

Behind the scenes: Reporting on the Supreme Court

Tuesday's oral arguments before the Oregon Supreme Court was the first time I've been to an Oregon Supreme Court hearing. It was certainly the first time I have reported on one of its cases.

Some members of the public attended Tuesday. It was [a case regarding cuts to the Public Employees Retirement System](#), and a good number of union members in purple or green T-shirts showed up to watch and make sure the judges remembered exactly who was impacted by those cuts.

Most people, however, never get to see the Supreme Court in action. It meets during the day when a lot of people are working. It's also a big, formal process, not somewhere parents could feasibly bring small children. It's also just time consuming and a little confusing, not exactly a "fun" outing for most people. Some, but not most.

For anyone who wishes they could watch the court or wonders what it's like, here is what struck me during my first experience being there.

1.) It's very public.

Journalism school is full of horror stories about public bodies that want to keep secret what they do. Courts are notorious for it. You hear story upon story about courts that don't allow photography, the use of laptops, or sometimes even reporters themselves.

The Oregon Supreme Court does not do that, and I was surprised.

There are certainly rules: Cell phones must be off, and all the news media had one photographer to share between us. (We were lucky enough to have that person be our own photographer, Tom Patterson.) I'm guessing those rules are set up primarily to minimize distractions. You simply cannot have a ringing cell phone in a court hearing like this. It would be unfair to the attorneys, who must stay focused. Likewise with photographers: Imagine trying to concentrate while having five of them hovering all over the room.

Aside from that, it's a very open process. We had free, public wireless Internet, and I was able to send emails, take notes and even tweet in real time from the courtroom. The court's library was set up on the second floor with big-screen televisions for anyone who wanted to watch but couldn't get in the room (there is limited seating). Best of all, there is a live video of the hearing that plays online, so anyone who is interested can watch from home or the office. It's all completely public, nothing kept quiet at all.

2.) It's not a trial, it's a thesis dissertation.

In most trials, attorneys make opening and closing arguments where they explain what they are trying to

prove, what they want the judge or jury to come away with. They spend the rest of the time trying to make a case for their argument.

This is not how the Supreme Court works.

It was obvious Greg Hartman, Keith Kutler and the other four lawyers who testified had prepared thoughtful, logical arguments in favor of their positions. They never finished those arguments, however, because the judges give them about three minutes to speak (maybe) before they start asking questions.

The judges ask questions the entire time. They grill the lawyers on past cases that relate to this one, present elaborate analogies for the attorneys to analyze, suggest hypothetical situations and pick apart words. A carefully crafted argument quickly falls apart when you're being asked to defend your point against a hypothetical situation thrown out by a judge at the spur of the moment.

3.) "Shall" is more important than I realized.

Certain words are particularly important to lawyers, and "shall" is one of them. The judges spent ages on that word and what it means. It is, apparently, crucial in determining whether a statute creates contract language.

It's an amazing lesson on precision of language. An attorney before the Supreme Court must be able to defend any word he uses and be able to explain exactly what he meant. Every word counts, every word can change the outcome of the case.

As a writer of words, I can tell you, that's a lot of pressure.

4.) The judges are always paying attention.

I am most used to watching people testify before committees in the Oregon Legislature. Usually, what happens in those hearings is a few lawmakers are truly engaged, although at least one or two fall a bit short in their understanding of some points. Others are only half listening and end up asking questions whose answer came two minutes before. Others are clearly messing with their phones, their notes or something else. Some actually close their eyes and appear to be napping.

That's not necessarily their fault. Those committees hear an enormous range of testimony, some that repeats itself or repeats exactly what's in a report the lawmakers have already read. Each lawmaker serves on multiple committees: It's impossible for them to be completely engaged, completely informed in every moment of every piece of testimony. Minds are bound to wander eventually.

Watching the court is not like this. The judges are always engaged. They're listening to everything. They see everything the attorneys do because they never look away. (One justice did look at the ceiling for a

while. He appeared to be sorting out his thoughts.) Every judge has a question for nearly every attorney. Those seven minds are nowhere but in that courtroom.

It's fun to watch. Watching the court is like watching the ballet or a really good baseball team. Everyone is talented, great at what they do. More than that, they are fully in that moment, fully in that place. For those two hours, you can see the rest of the world falling away for them. The whole world is suddenly in that courtroom. They're focused on no one but Hartman, Kutler, and the rest. Nothing else exists for those seven brains, working away, trying to make sense out of the law and the decisions that other people — people not in this room — made a year ago in other rooms in a different white marble building.

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