2017

# Hitting the "Bullseye" in Supreme Court Coverage: News Quality in the Court's 2014 Term

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# HITTING THE "BULLSEYE" IN SUPREME COURT COVERAGE: NEWS QUALITY IN THE COURT'S 2014 TERM

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A citizenry with working knowledge of political affairs plays a central role in ensuring that democracy functions effectively. Yet, while it is essential that the public has some understanding about issues, candidates, and the behavior of the political branches, citizen competence is particularly meaningful when it comes to the judiciary. Knowledgeable citizens are more apt to see the judiciary, particularly the

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Supreme Court, as a valuable cog in a system of checks and balances.[1] In other words, citizen competence is associated with a willingness to protect the integrity of the institution and obey its decisions.[2] These attitudes can help alleviate the problems of implementation and enforcement of rulings that the Court sometimes faces.[3]

Yet, if "to know the Court is to love it," numerous studies question whether citizens are able to learn what they need to know.[4] This lack of knowledge is a product of two related factors: court communication and adequate media coverage. Often, the Court does not communicate its actions in ways that can be easily understood by ordinary Americans.[5] As a result, citizens rely primarily on media coverage to learn about the institution's actions. But media coverage is often "laden with inaccuracies."[6] If the press is unable or unwilling to offer adequate coverage of the Supreme Court, this has important consequences for the institution's popular support and raises concerns about its ability to carry out its appointed functions.

Still, our understanding of coverage quality needs further development. Is media coverage of the Supreme Court as inadequate as the literature suggests? While it is true that some reports involving the Court contain factual errors and only a small number of news organizations devote full time staff to the Supreme Court beat, research

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[1] ELLIOT E. SLOTNICK & JENNIFER A. SEGAL, TELEVISION NEWS AND THE SUPREME COURT: ALL THE NEWS THAT'S FIT TO AIR? 4–5 (1998).

[2] Gregory A. Caldeira, *Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court*, 80 AM. POL. SCI. REV. 1209, 1216 (1986); James L. Gibson & Gregory A. Caldeira, *Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court*, 71 J. OF POL. 429, 437 (2009) [hereinafter Gibson & Caldeira].

[3] James L. Gibson, *Institutional Legitimacy, Procedural Justice, and Compliance with Supreme Court Decisions: A Question of Causality*, 25 L. & SOC'Y REV. 631, 631–32, 634 (1991); Matthew E.K. Hall, *The Semiconstrained Court: Public Opinion, the Separation of Powers, and the U.S. Supreme Court's Fear of Nonimplementation*, 58 AM. J. OF POL. SCI. 352, 353 (2014).

[4] *See* David Ericson, *Newspaper Coverage of the Supreme Court: A Case Study*, 54 JOURNALISM Q. 605, 607 (1977); TYLER JOHNSON, *How and Why the Supreme Court Remains Undercovered*, *in* COVERING THE UNITED STATES SUPREME COURT IN THE DIGITAL AGE 23, 24–26 (Richard Davis ed., 2014); Chester A. Newland, *Press Coverage of the United States Supreme Court*, 17 W. POL. Q. 15, 16, 34 (1964); SLOTNICK & SEGAL, *supra* note 1, at 8–9.

[5] SLOTNICK & SEGAL, *supra* note 1, at 4.

[6] Johnson, *supra* note 4, at 32.

has yet to offer a systematic portrait of what quality coverage entails.[7] In this study, we seek to understand the central components of coverage quality when it comes to the media's reporting on the Supreme Court and specifically as it relates to the idea of citizen competence.

We theorize that the quality of coverage is shaped by the relationship between the content of news reports and the Court's opinion in a given case. We argue that quality coverage should convey, with some degree of accuracy, the substance of Court rulings to the public. Specifically, our focus is on both the complexity and negativity of news coverage *relative* to the opinions they discuss. Our conceptualization implies that as coverage deviates markedly from written opinions on either of these dimensions, it falls short of the quality that is necessary to adequately inform citizens about what the Court has ruled.[8] For example, when news coverage uses significantly less complex language than the Court's opinion does to describe a decision, it falls victim to the dangers of over-simplification, which is associated with reporting errors.[9]

To better understand media coverage in light of these considerations, we gather a large volume of news reports from a wide range of news organizations. Specifically, we identify all internet news reports that were published on rulings from the Court's 2014 term.[10] Our dataset spans twenty-nine news outlets and 1,075 reports directly tied to a decision.[11] This represents a much broader collection of coverage than that found in typical work in this area.[12] Using textual analysis software, we examine both the complexity and negativity of news reports in relation to the opinions they discuss, measures which we validate using human raters. This enables us to gauge the accuracy of Supreme Court media coverage during the 2014 term.

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[7] *Id.* at 30, 32.

[8] *Id.* at 27; RICHARD DAVIS, DECISIONS AND IMAGES: THE SUPREME COURT AND THE PRESS 76 (1994).

[9] *See* Johnson, *supra* note 4, at 31–33.

[10] *See infra* DATA.

[11] *See infra* Figure 7.

[12] Our news outlets span the ideological spectrum and cover the U.S. geographically. They include national and regional newspapers, television and cable news stations, radio, and internet websites. Further distinguishing our approach, we collect coverage of all rulings, not just a limited number of high salience ones.

Our analysis yields numerous insights about the quality of coverage as well as the factors that lead to systematic variations in the media's portrayal of the Court.[13] We show that these variations are a product of legal factors, the size of the majority coalition in a case, the news outlet producing content, and the case being discussed.[14] These findings add a new angle to the literature on coverage of the Court and raise further questions about whether the press provides the necessary ingredients for citizen competence when it comes to the Court.

## THE SUPREME COURT IN THE NEWS

The Supreme Court and its decisions are somewhat isolated from the public in that Justices do not tend to engage in discussions of their activities, and direct accessibility to the institution is limited.[15] Thus, the public must largely rely on the news media to provide information regarding the Court's actions. This is not merely a decision on *what* to cover, but *how* to cover the institution. The subsequent consumption by the public can have serious consequences for compliance[16] and attitudes toward the institution itself.[17] Unfortunately, most research suggests that the Supreme Court consistently receives lackluster coverage at best, and total neglect at worst, providing the public with an incomplete and often inaccurate discussion of the Court's work that falls far short of the coverage received by either Congress or the President.[18]

Perhaps due to the complexity of law, or the lack of training many reporters have on that topic, coverage of the Court is often sparse or formulaic.[19] Additionally, reporters who are unfamiliar with legalese or historical aspects of a legal issue may face further burdens in interpreting

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[13] *See infra* ANALYSIS.

[14] *See infra* Figure 5, Figure 6, Figure 7, and Figure 8.

[15] Kaitlyn L. Sill, et al., *Media Coverage of the U.S. Supreme Court: How Do Journalists Assess the Importance of Court Decisions?*, 30 POL. COMM. 58, 61 (2013).

[16] *Id.* at 60.

[17] Brandon L. Bartels & Christopher D. Johnston, *Perceptions of Politicization and Public Preferences Toward the Supreme Court Appointment Process*, 76 PUB. OPINION Q. 105, 106 (2012); Christopher D. Johnston & Brandon L. Bartels, *Sensationalism and Sobriety: Differential Medial Exposure and Attitudes Toward American Courts*, 74 PUB. OPINION Q. 260, 261 (2010) [hereinafter Johnston].

[18] DAVIS, *supra* note 8, at 21.

[19] *Id.* at 66–67; DAVID L. GREY, THE SUPREME COURT AND THE NEWS MEDIA 134–35 (1968); SLOTNICK & SEGAL, *supra* note 1, at 23–26.

the Court's work.[20] Coupled with the reluctance of many outlets to maintain specialists on a Supreme Court "beat," the quality of coverage when stacked against other governmental reporting is comparatively low.[21] Ericson's 1977 examination of coverage quality showed that more than three-quarters of the stories covering Court decisions failed to provide complete substantive coverage; while subsequent studies using this rubric produced slightly higher evaluations, overall quality remained quite poor.[22] The added constraints of television coverage allow for even less substantive analysis, and quite often, only the most salient issue areas are covered with any journalistic depth.[23] Arguably, much of this lack of quality is because the media often opts not to dissect the decisions of the Court, but rather seeks out *reactions* to those opinions[24] or focuses its attention on more trivial aspects of the Court, like the personalities of the Justices.[25] This line of research suggests a severe deficiency in adequate, quality coverage of the Supreme Court, affecting both knowledge and perceptions of the Court and its work.[26]

### *Complexity, Negativity and the Court*

The language used by Supreme Court Justices in their opinions is important to understanding how their decisions will be perceived and implemented by various audiences. Prior research shows that one aspect of opinion language that is of particular importance is that of opinion complexity.[27] In a study of the complexity of language across opinion

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[20] SLOTNICK & SEGAL, *supra* note 1, at 24.

[21] SLOTNICK & SEGAL, *supra* note 1, at 40–42; Rorie L. Spill & Zoe M. Oxley, *Philosopher Kings or Political Actors? How the Media Portray the Supreme Court*, 87 JUDICATURE 22, 24–26 (2003).

[22] David Ericson, *Newspaper Coverage of the Supreme Court: A Case Study*, 54 JOURNALISM Q. 605, 607 (1977); Michael E. Solimine, *Newsmagazine Coverage of the Supreme Court*, 57 JOURNALISM Q. 661, 661–62 (1980).

[23] SLOTNICK & SEGAL, *supra* note 1, at 48, 58.

[24] Ericson, *supra* note 22, at 607; Newland, *supra* note 4, at 27–28.

[25] *See generally* DAVIS, *supra* note 8 (discussing the interest of the Justices in their public image as portrayed by the press). *See also* RORIE SPILL SOLBERG & ERIC N. WALTENBURG, THE MEDIA, THE COURT, AND THE MISREPRESENTATION: THE NEW MYTH OF THE COURT (2014) (discussing the role of the media in creating the public images of the Justices); Spill & Oxley, *supra* note 21, at 22–23.

[26] Spill & Oxley, *supra* note 21, at 23–24.

[27] Ryan J. Owens & Justin P. Wedeking, *Justices and Legal Clarity: Analyzing the Complexity of Supreme Court Opinions*, LAW & SOC'Y REV. 1027 (2011).

types, Owens and Wedeking find that several factors lead to more complex, less clear language.[28] First, larger majority coalition sizes necessitate greater inclusivity and input in the majority opinion, thus resulting in more complex language.[29] Consequently, as fewer Justices stand in the minority, dissenting language becomes less complex. Second, certain issue areas like criminal procedure may yield less complex opinion language.[30] Third, as the Court is forced to justify substantial alterations to precedent, the language of majority opinions increases in complexity.[31] Additional work suggests that the Court may limit the complexity of its majority opinion language depending on the receptivity of its intended audiences.[32]

One of these audiences, the media, is tasked with deciphering opinion language for presentation to a broader public. This filter between the Court and the public raises its own series of concerns. A complex decision may deter an outlet from using resources to properly analyze it in some contexts.[33] A second, more optimistic alternative is that more complex decisions deserve more complex coverage, or at the very least a greater effort in explaining their implications. In either scenario, it is the language provided by the media that most Americans will consume, not the direct language of the Court. With this in mind, not only can the language of Supreme Court decisions affect the media's subsequent coverage, but studies have shown that Supreme Court opinion language is highly influential when it comes to implementation and acceptance of decisions among various audiences.[34] Both the general public and the mass media can be categorized as a "secondary audience,"[35] and their interpretations and perceptions of the Court's

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[28] *Id*. at 1028.

[29] *Id*. at 1032–33.

[30] *Id*. at 1037.

[31] *Id*. at 1034–35.

[32] *See generally* RYAN C. BLACK, RYAN J. OWENS, JUSTIN WEDEKING & PATRICK C. WOHLFARTH, U.S. SUPREME COURT OPINIONS AND THEIR AUDIENCES (2016) (discussing the need of the court to adapt opinions to its audience in order to "maximize the impact of its decisions").

[33] *Id*.

[34] *Id*.; *see generally* WALTER F. MURPHY, ELEMENTS OF JUDICIAL STRATEGY (1964) (discussing the role of an opinion's language in influencing its implementation).

[35] *See generally* BRADLEY C. CANON & CHARLES A. JOHNSON, JUDICIAL POLICIES: IMPLEMENTATION AND IMPACT (1999) (discussing the role of the media as an audience of the court).

output are important for the maintenance of institutional legitimacy.[36] Thus, the media's ability to provide adequate coverage of decisions, including highly complex ones, is an important element in the formulation of public attitudes toward the Court.[37]

In addition to the issues that complexity can cause in news coverage, there is also a matter of tone. News outlets are largely unencumbered when it comes to the way they portray the Court and its activities; however, some have suggested that the Court's legitimacy is buttressed by a "myth of legality" propped up by positive symbolism surrounding the institution.[38] In spite of this, negativity remains a consistent feature of the Court's media coverage. Prior work has shown that not only does negative language directed at the Court hinder opportunities for coalition building among the Justices,[39] but opinions with greater use of negative language translate into more negative coverage.[40] In some instances, the Court may be able to protect itself from unflattering coverage through signals of consensus[41] and non-ideological coalition building,[42] but the ideological dispositions of some media outlets can lead to unfavorable portrayals.[43]

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[36] James L. Gibson, Gregory A. Caldeira & Vanessa A. Baird, *On the Legitimacy of National High Courts*, 92 AM. POL. SCI. REV. 342, 344–45 (1992).

[37] *Id.* at 352.

[38] JAMES L. GIBSON & GREGORY A. CALDEIRA, CITIZENS, COURTS, AND CONFIRMATIONS: POSITIVITY THEORY AND THE JUDGMENTS OF THE AMERICAN PEOPLE 8–9 (2009) [hereinafter GIBSON & CALDEIRA]; James L. Gibson, Milton Lodge & Benjamin Woodson, *Losing, But Accepting: Legitimacy, Positivity Theory, and the Symbols of Judicial Authority*, 48 LAW & SOC. REV. 837, 839 (2014) [hereinafter Gibson, Lodge & Woodson].

[39] Michael A. Zilis & Justin Wedeking, The Use of Disagreeable Language in Supreme Court Opinions, Presented at the Conference on Empirical Legal Studies (Oct. 31, 2015).

[40] Alexander Denison, Justin Wedeking & Michael A. Zilis, Negative Media Coverage of the Supreme Court: The Interactive Role of Opinion Language, Coalition Size, and Ideological Signals, Presented at the Southern Political Science Association Annual Meeting (Jan. 13, 2017).

[41] *See* MICHAEL A. ZILIS, THE LIMITS OF LEGITIMACY: DISSENTING OPINIONS, MEDIA COVERAGE, AND PUBLIC RESPONSES TO SUPREME COURT DECISIONS (2015); Tyler Johnson & Erica Socker, *Actions, Factions, and Interactions: Newsworthy Influences on the Supreme Court Coverage*, 93 SOC. SCI. Q. 434, 438–39 (2012); Alexander Denison, Distorting the Court? Politicized Language in Media Portrayals of the Supreme Court, presented at the Southern Political Science Association Annual Meeting, New Orleans, La. (Jan. 14, 2017).

[42] Denison, Wedeking & Zilis, *supra* note 40.

[43] Denison, *supra* note 41; Denison, Wedeking & Zilis, *supra* note 40.

As a result of the media's role as primary source of Supreme Court information for most Americans, the use of negative or disagreeable rhetoric may be quite detrimental to the legitimacy of the institution.[44] Experimental work has shown that exposure to more negative portrayals of the Supreme Court can weaken support for the Court's decisions[45] and lead to greater skepticism regarding the Court's fairness.[46] Additional work has pointed to the influence of "sensational" information sources, like cable news and talk radio, that tend to provide more negative coverage of political events and actors than more traditional outlets.[47] These scholars find that those who choose to get their political information from sensational sources indeed hold the Court in lower esteem, even when controlling for perceived ideological congruence.[48] If the Supreme Court's history of collegiality is gradually deteriorating as some suggest,[49] and the public continues to gravitate toward ideological and sensationalized news coverage,[50] then a greater exposure to negativity regarding the Court is seemingly inevitable and consequential.

With an understanding that the media's portrayal of the Supreme Court can have serious implications for public attitudes toward the institution and compliance with its decisions, we return to the question of

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[44] Denison, Wedeking & Zilis, *supra* note 40.

[45] ZILIS, *supra* note 41.

[46] Mark D. Ramirez, *Procedural Perceptions and Support for the U.S. Supreme Court*, 29 POL. PSYCHOL. 675, 677 (2008).

[47] *Id*.

[48] Johnston, *supra* note 17, at 262.

[49] Ryan C. Black, Ryan J. Owens & Justin Wedeking, *Herding Scorpions: The Chief Justice as Social Leader,* in THE CHIEF JUSTICE: APPOINTMENT AND INFLUENCE 281, 283 (David Danelski & Artemus Ward eds., 2016). *See generally*, Douglass Rice & Christopher J. Zorn, *Troll-in-Chief? Affective Opinion Content and the Influence of the Chief Justice* in THE CHIEF JUSTICE: APPOINTMENT AND INFLUENCE 306 (David Danelski & Artemus Ward eds., 2016) (discussing the role of the Chief Justice to create a collegial environment); Timothy R. Johnson, Ryan C. Black & Eve M. Ringsmuth, *Hear me Roar: What Provokes Supreme Court Justices to Dissent from the Bench?* 93 MINN. L. REV. 1560 (2009); Joseph L. Smith, Insults and Compliments in Supreme Court Opinions, presented at the Midwest Political Science Association National Conference (Apr. 8, 2016).

[50] *See* Mathew Gentzkow & Jesse M. Shapiro, *What Drives Media Slant? Evidence From U.S. Dailey New*, 78 ECONOMETRICA 35, 64 (2010) (discussing how there is an "economic incentive for newspapers to tailor their slant to the ideological predispositions of consumers); *see also* Shanto Iyengar & Kyu S. Hahn, *Red Media, Blue Media: Evidence of Ideological Selectivity in Media Use*, 59 J. COMM. 19, 32 (2009) (explaining a study looking at "ideological polarization" in news selection).

how various factors affect subsequent news coverage and how closely this news coverage mirrors the complexity and tone of the decisions being covered. The next section provides a novel conceptualization of quality Supreme Court coverage and what it looks like.[51]

## UNDERSTANDING QUALITY COVERAGE OF THE COURT

We conceive of coverage quality as the degree to which news reports on a decision offer a faithful portrait of the Court's actions. Specifically, we are interested in the relationship between the written opinions of the Court and the depiction of a ruling in the media.[52] How closely linked are the two? We contend that as the media paints a markedly different portrait of a ruling than the Justices themselves do, this detracts from citizens' ability to learn what they need to know about the Court.[53] This idea is consistent with other work on the quality of Supreme Court coverage, which focuses on the accuracy of press descriptions as a central determinant of quality.[54] In the assessment of Greenhouse,[55] the highest quality coverage should "provide the timely, sophisticated, and contextual information necessary for public understanding of the Court."[56]

When it comes to the relationship between Court opinions and coverage content, two dimensions are particularly relevant to the concept of quality. First, we consider the degree to which coverage captures the nuances, or *complexity*, of the Court's actions.[57] This is a key component in understanding how well the press is doing its job of covering the Court.[58] On one hand, poor quality coverage may lack the detail required

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[51] *See* discussion *infra* UNDERSTANDING QUALITY COVERAGE OF THE COURT.

[52] See *infra* Figure 1, Figure 4.

[53] *Id.*

[54] *See* SLOTNICK & SEGAL, *supra* note 1, at 2 (describing the questions the study asked in reviewing press coverage of Supreme Court cases); *see also* Spill & Oxley, *supra* note 21, at 25 (describing the information analyzed in reviewing press coverage of Supreme Court cases).

[55] Linda Greenhouse, *Telling the Court's Story: Justice and Journalism at the Supreme Court*, 105 YALE L.J. 1537 (1996).

[56] *Id.* at 1539.

[57] *See generally id.* at 1549 (providing a reporter's firsthand struggles with focusing on different complexities when preparing a story about a recent Supreme Court decision).

[58] *See id.* at 1545 (describing how media can over-complicate and over-simplify Supreme Court decisions and how both can be harmful when informing the public).

to characterize accurately what has occurred.[59] Yet, while quality news coverage helps the audience understand nuance, it is also important to note that coverage need not be highly complex to be of high quality. According to Davis, reporters are tasked with acting as "translators" of opinions since the Court's language is not directed at the general public.[60] Rather, "the 'legalese' in opinions must be reworded into a language acceptable to the general audience."[61] Taken together, these insights suggest that understanding coverage quality is, in part, an exercise in understanding whether the press translates complex actions to its audience accurately. It is not simply the case that more complex coverage is of higher quality, since part of a journalist's role is to interpret the technical actions of the Court to a lay audience.[62] Some of the highest quality coverage is able to capture the nuance associated with complicated cases while at the same time rendering a portrait simple enough for the public to understand.[63] As Greenhouse argues, "if it is important not to exaggerate the meaning of a Court action, it is also important to resist oversimplifying."[64]

A second dimension related to the quality of coverage is the tone presented by the media, and more specifically the degree of *negativity* in coverage.[65] As our earlier discussion indicates, the literature on institutional legitimacy suggests that the Court's support is buttressed by a "myth of legality" that follows, in part, from media coverage that emphasizes the legal and symbolic bases of judicial authority,[66] which

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[59] In the words of one reporter, "A judge may take three pages to discuss a minute point of law, while a reporter may have three sentences to explain the meaning and impact of the entire decision." Eldon Knoche, *A Reporter's View of Relations with Judges*, 70 JUDICATURE 268, 269 (1987). One common error involves depicting denials of certiorari as akin to decisions on the merits. *See* SLOTNICK & SEGAL, *supra* note 1, at 190; *see also* Newland, *supra* note 4, at 32 (providing examples of when media has confused denials of certiorari with other legal terms).

[60] DAVIS, *supra* note 8.

[61] *Id.*

[62] *See* Greenhouse, *supra* note 55, at 1545 (explaining a journalist's role in making sure to understand a reader's knowledge when reporting on Supreme Court decisions).

[63] *See id.* ("The story sometimes lies in what the Court, or a particular Justice, did not do, and that has its own journalistic perils").

[64] *Id.* at 1547.

[65] *See generally* Gibson, Lodge & Woodson, *supra* note 38, at 839 (explaining that the type of information and how the information is provided by third parties affects people's opinions).

[66] *See* GIBSON & CALDEIRA, *supra* note 38, at 9–10 (explaining the idea of the "myth of legality" that surrounds the Supreme Court and how it has been created through what is called

may be undermined by coverage that emphasizes conflicting actions or unpleasant considerations.[67] Relatedly, Johnston and Bartels find that sensationalized portraits of the judiciary can undermine its support.[68] Essentially, the tone of coverage is important to understanding citizen competence with respect to the Court.

However, it is not simply the case that we may consider any coverage that eschews negativity to be of high quality. This is because accurate depictions of the Court's behavior may, at times, need to emphasize negative aspects of cases, particularly when the Justices themselves do so.[69] Put differently, Justices adjust the language and frames they rely upon when crafting an opinion for a variety of strategic purposes[70] and this holds true even when it comes to the amount of negativity they integrate.[71] Higher quality coverage will adjust accordingly, tracing the tone emphasized by the Court as a means of more accurately depicting its opinions.

To illustrate our thinking, Figure 1 presents the theorized relationship between our two central dimensions of quality, with the relative negativity of coverage being depicted on the x-axis and the relative complexity of coverage on the y-axis.[72] We emphasize that both of these are relative metrics—meaning that we are interested in the degree to which coverage is more or less complex and negative, *relative to the opinion of the Court in a given case*.[73] This concept is important

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the "positivity theory"); *see also* Gibson, Lodge & Woodson, *supra* note 38, at 839 (explaining how a person's attitude is based on the context and preexisting attitudes, which is connected to how a third party provides the information to the person).

[67] *See* Denison et al., *supra* note 40; *see also* Johnson & Socker, *supra* note 41, at 446 (evaluating 5–4 decisions and how media framed these stories as conflicts between the Justices).

[68] Johnston, *supra* note 17, at 262.

[69] *See* Ryan J. Owens, Justin Wedeking, & Patrick C. Wohlfarth, *How the Supreme Court Alters Opinion Language to Evade Congressional Review*, J.L. & CTS. 35, 35–36 (explaining the reasons when Supreme Court justices will adjust the language of their opinions).

[70] *See* BLACK ET AL., *supra* note 32 (explaining different strategic reasons Justices will change the language of their opinions); *see also* Owens, Wedeking, & Wohlfarth *supra* note 69, at 38 (explaining how Justices strategically decide whether to write opinions in a clear or confusing manner).

[71] *See* Zilis & Wedeking, *supra* note 39.

[72] *See infra* Figure 1.

[73] *See generally* Paul W. Jamieson, *Lost in Translation: Civic Journalism's Applicability to Newspaper Coverage of the U.S. Supreme Court*, 20 COMM. & THE L. 1, 17–18 (1998)

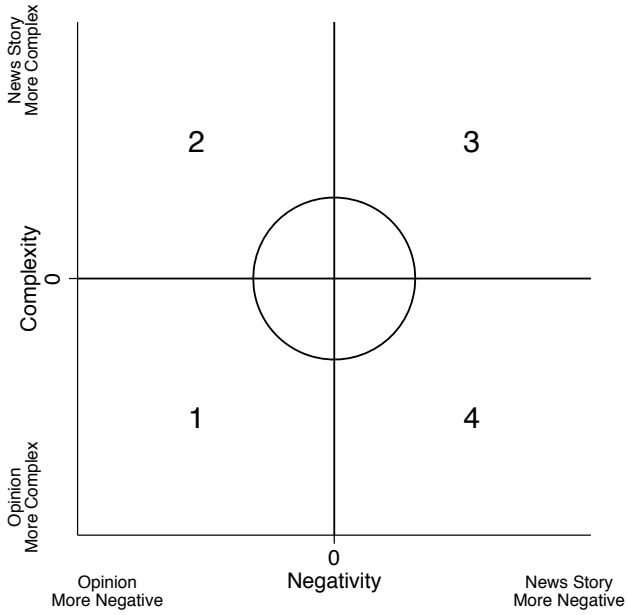
since opinions themselves vary on these dimensions, which likely requires higher quality media coverage to trace this variance. For example, if the Court writes a highly complex opinion, perhaps because the nature of a dispute or the actions being taken by the Justices call for such complexity, we theorize that quality coverage should mimic this complexity, within a reasonable range.[74] This allows the press to elucidate, with some degree of accuracy, the Court's actions to the attentive public. At the same time, coverage that is extremely complex in comparison to the opinion it references may fail to explain accurately the Court's actions to the public.[75] When it comes to negativity, a similar dynamic is in play: when a news story is significantly more negative than the opinion it describes, this presents a sensationalized portrait of the institution, with potential consequences for its public support. Nevertheless, if a story sterilizes an opinion, it fails to accurately convey the Justices' actions to the public.

(discussing two different forms of journalism and how each style differs in reporting the complexity of Supreme Court cases).

[74] *See id.* at 7 ("[C]ivic journalism would seem to charge the journalist with the responsibility of educating the public about the holdings and reasoning of judicial opinions. Presumably, a citizenry fully cognizant of the legal boundaries of reform issues could more effectively engage in public life").

[75] *See generally* Jamieson, *supra* note 73, at 4–7 (detailing Supreme Court coverage by way of civic journalism, and the importance of clear versus complex coverage, for purposes of public understanding).

**Figure 1. Story Accuracy**




The "bullseye" near the center of the figure therefore represents what we conceive of as quality coverage. Published reports near this bullseye represent, with some accuracy, the content of the Court's opinion in a given case. Specifically, these reports use language of relatively similar tone and complexity to the opinions they discuss.

Deviations from the bullseye are indicative of various ways in which coverage may be skewed. For instance, coverage in Quadrant 1 is non-conflictual (or less negative than the opinions it describes) yet overly simplified (or much less complex than these opinions).[76] Oversimplification may be associated with problems like inaccuracies in reporting, since streamlined reporting often leads to factual errors when reporters describe the work of the Court.[77] Alternatively, coverage located in Quadrant 2 is more complex than the opinions it concerns.[78] This may occur when the press wishes to buttress the Court's myth of

[76] *See supra* Figure 1.

[77] SLOTNICK & SEGAL, *supra* note 1, at 24–25.

[78] *See infra* Figure 2.

legality by depicting rulings as highly nuanced yet non-conflictual. But by emphasizing an opinion's complexity, coverage in Quadrant 2 falls short on informing its audience about the Court's actions in a readily interpretable way. Coverage in Quadrant 3 includes increased negativity and complexity than the opinions it concerns.[79] To the extent that news organizations strive for this type of reporting, they may see themselves as performing a "watchdog" function,[80] which facilitates detailed, critical coverage of governmental institutions. It is an open question as to how much of this coverage we might expect, since some scholarship suggests that "positivity frames" are a central part of the Court's portrayal in the media.[81] Finally, coverage in Quadrant 4 couples strong negativity with an overly simplified portrayal of rulings.[82] The accent on conflict and simplicity suggests that this approach shares qualities associated with traditional "horse race" journalism that highlights "winning, losing, strategy, and tactics."[83]

In short, Figure 1 represents our conception of coverage quality, which leverages the "space" between the content of published news reports and Supreme Court opinions.[84] What might affect this quality? We discuss next a series of factors that we expect relate to the quality of coverage.

### *Legal Background and Significance*

When the Court takes a legally significant action, the press may have to adjust the nature of its coverage. As Johnson notes, "some [members of the public] are unaware of basic Court functions like determining the constitutionality of laws."[85] This offers alternative

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[79] *See infra* Figure 3.

[80] Steven E. Clayman, et al., *When Does the Watchdog Bark? Conditions of Aggressive Questioning in Presidential News Conferences*, 72 AM. SOC. REV. 23, 23 (2007) (explaining how "the watchdog model of journalism competes with other models emphasizing other subservient or oppositional relations").

[81] Gibson & Caldeira, *supra* note 2, at 69–70; James L. Gibson, Gregory A. Caldeira & Lester K. Spence, *The Supreme Court and the US Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?* 33 BRIT. J. OF POL. SC., 535, 555 (2003).

[82] *See infra* Figure 4.

[83] Johanna Dunaway & Regina G. Lawrence, *What Predicts the Game Frame? Media Ownership, Electoral Context, and Campaign News*, 32 POL. COMM. 43, 44 (2015).

[84] *See supra* Figure 1.

[85] Johnson, *supra* note 4, at 34.

possibilities when it comes to coverage. If the press is required to educate the public about legally significant actions, it may be forced to offer more nuance following alterations of precedent or declarations of unconstitutionality. For example, if the public understands little about the Court's ability to alter precedent, media coverage may have to explain not only a case outcome but also offer other historical examples of precedent alteration.[86] Alternatively, it may be the case that public knowledge of these actions is poor precisely *because* the press portrays them in simplistic terms.[87] Therefore, we have dual expectations that legally significant actions cause the media to either increase or decrease the complexity of its coverage.

Next, we anticipate that coverage should be more contentious if a dispute features disagreement among judges involved with adjudication at the lower court level, as reporters will highlight these disputes for their audiences. In others words, lower court dissent signals that there is disagreement within some portion of the legal community over a case, which is then reflected in the media's tone.[88]

Additionally, we anticipate that there may be systematic differences in the quality of coverage as the legal issue area varies. Scholars have long noted that the media pays significantly more attention to certain areas of the Court's docket, namely civil liberties and rights and criminal procedure.[89] This, in no small part, is because cases in these areas often involve high profile and politically contentious issues that may attract citizens' interest; the media has incentive to emphasize the controversy and negativity surrounding these decisions.[90]

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[86] *See generally id.* at 34–35 (detailing the public's general lack of interest in, and knowledge of, the Supreme Court).

[87] *See id.* (explaining that media coverage of Supreme Court decisions "could help bridge th[e] gap between the public and the Court while at the same time keeping the distance necessary for the Court to maintain its historic independence").

[88] *See generally* Johnson & Socker, *supra* note 41, at 435 (explaining that media coverage of Supreme Court decisions is shaped with the public in mind, and based on, among other things, "who wins and loses (ideologically) at the court . . . [and] how [J]ustices on the court *align*") (emphasis added).

[89] Todd A. Collins & Christopher A. Cooper, *Case Salience and Media Coverage of Supreme Court Decisions: Toward a New Measure*, 65 POL. RES. Q., 396, 403 (2012); Spill & Oxley, *supra* note 21, at 23, 28.

[90] Spill & Oxley, *supra* note 21, at 23–24, 28.

*Majority Coalition Size*

The presence of dissent on the Supreme Court has been shown to signal the media's attention, leading to more coverage of a case.[91] These divisions of opinion present difficulties for reporters who are not able to interview the Justices to understand the basis of the disagreement. Of course, dissent also signals conflict and controversy, which has been shown to lead to more negative coverage of rulings.[92] Simply put, we anticipate that judicial dissent is likely to generate more contentious coverage.

*News Outlet*

News organizations differ sharply in the resources they devote to covering the Court. A small number of major national news organizations, such as the *New York Times* and *Wall Street Journal*, assign a full-time reporter to the Court beat.[93] These reporters are more likely to fit within Jamieson's conception of "specialists" on the beat, who have extensive experience covering the judiciary as well as particularized training.[94] Other reporters assigned to the beat are semi-regulars who simultaneously take on other responsibilities within their news organization. Finally, some outlets do not assign a full time reporter, in which case coverage is often quelled from wire services.[95]

While the extent to which an outlet relies on specialist versus generalist reporters likely has an influence on the type of coverage it produces, beat reporters are not the only ones who produce news content.[96] This is particularly true when it comes to high profile cases, which may be the subject of multiple stories, written by many different reporters, in a single outlet.[97] In addition to reporters, editors have an influence on the coverage that a news organization produces, which may lead to differences across outlets.[98] Finally, with the rise of the new

[91] Johnson & Socker, *supra* note 41, at 435, 438–39, 446.

[92] ZILIS, *supra* note 41, at 105, 108–09; Denison, *supra* note 41.

[93] DAVIS, *supra* note 8, at 98.

[94] *See* Jamieson, *supra* note 73, at 17–18.

[95] DAVIS, *supra* note 8, at 92–95.

[96] *Id.*

[97] *Id.*

[98] Johnston and Bartels suggest that coverage also differs systematically depending upon the nature of the outlet, with some sources (typically print media and broadcast networks)

media, there are apprehensions about whether the quality of coverage, already circumspect in the eyes of many, may deteriorate further.[99] Such concern implies that outlets may offer distinct coverage as their journalistic aims and audience demands vary.

## DATA

To examine the media's accuracy on negativity and complexity, we turn to the text of the stories. We gathered a thorough collection of published internet media stories directly covering Court decisions. Specifically, we searched twenty-nine news organizations for keywords to capture coverage focused on any decision released by the Court during its 2014 term.[100] This approach enabled us to locate a large volume of documents—some 1,075 news stories published that are directly tied a Court decision.[101] We chose to focus on news stories published online from a wide variety of media organizations because the vast majority of citizens today get their news "online" as opposed to in print newspaper, radio, cable or network television, though it is certainly worth noting that many of the internet stories that we captured in our search also appeared in print newspapers.[102]

The twenty-nine internet media outlets, in alphabetical order, are: ABC, *Atlanta Journal Constitution*, Associated Press, *Boston Globe*, CBS, CNN, *Chicago Sun Times*, *Chicago Tribune*, *Christian Science Monitor*, Daily Beast, Daily Kos, *Dallas Morning News*, FOX,

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aiming for more sober portrayals of the judiciary and others focused on sensationalism. *See* Johnston, *supra* note 17, at 261–64. On a related note, Vining and Marcin argue that "[i]ndividuals who learn about the Supreme Court from television and online news are exposed to a small segment of the Court's docket." Richard L. Vining, Jr., & Phil Marcin, *Explaining Intermedia Coverage of Supreme Court Decisions*, in RICHARD DAVIS, COVERING THE UNITED STATES SUPREME COURT IN THE DIGITAL AGE 98 (Richard Davis ed., 2014).

[99] Dahlia Lithwick, *The Supreme Court and New Media*, *in* COVERING THE UNITED STATES SUPREME COURT IN THE DIGITAL AGE 23, 187–197 (Richard Davis ed., 2014)

[100] We collected stories during the 2014 term and chose them because they contained a mix of high profile cases (e.g., the *Obergefell* same-sex marriage case and the second case on the Affordable Care Act - *King v. Burwell*) along with an assortment of other issues. *Obergefell* had the most stories of any case (149), while *King v. Burwell* had the second most with 98 stories. The median number of stories for a case was 9.

[101] To see the full list of the media sources where these 1,075 news stories, directly tied to a Court decision, were located, see *infra* note 103 and accompanying text. See also *supra* note 100 for our reasoning in how we searched for these news stories.

[102] Lithwick, *supra* note 99, at 187–197.

Huffington Post, *Los Angeles Times*, MSNBC, NBC, Newsmax, NPR, *New York Post*, *New York Times*, Politico, Reuters, Salon, SCOTUSBlog, *USA Today*, *Wall Street Journal*, *Washington Post*, and *Washington Times*.[103]

Importantly, a major strength of our outlet coverage is its diversity, with coverage of the United States geographically (e.g., both coasts, the South and the Midwest) and across the ideological spectrum, with multiple outlets ranging from liberal to neutral to conservative, as rated by independent users at mondotimes.com.[104] In addition, for our search, we only gathered stories that covered a Court decision, so any news pertaining to travel of the Justices or oral argument (or anything that is not decision related), we ignored.[105] Also, we only kept news stories that focused on coverage of the decision by limiting our search window to within three days of the decision, and excluded opinion pieces and

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[103] *See generally* ABC NEWS, http://abcnews.go.com/ (last visited Mar. 1, 2017); ATLANTA J. CONSTITUTION, http://www.ajc.com/ (last visited Mar. 1, 2017); ASSOCIATED PRESS, https://www.ap.org/en-us/ (last visited Mar. 1, 2017); DAILY BEAST, http://www.thedailybeast.com/ (last visited Mar. 1, 2017); BOS. GLOBE, https://www.bostonglobe.com/ (last visited Mar. 1, 2017); CBS NEWS, http://www.cbsnews.com/ (last visited Mar. 1, 2017); CHI. SUN TIMES, http://chicago.suntimes.com/ (last visited Mar. 1, 2017); CHI. TRIB., http://www.chicagotribune.com/ (last visited Mar. 1, 2017); CHRISTIAN SCI. MONITOR, http://www.csmonitor.com/ (last visited Mar. 1, 2017); CNN, http://www.cnn.com/ (last visited Mar. 1, 2017); DAILY KOS, http://www.dailykos.com/ (last visited Mar. 1, 2017); DALL. MORNING NEWS, http://www.dallasnews.com/ (last visited Mar. 1, 2017); FOX NEWS, http://www.foxnews.com/ (last visited Mar. 1, 2017); HUFFINGTON POST, http://www.huffingtonpost.com/ (last visited Mar. 1, 2017); L.A. TIMES, http://www.latimes.com/ (last visited Mar. 1, 2017); MSNBC, http://www.msnbc.com/ (last visited Mar. 1, 2017); NBC NEWS, http://www.nbcnews.com/ (last visited Mar. 1, 2017); NEWSMAX, https://www.newsmax.com/ (last visited Mar. 1, 2017); NPR, http://www.npr.org/ (last visited Mar. 1, 2017); N.Y. POST, http://nypost.com/ (last visited Mar. 1, 2017); N.Y. TIMES, https://www.nytimes.com/ (last visited Mar. 1, 2017); POLITICO, http://www.politico.com/ (last visited Mar. 1, 2017); REUTERS, http://www.reuters.com/ (last visited Mar. 1, 2017); SALON, http://www.salon.com/ (last visited Mar. 1, 2017); SCOTUSBLOG, http://www.scotusblog.com/ (last visited Mar. 1, 2017); USA TODAY, http://www.usatoday.com/ (last visited Mar. 1, 2017); WALL ST. J., https://www.wsj.com/ (last visited Mar. 1, 2017); WASH. POST, https://www.washingtonpost.com/ (last visited Mar. 1, 2017); WASH. TIMES, http://www.washingtontimes.com/ (last visited Mar. 1, 2017).

[104] MONDO TIMES, http://mondotimes.com/ (last visited Mar. 1, 2017) (discussing where users rate each website independently, producing an aggregate score for each outlet on a five point scale: liberal, leans liberal, neutral, leans conservative, and conservative, with the exception of scotusblog.com, which we scored as neutral); *see also* Daniel E. Ho & Kevin M. Quinn, *Measuring Explicit Political Positions of Media*, 3 Q. J. OF POL. SCI. 353 (2008) (discussing political positions of newspaper editorial pages).

[105] See *supra* note 103 and accompanying text for the websites searched.

editorials about the decisions.[106] Thus, our goal was to analyze only the news coverage, and not any editorial coverage related to a decision.

In addition to the geographical and ideological diversity, there are several more factors that distinguish our approach. First, while many studies look only at coverage of high salience decisions,[107] we include coverage of both high-profile cases and lower salience ones. In fact, we include all decisions from the 2014 term.[108] As we find, even lesser known decisions receive a substantial amount of coverage (relatively speaking); however, this coverage is commonly overlooked in existing research. Second, while the literature tends to focus on elite national newspapers, we use reports from a wide range of media outlets, including national newspapers (e.g., *New York Times*, *Wall Street Journal*), local and regional papers (e.g., *Atlanta Journal Constitution, Dallas Morning News, Chicago Sun Times*), major television networks (e.g., ABC, NBC), cable television stations (e.g., CNN and Fox News), public radio, and internet websites (e.g., Huffington Post, SCOTUSblog, and Salon).[109] This provides one of the most comprehensive portraits of Court coverage in the existing literature.

## MEASURES OF KEY CONCEPTS

With our stories in hand, we turn to the approach we use to measure negativity and complexity. To measure negative media coverage, we draw on the computer program Linguistic Inquiry and Word Count (LIWC).[110] LIWC is particularly appropriate for our purposes because its validity and reliability have been carefully examined by a number of other studies[111] and it has been employed in research on the Court

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[106] *Id.*

[107] *See* Charles H. Franklin & Liane C. Kosaki, *Media, Knowledge, and Public Evaluations of the Supreme Court*, *in* CONTEMPLATING COURTS 352–375 (Lee Epstein ed., 1995); Spill & Oxley, *supra* note 21 (discussing other studies that have only viewed coverage of high salience decisions).

[108] *See supra* note 100 (discussing why we included decisions from the year 2014).

[109] *See supra* note 103 and accompanying text.

[110] James W. Pennebaker & Laura A. King, *Linguistic Styles: Language Use as an Individual Difference*, 77 J. OF PERSONALITY & SOC. PSYCHOL. 1296, 1297–98 (1999).

[111] *Id.*; Yla R. Tausczik & James W. Pennebaker, *The Psychological Meaning of Words: LIWC and Computerized Text Analysis Methods*, 29 J. OF LANGUAGE & SOC. PSYCHOL. 24 (2010).

itself.[112] It uses a dictionary-based approach to measure its concepts, which is based on a word count strategy that counts the number of words associated with a specific concept's dictionary and divides by the total number of words in the text, producing the output for a given concept as a percentage.[113] We use the negative emotion dictionary to capture the percentage of negative language that appears in media coverage of Court decisions as well as the Court opinions themselves. There are over 400 words in this category, including, for example, the terms hurt, ugly, nasty, and hate. The measure is based on a simple premise: stories that feature a higher proportion of LIWC's negative emotion words are rated as containing more negative rhetoric.

We take a series of steps to assess the validity of our measure. In terms of face validity, we examine one case to give insight into negative rhetoric in practice (below, we italicize those terms that are included in the LIWC dictionary and thus picked up by our measure of negative rhetoric). Media coverage was particularly reliant on negative rhetoric following *Kerry v. Din*, a controversial ruling in which the Court divided 5–4 over the existence of a fundamental due process right to live with one's spouse.[114] In covering the decision, multiple news organizations highlighted Justice Scalia's emphasis on "*terrorism*" concerns about an individual seeking a U.S. visa so that he could live with his wife.[115] One brief Fox News story framed the case as involving "*terrorist* activities" and Taliban links, mentioning these terms five times in the space of a few sentences.[116] The dissent's argument that the case involved fundamental liberty interests received considerably less attention in the press.[117]

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[112] *See* Black et al., *supra* note 49; Pamela C. Corley & Justin Wedeking, *The (Dis)Advantage of Certainty: The Importance of Certainty in Language*, 48 L. & SOC'Y REV. 35 (2014); Frank B. Cross & James W. Pennebaker, *The Language of the Roberts Court*, MICH. STATE L. REV. 853; Owens, Wedeking & Wohlfarth, *supra* note 69; Rice & Zorn, *supra* note 49, at 306–29.

[113] Pennebaker & King, *supra* note 110; Tausczik & Pennebaker, *supra* note 111, at 27–28.

[114] 576 U.S. __, __, 135 S. Ct. 2128, 2141 (2015).

[115] *See id*.

[116] *See generally id.*; FOX NEWS, www.foxnews.com (last visited Mar. 3, 2017); *Immigrant Challenges Long-Standing Law that Denies Him Explanation of Why His Wife in Mexico Cannot Join Him in U.S.*, FOX NEWS (Dec. 12, 2015), http://www.foxnews.com/world/2015/12/12/immigrant-challenges-long-standing-law-that-denies-him-explanation-why-his-wife.html (discussing terrorist activities).

[117] *Kerry*, 576 U.S. at __, 135 S. Ct. at 2141–47.

In short, the preceding example provides insight into the forms that negative rhetoric in coverage may take as well as attest to our measure's face validity in identifying such language.[118] While there are other ways we have validated the measure, perhaps the most straightforward way was to determine if humans who read these stories could rate their negativity accordingly.[119] Hence, we had approximately seventy-five students read three different news stories, taken from a sample of sixteen total stories that varied along the high and low ends of the negativity dimension.[120] Some of the stories had high levels of negative language and others had low levels of negativity, according to LIWC.[121] After the students read each article, they rated the stories according to several questions asking about the negativity of the language. We found that the negativity of the articles based on LIWC strongly correlated with the mean ratings of the sixteen articles (with correlations ranging from .50 to .80).[122] In short, human readers easily picked up on the high or low amount of negativity in the media stories. Finally, to testify to our measure's discriminant validity, we can clearly distinguish negative coverage from positive emotional rhetoric in the news, also measured using LIWC software ($r=-0.20$, $p<0.01$).[123]

To measure the concept of coverage quality and how much it differs from opinion to news story that we discussed earlier, we use a straightforward difference measure: percentage of negative news words minus percentage of negative opinion words.[124] In short, a score of a "0" indicates that the news story contains the exact same proportion of negative words as the opinion. Thus, we are assuming a story with ten negative words out of 100 total words contains an equivalent amount of negativity as an opinion with 100 negative words out of 1000 total words.

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[118] On the other hand, the unanimous ruling in *Coleman v. Tollefson*, 135 S. Ct. 1759 (2015), generated very little negative coverage. This case involved interpretation of the "three strikes" provision in the Prison Litigation Reform Act. *Id.*

[119] See *infra* text accompanying notes 120–23 for how we conducted this study.

[120] See *supra* notes 110–14 and accompanying text for a discussion of "negativity," where this terminology comes from, and how we use it in our research.

[121] See *supra* text accompanying notes 110–14 for a discussion of "negativity" with regard to the LIWC.

[122] *Id.*

[123] *Id.*

[124] *Id.*

For complexity, we rely on a number of indicators. While recent work has relied on a combination of readability scores[125] other research reminds us that there are different types of complexity.[126] Thus, we use a common data reduction technique—factor analysis—on five measures of the text that are commonly associated with the complexity construct.[127] Specifically, the measures which we factor analyze include: word count, the document's average number of words per sentence, the percentage of words with six or more letters, the percentage of words in a document that are unique (used only once), and the number of cognitive words thought to be associated with more complex thinking.[128] We estimated a factor analysis on the text for the news stories and opinions, separately, with each returning a single factor that we argue is a manifest representation of the complexity dimension.[129] We then used our human raters to verify which end of the factor score was associated with higher complexity to ensure validity.[130] Once we accounted for this, we then took the difference between the news and opinions (in the same way as our negativity measure) to get our different measures for coverage complexity.[131]

For all other measures in the analysis (e.g., whether a precedent was altered, whether there was a dissent in the lower courts that was mentioned by the majority opinion, the legal issue area, and the majority coalition size), we use the Supreme Court Database.[132]

## ANALYSIS

Before we examine the conditions under which we might see shifts in coverage of Court decisions, we think it is important to establish a baseline of what coverage, overall, looks like. To do this, we plot all of

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[125] BLACK ET AL., *supra* note 32.

[126] Owens & Wedeking, *supra* note 27, at 1028.

[127] *See* Pennebaker & King, *supra* note 110, at 1298; Owens & Wedeking, *supra* note 27, at 1038.

[128] *See* Pennebaker & King, *supra* note 110, at 1298; Owens & Wedeking, *supra* note 27, at 1038.

[129] *Cf.* Owens & Wedeking, *supra* note 27, at 1039–42 (describing method for analyzing complexity).

[130] *Cf. id.*

[131] *Cf. id.* (explaining difference measure).

[132] Spaeth et al., *Data*, SUP. CT. DATABASE (July 12, 2016), http://supremecourtdatabase.org/data.php.

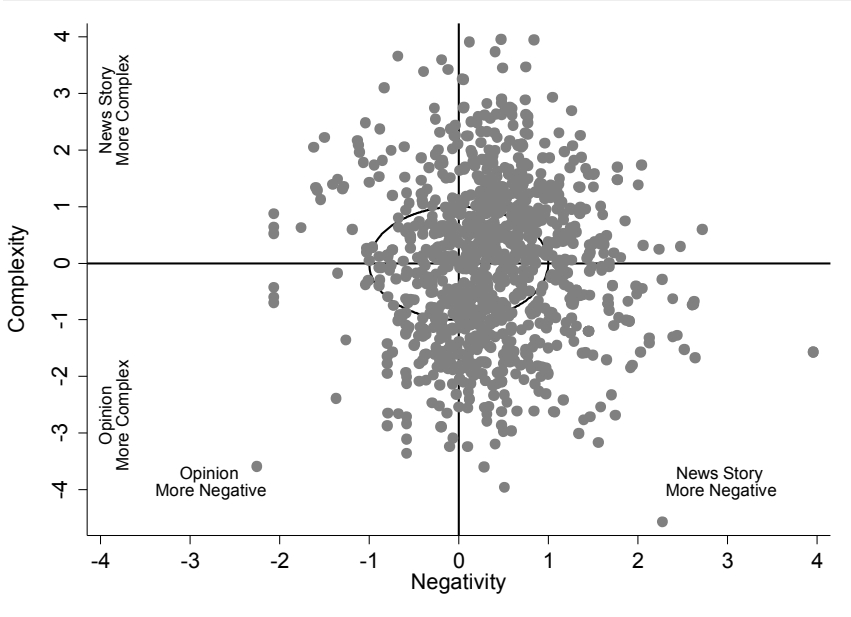
our stories according to the two dimensions we highlighted in Figure 1.[133] The plot of all stories appears in Figure 2 and appears to have something of a "blob" like outline.[134] What is noteworthy are some of its features. Specifically, it appears that the bulk of the dots appear within the "bullseye" on the target, which is hard to see because it is partly concealed by dots.[135] This suggests that most of the stories are within what some might consider "normal" range of variation, meaning that a large portion of the coverage is relatively accurate, at least on our two dimensions of interest.

[133] *See supra* Figure 1.

[134] *See infra* Figure 2.

[135] *Id.*

**Figure 2. All Stories**




The second noteworthy feature from Figure 2 is that dots appear in all four regions of the target, suggesting that a healthy amount of variation does exist in coverage.[136] While there does not appear to be any obvious bias amongst all stories (e.g., all four regions within the bullseye have a substantial number of stories), there is a slight noticeable rightward shift to the "blob" of dots, suggesting that the average news story is slightly more negative than the relevant Court opinion.[137] The final feature from Figure 2 is that a noticeable number of dots appear outside of the bullseye.[138] This suggests to us that news outlets regularly publish stories that differ in the portrayal of the Court's opinion in noticeable ways, at least on these two important dimensions. Next, we examine if there are predictable features of these notable differences.

We begin with an examination of the legal background and significance of cases to see if the media's coverage varies systematically

[136] *Id.*
[137] *Id.*
[138] *Id.*

in accordance with our earlier discussion. Figure 3 plots the stories covering a decision based on whether or not it altered precedent.[139] For the purposes of our data, because the Court rarely alters precedent or declares something unconstitutional, examining the alteration of precedent for a single term is very similar to examining the Court striking down legislation because the cases often overlap. Interestingly, Figure 3 reveals an important shift in how the media portrays opinions when the Court alters a precedent.[140] Specifically, these news stories (depicted as triangles) are noticeably less complex relative to all other stories (depicted by circles).[141] This suggests support for the idea that when the Court does something of legal significance, the media responds by portraying the case in less complex terms than the Justices themselves did. This helps resolve an earlier puzzle we highlighted about whether the media will complicate or simplify precedent alteration. One potential implication of the simplification we observe here is that the public may not be able to learn what it needs to know when it comes to understanding legally significant actions. Precisely why the press does this may be open for debate, as we do not have the data to provide a definitive answer. At the same time, it is important to keep in mind that almost all of these stories are about the *Obergefell v. Hodges* same-sex marriage case.[142] We look more closely at this case below.[143]

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[139] *See infra* Figure 3.

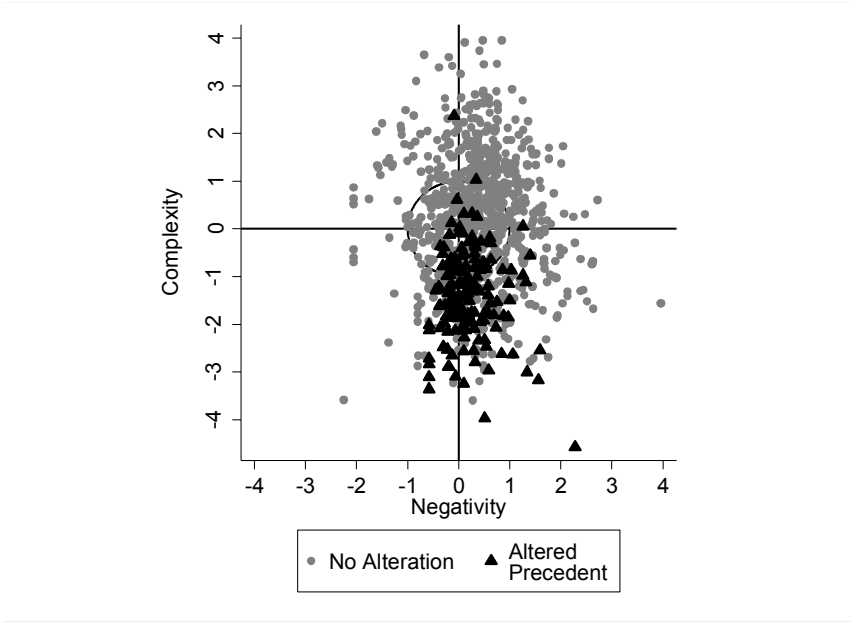
[140] *Id.*

[141] *Id.*; *see* discussion *supra* Understanding Quality Coverage of the Court.

[142] *See* 576 U.S. __, __, 135 S. Ct. 2584 (2015); *supra* note 100.

[143] *See* discussion *infra* ANALYSIS.

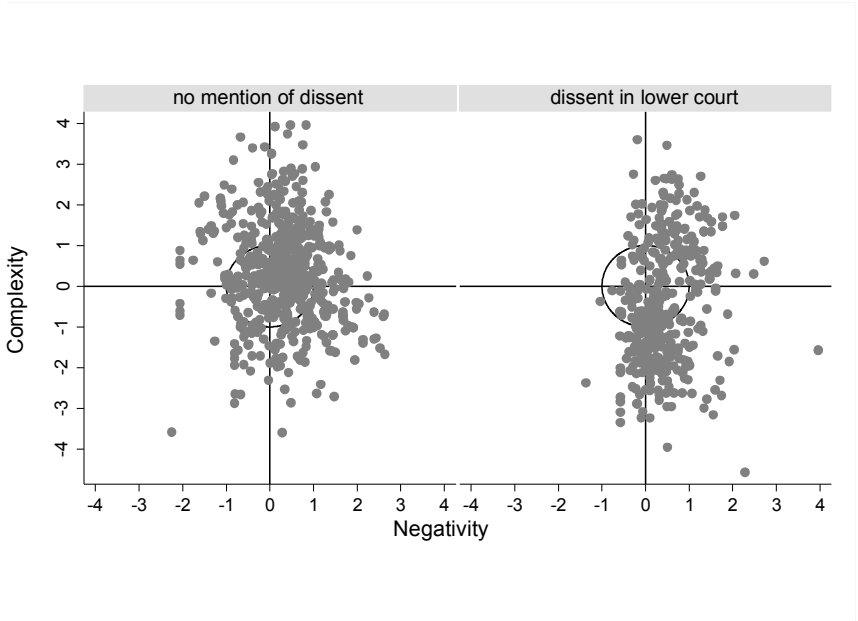
**Figure 3. Precedent Alteration**




We also expect the media to shift its coverage of the Court whenever there is noticeable disagreement, particularly in the lower court. We mentioned earlier that dissents in lower courts can be an important signal to higher courts about the presence of an important legal disagreement, the nature of the dispute, and the intensity of the dispute.[144] Figure 4 displays a shift to the right (where the news story is more negative relative to the opinion) in coverage of cases whose opinions discuss a lower court dissent.[145] At the same time, the relative complexity (the vertical dimension in Figure 4) changes modestly.[146] This suggests that the media is able to pick up on the conflict in the lower courts and the conflict is intensified by the amount of negative language in the media.

[144] *See infra* Figure 4.
[145] *Id.*
[146] *Id.*

**Figure 4. Media Coverage and Lower Court Dissents**




The legal issue area also tells us something about how the treatment of Court decisions differs depending on which legal issues were addressed. It must be remembered that these legal areas are assigned in the Supreme Court Database based on what legal provisions are found in the opinion.[147] This means that the cases are assigned to a category based on a set of coding rules, and it may not necessarily be how lawyers may think of the issue.[148] Regardless, we see some interesting patterns across issue areas in Figure 5. Specifically, we see that stories about taxation cases tend to be more complex than their opinions, yet also slightly more negative (at least to the extent they are to the right of the vertical zero line), possibly because the press is emphasizing the implications of those tax decisions.[149] We also see that many stories about first amendment cases tend to be more complex and negative than their opinions, perhaps suggesting that the press frames free speech issues so as to highlight the extensive body of first amendment precedent

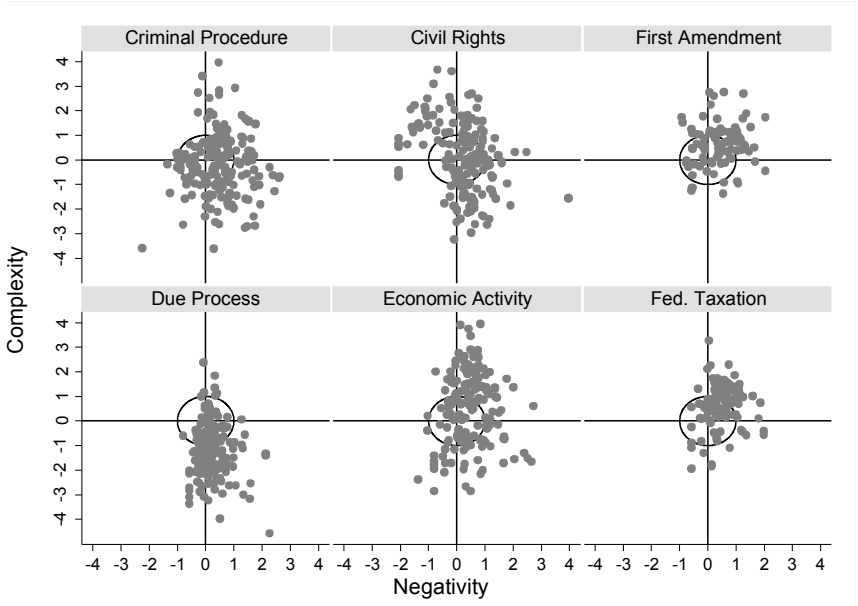
[147] Spaeth et al., *supra* note 132.

[148] *See id.* (explaining coding for legal issues).

[149] *See infra* Figure 5.

they implicate.[150] On the other hand, we see due process cases are portrayed in a simple manner; however, we note that the due process portion of Figure 5 is mostly comprised of *Obergefell v. Hodges* stories.[151] In cases of economic activity, most of the variation appears to be along the complexity dimension, with relatively little along the negativity dimension (most of the dots lie within the -1 to 1 range).[152] In fact, it is in the economic activity area where we see some of the greatest discrepancies, with very complex stories in comparison to the opinions they discuss.[153]

**Figure 5. Coverage, By Legal Issue Area**




Shifting away from the focus on legal factors, we turn to see if the media's coverage differs based on the degree of consensus among the Justices. Specifically, we examine the majority coalition size in Figure 6 and see some interesting patterns. First, what stands out very clearly from the figure is the fact that coalitions with only five members receive,

[150] *Id.*

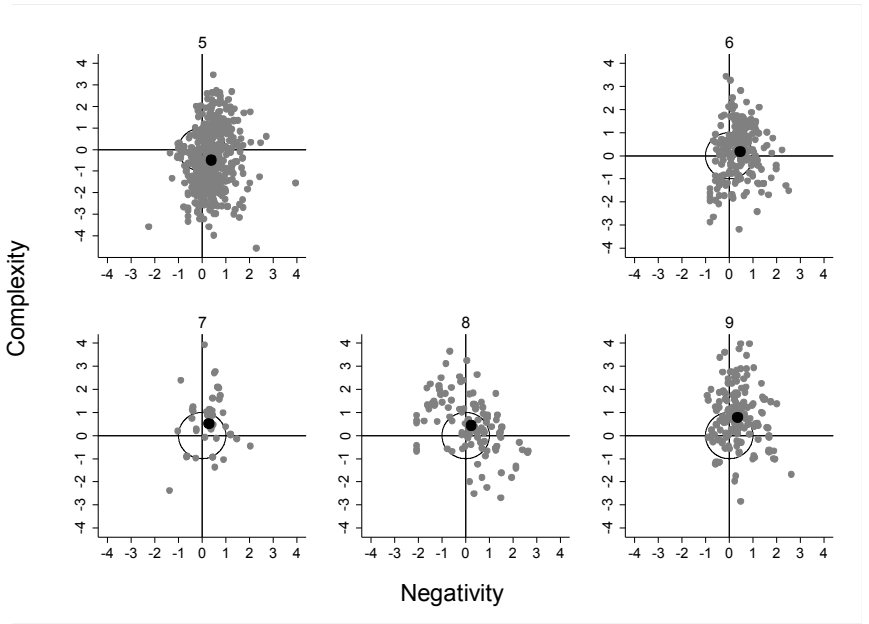
[151] 576 U.S. __, __, 135 S. Ct. 2584 (2015).

[152] *See infra* Figure 5.

[153] *Id.*

by far, the most stories written.[154] Some of this is likely a function of some of the high profile cases or issues in the 2014 term,[155] but given the stark differences in terms of sheer number of stories, we see that the public has far fewer opportunities to hear about the decisions of a unanimous Court. Perhaps this explains why many studies look to the size of the majority coalition as an indicator of the amount of harmony on the Court. This is also somewhat alarming because 5–4 decisions made up only 26% of the total opinions while 9–0 decisions made up 41% of the cases.[156] Thus, while the Court is actually somewhat harmonious in terms of its coalitions, it may not actually appear that way given that much of the media focus is on 5–4 splits.

**Figure 6. Coverage, By Majority Coalition Size**




Shifting our attention to the negativity and complexity in Figure 6, we see various noteworthy patterns. First, we see in the panel for five-member majorities that the "blob" is slightly offset to the right.[157] To

[154] *See infra* Figure 6.

[155] *Obergefell*, 576 U.S at __, 135 S. Ct. at 2584.

[156] Kedar Bhatia, *Final Stat Pack for October Term 2014*, SCOTUSBLOG, 1, 5 (June 30, 2015), http://www.scotusblog.com/2015/06/final-stat-pack-for-october-term-2014/.

[157] *See supra* Figure 6.

illustrate this rightward-shift in substantive terms, notice that many stories include about 2% more negative words than the opinions they discuss (dots at or near x=2), while only one story includes 2% *fewer* negative words (the lower left-most dot).[158] This suggests that the average news story is more negative than the opinion it discusses. This fits with the expectation that we would see more negativity in 5–4 decisions. By contrast, 9–0 decisions display relatively limited variation in terms of negativity, with the vast majority of stories within the normal bounds ("-1" to "1").[159] With respect to complexity, we see significant variation in 5–4 decisions, and this is to be expected given the amount of division on the Court in these cases. Likewise, we see some variation of complexity for 9–0 decisions, and interestingly, we note that most of those stories were more complex than the opinions they discussed.

While the above figures were based on expectations of what we might see given certain legal or coalition characteristics, we also take this opportunity to explore some other interesting questions about whether there are any particular habits among outlets or certain cases. Thus, in Figure 7 we examine the stories by outlet to see if any noticeable patterns emerge.[160] While we do not have any a priori expectations mapped out, we think it is valuable to examine this because it may reveal some patterns that were not previously known to scholars. Figure 7 provides several interesting findings. First, we see that outlets like Associated Press, CBS, *USA Today*, and Reuters, which are known to be large, national outlets, tend to have the bulk of their stories within the bullseye.[161] Next, in outlets like FOX and CNN, the two most-watched cable news networks,[162] most of the stories are within the bullseye as well but both have a slight shift to the right of the "0" line, indicating their increased negativity. Of the three outlets that have a strong reputation for their newspapers, the *New York Times*, *Washington Post*, and *Wall Street Journal*, all tend to be relatively "accurate" with most of their stories.[163] Finally, we see that SCOTUSblog, the website devoted to following the Supreme Court on a daily basis, produces stories that

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[158] *Id.*

[159] *Id.*

[160] *See infra* Figure 7.

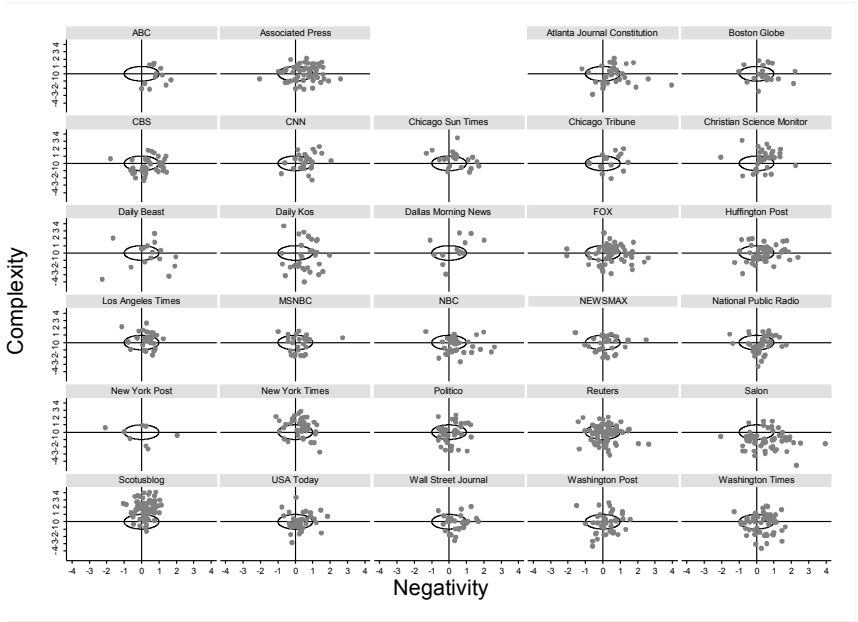
[161] *Id.*

[162] Rick Kissell, *Cable News Ratings*, VARIETY (Dec. 30, 2015), http://variety.com/2015/tv/news/cable-news-ratings-cnn-top-gainer-fox-news-channel-dominant-1201666151/.

[163] *See infra* Figure 7.

appear to be more complex than the opinions they cover, perhaps in response to the demands of their relatively sophisticated audience.[164]

**Figure 7. Coverage Quality, By Outlet**




Finally, we think it is important to see if any particular cases received coverage that differed significantly from the others. Figure 8 shows that, at least with respect to a handful of cases, there were systematic differences.[165] For example, we see that *EEOC v. Abercrombie*[166] had almost all of its coverage appear in the upper left quadrant. This quadrant suggests that stories are more complex and less negative than the relevant opinion. Recall, the issue in this case involved a Muslim-American who wore a headscarf to an interview and was refused the job because of it.[167] The media appeared to complicate the issue to some extent, at least more than the opinion conveyed. And the findings suggest that perhaps due to the sensitive nature of the religious

[164] *Id.*

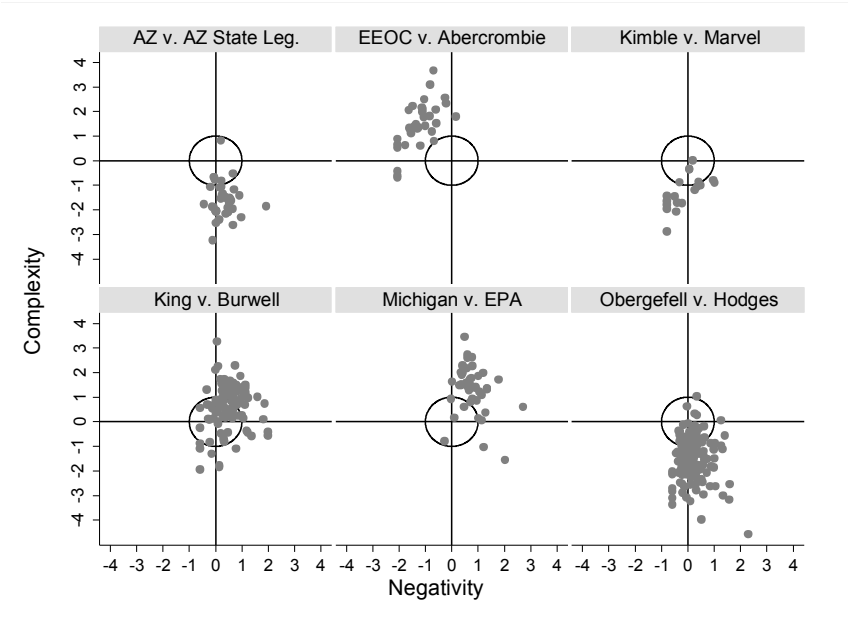
[165] *See infra* Figure 8.

[166] 575 US __, __, 135 S. Ct. 2028 (2015).

[167] 575 U.S. at __, 135 S. Ct. at 2031.

issue involved in this case, the media avoided injecting any negativity into the story.[168]

**Figure 8. Coverage of Six Cases**




In contrast, the case of *Kimble v. Marvel Entertainment, LLC*[169] appears predominantly in the lower left quadrant. This case, despite involving the company responsible for bringing us Spider-Man and a disputed patent over an invention that shoots spider webs, was actually a very narrow patent law case.[170] This suggests that, perhaps because of the popular comic book connection, the news media boiled down the issues to their most simple form and ended up being more simplistic than the opinion. Figure 8 also shows how other cases were treated differently. Coverage of *Obergefell v. Hodges*,[171] as we mentioned earlier, did not vary much in terms of its level of negativity, but did vary quite a bit on the complexity scale. In contrast, *King v. Burwell*[172]

[168] *Id.*
[169] 576 U.S. __, 135 S. Ct. 2401 (2015).
[170] 576 U.S. at __, 135 S. Ct. at 2405–06.
[171] 576 U.S. __, 135 S. Ct. 2584 (2015).
[172] 576 US __, 135 S. Ct. 2480 (2015).

appeared to have a rightward shift, where most of the stories were to the right of the zero line. In sum, while we see a small handful of cases that get covered in distinct terms, it is important to keep in mind that the bulk of cases get only a handful of stories, and most of those lie within the bullseye of relatively accurate coverage.

## CONCLUSION

The question of whether media coverage of the Supreme Court is of sufficient quality to facilitate citizen competence has wide-ranging consequences for our political system. To explore the nature of coverage, we offered a novel conceptualization of quality, which we used to evaluate media reports from the 2014 term.[173] We learned quite a bit from this analysis. Specifically, no analysis before had quite the volume of outlets under study for a complete term of the Court. What we found was that certain elements of the media's coverage were predictable when we examined accuracy on two important dimensions. Notably, we observe differences in coverage quality based on the Court's alteration of precedent, the presence of lower court dissent, the issue area involved in the case, the degree of consensus in the Court's ruling and the individual outlets providing coverage.[174] Each of these elements reveal evidence that the media's portrayal of Supreme Court decisions is often distorted—at least in relation to the language used in the majority opinions themselves. If we expect the media to provide an accurate portrayal of the Court's activities, largely so the public's judgments are based on a realistic assessment of the institution, it may be troubling to see coverage stray from the "bullseye" of quality under such predictable circumstances.[175] While certainly not satisfactory evidence of anything like ideological "news bias," it does suggest that discrepancies in news coverage may be the product of several implicit biases regarding particular actions of the Court.

Our conceptualization also allowed us to elucidate four specific ways in which coverage may fall short of what is required to inform citizens (roughly corresponding to our four quadrants in Figure 1).[176] While we find evidence that coverage is sometimes simplistic, we also

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[173] *See supra* UNDERSTANDING QUALITY COVERAGE OF THE COURT.

[174] *See supra* Figures 3–7.

[175] *See supra* Figure 2.

[176] *See supra* Figure 1.

break with conventional wisdom, which sees coverage as uniformly *too* simplistic (or just plain wrong), and demonstrate that the press may also *over*-complicate coverage in certain contexts. On other occasions, we show, the media over- or under-emphasizes conflict and negativity. Both of these tendencies are consequential from the perspective of citizen competence. For instance, complexity may help obscure the Court's actions and thus buttress a "myth of legality" about the institution.[177] On a different note, the degree to which the media is biased towards or away from conflict has implications for the Court's level of popular support.

While we are enthusiastic about how our findings advanced several important debates within the literature, we would be remiss if we did not mention some caveats. First, because we examined a single term, we cannot say with confidence how things have changed over time or how they might change in the future. While that is undoubtedly important, it is a good avenue for future study because the point of this study was to examine the state of media coverage for one entire term. In addition, while we think that internet media stories are probably today's most common and popular form of getting news, we also recognize that this sample neglects the smaller portion of the public that may only get its news via the medium of television or cable. While we think there is a strong amount of overlap between internet print and television, we recognize that the different mediums do offer different constraints and audience demands that may result in a different product being consumed by the masses.

As with all research that addresses important debates, we feel ours raises many important questions for the future. Specifically, we feel that the expansion of news outlets available to the public raises the question of whether there are more opportunities for added negativity and complexity to creep into stories that differs substantially from what opinions say. To be sure, we also think that our findings raise important questions about the implications of when a news story strays too far from the opinion on either the negativity or complexity dimension. For example, will these overly negative depictions of the Court's decisions result in a lower evaluation of the institution—whether it is specific support or even institutional legitimacy? Future research would be wise to track any changes over time in the depictions of the Court along with the approval of the Court. As polarization begins to tighten its grip

[177] *Id.*

around the elected branches of government, we suspect that this polarization will begin to show up in media portrayals of the Court if media outlets are going to respond to audience demands. While that is just one speculation, it raises a host of interesting possibilities for future research on the media and the courts.