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**AN ANALYSIS OF SOURCES IN JOURNALISM ON THE
SUPREME COURT**

by

Dione Garlick

**Thesis submitted in partial fulfillment
of the requirements for the degree**

of

DEPARTMENTAL HONORS

in

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in the Department of Political Science**

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The United States Supreme Court building is intimidating, to say the least. The massive structure rises four stories above the ground and the three million dollars worth of white marble shines starkly against the blue sky.¹ The inscription "EQUAL JUSTICE UNDER LAW" runs horizontally across the top of the impressive structure. This beautiful building is part of the imagery associated with the Supreme Court. Along with black robes and gavels, the Supreme Court has carefully crafted the images that are connected with the justices and the Court.

Unlike the leaders of the legislative and executive branches, the justices of the Supreme Court have historically chosen to avoid the harsh glare of the media. The Court has become largely a mysterious organization, requiring even their law clerks to commit to secrecy. In an era of massive amounts of constant information, an organization that has managed to keep their actions mostly secretive is bound to be shrouded in both mystery and misunderstanding. With such a great deal of mystery surrounding this aspect of the government, there is an open opportunity to affect how the Court is viewed through the influence of the media. Through our research, we will attempt to characterize more closely the nature of this influence. Looking specifically at how the issues of the Court are framed by the news media, we examine the presence of outside quotes in the press coverage of the Court, its decisions, or the Justices themselves. We find that these sources are not as frequently used in the news media as we had

¹*The court building*. (2007). Retrieved on April 30, 2008 from <http://www.uscplus.com/info/building.htm>.

originally expected. We also found a general polarization in the opinions of the sources used.

I – BACKGROUND OF THE COURT AND THE MEDIA

The shroud of secrecy enveloping the Supreme Court is not accidental. Through a long and storied history with media, the justices carefully control their presence in the media. Save a few specific purposes, the justices mainly chose at least to avoid media attention, if not openly disdain its pervasive presence. While the office of a justice is fundamentally different from other federal offices, the justices recognize the necessity of protecting their power. Their power is protected by recognizing the importance of the legitimacy of the Court, which is intrinsically tied to the public opinion of the Court.

The justices of the Supreme Court typically place themselves in the center of media attention on two occasions. The first time a justice willingly accepts media attention is during the confirmation process. Since the nomination of Robert Bork and the expansion of mass media, the nomination process has become both gruesome and imperative. Richard Davis of Brigham Young University describes the nomination process as “an exhaustive journey for nominees through a maze of press and interest group scrutiny and public disclosure.”² The justices must accept the necessity of facing public exposure during the nomination hearing, which carries the possibility of a personal attack or humiliation, as in the Anita Hill scandal. Anita Hill had accused

²Davis, Richard (1994). Supreme Court nominations and the news media. *Albany Law Review* 57, 1061.

Clarence Thomas of sexual harassment. Her claims were not originally considered legitimate enough to warrant attention, but after the confidential FBI report was illegally leaked to the press, the confirmation process became centered on the issue of the legitimacy of her accusations³. Needless to say, Clarence Thomas's opinion of the media was affected by the process.

Though not as nobly based, the justices typically allow themselves to be placed in media attention when they have recently authored a book. Typically justices at some point publish a book at some point during their tenure as justice, and, naturally, wish to promote sales. The media has noted the trend of exception to their general rule of avoiding the press and the subsequent change in their attitudes:

just last year Justice Clarence Thomas' memoir, "My Grandfather's Son," was published the day after a "60 Minutes" appearance. Current and former Justices Sandra Day O'Connor, Stephen Breyer and William Rehnquist have also done televised interviews to publicize their works.⁴

Even Justice Antonin Scalia, who has repeatedly and openly expressed disdain for the news media, agreed to an interview. Tony Mauro of the *Legal Times* describes Scalia's contempt for the media: "[n]o justice has excoriated the news media like Scalia has, and it would have surprised no one if he had completed his tenure on the high court without ever consenting to a broadcast interview."⁵ Scalia's dislike for the media

³ Guy Gugliott, "Senate tries to make best of bad day: Rules are trampled, feathers are ruffled," *Washington Post*, October 9, 1991, A6.

⁴ Mauro, Tony. (April 9 2008). Scalia to go before the news cameras – voluntarily. *Legal Times*. Retrieved on April 29 from <http://www.law.com/jsp/scm/PubArticleSCM.jsp?id=1208342632322>.

⁵ Mauro, Tony. (April 9 2008). Scalia to Go Before the News Cameras – Voluntarily. *Legal Times*. Retrieved on April 29 from <http://www.law.com/jsp/scm/PubArticleSCM.jsp?id=1208342632322>.

has bordered on paranoia at times: he once spoke at a law school and a local news crew arrived to cover the event. When Scalia realized the crews were there he ardently refused to go on stage, and U.S. marshals, believing to be following Scalia's recalcitrance, ordered all of the reporters present to erase all audio recordings of his speech.⁶

Considering that almost all congressmen, senators, and even the president vie for the smallest share of media attention, the reluctant attitude of the justices seems surprising and even suspicious. However, the justices fulfill a vastly different role than do legislators or the executive, thus a different character of person is attracted to the position of a justice. Similarly, a justice is never required to formally campaign for office, and therefore does not have a well developed relationship with the media.

Regardless of the innate distinction between justices and other federal offices, justices have more at stake than the other branches. The power of the judiciary is technically nonexistent; their power of judicial review completely depends upon their legitimacy. This precious legitimacy is significantly dependent upon the public opinion of the Court. The Court even admits to this necessity: "The Court's authority – possessed of neither the purse nor the sword – ultimately rests on sustained public confidence in its moral sanction."⁷

The Court seems to have succeeded in cultivating a "sustained public confidence". Typically, research on public opinion of the Supreme Court has found that

⁶ Oliphant, James. (May 1 2008). Supreme Court justices open up to media. *Chicago Tribune*. Retrieved May 1 from <http://www.latimes.com/news/nationworld/nation/la-na-scalia1-2008may01,1,875113.story>.

⁷ Baker v. Carr 369 U.S. 186 (1962)

the public's view of the Court is stable, and significantly higher than the opinion of the other branches, and the public is less informed about the workings of the Court than any other branch.⁸ Even when dealing with controversial cases, the Court still seems to maintain legitimacy in the view of the public: "Model analysis and estimation demonstrates that an active and occasionally controversial Supreme Court can maintain aggregate public support that is both high and stable."⁹

Often researchers even claim the Court's public support is derived from a myth-like belief system. Gregory Casey presents a theory concerning the reasoning of maintaining legitimacy:

All these observations and findings proceed either directly from the proposition that visibility endangers legitimacy, or by deduction from the two premises that (a) myth sustains legitimacy and (b) visibility imperils myth...The weight of scholarly and juridical opinion nonetheless commends to the Court a "low profile" strategy for maximal legitimacy.¹⁰

The Court, of course, is not a perfect institution. Maintaining a low-visibility status in the media protects the Court from exposing some of its more embarrassing features.

Although Court opinion has technically disconnected cameras from the Court's retention of legitimacy, the Court has blatantly refused to even consider allowing

⁸ Gibson, James L., Caldeira, Gregory A. & Spence, Lester K. (April 2003). Public Opinion of the Supreme Court: Measuring Attitudes toward the United States Supreme Court. *American Journal of Political Science*, Vol. 47, No. 2. Retrieved on April 30, 2008 from <http://www.jstor.org/stable/3186144>.

⁹ Mondak, Jeffery J. & Smithey, Shannon I. (Nov. 1997). The dynamics of public support for the supreme court. *The Journal of Politics*, Vol. 59, No. 4. Retrieved on May 1, 2008 from <http://www.jstor.org/stable/2998595>.

¹⁰ Casey, Gregory. (Spring, 1974). The Supreme Court and myth: An empirical investigation. *Law & Society Review*, Vol. 8, No. 3. Retrieved on April 30 from <http://www.jstor.org/stable/3053081>.

cameras in the courtroom.¹¹ The Court claims that cameras will distort the fairness of judicial proceedings¹², it is also possible that cameras might break down the mystique of the high court. Perhaps, if there were video footage of Associate Justice Ruth Bader Ginsburg falling asleep during a political redistricting hearing, the public opinion of the Court might decrease.¹³

Justice Sandra Day O'Connor, in a broadcast interview, once claimed that the Supreme Court is the "most open branch" of government. This, she explained, is because the justices "fully explain everything [they're] thinking and doing in written opinions for the world to see. That doesn't happen in the other branches of government."¹⁴ Although the justices do explain the reasoning behind their decisions, much of what the Court does is still mysterious to the public. As the result of what appears to be careful planning, the justices generally stay far from the news media. The lack of information cultivates the myth that pervades the opinion of many Americans.

II – THE RESEARCH QUESTION

Due to this intricate relationship between the Court and public opinion, the power of the media could potentially influence the public and public opinion. With our

¹¹ Bauer, Robert F. (August 7, 2005). A court too supreme for our good. *Washington Post*. Retrieved on April 30, 2008 from <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/05/AR2005080501999.html>.

¹² *Estes v. Texas* 381 U.S. 532 (1965)

¹³ Kovacs, Joe (March 1, 2006). *Snorer in the court? Ruth Bader Ginsburg snoozes Justice dozes off during political redistricting hearing, colleagues let her sleep*. Retrieved on May 1, 2008 from http://www.wnd.com/news/article.asp?ARTICLE_ID=49070.

¹⁴ Dorf, Michael. (July 9, 2003). *A TV appearance by two supreme court justices indicates how much the court continues to value image control*. Retrieved April 30 from <http://writ.news.findlaw.com/dorf/20030709.html>.

research, we wished to delve into this relationship between the media and public opinion. There are many ways in which the public is influenced by the media concerning the Court. However, in examining the relationship between the Court and the media, there are a few specific aspects of reporting that hold a noteworthy opportunity for influence.

As the journalists report on the Court, many are not able to meet with the justices to discuss the cases, and those who do are generally only able to meet with them off-record¹⁵. Thus, by the nature of journalism, those reporting on the Supreme Court must find other ways to keep the stories about the Supreme Court edgy and interesting enough to captivate modern audiences. One way that journalists accomplish this seemingly impossible task is by interviewing different groups or individuals about the case.

These interviews are capable of influencing what voices and opinions surround each Court decision, and thus could potentially impact the way the public views the Court. We wished to characterize these types of interviews by examining their frequency and generally exploring the characteristics of the individuals who are interviewed and the groups or beliefs that are represented.

One particular news reporter of the New York Times, Linda Greenhouse, has often been cited as an example of the effect of the news media. Many criticize her methods of reporting, calling her influence the “Greenhouse Effect”. The Greenhouse Effect has been faulted for changing opinions not only of the public, but of the justices

¹⁵ Davis, Richard. *Decisions and Images: The Supreme Court and the Press*. Englewood Cliffs, NJ: Prentice Hall, 1994.

themselves, and is a case-in- point example of the potential influence of the liberal bias of the news media.¹⁶ We wanted to also capture her particular influence by being sure to include her pieces in our research.

III – RESEARCH METHODS

Since the New York Times is generally considered the nation’s flagship entity for news, we chose to examine the presence of these interviews in the New York Times exclusively. Certainly, this study could be improved if other newspapers or even types of media were included in the study. We were also curious to explore the writings of Linda Greenhouse, the infamous New York Times reporter covering the Supreme Court whose influence has been described as the Greenhouse effect.¹⁷

We decided to examine all the articles mentioning the Supreme Court that were published in the New York Times in a given time period. We felt it was important to capture a time period in which there were nominations and/or confirmations of new Justices to the Court, as that inspires more coverage than is usual. We chose to cover 1990, 1991, and 1992. These three years includes the nominations and confirmations of Justices David Souter and Clarence Thomas.

In order to access the articles, we used the Lexis Nexis search database. After attempting many different search terms, we eventually defined our search terms to include any article whose title included the words “Supreme Court” . Again, the results of this research could be greatly explored by elaborating on search terms, years, and

¹⁶ Thomas Sowell, “The Greenhouse Effect”, *Albany Times Union*, March 8, 1994, A10.

¹⁷ Thomas Sowell, “The Greenhouse Effect”.

types of media included. However, we found that broadening the search terms resulting in bringing up a large number of articles that were not relevant to our study. After using these stipulations to search through the database, we found 168 articles that matched our criteria.

IV – RESULTS AND IMPLICATIONS

When examining the data, we first looked at the general frequency of the stories. We found that, within the criteria, journalists quoted outside sources roughly 30 percent of the time. This was slightly lower than we had expected, though still an substantial number of times. We also found that, in general, the court would usually (roughly 75% of the stories) include quotes from the case, the trial, or other sources that were matter of public record. Only 10 percent of the articles we examined included no quotes at all and were merely the journalists' words.

Through examining the data, we saw that only 10 percent of the stories we coded did not include any quotes at all – meaning quotes neither from outside sources nor from the court case or other matter of public record. This creates an interesting implication. On the one hand, in only 10 percent of the cases, the public receives only the interpretation of the journalists. However, it also means that the issue is not framed by the presence or the opinions of an individual or interest group.

Coding	Data
# of Articles	168
% Greenhouse Articles	58.333333
% Articles from AP	07.142857
% of articles that included quotes	29.761905
% of sources included excerpts from trials	74.404762
% of articles that did not include quotes	10.119048

When they did include quotes from sources we found that the nature of the opinions of the people who were quoted were polarized in their opinions of the Court, the Justices, or a specific decision. There were roughly the same number of sources who spoke positively and negatively of the case. There were less than half as many who spoke neutrally. Generally, when people spoke negatively, it was concerning nominations of potential justices and not as often concerning the outcome or decision of a specific case.

In coded articles that contained quotes other than from the trial, it was most common to see individuals from two major organizations. As one would expect, lawyers were frequently quoted. At times, journalists interview the lawyers after the trial. Quotes were typically given only as legal representation, speaking on behalf on the lawyers' clients. Journalists also sought information from lawyers who weren't directly involved in the case, but may have experience on the subject. An example of this kind of

situation is Dominic P. Gentile, a lawyer for the National Criminal Defense Bar. Gentile was sought for a quote on the trial at hand, but was not directly involved in the case. Another majority organization that one can find as a source in articles involving the Supreme Court is legislators. It is not uncommon for trials to become political and for politicians to get intensely involved. Another time when national legislators make appearances in articles is during Supreme Court Justice nominations. At this time, the coding suggests that many politicians will use the nominations for a chance to platform and gain media attention.

Another category of individuals journalists quote are specialists within the field of the trial topic. Obviously, as a trial about abortion is taking place, journalists go straight to the experts on the subject. What is not surprising is how radical many of the individuals quoted are. On the abortion topic, for example, they don't necessarily quote doctors, but leaders of polar NGOs like National Abortion Rights Action League, National Right to Life Committee, Pennsylvania Pro-Life Federation, and the Abortion Rights Mobilization Inc. These individuals, in general, provided passionate quotes. However, it was uncommon to find an article that didn't have quotes from both viewpoints. Thus, although journalists were quoting radical groups on the trial subject, they maintained an equal representation from both sides.

What we expected to find more frequently was journalist quoting law professors. However, this was not the case. The number of professors quoted was so low, the only conclusion made is that our hypothesis about the use of professors was

false. Other notable sources were church leaders, government officials, embassy representatives, and union leaders.

Demographics	Summary
Males Quoted	95
Females Quoted	97
Titles of Sources Cited	Adviser, assistant executive director, Assistant Secretary for civil rights, Attorney General, Author, Citizen, Commentator, Councilwoman, Democratic poll taker, Director, Economist, Executive Director, Follower, Governor, Justice, Law Professor, Lawyer, Legal Director, Media relations, medical director, Officer, Olympian, Parent, Pilot, President, Rabbi, Registered Nurse, Representative, Senator, Chairman, Speaker, Solicitor, Spokesman, Adviser

Journalist Linda Greenhouse was the most interesting journalist coded. Out of all of her articles written within the time period, rarely was there a report that included a quote not from a trial. Generally, her articles were summaries of the trial and were filled with quotes from the decisions. When Greenhouse did quote an individual outside of the trial, the quote was almost always from lawyers or legislators. Out of all of the stories coded by Greenhouse, only three included quotes from an individual that was not a lawyer or a legislator. Thus, in light of the controversy surrounding Linda Greenhouse, we find that if she were influencing the public or the Court with her work, then she is not doing so by only quoting individuals from certain viewpoints. By only including quotes from the trial, or no outside sources at all, she is relying exclusively on her interpretation of the decision and its impacts. Arguably, she could not need the

interpretations of other individuals because she is a Pulitzer Prize winning journalist whose beat has been the Supreme Court for the past three decades.¹⁸ Contrastingly, she could be simply shouting her opinions from the New York Times without any substantial backing.

VI – FUTURE RESEARCH

This study of the sources used in journalism is recognizably limited. There is still much to be explored in the characterization of the media's portrayal of the Court, and the judiciary in general. There are many ways in which our study could be expanded to capture a greater view of the way the media portrays the Court. The Court and the media have an interesting relationship. With all of the regulations in place to limit the amount of information Justices give out, from their appearances in public and the limitations on interviews, the media has to design a new way of reporting the trials and appointments. This relationship is what makes the studies done intriguing to scholars and drives academia to make sense of the existing unique relationship.

Similar studies could be designed, and future research is scheduled, to explain more clearly how the media portrays the Court. First and foremost, it is important to expand the data collection. It will be important to take a sampling since the beginning of the Court's existence and the modern media. The analysis could then be expanded to

¹⁸ "Linda Greenhouse returning to Yale Law School in 2009 as Journalist-in-Residence." March 26, 2008. *Yale Law School*. Accessed December 4, 2009 from <http://www.law.yale.edu/news/6597.htm>

show changes in reporting, introduction of new medias, compare differences between appointments and influential cases, changes in rules for the media set by the Court, and even important cases where court case reporting has gone to the Supreme Court can be plotted throughout the data.

Additionally, this research would help provide clarity by making the sample size larger, and doing better comparisons between the role media plays and the Courts stringent policy. We would not only recommend taking a larger sample of time, but also including broader search terms, and larger periods of time throughout different decades. Perhaps examining a few years with a set number of decades. We also would recommend expanding the research to include different types of media. Although certainly the New York Times represents the more traditional old media, we would be interested in seeing an analysis of new media, as they are even more removed from being able to contact the Court. We also would like to see an examination of other newspapers, and even of broadcast media.

Most of the analysis of the data in our project was simply mined through to find summary statistics generalizing certain aspects of the data. There are certainly other avenues of statistical research that could be explored. We would like to use SAS in the future to explore some deeper levels of statistics. For example, using a two-sample t-test, we could the difference in the frequency of certain tendencies of Linda Greenhouse versus the New York Times in general. For example, we could examine the statistical significance of her decreased use of outside sources in general, or her continual referencing of lawyers and legislators. Using statistical tests, we could also

examine the degree of variability among the different authors and their use of outside sources.

VII – Conclusions

The relationship between the Court and the media is unique, but important one. While the Justices continue to legislate through their courtroom, the American people are left with less than necessary to make a conclusion about the results of major cases. As seen through the data collection done in this research, the majority of the articles written on the Court aren't written as opinions, or filled with quotes from opposing viewpoints from both the prosecuted and the defendants; rather, they are articles summarizing the transcripts from the trial. As we learn from the way that media is presented, Americans generally aren't reading the available news media; they must be drawn in by scandal, gore, or heartfelt human interest stories. The public can pick and choose news outlets of their choice, and they won't take time to do research on topics to get the full story. Therefore, the way the Court and the results are portrayed to the American public is not realistic.

The question of if it is the fault of the media or the courts is a debatable one, and would need future research to decide. However, from the research data collected in this project, one can assume that there is not a clear bias on who is interviewed for articles. In actuality, the quotes come from a wide range of sources, generally public figures, which includes legislators, and law scholars from no particular left or right-wing influenced university, and miscellaneous directors and presidents of unions, NGOs, and

religious groups. Thus, there is no evidence at this point that the media portraying the media in a certain light, whether this be intentional or unintentional. However, when in light of the restrictions placed on the media by the Court, the influence on courtroom policy, and the sources used by the media, the boundaries for which research can be done is limited, yet more is still necessary to more fully understand the nature of the relationship between the media and the Court.