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**Georgetown University Law Center &  
American Law Institute**

**"Fair and Independent Courts: A Conference on the State of  
the Judiciary"**

**PANEL:  
Public Understanding, Media, and Education**

**Panelists:**

**FRED GRAHAM, SENIOR CORRESPONDENT, COURT TV**

**LINDA GREENHOUSE, SUPREME COURT CORRESPONDENT,  
THE NEW YORK TIMES**

**KATHLEEN HALL JAMIESON, DIRECTOR,  
ANNENBERG PUBLIC POLICY CENTER**

**Moderator:**

**GLORIA BORGER,  
NATIONAL POLITICAL CORRESPONDENT, CBS NEWS;  
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2:30-3:50**

**GEORGETOWN UNIVERSITY LAW CENTER  
HART AUDITORIUM – MCDONOUGH HALL  
WASHINGTON, D.C.**

GLORIA BORGER: Thank you so much. That was a riveting panel discussion. I must say I think we were all here to witness perhaps the first presidential debate – (laughter) – between Newt Gingrich and Tom Daschle. I think we were all – couldn't help but wonder that, being a political journalist myself.

Let me very quickly just tell all of you that I can – I think I speak for all our panelists that we're honored to be here as part of this discussion. We decided

unanimously to revise and extend our remarks, as they say on Capitol Hill, so we can get right into our discussion.

And then, unlike the other panels -- being egalitarian journalists that we are -- we have decided to reserve the last 15 or 20 minutes for your questions or your comments when you can play blame the media or whatever else you want to do.

And so let me talk just for one moment about our panelists: Linda Greenhouse, of course the Pulitzer Prize-winning Supreme Court reporter of the New York Times, required reading for me and other journalists; Fred Graham, a former colleague of mine at CBS News, now the senior editor for Court Television; and Kathleen Hall Jamieson, of course of the Annenberg Center at the University of Pennsylvania.

And just for this event, Kathleen, I'm going to start with you and then I'll sit down and join the discussion. Kathleen has put together a survey just for this and in it -- and I think it sort of gives us a sense of the dimensions of the public misunderstanding, if you will, about the courts and we can start from that and then progress to the rest of the discussion.

One-third of Americans in this country -- this speaks to what Warren Rudman was just saying -- one-third of Americans in this country cannot name any of the branches of government. And only about one-half believes that the president must follow the Supreme Court. I think maybe Newt Gingrich was part of the other half there. (Laughter.) And let me then turn this over to Kathleen so she can tell us a little bit more about what she learned in her survey. Thanks, Kathleen.

**KATHLEEN HALL JAMIESON:** I'm reporting the results of two surveys: one done in 2005, one done in August, 2006. Where that makes some difference, I'll indicate the year. Margin of error plus or minus three, surveys done by Princeton Survey Research. As Gloria indicated, the American public doesn't know a great deal about branches of government because it doesn't know branches of government. One-third can't name any branches, but one-third can name all three, and the other third falls some place in between: able to name one or two.

How knowledgeable is the American public about the courts? Twenty-two percent believes that the Supreme Court cannot declare an act of Congress unconstitutional and 23 percent doesn't know whether it can or can't. That means 45 percent either believes the Supreme Court can't declare an act of Congress unconstitutional or doesn't know whether it can or can't. Thirty-five percent thinks that it was the intention of the founding fathers to have each branch have a lot of power but that the president has the final say.

Less than half believes that a five-four decision by the Supreme Court carries the same legal weight as a nine-zero decision. When the court divides five-four, one in four Americans believes the decision is then referred back to Congress for resolution, and 16 percent thinks that it needs to be sent back to the lower courts to be decided.

Public trust. The Americans consistently rank the Supreme Court as the most trusted branch of government: 64 percent of the public in August said that they trust the Supreme Court a great deal or a fair amount. That is, however, a decline from 75 percent in 2005. I don't know why.

MS. BORGER: By political standards, it's still terrific though.

MS. JAMIESON: Being the most respected of the institutions that is surveyed is a consistent finding across time.

Trust in the state courts is virtually the same. Three-quarters of our survey in 2006 agree or strongly agree that the Supreme Court can usually be trusted to make decisions that are right for the country as a whole. And I hope we don't lose sight of those findings as we talk about the findings that sound more problematic. That's a high level of endorsement in the form of trust in this institution. Seventy-five percent of the public disagrees or strongly disagrees that if the Supreme Court started making a lot of rulings that most Americans disagreed with, it might be better to do away with the court altogether. So 75 percent reject doing away with the court altogether if the Supreme Court started making a lot of rulings that most Americans disagreed with. The other side of that is 25 percent agree or strongly agree that if the Supreme Court started making a lot of rulings that most Americans disagreed with it might be better to do away with the court.

Fifty-eight percent believe that if the president disagrees with the Supreme Court ruling he should follow the Supreme Court ruling rather than do what he thinks is best for the country. Nearly half, 48 percent, says it is essential or very important to be able to impeach or remove a judge from office if the judge makes an unpopular ruling. That's nearly half.

How does the public perceive the impartiality of the judiciary? Seventy-five percent – this is August, 2006 – said the judge's ruling is influenced by his or her personal political views to a great or moderate extent. Sixty-two percent says that the courts favor the wealthy or those with political influence. Six in ten, 62 percent, say the courts in their state are legislating from the bench rather than interpreting the law. Seventy percent thinks raising money for elections affects judges' rulings, but 65 percent thinks it is better to elect judges than to do it some other way at the state level.

And this is an interesting finding at least to me: Americans who have a high level of court experience, 43 percent of survey, either as a result of jury service within the last five years or having a family member in court over the past five years – those people who have that kind of experience are more likely than those without the experience or who have a slight exposure to say that they strongly agree that courts favor the wealthy or the connected. And so direct experience with the process doesn't appear to increase the likelihood that you think that in this area that the courts are fair.

Why are these findings of concern? If knowledge about the courts is low and when knowledge about the courts is low – and that's measured by those knowledge

questions – that low knowledge predicts lower trust, higher knowledge predicts higher trust. And higher trusts predicts an unwillingness to impeach the judge for an unpopular ruling, a willingness to retain the Supreme Court even if it makes a lot of rulings the public disagrees with, and high trust predicts saying that if the president disagrees with the ruling of the court he still should follow the ruling of the court even if he believes that's not in the best interest of the country.

Why should we be concerned about the perception of the bias and of partiality? Because they have the potential to undermine trust.

MS. BORGER: Okay, let me thank you very much, Kathleen. I should say to everyone here that copies of this survey done by Annenberg will be available to you as you leave today so you can take it home and look at it in more detail.

Let me start. I'll start with you, Fred. Where does the media come in here? We see the notion that people – one-third can't name any branch of government, they're not sure how the system works, yet they do seem to trust their judges.

FRED GRAHAM: Well, you know, the media – the definition of the media has changed. When you say the media, when I started covering the Supreme Court – it was 40 years ago; I had the job that Linda now has – and I must say it's breathtaking after 40 years of having the justices sit and talk and me listen, it's refreshing to have four of them hear and I'm talking. I hope I have something to say that's worth listening to.

The media, I would say, those 40 years ago was quite different from what it is today because we know again from polls that fewer and fewer people read the written media and more and more of them get their information, if they get information, from television. Some polls have showed that 80 percent of the American people get a majority of their information from television. And what's scary about that is when they refine those polls they find it's Jay Leno and it's Jon Stewart and they're believing – this is their information that they're getting. So, Gloria, this is really a monkey on the back of you and I and those who do their journalism in television.

I do have some concern that the short time span we are given in the network at CBS – and this hasn't changed much from my days at CBS to yours. I mean, two minutes is a long broadcast – two and a half minutes. And how can you explain – I was sitting there outside the Supreme Court some months back trying to explain the Hamdan decision, which had just come down. And I'm saying, two and a half minutes? Give me a break. People are still trying to figure out what you all said in that. (Laughter.)

So I think we have a real burden, particularly in television, to try to develop new procedures of processes so that we can more intelligently and more effectively communicate what's happening in the world around us.

MS. BORGER: Let me take this to Linda, who gets to write in long form, but still on deadline obviously. You get a complicated opinion at 5:00 at night and you have to write –

MS. LINDA GREENHOUSE: Ten o'clock in the morning.

MS. BORGER: Ten o'clock in the morning?

(Cross talk.)

MS. BORGER: Right, exactly. And you have to write for the next day's paper and what's your obligation here to try and close this gap in public understanding about the courts and how do you do it?

MS. GREENHOUSE: Well my role, my experience is not typical of the media in the United States because my editors have made a judgment that it's worth it to keep somebody at the Supreme Court you know who goes there every day and who even if there's not a breaking story you're not going to spend the day reading cert petitions and briefs and so on and hopefully be prepared when the Hamdan comes down or whatever.

The problem arises with much of the other media in the country. As I view it and when I talk to judicial audiences, not to an audience this elevated, but I do talk to a lot of judges in the course of the year and I try to frame it by saying I think there's a mutuality of obligation. I think there's an obligation on the part of the media to make that kind of commitment, that kind of judgment that it's worth training and paying people to do the right kind of job. It's not a problem when judges say, oh, you know my court is so badly covered; the reporters change every six months, they never understand anything, I'm afraid to talk to them because they always get it wrong. In a way it's not their fault; it's the publishers, the editors, the news directors that make those judgments, so there's an obligation on the part of the media.

There's also an obligation on the part of courts to make themselves more accessible, to issue their opinions in a way – as the Supreme Court does, in some regular way that they don't just kind of plop in the middle of the night or on a Friday afternoon to do what the Supreme Court will now do for the first time this term beginning next week, which is put up same day complete transcripts of the arguments. That's a very good thing.

But it occurs to me as I listened to the previous panels and talked in the small group this morning, especially the last panel, that there is really – this is a very, very complicated issue. Obviously, there's kind of two levels of problem – of disconnect in terms of the public understanding the judicial system because I think we're starting from the premise – well, there's the levels. We're starting from the premise here that understanding – knowledge brings understanding, brings enlightenment; enlightenment brings an alleviation of the problem that we're all discussing here. I'm not sure that's always true because some of the most knowledgeable people in the country – people in

other branches of government, people in high places who understand very well what the courts are about – can act out on their disagreement and disappointment with the court in very, we might say, counterproductive ways.

And so knowledge isn't always the path to enlightenment; it can be a tool for other kinds of behavior. But when I initially said there's two levels of this, so there's the kind of micro level. I mean, people in their communities ought to be able to understand and trust the integrity of their judicial system by having what happens in their communities adequately explained through the medium of the press and that requires, I think, judges and editors and reporters and lawyers all to have a good working relationship and we're kind of all in this together. I've always believed that. That's on the micro level, but on the macro level some of things we're talking about here I don't think it's realistic to think that newspapers or television networks are going to devote on some regular basis the time or space to give the basic civics lessons; to say, by the way, dear reader, there are three branches of government as follows.

So there is where people take their clues from their political leaders and what Justice Breyer said at lunch I thought dovetailed with the conversation we just had, the decline in the number of people who think that judges are basically fair and act with integrity instead of trying to entrench their personal preferences kind of coincides with the timeline where we've had high leaders of our government when decisions come down if they don't agree with seeking to delegitimize the judges rather than engage in the constitutional conversation that ought to flow.

So I think what the press needs to do about that is a trickier issue, but I think it's got to be to pay very close attention to this discourse, to report it, to comment on it, and to make sure that readers who are attentive enough to care and pay attention about it are enabled to understand where it's coming from and what it is.

MS. BORGER: You know, in politics we call it the permanent campaign. It seems that you finish one campaign and you get involved in immediately starting to cover another and I'm wondering whether you all believe that in fact that's what covering the courts has become to a certain degree because so many decisions, as you just mentioned, Linda, seem to be politically related. Seventy-five percent of the people now believe that a judge is influenced by his or her political views, and so are we covering the courts as part of the campaign?

MS. GREENHOUSE: Well, yes, I mean, I don't feel that way in terms of the Supreme Court, but I have to say there's a new phenomenon in the last couple of years which is the hiring of PR firms to position cases and even to petition pending cert petitions. I've started getting inundated with phone calls all summer actually. We've got a pending cert petition, won't you write about it? It's going to conference on September 25<sup>th</sup>. And my answer is no, your cert petition is one of 2,000 and my job isn't to tee it up so the law clerks will notice it and put it on the discuss list. That's not my role in life. And if the court grants it, I'll write about it, but this is something new.

MS. BORGER: Welcome to my world, Linda.

MS. GREENHOUSE: Exactly. I know Gloria's husband, Lance Morgan, is a wonderful PR executive so there's no aspersion on Lance, but –

MS. BORGER: He doesn't do that, though, Linda.

MS. GREENHOUSE: So it's not that the court is engaged in a permanent campaign but there's a sophisticated way to kind of rope in the press to make the press an unwitting foot soldier in the permanent campaign. And it takes some considerate effort to resist it, I have to tell you.

MS. BORGER: Kathleen or Fred?

MS. JAMIESON: One of the theories of media scholars is that the high level of trust in the Supreme Court is a direct function of the fact that it doesn't get much media coverage, and as a result it isn't framed for the public thorough the cynical, tactical assumptions that characterize much of the coverage of campaigns and of governance.

When we did a study that looked experimentally at the impact in campaigns of exposing people in a controlled experiment, and so a tight research design, to tactical, strategic coverage that actually had aired and been printed and then coverage we rewrote to take it out. What we found was that the tactical, strategic coverage – the horse-race norm – activated cynicism and depressed learning. If that's case when you cover the court, if you want to produce that same effect you would rather the court never be covered than that to be covered more.

MS. BORGER: Well, Fred, I think you probably disagree with that. We'll get into television and the court room in a moment because you can make your case to the justices sitting here, but go ahead.

MR. GRAHAM: Well, but on the subject now I think that judges could respond in some ways to this by being more available themselves to the media. It seems to me that there are many, many situations in which judges can talk to the media and it's proper and it's helpful. And I think more of that should occur.

MS. BORGER: But if they are the most trusted branch of government, why shouldn't they quit while they're ahead by not talking to the media and essentially say, we're doing very well; people seem to trust us. If we start talking about our decisions more and more, or what goes into them, then perhaps that would hurt us. What about that?

MR. GRAHAM: Well, I think they probably should not just go out and volunteer in some low-level case in which there's no controversy or public interest, but when there's controversy and when it's being reported fallaciously or mistakenly, why shouldn't the judge talk to the media and straighten them out?

MS. GREENHOUSE: Professor Burbank invoked the memory of Judge Richard Arnold, who was wonderful on many levels and one was an article he wrote maybe ten or 15 years ago about his contact – his philosophy about being in touch with the press. And he had a regular practice: if he saw a mistake he would call the reporter up, invite the reporter in if it was based on some fundamental misunderstanding, explain, enter into a dialogue, and he was urging his fellow judges to do this rather than take the I never talk to the press, because he said it's counterproductive. If the purpose is you want to be able to have the public understand what you're doing, you're not up on a soapbox, but just get the person in and try to help get it explained. I think that was very smart.

MS. BORGER: Well let me then bring this to cameras in the courtroom because obviously there is a school of thought that says that if you let cameras into the court room that it will illuminate what goes on in the courtroom for the American public. It will help them understand the system, how it operates, and will in fact enhance the view of the courts for the American public. That's the other point of view. Let me ask – well, I'll start with Fred on that since he's at Court TV and it's no doubt a little self-interested in this respect but would probably like to have cameras in the courtroom.

MR. GRAHAM: You're right, I'm like the Tennessean who wrote a book called "An Impartial History of the Civil War from the Southern Point of View." (Laughter.) I've got a point of view here. What we do on Court TV – we televise trials, some appellate proceedings, but not many. We televise trials gavel to gavel, with an occasional break for a commercial, and we've done about 900 of these. And so I go to work in the morning and I sit and I watch a trial. And of course after you've seen 900 what you realize is that they forget – the participants forget that camera and the case is so important to everyone in that courtroom that that's what they're focused on.

And I think that the public responds to that and has a heightened appreciation for the fairness of the process and the lengths to which the system goes. It's not Perry Mason. It's not gotcha jurisprudence. It's careful. And I think that would be true in the Supreme Court, too. But there's another aspect of the Supreme Court's refusal to permit cameras in to the courtroom and that is I think that it is undermining the public's confidence in the court. They're saying, well, 47 of the states allow TV coverage of the Supreme Court proceedings and no harm done in any of those 47 states and I think the public is sort of half amused at this. I think they think that it shows – I think some people may feel that it shows that the justices are out of touch with modern life and not connected to the way they think because the average person I don't think sees it in the fearsome terms that some justices seem to do.

And I think that the few arguments that I've heard in an effort to support the ban that now exists – of course, the usual ones that people raise – that it might affect testimony, it might affect juries, and so forth – don't apply. Showboating in the Supreme Court you would not see. No one really expects anyone to showboat if there's a camera in the Supreme Court. The media would use sound bites. But as I say, 40 years ago when I started with the New York Times I used sound bites. Print reporters use quotes; those are

sound bites. And it's the essence of journalism that you have to pick what you think are the salient statements and you put it in.

I think the one problem that you hear that to me has the most substance is that there is a mystique to the Supreme Court, and rightly so. And the public venerates the Supreme Court and I call it the Wizard of Oz syndrome: that somehow this concern that perhaps if they were able to see that these were real people, that although very, very formidable people, that it might somehow dissipate that mystique.

And as I close here, I think you look at – there's a precedent in the states that before the states make a decision as to whether or not to permit television coverage of the proceedings they have a test. And I would say that when this conference considers its recommendations about what to do about judicial independence, that one of those recommendations might be a suggestion to the Supreme Court that they run a test. Take three arguments and let the public see what happens. And I think the result would be that the public – its knowledge of the court and its veneration of the court would be greatly increased.

MS. BORGER: But if the ratings were bad, they'd be yanked, right? (Laughter.)

MR. GRAHAM: I think the ratings would be a little flat.

MS. BORGER: Yes. Well, I don't know about that actually. Linda, go ahead.

MS. GREENHOUSE: Well, I'm agnostic on this issue and the court is not part of the problem. I think the kind of mandate of the conference is not so much the Supreme Court, but problems with other courts. A point I wanted to make earlier in talking about journalism about the judicial system in general is there's a systemic institutional problem, which is that the ethos, the norm of mainstream journalism is that there's no such thing as a point of view, on the one hand; on the other hand, let everybody have their say and people can be very sophisticated in manipulating that norm.

Not everything is equal. Some things are really bad ideas. Some ideas are really worse than others. And one could posit – I mean, I don't mean to be controversial, but one could posit that it's bad thing if a powerful member of the House gets up and says, we made the courts; we can unmake the courts. Or if – the other week when a federal district judge in Detroit declared unconstitutional the NSA wiretapping program. The response to that wasn't, okay, here's the constitutional issue, let's discuss, or that's fine; we're going to appeal this. We believe we're right. But rather was to demonize the judge and bringing all kinds of extraneous information about her, her background, and so on.

And the press becomes a kind of a megaphone for this if all that happens is it gets reported. If every time there's a decision by a three-judge panel of a federal circuit court, you identify which president appointed each judge, even if that's completely irrelevant to the administrative law question that the panel decided, this is the press being part of the problem, not part of the solution. And I don't sense – and I've carried this – I've made

this argument inside my own shop without a lot of success, but I'm not optimistic that there's a willingness on the part of the press to really step back and look at the problem in the way that I just framed it. And there's a whole lot of smart people out there that are making good use of it.

MS. JAMIESON: One of the findings in a survey that troubled me was the notion that almost half don't think that Supreme Court justices usually give written reasons or they don't know whether they do or not. I wonder if one could increase the number of people in the country through some means – and I don't know what that means is, but through some means who are aware that there is a justification process that is made public, that the reasons are thoughtful, that they engage the other side, that they warrant the inferences that they offer, whether or not that would blunt some of those other inferences about how whimsical people think judges are and how personal they think their opinions actually are.

The reason that this question interests me in this context is I think that people who read the New York Times have a clearer sense that judges give reasons for their opinions than people who get their news about courts from other venues, and I think they have a clearer understanding of what those reasons are. The problem of course is that's not a very large audience.

MS. GREENHOUSE: Many times if I read about a lower court opinion that I think is likely to end up in the Supreme Court and I want to just flag it or know something about it and I look at a story that I picked up – a wire story or whatever – there's no sense given of where this case came from – it just sort of dropped randomly from the sky – who the parties are, what the reasoning of the opinion was. And it's not that – well, of course these days you can go on the web and get it, but it's not easy in a passive way to keep track of what's going on out there if all you rely on are the press accounts.

MS. BORGER: Well, speaking of the web, given the internet and given the accessibility we get to all kinds of institutions through the internet, including Congress and including the Supreme Court, why hasn't that helped accessibility of the courts generally?

MS. GREENHOUSE: I think it has within those segments of the public that are sort of in the discourse already. When I started covering the court in the 1970s, I couldn't have an intelligent conversation with anybody in the country about a newly issued opinion unless that person had been in the courtroom and had gotten the bench copy. There was just no access. And now within half an hour anybody who wants it can get it anywhere in the country, or the world I guess, and I think it has really enhanced the ability of those communities to know what they're talking about.

MR. GRAHAM: But, Linda, there may be a flipside, too, to this.

MS. GREENHOUSE: And there is a flipside, yes.

MR. GRAHAM: Well, and I think the flipside may be the bloggers. We know that there's a lot of political mischief that goes on because bloggers are out there and there's very much a point of view. They are not overly worried about checking their facts or hurting people's feelings or damaging people's reputations. And I don't follow the blogging world very closely, but –

MS. GREENHOUSE: There are some very good ones, though.

MR. GRAHAM: But – well, I'm told that some of them now are concentrating on judges and it's pretty negative and destructive. What you can do about it, I don't know. Maybe you need more pro-court bloggers. Who knows?

MS. BORGER: Maybe there are some secret ones you don't know about, right?

MR. GRAHAM: Yes.

MS. BORGER: Well, let me just talk a little bit about the politics in the courts because obviously given the cases that we've seen, you mentioned NSA wiretap, Hamdan, Gore v. Bush, Terri Schiavo. In your newsrooms, can you tell me – and when we talk about the so-called activist courts, which we were hearing a lot of discussion about today, how do you decide to write a piece? Is it a political story? Is it a legal story? Is the court now covered as a political matter by your political reporters inside your news operation? I mean, it seems to me that the nature of the cases have sort of taken on a life of their own and brought the courts into a very different realm. And it will continue, as somebody was saying in a previous panel with the war on terror and all that that implies.

MS. GREENHOUSE: In my newsroom the court is mostly ignored except when I come back every day from the court. No, I think – again, I think the issue is not the Supreme Court. The Supreme Court takes care of itself and its docket is very public and very obvious. I think where the lapses occur for the most part is in the lower courts where they're not covered as systematically, although many of them try to be quite user friendly, but don't have sort of a dedicated press corps. And cases can be bubbling up around the country and it's just very hard to keep track of them.

MR. GRAHAM: I'd like to ask you a question because it relates to our side of this – the TV side. Most of us I'm sure are familiar with the case that surfaced about a little over a month ago when Judge Anna Diggs Taylor, federal district judge in Detroit, declared unconstitutional – she was the first judge to rule on what – there are several cases out there – declared unconstitutional the Bush administration's warrantless wiretapping program. And that was the bottom line: judge – court finds domestic wiretapping unconstitutional. And then almost right away there was her quote about our Constitution doesn't create a hereditary monarchy, and then it went on. Well, it was very interesting that the reporting of that on television was basically, hey, this thing is unconstitutional. No judge yet has said it's constitutional and now we have one that says it's unconstitutional.

The next day, in the follow-up stories primarily, there was some excellent reporting about the type of problems with this opinion – that it skated across, according to the observers, some of the most difficult questions of case or controversy or standing – perhaps the most difficult question, and it gave a lot more texture. Television within that two and a half minutes doesn't give you enough time and they don't generally have the second-day story. And 80 percent of our people are getting their information from television. What do we do?

MS. BORGER: Well that's a really good question. Unless you extend the evening news to the length of the NewsHour on PBS, you've got 22 minutes in every evening news show. And I don't know anybody who can really get an awful lot of nuance in a story, which is why I keep a job writing at U.S. News – how you can ever get a lot of nuance in a story in a minute 30, which is basically what these stories are. And what that story was covered as was honestly, this judge has made this decision, this is now a real political problem for the White House and this is a real opening for the Democrats on Capitol Hill.

And that's how a lot of television covered that story. Not only every network, I would say, because it was made in this context of the fact that we're – yes, we're heading into the midterm elections and, yes, Iraq and the war on terror are both issues in the campaign. And so this is where I see these things becoming bound in the coverage of the courts and I'm wondering if the public sees it the same way.

Let me just open this up to your questions if you'd like to ask my colleagues here any questions you have about the coverage of the courts and how that's changed and what we can do to improve our coverage. We'd love to hear from you folks to see whether or not we can start doing a better job or what we ought to change or not change, what we do well. We would accept all compliments I'm sure.

MS. GREENHOUSE: And let me just say, I know from my conversations last night we have some very terrific state court judges here who have some interesting experience that they might like to relate about their own media relations that I think are useful.

MS. JAMIESON: And in the transition, let me address the comment made this morning on one of the panels. The concern about dirty attack advertising in judicial races is of course also a concern in all campaigns. And we do know from research that when the news media critique those ads and put them in context you have the possibility – the first affect, which is you decrease the number of ads that do that, but more importantly you increase the likelihood that you create a backlash against the person who's engaging in illegitimate tactics. The problem is the news media don't like to do ad watches. They're difficult to do and I don't think they even know their ads in judicial races.

MS. BORGER: So can we get a question from the audience or we'll just continue to talk amongst – yes?

Q: (Off mike.)

MS. GREENHOUSE: Well, I guess the other side of the argument is it's information. I think there are occasions when it is relevant. When the readers would really want to know some highly politicized case. I'm willing to concede that it's a little precious or it's withholding relevant information to not mention it. What I object to is just the kind of knee-jerk routine mentioning it when it has absolutely nothing to do with the case. It was a unanimous – whatever, you know. So I guess the argument on the other side is, if we know it, we'll say it.

Q: (Off mike.)

MR. GRAHAM: Well, I think it's a healthy trend when it's done fairly and done accurately. And I think because most newspapers understand that if they run an analysis such as that and it turns out that there's a backlash against it on the grounds that they just got it wrong – they were sloppy or they were prejudiced or biased in some way – then I think it hurts. But the ones I've seen, it's been pretty sound as far as you can tell from the lack of criticism of it later. And I just think – I mean, I deplore as much as others do here the trend toward high-priced political campaigns for judges or for judgeships, but if we're going to have more and more of an influence on judicial contests – what you can afford to buy in terms of TV advertising, attack ads or whatever – then it has to be a healthy counterweight, it seems to me, to have the newspapers doing their own analyses of how these judges appear to be.

MS. GREENHOUSE: I'm assuming you mean editorial page endorsements, not news coverage. Am I right?

Q: (Off mike.)

MS. GREENHOUSE: Right.

MS. JAMIESON: If I could comment on that, from what we know about the effect of endorsements, the more visible the race; that is, the more advertising, the more news, the less likely an endorsement makes any difference. But newspaper endorsements in local politics and in races in which people don't know the candidates, which is more likely to be the case in judgeships, have a discernable but small effect.

MS. BORGER: Yes, Ted.

Q: What was the effect on judicial perspective – (off mike) – what with respect to public opinion as to the judges, as to the questions that they should answer – (off mike) – and the impression of the senators with respect to whether they were attempting to influence the justices or develop opposition to them or develop support for them based upon how they would answer the questions.

MR. GRAHAM: Well, you know, we did get good ratings on those hearings. People were really watching.

Q: (Off mike.) (Laughter.)

MR. GRAHAM: Did you hear? He wasn't asking about my ratings. But no, Ted, what I meant was people were watching and I think that was a very enlightening process. And I thought it had to be helpful that so many people saw the issues that these senators were raising, and some of them were extremely thoughtful.

In comparison, the reaction, as I've been told by some of the justices and certainly by many others, after the Bork hearings were very, very negative. And it just seems to me that if the politicians – the officeholders who were conducting these hearings, if they're keeping it thoughtful, high level, then it's very beneficial. If they're not, then it's not.

MS. GREENHOUSE: I'll just say about the televised hearings in which of course I have no stake, but I think the camera was extremely friendly to John Roberts and sort of made him a TV star. I remember leaving the office one day after one of the hearings and a colleague of mine, who never writes anything remotely about the courts, came up to me and said, I never knew much about the Supreme Court, it's kind of remote, it's kind of scary, but, you know, this John Roberts seems like such a nice normal guy. I think in a way – I mean, that wasn't the purpose of the hearings and it certainly wasn't the purpose of the Democratic senators who were on the other side, but it kind of humanized the court a bit in the way he conducted himself.

MS. BORGER: And I think just from having been in the room covering it and looking at public opinion afterwards, I think quite honestly that the nominees did very well and the members of Congress did less well in the public's eyes, particularly when they seemed to be filibustering when they were asking a question. And that occurred time and time again and I think there was a sense in the public that – you know, let the guy answer the question please.

So I think these things were quite illuminating. I think when people watch these hearings gavel to gavel there was a sense that there were really important issues at stake. That the court was going to have to decide and that somebody who was being nominated to the Supreme Court could decide not to answer those questions. But the public was hearing about the issues and the important issues and I think that's only positive because we weren't talking about who could have got to Osama bin Laden first; we were talking about the issues facing our country in the future and I think that kind of discussion is always good to have. And by the way, you can watch it every day on C-SPAN if you really want to, but to have those kinds of hearings covered gavel to gavel on cable stations – they were not covered gavel to gavel on the networks, I might add.

MS. GREENHOUSE: And by the way, I feel the same way about the Bork hearings. I thought the Bork hearings, which I covered, were a fabulous constitutional

conversation that the country had access to through those hearings. So I don't put those down at all.

MS. JAMIESON: I wish we had an answer to your question but I don't know of any polling data that directly addresses it. What would you need to answer it would be a rolling cross-sectional design. You need to be in the field every day. We are at the national Annenberg elections survey, but only during election years, I wish during that process that we had been. I also wish that we had been also during the Thomas hearings because I think there are times in which the institutions make us proud and times at which we are ashamed of institutions, and I think it affects our sense of confidence and trust in those institutions. We know that in part because when we're tracking and you get a high level of conflict happening inside Congress about something, you can see some of the indicators on Congress start to shake out. Even though they're just specific people fighting about something, the public seems to be drawing an inference that something may be wrong there with the institution. But I can't answer your question from anything that we know directly from data.

MS. BORGER: Yes?

Q: (Off mike.) What is the press's take, what are the aspirations, what is the interest with respect to the other 98 percent of our civil conflict, some of which is very, very large and very, very, very important and probably very difficult to reach?

MS. GREENHOUSE: You mean in terms of news coverage? Yes, I think I agree with that. My entire career has been spent covering the public sector legislators and courts. I think what you're talking about – the uneducated adjudicated, private, civil conflicts on the business side – I think the private sector – I think the corporate sector is really hard to cover and get in those boardrooms. This might not be the time to mention –

Q: (Off mike.)

MS. GREENHOUSE: Yeah, of course, a lot of which is purely private and not really of news interest to anybody.

Q: (Off mike.)

MS. BORGER: Yes?

Q: (Off mike)

MS. GREENHOUSE: No, I do feel your pain, I think these are tough issues and that's probably a good solution, you know, on some minor thing – have the clerk call, and it's better than not calling, you're just kind of stewing in error. I think it requires a leap of faith. I think that one thing Judge Arnold was advocating was that judges should reach out and get to know the reporters that cover their courtroom and that posits that it's going

to be the same person on Thursday as it was on Monday, and that's not unfortunately always the case.

I know the First Circuit a few years ago – the judges there were disappointed in the kind of press coverage the court was getting and they organized a conference and invited the Boston area media to come and have a conversation. When I was asked for my advice about this, I said, make sure you get the editors, not just the reporters. The editors are the problem.

So, yes, obviously in the middle of hot case you're not going to want to have a conversation about it, but it's a longer term issue and I guess my advice I try to give people is just try to have – with all the obstacles and all the pitfalls, try to have those relationships in the court and the public will benefit in the long term from them I think.

MS. BORGER: I can't believe you think the press makes mistakes actually, do we do that? Yes, and I just want to add one thing to what Linda was saying, which is that resources are so scarce now in newsrooms around the country – in state courts, you're not going to have the same reporters all the time, they may cover that beat for three months and then move on to covering the state house and to cover politics, and so you have this kind of revolving door of journalists. We're all really lucky. We've gotten to be experts, such as it is, in our particular fields because we've been giving the luxury of being able to cover something for decades and really get to understand the institutions that we cover, which we really honestly care about. And I don't think that happens everywhere, particularly on the local level. It happens more here in Washington I think than it does anywhere else, and I think that's a real issue.

Yes, sir?

Q: (Off mike.) (Applause.)

MS. GREENHOUSE: I think he has. Oprah.

MS. BORGER: We were just thinking Oprah.

MR. GRAHAM: He mentioned Oprah.

Q: (Off mike.)

MR. GRAHAM: Well you know he was on the Lehrer – he and Justice O'Connor were on the Lehrer –

MS. GREENHOUSE: Yeah, they were great.

MR. GRAHAM: What was it? I believe the night before last? And it was very, very favorable and it was cogent and certainly helpful.

MS. JAMIESON: And that should be a way of saying that media is not a single thing or media are not some single thing. There are venues that are consistently substantive. The audiences for them are not terribly large, but if one wanted to say – the NewsHour, for example, is pretty consistently substantive, why don't we have more viewers coming to it and would a model that moved to more substance elsewhere have comparable amounts of viewers and be economically nonviable. I think one would be saying the indictment would be on the audience, not necessarily on the absence of substance across the board.

I think there's more substance now in news than there ever has been in the history of this country. The question is, do you know how to find it and have we developed an appetite for it? And I think people do know that it's there and I don't think we've developed an appetite for it. And we ought to ask ourselves, since we have the highest level of college graduates we have ever had in the history of the country, what have we done wrong that those college graduation rates haven't translated in to high viewership and readership of the substance that is there?

It is possible now by use of the internet as well as judicious use of television and of print to learn more than one could have learned in a graduate seminar 30 years ago on virtually any topic that's available. I think in all of this discussion we're missing two pieces: the audience is part of the problem, and those of us who have educated the audience must therefore be part of the problem. And part of the solution I think has to be in the school systems and not simply in trying to reform the media and trying to get them to create a product that there may not be an audience for.

MS. BORGER: I don't know about you, but I'd love to watch Justice Breyer on Oprah. That would be really – okay, one last question and we've got to go.

Yes, sir?

Q: (Off mike.)

MS. BORGER: And the question was?

MS. JAMIESON: Let me turn the question back to the audience. One might look at the findings that suggest that the public things that the courts are largely partial and biased and favor of the wealthy and say that's realism; that's not cynicism. Those are attitudes, after all. We don't know in this data what is actually going on there. Why is it that when the public comes into the court system and we ask two separate questions to make sure that we weren't conflating the data, either in the form of serving on a jury, where you would expect people of higher commitment to institutions to be more likely to serve, and having a family member in court in some capacity over the past five years, that that doesn't predict positive things about the answers to some of those questions?

I think one of the large questions underlying all of the concerns about attitudes toward the court is what is actually happening in the court? Are people not seeing what's

really there and everything's going well, or are they seeing what's there and maybe there's a problem. And if there's a problem, then we're talking about the wrong solution if we're looking to the media or to the educational system. We should be looking to them for the higher knowledge measures, but we should be looking to the court itself to address the question that either this incorrect perception or the underlying problem that is being perceived.

MS. BORGHER: Okay, I think we're going to have to end it there. We're getting the hook so thank you very much. We really appreciate it. (Applause.)

(End of session.)

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