

# Making democracy work



We need more immediate education initiatives to help the public gain direct access to and understanding of Supreme Court decisions that shape their lives

By **Mary-Christine Sungaila**

EACH SUMMER, THE ASPEN INSTITUTE, A NONPARTISAN THINK TANK, HOSTS THE JUSTICE & SOCIETY SEMINAR, co-founded by the late Supreme Court Justice Harry A. Blackmun. The seminar, held in breathtaking Aspen, Colo., brings together a small group of individuals from diverse backgrounds to discuss how a just society ought to structure its legal, judicial, and political institutions. This summer, I had the privilege of participating in a portion

of the one-week annual seminar. Participants included law professors, federal district court and appellate judges, a state Supreme Court justice, a Unitarian minister, a doctor, and other partners in private law firms like me.

Over the same time period, I also participated in a two-day Aspen Institute Symposium on the United States Supreme Court's most recent term, designed for nonlawyers, which was largely attended by business people, philanthropists, and well educated, accomplished retirees,



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all interested in furthering their knowledge about the court. The symposium, entitled “The Great Cases, Controversies, Trends and Personalities at the U.S. Supreme Court,” was moderated by Jeffrey Rosen, president and CEO of the National Constitution Center and professor at George Washington University Law School, and Tom Goldstein, founder and publisher of SCOTUSblog and noted Supreme Court litigator. The discussion included recent and upcoming cases on voting rights, marriage, affirmative action, and health care reform.

Both programs were fascinating, and offered an opportunity to consider broader questions about law and society that we as practicing lawyers – even appellate litigators like me – do not often have the luxury to do. For example, the Justice & Society seminar included wide-

ranging readings by Kurt Vonnegut as well as economists, lawyers and judges for its segment on Law and the Economy, and invited participants to consider what role the law and the legal system should play with regard to the economy. The experience was like mixing the best of undergraduate humanities with legal education, and then applying decades of experience in the world and the legal system to it.

The Supreme Court symposium, in contrast, was designed to immerse participants directly into the decisions and arguments in major cases of the last term. Participants were required to read the full opinions and listen to the oral arguments, rather than read news reports or analysis of them. As Jeffrey Rosen put it, for a democracy to work, Thomas Jefferson believed that all members of society need to make it their responsibility to be both educated and informed about the issues of the day, and in the context of our symposium, the best way to do that was to dive directly into the decisions ourselves. The reaction of many seminar participants was surprising. Most were unaware that oral arguments, much less the decisions themselves, were publicly available online. Many noted that, after reading both the majority and dissenting opinions in widely reported cases, they had a fuller and sometimes very different understanding of the decisions. They remarked that news reports sometimes left out aspects of the decisions they felt to be important. A few even reported that their view of the decisions changed after reading them, and that their views sometimes coincided with those of the dissenting justices in some cases, which they had not realized from reading abbreviated news reports.

This experience impressed upon me the need for us as lawyers to educate the public about the Supreme Court, and the public resources the court itself makes available, whenever we can.

Through my work with civics education initiatives, I learned that there is a deep need to bridge the gap in civics education at the middle school and high

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school levels. As California Chief Justice Tani Cantil-Sakauye has pointed out, “On the last national measure of K-12 school student civic knowledge, barely a third of students could name the three branches of government, and an equal number could not even name one.” Civics education in California, for example, is largely relegated to the final year of high school; it needs to play a more prominent role in the school curriculum, earlier in a student’s education.

The California Task Force on K-12 Civic Learning, a joint creation of the Chief Justice and State Superintendent of Public Instruction Tom Torlakson, last year published a blueprint for addressing the improvement of civics education in California. And through such online civics education resources as iCivics, founded by former U.S. Supreme Court Justice Sandra Day O’Connor, students can play online games in the classroom and at home where they can learn about the workings of the three branches of government by, for example, serving as virtual law clerks for Supreme Court justices and learning how judicial decisions are made.

Likewise, the National Association of Women Judges’ “Informed Voters. Fair Judges” project, a nonpartisan voter education project started last year, helps voters make informed choices in state judicial elections. The project educates voters about the qualities that make a good judge – fair-mindedness, impartiality, integrity, knowledge of the law, and a willingness to decide cases on the evidence presented and the law – and about ways

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to learn about a judge’s qualifications and performance record in order to exercise an informed vote.

But my experience at the Aspen Institute convinced me that not only do we need to provide civics education to young people and ensure the voting public has the necessary information to make informed choices in judicial elections, we also need more immediate education initiatives to help the public gain direct access to and understanding of the Supreme Court decisions which shape their lives. As lawyers, we are uniquely positioned to do our part in this by alerting friends, family members and business associates to the oral arguments and decisions publicly available on the Supreme Court’s website and SCOTUSblog, so that they can listen to and read firsthand the decisions and arguments that led to them, and in the process become more informed citizens in the finest Jeffersonian tradition. ■