

Senator Chuck Grassley
Tom Goldstein
Cameras in the Supreme Court Hearing
Questions for the Record

1. Have you changed your approach or strategy in preparing for an oral argument because you knew that the argument was going to be broadcast? If so, please describe.

Answer: I have argued one case that was simultaneously broadcast. It was before the Supreme Court of the State of Washington. My preparations were no different than any other case. I argue most of my cases before the Supreme Court of the United States. Those arguments are of course not simultaneously broadcast; they are available online, however.

2. Have you noticed that your own performance during argument is different when you know you are being televised? If so, in what ways? Did it materially affect the outcome of the case?

Answer: I do not believe my performance during the argument before the Supreme Court of Washington was any different as a result of the simultaneous broadcast. I do not believe it affected the outcome in any way. I was not conscious of the cameras, and I do not believe that the judges were either.

3. There was testimony that audio tapes and transcripts are as effective as video. Do you agree with this statement? If not, please explain what benefits video offers over the currently available audio recordings and transcripts.

Answer: I disagree. As I said in my written testimony, we are a visual nation. People tend to watch television news. It seems obvious to me that many times more people would watch an oral argument than would listen to an audio tape or read a transcript. Substantively, I do believe that audio and visual broadcasts are the same, because there is not visual “action” in an appellate court argument. There is not even much in the way of “body language.” But the simple matter of fact is that more people will watch than will listen. There is the further point that audio “tapes” released at the end of the week are of course not immediately available, unlike a simultaneous broadcast.

4. If a bill mandating televised Supreme Court proceedings were limited to only apply to cases of appellate jurisdiction, explicitly exempting cases of original jurisdiction, do you think it would violate the Separations of Power doctrine? Please explain.

Answer: I do not believe any bill mandating televised proceedings would violate the Separation of Powers, although the answer is not certain. As I explained in my oral testimony, I believe that such a requirement is analogous to legislation specifying the number of members of the Court, the standards for a quorum, and the Court’s budget. Excluding original jurisdiction cases would perhaps strengthen the statute’s

constitutionality (because Congress has substantial control over the Court's appellate docket) but I do not think it is necessary.