kennedy and Stephen Breyer used to regularly debate the proper role of a judge before audiences, their tone jovial and light. All of the Justices talk about how their jobs are stressful but highly rewarding. Overall, these humanizing efforts have reaped rewards. Across audiences, Krewson (2019a) found this accessibility approach employed by Justices fosters positive feelings towards themselves and the institution.

Justices engage in active strategic presentation through the media because such presentations influence public attitudes toward the Court (Schmidt 2013; Krewson 2019a; Glennon and Strother 2019). Media exposure serves as an opportunity to cast the Court as an apolitical policy actor. During mass media exposures, Justices speak in direct, simplistic ways that are devoid of legal jargon. In a unified front, they spend most of their time—between 60 and 80%—discussing the appropriate role of judges, judicial philosophies, and the decision-making process (Glennon and Strother 2019). The Justices rarely criticize the Court nor do the Justices try to politicize the institution.

Symbolic presentations are bestowed upon the Justices by the nature of their work. They are cloaked in black robes. The Court's cases are thundered in with a gavel. Opinions have the weight of finality. All of this occurs in a large, marble, temple-like building. Such symbols reinforce the perception of a neutral Court that rises above the political branches (Gibson, Caldeira and Spence 2005;

Gibson and Caldeira 2009; Gibson, Lodge and Woodson 2014). They provide the appearance that the decision-making process is based on legal standards rather than partisanship or ideology (Baird and Amy, 2006).

Procedural presentations of the Supreme Court work in tandem with its symbolic presentations. The Court takes in cases through written briefs. While granting a writ of certiorari may be impacted by a number of factors, among them policy preferences (Black and Owens 2009) and amicus filings (Collins 2004), it only requires four justices to hear a case on its merits. Granted cases then go through adversarial oral arguments. A good argument can sway a Justice while a bad argument may hinder a party's chances of success (Johnson, Wahlbeck and Spriggs 2006). The Court then produces a written opinion which provides a detailed rationalization for the Court's decision. These procedures together exhibit a thorough and fair consideration of the case.

The Supreme Court needs to cultivate the public's good will because its primary product is legal opinions. These documents are nothing more than words on the page if the public and political elites do not believe they have weight. Through public engagements, including mass media appearances, the Justices show they are cognizant of this fact. The content of their opinions reiterates the point. For example, complex language can decrease public acceptance for a decision (Hansford and Coe 2019). Justices therefore focus on writing clear, accessible opinions, especially when the public expresses a high interest in the case (Black et al., 2016b).

Focus on opinion language has two additional benefits. First, opinions are the primary source for reporting on the Court's decisions. Carefully worded decisions can have the effect of curtailing or limiting negative coverage. Second, these opinions can limit the ability of other actors, such as politicians, to frame the Court's activities. As such, opinion language offers another opportunity for strategic presentation. However, since the Justices do not actively seek out the media to cover their opinions, these products are passive presentations.

Supreme Court opinions are inclusive documents. The rulings contain content taken from parties' briefs, which lay out the case facts and legal precedents in carefully constructed arguments. Rulings may also include content from amicus filings (Collins and Cooper 2015), which are an indication of public and group interest in a case and provide the Justices with additional context and technical information. As judicial rulings impact the shape of public policy (Rosenberg 2005; Grossmann and Swedlow 2015), language inclusivity signals the Court's careful consideration of the case facts. Logically, this should foster legitimacy in the public while also reducing criticism from watchdogs, such as the media.

In the American political system, few watchdogs enjoy the reach or influence of the media. Mass media discussions of political actors exhibit a critical lens and an adversarial tone (Norris 2014). It is an approach not lost on governmental actors. For example, research demonstrates members of Congress respond to news coverage when casting votes (Arceneaux et al., 2016) and, as potential candidates, considering when and how to enter a political race (Arceneaux et al., 2020). More importantly in our context, it has been shown that political elites will adjust their expectations and positions in response to media coverage (Clinton and Enamorado 2014).

Still more, Americans get most of their information about courts from the media (Strother 2017; Hughes 2022). This provides the public two advantages. First, they get a simplified version of the facts. Second, they can reasonably assume that the Court is being held accountable for its actions.

Nonetheless, the Justices do not make themselves available to the media in real time. Each day after oral argument, the Court provides a transcript of oral argument without further comment or opportunity for interested parties to ask clarifying questions, with full audio being released later in the week². Too, there are not cameras in the courtroom, and Justices rarely make appearances on news outlets or give reporters interviews to explain or discuss cases as they are decided. When they do grant interviews, they are very controlled. Further demonstrating the Court's control, obtaining a press pass to the Supreme Court is difficult, sometimes leaving major media outlets without access to the Court (Hermes et al. 2014)³. The press information office's statements are usually vague. During official duties, access to the Justices' chambers is nonexistent, and strong norms exist that prevent clerks from speaking to the press even after their clerkships end. Recently, the Justices have also taken to limiting, if not eliminating, press access to their appearances outside the Court. In these contexts, the Supreme Court actively tries to limit or restrict the ability of the media to cover the Court. The result is a heavy reliance on the opinions the Court produces in argued cases. After all, once opinions are released, the Justices have little ability to actively control how the media presents them.

Prior research has demonstrated the media can influence public opinion across a wide range of contexts, including public opinion towards the Court (Nelson, Clawson and Oxley 1997; Baird and Amy, 2006; Hitt and Searles 2018). Yet when reporting, the media has multiple frames through which they can present the same general information (Nelson, Clawson and Oxley 1997). Often, this presentation is skewed. For instance, media outlets will disregard neutral coverage if there is a financial incentive for emphasizing the political aspects of a case (Bailard 2016). Since the 1990s, this has manifested

in a game-frame posture when covering the Supreme Court (Hitt and Searles 2018). Because the Court is interested in maintaining its legitimacy among the public, the Court likely wants to constrain the skewness embedded in how the media frames Court decisions. For this reason, we anticipate this further encourages the Court to carefully deliberate over its opinions, thereby engaging in passive strategic presentations. What makes these efforts passive is that the Court does not seek attention for their decisions, but instead try to take preemptive action in an attempt to constrain the media.

To combat the media's discretion in framing, the Justices will need to carefully present their decisions. The Justices will do this by engaging in greater deliberation before releasing their opinions. The Justices will want to ensure the opinion is carefully crafted and the result of extended deliberation because the opinion will be the primary source for the media's coverage of the Court's decision.⁴ By deliberation, we mean that the Justices will consider potential alternative outcomes and arguments in an attempt to make the outcome they ultimately select stronger.⁵ Research has shown deliberation has many potential benefits, including strengthening and clarifying arguments (Schneiderhan and Khan 2008). By engaging in greater deliberation, the Justices can produce stronger arguments that provide narrower grounds for criticism or mischaracterization. Through extended deliberation, the Justices should be able to present their arguments in the most straightforward and thoughtful manner. Given this deliberative process, it is reasonable to expect the Justices think they are putting themselves in a position to limit, if not avoid, unwanted media frames of their decisions. It is also reasonable to expect the Justices will deliberate more on cases that are likely to garner greater media coverage. Based on this line of thought, we hypothesize that the Court will deliberate more when they anticipate a decision will receive more media attention.

Data and Analysis

To test the hypothesis that the Court is more deliberative when there is greater media attention of a case, four approaches are used. The first approach conceptualizes time as deliberation. Specifically, we look at the time it takes the Supreme Court to release an opinion after it has conducted oral arguments. This signals the Court may be engaging in more deliberation. Our second approach is to analyze whether the Court decided to hold reargument in a case. Previous research argues that reargument stems from uncertainty and a greater need for deliberation (Hoekstra and Johnson 2003). Thus, we use the decision to schedule a reargument as an act of deliberation. Our third approach is to analyze the number of draft opinions the Court produces before publishing an opinion. Here, it is assumed when

there are more drafts circulated, the Court is engaging in more deliberation. Fourth, we analyze a potential implication of deliberation by examining the language of the Court's opinion. Specifically, we analyze the extent to which the Court's opinion uses language indicative of cognitive mechanisms—or language that is clearly trying to explain or justify an outcome. For the analyses on time to opinion, decision to rehear oral arguments, and opinion language we rely on data from 1955 until 2008. We analyze this time period because these are the terms the Clark, Lax and Rice (2015) measure of media attention is available. For the analyses on the number of draft opinions, we use data from 1969 until 1985. We analyze this time period because these are the terms in which data on the number of draft opinions is available. Each approach finds support for the hypothesis that the Court engages in more deliberation when there is greater media attention given to a case.

Indicator 1: Time to Opinions

To determine if the Supreme Court takes longer to issue decisions that have received more pre-decision media coverage, we use two data sources. The first is the Clark, Lax and Rice (2015) measure of pre-decision salience. The Clark, Lax and Rice (2015) measure of salience conceptualizes salience as a latent concept observed through newspaper coverage of individual cases. Key for our analysis is that the Clark, Lax and Rice (2015) measure includes only news coverage of the case up to the oral argument. This ensures we are not introducing any post-treatment bias that would be present with other measures of salience that only measure media attention after the decision has been released (Epstein and Segal 2000). The Clark, Lax and Rice (2015) measure of pre-decision salience will be the key independent variable. The second data source used is the Supreme Court Database (Spaeth et al. 2018). The Supreme Court database includes case-level information on all orally argued Supreme Court cases. Key for the analysis here is that the Supreme Court database includes the dates of oral arguments and the dates when the opinion was released. The number of days passed between oral argument and the date the Court's opinion is released will be the dependent variable.

Outside of the Court's strategic decision to engage in more deliberation when media coverage is high, other factors may influence the time it takes the Supreme Court to release an opinion. For example, the Court's workload concerns may impact the amount of time it takes to release an opinion. Workload concerns are conceptualized in two ways. First, the number of days remaining in the term when the Court hears oral arguments in a case. When there are more days remaining in the term, the Court can take

Table 1. Cox Proportional Hazards Model: Days to Opinion.

	(1) Coefficients
Pre-Decision Media Attention	-0.115*** (0.0232)
Lower Court Disagreement	0.00824 (0.0332)
Case Complexity	-0.114*** (0.0205)
Days Left in Term	-0.00865*** (0.000273)
Total Cases	-0.00692 (0.00558)
Majority Ideological Variation	-0.0348 (0.0281)
Number of Dissenting Votes	-0.198*** (0.0109)
Law Ruled Unconstitutional	-0.0635 (0.0555)
Precedent Altered	-0.239** (0.0914)
Lower Court Affirmed	-0.0653* (0.0289)
Issue Fixed-Effects	Yes
Author Fixed-Effects	Yes
Term Fixed-Effects	Yes
Observations	5258

Standard errors in parentheses.

* $p < .05$, ** $p < .01$, *** $p < .001$.

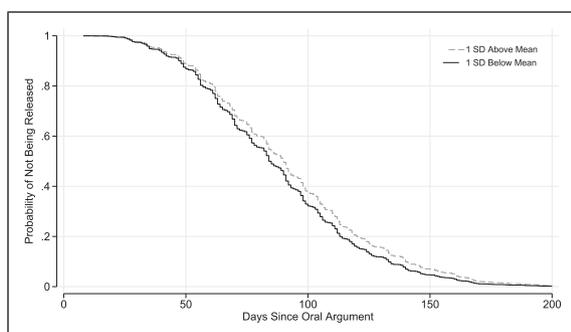


Figure 1. Survival curves by one standard deviation below and above mean pre-decision media attention.

longer to release an opinion. Second, the total number of cases heard in an individual term will likely influence the time it takes the Court to release opinions. When the Court agrees to hear more cases, the Justices have less time to work on each individual case and publication is likely to be quicker.

The complexity of a case may also influence the amount of time it takes the Court to produce an opinion. Complex cases require wrestling over complicated issues to ensure the present dispute is settled in a clear manner. Complex cases likely require a greater amount of time to resolve than more routine cases. For this reason, we account for the complexity of a case using the [Goelzhauser, Kassow and Rice \(2021\)](#) measure of case complexity.

Another factor that likely influence the length of time it takes to produce an opinion is whether the Court is upsetting the status quo. When the Court upsets the status

quo, the Justices may feel the need to engage in greater deliberation to defend and justify their decision. We conceptualize upsetting the status quo in two ways. First, we control for whether the decision ultimately declares a federal, state, or local law as unconstitutional. The omitted reference category is the Court does not strike down any law. The second way we conceptualize upsetting the status quo is to account for whether the Court is formally altering precedent.

The ideological composition of the Court's majority may influence the amount of deliberation given to any case. As the majority coalition becomes more ideological diverse, it becomes more difficult for the Justices to produce an opinion with which each Justice agrees ([Wahlbeck, Spriggs and Maltzman 1998](#)). To account for the ideological variation of the majority coalition, we control for the standard deviation of the majority coalition's [Martin and Kevin \(2002\)](#) ideology score.

The general legal and political salience of a case— independent of any media coverage—may cause the Justices to engage in more deliberation. To account for this, we control for conflict in the lower courts. [Strother \(2017\)](#) and [Hettinger, Lindquist and Martinek \(2003\)](#) each identify cases with conflict in the lower courts as cases that are generally more legally and politically salient than those that do not produce conflict in the lower courts. Beyond conflict in the lower court, we include fixed-effects for legal issue. Some legal issues are more likely to be legally and politically salient than others. For example, it is likely that on average First Amendment cases are more politically and legally salient than issues relating to federal taxation.

Table 2. Random Effect Logit Model: Reargument.

	(1) reargued
Pre-Decision Media Attention	0.738*** (0.133)
Lower Court Disagreement	-0.0685 (0.248)
Case Complexity	0.0503 (0.140)
Days Left in Term	0.00882*** (0.00154)
Total Cases	0.0192** (0.00620)
Random Effects Term?	Yes
Random Effects Issue?	Yes
Constant	-9.011*** (1.029)
Observations	5671

Standard errors in parentheses.

* $p < .05$, ** $p < 0.01$, *** $p < .001$.

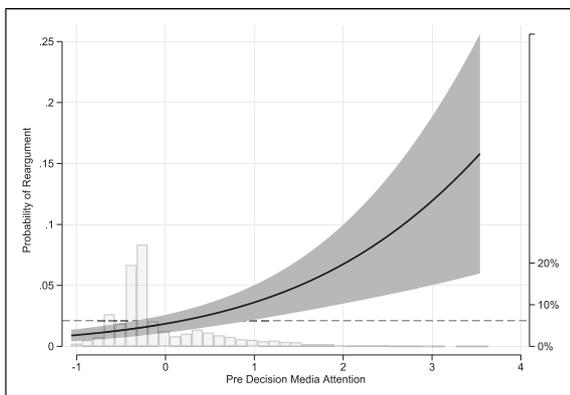


Figure 2. Probability of hearing reargument. Dashed line represents baseline probability of hearing reargument. Imposed histogram presents the distribution of pre-decision media attention.

Other factors associated with the time it takes the Court to produce an opinion are the legal issue involved, whether the Court is affirming or reversing the lower court, the Justice authoring the majority opinion, and term-level dynamics.⁶ For this reason, we include fixed-effects that capture all these factors.

To estimate the time it takes the Supreme Court to release an opinion, a Cox Proportional Hazards model was estimated.⁷ The model is presented in Table 1.

The results support the hypothesis that the Court engages more deliberation when the case has received more media attention. To draw a substantive example, estimated survival curves are presented in Figure 1 for a case one standard deviation below and one standard deviation above the mean level of salience. At the average time to opinion (81 days), a case with salience score one standard deviation below the mean has a probability of 0.522 of not being published while a case with a salience score one

standard deviation above the mean has a probability of 0.568 of not being published.

Indicator 2: Decision to Hear Reargument

Prior research conceptualizes the decision to hold reargument as an indicator of deliberation (Hoekstra and Johnson 2003). This research concludes that when the Justices face uncertainty in terms of the ideological composition of the Court, they decide to hold a reargument of a case to gather further information and engage in more substantive deliberation (Hoekstra and Johnson 2003).

We argue that the Justices will use a similar reasoning process and be more likely to hold reargument when media coverage is high. Specifically, the Justices are going to want to engage in greater deliberation in order to learn best how to frame their decision in anticipation of media scrutiny. The additional oral argument also gives the Justices additional information about how their arguments will be received by external actors (Black, Johnson and Wedeking 2012). This information may be helpful to the Justices as they craft their opinions and try to constrain the media's ability to frame the decision.

To test whether the Court is more likely to hold reargument when pre-decision media attention is high, we estimate a random effects logit model. The model includes random effects for the term and issue area.⁸ The model controls for case complexity, days left in the term, and the total cases heard in a term. The model does not control majority opinion author, ideological variation of the majority coalition, number of dissenting votes, whether a law was declared unconstitutional, or whether precedent was altered. This is because each of these variables occur or are known *after* the decision to hold reargument. Thus, including them in the variable would be a form of post-treatment bias (Rosenbaum 1984).⁹ The results to the model are presented in Table 2, and the

Table 3. Poisson Regression: Number of Drafts.

	(1) Drafts
Pre-Decision Media Attention	0.0456* (0.0222)
Lower Court Disagreement	0.0407 (0.0295)
Case Complexity	0.0307 (0.0185)
Days Left in Term	0.00146*** (0.000174)
Total Cases	0.000183 (0.00540)
Majority Ideological Variation	-0.0156 (0.0212)
Number of Dissenting Votes	0.0722*** (0.00926)
Law Ruled Unconstitutional	0.0261 (0.0441)
Precedent Altered	0.0887 (0.0819)
Lower Court Affirmed	0.0166 (0.0256)
Issue Fixed-Effects	Yes
Author Fixed-Effects	Yes
Term Fixed-Effects	Yes
Constant	0.518 (1.078)
Observations	1974

Standard errors in parentheses.

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

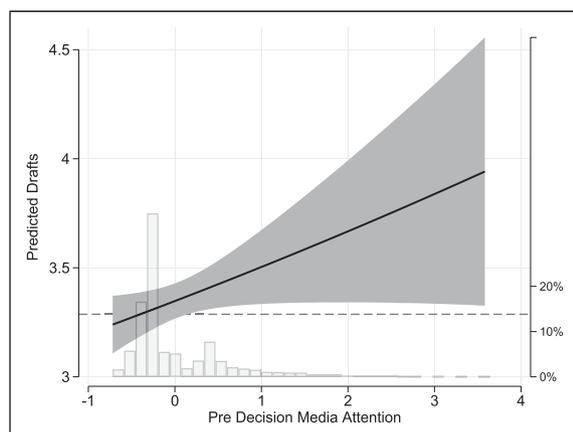


Figure 3. Predicted draft by salience. Dashed gray line represents mean number of drafts. Imposed histogram presents the distribution of pre-decision media attention.

substantive effect of pre-decision media attention is presented in [Figure 2](#).¹⁰

The results lend support to our argument that the Supreme Court will be more likely to hold reargument when pre-decision media attention is high. To draw a substantive example, at the mean level of media attention, the predicted probability that the Court will hold a reargument is 0.016. As media attention increases by one standard deviation that probability increases to 0.025. While that does not seem like a substantively large effect, it represents a 64% increase in the probability that a rehearing of oral argument will be conducted. Thus, these results demonstrate that the Court is attentive to the media

and seek to engage in greater deliberation when the media is attentive to the Court.

Indicator 3: Number of Drafts

The results so far have indicated that the Supreme Court takes longer to release opinions and are more likely to hold reargument in cases that have received a high degree of media attention. One potential limitation of that analysis is that time to opinion is not a direct measure of deliberation and that the decision to hold reargument is relatively rare. To overcome these potential limitations, a more direct indicator of deliberation is analyzed. Specifically, we look at the number of draft opinions circulated before the final opinion is released. Three data sources are used. First, the [Clark, Lax and Rice \(2015\)](#) measure of pre-decision salience measures media coverage of cases. The [Clark, Lax and Rice \(2015\)](#) measure of pre-decision media attention will serve as our primary independent variable. The second data source is the Supreme Court Opinion Writing Database ([Maltzman and Wahlbeck 1996](#)). The Supreme Court Opinion database includes information on the number of draft opinions circulated in cases 1969 and 1985. While the Supreme Court does not publish the number of drafts circulated, [Maltzman and Wahlbeck \(1996\)](#) relies on the Justices personal papers for information on the number of drafts circulated. These personal papers have been shown to be reliable ([Maltzman and Wahlbeck 1996](#)). The number of drafts the Court circulated will serve as our dependent variable. The information from the Supreme Court Opinion database is then merged with the Supreme Court database.

Table 4. Linear Regression: Cognitive Mechanisms.

	(I) Cognitive Mechanisms
Pre-Decision Media Attention	0.111** (0.0373)
Lower Court Disagreement	0.0299 (0.0530)
Case Complexity	-0.0874** (0.0328)
Days Left in Term	0.000744* (0.000324)
Total Cases	0.0182* (0.00853)
Majority Ideological Variation	0.0323 (0.0449)
Number of Dissenting Terms	0.0379* (0.0169)
Law Ruled Unconstitutional	-0.225* (0.0888)
Precedent Altered	-0.482** (0.147)
Lower Court Affirmed	-0.0974* (0.0458)
Issue Fixed-Effects	Yes
Author Fixed-Effects	Yes
Term Fixed-Effects	Yes
Constant	12.35*** (0.776)
Observations	5135

Standard errors in parentheses.

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

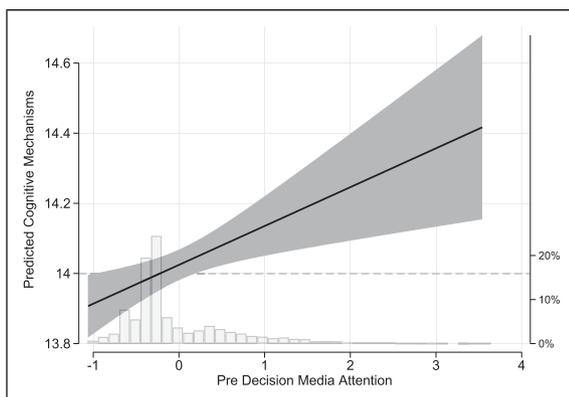


Figure 4. Results to linear regression. Dashed line represents mean cognitive mechanism. Imposed histogram presents the distribution of pre-decision media attention.

With these data, we estimate a Poisson regression model that includes the same controls as those found in Table 1. Poisson regressions are appropriate when the dependent variable is a count of an outcome and there is no evidence of over-dispersion in our data (Long 1997).¹¹ The results are presented in Table 3 and Figure 3. The results lend support to our hypothesis that the Court will engage in more deliberation when pre-decision media coverage is high. For example, a case that received one standard deviation below the average amount of media attention, the predicted number of draft opinions is 3.26 while at one standard deviation above the mean level of salience, the predicted number of draft opinions is 3.43.

Indicator 4: Opinion Content

Thus far we have demonstrated that increased media coverage leads the Supreme Court to take longer to produce a majority opinion, be more likely to schedule additional arguments, and produce more draft opinions before releasing an opinion. Yet, we still have not addressed whether the Supreme Court Justices write opinions differently when they anticipate greater media attention. To address this question, we analyze the extent to which the Supreme Court's opinion relies on cognitive mechanisms (Tausczik and Pennebaker 2010). Cognitive mechanisms are words that associate to cognitive processes and are associated with rational argumentation, logic reasoning, causal thinking, certainty, and clear presentation of arguments (Tausczik and Pennebaker 2010).

We expect that when the Supreme Court anticipates greater media attention for their decisions, the opinion will make greater use of cognitive mechanisms. Opinions high in cognitive mechanisms are likely to provide clearer justification for the decision the Court has come to and is likely to do so in a straightforward way. Opinions that are high in cognitive mechanisms are therefore less likely to allow for ambiguities that would allow the media discretion in their framing of the Court's decision and justification for that decision. To measure the cognitive mechanisms included in Supreme Court opinions, we rely on data from the Linguistic Inquiry and Word Count (LIWC) software. LIWC is a software project that measures the percentage of a given text that reflects a variety of psychometrics properties, including cognitive mechanisms. Cognitive mechanisms specifically are measured

by using a dictionary of over 730 keywords such as cause, know, ought, always, never, hence, and because (Tausczik and Pennebaker 2010). The measure of cognitive mechanisms has been validated (Tausczik and Pennebaker 2010). As applied to the study of the Supreme Court and judicial decisions, the LIWC software has been used across many research questions (Corley and Justin, 2014; Black, Owens and Wedeking 2016a; Bryan and Kromphardt 2016; Wedeking and Zilis 2018; Budziak, Hitt and Lempert 2019; Krewson 2019b; Denison, Wedeking and Zilis 2020). The percentage of an opinion that includes language indicative of cognitive mechanisms will serve as our dependent variable for this analysis. The key independent variable again is the Clark, Lax and Rice (2015) measure of pre-decision media coverage. We include the same controls as Table 1 and Table 3. We have data on all measures between 1955 and 2008. Cases with per curiam opinions are excluded because the cognitive mechanisms scores are not available for these cases. Because the percentage of an opinion that includes cognitive mechanisms is continuous, we estimate a linear regression model (OLS). The results to our regression model are presented in Table 4 and Figure 4.

The results support our argument that the Supreme Court will include language that provides more cognitive mechanisms in opinions that have received more pre-decision media coverage. We reason that this is because the Court is attempting to limit the media's ability to leverage ambiguity in the Court's opinion to frame the decision in a way that may deviate from how the Court wants its decision to be presented. Thus, the Court is providing clear explanations and rationalizations for its decisions. To draw a substantive example, a case with the one standard deviation below the mean media attention is expected to include 13.95% of the text as cognitive mechanisms while a case with one standard deviation above the mean media attention is anticipated to include 14.09% of the text as cognitive mechanisms. The difference of 0.14 represents roughly 8% of a standard deviation in cognitive mechanisms used.

Implications and Conclusions

The Supreme Court is designed in a non-majoritarian fashion. The public and other political elites have few formal mechanisms to hold the Court accountable. Yet, because the Court lacks implementation authority, it needs to rely on its legitimacy to compel other actions to follow and implement its decision. To this end, the Justices on the Court behave in strategic ways. Much of this strategic behavior is an effort to present the Court in the best light possible. Typically, this means presenting the Court as a legalistic institution that is outside the realm of ordinary politics.

Here, we present new evidence of strategic presentation by the Supreme Court. We theorize that, because the news media assumes a watchdog role in politics and society, the Court will be aware when the media's spotlight is on them and change their behavior as a result. From this theory, we hypothesize that greater media attention will induce the Court to engage in greater deliberation and produce opinions and outcomes that can potentially withstand the scrutiny of greater media scrutiny. We test this hypothesis in four contexts and find support for it in each. First, we find that cases with greater media attention take longer to have opinions released than cases with less media attention. Second, we find that the Court is more likely to hold reargument on cases which garner high levels of media coverage. Third, we find that cases with greater media attention produce more drafts before final publication than cases with less media attention. Fourth, we find that in cases that have received more media attention, the Court is more likely to use more cognitive mechanisms in their opinion language.

While we believe we present compelling evidence that the Court is attentive to media attention, we need to express a degree of caution. First, we are not able to directly rule out that the Court is simply more deliberative in salient cases, independent of the media attention. While we account for general salience by controlling for lower court conflict (Strother 2017) and legal issue, we cannot be certain that there is a dimension of general salience these variables do not capture and media attention does. Thus, future research should study the Court's deliberative processes and how the Court's various audiences (Baum 2009) influence the Court's deliberative processes. Second, while we find evidence for our theory in the four contexts analyzed, it is worth noting that the substantive effect in some contexts is relatively small. Thus, while media attention does induce the Supreme Court to engage in more deliberation, other factors matter too and sometimes these factors matter more than media attention. With that caveat in mind, we believe our results are still meaningful and have important implications. Considering the totality of our understanding of Supreme Court decision-making largely presents the Justices as motivated by political outcomes (Segal and Spaeth 2002), finding evidence of constraint and responsiveness in any circumstance is notable to our overall understanding of the Supreme Court (Epstein and Knight 2013). Further, the effect of media attention on deliberation is comparable to other factors such as number of questions presented and decision to hold additional oral arguments (Hoekstra 2003), case complexity and length of time before a decision is released (Epstein, Landes and Posner 2014), and number of drafts produced before an opinion is published (Table 3). Thus, it appears as if the effect of media attention causes the Justices to engage in greater

deliberations in a similar manner as a potentially difficult or complex case does.

Our results have implications for understanding the Supreme Court's behavior and for understanding the media's position in politics and society. We further demonstrate that the Court and Justices on the Court engage in a strategic interaction with the media to offer the best presentation of the institution. Here, we think we do so in a novel way that is somewhat different from existing literature. Existing literature demonstrates that in media interviews or events covered by the media, such as speeches at law schools and professional associations, the Justices engage in strategic presentation of themselves and the Court (Glennon and Strother 2019; Krewson 2019a). We consider these to be active behaviors. In these situations, the Justices are seeking out the media with a particular message and hopes that the media will broadcast that message. The results to our analysis provide evidence of a strategic interaction with the media that occurs in a more passive manner. The Justices are not seeking out media attention but are aware the media is scrutinizing their actions and update their behavior in a way that they think will lead to be better outcomes for the Court.

The media is often portrayed as a watchdog. This is because through scrutiny and coverage, the media can hold individuals and institutions accountable. This accountability function creates an incentive for individuals and institutions to engage in strategic interactions with the media. Existing research shows the media is effective in this role. For example, studies have found that the media influence the behavior of politicians, public organizations, and corporations (Bednar 2012; Jacobs and Schillemans 2016; Norris 2014). Here, we demonstrate that the media's status as a watchdog influences the Supreme Court by inducing greater deliberation. This process has a beneficial impact, as research shows that greater deliberation typically leads to better outcomes and diminishes the extremity of potential decisions (Stasser and Birchmeier 2003; Janis 1972; Mutz 2006). Further, the media's ability to influence the behavior of the Court may induce greater accountability over the Court. As such, this deliberative process may force the Court to think deeper about their decisions and how the public will respond to those decisions.

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Supplemental Material

Supplemental material for this article is available online.

Notes

1. Information on the amount of media attention each case received comes from the Clark, Lax and Rice (2015) pre-decision measure of case salience. This measure is discussed in more detail later in the paper.
2. During the Covid-19 pandemic, the Court has provided real time audio of oral arguments. It is unclear if this practice will continue after the Covid-19 pandemic reaches its conclusion. Even during this period, the Court would not entertain questions or points of clarification.
3. For example, SCOTUSblog, a widely respected and read website for news on the Supreme Court, had a difficult time obtaining a press pass. [Source](#).
4. To be sure, the media has other potential sources through which to frame a Supreme Court decision. These sources include other politicians such as Members of Congress, or political activists. But we argue that the Court's opinion is likely the starting point and will serve as its primary frame. While Hitt and Searles (2018) demonstrate that media is increasingly relying on game frames when discussing the Court, such frames are still the minority, suggesting that the media often takes the Court's opinion at face value and uses legal values as the primary frame. Further, while the media does have other sources to draw from, these sources are *also* constrained when the Court is clearer.
5. As such, deliberation is a latent concept that cannot be directly observed. For these results, we must use an indicator of deliberation. The indicators are imperfect. Some indicators may tap into many different concepts. For example, time may be an indicator of deliberation. But time can also be indicator of delay. Unfortunately, since we cannot directly measure deliberation, we must rely on imperfect indicators. We hope that *on the whole* our indicators demonstrate the Court is engaging deliberation and not some other concept such as delay. Specifically, in the example of delay, we think our other indicators suggest that our results are not simply signaling delay from the Court. If the Court was simply delaying, there

would be no need to go through the effort of writing additional draft opinions, conducting additional oral arguments, or using more cognitive mechanisms in the opinion. Further, in the [Appendix](#), we present latent deliberation scores generated through factor analysis and the four indicators used in this manuscript. Using the deliberation scores generated from factor analysis, we replicate the substantive finding produced throughout the manuscript, greater media attention is associated with greater deliberation.

6. Some may argue that due to the leadership position of the Chief Justice, the deliberative environment may vary across Chief Justices. For example, Warren Burger tended to allow prolonged debate during conference, while his successor Chief Justice Rehnquist preferred limited debate. To account for this, we provide alternative specifications in the [Appendix](#) that allow Chief Justice fixed-effects rather than term fixed-effects. These results produce substantively similar findings to those presented here.
7. Alternative specifications such as a linear regression model or a negative binomial regression model predicting the number of days the between oral argument and the release of the opinion produce substantively similar results. Likewise, an alternative specification that uses a linear regression model to predict the percentage of days remaining in the term when the Court holds oral argument in a case that pass before a decision is announced produce substantively similar results. These results are in the appendix. Further to demonstrate our results are robust to modeling choices, we conduct a set of multiverse analyses for each set of results. The multiverse analyses show that our results hold under nearly all potential modeling choices. Details on the multiverse analyses are presenting in the [Appendix](#).
8. Random effects are used rather than fixed-effects because reargument is relatively rare. There are some terms when no cases are reargued, and there are a few issue areas where no case is reargued. Rather than exclude these from the model, we account for potential effects of these variables via random effects. Models that used fix-effects and drop variables that perfectly predict reargument are substantively similar to those presented here. Those results are available in the [Appendix](#).
9. We are more concerned about post-treatment bias in the context of reargument because the Supreme Court database only includes variables on the post-reargument coalition. Thus, the coalition observed, or outcome observed is potentially not the same coalition or outcome that called for reargument. For reargument to be granted, a member of the majority coalition has to request reargument and a majority of the majority coalition has to agree ([Hoekstra and Johnson 2003](#)). Thus, predicting whether the Court decided to hear reargument as a function of variables from the final majority coalition or final case outcome is all post-treatment (decision to hold reargument). In the context of cases that are not reargued, this information is likely not post-treatment. The

Justices vote at conference and begin deliberation. At conference, the Justices understand the case disposition, the majority coalition, the number of dissenters, and whether laws have been invalidated or precedents altered. While, there may be some voting or outcome fluidly, such fluidly is not the norm ([Brenner 1982](#); [Ringsmuth, Bryan and Johnson 2013](#); [Lax and Kelly, 2015](#); [Ringsmuth 2015](#)). Conference coalitions typically maintain themselves until the publication of an opinion ([Brenner 1982](#); [Ringsmuth, Bryan and Johnson 2013](#); [Ringsmuth 2015](#)). Thus, in this context, post-treatment biases are theoretically less problematic. However, a model with these variables included is available in the appendix. The results are substantively similar.

10. The Supreme Court heard reargument in 1.9% of cases. Since reargument is infrequent, the traditional logistic regression model by be biased in some situations ([King and Zeng 2001](#)). To ensure the robustness of our results, we estimated a rare events logistic model. The results are substantively similar. Those results are presented in the appendix.
11. Mean=3.28; Variance=3.01. A negative binomial model produces substantively the same results. If we estimate a linear regression model, the results are substantively similar. We also estimated an order logistic regression, and the results are substantively similar. These results are in the appendix.

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