

Case complexity and the study of strategic behaviour at highest courts

The choice and implications of different measurement strategies to quantify case complexity

David M. Grundmanns¹

¹University of Mannheim

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Condition

Information processing and information provision reduce complex information environments by making information accessible.

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Hypothesis

The court is more likely to hold hearings in complex cases if external actors file written briefs compared to when no external actors file written briefs, but not in simple cases.

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Different types of external actors...

- **Privately funded organized interests**
- Publicly funded organized interests
- businesses

... with different goals

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Focus on privately funded organized interests

Due to their reliance on mobilizing funds and members, they are likely to accumulate expertise in public communication and how to reduce the complexity surrounding the issue areas they engage with.

Government briefs can signal a threat of noncompliance. External actors have no formal powers, so they cannot threaten noncompliance.

- How do their briefs impact judges at highest courts?
 - information provision to judges
 - signal engagement, information processing to public makes transparency-inducing action (hearings) more effective

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- How do their briefs impact judges at highest courts?
 - information provision to judges
 - signal engagement, information processing to public makes transparency-inducing action (hearings) more effective
- When are briefs effectively influencing judges (and public audiences)?
 - Information provision and processing reduce complexity
 - the more complex the information environment in a case, the more effective are mechanisms of complexity reduction
 - Different receivers of information: Complexity is perceived differently by judges and public audiences

- **External actors matter for judicial behaviour**

Judicial decision-making is not solely impacted by a bilateral interaction between judges and governments. We need to advance our understanding on who lobbies the court and how.

¹Supreme Court of the United States

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especially beyond the SCOTUS.¹

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- Case complexity depends on the receiver. Judges and public audiences may perceive the complexity of a case differently
- Categorize three types of complexity
 - Language and structural complexity: hard to read and comprehend
 - Legal complexity: many legal issues, multilayered set of laws and precedent
 - Cognitive complexity: how demanding it is to relate to a case and its implications
- Information processing reduces cognitive complexity to public audiences
- Information provision reduces legal complexity to judges
- Different types of case complexity have to be measured differently

390 senate proceedings by the **German Federal Constitutional Court** (1991 – 2014)

- Kelsenian-type court with features representative of many other European Constitutional Courts
(Kelsen 1931, Shapiro & Stone 1994, Engst 2021: ch. 3)
- long history of briefs filed across all proceeding types
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Model

Logit Model to estimate the occurrence of Hearings ($y = 1$)

Key explanatory variables

Any external actor filed brief (=1) or none (=0)

Cognitive complexity: Proceeding is on simple (=1) or complex (=0) issue area

(cf. Vanberg 2005, Krehbiel 2016)

Legal complexity: Number of unique prior decisions cited

Controls

Government defends statute with brief, Expert filed brief, Total number of briefs, Second Senate proceeding, Lower court filed brief, Proceeding concerned with federal law, Constitutional complaints, decision length

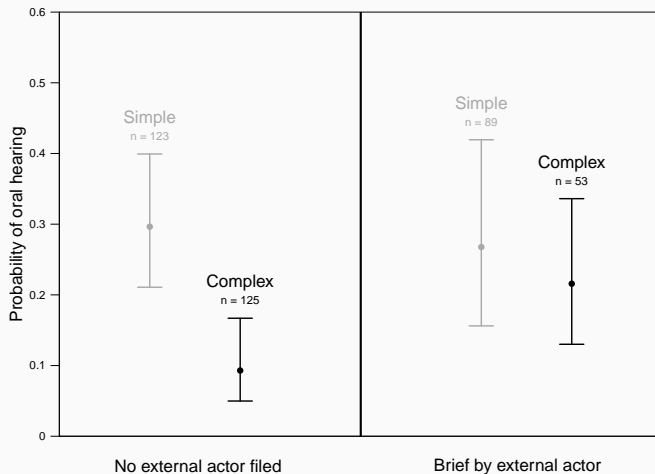


Figure 1: Predicted probability of hearing occurrence for court proceedings on simple and complex issues when no external actor has filed (left) and when any external actor has filed (right)

Summary

External actors are important information processors in complex cases.

They are helpful to judges as public communication agents that can process information to make them accessible to public audiences. However, they are not effective as information providers to judges. External actors help reduce complexity to the public, but not necessarily to legal experts.

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Implications and Extensions

- external actors help increase transparency in complex cases
- external actors can offset reduced benefits of oral hearings to judges ruling against the government on complex cases
- account for capacity of external actors
i.e. measures of organizational strength: budget, membership, ...
- identify public communication strategies of external actors
- respecify measure of legal complexity to be linked less to legal doctrine how do they respond to judicial action in their public communication?
(how) do they claim credit?
- compare results to other courts

Any comments and feedback are welcome
⇒ david.grundmanns@mzes.uni-mannheim.de

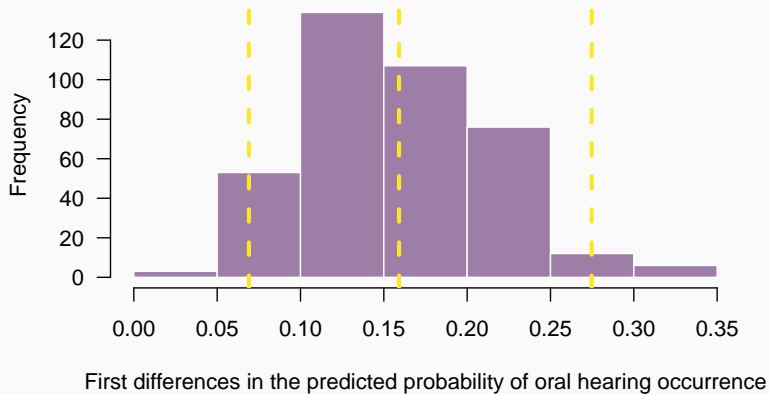


Figure 2: First differences in predicted hearing probability for complex issues when any external actor has filed vs. none has filed