Give them the word, they sharpen the sword

How high courts use language to exert political and societal power

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Abstract. How do courts manage the transparency surrounding decisions through crafting opinions and press releases? To achieve political compliance with decisions justices need to activate public support. In order to do so, the transparency surrounding decisions is decisive. The more transparent the environment, the more likely the public becomes aware of judicial decisions and potential political threats towards the decisions. While most research regards transparency as a factor either present or absent, we argue that justices can manage the transparency surrounding their decisions through the way they write opinions and press-releases.

To assess the argument we analyze the readability of Senate decisions and press releases published by the German Federal Constitutional Court. The findings suggests that the less readable a judicial opinion, the more likely it is supplemented by a press release. However, contrary to our expectations, less readable press releases attract more newspaper coverage than easy to read press releases. The findings have major implications for our understanding of transparency surrounding judicial decision-making. Further research is well advised to account for linguistic features when assessing the capabilities of justices to mobilize the public through creating transparency.

1 Introduction

How do courts manage the transparency surrounding decisions through crafting opinions and press releases? To encourage the implementation of judicial decisions by political actors scholars argue that courts need to mobilize the public (Vanberg, 2001, 2005; Staton, 2010; Sternberg et al., 2015; Krehbiel, 2016). To do so, justices are able to increase the transparency surrounding their decisions by holding hearings (Vanberg, 2001, 2005; Krehbiel, 2016), crafting specific instead of vague decisions (Staton and Vanberg, 2008; Sternberg, 2019), or using institutional features such as press releases to increase the media's awareness for decisions (Staton, 2010; Meyer, 2021*a,c*).

While transparency was initially an abstract concept (Vanberg, 2001, 2005) it seems linked to media-coverage of judicial decision-making nowadays (Staton, 2010; Meyer, 2021*a*). Recent studies highlight features of decisions that encourage the publication of newspaper articles regarding the decisions; theses features include, for example, the publication of separate opinions, having had oral arguments, or having taken an unanimous decision (Meyer, 2021*b*). While these are certainly important features of decision-making we do not know in what ways the style of written opinions or press releases influences news-coverage. This is a shortcoming considering that most of all, justices are bound to produce text to communicate their legal expectations. Thus, an unanimous verdict in the dichotomous format either granting a plaintiff a success or not does not include any information on how the justices arrived at a verdict, let alone the justices' expectations connected to it. These details of judicial decision-making are entwined with the text of the judicial opinion. This is why we plead to assess the linguistic features in substantive parts of judicial decisions and press releases to understand how highest courts manage the transparency surrounding decisions.

In particular, we argue that courts craft press releases to communicate decisions written in a complicated manner to the media. The more complicate a decision is written the more likely that the court will publish a press release. Managing the

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textual complexity of the decision by how a press release is formulated allows a court to influence the transparency surrounding a decision. In this regard we understand transparency as the likelihood of a decision being covered in a newspaper article.

To assess the argument we combine data collected by Meyer (2020, 2021*b*) on the publication of press releases and his data on newspaper-coverage for the German Federal Constitutional Court (GFCC). Moreover, we extent the data with measures on the readability of judicial decisions and judicial press releases. The GFCC is a comparatively powerful, yet archetypal high court with constitutional review powers (Kelsen 1942; Engst 2021, Ch.3). The court is well suited to assess our argument considering that the court's design served as a role model to constitutional courts world wide (Hönnige, 2008). Thus, findings for the GFCC may travel to other countries.

In what follows we briefly review the literature on how courts are able to enhance the transparency surrounding decisions to situate our contribution in the literature. Afterwards, we present theoretical considerations illustrating how justices are able to manage transparency through opinion-writing and the textual composition of press releases. Finally we assess our argument presenting the likelihood of a decision being covered in a newspaper article as a function of the textual composition of the decision and a respective press release. Results show that the probability of the court publishing a press release decreases as a decisions readability increases. However, counter to our expectations we find that news-coverage of decisions becomes less likely the larger the readability of a judicial press release.

This project has major implication for our ability to conceptualize transparency as a decisive element of judicial power. Transparency cannot only be manipulated through the presence or absence of elements included in decision-making; such as, oral hearings (Vanberg, 2001, 2005; Krehbiel, 2016). Instead, the degree of transparency can be managed actively through opinion-writing and the formulation of press releases. Specifically justices are able to reduce the complexity of a decision by publishing

readable press release. This way, text – as a key element of every judicial decision – becomes a tool justices can use strategically.

2 Literature Review

This study argues that the way justices write opinions and press releases allows them to manage the transparency of the environment in which decisions are made. A transparent environment enables the public to monitor the implementation of judicial decisions, making political resistance against judicial action costly. According to Vanberg (2001, 348) "a 'transparent environment' [...] is one in which an evasion attempt by the legislature will become public knowledge and will result in a public backlash against the legislature." This functional definition suits his formal modeling approach but is less precise on what transparency actually is. Instead, the definition describes some abstract concept in a dichotomous form meaning that transparency is something that is either present or absent. Moreover, transparency is connected to the political domain emphasizing that legislative evasion is openly observable. We argue to adjust the defined perspective in two ways. First, transparency is a gradual concept. A judicial decision is always consumed by some audience while the accessibility of a decision is defined by its readability; for example, a technical decisions written with legal jargon is transparent to a specialized, legal audience and an easy to read decision is transparent to the public at large. Thus, any decision is more or less accessible to a specific audience, and this audience can vary in size. The varying size of the audience with easy access to a decision makes transparency a gradual concept. Second, for a public backlash to occur the legislative evasion is not the most decisive feature of transparency. Instead the judicial opinion has to become public knowledge; for example, moderated through the media (see Staton, 2010). Therefore, we argue that transparency should be conceptualized through the readability of judicial opinions.

Readability defines the likelihood of the media picking up on opinions. This likelihood defines whether an environment is more or less transparent.

How is transparency currently studied? In essence scholars study (1) elements of decision-making that increase the probability of media-coverage (Staton, 2010; Meyer, 2020, 2021*b*,*a*) or (2) institutional features that enlarge the audience to a decision (Vanberg, 2001, 2005; Krehbiel, 2016; Engst, 2021). In the former case, studies find that justices can use strategic media-communication to make decision-content publicly available. Elements of decisions, such as separate opinions, oral hearings, or press releases affect a decision's likelihood to be covered by the media (Meyer, 2021*b*). In the latter case, scholars define features of decision-making – such as oral hearings (Krehbiel, 2016) or amicus curiae briefs (Vanberg, 2005, 103) – as elements that widen the audience to a decision. In this regard the occurrence of oral hearings is explained using government briefs, the case's complexity, and the decision type as predictors (Krehbiel, 2016). Moreover, briefs and hearings are also used to predict outcomes of decisions (Vanberg, 2001, 2005). Accordingly, justices will present harsh legal outcomes in a transparent environment to avoid evasion. However, there is initial empirical support for the idea that justices will present vague decisions once they fear a possible evasion (Sternberg, 2019). The idea is to hide the backlash from an evasion in a transparent environment through publishing a vague rather than specific decision (Staton and Vanberg, 2008). Except for these newer approaches which account for the clarity in opinion-writing all the other approaches to address transparency do not account for the text justices write. However, the approach by Staton and Vanberg (2008; also Sternberg 2019) is not about managing transparency but more about how a court may play it safe in a transparent environment. We extent upon this approach and argue that the way justices write opinions and press releases allows them to actively manage the transparency surrounding their decisions. In particular, the judicial writing affects the likelihood of a decision being covered by the media.

Finally, a close reading of existing studies suggests that transparency is seen as something always favoring the court (e.g. Vanberg, 2001; Krehbiel, 2016). This is based on the assumption that public support for the judiciary is always higher than support for the political branches (Caldeira and Gibson 1992; Gibson, Caldeira and Baird 1998; different, Bartels and Johnson 2010). Nevertheless, considering that there exists cross-country variation in public support and that there is evidence that justices vary the clarity of opinions (Sternberg, 2019) it is not compelling why transparency should always be present let alone be desired by the justices. Moreover, features such as oral hearings may draw attention to the court but if the judicial writing remains overly complex then transparency may not help to bring a decision into public discourse. In sum, transparency may not only be exogenous to a court and may not always favor the court. Instead, through (the absence of) opinion-clarity or (the absence of) readable press releases justices are able to shape to which extent decisions become part of the public discourse. Therefore, we argue that to understand public influence of judicial decision-making we need to take opinion-writing and the wording of press releases serious.

In the next section we describe in what ways justices can manage the transparency surrounding decision-making when crafting opinions and press releases.

3 Theoretical considerations

To settle cases, justices at highest courts write and publish opinions, which makes text the comparative feature existing in any democratic legal system. Written decision are composed of various parts; e.g. general case characteristics describing the background concerning a plaintiff's request or technical sections discussing whether a referred issue is admissible. These sections of a decision are exogenous to the court and predefined or legally regulated not allowing the justices much leeway. Therefore, we are not concerned with these sections of decisions. Instead, the section that puts less

constraints on the justices and allows them to shape opinion-writing is the substantive part on the merits. In this section justices argue a case providing reasons for their substantive legal opinion.

Assuming that justices wish to see their decisions being implemented, then mobilizing the public and making citizens aware of opinions is necessary (Vanberg, 2001). It is plausible that the larger the audience to a decision the higher the mobilization of the public. In this regard, varying the readability of substantive parts of opinions appears as a feasible tool, considering that an easy to read decision is accessible by a larger audience compared to one loaded with legal jargon. From this perspective, relatable language can be used to enhance the transparency surrounding decisions, comparable to the idea that precise instead of vague decisions are used when evasion is less likely (Staton and Vanberg, 2008). However, there may be circumstances when a decision written in a complicated manner might be inevitable; for example, when the topic is particular complex. In such situations justices need to rely on additional tools to manage transparency of their decisions. This is where the text of a press release appears as a plausible tool to increase access to a judicial opinion. According to the literature, judicial press releases serve two purposes: First, to allow for strategic media communication enhancing the transparency surrounding decisions (Staton, 2010) and, second, increasing the legitimacy of judicial decision-making by creating open justice (see review in Meyer, 2021*c*, 727-728). However, not every decision is accompanied by a press release, as not in every case transparency maybe desired; especially, if justices expect a political evasion regardless of transparency and attempt to hide such an evasion (Staton and Vanberg, 2008; Sternberg, 2019). From the perspectives existing in the literature and our considerations, the publication of press releases is a strategic choice especially effective to communicate complex, less readable opinions. This leads us to derive the *press release hypothesis*:

- If an opinion is less readable then the likelihood of publishing a press releases increases compared to when an opinion is more readable.

The choice to write or not to write a press release is only the first – dichotomous – step in managing transparency. This opens an external perspective, meaning that looking from the outside a press release is either present or absent. The former increases transparency and the latter does not. In addition, there is also an internal perspective, meaning the court shapes the press release in a certain form. Accordingly, what applies to opinion-writing also applies to press releases. Thus, courts can manage the accessibility of press releases by adjusting the readability of those releases; more readable press releases are easier to understand by journalists and the public compared to less readable press releases. Therefore, the former further increase transparency while the latter does not increase transparency. The easier-to-read press releases accompanying decisions should make it easier for journalists to transform judicial opinion-writing into publicly relatable language when publishing newspaper articles. From this perspective we derive the *media coverage hypothesis*:

- If the court publishes a press release that is easy to read then the likelihood of media coverage of the corresponding opinion increases compared to when the court publishes a press release that is complicated to read, given the same level of opinion readability.

Therefore, given the opinion's level of readability, press releases become a moderating tool to the justices. They can use the press releases to communicate decisions that are inevitably complex and increase transparency. Thus, press releases allow justices to manage transparency. In the next section we outline the measures necessary to assess the hypotheses.

4 Empirical Assessment

To assess the hypotheses we rely on data on senate decisions and press releases published by the German Federal Constitutional Court (GFCC) between the years 2009 to 2017. The justices made a total of 265 senate decisions during these years but not all included a substantive part on the merits. In line with the theoretical considerations, we reduced our sample to the 206 senate decisions with an opinion on the merits.

The GFCC is a suitable case for our assessment, despite the fact that it is a specialized highest court with constitutional review powers situated outside the common legal hierarchy, as opposed to supreme courts which are courts of last resort (Kelsen, 1942; Epstein, Knight and Shvetsova, 2001). The German court is an archetypal constitutional court closely following Kelsen's (2008) writings, making it a court evaluating referred acts exclusively against constitutional law. Despite the fact that the court is among the stronger constitutional courts in Europe (Engst 2017; Engst 2021, Ch.3) it has become a role model to many constitutional court throughout newly established democracies in Central and Eastern Europe (Hönnige, 2008, 526). Therefore, findings generated with regard to this court appear generalizable to other countries.

The dataset necessary to assess the hypotheses has to include three features. First, we require information on whether a senate decision by the GFCC was covered by a newspaper. This information is included in a dataset published by Meyer (2021*b*). Second, we require information on and the full texts of press releases published with regard to the decisions. The full text of the press releases and additional information was made available to us by Philipp Meyer and is an extension on his data used in Meyer (2020). Finally, we extract the full texts of the senate decisions made by the GFCC from the official collection of decisions published by the publishing house "Mohr Siebeck" on CD-Rom. In line with our theoretical discussion we reduced the texts to sections on merits. This is where the justices present their opinions. Merging the different data sources results in 202 senate decisions including merits of whom 171

(about 84 percent) were accompanied by a press release and 73 (about 36 percent) were reported on by the media.[1] In what follows we operationalize the concepts decisive to our analysis.

4.1 Operationalization

The analysis consists of two steps and the hypotheses require to model two distinct dependent variables. First, we need to predict the publication of judicial press releases, which is our first dependent variable. Second, we need to predict whether a judicial decision receives newspaper coverage or not. This is our second dependent variable.

Dependent variables: press releases & newspaper coverage

The publication of press releases. The first dependent variable is a dichotomous measure indicating whether a press release has been published for a corresponding judicial decision (=1) or not (=0). This is the case in 171 of our 202 decisions. A press release is a written text published in the name of the court on its website. Within a press release the GFCC provides a short abstract on its decision. Afterwards, case facts and procedural matters are summarized, before presenting a selection of the justices' main opinions on a case. We only account for press releases that are explicitly associated with a judicial proceeding referring to a corresponding docket number.

Newspaper coverage. The second dependent variable is a dichotomous measure indicating whether a corresponding judicial decision with a press release was referred to in newspaper articles (1) or not (0). Of the 171 decisions including press releases 71 were reported on by newspapers. The data on media coverage has been previously collected by Meyer (2021*b*, 434) "by searching the German LexisNexis Database [...] cover[ing] national and regional flagship outlets [...] as well as niche outlets" including 36 individual newspapers. To identify whether any newspaper article referred to a

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[1]Four senate decisions (*BVerfGE* 124, 267; 134, 239; 136, 274; 136, 277) were not included in the data by Meyer (2020, 2021*b*) which is why we omitted those.

judicial decision, articles published within 100 days after a decision was made were reviewed. The newspaper articles were pre-selected using text similarity followed by manual annotations assessing whether an article referred to a decision by citing the name or docket number or dealt with the "same topic as the decision and mention the [GFCC]" (Meyer, 2021*b*, 435).

Independent variables

Readability. The hypotheses require to measure both, the readability of judicial opinions and, where available, the text of their accompanying press releases. To do so, we calculate the Flesch readability index (Flesch, 1948) for the substantive part on the merits of a decision where justices present their opinions. This is where justices have leeway on adjusting their style of writing and argue a case presenting the substantive outcome. Moreover, for press releases, we calculate the readability index on the entire text. The content communicated in press releases already constitutes a selection of the key content of a corresponding decision.

For both measures, we process the text to exclude unintentional artifacts. We deploy `quanteda` in `R` to build a corpus removing abbreviations, numbers, special characters and URLs from the text, as well as some unnecessary legal terms. Afterwards we use automatic tokenization and count the number of sentences, words, syllables as well as characters for each text to compute the Flesch for German text (Amstad, 1978):

$$\text{Flesch}_{German} = 180 - \frac{\#\text{words}}{\#\text{sentences}} - \frac{\#\text{syllables}}{\#\text{words}} \cdot 58.5$$

The index ranges from 0 to 100 whereby lower scores indicate text more difficult to read. In general, the higher the Flesh score of an opinion or press release the more readable the text. In our case the scores range between 3 to 62 for judicial opinions (on average 27, standard deviation 7) and between 14 to 53 for press releases (on average 33, standard deviation 6). Therefore, on average the press releases are a slight improvement in readability compared to the opinions.

The Flesch readability index has been used previously to analyze judicial opinion-writing (see e.g. Owens, Wedeking and Wohlfarth, 2013) and while the formula is adapted for specific languages, it comes with similar issues that arise whenever using standard readability scores for specialized language: It does not account for the specifities of legal writing. However, these specifities are inherent to all opinion writings; and therefore variation in the Flesch readability index should still be the best available proxy of readability for legal text. Second, we check the robustness of our results by employing an alternative readability score, specifically created for German text. This is the *Neue Wiener Sachtextformeln (1)* (Bamberger and Vanecek, 1984), calculated as follows:

$$\text{nWS} = 19.35 \cdot \frac{\#\text{words}_{\geq 3syllables}}{\#\text{words}} + 0.1682 \cdot \frac{\#\text{words}}{\#\text{sentences}} + 13.73 \cdot \frac{\#\text{words}_{\geq 6chars}}{\#\text{words}} - 2.779$$

The score follows school levels which implies that opinions or press releases having a lower score are understandable to a wider audience then text having higher scores. Thus, note that the nWS is coded converse to the Flesch. In our case the scores of the nWS range between 8 to 18 for judicial opinions (on average 14, standard deviation 1) and between 10 to 16 for press releases (on average 13, standard deviation 1).

Methodologically, it will be necessary to interact a decision's readability with the readability of its associated press release to understand how justices can use the releases to moderate the complexity of decisions. We assume that, taking the decision's complexity for granted, the easier a press release is to read, the more accessible the associated decision.

Controls

To account for case characteristics and environmental constraints that impact the occurrence of press releases and newspaper coverage we control for a number of factors.

Second senate. The GFCC is composed of two senates who divide responsibilities among them (Kommers and Miller, 2012). It is possible that the different issues, which the senates are concerned with, affect how often the court publishes press releases. Moreover, the different tasks may influence the news value of an issue considered by a senate. To account for the specific institutional design, we use an indicator variable showing whether an opinion was written by the second senate (= 1) or the first senate (= 0). In total 89 decisions in our data were made by the first senate and 113 decisions by the second senate.

Political proceeding. A diverse set of actors can refer issues to the GFCC for judicial review. Some of them will be a priori more interesting to the public than others independent of the court's communication strategy. Different actors can refer different types of proceedings; for example citizens can refer constitutional complaints while certain political actors can request an abstract review of a legislative act (Engst, 2021, 83-88). The docket numbers provide information on the proceeding type. We assume that any legal issues brought forward by political actors is of particular interest to the public. Thus, political proceedings should be more likely accompanied by press releases and newspaper coverage. To control for this, we employ an indicator variable for political proceedings. Political proceedings include: disputes between high state organs (docket type: BvE), abstract judicial reviews (BvF), federal-state disputes (BvG) and intrastate constitutional disputes (BvH). For all these proceeding types, the indicator variable takes the value 1 (and 0 otherwise). In our data 35 of the 202 decisions include political proceedings.

Combined referrals. It is common that the GFCC combines referrals made by different plaintiffs on a similar subject into one decision (Wittig, 2016, 27-28). Considering that multiple plaintiffs referred a similar issue it appears plausible that the issue is of relevance to a larger audience. Thus, it seems likely that combined proceedings have a higher newsworthiness than decisions concerning an issue referred by only one

plaintiff. In total 60 of the 202 decisions in our data combine multiple referrals. To account for those we include an indicator variable for combined proceedings in our analyses.

Oral hearing. The literature has already established that oral hearings are a tool for justices to increase transparency (Vanberg, 2001; Krehbiel, 2016); especially as those hearings receive increased news coverage (Meyer, 2021*b*). This is why we control for the 40 decisions with oral hearings in our data.

Government support. It appears plausible that creating transparency and publishing press-releases is not wise in situations where the court is in a hostile situation with the government while the government receives high levels of public support. Despite the fact that the GFCC receives high levels of public trust (Sieberer, 2006; Sternberg et al., 2015) a government could evade a judicial decision when electoral support is high and robust even in a transparent environment. In such situations a government could risk to loose a few percentage points without risking to loose office (Engst, 2021, 127-128). This implies that under such circumstances justices should rather publish a vague opinion (Staton and Vanberg, 2008) but not a press release to encourage newspaper coverage. Therefore, we control for the public support of the government using survey data from the German *Politbarometer* (Jung, Schroth and Wolf, 2013). Respondents are asked to indicate which party they would vote for if a general election were held in a given week. We aggregate this information and sum the support for the governing parties (in percent) in a given month and connect this support to the month in which a judicial decision was made. On average the governmental support is about 54 percent with a standard deviation of about 12 percentage points in our data.

With the major concepts, independent and control variables operationalized in this section we turn to the empirical test of our hypotheses in the next section.

4.2 Results

In this section we report our results. Given that the respective dependent variables to assess the press release as well as the media coverage hypothesis are dichotomous, we estimate two logistic regressions models (King, 1989).

Let P_i be the value of the dependent variable of model 1 that indicates whether a press release of decision i was published ($= 1$) or not ($= 0$). D_i is the key variable to test our press release hypothesis and summarizes the readability of a decision i. We expect that the lower the readability of a decision the more likely it is accompanied by a press release. Finally, X_i is a matrix combining the values of the control variables outlined above for decision i while β is the vector of respective coefficients.

Moreover, let M_i be the value of the dependent variable of model 2 that indicates whether a newspaper article about decision i was published ($= 1$) or not ($= 0$). We expect that the easier to read a press release about a decision with a given readability is, the more likely will the media report about it in a newspaper article. In order to test our media coverage hypothesis the systematic component of our model has to include not only the readability of the decision i, i.e. D_i, but also P_i, the corresponding press release readability score, as well as the product term of both readability scores.

$$\text{Model 1:} \qquad Pr(P_i = 1 | D_i, X_i) = \frac{exp(\delta D_i + X_i \beta)}{1 + exp(\delta D_i + X_i \beta)}$$

$$\text{Model 2:} \qquad Pr(M_i = 1 | P_i, D_i, X_i) = \frac{exp(\gamma P_i + \delta D_i + \alpha[D_i \times P_i] + X_i \beta)}{1 + exp(\gamma P_i + \delta D_i + \alpha[D_i \times P_i] + X_i \beta)}$$

In model 1, we analyze all 202 senate decisions to assess how well the readability of an opinion can predict the occurrence of a press release. We assume that, all else equal, the harder to read an opinion the more likely does the court supplement it with a summary to inform the press. In model 2, we reduce our sample to all 171 decisions accompanied by press releases. In this step, we identify how the readability of an

Figure 1: Probability of a press release being published depending on the readability of opinions
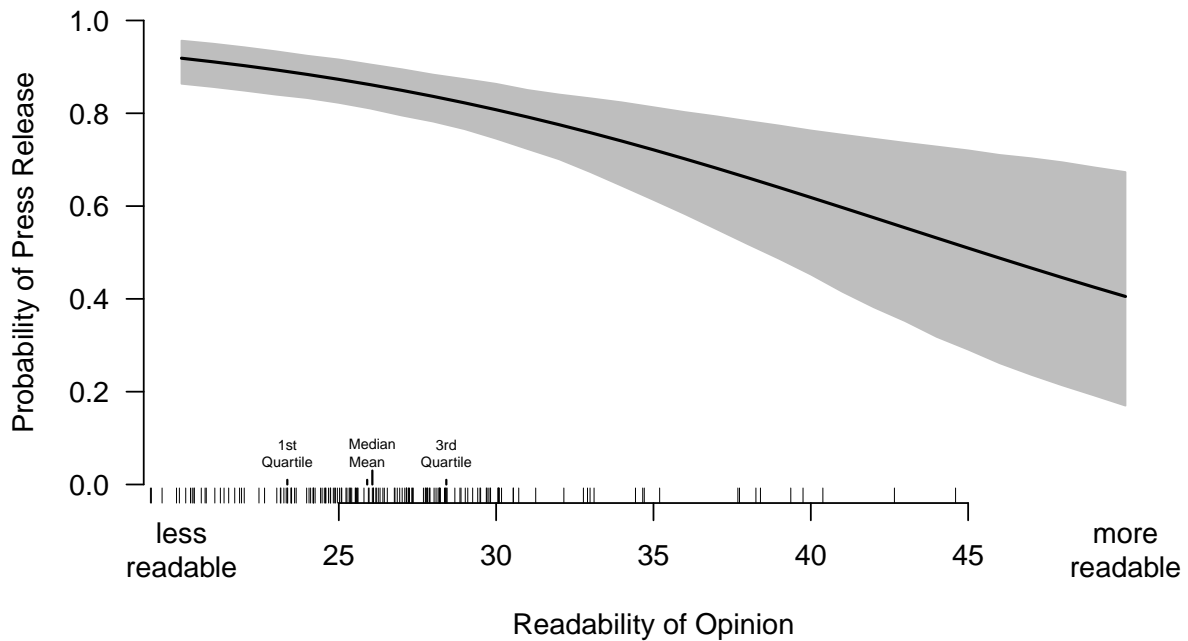
Note: The predicted probabilities are generated based on the estimated coefficients of model 1 reported in table 1 in the appendix using the observed values for each decision on all covariates but the readability score D_i which varies systematically along the x-axis. The gray shaded area illustrates the 95% confidence intervals around the respective predicted probability generated through 1000 draws from a multivariate normal distribution with a mean equal to the vector of estimated coefficients and a variance that equals the estimated variance-covariance matrix of model 1.

opinion and the readability of the accompanying press release impact the probability of newspaper coverage.

Figure 1 summarizes the predicted probability (Hanmer and Ozan Kalkan, 2013) of a press release being published (y-axis) over the readability of an opinion (x-axis). The values of all other covariates are fixed at their respective observed value for each decision. The respective estimated raw coefficients that are used to calculate the probabilities presented in this section are shown in table 1 in the appendix.[2] The

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[2]We use 1000 draws from a multivariate normal distribution to approximate estimation uncertainty of the predicted probabilities shown in Figure 1. The mean of this distribution equals the estimated raw coefficients while the variance equals the estimated variance-covariance matrix of model 1.

readability scores are the Flesch scores with higher values indicating that opinions are easier to read than opinions with lower scores.

The estimated probabilities confirm the press release hypothesis. Accordingly, justices are more likely to supplement a decision with a press release the harder an opinion is to read. Moreover, the figure illustrates that to a certain degree press releases seem to have become a norm. The rug plot above the x-axis highlights the readability scores of all decisions in our data. Considering that most opinions have a low readability score between 20 to 40 points, then the probability of a press release being published varies only between 95 to 70 percent. Thus, in general press releases seem to be rather common. Nevertheless, one can clearly see that the probability to issue a press release decreases the higher the decision's readability score, as expected given our first hypothesis.

The most abstract concept in our analyses are the readability scores. To assess the robustness of our results, we estimate the probability of the court publishing a press release accompanying an opinion using the *Neue Wiener Sachtextformel* (nWS) as an alternative measure of readability. While both, Flesch 1948 and nWS, are general measures of text readability not adapted for legal language, the latter has been created specifically for German text (Bamberger and Vanecek, 1984). The former has merely been adapted for other languages by changing the constant values of the formula (Amstad, 1978).

The estimates of our re-specified model suggest that the presented finding is robust (see Table 1, Model 3 in the appendix) to other readability measures. Again, the lower the readability of an opinion, the more likely the court publishes a press release. Remember that scores on the nWS are read converse to Flesch scores; the higher the nWS the harder to read a text. Thus, the findings estimated in model 1 and in model 3 are very similar and consistent to one another. Moreover, figure 3 in the appendix is computed similarly to figure 1 yielding the same effect. Therefore, we find robust

evidence in favor of the press release hypothesis independent of a particular readability measure.

The second hypothesis is based on the assumption that, holding the readability of opinions constant, justices are able to manage the occurrence of newspaper articles by varying the readability of press releases. In other words, the effect of opinion readability can be moderated through the readability of press releases. This moderation is expressed in the interaction term $D_i \times P_i$ included in model 2. The corresponding estimated coefficient of this interaction term, α, shown in the appendix is positive and significant, confirming that the more readable a press release when holding the readability of opinions constant, the more likely a newspaper reports on an opinion. Thus, in managing the readability of press releases justices can influence the likelihood of media reports on opinions.

Figure 2 summarizes the probability of an article being published (y-axis) over the readability of press releases. As before, the readability is measured using Flesch scores. The figure shows the respective predicted probabilities that are calculated through holding the values of all covariates in model 2 fixed at their respective observed value for each decision and only let the readability score of the respective press release, P_i, systematically vary across the x-axis. The corresponding 95% confidence intervals summarize the distribution of 1000 simulated predicted probabilities for each readability score P_i based on draws from a multivariate normal distribution with a mean that equals the estimated coefficients and a variance that equals the estimated variance-covariance matrix of model 2.

The results are converse to our expectations: The less readable a decision the higher the probability of a press release being published. This does not confirm the media coverage hypothesis. Therefore, we need to further evaluate this hypothesis considering the following possible explanations: First, our current considerations are court driven not accounting for strategic choices by journalists. It maybe plausible that journalists

Figure 2: Probability of newspaper coverage accounting for press release readability
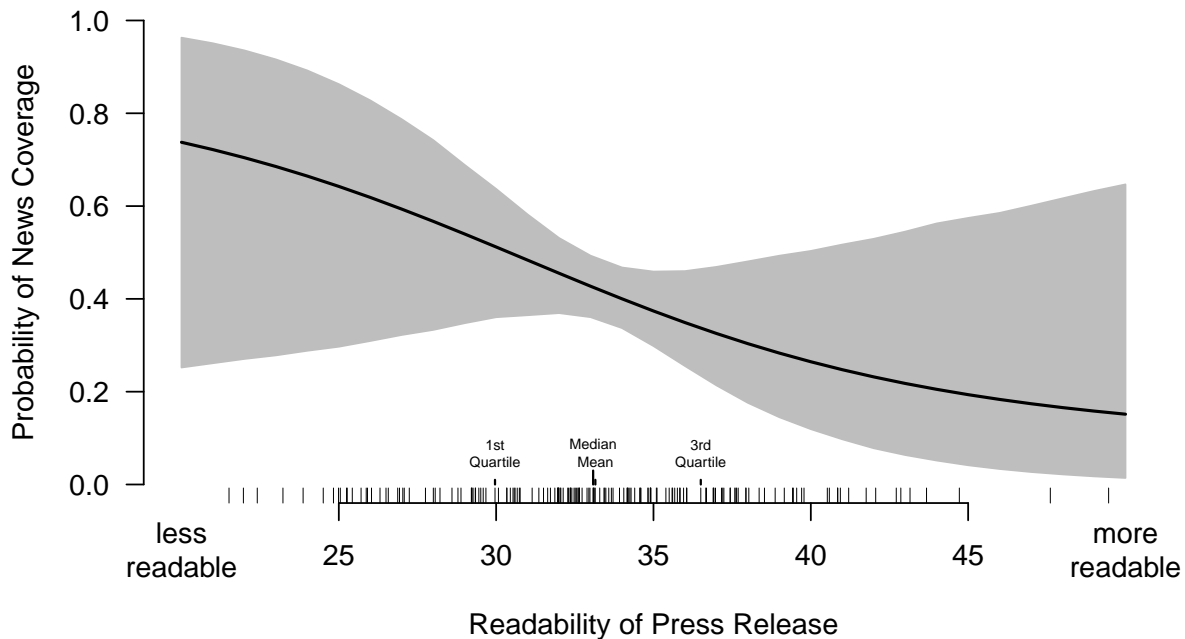
Note: The predicted probabilities are generated based on the estimated coefficients of model 2 reported in table 1 in the appendix using the observed values for each decision on all covariates but the readability score P_i which varies systematically along the x-axis. The gray shaded area illustrates the 95% confidence intervals around the respective predicted probabilities generated through 1000 draws from a multivariate normal distribution with a mean equal to the vector of estimated coefficients and a variance that equals the estimated variance-covariance matrix of model 2.

step in when press releases are particularly complex to read to bring a decision into public discourse. Second, the focus on the court also does not account for the newspaper covering a judicial decision. Some newspapers are read by a larger audience while other newspapers have a lower circulation. Thus, one article may have a larger impact than an article published by another outlet. Hence, we might have to control for the (type of) newspaper when evaluating news coverage. Third, we currently account for the whole text of a press release when estimating readability scores. It might be reasonable to also reduce the text in press releases to the substantive part written by the justices, excluding case facts or summaries not of relevance to the substantive argument. The idea is that even while the case fact are summarized in complicated ways this does

not necessary apply to the summary of the legal argument. In sum, while the media coverage hypothesis is not confirmed further analysis are necessary to specify the effect of press release readability on newspaper coverage.

5 Conclusion

Courts cannot enforce decisions themselves (Hamilton 1788, Federalist No. 78). That is why scholarship argues that justices need to mobilize a court-friendly public to exert pressure on the political branches. The pressure forces these branches not to evade judicial decisions (Vanberg, 2001, 2005). Decisions made in a transparent environment are better suited to achieve mobilization than those taken in a non-transparent environment. However, while courts have some institutional features available to influence transparency – e.g. the justices can hold hearings (Krehbiel, 2016) or engage in strategic media communication (Staton, 2010) – transparency is often regarded as something that is present or absent (see Vanberg, 2001). This study addresses this dichotomous perspective and instead of focusing on mobilization in an environment that is either transparent or not, we are concerned with the management of transparency itself. In our view, transparency is not exogenous to the court. Instead, through the way justices write opinions and press releases they are able to manage transparency. In particular, the readability of opinions and press releases influences the likelihood of decisions being covered by newspapers.

How do courts manage the transparency surrounding decisions through crafting opinions and press releases? In two steps we show that: First, the less readable a judicial opinion the higher the likelihood that the justices publish a press release. Second, varying the readability of press releases influences the likelihood of respective opinions being covered by newspapers. Nevertheless, in contrast to our expectations harder-to-read press releases increase the probability of media coverage, whereas easier-to-read press releases decrease this form of transparency. The court can supplement

decisions with information for the press that influence the likelihood that journalists write a newspaper article, albeit in contrast to our hypothesized effect.

These findings have major implications on how to conceptualize the transparency of the environment in which judicial decision-making takes place. Instead of transparency being exogenous we argue that transparency is also endogenous to a court. This is true at least to the extent that justices can influence the likelihood of media coverage through their writing. Moreover, in focusing on the way substantive parts of decisions are written and on how press releases are written we leverage text as a comparative feature existing in any legal system. Hence, this analysis does not rely on institutional characteristics which may vary across countries. Instead, we show that opinion writing and the wording of press release can serve strategic judicial purposes.

A way to extent this study is to bring public opinion into the analysis. Previous studies implicitly assume that transparency is good for the court mobilizing a public that is generally court friendly. However, recent scholarship suggests that public support for courts can vary which should affect the strategic behavior of the justices (Staton and Vanberg, 2008; Sternberg, 2019). We say that varying the readability of opinions and press releases is a reasonable strategy justices can follow to also decrease transparency when public support is not in favor of the court. Thus, our study makes the important contribution to conceptualize transparency further and outlines that manipulating transparency can be done strategically. In a next step one may assess in what ways justices use the strategic writing of opinions and press releases to respond to different levels of public opinion.

6 Appendix

Table 1 summarizes the logistic regressions mentioned in section 4.2. Model 3 is estimated analogue to model 1 just substituting the Flesch as readability scores with the *Neue Wiender Sachtextformel* (nWS). Figure 3 is the illustration similar to figure 1 using the nWS. Note that scores form the nWS are scaled converse to the Flesh index. Thus, according to the nWS lower scores indicate better readability than higher scores.

Table 1: Logistic regressions to estimate the effect of readability on transparency

	Press release publication	Newspaper coverage	PR publication (nWS)
	1	2	3
Opinion readability	$-.12^{***}$	$-.36^{**}$	$.54^{***}$
	(.03)	(.15)	(.19)
Press release readability		$-.16$	
		(.12)	
2nd Senate	$-.92^{*}$	$-.07$	$-.92^{*}$
	(.49)	(.38)	(.49)
Political proceeding	.13	.34	.04
	(.63)	(.54)	(.61)
Combined referrals	-1.37^{***}	$.75^{*}$	-1.19^{**}
	(.48)	(.41)	(.46)
Oral hearing	2.29^{**}	2.31^{***}	2.26^{**}
	(1.07)	(.51)	(1.07)
Government support	$-.03^{*}$	$-.01$	$-.03^{*}$
	(.02)	(.02)	(.02)
Opinion readability x Press release readability		$.01^{*}$	
		(0.00)	
Constant	7.61^{***}	7.20^{*}	-3.43
	(1.67)	(3.98)	(2.69)
Observations	202	173	202
Log Likelihood	-69.46	-92.56	-71.71
Bayesian Inf. Crit.	176.09	231.49	180.57

Notes: $^{*}p < .1$ $^{**}p < .05$ $^{***}p < .01$.

Figure 3: Probability of a press release being published depending on the readability of opinions (nWS)
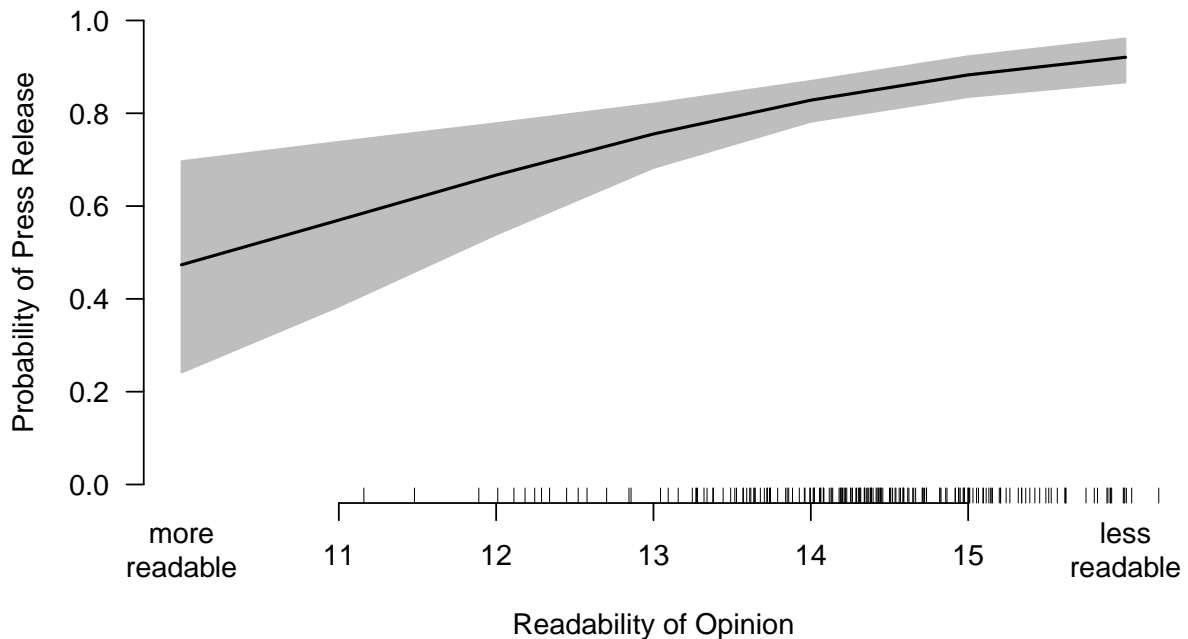
Note: The predicted probabilities are generated based on the estimated coefficients of model 3 reported in table 1 in the appendix using the observed values for each decision on all covariates but the readability score D_i which varies systematically along the x-axis. The gray shaded area illustrates the 95% confidence intervals around the respective predicted probability generated through 1000 draws from a multivariate normal distribution with a mean equal to the vector of estimated coefficients and a variance that equals the estimated variance-covariance matrix of model 3.

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