Another Look at Press Coverage of the Supreme Court

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I. Introduction

Public understanding of the United States Supreme Court depends almost exclusively on the news media since, for most Americans, the press is the sole source of information concerning the operation and decisions of the Court. As former Chief Justice Earl Warren observed:

The importance of a proper understanding of the Court's work can hardly be overemphasized. The decisions of the Court, spanning as they do almost the entire spectrum of our national life, cannot realize true fulfillment unless substantially accurate accounts of the holdings are disseminated.¹

The urgent need for competent news coverage of the Court has been suggested by political scientist Chester A. Newland, who believes that the proliferation of legal realism and social science criticism in this century has caused the Court to lose the "protective cloak provided by past myths of mechanical judging."² The contemporary Court, Newland indicated, is "subjected to increasingly broad political scrutiny [and] consequently, respect for the Supreme Court and law in general depends increasingly upon popular appreciation of the inherent merits of the Court's work."³

In spite of its acknowledged importance, press coverage of the Court has been notably inadequate in the view of critics both within and outside of the press. In a candid speech to the National Conference of Editorial Writers in 1956, Max Freedman of the Manchester Guardian declared, "the Supreme Court is the worst reported and worst judged institution in the American system of government."⁴

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³ Id.

⁴ Freedman, Worst Reported Institution, 10 Nieman Reports 2 (1956).
It seems to me simply inconceivable, in the first place, that the average American editor would ever dare to write on a debate in Congress or a decision by the President with the meager preparation which he often manifests in evaluating the judgments of the Supreme Court. Yet in politics "today's panacea is tomorrow's folly, and a politician's reputation is a mist enthroned on a rainbow." A decision by the Supreme Court, on the contrary, may shape America's destiny.5

One commentator agreed, suggesting that, "[b]oth the Court and the press need to improve their methods if essential public understanding and support of the Court and a dynamic legal system are to exist."6 Attorney Lionel S. Sobel underscored the problem: "Only rarely do people know exactly what the Court has held, less often do they know why it has held as it has. And almost never do they appreciate the consequences of particular Court decisions."7 This ignorance, according to Sobel, is the result of two factors: "(1) the popular press is the primary, perhaps exclusive source of Court information for most Americans; and (2) Supreme Court reporting is simply not all that it should or could be."8 It has been proposed that the consequences are even graver:

The odds are great that few citizens would know that two weeks out of each month, the highest court is listening for four hours a day to important arguments addressed to some of the most intriguing social questions that will ever have measurable impact on their daily lives. And the chances are as high that should the Court decide or act on these issues, only a tiny percentage will be reported with any sense of the importance or meaning of the work, so that even those who actively seek out news of the Court's work, will find the search all too often, a futile one.9

Most of the critics of news media coverage of the Court mentioned in this article suggest that the responsibility for its inadequacy lies both with the press and with the Court. As with most media criticism, commentators accentuate the negative. Citing public opinion surveys that document a shocking lack of public awareness and knowledge of the Supreme Court and its work, these commentators suggest that the

5. Id.
8. Id.
problem is attributable to a failure of the news media. These critics maintain that this failure is the product of both the disproportionately less reportorial emphasis placed upon the Supreme Court, as compared to that placed upon the Presidency and Congress, and the information policies of the Court itself which discourage full media coverage.\footnote{10}

In recent years, political scientists, legal scholars, and communications researchers have demonstrated an increased scholarly interest in the media coverage of the Court. Much of this recent commentary is reviewed in the first section of this article, which analyzes the dilemma of reportage at the Court in several dimensions, including press coverage constraints, press coverage performance, sources for Court news, public opinion and editorial demands, and prescriptions for improved press coverage. This review sets the stage for the second section of this article which is a survey of reporters taken at the Supreme Court in January, 1974. This survey provides a demographic profile of the reporters, their self-assessment of performance, time allocation, perceived audience, accuracy in reporting, as well as their attitudes toward current Court information policies. Finally, some modest proposals aimed at improved coverage are presented.

II. PRESS COVERAGE OF THE SUPREME COURT: A REPORTORIAL DILEMMA

A. Reportorial Constraints at the Court

It has been suggested that the news media would never consider covering professional athletics with the paucity of resources generally employed in Supreme Court reporting.\footnote{11} This useful analogy was demonstrated by editor Wallace Carroll:

Let's suppose that when the time comes to cover the World Series, one of the great press associations decides that it can spare

\footnote{10. The question arises whether the activities of the Court should receive the same amount of publicity given to the more "public" branches of government. Speaking in another context, but in language relevant to the present inquiry, Justice Frankfurter once said:

The secrecy that envelops the Court's work is not due to love of secrecy or want of responsible regard for the claims of a democratic society to know how it is governed. That the Supreme Court should not be amenable to the forces of publicity to which the Executive and the Congress are subjected is essential to the effective functioning of the Court. Frankfurter, Mr. Justice Roberts, 104 U. Pa. L. Rev. 311, 313 (1955). Since the public should be informed of the decisions of the Court, and since the press attempts to provide such information for the benefit of the public, it follows that the public would benefit more from a well-considered, carefully analyzed explanation of a case than from the hurried "deadline pressure" reporting that results from the race to the presses. \textit{See} Judicial Secrecy: \textit{A Symposium}, 22 Buffalo L. Rev. 797 (1973).

\footnote{11. \textit{See} text accompanying note 43 infra.}}
only one reporter who has any knowledge of the game. Let’s suppose that, for purposes of speed, it decides that this reporter should not sit where he can see the game but stay on an open line in a phone booth below the stands. And let’s suppose that in order to let him know what is happening on the field, a man who doesn’t know very much about baseball sits in the press box and sends him by pneumatic tube an official summary of what is going on.  

If this analogy sounds silly, it can be extended still further. The man in the phone booth who is handicapped by not seeing the game, writes a muddled story which contains the wrong score. The final absurdity is that the newspapers which subscribe to the news service use the story without receiving any complaints for doing so. These criticisms have less relevance today since there have been some physical changes in the courtroom, but for the most part the baseball analogy remains accurate, especially with regard to press staffing patterns.

The physical setting for reporters at the Court is relatively simple.

On the first floor of the Court building there is a press suite which includes a small pressroom and an office for the Court’s Public Information Officer (formerly called the Press Officer). Until 1973, the pressroom was linked to the courtroom by pneumatic tubes through which reporters could send copies of opinions, orders, and handwritten notes. The tubes were attached to four news desks which were just below the bench and hidden from view. These desks were occupied by Court regulars or full-time correspondents. However, the desks were later removed when Chief Justice Burger had the bench curved in order that the Justices could see each other during the course of oral arguments. Seats for reporters were moved to the side of the courtroom, so that the press and Justices can now view each other clearly. The tubes were removed from the old positions and newsmen now slip in and out as they choose. These changes eliminated the ability of reporters on the first floor to speak to reporters in the courtroom who had to remain silent. The changes had the effect of equalizing the reporters insofar as their physical setting is concerned. No longer do the regulars, such as Associated Press (AP) and United Press International (UPI) correspondents, get the special seating


arrangements which had facilitated the more rapid physical movement of their copy to the pressroom.

Reporters in this Spartan setting must be quite self-sufficient as they receive no assistance in the form of briefings, press conferences, or mimeographed releases. The Supreme Court currently has a single press officer, Barrett McGurn, who supplies the reporters with such essential materials as: 1) lists of all cases on the regular docket with descriptive subject-matter notes and an indication of their origin; 2) complete files of briefs and records of the cases on the regular docket; 3) notices of newsworthy cases from the miscellaneous docket taken from information in the Clerk's office; 4) biographical information and portraits of the Justices; 5) statistical summaries of the Court's work; and 6) a list of names of all the Justices' law clerks. Most important, of course, are the copies of opinions and orders, both of which are released to the press at the precise time they are announced from the Bench.

The constraints of this setting and its limited technical assistance stand in marked contrast to other press coverage assignments in Washington. The executive and legislative branches provide the reporter with press releases, special briefings, news conferences, and an array of public relations material designed to assist him in his job. These conveniences are not made available to those who cover the Supreme Court's work. One critic has posited: "The Court job in many ways is like no other in Washington. The Court is the only part of the federal government where the newsman is left totally on his own."

Reporters covering the Court function under the same demands which face other journalists. They must produce readable, understandable copy under considerable deadline pressure, but they must do so at a great disadvantage. As David L. Grey observed:

There is one overriding difference between Supreme Court coverage and other types which is not readily apparent. In many fields, there is at least partial truth in the statement that if the press has not covered a news development, the event or trend, in effect has not happened. News is what the press makes it; the press by its selection of events to report, in a sense, "makes" the event happen; many things are "real" only if the press has reported them. By contrast, each case before the Court goes into history books whether or not the press has written a word on it. There is an automatic and permanent record on everything the Court has decided which, in effect, acts as a check on the newsman covering

the Court. A missed case, improper emphasis, or an error in fact in a news story will be obvious for those experts in the field who have a chance to read exactly what the Court said. By comparison, in other news fields, many public officials (such as in Congress or the State Department) have to rely heavily on the press for interpretation and information.16

One of the constraints upon Court reportage is the absence of a public relations tradition.17 Anthony Lewis of the New York Times, who covered the Court for several years, has remarked that "[a]ll of official Washington except the Supreme Court is acutely conscious of public relations. . . . The Supreme Court is about as oblivious as it is conceivable to be."18 The lack of public relations tradition can be explained, in part, historically. In the Dred Scott case,19 which was decided prior to the Civil War, an Associate Justice released a dissenting opinion to the press before Chief Justice Roger B. Taney had completed his majority opinion.20 The incensed Chief Justice ordered the Clerk of the Court that thereafter, official opinions were to be released only after they had appeared in the official compilation of the Court. This order remained in force until the 1920's, when columnist David Lawrence convinced Chief Justice William Howard Taft to make proofs of the opinions available when all the Justices had finished reading their opinions aloud on a decision day.21 Prior to this change, the press was forced to write its stories without having a text of the opinion from which to work.22

In 1935, shortly after the AP had misinterpreted a majority opinion in the Gold Clause cases23 and had issued a bulletin based on that misinterpretation, Chief Justice Charles Evans Hughes allowed reporters to have proofs of the opinions as the Justices began reading them aloud.24 This change occurred about the same time that the Court moved into its present building, which provided physical space

16. Id. at 44 (footnote omitted).
17. Inseparable from this lack of a public relations tradition is the lack of openness in Court decisionmaking and the inaccessibility of Court officials, especially when compared with other government officials. At the same time that these barriers make Court reporting difficult, the Court's critics seldom cease to offer their analysis, explanation and review. In contrast, the Court speaks once and then remains silent.
20. N. MINOW, J. MARTIN & L. MITCHELL, PRESIDENTIAL TELEVISION 94 (1973) [hereinafter cited as MINOW].
22. GREY, supra note 15, at 37.
for reporters for the first time. A Court Press Officer was also employed to distribute documents and other raw material, although his role differed sharply from that of the public information officers employed in the executive branch.

The lack of a public relations tradition is manifested not only in the absence of the promotion or publicity of decisions, the Justices, or the Court as an institution, but also in the Court's traditionally oblivious attitude toward the deadline problems of the media. While other agencies cater to the media, the Court has, until recently, paid little attention to the media's needs. Political scientist Chester A. Newland has summarized the problems that the newsgperson faces:

No positive program of public relations exists... Press releases are not utilized. Decisions are announced, often in large numbers, on a few opinion Mondays [changed in 1965, although most opinions are still handed down on Monday] with no apparent regard for considerations of timing. And as a rule the justices and Court subordinates do not comment publicly upon opinions or respond to criticisms of the Court. Press interviews with justices are rare, and press conferences are non-existent.

While decisionmaking in the executive and legislative branches has considerable public visibility, discussions amongst the Justices which precede a decision remain secret. The assignment of opinions and their actual preparation, closed conference discussions amongst the Justices, preliminary votes, and changes in voting alignment are all aspects of the process of Supreme Court decisionmaking that are hidden from public view. John P. MacKenzie, Supreme Court reporter for the Washington Post, has commented on this secretive aspect of the Court:

The process of marshalling a Court, of compromise, of submerging dissents and concurrences, or of bringing them about, can only be imagined or deduced by the contemporary chronicler of the Court... This is not to say that newsmen need to be privy

25. Newland, supra note 2, at 17.
27. Newland, supra note 2, at 16.
28. The "secrecy that envelops the Court's work" was defended by the late Supreme Court Justice Felix Frankfurter as "essential to the effective functioning of the Court." Frankfurter, supra note 10, at 313. Two important reasons have been advanced in support of the Court's policy of secrecy prior to the announcement of a decision. First is that the Court should be free from all external pressures while formulating a decision. A second reason is that the leak of a decision to the public would adversely affect the proper administration of justice by causing people to act before the Court has officially stated its position. GREY, supra note 15, at 15.

While these reasons support the Court's policy of secrecy, it must be realized that the deliberate isolation of the Court from the public can only hinder the process of communication.
to the Court's inner dealings, helpful as that might be, to describe its decisions accurately and well. But ... murky decision-reporting may be the reporting of murky decisions as well as the murky reporting of decisions.  

The absence of explanation by the Court for its official actions is demonstrated by the Court's handling of petitions for certiorari, "a process replete with elements of subjectivity and perhaps even arbitrariness [which] eludes the attempts of newsmen to fathom, much less to communicate to the general public, the sense of what the Court is doing." It has been suggested that the summary action of the Court with regard to petitions for certiorari is "the antithesis of what an Opinion of the Court is supposed to represent: a reasoned judicial action reasonably explained." Thus, because of its policy of secrecy, the Court must bear some of the burden for the inadequate public understanding of its actions.

Because the press is not privy to the decisionmaking process, the Court's decisions are often interpreted as the end, rather than the beginning, of significant social arguments. Opinions are sometimes "written in such a way that they mask the difficulties of a case rather than illuminate them, and hence, [n]ew decisions sometimes cannot be reconciled with earlier rulings . . ." According to Justice William O. Douglas, this is often because "policy considerations, not always apparent on the surface, are powerful agents of decisions."

The contrast between the coverage of the Supreme Court and of other federal institutions is most clearly illustrated by the difficulty of obtaining access to news sources. Anthony Lewis commented:

To do an adequate job of covering any part of the Executive Branch or Congress a reporter must have some personal relationship with the officials concerned. That does not mean intimate friendships. It does mean a certain amount of mutual understanding and confidence.

However, the Justices rarely amplify or explain their opinions. The often complex opinions are difficult even for lawyers to understand,

30. Id. at 305 (footnote omitted).
31. Id.
32. Id. at 304.
34. Lewis, supra note 18, at 363.
35. Supporting this lack of judicial explanation is the philosophy that the legal opinion as written should "stand alone" as the declaration of the law. See Grey, supra note 15, at 15-16. Additionally, some believe that the opinions of the Supreme Court should emanate as a single voice if the Court's authority is to be accepted as final. See Schmidhauser, Berg & Green, Judicial Secrecy and Institutional Legitimacy: Max Weber Revisited, 22 Buffalo L. Rev. 867, 868 (1973).
yet the reporter must offer his or her interpretation under considerable
deadline pressure. Even when there is interaction between the Court
and the press, it is almost always limited to providing background in-
formation which cannot be attributed to an individual member of the
Court. The interchange between the Justices and the press is usually
confined to private or nonnoteworthy material, and according to Grey,
Justices occasionally send notes to individual newsmen containing
messages such as, "[y]ou didn't read page 6 of my opinion."36 Naturally,
the accessibility of a Justice varies with the individual. Felix
Frankfurter played a significant, though unnoticed, role in urging
improved press coverage of the Court.37 Justice Thurgood Marshall
once sent a note to reporters explaining why he had not taken part
in a decision.38 Chief Justice Burger has granted at least one interview
to a news magazine.39 There are many other examples of contacts
between the press and the individual Justices, some of them official,
some social, but these contacts have never resulted in any direct com-
ment on matters before the Court. The rationale underlying this
traditional evasion of publicity stems from a desire to protect the Court
from political pressures. As the late Professor Alexander Bickel pointed
out, "[t]he justices have their being near the political marketplace....
[b]ut the system embodies elaborate mechanisms for insulation."40

B. Reporters' Performance at the Court

As late as 1968, John P. MacKenzie of the Washington Post
made this harsh judgment of his press colleagues who cover the
Supreme Court:

With a few exceptions, the press corps is populated by persons
with only a superficial understanding of the Court, its processes,
and the values with which it deals. The Court has poured out
pages of legal learning, but its reasoning has been largely ignored
by a result-oriented news industry interested only in the super-
ficial aspects of the Court’s work. The Court can trace much of
its “bad press,” its “poor image,” to the often sloppy and in-
accurate work of news gatherers operating in mindless deadline
competition.... [which is] the chief obstacle in these critical years
to a better understanding of the Court and our laws and liberties.41

37. Id. at 52.
38. Minow, supra note 20, at 95.
The baseball analogy suggested earlier was once raised by the late Justice Felix Frankfurter, who said that the New York Times would never think of sending a reporter to cover the Yankees who knew as little about baseball as its reporters covering the Supreme Court knew about law.\(^4\) "The Justice overstated the case against the Times but was quite right so far as most of the American press was concerned. The press still does a poor job of covering the courts in general and the Supreme Court in particular," asserted James E. Clayton, a former Court reporter for the Washington Post.\(^4\) The low regard that MacKenzie and Clayton seemed to have had for those engaged in Court reporting focused on the small coterie of persons who cover the Court with any regularity. It should be noted that fewer than 40 reporters attend often enough to apply for press passes for the entire term, and only seven of these have full-time assignments at the Court.\(^5\)

AP coverage of the Court, which is relied upon by more media organizations than any other single source of reporting, has incurred the wrath of many media critics.\(^6\) Defending his staff, the general manager of AP offered this lament for the beleaguered AP reporters who cover the Court:

"[AP reporters] must quickly identify a case, determine the decision, wade quickly through thousands of legalistic words of the majority and dissenting views, refer to the background which they have assembled and get the story moving by telephone dictation — all in a matter of a few minutes. This is quite different from the problem of the New York Times, which has hours to digest a decision before press time."\(^7\)

42. See text accompanying notes 11-12 supra.
43. GREY, supra note 15, at 52-53.
44. Clayton, Book Review, COLUM. JOURNALISM REV., Summer, 1968, at 48. Clayton was the Court reporter for the Washington Post from 1960 to 1964. Id. at 49.
45. Results of the author's survey of Court reporters, see text accompanying notes 119-27 infra.
46. See generally GREY, supra note 15, at 37, 69-73; Carroll, supra note 12, at 4-6; Clayton, supra note 29, at 48-49. It has been suggested that half of all American newspapers get all their Court coverage from the AP. See, e.g., S. Goldschlager, supra note 9, passim.
47. Letter from Wes Gallagher, general manager of the Associated Press, to Wallace Carroll, Sept. 23, 1963, in Carroll, supra note 12, at 6. Gallagher suggested that decisions be distributed to reporters in one of the large conference rooms prior to the oral readings in order to allow reporters to digest the material. He also urged the Court to provide an information officer to clarify confusing or complex decisions. Id.

In 1965, David L. Grey conducted a study of a Court reporter's decision-making under deadline pressure by observing the working habits of Dana Bullen who was then a Court reporter for the Washington Evening Star. Grey, Decision-Making by a Reporter Under Deadline Pressure, 43 JOURNALISM Q. 419 (1966). Bullen was selected because he was considered a compromise type of reporter; his reports fell in between the exhaustive and intellectually oriented coverage of the New York Times and the hastily prepared product of the AP. Bullen had a law degree and a bachelor's degree in journalism, a characteristic shared by many other recent Supreme Court
In spite of the continuing barrage of criticism of Court coverage, there is little doubt that the regulars covering the Court today are far better qualified than those of the past, and that there is an increased emphasis placed upon coverage of a higher calibre. 48

While newspaper and wire service reporters have improved their reporting, as might be anticipated, television news has also exhibited heightened interest in Supreme Court coverage. Until recently, broadcast organizations had offered only limited coverage of the Court. 49

journalists. Grey found it difficult to make precise or detailed conclusions about a Court reporter's story selection and emphasis, although some general patterns could be traced:

1. The reporter knew at all times how many cases remained undecided by the Court, although he had to guess which cases the Court would decide on a particular day.

2. News selection depended largely on what events transpired on a given day, and the reporter had to decide how much "weight" to give a particular story.

3. Reporters made an effort to stay informed of the operations of their competition, often as to a specific story. This enabled the reporter to validate his news sense and gain peer reinforcement.

4. The reporter acknowledged that he exercised a conservative news judgment. He preferred to be on the safe side; understating, rather than overstating, what the Court had decided.

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48. For example, Justice Frankfurter's conversations with James Reston during the 1950's eventually resulted in the appointment of a young, energetic and well-known New York Times reporter, Anthony Lewis, who had spent a year studying law at Harvard under a Nieman Fellowship. Lewis later became widely known as the author of a book which described in detail the events leading to the decision in Gideon v. Wainwright, 372 U.S. 335 (1963). A. Lewis, Gideon's Trumpet (1966). Id. at 4-5. The critic continued:

[Lewis] led his readers into the great marble hall where the nine secluded men were trying to apply the principles of the Anglo-Saxon law to a social revolution. With amazing lucidity, he traced their intricate reasoning and explained the precedents from which it rose. His stories were models of historical insight and accuracy even though they were written under the pressures of daily journalism. Id. at 5.

49. For example, in 1971, Carl Stern of NBC News, estimated that his network covered the Court only about six times a year. Minow, supra note 20, at 92. However, in 1973, CBS News obtained for its staff Fred Graham from the New York Times for the express purpose of covering the Supreme Court and various federal issues related to the "Watergate" crisis.
The past reluctance of broadcasting organizations in covering the Court stems partially from the Court's prohibition of cameras and broadcasting equipment in the courtroom. Court coverage thus becomes quite difficult for broadcasting organizations which must rely upon the detached view of sketch artists and interviews outside the courtroom.

It is likely that Court coverage will improve as the news media organizations direct their attention more carefully to the Court's "publics," i.e., those persons most keenly concerned with the activities of the Supreme Court. By examining opinion studies and polls regarding the Court, the press can gain knowledge of who is interested in the Court and how to gauge general public awareness of the Court's activities.\(^50\) Certainly public perceptions of the Supreme Court should be influential in forming reportorial strategies. In this context, one scholar suggested that those who communicate about the Court should be aware of public officials as well as public and private interest groups when covering the various decisions.\(^51\) This increased sensitivity to their audience would aid reporters not only in their case selection, but also in decisions regarding the degree of detail a particular opinion merits.

C. Sources for Supreme Court News

The major news sources upon which reporters rely when covering the Supreme Court are: 1) the actual opinions, orders, and other official documents of the Court; 2) the Justices themselves; 3) the bar which practices before the Court; 4) the Court Public Information Officer; and 5) the critics of the Court.

It should be noted preliminarily that since 1960, the Court has assisted the reporter in his battle with press deadlines in at least two ways. First, the Court extended its own business hours\(^52\) which greatly benefited reporters with deadlines for afternoon papers and television newscasts. Second, the former practice of announcing decisions on Monday only was modified.\(^53\) Even though many decisions are still announced on Mondays, others are now spread out during the week, thus enabling the reporter to adjust his work load and to use more thought and planning in his coverage of the Court. Aside from these recent conveniences, the press must rely entirely on the sources listed above, which will be discussed individually below.

\(^{50}\) See text accompanying notes 69–87 infra.
\(^{52}\) Now from 9 a.m. to 5 p.m., Monday through Friday.
\(^{53}\) See GREY, supra note 15, at 1–2, 35–37.
1. **Opinions**

The opinions of the Court as a source of news are only as informative as the reporter's lay comprehension of them. Competent coverage requires advance study and analysis of the case, the reading of lower court opinions, and the ability to quickly and accurately synthesize the main points of law and to translate them into language that newspaper readers will understand. To some extent, the form required for a news story creates problems for the reporter. Explaining a majority decision and possibly one or several concurring and dissenting opinions can severely strain the clarity so essential to a news story. The reporter is required by his editor to organize the news of a report in decreasing order of newsworthiness. Thus, the placement of various elements of a complex case may have considerable impact on the reader's perceptions of that case. The reporter is involved in a hectic race with time once opinions are handed down; if he doesn't understand a case by decision day, the report may never get to his readers. Of course, longer interpretative articles in newspapers and magazines, as well as broadcast documentaries, allow some reporters the luxury of additional time for preparation.

2. **Justices**

While few Justices have had close relationships with the press, in recent years they have made efforts to offer the media more background briefings. The traditional taboo against press conferences and briefings was removed by Chief Justice Burger in 1970 when he invited two wire service reporters into his chambers for a "backgrounder" on a Court order consolidating six desegregation cases for a combined hearing and decision. But since the Justices so rarely publicly discuss cases before the Court, press coverage of the Justices is minimal and usually confined to feature stories that mark their particular individual milestones. Two examples are a 1968 interview...

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54. Huston, *Chief Justice Breaks with News Tradition*, EDITOR & PUBLISHER, Sept. 12, 1970, at 12. Other reporters in the Court's pressroom were later advised of the session and assured that they would also be invited to similar sessions in the future. However, some doubt has been expressed about these sessions: The background sessions with reporters obviously are designed to give the members of the press corps some special insight into what the court does and why so that their stories may be not only accurate but informatively intelligent. Because the first background sessions produced some unanswered questions, skepticism persists as to whether the session will contribute to better reporting of the Supreme Court. For instance, the reporters who were invited to the first briefing were informed that the Chief Justice was not to be identified as the source of anything they wrote and, since they did not feel free to talk, only scraps of what was said have become public knowledge.

*Id.*
that Justice Black granted to CBS News, and a 1973 press briefing Justice Douglas held on the occasion of his becoming the longest-serving Supreme Court Justice in American history. In both instances, the two Justices merely discussed their general legal philosophy, with Justice Douglas appearing before 50 newsmen for 30 minutes in an unrestricted session.

3. The Supreme Court Bar

The Supreme Court bar includes those attorneys who argue cases before the Court on a reasonably regular basis. The most accessible of these attorneys are the members of the Solicitor General's staff, primarily because of their practical and physical proximity to the Court. They are helpful contacts, granting frequent interviews and making certain that various exhibits, petitions, and supporting documents are brought to the attention of the press. Others in the Justice Department are equally helpful to reporters, although their help is often viewed as somewhat self-serving. Reporters also have access, either in person or by phone, to private attorneys who have business at the Court, some of whom may be nationally known authorities in particular legal specialties.

4. Public Information Officer

The Supreme Court Public Information Officer (Press Officer) is another conduit of information to reporters. From 1947 to 1973, this position was held by one man, Banning E. Whittington, a former United Press (a predecessor to UPI) correspondent. Perhaps for this reason the studies and commentary about the Press Officer usually have not distinguished between the functions of the position and of the personal style of its former occupant. Because Barrett McGurn, a former New York Herald-Tribune reporter and government information officer, was appointed as the new Press Officer in 1973, it is possible that this view of the position will change.

During Whittington's tenure, the Press Officer was not a spokesman for the Court in any sense of the word. He was neither a press secretary nor a public relations person who spoke on policy questions. Neither did he offer specific interpretations of cases nor attempt to

55. Interview in Minow, supra note 20, at 95.
57. Until 1947, the Press Officer was a lawyer from the Clerk's office. Whittington was the first member of the press to hold the post.
58. See text accompanying note 65 infra.
59. Some reporters' reactions to McGurn are discussed in note 126 and accompanying text infra.
clarify issues. He carefully avoided answering any questions that involved a Court opinion or judgment. This passive role of the Press Officer was challenged by the Goldschlager study which suggested that "the informal relationship that develop[ed] between the press officer and the regular reporters may have [had] a significant effect on the choices of cases that [were] deemed 'newsworthy' and carried by the wires." Indeed, the author posited that the possible influence of the Press Officer was sometimes less than subtle. For example, the Press Officer would suggest to the press that one case would produce better copy than others, or that a more newsworthy case would be before the Court later in the day, thus helping to define Court news.

Goldschlager concluded that this probably had the most influence on the new reporters at the Court and on those visiting for only one day, since they needed more assistance than the regulars. Although many reporters would disagree with the Press Officer's judgment, he was a "significant source of reinforcement for the status quo definition of what [was] newsworthy."

David Grey offered this comment on the Supreme Court Press Officer:

In analyzing the Press Officer's job it is difficult to distinguish between what is attributable to the individual and what is inherent in his role. The Press Officer's assignment is largely determined by others; he has virtually no power or policy-making function. As a staff member of the Court, he is responsible to the Chief Justice. The result is that he is usually closedmouthed about everything. His view is that the Court does not and should not give the press much help — that the institution is a Court of law, not a legislature.

Critics have suggested a change in the Press Officer's role, requesting that he become more like his counterpart in the executive and legislative branches. As indicated, the role of the Press Officer may be a function of the officer's personality and the way he perceives his job. However, it should be noted that in spite of his limited policymaking and commentary role, the Press Officer is the source of Court opinions and the keeper of various records that are of assistance to reporters.

61. S. Goldschlager, supra note 9.
62. Id. at 42-44.
63. Id.
64. Id. In a letter to the author, Whittington, now retired, refused to comment upon, or offer clarification of, the assumptions of the Goldschlager study, writing only, "I'm sure my problems were about the same as those of any other public information officer in Washington." Letter from former Supreme Court Press Officer Banning E. Whittington to the author, January 17, 1974.
65. Grey, supra note 15, at 47.
5. Critics

Much of the press coverage of the Court centers on criticism of the institution and its decisions. Critics are a primary source of information about the Court, although few of them are readily accessible to the reporters who spend most of their time in the Supreme Court building. Thus, much of the coverage of Court criticism is handled by persons who are not regular reporters of the Court. According to Anthony Lewis, criticism of the Court "falls into three broad categories: abusive criticism motivated largely by the results reached in particular cases, criticism of the Court's exercise of power of judicial review of legislation, and academic criticism directed chiefly at the reasons the Court gives for its results."\(^6\)

The result-oriented criticism which attacks the substance of particular cases is, according to Lewis, the loudest and most frequent.\(^6\) It appears almost anywhere and is generated by a wide range of interest groups and individuals. The criticism aimed at judicial review of legislative enactments is more complex than the result-oriented attacks. It considers the Court in at least four contexts: as a forum for moral protest, as a catalyst of legislation, as a nonpolitical arbiter, and as an instrument of national unity.\(^6\) The academic criticism is generated primarily by law professors and others who might write for legal periodicals. This criticism spans a broad spectrum of issues and concerns, but, whether result-oriented or conceptual, it provides useful perspectives to the Supreme Court reporter. The story of the Supreme Court consists of more than the decisions written by the Justices; it also consists of the response of the critics and the public to those decisions.

D. Public Opinion and the Court

Another important source for media coverage of the Supreme Court consists of the various public attitudes toward the institution and its work. The literature of American democracy traditionally assumes that the Court is held in high esteem by the American people. However, in recent years this assumption has been subject to reevaluation. Researchers have surveyed the public's attentiveness and probable reaction to, as well as its evaluation of, the Court and its decisions. For example, in 1966, a study was made in Wisconsin which found that the Court's prestige in comparison with other governmental in-

\(^6\) Id.
\(^6\) Id. at 312-19.
stitutions was relatively low. When members of the public were asked, "Which branch of government does the most important things in deciding how Americans are going to live?", 52 percent said Congress, 27 percent said the President, and only six percent responded the Supreme Court. Three percent said "it depends," and 12 percent professed not to know.

The late Chief Justice Warren asserted that the Court is the "least understood of all our governmental institutions," and national public opinion studies tend to confirm this assertion. In one study undertaken by the American Institute of Public Opinion during the early years of the New Deal, people were asked whether they favored limiting the Supreme Court's power to declare congressional acts unconstitutional. The public response reflected an anti-Court sentiment which followed political party lines. Overall, 31 percent favored cutting the Court's power, while 53 percent opposed this move. However, Democrats favored this proposition 55 percent to 45 percent, while Republicans opposed it 86 percent to 14 percent. However, in a 1957 Gallup study in which respondents were asked which branch of the Government they had the greatest respect for, the Court had a slight edge over Congress and the Presidency. In the same study, a change in the public attitude toward the Court was examined. Twenty percent said their attitudes had changed, 78 percent said they had not, and 2 percent did not respond. Fifteen percent, or three-fourths of those whose attitude toward the Court had changed indicated that it was a change unfavorable to the Court, while 3 percent changed favorably, and 2 percent were either indifferent or gave vague replies.

In 1969, the same basic question was phrased somewhat differently, inquiring: "In general what kind of a rating would you give the Supreme Court, excellent, good, fair or poor?" The responses were: excellent — 8 percent; good — 25 percent; fair — 31 percent; poor — 23 percent; and no opinion — 13 percent. Parenthetically,
an analysis of opinion on the Supreme Court by groups within the sample indicated that the college-educated thought more highly of the Court than did those with less formal education; and politically, Democrats rated it somewhat higher than did Republicans.\textsuperscript{78}

The surveys concluded that a citizen's evaluation of the Supreme Court bore a close relationship to his educational level, suggesting that the higher the educational attainment, the higher the esteem for the Court.\textsuperscript{79} This conclusion conflicts sharply with other findings that indicate that the more education the respondent had, the more critical he was of the Court.\textsuperscript{80} Generally though, those who are politically aware tend to have a greater reaction to the Supreme Court issues, as a 1965 Seattle study suggested.\textsuperscript{81} In that study, 21 percent of the respondents were unable to articulate any opinion about the Court, of which two-thirds frankly stated that they were insufficiently informed to offer any opinion about the Court.\textsuperscript{82}

A number of other studies have examined the public's awareness of the Court. In 1945, a Gallup Poll indicated that only 40 percent of a nationally representative sample could accurately indicate the number of Supreme Court Justices.\textsuperscript{83} But in 1949, when asked to name the highest court in the land, 86 percent of the respondents correctly answered "the Supreme Court."\textsuperscript{84} In 1964, the Survey Research Center asked, "Have you had time to pay attention to what the Supreme Court of the United States has been doing in the past few years?" Forty-one percent of the respondents answered in the affirmative. However, when the same individuals were asked to specify an issue before the Court only 57 percent could name one issue; 34 percent could name two issues; 8 percent three; and less than 1 percent could

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illustrated by the following table which summarizes the responses to the question, "In general, what kind of rating would you give the Supreme Court?"

<table>
<thead>
<tr>
<th></th>
<th>1963</th>
<th>1967</th>
<th>1968</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excellent</td>
<td>10%</td>
<td>15%</td>
<td>8%</td>
</tr>
<tr>
<td>Good</td>
<td>33%</td>
<td>30%</td>
<td>28%</td>
</tr>
<tr>
<td>Fair</td>
<td>26%</td>
<td>29%</td>
<td>32%</td>
</tr>
<tr>
<td>Poor</td>
<td>15%</td>
<td>17%</td>
<td>21%</td>
</tr>
<tr>
<td>No Opinion</td>
<td>16%</td>
<td>9%</td>
<td>11%</td>
</tr>
</tbody>
</table>

\textit{Id.} at 1836–37, 2068, 2147.

78. \textit{Id.} at 1837.
79. \textit{Id.} at 1837, 2201.
80. See note 86 and accompanying text infra.
81. See Daniels, \textit{supra} note 51, at 637.
82. \textit{Id.}
83. Dolbeare, \textit{supra} note 69, at 199.
84. \textit{Id.}
One clear finding of several studies was an inverse relationship between knowledge and support for the Court. Greater knowledge tends to decrease support for the Court, thus subjecting to question the utility of promoting greater public understanding of the Court, at least for the purpose of inspiring confidence in the institution and its work. This alarmist view notwithstanding, it is natural for a person with a higher level of knowledge to be more discerning and critical of the Court, which is perhaps a healthy sign in a democracy.

An inspection of the findings of the Gallup Polls for the 40 years in which they have assessed public attitude toward the Court indicates that these findings must be studied in terms of the specific time period in which they were made and a particular respondent’s party affiliation. Thus, the Republicans tended to be more critical of the Warren Court in its later years, just as the Democrats opposed the Court during Roosevelt’s early years in office.

The Wisconsin and Washington studies are valuable for the questions they raise about the relative esteem in which the public holds the Supreme Court. Unfortunately, these were small-scale studies undertaken in particular locales and cannot be considered universal views. There are also serious problems in comparing Gallup data taken in the 1930’s with data taken in the present, due to the fact that methodology of opinion polls has changed substantially since the 1930’s. Therefore, it is suggested that contemporary survey data focusing more closely on particular demographic characteristics and educational levels would be of more use to the media as a guide to public affairs coverage of the Court.

E. Editors’ Attitudes Toward Court Reporting

Most of the literature on Supreme Court press coverage focuses on the reporters and their relationship to the Court as a source of news. David L. Grey, the initial researcher in the area, likewise viewed

85. Daniels, supra note 51, at 636-37. Daniels, a political scientist who has studied the Court and public opinion, has written the following:

Generally, there is a low level of public awareness and knowledge about the Supreme Court. This tends to be significant in that the high knowledge and high status are related to greater disapproval of the Court.

... [N]o matter what criteria of knowledge one sets, the public is not politically attentive. As a result, there is a very low level of knowledge about the Court. Only a minority of the public is sufficiently aware to name individual justices or to comment on recent Court decisions. It seems that one must be aware politically for the Court to have visibility.

Id., at 655-57 (footnotes omitted).

86. See, e.g., id. at 655-56.

87. See notes 69 & 85 and accompanying text supra.
the Court as a communicator, but it was Goldschlager who was the first
to be concerned with the news executives' perceptions of Court cover-
age. In a survey of 143 managing editors of daily newspapers, Gold-
schlager found that news executives desired more legal trend stories
and interpretive coverage; however, these desires were at variance
with the perceptions that reporters had of their editors' wishes.

Generally, the editors questioned in the study were positively
impressed with the output of the wire service reporters and other
 correspondents at the Court. In response to an evaluative question
about the quality of the reporting, 79 editors found it to be complete
and clear, while only 14 found the reporting unclear, and 16 considered
it too lengthy. Seven considered the stories to be too short. Seventy
editors indicated that they edited the stories to fit the space available,
while 19 were usually able to fit the reports to the space without any
significant editing. Present Court coverage was heavily concentrated
on stories about decisions, although the editors stated that they were
receptive to material about oral arguments and legal trends. Most of
the editors surveyed (76) considered the news of the Court as im-
portant as that of Congress and the Presidency, while only 19 con-
sidered it less important than the news of the other two branches.
Only one person thought it was more important.

Suggested methods by which wire services could improve cover-
age of the Court were: 1) more spot analysis of issues and cases, recom-
mended by 65 of the editors surveyed; 2) monthly columns on legal
news and issues, 8 editors; 3) weekly columns, 6 editors; and 4) other
suggestions, 10 editors; 6 editors indicated that coverage was satis-
factory as it then existed. Goldschlager concluded that "it is essential
to construct a definition of legal news as viewed by the reporters'
editorial supervisors for they determine how much of the reporters' choices are filtered out to the general public."

F. Prescriptions for Improved Supreme Court Reporting

Most critics of Supreme Court reporting acknowledge that com-
munications problems stem from both the Court and the press. While
there have been proposals for change in press-Court relations for much
of this century, only limited progress has been made. The extension of
Court hours and the more even distribution of decision days are often

88. S. Goldschlager, supra note 9.
89. Id. at 292.
90. Id. at 8.
cited as major improvements. Chief Justice Burger's background sessions also constitute a departure from previous Court practices.

In 1968, David L. Grey suggested improved press coverage of the Court might result from innovations at two levels: first, the Court and bar, and second, the press. For the Court and bar, Grey suggested the following:

The Court has considered the idea of having a skilled interpreter of its decisions — someone who could help the newsmen understand the main legal issues involved. . . . What is needed is an "expert" of some kind — not the traditional press agent — but someone who could help newsmen and lay publics by providing objective and nonpromotional information about legal issues.

Another change . . . is the possibility of having each case decision headnote (the very brief digest of a case) written up and released when the case is announced rather than afterwards . . .

. . .

Still another logical alternative would be to make sure all opinions had a summary statement written into them — designed deliberately not only for the press but also for hard-pressed legal scholars and students. Some of the justices already tend to do this but the practice is too informal and inconsistent.

A more controversial proposal is for distribution of decisions to the press on a hold-for-release basis, with perhaps a "lock-up" arrangement whereby newsmen would be isolated from any contact with the outside world . . .

. . .

Still another major suggestion that has been adopted, in part, by the Court: the spreading out of decision days rather than letting them pile up . . .

Even though he did not offer it as a formal proposal, Grey asked parenthetically: "Indeed . . . is the Court so special that it could not be covered on occasion 'live' or on tape by television?" However, former Federal Communications Commissioner Newton N. Minow and two co-authors oppose televised Court sessions or explanations by Justices. They contend that television presentations "would diminish the Court's prestige and throw the Court, that aloof final arbiter, into the whirlpool of controversial political television."
While proposals for the Court to change its behavior are legion, they have generally been couched in gentle language, as illustrated by this editorial comment:

Change, if any, will have to come from those concerned with the decisions and the reporting of them. Recognizing the possible consequences of public misinterpretation of a key decision, the justice writing the majority opinion might well strive to make crystal clear just what the decision is and what its scope is, as well as what the principal reasoning behind it is. There is nothing requiring that Supreme Court opinions be less than lucid.98

Although mechanical improvements in the Supreme Court's presentation of opinions are a fertile source for attractive proposals for change, they are actually quite superficial; as they would fail to remedy the present problems of press coverage of the Court. It would be more realistic and beneficial for the press to look critically at its own practices and performance. For example, legal training for journalists has been widely discussed.99 Occasionally, this has been accomplished through professional fellowships, such as the Nieman Program,100 and also more recently through specialized reporting efforts by schools of journalism. The more qualified and lauded reporters, such as Anthony Lewis and Fred P. Graham, have demonstrated the worth of these efforts.

Other recommendations for improved Supreme Court coverage have come from the bench and the bar. One of the most helpful was a project undertaken by the Association of American Law Schools (AALS). In its 1963 report, the AALS Committee on Education for Professional Responsibility submitted a recommendation that

[t]he AALS . . . appoint a special Advisory Committee on Supreme Court Decisions composed of law teachers who regularly followed the work of the Supreme Court. When the Court takes jurisdiction of a case which (in the judgment of the committee chairman) is of substantial news interest, a member of the committee will be asked to prepare a short memorandum explaining the significance of the case, the issues involved and possible alter-

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98. On Covering the Court, COLUM. JOURNALISM REV., Fall, 1962, at 2.
100. The Lucius W. Nieman Fellowship in Journalism is annually awarded at Harvard University to newspeople to provide them with a mid-career opportunity to study and broaden their intellectual horizons.
native bases of decision . . . . These memoranda could be reproduced and distributed through the new Washington office of the Executive Director to the ten to fifteen "regulars" who report the work of the Court for their newspapers, wire services, radio and television stations.\textsuperscript{101}

The recommended memoranda program began in 1964 with the enthusiastic support of the news media and the late Chief Justice Warren, who said the memoranda aided "the various news media in reporting on the Court's decisions in the interest of achieving more accurate and more perceptive accounts of what the Court held — or did not hold."\textsuperscript{102} At first the committee limited itself to only the most newsworthy cases, preparing 31 memoranda during the 1964 October term.\textsuperscript{103} In 1965, the number increased to 89 memoranda dealing with 113 cases.\textsuperscript{104} During the first year of the program, a law professor was present in the press room on a decision day to assist reporters in interpreting the meaning of a Court decision. Due to the deadline pressure and the hectic atmosphere of the pressroom on a decision day, the professors were not getting many inquiries from the hurried reporters.\textsuperscript{105} Therefore, this part of the program was discontinued after 1 year.

By 1966, nearly 150 journalists were on the mailing list to receive the memoranda. Professor Jerome A. Barron of George Washington University conducted a survey to determine the response to the service.\textsuperscript{106} He found that a large majority of the journalists surveyed considered the memoranda helpful, but that only a slight majority of the newspapers for which the journalists wrote would be willing to

\begin{thebibliography}{99}
\bibitem{102} Report of Special Committee on Supreme Court Decisions, 1966 Ass'n of American Law Schools — Reports and Proceedings, pt. 1, at 324, 331.
\bibitem{103} Id. at 325.
\bibitem{104} Id. at 324-25. The law professors preparing the memoranda were careful to state that the contents of their memoranda did not necessarily reflect the views of any person or organization connected with the program, and quotations from it should not be attributed to any of them or to the author without their specific authorization. No part of this memorandum has any approval by the Supreme Court or any branch or office of the Government. Report on the Supreme Court Memoranda Project, 1972 Ass'n of American Law Schools — Reports and Proceedings, pt. 1, at 113.
\bibitem{105} See Sobel, supra note 7, at 548.
\bibitem{106} Report of Special Committee on Supreme Court Decisions, 1966 Ass'n of American Law Schools — Reports and Proceedings, pt. 1, at 324, 328.
\end{thebibliography}
pay for the service.\textsuperscript{107} In an article in \textit{Saturday Review}, Gilbert Cranberg wrote, "The law professors' project is probably the most constructive single contribution to advancing public understanding of the Court in recent years . . . ."\textsuperscript{108} The project, which began with a $5,000 annual budget, increased in cost to approximately $22,000 by 1970.\textsuperscript{109} It was supported by a grant from the American Bar Foundation,\textsuperscript{110} and Chief Justice Burger praised it as "a most welcome boon to those who are most acutely aware of the need for effective communication to the public, which is largely through the news media."\textsuperscript{111} When the project's funds were exhausted in 1972, an effort was made to have the news media pay for the service. While a few papers agreed to do so, most did not, and the project was discontinued with no memoranda being written during the 1972–1973 term. However, in 1973 the American Law Institute, in collaboration with the American Bar Foundation, agreed to reinstate the service on a subscription basis. It was reinstituted in the 1974–1975 term, and presently 400 subscribers receive it.

Improvements have also been initiated by the Court itself. Ever so subtly, Chief Justice Burger has begun to modify the Court's public relations tradition. Earlier, when he served on the United States Court of Appeals for the District of Columbia, the then Judge Burger often made personal calls to newspaper editors to notify them that a forthcoming case was particularly newsworthy. And, as Goldschlager stated, Chief Justice Burger has "addressed himself to the question of press coverage more directly and successfully than any other Chief Justice before him."\textsuperscript{112} Brushing aside the Court's traditional dis-

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
1. Do you find the service of assistance? & Number & Percent \\
\hline
& 40 & 50.0\% \hspace{1cm} Considerable \\
& 32 & 40.0\% \hspace{1cm} Some \\
& 7 & 8.8\% \hspace{1cm} Little \\
& 1 & 1.2\% \hspace{1cm} No comment \\
\hline
2. Would your newspaper be willing to pay for the service? & Number & Percent \\
\hline
& 46 & 57.5\% \hspace{1cm} Yes \\
& 28 & 35.0\% \hspace{1cm} No \\
& 6 & 7.5\% \hspace{1cm} No comment \\
\hline
\end{tabular}
\caption{Professor Barron's findings were as follows:}
\end{table}

\textsuperscript{107} Professor Barron's findings were as follows:

\textsuperscript{108} Cranberg, supra note 71, at 91.


\textsuperscript{110} Id.

\textsuperscript{111} Id. at 139.

\textsuperscript{112} S. Goldschlager, supra note 9, at 259. However, it should be noted that this favorable opinion of the Chief Justice's press relations is not shared by all. One reporter in a telephone interview with the author in May, 1947, suggested that the Chief Justice's press relations had deteriorated. The reporter accused him of manipu-
regard for the press, the Chief Justice, shortly after assuming his position on the Court, asked the Court's press corps to prepare a memorandum of problem areas where procedures could be altered to aid the reporters' work.

In response, a dozen reporters drafted a background report for the Chief Justice and strongly enunciated their position: "[W]hile we fully recognize that there is a necessary realm of confidentiality within the Court, we work under one overriding principle, that the Court, like all branches of government, should be an open institution." Among other things, the reporters asked for a better system of notification of general news developments, access to more of the Court records, such as official correspondence related to a case, and a less passive role for the Press Officer. The reporters further detailed their proposals, requesting:

1. Simultaneous release of all opinions on a given day.
2. Distribution of all opinions a few hours in advance to reporters in a lockup with no access whatever to the outside, until a common, fixed release time.
3. Advance notification by docket number — on a confidential basis — of the cases to be decided that day, with opinions themselves distributed as at present.
4. Release of headnotes with opinions.
5. Joint release of related decisions.
6. Clear specification, in cases on which the Court is divided on more than one issue in a single opinion, of the concurrence or dissent of individual justices on each issue.
7. Release of opinions on days other than Monday in May and June.
8. Release of texts to reporters in the alcove section of the Courtroom at the six front desks.

After considering these requests for 3 months, Chief Justice Burger held an unprecedented meeting with reporters at the Court.

114. Id.
While only a few of the suggestions were eventually put into effect,\textsuperscript{116} the Chief Justice nonetheless provided a channel for the reporters' complaints. He agreed to release headnotes on decisions when they were announced, to distribute decision days more evenly through the week, and to schedule newsworthy cases on Monday afternoons, rather than mornings, to allow more reporters to cover the oral arguments. The Chief Justice considered the lockup proposal "an idea whose time has not come,"\textsuperscript{117} but he surprised many reporters by announcing that he might eventually refurbish the Court chambers, providing a line of glass-walled booths where correspondents would be able to telephone directly to their papers and broadcast outlets.\textsuperscript{118}

While it is recognized that all of the foregoing proposals would result in better press coverage of the Court, it should be noted that these prescriptions deal solely with ameliorating the process of covering "the worst reported institution."\textsuperscript{118} It is submitted that full achievement of the goal of improved press coverage, and hence greater public understanding of the Court, is also heavily dependent upon the reporters themselves. Clearly, an understanding of the reporters — who they are, how they perceive and evaluate their work and the work of their colleagues, as well as their attitudes toward Court information policies — is central to the advancement of knowledge about reportage at the Court.

III. THE SUPREME COURT PRESS CORPS: A SURVEY OF DEMOGRAPHICS AND ATTITUDES

Most of the literature about Supreme Court reportage, where concerned with the performance of the Court press corps, has been highly generalized. With the exception of stories about a few widely known reporters, little has been written about the men and women who cover the Court. Accordingly, a survey of these persons\textsuperscript{119} was

\begin{itemize}
\item 115. \textit{See} text accompanying note 127 infra.
\item 116. S. Goldschlager, \textit{supra} note 9, at 275.
\item 117. \textit{Id}.
\item 118. \textit{See} text accompanying note 4 \textit{supra}.
\item 119. The members of the Supreme Court press corps, as of January 1974, were the following:
\begin{itemize}
\end{itemize}
\end{itemize}
initiated by the author to ascertain both demographic and attitudinal information. The survey, conducted in January, 1974, sought information that would provide a profile of the Supreme Court reporter, a reportorial assessment of Court coverage, and an indication of attitudes about the public information policies and practices of the Court.  

A. Demographic Profile

Reportorial assignment of the respondents included wire services — one reporter, news magazines — two, daily newspapers — seven, television networks — two, specialized publications — one, and combination assignments (e.g., news magazine and specialized publication and/or wire service and daily newspapers) — two. Eleven respondents were male, and four respondents were female. They ranged in age from 27 to 50 years old, with most of the reporters being in their early thirties. The reporters’ news media experience ranged from a low of 4.5 years to a high of 27 years with an average experience level of 11.57 years. This previous professional experience was quite varied, although most reporters had been general-assignment reporters in major and medium-sized cities. Several had covered at the metropolitan and state level government and politics before coming to Washington. Three respondents had other Washington assignments before going to the Court, including covering regulatory agencies and Capitol Hill. One respondent had been a foreign correspondent; one, a national political correspondent. Several mentioned handling such local assignments as police, courts, and education prior to joining the Supreme Court press corps.

When asked from what region of the United States they came, responses were: East — five, Midwest — five, Southwest — two, South — one, West — one. An open-ended question asking them


120. A questionnaire was sent to the entire population of reporters (23) covering the Court during the 1973-1974 term. The reporters fell into three broad categories: regulars, those who have the Court as their primary assignment and spend all of their working time at the Court; semi-regulars, those who cover the Court assiduously, but usually along with another agency, e.g., the Department of Justice; and occasionals, those who cover the Court less frequently, usually only to cover decisions of wide interest. The Court’s Press Officer reported that there were 7 regulars, 11 semi-regulars (whom he called “also assiduous”) and 5 occasionals at the time of this study. Three designations have no practical or formal consequence, but are useful in categorizing Supreme Court reporters in terms of the time they spend at the Court. Questionnaires were sent to all 23 reporters, and 15 were returned fully completed. These persons declined (in letters to the author) to complete questionnaires, and five did not respond at all.
to indicate their educational backgrounds resulted in the following responses:\textsuperscript{121}

\begin{tabular}{ll}
Law degree & 6  \\
M.A. (journalism) & 5  \\
B.A. (journalism) & 5  \\
B.A. (political science) & 2  \\
B.A. (economics) & 1  \\
M.A. (other) & 1
\end{tabular}

To provide a context for the educational question, respondents were asked, "What advice about educational training would you have for a young person who aspired to cover the Court or other aspects of the legal system?" Respondents could indicate as many or as few options as they desired. Their responses were:

- General liberal arts education: 10
- Training in a law school: 7
- Graduate work in constitutional law: 4
- Training in a journalism school: 3
- No response: 1

\textbf{B. The Reporter at the Court}

The Court tenure of the reporters that responded was rather brief. The senior respondent had served 8 years, while the shortest tenure was 1 year. The average time spent at the Court was 2.63 years.

When asked what percentage of their working time they spent at the Court, the result was: 75 to 100 percent — four, 50 to 75 percent — five, 25 to 50 percent — three, less than 25 percent — three. When the reporters were asked to indicate what percentage of the time that they spent covering the Court was devoted to specific types of stories, the responses were (using averaged percentages) as follows:

- Decisions: 49.92
- Advance stories about docketing and petitions for certiorari: 22.69
- Analyzing legal trends, major issues: 12.00
- Other: perusing briefs, television documentaries, discussion with Justices: 10.70
- Oral arguments: 4.69

\textbf{Total}: 100.00\%

Eleven reporters considered the quality of coverage at the Court high, and believed that coverage had improved in recent years. One

\textsuperscript{121} Since several reporters have both law degrees and master's degrees in journalism, and because some reporters failed to respond to this particular question, the figures do not total 15.
reporter said that the coverage had remained about the same, no one suggested that it had declined, and three chose not to respond since they had recently come to the Court and did not feel competent to make an evaluation. When asked to rate the comparative quality of the Court reporting of wire services, newspapers, news magazines and radio-television, wire services and newspapers got the highest marks, while news magazines and radio-television were generally rated mediocre or worse. The results were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Excellent</th>
<th>Good</th>
<th>Mediocre</th>
<th>Poor</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wire services</td>
<td>4</td>
<td>8</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Newspapers</td>
<td>3</td>
<td>8</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>News magazines</td>
<td>0</td>
<td>4</td>
<td>8</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Radio-television</td>
<td>0</td>
<td>2</td>
<td>8</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>

When asked how they felt about the amount of space, time, and general play given to the Supreme Court by the news media, the reporters responded to the following categories: Excellent-Generous — two, Adequate-About Right — seven, Inadequate — four, and No Response — two. One respondent elaborated:

Overall "about right" is about right, but that doesn't mean much, since it is made up of good amounts of coverage (early in the term) and undercoverage (especially in June). Much of this has to do with the flow of decisions from the Court, of course, but it also has something to do with a lack of tough-mindedness on the part of editors. Since the guy covering the Court tends to be one of your better reporters — and probably one of your higher paid — his stories get overplayed on sparser decision days; on the dam-breaking days, even if the regular reporter is given extra help, there tends to be some feeling that regardless of their importance, we can't have three scotus stories on the front page.

Another respondent indicated that newspaper coverage in the Washington area was generally good, while that of radio and television was inadequate. Still another respondent pointed out that the reporters generally see only Washington and New York papers, and for this reason, he felt that they were not competent to make this type of assessment.

C. Accuracy of Supreme Court Reporting

Most respondents (14) thought the coverage of the Court was accurate and one even believed it to be "extremely accurate." When respondents were asked, "Can you think of an example in the last five
years when the result of a Supreme Court decision was reported inaccurately?”, five responded affirmatively, seven could not think of an example, and three did not respond. One reporter specifically characterized as “questionable” the interpretations given the Pentagon-Papers decision. Three persons mentioned the coverage given the 1973 abortion decisions as being inaccurate. Another story considered to be inaccurate was a 1972 New York Times article on workmen’s compensation benefits for bastards, which asserted that the Court decision meant bastards thenceforth had to be treated like legitimate children for the purposes of awarding of benefits. However, one respondent suggested that that decision had already been made by the Court earlier, and that this time around the decision was applicable to a certain, numerically insignificant class of bastards.

One reporter responded that Supreme Court reporters on occasion have discussed favorably the idea of diversity in reporting on an equivocal opinion. The reporter continued:

Is it bad journalism/bad public policy when one story picks on one part of a decision to emphasize and a competitor picks another, or even when one calls it a minor decision of limited importance and another a sweeping revolution? I tend to think not, if that diversity truly reflects ambiguity left behind by the decision, but there’s a lot of uneasiness among the press corps. A related problem: we may all be trapped by the myth that every pronouncement of the Court says something definitive about the state of the law: the case or controversy stuff is really true, but you don’t get on the front page writing, the U.S. Supreme Court decided today by a 7–2 vote that Mrs. Estrella Sanchez can sue her landlord for the cost of laundering slipcovers rainspotted because of a leaky roof.

D. Reporters’ Perception of Their Audience

There was a noticeable lack of uniformity in the reporters’ responses when asked for whom they were writing and how they perceived their audience. Several indicated that “intelligent high school graduates,” were their primary target. One reporter said that the first two paragraphs of his stories were written for the average high school graduate, but the remainder of his reports were geared to the sophisticated reader. Three reporters responded that they wrote for a dual audience: general readers with interests in legal developments, and
lawyers who were interested in new decisions on the subject. One television reporter said that he aimed his material at that segment of the general public who were "without a natural interest in legal subjects." Another responded: "just people, though probably an educated class." Another newspaper reporter indicated that his stories were intended for "persons of high educational level with legal interests." Two reporters (for specialized publications) said their material was written for business executives. One reporter simply answered, "my editor." Another offered a more detailed explanation:

For general news stories that move on our wire to newspapers and radio-tv, my audience is the readers of the several dozen largest and best financed papers in the U.S. . . as well as viewers of newscasts from the major network and a relatively few well-heeled independent stations.

Several respondents indicated that they wrote both for domestic and foreign consumption, and modified their stories accordingly.

E. Court Information Policies

A number of specific improvements were cited in response to a request for an evaluation of the Supreme Court information practices since the appointment of Chief Justice Burger. Four reporters said information policies and practices had improved during the Burger years. Three concluded that they were about the same, while four said there was no basis for judgment, and two offered no response. The specific information policy changes made under Chief Justice Burger were cited by the reporters as: 1) headnotes on opinions as they were issued; 2) the annual meeting that the Chief Justice held with reporters to discuss the mechanics of Court coverage; 3) the Chief Justice's policy of giving a reason for not participating in a particular case; 4) the existence of multiple decision days; 5) the reduction of oral delivery of opinions, especially dissents; and 6) the appointment of a new Press Officer. One reporter criticized the Chief Justice for removing the reporters' desks which formerly were directly below the bench, but admitted that "this [was] more symbolic than substantive."

Although several reporters expressed considerable enthusiasm for the new Press Officer, Barrett McGurn, and his press information operation, there was still an overwhelming desire for the expansion of the public relations activities of the Court. The reporters were asked, "Much has been written about the lack of a public relations tradition at the Court. In that regard do you think that the activities of the
press officer should be [several alternative choices were given]?” The responses were:

- Accelerated and stepped up: 9
- Remain about the same: 5
- No response: 1
- Be diminished: 0
- Be phased out altogether: 0

McGurn was praised for making an actual effort to get information from the Court to the press, and for improving the organization of the press office. One reporter wrote, “The new information officer chosen by the Chief Justice this term is 100% superior to the former one.” However, this view was not universal among the press corps at the Supreme Court.126

Opinion favored the 1969 lockup proposal127 in which members of the press corps would agree to remain confined in a room so that opinions could be distributed to them in advance of a Court session. Nine reporters favored this plan, none were against it, four had no opinion, and two indicated that it should be used only when needed, e.g., at the end of the term when there is a barrage of opinions. Several respondents said they felt that such a system would be of the greatest use to the wire services.

When asked in an open-ended question to list two or three changes they would implement in Supreme Court information practices if they were given the opportunity, the reporters enumerated several. The list included placing the Press Officer “closer to the Justices for more behind-the-scenes information.” It was also suggested that the Press Officer “convince the Justices that they are accountable to the public and must discuss some matters publicly.” One respondent recommended the use of an additional information officer, while others urged the availability of someone to explain the significance of decisions. Other suggestions included the holding of nonattributable press conferences with the Justices and the distribution of copies of the Justices’ speechmaking schedules. Among the procedural suggestions were the availability of a sufficient number of lists of court orders, the ability to make phone calls to Justices who grant stays or otherwise act on their

126. For example, one correspondent, upon reading a preliminary draft of this study, made an angry telephone call to the author. He stated that the suggestion of improvement under the new Press Officer was folly, and that, in general, the Press Officer was less than candid with the Supreme Court press corps. This dissenting reporter suggested that the major improvement under McGurn was that the Press Officer had sufficient bureaucratic “clout” to acquire an additional press officer which hastened the movement of paper.
127. See text accompanying notes 94 & 114 supra.
own, the more liberal distribution of opinions, and the distribution of conference lists by case names rather than merely by numbers. One reporter thought opinions should have an "accompanying paper with less legaleze [sic] and more simple language." Finally, general suggestions included immediate access to transcripts of oral arguments, the disclosure of the Justices votes on the denial of certiorari and other orders, and the admission of cameras inside the courthouse.

IV. SUMMARY AND CONCLUSIONS

The average news reporter at the Supreme Court is a relatively young, well-educated individual who has had several years of media experience before coming to the Court. Tenure at the Court is rather short. Most of the reporters queried were pleased with their own performance and that of their colleagues. Most were also gratified with the treatment their stories received in their own publications or newscasts. Newspapers and wire services were rated the highest by the performance indicators, while the news magazines and broadcast news received lower ratings.

Slight improvement was seen in Court information practices during the Burger years, although a number of specific improvements were still desired. While pleased with the Press Officer and the improvements he has made in the press office, the reporters wanted still more public information activity at the Court.

Almost all of the respondents said they considered working at the Court a difficult assignment. As one broadcast reporter stated:

It's a tough assignment, particularly with the immediacy demands of network radio. My desk wants spots as quickly as I can get them done and with my time in such demand for other assignments, it's difficult to research the case. My desk relies on my accuracy . . . and when I think of all the audience perhaps basing their reaction on what I say, perhaps you can understand why I think backgrounders, and a simpler syllabus would be helpful.

Another reporter said that the Court has become "a duller, less newsworthy institution, just as a talented group of journalists had gathered to cover it. The problem now is not mechanics of coverage, but that there is much less to cover these days." No doubt this statement was partly attributable to the fact that the Watergate events had not yet involved the Supreme Court. One reporter said, in agreement, that

we often sit around at the Court thinking it is a shame that we don't have more momentous stories to write about. But, in part
those things are accidents of history. To be sure, though, the Burger Court is nibbling around the edges of old decisions — take the criminal defendant and obscenity cases, for example. Undoubtedly the decisions of the pre-Watergate years of the Burger Court provided for less interesting reportage than the more active years of the Warren Court.  

This limited survey clearly indicated that generalized criticism of the Court is of little value. The tiny Supreme Court press corps is quite specialized, both in terms of its perception of its audience, and in the way it meets the demands of the different types of publications and broadcast outlets. However, the relationship of the Supreme Court reporters to their sources still remains an obscure area. Whether the increasing number of reporters with law degrees suggests that lawyers are “taking over” Court reporting is a question that ought to be explored, though beyond the scope of this article.

The reporters’ attitude toward the information policies of the Court reflected a tone of resignation. Most reporters assumed the Court was unyielding in its basic stance toward disseminating information on its deliberations and rationale for decisions. Accepting this, they focused their concerns upon the procedural problems which, if resolved, would result in some short-term gains. This acceptance sadly suggests a potential co-optation of some reporters. Several comments by the reporters in response to the questionnaires suggested a deferential attitude toward the Court. For example, several reporters responded to questions about policy change with such statements as “you don’t understand.”

However, it may be short-sighted to practice “overkill” in analyzing and criticizing the Court’s press corps. Its size and limited resources make it impossible to fully cover one of the most overwhelmingly complex stories of our national life. More appropriately, criticism should be focused on the newspaper and broadcasting groups as well as the national magazines which have abdicated their public responsibility by failing to cover the Court adequately.

Increasing the size of the press corps would ease the weighty burden now borne by the wire services, which are the sole agencies giving broad coverage to the Court. The other publications and broadcast outlets are more selective, and rely heavily upon the wire services for their general coverage.

128. The idea of a less visible court was also reiterated in a newspaper column by James J. Kilpatrick who wrote, “This is not a spectacular court . . . . It may be that we are in one of those lulls in the law when nothing much happens.” Kilpatrick, Supreme Court Maintains a Low Profile, Minneapolis Star, June 17, 1974, at 6A.
Particularly disturbing is the reporters' sentiment that just as the press corps has improved markedly, the Court has become a less interesting subject of national news. If this is true, it may be difficult to maintain the present quality of reporters at the Court, let alone enhance it.

Beyond the general observations of this article remains a significant task for communication researchers. Little is known about the output of Supreme Court reporters. For example, most of the reporters responding to the survey admitted that they saw very little of their colleagues' work, and thus they have little basis for evaluating overall coverage of the news media. In this field, content-analysis studies would do much to provide insight into coverage patterns and performance. Similarly, studies of reporters and their relationships with their sources at the Court would be helpful. Finally, the Court press corps should not be studied in isolation, but rather it should be studied in relation to the rest of Washington journalism: to the reporters covering other branches of government and particular executive departments. Such studies would do much to enhance our understanding of the popular concepts of our national government.