

## The Supreme Court, in living color

By Peter G. Verniero

Sills Cummis - in the News

**Y**ou wouldn't know it judging from the heightened media attention given to Supreme Court nominees, but the federal judiciary remains the most mysterious branch of government.

Many Americans know little about how the court really goes about the task of hearing or deciding cases. That could change overnight if the new chief justice, John Roberts, were to lead his court in allowing the oral arguments before it to be broadcast on television or over the Internet. Live radio broadcasts and still photography also should be allowed.

The current policy banning cameras and radio microphones in the courtroom is rooted as much in tradition as anything else. Judges are known for preserving their prior decisions. The Latin phrase for that practice is *stare decisis* ("stand by things decided"). A similar mindset makes it difficult for the court to reverse its longstanding opposition to media coverage of its proceedings.

Some defenders of the status quo fear that the presence of cameras will prompt attorneys to play to the television audience rather than focus on the technicalities of particular cases. Others are bold enough to suggest that even the justices might be tempted to ham it up a bit if the cameras were rolling. Still others believe that cameras simply would distract the justices and attorneys and thus intrude on the normal flow of argument.

Those fears and concerns are misplaced. An attorney inclined to engage in theatrics for the benefit of the cameras would do so at some risk. First, he could divert attention from the merits of the question to be decided. Second, because the court strictly enforces the time limits on oral arguments, a grandstanding attorney accomplishes little more than shortening the time within which to present his case.

As for the justices, these are serious and conscientious officials. I find it hard to imagine that they would alter their questions to counsel during court proceedings merely to impress TV viewers.

I once attended a law school dedication with Justice Ruth Bader Ginsburg that was open to the media. I was struck not only by what she had to say but the dignified manner in which she said it. If Ginsburg is any guide, the chances of her colleagues preening themselves during televised arguments are next to nil.

The reasons in favor of televised oral arguments outweigh the reasons against them. The justices allow audiotapes of arguments to be made and then released after the fact. However, without the availability of television or some other instant medium, the public is denied access on a mass scale. Such access would enable us to see a truer picture of the judicial process than the one dramatized in movies or other works of fiction. That, in turn, could lead to more respect and a greater understanding of the court system at a time when judges everywhere seem to be under attack.

Moreover, there are things that cannot be captured on an audiotape that only television can convey, like a justice's stern look or other reaction that sometimes communicates far more than the spoken word. The public deserves to see those reactions if for no other reason than to get a better sense of the human side of judging.

And make no mistake: Judges are human. In addition to the tightly woven legal standards that guide them in their work, judges draw on life's experiences when reaching decisions. Those experiences can be revealed by the questions posed by the justices or other comments they make from the bench, which are not always reflected in the written decisions they file.

To be sure, I do not advocate televising the court's private conferences in which the justices rightly expect an opportunity for unfettered discussion and deliberation beyond the camera's glare. But I see no persuasive reason why the already public aspects of their work, such as hearing the arguments of counsel in open court, should not be viewed by the widest possible audience. In an age when we see instant images of events taking place around the

world, we also should be permitted to observe the majesty of the rule of law as it unfolds in the nation's highest court.

In New Jersey, my former court has long permitted still and video cameras in the courtroom and recently expanded its policy by allowing broadcasts over the Internet. In my tenure on the bench, I saw no feigned drama by lawyers or my fellow justices and no other sign of abuse that would warrant limiting the public's access to the court's important work. Nor did the presence of the cameras distract the court members as we asked questions of counsel appearing before us.

I predict that the U.S. Supreme Court would experience similar results if cameras were allowed to record and broadcast its proceedings. Federal legislation has been introduced that would require that oral arguments be televised. The court does not need authority from lawmakers to act; it can act on its own. Now is an opportune time for the highest court in the land to be the most public one as well.

---

*Peter G. Verniero practices law at Sills Cummis Epstein & Gross P.C. in Newark. He formerly served as an associate justice of the state Supreme Court as well as state attorney general.*

---