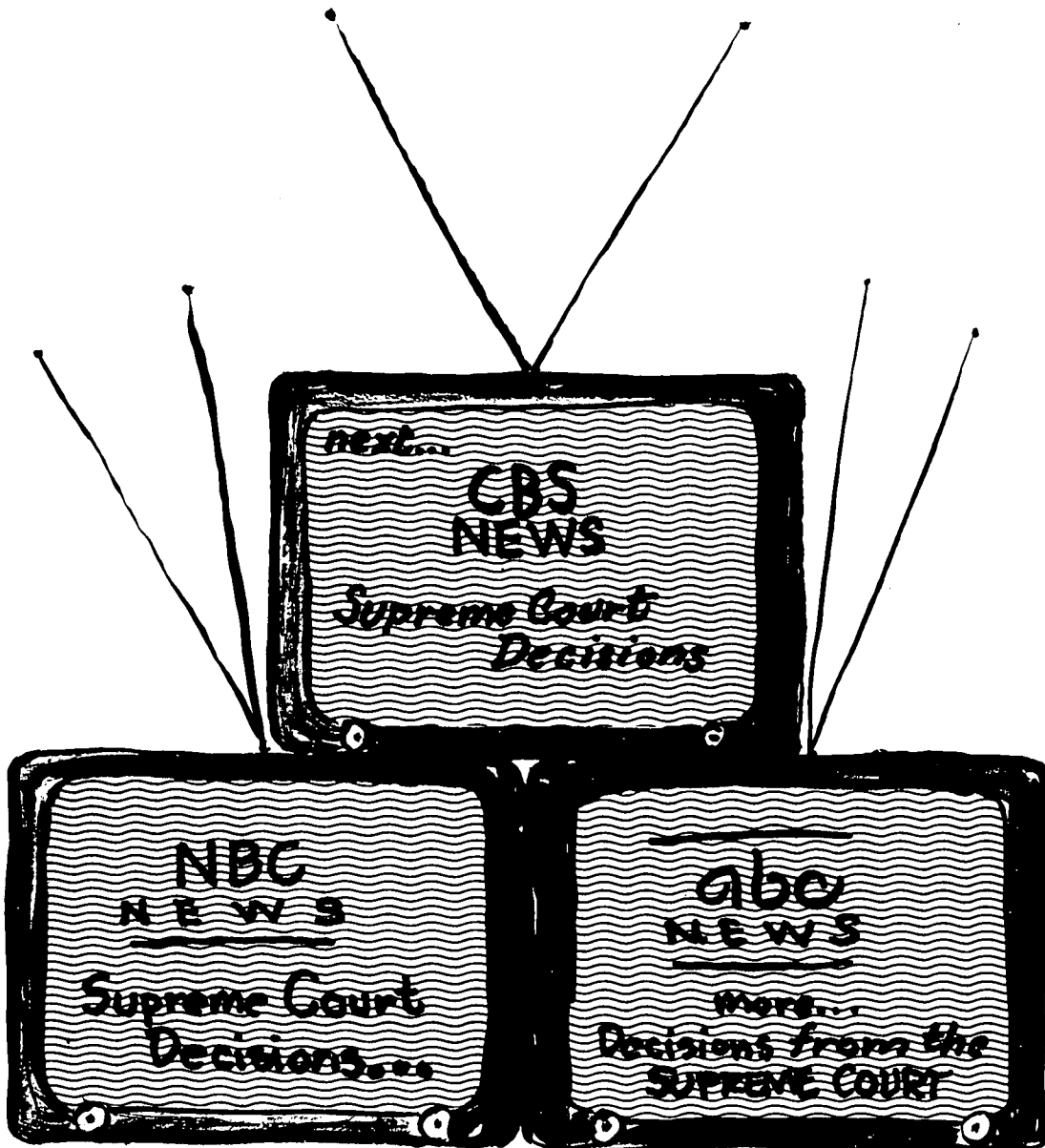


# The Supreme Court beat: how televi



# on covers the U.S. Supreme Court

*This study found no significant differences in Supreme Court coverage among the three major networks—each gave some air time to about one out of five of the Court’s decisions. But is the quantity and quality of coverage adequate?*

by Ethan Katsh

Justice Felix Frankfurter was fond of asking why the news media did not cover the Supreme Court as well as it did the World Series.<sup>1</sup> In 1956, journalist Max Freedman commented that the Supreme Court is “the

worst reported and worst judged institution in the American system of government.”<sup>2</sup> Since the 1950s there have been significant changes and improvements in television news and each network now has a well known correspondent assigned to cover legal affairs on a full time basis. Yet, Justice Frankfurter would probably still not be satisfied. Although television is the primary source of news for the majority of the American public, television coverage of the Supreme Court is limited, and

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The research described in this article was supported by a grant from the University of Massachusetts Research Council.

1. Baker, *FELIX FRANKFURTER* 218 (New York: Coward-McCann, 1969).

2. Freedman, *Worst Reported Institution*, 8 *NIEMAN REPORTS* 2 (April, 1956).

some important legal issues are consistently neglected. There is, it is fair to say, more taking place at the Court than meets the television eye.

This conclusion results from an analysis of all Supreme Court cases which were reported on the three national network news programs from October, 1976 to July, 1981, a period of five court terms. Among the findings were the following:

- Each network gave some coverage to approximately one out of five Supreme Court decisions.
- One in ten Supreme Court decisions were reported or analyzed by the network's legal affairs correspondent.
- There were no significant differences among the networks.
- The Supreme Court itself, by the way it schedules cases, is a large impediment to more frequent reporting of its decisions.
- Cases involving corporate and business issues are much less likely to be reported than cases involving individual rights.

### The importance of law-related reporting

Before describing these findings in detail and exploring their meaning, it is important to understand the significance of law-related news reporting and its relationship to public trust in law and legal institutions. Frankfurter's dream was based on a belief that public faith in law and the legal system depends on how they are perceived and how they are perceived depends on how they are portrayed by the media. It is not only what courts do that is important, but what they are perceived to be doing. "The force of judicial decisions," Judge Irving Kaufman has stated, "depends on a fragile constitutional chemistry, and it flows directly from popular knowledge and acceptance of their decisions. Courts cannot publicize; they cannot broadcast. They must set forth their reasoning in accessible language and logic, and then look to the press to spread the word."<sup>3</sup>

Spreading the word about law affects the public in two ways. First, specific factual information is provided to citizens about legal issues—about what a court has ruled and about what consequences might flow from

the decision—with the hope that consumers of legal news will become more informed and knowledgeable about law. Second, there is communicated a sense of how important law is in our society and what functions it performs. Whether or not the viewer learns something specific about legal rules or procedures, he or she will have been told that our culture relies on law to resolve important disputes and social problems. As a counterweight to news reporting of the executive and legislative branches, which suggest that we are a society governed by politics, coverage of the Supreme Court promotes the idea of a society ruled by law.

Although there have been a few studies of newspaper coverage of the Supreme Court, television reporting of the Court has been almost totally neglected.<sup>4</sup> Yet, the importance of television as a source of news has been documented repeatedly by researchers. Television is the major source of news about national affairs. A majority of the public relies on television more than on any other medium and a plurality cite television as the "most thorough" source of national news.<sup>5</sup> A study in the mid-1970s of 111 individuals from 11 occupational groups found that 71 per cent believed that they usually obtained reliable information about Supreme Court decisions from television.<sup>6</sup>

These findings are particularly interesting since general public knowledge about law is at a disappointing level. A 1978 study concluded that "public knowledge of and direct

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3. Quoted in Shaw, *Media Coverage of the Courts: Improving But Still Not Adequate*, 65 JUDICATURE 24 (1981).

4. Newspaper coverage of the Supreme Court is discussed in Grey, *THE SUPREME COURT AND THE NEWS MEDIA* (Evanston: Northwestern University Press, 1968); Goldschlager, "The Law and the News Media," (unpublished thesis, Yale Law School, 1971); Dennis, *Another Look at Press Coverage of the Supreme Court*, 20 VILL. L. REV. 765 (1975); Newland, *Press Coverage of the United States Supreme Court*, 17 W. POLITICAL Q. 15 (1964); Ericson, *Newspaper Coverage of the Supreme Court: A Case Study*, 54 JOURNALISM Q. 605 (1977); MacKenzie, *The Warren Court and the Press*, 67 MICH. L. REV. 303 (1968); Sobel, *News Coverage of the Supreme Court*, 56 A.B.A.J. 547 (1970); Cranberg, *What Did The Supreme Court Say*, SATURDAY REVIEW 90, April 8, 1967; Lewis, *Problems of a Washington Correspondent*, 33 CONN. B.J. 363 (1959); Hess, *THE WASHINGTON REPORTERS* (Washington: The Brookings Institution, 1981).

experience with courts is low.”<sup>7</sup> Three out of four persons surveyed admitted that they knew very little or nothing at all about state and local courts. More than half believed that the burden of proving innocence is on the accused and 72 per cent believed that every decision made by a state court could be reviewed by the U.S. Supreme Court.

Television has been found to be a source of both information and misinformation about law. Research on prime time police programs found that the “officers of the law” on such shows regularly violated the constitutional rights of citizens.<sup>8</sup> A study of news reporting of crime revealed that “crime news distorts the reality of crime commission by disproportionate emphasis on street crime as compared to white-collar crime.”<sup>9</sup>

### Reporting the Court

During the five year period studied, the Court handed down a total of 663 written decisions. Using the *Television News Index and Abstracts*, prepared by the Vanderbilt University Television News Archives, as well as videotapes of some broadcasts, it was determined that 20 per cent of these decisions received some mention on ABC and NBC and 23 per cent on CBS.<sup>10</sup> Thus, fewer than one in four decisions is likely to receive mention. For other kinds of Supreme Court actions, the odds of a case being reported are very much lower. In the years covered, for example, an average of only 11 review denials and five oral arguments were reported on each network each year.

5. Roper Organization, *CHANGING PUBLIC ATTITUDES TOWARD TELEVISION AND OTHER MASS MEDIA, 1959-1977*, (New York: Television Information Office, 1977).

6. Berkson, *THE SUPREME COURT AND ITS PUBLICS* 64 (Lexington: D.C. Heath and Co., 1978).

7. Yankelovich, Skelly and White, *Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders*, in Fetter, ed., *STATE COURTS: A BLUEPRINT FOR THE FUTURE* 5-69 (Williamsburg, Virginia: National Center for State Courts, 1978).

8. Arons and Katsh, *How TV Cops Flout The Law*, *SATURDAY REVIEW* 11, March 19, 1977.

9. Graber, *CRIME NEWS AND THE PUBLIC* 42 (New York: Pantheon, 1980).

10. The programs studied included all of the early evening weekday network news programs, and all of the early evening weekend broadcasts after November, 1978. From October 1976 to November 1978 the only weekend data in *THE TELEVISION NEWS INDEX AND ABSTRACTS* was for the CBS and NBC early evening programs.

## Researchers have almost totally neglected television reporting of the Court.

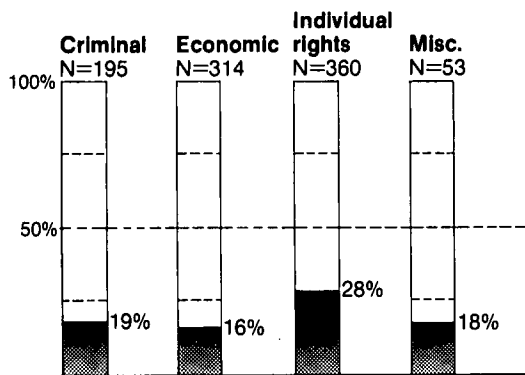
In considering the number of cases covered, it is important to distinguish between cases reported by the anchorperson alone and cases covered by the network’s legal affairs correspondent. Correspondent reports are longer, frequently contain interviews, always have pictures, and generally provide more details about the nature of the judge’s reasoning and the significance of the case. These reports are one to three minutes in length compared to 10 to 30 seconds for anchor stories. If the public is to learn anything meaningful about the Court, it will probably be from these reports. Of the 663 decisions handed down, 10.4 per cent received correspondent coverage on ABC, 10.7 per cent on CBS and 11.6 per cent on NBC. Thus, approximately half of the decisions which were reported on these programs were covered by a correspondent.

### Network differences

Although CBS did carry more reports of cases than the other networks, the margin of difference was not statistically significant. Other analyses also did not reveal important differences in coverage among the networks. In fact, what was revealed was a pattern of striking similarity. For example, during the five-year period, the total number of decisions and non-decisions covered by a correspondent was 115 for ABC, 114 for CBS and 116 for NBC.

This indicates that the pattern of news reporting described here is probably not due to the particular qualities of the correspondent assigned to the Supreme Court or to the

**Figure 1 Per cent of decisions reported by average network, 1976-1981**



editors and producers at a particular network. Rather, as will be suggested later, why the Supreme Court is covered the way it is is more likely due to institutional factors inherent in broadcast news or to the special qualities of the medium of television.

### What issues are covered?

Figure 1 reveals a bias in network news coverage of Supreme Court decisions. Individual rights cases are almost twice as likely to be reported than cases involving an economic issue. Criminal cases and miscellaneous decisions (foreign affairs, elections, etc.) fall in between. This pattern of reporting occurs on all of the networks.

Comparing more specific issues also reveals wide disparities in coverage. The most likely issue to be covered was abortion, with every decision handed down during the five-year period covered by at least one of the networks. Also receiving coverage more than 50 per cent of the time on at least one network were decisions involving free press, free speech and freedom of religion. Cases involving anti-trust, individual and corporate taxation, patents, copyrights and trademarks were much less likely to be covered. Criminal cases also seem somewhat neglected. While capital punishment cases were often reported, no other criminal areas were reported more than half of the time.

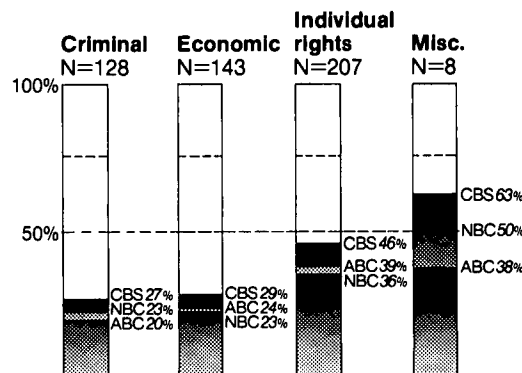
Do important cases go unreported? This is

a particularly difficult question to answer because there is no objective standard for determining importance. It could be argued that, by the mere fact that it has been selected for review by the Court, there is something noteworthy about every case. Yet, it can also be persuasively argued that legal importance and public importance are not synonymous.

Even admitting the problem of rating the significance of cases, it is still interesting to take two frequently used legal summaries of the Supreme Court term and compare them with network coverage. Each summer, *U.S. Law Week* publishes a summary of the previous term's decisions which its editors consider to be the most significant; and each fall, the *Harvard Law Review* publishes a more detailed but narrower analysis of the previous year's term. Figure 2 uses cases which were included on either list and analyzes by subject area how many were covered, on average, by each network.

The pattern of selective reporting which was noted earlier is present here as well. Even among these cases, which can be assumed to be the most legally important decisions, significantly fewer cases with economic issues were reported than individual rights cases. Interestingly, cases with criminal issues fared even worse. What is most important is that even with these legally significant cases, no

**Figure 2 Per cent of decisions in *U.S. Law Week* or *Harvard Law Review* reported on each network, 1976-1981**



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## **Newsworthiness and legal significance do not seem to be equivalent terms.**

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network reported more than 50 per cent of the cases in any category. Newsworthiness and legal significance, therefore, do not seem to be equivalent terms.

### **Law and television**

It should not be surprising that relatively few Supreme Court decisions make the network news programs. These programs average 22 minutes in length, with 10 to 15 stories reported each evening. Competition for air time is fierce. To get a Supreme Court story on the air, one network correspondent has stated, the case must be "both interesting and important" and capable of being made meaningful to viewers in a minute and a half.<sup>11</sup> The exclusionary rule and the elimination of diversity jurisdiction in the federal courts were given as examples of issues which are important but which would probably fail the "interesting" standard and thus not be covered on the national news.<sup>12</sup>

The small number of reported decisions is also partly a function of the Court's schedule of handing down decisions. Announcing

decisions in clusters on one or two days during a week makes it less likely that all will be covered. Similarly, the practice of announcing more than a third of the yearly decisions in June reduces the number that can practically be reported. If public reporting of court decisions is considered important, some study should be given to modifying the Court's calendar.

While it is debatable whether the Supreme Court receives its fair share of attention on the national news programs, the uneven reporting of different issues is more clearly open to criticism. Rulings involving important subjects like collective bargaining are almost totally ignored and court decisions involving large economic institutions are underreported. Those in academia, for example, would probably be interested to learn that *NLRB v. Yeshiva*, 444 U.S. 672 (1980), which limited the right of private college faculty to unionize, received no mention on any news program the day it was decided. It would not be surprising if public understanding of legal responses to concentrations of economic power was negligible.

One plausible explanation for the bias in reporting and not reporting certain issues concerns the nature of the television medium. In general, television tends to emphasize the visual and the concrete, and to neglect the abstract. As University of California sociologist Todd Gitlin has written, "television news stories are built around images of particular personages and dramatic conflict. Stories are personified; they issue forth from sanctioned politicians and certified authorities. Stories include visual images that will secure the flickering attention of the mass audience. Other things being equal, the dramatic image—a burning flag, a raging fire, a battle—gets priority, especially the image that lies on the surface, immediately visible to the camera."<sup>13</sup> It is at least arguable, therefore, that individual rights cases are covered more frequently, not because they are more newsworthy or important but because they are more easily made interesting to viewers. Individual plaintiffs are live human beings with whom viewers can identify much more readily than with corporate spokesmen. In other words, individ-

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11. Katsh, *Law in the Lens: An Interview With Tim O'Brien*, 5 AM. LEG. STUD. FORUM 37 (Fall, 1980).

12. *Id.*

13. Gitlin, *Television's Screens: Hegemony in Transition*, in Apple, ed., *CULTURAL AND ECONOMIC REPRODUCTION IN EDUCATION* 209 (Boston: Routledge and Kegan Paul, 1982).

ual rights cases are also often human interest stories, can be dealt with in a visual manner, and therefore appear on the air more often.

This study reveals only a small part of the information we should try to gather about the television image of law. How, for example, are other legal institutions covered? What appears on local news programs? Do public attitudes toward the law and courts parallel the television image? The ABA's invitation to actress

Veronica Hamel of "Hill Street Blues" to speak at its 1982 Annual Meeting illustrates the fact that it is often difficult to draw a line between television reality and what exists in real life. It is clear that television plays an influential role in modern life and what this implies for the law has not yet been fully determined. □

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## Yes, but...

by Tim O'Brien

**E**than Katsh should be commended for his valuable contribution in a much neglected area of inquiry. His statistics show conclusively what many who cover the Court must concede, however unhappily: many legal issues confronting the Supreme Court fail to get the attention they deserve from television news.

I regret, however, that Katsh chose to confine his inquiry to the early evening news broadcasts,<sup>1</sup> a misleadingly narrow focus. There was a time when the evening news was the only regularly scheduled news programming on the air. Today, however, it accounts for less than ten per cent of the networks' regularly scheduled news and public affairs programming.<sup>2</sup>

Limiting the study to the evening news broadcasts obscures not just the *frequency* of court coverage, but also the *depth*. Last term, for example, ABC's "Nightline" program devoted 30 minutes to exploring the issues confronting the Supreme Court in *Bob Jones University v. United States* (federal tax exemptions for private schools with racially discriminatory policies); another "Nightline" broadcast was devoted, in its entirety, to *Rogers v. Lodge* (voting rights).

ABC's "Good Morning America" devoted segments, running seven to ten minutes, to a number of Supreme Court cases, including *Bob Jones, Murphy v. Hunt* (preventive detention), and *Youngberg v. Romeo* (rights of involuntarily committed mental patients). A dozen Supreme Court cases<sup>3</sup> were explored on

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1. Katsh's research only partially considered weekend broadcasts and failed to take into account any of the networks' morning and late night broadcasts. The surveys showing Americans get most of their news from *television* (the premise of Katsh's piece) do not distinguish newscasts, morning from evening or daily from weekend.

2. Katsh's figures, for example, show that "...of 663 decisions handed down [by the Supreme Court between 1976 and 1981] 10.4 per cent received "correspondent coverage" on ABC. Had Katsh gone beyond the *evening* newscast, however, he would have found the numbers much higher. Last term, for example, of 141 signed decisions, the network had "correspondent coverage" of 29 cases, or 20.6 per cent—nearly twice Katsh's average.

In fact, even Felix Frankfurter might have been pleased. Despite the network's legendary emphasis on sports, in 1982 the Supreme Court got much more attention from ABC News than the World Series!

3. *Widmer v. Vincent* (campus prayer), *Hoffman Estates v. Flipside* (drug paraphernalia), *Mesquite v. Alladin's Castle* (video arcades), *Nixon v. Fitzgerald* (immunity), *New York v. Ferber* (child pornography), *Rogers v. Lodge* (voting rights), *Doe v. Plyler* (illegal aliens), *Washington v. Seattle School Board*, together with *Crawford v. Los Angeles* (busing), *U.S. v. MacDonald* (speedy trial), *Enmond v. Florida* and *Eddings v. Oklahoma* (both death penalty).