

C-SPAN'S LONG AND WINDING ROAD TO A STILL UN-TELEVISED SUPREME COURT

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In 2005 when Senator Arlen Specter (R-PA) first proposed legislation requiring the Supreme Court of the United States to televise its oral arguments, he resuscitated a twenty-plus-years long effort by several news organizations to achieve the same goal. For at least that long, C-SPAN has been ready to provide the same kind of video coverage of the federal judiciary as it has been providing of the Congress and the president. If cameras are ever permitted in the high Court's chamber, C-SPAN will televise every minute of every oral argument, frequently on a live basis, and will do so in its trademark format of no interruptions or commentary.

This commitment to so-called "gavel-to-gavel" coverage of the Supreme Court is one we make to our audience, and it has an extensive history. Only a few years after C-SPAN began operations, we produced our first Supreme Court oriented program with our full coverage of Sandra Day O'Connor's 1981 Senate confirmation hearings. Four years later, we launched "America & the Courts," a weekly program (Saturday nights at 7 p.m. Eastern Time) focusing on the judiciary with an emphasis on the high court. A few years later, when it seemed to us and others (erroneously, as it turned out) that the Court was open to the possibility of letting the cameras in, we formed an advisory group of former Supreme Court clerks. These nine, mostly younger lawyers had been on the inside of the less-than-transparent Court and were willing to answer our questions about how we should proceed in dealing with it as we urged the Court to become more open to public view. Each of them was careful not to divulge any confidences from their Court service, but as a group they were valuable to us as we decided *which* proposals we might make to the Court and, almost as important, *how* we would make them.

In 1987, the Court accepted an early proposal that allowed C-SPAN to originate live programs from the press room inside the Court building. This was a breakthrough of sorts, albeit a modest one, in terms of the Court's receptiveness to television cameras on its premises. For the first time, the general public was able to see what it looked like inside the Court building as they used our viewer call-in format to talk to the journalists who work in the press room covering the Court, to the lawyers, and even to the parties involved in the pending cases. We were even able to persuade several mem-

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bers of the Court staff to appear on television to describe their jobs and to take questions from viewers. We thought we were slowly but surely easing the Court and its staff into the television age. We believed that by originating television programs from inside the building we were showing them that television coverage could be achieved easily; that it did not disrupt Court operations; that the cables, equipment and power requirements did not stress the building's infrastructure; and that the public was getting an accurate view of the Court.

Early in the following year, 1988, C-SPAN CEO Brian Lamb wrote to then-Chief Justice Rehnquist to make a formal offer. He told the Chief Justice that C-SPAN would televise the entirety of every oral argument if the Court would permit cameras in its chamber. Lamb's offer was made partly in response to our awareness of what a few of the Justices regularly referred to as the "snippet" problem. They did not like the idea of their hour-long arguments being reduced to very brief "snippets" when reported on the evening newscasts. They believed such reporting was inherently distorting and the Court would be better off without it. C-SPAN's offer of gavel-to-gavel coverage was intended to highlight our network's unique format and our ability to televise the whole of each oral argument to an audience that would appreciate such coverage. We realized that the appearance of Court arguments on C-SPAN would not eliminate the Justices' "snippet" concerns, but we hoped our offer would at least mitigate them.

The offer was a long shot, but we hoped its comprehensiveness would appeal to enough of the Justices' concerns that it might overcome their hesitation regarding cameras in their courtroom. For example, we knew some of the Justices recognized courtroom video would generate educational benefits, particularly for law schools. With this in mind, we noted that C-SPAN keeps an archive of all its programming and regularly makes videotapes (now, DVDs) available to educators. We also pointed out that we would not televise the arguments only during the daytime on a live basis, but rather at various times of day when a wider audience would be able to watch.

Chief Justice Rehnquist graciously acknowledged Lamb's offer and said he would refer it to the Conference—meaning the rest of his colleagues. He later responded that the Conference preferred not to change its current practice regarding news media coverage.

Our efforts continued. Toward the end of 1988, C-SPAN joined an informal consortium of other news organizations (including still photographers who wanted the right to take photos of oral arguments—thereby putting the sketch artists out of business). The consortium put on a demonstration inside the Court's chamber to show exactly how televised coverage would work. Our group set up two cameras, one off to the side of the bench and a second facing the lectern from which the attorneys addressed the Court. The director and the switching equipment were set up in a hallway outside the chamber. The production relied on the Court's existing audio system and on available lighting—we did not set up bright lights that would be a distraction. After a 25-minute oral presentation during which three Justices attended (while seated at their usual places on the bench) they

watched a playback on tape and asked a few questions. Nothing else came of the demonstration.

C-SPAN's efforts to cover the judicial branch continued. In July 1989 we became the first news organization to televise a federal court argument when the chief judge of the U.S. Court of Military Appeals (now the U.S. Court of Appeals for the Armed Forces) permitted our cameras to tape an argument on drug testing. The next year the same court (which is not subject to the federal courts' rules regarding television coverage) permitted us to provide live coverage of an argument challenging the military death penalty.

Up to this point we had thought the Court, as the iconic Highest Court in the Land, could be persuaded on the merits alone that televised oral arguments would be good for the Court and for the public. We began to think that in light of the Court's deep respect for and reliance on precedent, perhaps it would rather be a follower than a leader in opening the federal judiciary to TV coverage. So, in 1991 C-SPAN and other television news organizations proposed a multiyear experiment during which eight federal trial and appellate courts across the country would be open to televised coverage of civil trials and appellate court oral arguments. The four-year experiment was taken up by the Federal Judicial Center, with the Chief Justice's approval. At the end of the experiment, the official assessment concluded that the television coverage of court proceedings did not adversely affect the administration of justice. We took this as a victory and hoped for a loosening of the rules against televising federal courts including, eventually, the Supreme Court. Although a few of the lower federal courts continued to allow some television coverage after the experiment, its results had no discernible effect on the Supreme Court.

There was little activity in this area from the mid-nineties until the disputed presidential election of 2000. As we watched the Florida Supreme Court's televised proceedings on the vote recount, we realized the election, against all earlier expectations, could be decided in Washington. C-SPAN made an emergency appeal to the Chief Justice to permit televised coverage of the Court's oral arguments in the case that became known as *Bush v. Palm Beach County Canvassing Board*. We pointed out that in this case "the public interest in the Court and its role in our government would likely never be higher" and that "televised coverage of that role would be of immense public service and would help the country understand and accept the outcome of the election." The Court did not agree to televised coverage, but it did break with tradition by offering instead to release audiotapes of the oral arguments immediately upon their conclusion. This led to a media frenzy of coverage as every news channel, including us, put the taped arguments on the air the moment they were available.

A few days later when what turned out to be the dispositive case, *Bush v. Gore* was to be argued, we asked for permission to provide live radio coverage, realizing that televised coverage was unlikely to be approved. Again, the Court consented only to prompt release of the audio, prompting a media frenzy similar to the one experienced days before.

Since that time the Court has not altered its stance against televised coverage, but it has loosened up considerably in releasing the audio of many important cases on the day of the arguments. From December 2000 to the date of this writing, the Court has granted just more than half (fifty-six percent) of C-SPAN's requests for same-day release of the taped oral arguments.

Although we continue to provide extensive coverage of the judiciary and of the Supreme Court in particular, we do so without any real expectation that cameras will be allowed in its chamber any time soon. Still, as recently as October 3, 2005, C-SPAN CEO Brian Lamb renewed the offer originally made to Chief Justice Rehnquist in 1988 in a letter to his successor, Chief Justice John Roberts. The letter described again that if given the chance C-SPAN would televise the entirety of every oral argument. In recognition of the dramatic changes in technology since our first such offer to the Court, we also offered our experience and expertise in creating high-quality and discreet video coverage of arguments should camera coverage ever be permitted. Chief Justice Roberts, like his predecessor, graciously received the offer but ultimately passed on the proposal.

Recently, there has been an unprecedented effort to legislate television access to the Supreme Court. The legislation introduced by Senator Specter, first in September 2005 and again in January 2007, has reinvigorated the debate, while raising new issues of comity between the branches on the one hand, and separation of powers on the other.

When asked to testify on these and other issues in 2005, C-SPAN declined. As a news organization we did not think it appropriate to take a position on pending legislation. However, Brian Lamb appeared before the Senate Judiciary Committee at a hearing on Senator Specter's bill in order to answer the committee's questions about how C-SPAN would use televised oral arguments if they became available. In his testimony, Lamb told the senators the same thing he told Chief Justices Rehnquist and Roberts: C-SPAN will televise the entirety of the oral arguments and we will make it available to the public, scholars, lawyers, judges, educators and the public at large as part of our public service mission. All we need is the right to do so. We think it should happen, but we are not entirely sure it will happen.