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I Want My Supreme Court TV!

by Jim Sherwood

On Monday, Senator Arlen Specter introduced legislation that would require the Supreme Court to permit television broadcasts of the Court's proceedings (unless television coverage of a specific case would threaten the due process rights of a litigant). [[Video Broadcast from C-SPAN.](#)] For law school geeks around the nation, this is exciting news. Indeed, the public benefit of increasing awareness of the Court's activities seems clear, especially when sixty-five percent of Americans cannot even name one Supreme Court justice. See [James Markham, Note, *Against Individually Signed Judicial Opinions*, 56 DUKE L.J. 923, 925 n.12 \(2006\)](#) (citing [Result's of Findlaw's U.S. Supreme Court Awareness Survey](#)). Senator Specter emphasized this benefit when introducing the legislation, stating that "the public would have insight into key issues and be better equipped to understand the impact of and reasons for the Court's decisions." [Press Release: Specter Introduces "Cameras in the Courtroom" Legislation, Jan. 29, 2007, <http://specter.senate.gov>.](#)

But not all are enthusiastic about the possibility of C-SPAN airing a season of *Party of Nine* (or perhaps *The SC*—Chief Justice Roberts, a top five [Judicial Superhottie](#), could easily steal some teeny-bopper buzz from *The OC*'s Ryan Atwood with a little marketing). Indeed, some of our Supreme Court justices—reluctant to be TV's newest stars—have been the most vocal critics. In 1996, Justice Souter commented that cameras on their way in to the courtroom would have to make their way "over [his] dead body." Likewise, Justice Thomas has stated, "It runs the risk of undermining the manner in which we consider cases. Certainly it will change our proceedings. And I don't think for the better." And although some of the justices have shown a degree of willingness to allow cameras in the Court, they have not done so without simultaneously expressing some concern. (Quotes from the justices on the topic can be found at [Cameras in the Court, CSPAN.ORG, \[### Categories\]\(http://www.c-</p>
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But the justices' reluctance to televise proceedings is somewhat at odds with the justices' recent openness to publicity. This week, Slate writer Dahlia Lithwick observed that members of the Court have recently shown greater willingness to appear on camera, with Justice Stevens and Chief Justice Roberts appearing on ABC, Justice Ginsburg making an appearance on CBS, and Justice Breyer "logg[ing] almost as much time on camera as Lindsay Lohan" *Dahlia Lithwick, Talk of the Gown, SLATE, Jan. 27, 2007.* However, perhaps this recent openness to publicity should lead us to question the prudence of putting the justices in the limelight. James Markham, the Editor-in-Chief of the Duke Law Journal, recently published a note, *supra*, questioning the practice of justices signing their opinions. Although this practice is not likely to end any time soon, Senator Specter's legislation raises some of Markham's concerns. Markham suggests that the practice of justices signing their opinions contributes to justices writing opinions "written less for litigants than for an external audience of like-minded devotees," a practice referred to as "playing to the home crowd" by Justice Ginsburg (or "playing to the gallery" by Judge Posner). Markham notes that, according to Professors [John Ferejohn](#) and [Pasquale Pasquino](#), if the justices are "using their opinions to speak over the heads of the litigants to a public constituency of sorts, . . . this strains the notion of the Court as an independent body." Markham, *supra* at 944. Although Markham focuses on the effect of attaching the justices' names to their opinions, broadcasting the Court's proceedings live could exacerbate this problem.


Along these lines, [Professor Bruce Peabody](#) of Fairleigh Dickinson University has suggested that Senator Specter's bill could present a constitutional problem. He suggests that a separation of powers challenge might surface: "Mandating television coverage smacks of congressional meddling in the details of the [C]ourt's internal operations." [Bruce Peabody, Legislating Supreme Court TV, THE CHRISTIAN SCIENCE MONITOR, Sept. 28, 2006.](#) But Peabody doubts the merits of this argument because "Congress already controls numerous aspects of the the [C]ourt's business, including the number of justices and the size of their salaries."

All told, Professor Peabody might be on to a reasonable solution: to ensure that the Court will rule favorably on the constitutionality of Specter's legislation, perhaps Congress will only need to give the justices a fair cut of the revenue from licensing the broadcasts.

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Fred :: 3/14/07 at 11:08 am

Nice work, Jim.