

Case Salience and Media Coverage of Supreme Court Decisions: Toward a New Measure

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Abstract

Judicial behavior is contingent on case salience. Unfortunately, existing measures of case salience have met with some skepticism. After discussing the characteristics of an ideal measure of salience, the authors construct a new measure of case salience. This new measure expands on prior studies by examining coverage in four diverse newspapers and includes coverage anywhere in the paper, instead of concentrating on front-page coverage only. By developing this new measure, the authors uncover patterns about national media coverage of the Court and provide a potentially more useful measure of case salience.

Keywords

judicial decision-making, salience, media, Supreme Court

On June 10, 1996, the United States Supreme Court upheld the convictions of Michael Whren and James Brown. While the defendants were initially pulled over for minor traffic infractions, they were convicted of serious drug offenses.¹ The young defendants were driving a new car in a known drug area and were African American. The defense in *Whren v. United States* contended that the investigating officers needed probable cause of drug activity for the stop. To rule otherwise, the defense argued, could justify racially discriminatory behavior (Sklansky 1997, 289). The Supreme Court's decision, stating that the judiciary should not look at the officer's subjective state of mind, was quickly heralded by law enforcement (Biskupic 1996), but criticized by many who suggested the opinion made all drivers "become prey to police officers' arbitrary whims, hunches, suspicions, and prejudices" (Levit 1996, 187).

On the same day as the *Whren* decision, New York City's mayor Rudi Giuliani agreed to a new budget; the city of Newark, New Jersey, implemented new policies to improve some of its failing schools; and presidential candidate Bob Dole announced changes to the Republican Party's platform concerning abortion. We know these events occurred because they were reported on the front page of the *New York Times* on June 11, 1996. Absent, however, from the *Times* front-page coverage is any mention of the *Whren* case. Although contemporary critics called this case a "clear step . . . toward authoritarianism, toward racist policing, and toward a view of minorities as criminals" (Harris 1997, 547), the *Times* placed a story about *Whren* on page 22. On the same day, however, the editors of *Washington Post*,

Chicago Tribune, and *Los Angeles Times* all devoted space on the front page of their papers to the *Whren* holding.

There could have been many reasons why the editors of the *New York Times* did not place the *Whren* decision on page 1. Perhaps they felt the case was not that important. Perhaps they felt that local issues, such as the Newark schools situation and the city's budget, were more interesting to their subscribers. Perhaps the conservative, pro-law enforcement decision did not coincide with the ideology of some of the editors, and these editors wanted to downplay the decision's relevance. Whatever their motivations, the result is that a *Times* reader may have a very different impression of the importance of the *Whren* decision, covered on page 22, than a reader of the many other papers across the nation that gave the decision front-page attention.

This example is not an indictment on the coverage of the *Times*, as reporters and editors must weigh a number of different characteristics of newsworthiness when deciding what to cover and where to place certain stories (Gans 1979). The problem arises when scholars use news coverage in the *New York Times* as a measure of a case's importance, relevance, or "salience." Using front-page coverage of the *Times* as the only indicator of salience could be problematic

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as many cases, just like *Whren*, may not appear on the *Times*' front page but may be considered salient based on other media outlets.

In this article, we further explore the idea of case salience, examine multiple newspapers' coverage of Supreme Court decisions, and propose a new measure of case salience. This article speaks to multiple audiences and makes a significant contribution to the discipline. For judicial scholars, this article proposes an alternative and potentially better salience measure. For researchers examining political behavior outside of the judicial context, this article examines whether the practice of coding coverage from one media source may be an appropriate way to measure the salience of specific topics. Lastly, for scholars of media politics, this case provides an excellent opportunity to inform debates over standards of newsworthiness.

Salience and the Courts

Most scholars agree that a salient issue or event is one that actors care more about (Niemi and Bartels 1985, 1212) or one that they feel is more "important" (Baird 2004, 760). Others define salience as awareness of information about events or issues (Hutchings 2001). This definition is often related to the amount of media coverage devoted to an issue (Canes-Wrone and de Marchi 2002). These two aspects are invariably intertwined as "people generally have only a few issues that are particularly important to them and to which they pay attention" (Edwards, Mitchell, and Welch 1995, 110-11).

Whichever definition we choose, issues or events deemed highly salient are more likely to influence decisions of individual citizens and elite actors. For example, the presence of highly salient issues on the ballot can increase voter turnout (Smith 2001), and citizens often choose candidates based on salient issues (Abramowitz 1995). Issue salience also has an important influence on legislative behavior (Hutchings 1998), and Ang and Peksen (2007) find that economic sanctions are much more likely to be effective if the nation enforcing the sanction sees the issue as important.

In the judicial context, regardless of whether we call them "landmark" decisions (Segal and Spaeth 1996, 976), "controversial" cases (Pritchett 1941, 890), or simply "big" cases (Barrow and Zuk 1990, 466), prior research suggests that justices act differently when deciding salient cases. Judicial scholars have identified two types of salience: political salience and legal salience. A case that is politically salient is one that is important to the public. A case that is legally salient, however, is important because it influences "the development of the law" regardless of whether it is known to the public (Bailey, Kamoie, and Maltzman 2005, 79). Like most recent studies, we focus on political salience as opposed to legal salience. Although legal salience can be important, the theoretical framework underlying the

two most popular paradigms for judicial behavior, the attitudinal and the strategic models of judicial decision making, both point to the importance of political salience, rather than legal salience.

The attitudinal model posits that justices have policy preferences and suggests that their behaviors on the bench are influenced by those preferences (Segal and Spaeth 2002). Thus, a liberal justice will support liberal outcomes in most cases and a conservative justice will generally support conservative outcomes. While this model of judicial behavior has received substantial support in the literature, the influence of the attitudinal model may be conditioned by the salience of the case (Spaeth and Segal 1999, 309). A justice may be more willing to follow the majority than dissent if the issue at hand is relatively unimportant or is perceived to lack wide-ranging ramifications (Spriggs, Maltzman, and Wahlbeck 1999, 491).

In their analysis of civil rights cases from the Supreme Court, Unah and Hancock (2006) find that justices are more likely to follow their policy preferences in highly salient cases than in those cases deemed less significant. Like other political actors, judges may devote their attention to issues they feel are the most important and that may have larger policy impact. Similarly, in their examination of the influence of attorney experience and Supreme Court decisions, McAtee and McGuire (2007) find that attorney experience influences a justice's behavior only in nonsalience cases, where perhaps the justice is not as knowledgeable of or interested in the issues at hand and is more easily swayed by attorney arguments.

The strategic model of judicial decision making suggests an alternative way that salience may influence judicial behavior. This model recognizes that justices do not make decisions in a vacuum; they are constrained by the preferences of other actors (Epstein and Knight 1998, 10). Aside from conditioning the effect of personal preferences, case salience can factor into individual justice's calculations of how he or she expects other political actors or the public to react. For example, justices may negotiate more in salient decision than in more ordinary cases (Epstein and Knight 1998, 98). Spriggs, Maltzman, and Wahlbeck (1999) find that justices make more suggestions and threats during the opinion-writing process and author more separate opinions in those cases that are deemed salient. Others suggest that the Chief Justice is more likely to write the opinion in highly salient cases, presumably to have more control over the court-created policy in major decisions (Brenner 1993; Epstein and Segal 2000).

Operationalizing Salience in the Courts

While case salience may play a role in attitudinal and strategic models, there is considerable disagreement over the operationalization of the concept. Supreme Court

justices are generally reticent to discuss the salience of current or pending cases (Epstein and Segal 2000, 67); therefore, researchers have substituted proxy measures to capture judicial salience. In their study of case salience, Epstein and Segal (2000, 69-70) cite seven prior measures of case salience used in previous research: (1) cases that have been reprinted in constitutional law textbooks, (2) cases that are included in *Congressional Quarterly's* list, (3) cases on *The Supreme Court Compendium's* list, (4) cases that generate "substantial" Supreme Court citations within five years of their decision date, (5) cases that generate eight or more law review articles within two years of their decision date, (6) cases headlined on the advance sheets of the *Lawyer's Edition*, and (7) cases generating substantial amicus curiae participation. Epstein and Segal (2000) convincingly cite the flaws of each approach and, consequently, derive their own measure—whether the case is discussed on the front page of the *New York Times*.

Epstein and Segal (2000) make compelling arguments for their measure and it has been widely accepted and used in subsequent studies (e.g., Bailey, Kamoie, and Maltzman 2005; Baird 2004; Giles, Blackstone, and Vining 2008; McAtee and McGuire 2007; Unah and Hancock 2006). Despite its common usage, however, there are at least three potential systematic flaws in using the *New York Times* (or any other individual media outlet) as a proxy for salience (Brenner and Arrington 2002). First, some papers may lean to the ideological left or right. In the *New York Times* example, there is some evidence that the *Times* leans farther left than many other papers (Groseclose and Milyo 2005). If the *Times* exhibits a liberal bias, it may be more likely to cover liberal than conservative decisions, and thus, relying on the *Times* measure may overrepresent the salience of liberal cases (Maltzman and Wahlbeck 2003). Unah and Hancock (2006) find merit in this critique, finding that 28 percent of liberal Supreme Court decisions are covered on the front page of the *Times*, compared to 19 percent of conservative outcomes ($\chi^2 = 9.008, p < .01$).

Second, Brenner and Arrington (2002) argue that cases must compete with other news stories (and other cases) for front-page coverage. For example, if a natural disaster occurs on the same day the Supreme Court announces an important decision, the disastrous event may push an otherwise salient case off the front page and to other parts of the paper. The case is still important, yet it would not appear salient under the measure. Similarly, two important cases may compete for front-page coverage, but due to space limitations, only one may make it to page 1. Obviously, this problem is exacerbated with any media measure that relies solely on the front page, rather than considering coverage anywhere in the paper.

A third criticism levied at coverage from a single source is that newspapers may be more likely to report stories from their home area, as their readership and advertisers are likely to live and work close by (Brenner and Arrington

2002; Maltzman and Wahlbeck 2003). For the *New York Times*, Unah and Hancock (2006) verify this critique, concluding that 42 percent of cases originating from New York State are published on the front page of the *Times*, compared to 23 percent of cases originating elsewhere ($X^2 = 5.65, p < .05$).

The *Whren* case and associated coverage provides one concrete example of a case illustrating many of these critiques. *Whren* was a conservative decision that strongly supported (if not greatly expanded) law enforcement's ability to use evidence obtained during minor traffic infractions. The same time as the Court decided *Whren*, two local stories appeared to be very prominent in the *Times*, as New York City's mayor and city council were gripped in difficult budget negotiations and New Jersey schools struggled with multiple policy and monetary issues. These two local issues and the fact that it was a conservative decision may have been responsible for bumping coverage of *Whren* to page 22.

Despite the concerns expressed in the judicial literature, many have continued to use the front page of the *Times* as a proxy for salience, concluding that "its advantages over other measures lie in its immediacy, which makes it facially the most valid measure, and in its content neutrality, which makes it transportable to virtually any policy area of interest" (Unah and Hancock 2006, 304). We agree that the *New York Times* measure has many advantages over currently extant measures, but we believe that building off of the logic of this measure and expanding its reach may yield a better measure. To improve upon this existing measure of salience, we next discuss the characteristics of an ideal measure of case salience.

Defining an Ideal Measure of Salience

We believe that there are six characteristics of an ideal measure of salience. First, if one is examining the influence of salience on behavior, it follows that the measure of salience should be contemporaneous with those behaviors (Baird 2004, 760). After all, justices are not influenced by history's assessment of a case's significance but the case's apparent importance at the time it is being decided (Cook 1993, 1128; Epstein and Segal 2000, 67-8). Media measures score well on this criterion, but the need to have contemporary measures of salience excludes many previous measures that are retrospective in nature, such as *The Supreme Court Compendium*, *Congressional Quarterly* lists, and cases printed in law textbooks (Epstein and Segal 2000, 68).

Second, a good measure of salience should be replicable. The reliability of any measure may be questionable if future studies and/or other researchers cannot replicate that measure (King 2007). Again—media measures score quite well on this criterion. Most researchers have access

to major newspapers, whereas other options, like scoring cases from the lawyer's edition, are more difficult for many scholars.

Third, a good measure should be transportable, meaning that it can be used across multiple types of studies regardless of the subfield (Epstein and Segal 2000, 67). Having a measure of salience that can be used to study all three branches of government would allow more insight into the role of salience in political behavior than a measure that is specific to the courts. Using the media as a measure of salience again appears appropriate in this context, as nonjudicial studies have used the media as a proxy for salience (Canes-Wrone and de Marchi 2002). Those measures specific to judicial studies, such as the number of amicus curiae briefs, would not be transportable to other fields.²

Fourth, a good measure should reflect the potential range of salience. It is unrealistic to claim that a case or issue either is or is not salient. Just as partisanship varies from strong partisan to weak partisan to undecided, so too do assessments of salience and ambivalence vary across a spectrum of beliefs. In a similar example, scholars in the judicial field have moved away from using dichotomous measures of judicial ideology (e.g., partisanship) to more refined and continuous measures, such as judicial common space scores (Epstein et al. 2007) or measures derived from NOMINATE scores (Giles, Hettinger, and Peppers 2001). Just as with judicial ideology, a more nuanced measure of salience that includes more potential variation will open the door for new examinations of salience and its importance.

Fifth, current theories of judicial decision making suggest that salience is important to the Court because it reflects the national mood. Justices must "rationally anticipate whether [their] preferred outcomes will be respected and faithfully followed by relevant publics" (McGuire and Stimson 2004, 1019). As they lack the institutional ability to enforce their own rulings, strategic models predict that justices should display different behaviors because they anticipate that the public feels strongly about an issue. If the High Court issues a decision contrary to public opinion, the Court may lose legitimacy in the public's eye. In response, elected officials, fearing negative electoral consequences, may also reject the Court's ruling. Some prior studies support the view that justices' behaviors change with public opinion (e.g., McGuire and Stimson 2004; but see Norpoth and Segal 1994). However, the influence of public opinion on judicial behavior may be conditioned on the salience of the case. For example, Giles, Blackstone, and Vining (2008) find that public opinion influences judicial decisions in nonsalient cases but not in salient cases. Given this important line of research on judicial responsiveness to public mood (either directly or indirectly through elected

officials' attentiveness to public opinion), a good measure of salience should reflect those cases thought important by the public.³

Finally, an appropriate variable for any study should be free from systematic bias. For example, if a measure of salience consistently favors liberal outcomes, then it introduces measurement error into studies employing that measure. This type of error, although unintentional, might cause us to draw faulty conclusions about the effects of salience.

Sample Selection and Data Collection

To evaluate media sources as a measure of salience, we examine coverage of cases argued during William Rehnquist's tenure as Chief Justice (1986-2005). Once we selected this era, we then had to determine which media outlets to search. We immediately concluded that we must search the *New York Times*. The importance of the *Times* is obvious—it is the preeminent indicator of salience (Epstein and Segal 2000) as well as perhaps the most decorated and influential paper in the country. We then considered searching the Vanderbilt Television Archives for indications of coverage on television, but we quickly discovered that far too few cases are covered on the major newscasts to yield accurate results. We also considered searching popular Internet sites focusing on the courts, but then determined that these sites would not be relevant for older cases. After considering these options, we concluded that Epstein and Segal (2000) are correct that newspaper coverage is the ideal media indicator. Because of the problems with using any single media outlet, however, we wanted to combine the *Times* with three other papers that were respected as excellent news outlets while simultaneously (at least in the aggregate) maintaining ideological and regional balance. We eventually settled on the *Washington Post*, *Los Angeles Times*, and *Chicago Tribune*, in addition to the *New York Times*. These papers have been previously used in the judicial literature because they are both geographically and ideologically diverse. The *New York Times* and the *Washington Post* tend to take more liberal stances while the *L.A. Times* and the *Chicago Tribune* are generally considered more conservative (Segal and Cover 1989, 559).

After selecting the papers, we then searched all cases orally argued during this period to determine whether they were covered in the *New York Times*, *Washington Post*, *Los Angeles Times*, and/or *Chicago Tribune*, yielding a total of 7,356 searches.⁴ If the case was covered, we coded the page and section number on which it appeared. We then merged the coverage data with the cases from the *U.S. Supreme Court Database* (Spaeth 2008) data set to better understand the characteristics of the cases that are covered.

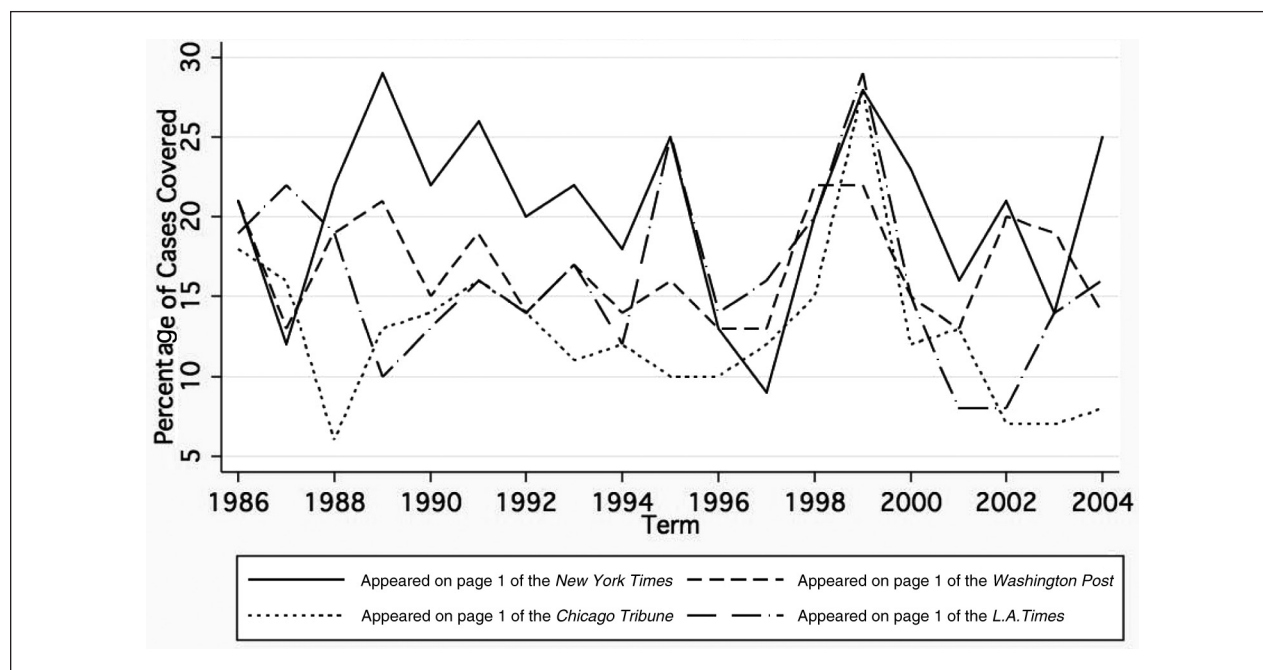


Figure 1. Percentage of Supreme Court cases covered on the front page of four major newspapers, 1986-2004

Comparing Court Coverage in Major Newspapers

Scholars have noted the variations among media coverage of political events and political actors. For example, Canes-Wrone and de Marchi (2002) found that coverage of roll call votes differed between even “national” papers like the *New York Times*, the *L.A. Times*, and the *Washington Post*. To help answer whether coverage differs by paper, Figure 1 presents the percentage of Supreme Court cases covered on the front page of four major newspapers, the *New York Times*, *Los Angeles Times*, *Washington Post*, and *Chicago Tribune*. Figure 2 shows a similar graph, but is adjusted to reflect coverage anywhere in the paper (not just on the front page).

Taken together, these figures tell a number of important stories. First, coverage varies across time. Both figures suggest that coverage is much more prevalent some years than others. For example, Figure 1 reveals that in 2000 almost 30 percent of cases were covered on the front page of the *New York Times* and the *L.A. Times*, while page-1 coverage in the *New York Times* just a few years before did not top 10 percent. This suggests that studies of the media and the Supreme Court should closely consider context and not assume that trends found in one year continue in other years. This trend of temporal variation is even more obvious in Figure 2, where overall coverage is declining over time, regardless of the paper in question. Second, these figures demonstrate that the coverage differs radically across papers. In most years, the *New York Times* covers more Supreme

Court cases—both on the front page and anywhere in the paper—than the *Washington Post*, *Chicago Tribune*, or *L.A. Times*. The *Washington Post* and *L.A. Times* have similar coverage most years and the *Chicago Tribune* consistently devotes the smallest amount of ink to Supreme Court cases. While this may be an indication of more thorough coverage by the *New York Times*, it may also provide evidence that using the *Times* measure overrepresents the number of salient cases, as others have suggested (Brenner and Arrington 2002, 104).

Toward a New Salience Measure

We contend that a quality salience measure must be contemporaneous, replicable, transportable, nondichotomous, a measure of mass national mood, and free from systematic biases. We also believe that existing proxies of salience all fail on at least one of these attributes. Even the front page of the *New York Times*, while probably the best measure currently available, is suboptimal on many of these criteria (Brenner and Arrington 2002; Unah and Hancock 2006).

To alleviate these problems, we developed a Case Salience Index (CSI) that includes components of all of the media measures previously discussed. We begin with the presumption that combining four papers from four different regions will reduce (although not necessarily eliminate) regional biases. Furthermore, we believe it is important not only to recognize the significance of the front page, but also to include cases mentioned anywhere in the paper.

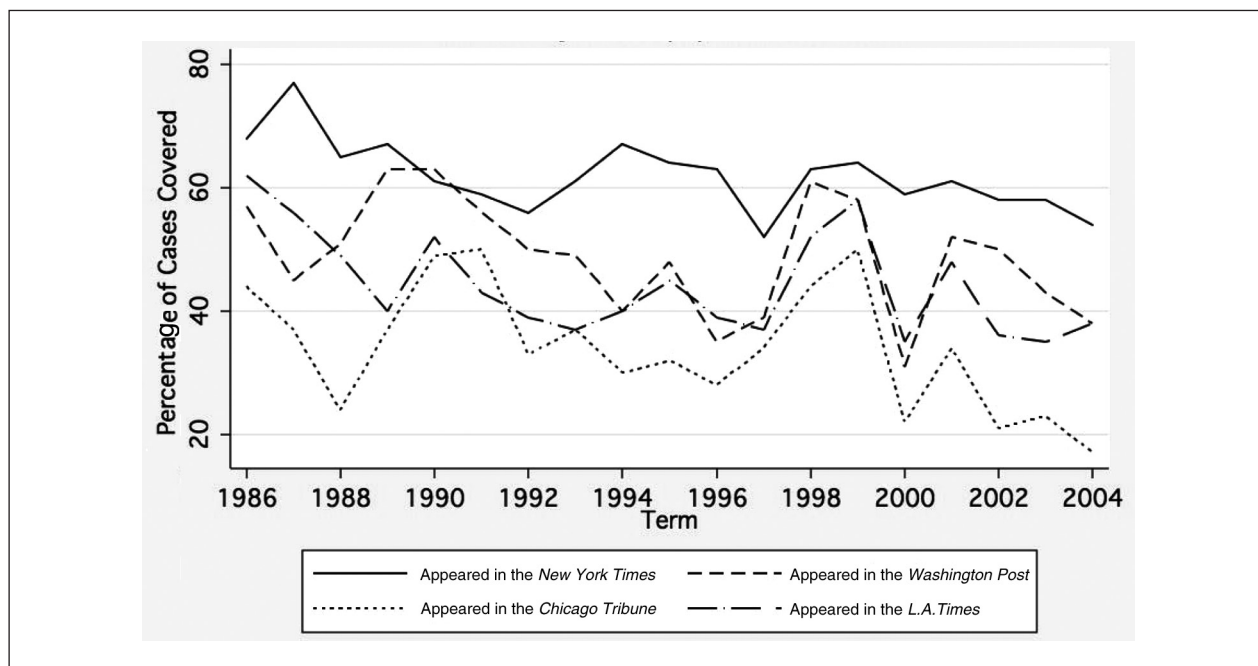


Figure 2. Percentage of Supreme Court cases covered anywhere in four major newspapers, 1986-2004

We think this is particularly noteworthy, as less than one-fourth of cases argued before the Court are covered on the front page in any given year, but many receive some coverage off page 1. We contend that coverage anywhere indicates some level of salience, although clearly front-page stories are more important.

Given these criteria, we develop an index where each occurrence of coverage on the front page of any paper receives a score of 2, coverage anywhere else in each paper (but not on page 1) receives a score of 1, and no coverage at all receives a 0. We then sum these scores across all papers, meaning that each case receives a CSI score varying between 0 (meaning that it was not covered anywhere in any paper) and 8 (indicating that it was covered on the front page of all four papers).⁵ Our index includes all the advantages of using the front page of the *Times* while minimizing the potential problems of using a single media outlet.

Given what we know theoretically about salience, a good sign of face validity would be if the index places the plurality of cases in the 0 or “not salient” category and the percentage of cases would decrease with each step on the scale. Using this measure of salience, we would expect that few cases would receive an 8—the highest potential point on the case salience index.

Figure 3 presents a histogram showing the distribution of the Case Salience Index. Fortunately, it largely conforms to our expectations previously outlined. Approximately one-fourth of cases receive a score of 0, and three-fourths of the cases score a 4 or lower. Further

investigation suggests that the Case Salience Index identifies many potentially important cases that are counted as not salient if we examine just one particular newspaper source. For example, we find that 1,494 out of 1,876 cases (80 percent) were not covered on the front page of the *New York Times*. Out of these cases that would be deemed “not salient” by the *Times* measure, over 1,000 were covered somewhere in at least one paper. Over 18 percent (270) of the cases deemed not salient by the *New York Times* measure actually appeared on the front page of at least one other paper, with 71 cases appearing on the front page of at least two papers, but not the *Times*.

Examples of cases appearing on multiple front pages but evading page-1 coverage of the *New York Times* are numerous. In addition to *Whren*, cases involving election laws,⁶ cable television regulation,⁷ governmental immunity,⁸ contempt orders in child custody hearings,⁹ and racial discrimination¹⁰ all appeared on the front page of at least two other major papers but did not appear on page 1 of the *Times*. In addition, many cases from the New York area appeared on the front page of the *Times* but were not significantly covered in any other paper, front page or otherwise. For example, one case dealing with New York cigarette taxing policies¹¹ appeared on page 1 of the *Times* but was not covered anywhere in the three other papers. In all, 122 cases received front-page coverage in the *New York Times* yet did not appear on the front page of any other paper. Thus, this measure has the potential of overrepresenting some cases' salience while underrepresenting the importance of other cases.

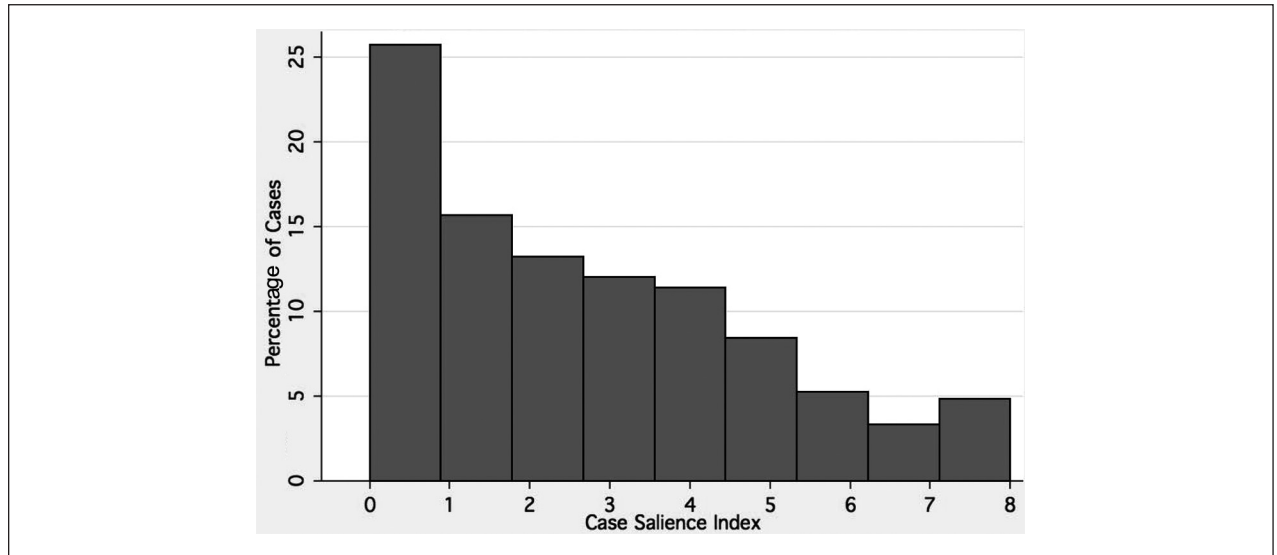


Figure 3. Distribution of the Case Salience Index

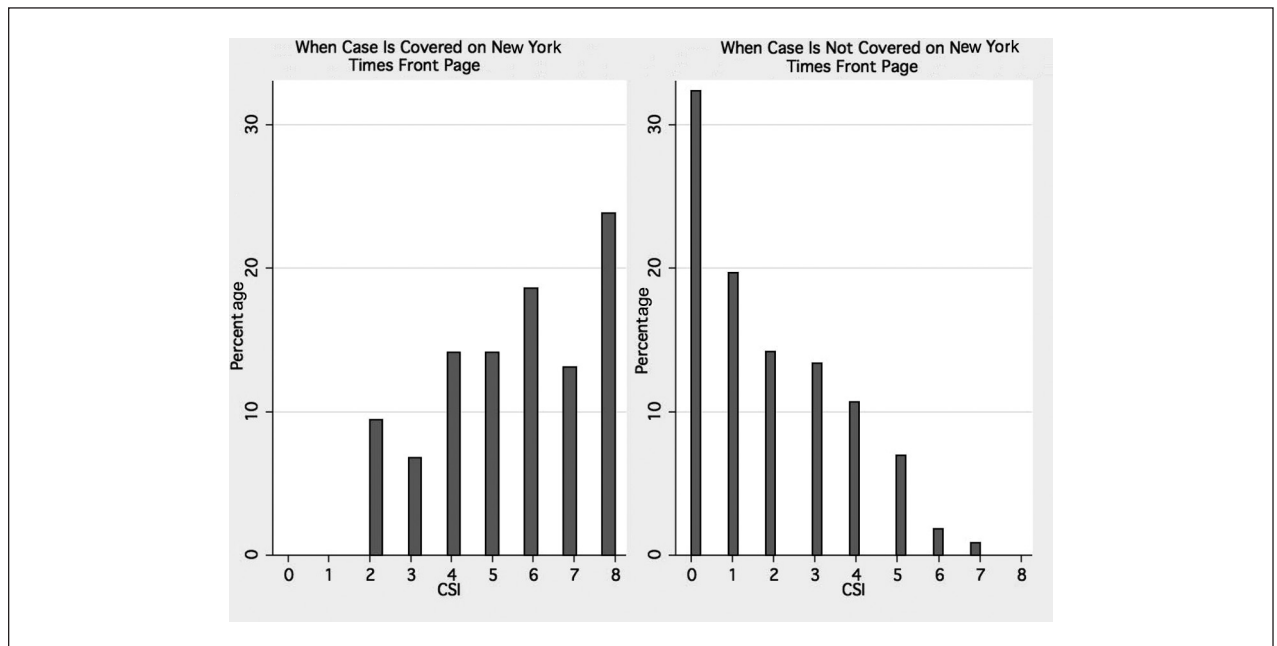


Figure 4. Distribution of the Case Salience Index (CSI)

To further illustrate the potential differences, Figure 4 displays histograms of the CSI when cases are reported on the *New York Times*' front page and when they are not. The left panel of the figure varies from 2 to 8 because 2 is the lowest possible score for a case that has been covered on the front page of the *Times*. The most important lesson from the left panel of Figure 4 is that three-fourths of the cases that are covered on the front page of the *New York Times* are not covered on the front page of at least one other paper. This is further indication that simply using

the *New York Times* measure produces results that are very different than the results you receive when considering four papers.

The right-hand panel of Figure 4 presents the distribution on the CSI for cases that are not covered on the front page of the *New York Times*. Here, a score of 8 is impossible because none of these cases were covered on the front page of the *Times*. Once again, this figure suggests that consulting only the *New York Times* gives a very different view of salience than consulting all four papers. Approximately

two thirds of the time cases are covered somewhere in at least one paper, even though the case does not appear on page 1 of the *Times*.

To further evaluate the efficacy of this multi-paper measure, we estimated an ordinal logistic regression model where the unit of analysis is the case and the dependent variable represents a particular case's score on the Case Salience Index. Following Maltzman and Wahlbeck (2003), we control for a number of other factors that may influence newsworthiness. For example, any follower of the Supreme Court would expect that a case on flag burning will be more salient to the public than a case debating the intricacies of administrative law. If the new measure is truly representative, however, other more idiosyncratic factors should exert no influence on the likelihood of coverage and thus no influence on the likelihood of being considered a salient case.

Our model includes independent variables representing ten of the traditional issue areas used in the *U.S. Supreme Court Database* (Spaeth 2008),¹² with the expectation that traditionally newsworthy issue areas like civil rights and First Amendment will receive higher salience index values than other issues with less public resonance, such as cases dealing with economic issues. Given the journalistic norms to cover unusual political behavior (Groeling 2010), we include a variable representing whether the opinion writer takes a stance that is different than the writer's ideology,¹³ whether the case overrules precedent, whether the case rules a law unconstitutional, and the size of the majority coalition (with the expectation that closer decisions will be more likely to be covered).

We also control for whether the case is decided in a liberal direction.¹⁴ As prior studies show that particular media sources, including the *New York Times*, may have an ideological bias in the stories they cover (Groseclose and Milyo 2005; Unah and Hancock 2006), we need to determine whether this new measure shares such biases. If this measure also shows an ideological bias, its usefulness as an objective measure of salience would be compromised. After all, few would argue that, *ceteris paribus*, cases with liberal outcomes are more salient than cases with conservative outcomes, or ones from other parts of the country. We also include a control for whether the case occurred in one of the typical coverage areas for our four papers, including a dummy variable indicating whether the case originated in one of the papers' home states.

The results in Table 1 indicate that certain types of cases are more likely to be covered (and thus to be considered salient) than others. For example, First Amendment, civil rights, and privacy issues are more likely to be covered than economic cases (the base term). Similarly, the size of the majority coalition is negatively associated with the CSI.¹⁵ Cases dealing with constitutional issues are more likely to be covered, although cases overruling

Table 1. Checking for Bias in the Case Salience Index

	Logistic regression coefficient	Robust SE
Liberal outcome	0.06	.05
Writer takes alternative stance	-0.11	.09
Number in the majority coalition	-0.26	.02**
Overrules precedent	0.27	.17
Rules unconstitutional	0.59	.18**
First Amendment issue	1.51	.20**
Civil rights issue	0.85	.16**
Criminal procedure issue	0.33	.15*
Due process issue	0.55	.25*
Privacy issue	2.21	.36*
Attorney issue	-0.80	.35*
Union issue	-0.00	.22
Judicial power issue	-0.56	.19**
Federalism issue	0.55	.21**
Tax issue	-0.58	.25*
Interstate relations issue	-0.61	.66
Miscellaneous (uncategorized) issue	1.30	.68
Case from covered area	0.54	.09**
N		1,876
Chi-square		4083.89**
Pseudo R ²		.06
Reduction in error		4.0%

Note: Robust standard errors are clustered on the term. All case issue areas are listed except "economic activity," which is the base term. * $p < .05$. ** $p < .01$.

precedent are not statistically significant. We also see that a case originating in one of the papers' home states is more likely to be covered as well. However, the influence of the home-state variable is relatively small, as the average change in predicted probability is less than 3 percent when moving from a home-state case to a case from another state.

Importantly for our purposes, we see that the liberal outcome is not statistically significant, indicating that the CSI does not overrepresent liberal (or conservative) outcomes. In sum, the criteria we established earlier in this article combined with the results in Table 1 suggest that the CSI closely follows those factors thought to be traditional indicators of important or salient decisions while avoiding the biases suggested concerning other salience proxies.

We next seek to determine whether our measure of issue salience influences a substantive area in the way in which we would expect. Following Epstein and Segal (2000), we expect that Chief Justices are more likely to write the opinion on salient cases. Indeed, this is what Epstein and Segal find, although the size of the effect they find is smaller

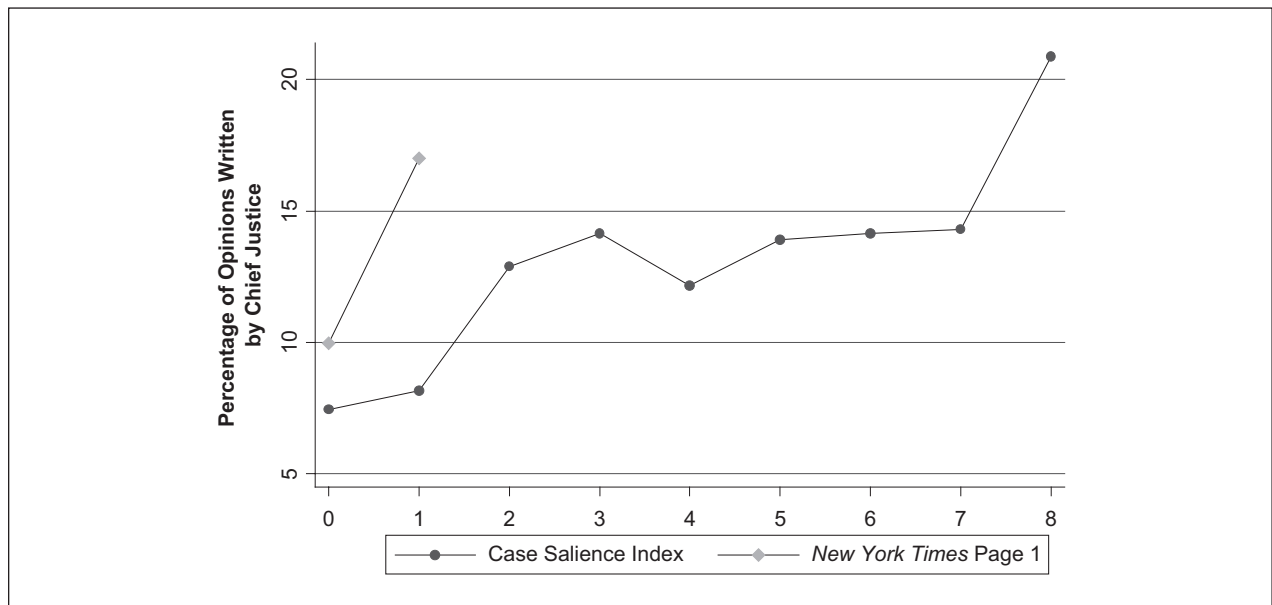


Figure 5. Chief Justice opinion self-assignments and salient cases

than that found by using other competing measures like cases on *Congressional Quarterly's* list. To test this possibility with our data, we determined the percentage of cases on which the Chief Justice self-assigns opinion-writing duties for each level of the Case Salience Index and plotted the results in Figure 5 along with a line representing results using the *New York Times* measure. Figure 5 suggests that the Chief Justice is more likely to write the majority opinion as the salience of the case increases. In the line representing the *New York Times's* measure, we see that the Chief Justice writes the majority opinion in about 10 percent of the nonsalience cases and about 17 percent of the salience cases. However, rather than an “all or nothing” approach that we find with this dichotomous variable, our approach allows us to see that the effect here is not linear. In the second line using the Case Salience Index as our measure of salience, we see the jump is the greatest near the low end and at the highest end of the scale—as it moves from 1 to 2 and from 6 to 7 on the scale. Furthermore, the magnitude of the effect is plausible and fits with what we know about judicial behavior more generally.

To determine whether the effect we find previously is merely a result of other factors, we next model whether or not Chief Justice Rehnquist self-assigns the opinion-writing duties as a function of salience as well as thirteen other factors. As Table 2 displays, even after controlling for many of the typical signs of a significant or important case, such as overturning precedent, issue areas, and the size of the majority, we see that Chief Justice Rehnquist was more likely to assign the opinion-writing duties to himself in salient cases using the index. Our analysis of the predicted

Table 2. Chief Justice Self-Assignments

	Logistic regression coefficient	Robust SE
Case salience	0.09	0.03**
Number in the majority coalition	0.02	0.04
Overrules precedent	0.66	0.31*
Rules unconstitutional	-0.84	0.40*
First Amendment issue	1.53	0.33**
Civil rights issue	1.13	0.31**
Criminal procedure issue	1.83	0.25**
Due process issue	1.84	0.39*
Privacy issue	2.27	0.49**
Attorney issue	0.85	0.81
Judicial power issue	1.03	0.31**
Federalism issue	1.26	0.29**
Interstate relations issue	0.80	1.18
Miscellaneous (uncategorized) issue	1.07	1.02
Constant	-3.68	0.36**
N		1,769
Chi-square		183.94**
Pseudo R ²		.06

Note: Robust standard errors are clustered on the term. All case issue areas are listed except “unions” and “tax,” which were dropped due to collinearity. “Economic activity” serves as the base term for the issue areas. * $p < .05$. ** $p < .01$.

probabilities displays that this effect is substantively large as well—the probability of Rehnquist writing the opinion doubles from the low end of the high end of the salience scale.¹⁶

Discussion and Conclusion

Patterns of media coverage of the Supreme Court are important for two reasons. First, the media are an important means through which citizens learn about the Court (Caldeira 1986, 1216). If there are biases in the types of cases that are covered, then, presumably, citizens' knowledge of the job of the judiciary will be similarly skewed. In addition, media coverage provides a contemporaneous and easily accessible measure of case salience—a concept that has been shown to be an important influence on judicial decision making.

This investigation clearly shows that media coverage of the courts varies across outlets. Almost 75 percent of Supreme Court cases are covered by one of four papers, but the coverage by paper differs from a low of 34 percent of cases in the *Chicago Tribune* to a high of 63 percent of cases in the *New York Times*. If newspapers provide political information, then given these different patterns of coverage, we would expect *New York Times* readers to have more basic knowledge of the courts than readers of the *Chicago Tribune*. This could even contribute to regional differences in knowledge and public opinion of the High Court. We also find that media coverage of Supreme Court cases varies considerably over time. In some years, almost 85 percent of cases receive coverage in some papers while in other years the number hovers around 65 percent. Future research should explore the causes and effects of these temporal differences.

In addition to adding to our substantive knowledge of media coverage of the Supreme Court, this article adds to our knowledge of case salience. There are myriad ways to measure case salience, with media sources serving as perhaps the most popular. Not only is salience useful in Supreme Court studies, but research on other courts is also examining the importance of case salience using similar techniques. For example, Vining and Wilhelm (2010) have begun using coverage of state court decisions in the state's most circulated newspaper as a measure of state case salience. It appears clear that media coverage will continue to serve as an important proxy of case salience.

In this article, we build on the use of the front-page *New York Times* salience measure and improve on that commonly used proxy. First, the new index allows for more variation in the salience measure, which is consistent with our theoretical and empirical expectations for issue salience. Second, the new measure includes coverage anywhere in the paper, as reporting anywhere notes that a case is at least somewhat salient and allows for a more nuanced measure of case salience. This also corrects for the “big-news-day bias” that could lead to the improper categorization of an otherwise salient case (Brenner and Arrington 2002, 103-04). Thus, an important case will still have some

level of salience in our measure even if it is bumped from the front page by catastrophic events or even another highly salient Supreme Court ruling.

Third, examining multiple papers with varying ideological perspectives (Segal and Cover 1989) from multiple regions of the country provides face validity of less potential bias. This new measure, which we call the Case Salience Index, combines coverage in four papers, includes coverage anywhere in a paper, but weights prominent, front-page coverage higher. As noted earlier, we do see differences between what is covered in the *Times* and what is covered in other papers, collectively.

Of course this measure is not perfect. It does not consider coverage on television—which would clearly mark a salient case. Given that cases from the four papers' home states are more likely to be covered, we improve upon but do not solve the localism problem. Furthermore, our investigation also rests on the examination of one era of the Court. It remains to be seen whether this measure would stand up to more longitudinal analysis. Despite these limitations, however, this new measure includes many characteristics to endorse its future use as a measure of case salience. It is contemporaneous, replicable, nondichotomous continuous; measures mass salience; and avoids many potential sources of systematic bias. In sum, this new Case Salience Index includes all of the advantages of the existing media proxies while reducing the negative characteristics.

Even though no measure of an abstract concept such as salience is without potential problems, this measure will provide more choice for researchers wishing to assess the influence of salience. While some scholars may choose to continue using the *New York Times* measure, the CSI will provide an option to those scholars that seek more nuanced analyses than those available from a dichotomous measure. Although it is difficult, if not impossible, to prove one proxy for an abstract concept is “better” than another, this article's main focus was to show that this new measure is significantly different. With the inclusion of more information, multiple media assessments of a case's importance from around the nation, and the ability to perform more innovative statistical techniques than available with a dichotomous measure, we are confident that the CSI will be a useful measure for future studies to advance our understanding of salience and judicial behavior.

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Notes

1. Whren v. United States, 517 U.S. 806 (1996). The vehicle stop was initiated based on the defendants' seemingly long pause at a stop sign, a right turn made without giving a proper signal, and driving at an "unreasonable" (although unspecified) speed (Whren 517 U.S. at 809).
2. Although we believe this is an important criterion, it is likely the least important of these criteria for judicial scholars. As a result, it should be considered a criterion of a good measure, but should perhaps be weighted less heavily than the others.
3. Of course this would not be important for measures of legal salience.
4. We are in the process of expanding this data set to include more terms and plan to make the Case Salience Index for the Rehnquist Court and future updates publicly available.
5. While others have attempted to create index measures of salience (Brenner and Arrington 2002; Cook 1993), these prior attempts were based, at least in part, on retrospective assessments of salience and thus have not been widely adopted by subsequent studies.
6. California Democratic Party v. Jones, 530 U.S. 567 (2000).
7. Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622 (1994).
8. Berkovitz v. U.S., 486 U.S. 531 (1988).
9. Baltimore DSS v. Bouknight, 493 U.S. 549 (1990).
10. Watson v. Fort Worth Bank, 487 U.S. 922 (1988).
11. Dept. of Taxation & Fin v. Milhelm Attea & Bros., 512 U.S. 61 (1994).
12. All case-issue areas are listed except interstate relations and miscellaneous, which represented only 6 out of 1,839 total cases. These 6 cases were not used as these issues do not generally fall on a liberal/conservative spectrum (Spaeth 2008, 54-55) and thus were not usable in the empirical analysis. Economic activity is the reference category (base term).
13. This was based on the Martin and Quinn (2002) judicial common space scores and the individual justice votes from the Supreme Court Database (Spaeth 2008).
14. The ideological direction of the case is included in the U.S. Supreme Court Database (Spaeth 2008, 53) and has been used by numerous prior studies. For example, decisions favoring criminal defendants, favoring affirmative action, or favoring plaintiffs in discrimination cases are coded as "liberal" decisions. Decisions favoring the prosecution or law enforcement, favoring corporations over individuals, or restrictions on abortions are coded as "conservative" outcomes. In some instances, there may be a split vote on multiple issues, making directionality of the outcome more difficult to determine (see Spaeth 2008, 53). However, these split decisions occurred only seven times in our data.
15. However, this is not to suggest that some cases, such as *Brown v. Board of Education*, 347 U.S. 483 (1954), were unimportant because of the unanimous decision rendered by the justices, just that overall they are less likely to be

reported. Important unanimous cases such as *Brown* would still be salient if appearing in the papers.

16. In a separate analysis (not shown), we also conducted a simplified replication of Unah and Hancock's (2006) study using both the new measure and the Times front page measure. We interacted the new salience index and the *New York Times*' measures with court ideology to assess the impact of case salience on the attitudinal model. After controlling for issue area and the lower court ideological direction, we found that the Case Salience Index produced statistically significant results for the salience measure constituent term and the interactive term, suggesting that ideology is conditioned on the salience of the case ($p < .05$). However, when we used the *New York Times*' front page, the interactive term and the *Times* salience proxy did not achieve statistical significance.

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