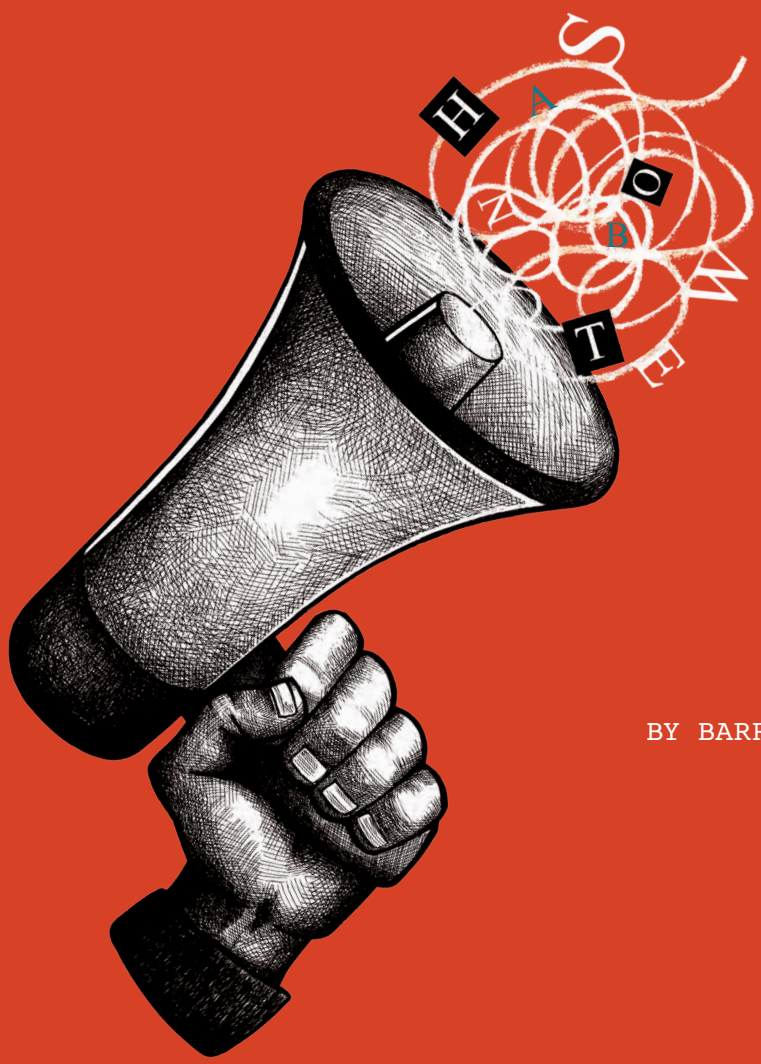
The Supreme Court and the People

COMMUNICATING DECISIONS TO THE PUBLIC



BY BARRY SULLIVAN & RAMON FELDBRIN

As courts around the world face the challenge of reaching the public, some are finding new ways to make their decisions clearer and more accessible. This article explores how Canada, Germany, and Israel are rethinking judicial communication to boost understanding, transparency, and trust.

For a long time, scholars and professional observers assumed that courts should "speak for themselves" only by speaking as courts do, that is, through their formal, written opinions or judgments.[1] Although the convention that judges speak through their written decisions is deeply rooted, it has not always been strictly observed. At various times, Justices have sought to explain or defend their decisions in a range of extra-curial contexts — the pages of newspapers, in television interviews, in lecture halls, and even in Zoom meetings with like-minded partisans. Still, despite these departures, the U.S. Supreme Court, as an institution, continues to speak authoritatively only through its official written decisions. Indeed, we have too often taken it for granted that the Court fulfills its role when it relies solely on the power of persuasion, defending its legitimacy by confining its speech to the dry, technical language of judicial reasoning.

Recently, Justices Amy Coney Barrett and Sonia Sotomayor have publicly urged that the public should "read the decisions." Yet that is easier said than done. The Justices provide no reasoning for their rulings on the emergency docket, and the Supreme Court's written opinions have grown increasingly more complex, prolix, and fractured — so much that even well-informed readers often struggle to discern what the Court has actually decided. As a result, the Court's interpretations of the Constitution remain shrouded in mystery and beyond the understanding of ordinary citizens. This stance is difficult to square with the Court's own teaching on the importance of an informed public in a democratic society, let alone with the Court's fundamental obligation to expound the Constitution in a way that is intelligible to the people.

Faced with fast-changing media and the emergence of populist politics that distrust expertise and frequently call for restrictions on judicial power, many apex courts around the world have acknowledged the vital importance of correct, complete, and timely accounts of their work. These courts, showing an increased awareness of developments in technology and the social transmission of knowledge that not infrequently lead to the distortion of truth, have adopted new means of communicating with the public through the press and across the contemporary information ecosystem. Three simultaneous objectives can be identified: first, an attempt to make it easier for the representatives of the mainstream media to understand and broker judicial decisions; second, a desire to reach out directly to the general public and to make judicial determinations more accessible; third, a strategic use of new channels of communication to signal which cases are more important and which are less so and thus shape the way in which decisions are received.

Here we explore these important contemporary developments, detailing the various practices that the high courts of Canada, Germany, and Israel have adopted to improve the accuracy of the press's coverage and the public's understanding of their rulings. Considered together, they reflect a greater degree of openness and a growing recognition that the apex courts of democratic societies are institutionally and professionally obliged to make their judgments more intelligible to the rest of us. These emerging trends also seem to reflect a judicial realization that a proactive stance with respect to the media is necessary to protect the perceived legitimacy of the judiciary at a time when public debate over the proper role of the courts is especially heated and polarized. ▸

THE SUPREME COURT OF CANADA: THE MOST OPEN COURT

The Supreme Court of Canada has long been a leader in terms of its conscious effort to better organize — some would say orchestrate — its relationship with the media. The Canadian Court still communicates its binding decisions through classic written opinions, but, as former Chief Justice Beverley McLachlin has acknowledged, "the news media is the principal means" through which Canadians can come to understand the Court and its work. Likewise, Justice Frank Iacobucci has pointed out that the legitimacy of the Canadian Court, and indeed the democratic process, depends, at least to some degree, on the Court's ability to get its message out: "The danger . . . is that if the media are inaccurate in conveying the information to the public, you are dealing with a misinformed public." According to Iacobucci, "Decisions are enforced because people accept the decisions as the law. If confidence is eroded, then we worry about the legitimacy of the court and the role of the court to settle disputes through the rule of law in our country and that's an absolutely priceless commodity in a constitutional democracy. So those are the stakes."

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Doctrinally, the Canadian Supreme Court sees its willingness to accommodate the news media as an important element in realizing the principles of "open court" and freedom of expression. The Canadian Court has construed these constitutional principles to encompass a general obligation to provide the public with all the information necessary to understand its decisions: "The freedom of the press to report on judicial proceedings is a core value. Equally, the right of the public to receive information is also protected by the constitutional guarantee of freedom of expression. The press plays a vital role in being the conduit through which the public receives that information regarding the operation of public institutions. . . . Consequently, the open court principle, to put it mildly, is not to be lightly interfered with."

As Professor Florian Sauvageau and his co-authors have observed, the Canadian Supreme Court's decision to enter the world of media relations and address the issue of accuracy in reporting was made incrementally and in slow, halting steps. Further, as journalist Susan Harada has noted, these steps "can be categorized in two ways: those aimed at making it easier for journalists to report on the court's business — the hearings and decisions; and, those aimed at opening up the court as an institution." Former Chief Justice Brian Dickson broke down some of the old taboos and lifted the curtain that hid the Canadian Court from the public. He created the position of the Executive Legal Officer (ELO), a senior lawyer or legal academic whose duties include briefing journalists who cover the Court. Chief Justice Dickson also began the practice of meeting with newspaper editorial boards, giving interviews, and releasing texts of his speeches in advance. In addition, he ensured that the Court would space out the announcements of its decisions so that reporters would not be overwhelmed. He also invited, for the first time, a documentary camera crew into the Canadian Court's inner sanctum: the hallways, offices, and conference and dining rooms to which the public had previously been denied access.

Chief Justice Dickson's colleague, Justice John Sopinka, expressed the sentiment that drove the Canadian Court to move away from deep-rooted tradition and experiment with new channels of communication. Justice Sopinka believed that, "A judge can and ought to speak on the work of the court. It is absolutely essential that the workings of the court be demystified. Otherwise how can the public have confidence in it?" He thought "that there should be no 'absolute rule that prevents a judge from explaining his or her decision to the public if failure to do so has led or may lead to confusion or misunderstanding.'" Former Chief Justice Antonio Lamer opened up the Canadian Court even further. During his tenure from 1990 to 2000, cameras were allowed into the courtroom, and oral arguments were televised live on the Canadian Parliamentary Affairs Channel. To ease the work of reporters, the Court also decided, under Chief Justice Lamer's leadership, that judgments would be released over a two-day period when a nest of decisions was scheduled to be handed down during a particular week.

Over the past two decades, the Supreme Court of Canada has continued to foster a modern communication environment designed to promote accurate and comprehensive reporting of its decisions. The Court has explicitly sought to make its "judgments as clear as possible." As Professor Sauvageau and his colleagues observe, "there is little doubt that for crucial decisions . . . the court trie[s] to anticipate the

needs and reactions of reporters by writing its decisions in language that [may] be easily understood." To that end, each ruling is accompanied by concise headnotes summarizing its essential points.

In addition, the ELO plays a central role in facilitating media understanding and timely coverage. They frequently brief journalists before sessions begin and provide them with briefings on every important judgment released. Before each session and ahead of major decisions, the ELO conducts off-the-record briefings that outline the facts of the case, the legal issues, the parties' arguments, and the Court's reasoning. They do not act as a spokesperson or apologist for the Court or spin its rulings. Rather, the explicit goal of the media briefing is to help journalists grasp the reasoning behind the decisions. As the Sauvageau study emphasizes, ELO officers neither consult with the Justices nor receive instructions about what to say. Positioned as neutral legal experts, they explain the law, clarify possible judicial approaches, and direct reporters to key passages in the decisions.

To further support accurate and timely reporting, the Court also permits so-called "lock-ups," during which accredited journalists are granted advance — though secure and confidential — access to decisions before their public release. These lock-ups, accompanied by additional ELO briefings and opportunities for questions, enable the media to prepare informed coverage that captures both the outcome and the nuances of the Court's reasoning.

Clearly, the Canadian Supreme Court has acknowledged its dependence on the press. "The fundamental problem for the justices," according to the Sauvageau study, "is that their messages cannot get through to society without being altered by the journalistic lens. In a sense, journalists have the last word." Professor Sauvageau and his colleagues further argue that the Canadian Court "has carefully constructed a system which ensures that not only are its points of view clearly communicated to the public, but that it can play a role in setting the agenda and enhancing its prestige. While the court is engaged in what is clearly an important public service, it is also a political institution that is attempting to ensure that its judgments are understood by journalists."

In recent years, the Supreme Court of Canada has increased its efforts to reach out directly to the public and make its work more accessible and transparent. In 2018, the Court launched "Cases in Brief," short summaries of its written decisions drafted in clear, reader-friendly language, enabling anyone interested to learn about rulings that may affect their lives. Published on the Court's website and shared on its official Facebook and X accounts, these briefs are prepared by the Court's communications staff to help lay people better understand the Court's judgments. A 2020 press release reported that the "Cases in Brief have been viewed nearly one million times on the Court's website." The Canadian Court also permits local newspapers to republish its summaries free of charge. As Chief Justice Richard Wagner has explained, "Letting these papers republish our Cases in Brief will bring the Court's daily work closer to all Canadians. And it will help the public better understand how our decisions affect their daily lives."

In a similar vein, the Canadian Court recently decided to "ride circuit," hearing oral arguments outside of Ottawa for the first time. Hundreds of local people were able to see the Canadian Court in action in Winnipeg, Manitoba, as the Justices heard two appeals — one on the right to a trial within a reasonable time, the other on minority language education rights. On the same occasion, the Canadian Justices spoke to thousands of high school students, met with members of Indigenous groups and the francophone community, and participated in a public event at the Canadian Museum for Human Rights, where members of the public were able to speak one-on-one with the Justices. In its annual Year in Review publication for 2019, the Canadian Court observed: "The judges of the Supreme Court of Canada believe it is important for Canadians to see how our justice system works, and who its judges are. This is why the Court decided to hear cases outside of Ottawa. It gave more people the opportunity to see Canada's highest court in person."

THE FEDERAL CONSTITUTIONAL COURT OF GERMANY: A POPULAR COURT

The German Federal Constitutional Court (Bundesverfassungsgericht) is a specialized court empowered to determine the constitutionality of legislation and executive actions under the Constitution — the Basic Law (Grundgesetz) — and to adjudicate disputes between the other branches of the federal government or between the federal government and the states. The German Court was founded in the post-War period and was influenced by the models of the U.S. Supreme Court and of the Constitutional Court of Austria as originally devised by Hans Kelsen. Over time, the Federal Constitutional Court has gained a central position in the German governmental system and has become the most powerful constitutional court in Europe.

These facts have led Franco-German political scientist Alfred Grosser to call it "without doubt the most original ▸

and most interesting instance of the German constitutional system." The Federal Constitutional Court has been referred to as a popular court because it is open to the complaints of all citizens who feel that their constitutional rights have been violated. The result, according to Professors John Ferejohn and Pasquale Pasquino, is a unique dialogue between the Court and the German people about the meaning of their constitution. Similarly, Andreas Vosskuhle, former President of the Federal Constitutional Court, has pointed out that "[t]his proximity to citizens' everyday life is the foundation of Germans' evident trust in the Federal Constitutional Court." Professor Thomas Hochmann has added that the Court has been very sophisticated — and successful — in using methods of communication to develop public support.

The Federal Constitutional Court has traditionally been cautious with respect to the press and has preferred to speak for itself through its written decisions. Although the Court is not required to deliver its opinions in open court, it sometimes does so in cases that it deems to be particularly important, and its rules permit the announcements to be recorded as well. But the German Court has a particular difficulty to overcome in that its opinions are very detailed, as well as long, and they are written in a style that is difficult for a general audience to comprehend, so that only a summary can be read in the context of an oral announcement. "We cannot expect that these decisions, which sometimes go on for hundreds of pages, will be understood without providing some assistance by way of explanation," former President Vosskuhle has stated.

This recognition has led the German Court in recent years to modify its communications policy to try and help as many people as possible make sense of its decisions. But it has attempted to walk a fine line — to find a middle ground between the inaccessible doctrinal language usually used in its decisions and the language common in ordinary speech. To achieve this goal, the Federal Constitutional Court has relied on a method of communication with the public that is rather indirect and focuses to a large extent on enhancing its relationship with the media. This reasoning has been underscored by Vice-President Winfried Hassemer who has acknowledged that "[t]he media are the mouthpiece of the judiciary."

In 1996, the Federal Constitutional Court centralized its public relations activities and established a press office that regularly prepares press releases with detailed descriptions of selected decisions and also handles inquiries from the media. This innovation occurred at a time when the Court's popularity had suffered because of a series of controversial decisions. The German Court's press releases, written by the press office in collaboration with the reporting Justice, remain relatively complex and technical. But for the most part, they fulfill their purpose: they allow journalists who are well-versed in constitutional law to quickly understand the decisions in order to thoughtfully communicate their meaning to the public.

And there is some evidence that this tool has proven effective. For example, a recent study found that the media are more likely to cover a decision when the Federal Constitutional Court calls attention to it in a press release. Professor Christoph Engel has noted that "[a] press release indicates that, in the Court's perception, the wider public has an interest in the particular case, or in the reasons for deciding it." Hence, the Federal Constitutional Court has learned to use this powerful institutional tool to increase the visibility of a specific decision and, therefore, the likelihood that it will be covered by the media. As former President Vosskuhle explained: "Today, good press releases are indispensable for serious press coverage. Specialized legal journalists are rarely found even in national daily newspapers. It is all the more important therefore to reduce the risk of misunderstandings or even false news reports by formulating clear press releases."

The Federal Constitutional Court also allows members of a particular group, the Judicial Press Conference of Karlsruhe (JPK), to receive access to information about important judgments ahead of their official pronouncement. In some cases, this select group of journalists can pick up the press release in person from the Court's building on the evening before the oral announcement of a decision; in other cases, they will be notified the day before a written decision is posted online and will receive the press release an hour before the decision is made public. Either way, journalists who receive the advance information are not allowed to publish anything until the judgment is officially released. But the time advantage given to the members of the JPK to read and process the press release is meant to facilitate a more accurate and nuanced immediate reporting of the German Court's decisions. Furthermore, to provide additional background on the Court's deliberative process and explain the jurisprudential basis of highly sensitive decisions, the Justices may provide members of the JPK with confidential off-the-record briefings.

There is another feature in the Federal Constitutional Court's decisions themselves that makes those decisions more accessible to a wide audience of the legal community

and public officials. Its decisions are preceded by several sentences, sometimes taking up several pages, which summarize the main doctrinal bases for the opinion. Professor Craig Smith has explained it well:

> The opinions begin with an admirable, lawyer-friendly feature: the Leitsätze, or literally "leading sentences." These court-written statements give readers a boldly stated, extremely concise, and accurate account of the binding rules that the court has articulated in the opinion. They are thus far more satisfying and useful than the rambling reporters syllabus that, alongside an explicit warning that it "constitutes no part of the opinion," typically precedes and simply summarizes a [U.S.] Supreme Court opinion. American lawyers can appreciate the FCC's Leitsätze best if they recall the hours of work they must spend tracking down and searching through lengthy cases, only to see their German colleagues progress more quickly through a comparable research task simply by pulling the (Grundgesetz), a few commentaries, and a Leitsatz or two off the shelf.

As Professor Smith further notes, "[t]he FCC also speaks with a remarkably coherent, authoritative voice. Moreover, the opinions have an organizational and rhetorical similarity that suggest a firm unanimity of purpose among the justices." In addition:

> Such unanimity seems stunning in light of both the unabashedly political process by which the Republic selects the justices and the court's crucial, unavoidably political function. The court's capacity for consensus is likewise striking. Unlike in the U.S. Supreme Court, decisions are not rendered with five different opinions, in which Justice X joins Justice Y only in Parts I.B. and III.C. of her opinion and then, with a feisty rhetorical scalpel, unapologetically slices to bits the ideas of Justice Z. Nor will a German judge singlehandedly and openly put forth an official opinion that — despite a nearly complete refusal of fellow justices to join that opinion — nonetheless becomes widely accepted as constitutional law. That of course is what Justice Powell did when his solo opinion in the *Bakke* case set parameters for racial preferences in state university admissions that only now, more than two decades later, courts are gradually supplanting.

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To be sure, there is an ongoing debate in Germany as to the desirability of "popularizing" the Federal Constitutional Court's opinions — or making them more accessible to the public. Some believe that the German Court's concern with public relations contributes to its special position in German society and to the acceptance of its decisions by the German public. In fact, some have called for even greater openness on the part of the Federal Constitutional Court and for a further adaptation of its work product to accommodate current realities. Others, however, have expressed the view that the Court's media initiatives are unnecessary and potentially damaging to its image. According to those critics, it is the formal, esoteric language of the law — and the distance that separates the Court and the public — that accounts for the prestige of the judiciary and is the reason that the public holds the German Court in high regard. As Professor Hochmann has noted, "The opacity gives the Court its dignity, and its dignity is the foundation of its legitimacy." Finally, some criticism of the Court's media practices emanates from politicians who feel that it has become too effective in media relations, thereby overstepping its boundaries and competing with politicians for public attention. In other words, some German politicians resent the fact that opinion polls indicate that the Federal Constitutional Court is the most trusted governmental institution.

Notwithstanding these criticisms, recent developments indicate that the Federal Constitutional Court remains strongly committed to adopting a proactive approach to ▸

communicating and transmitting information about its decisions to the press and the public. The Court published a detailed, 100-page annual report (available in German and English) for the first time in 2021, noting that: "With this new format, the Court aims to reach out to the public and to domestic and foreign institutions in particular, seeking to provide information about the Court's role and its work, its structure, and the different types of proceedings. Going beyond the publication of mere statistical data, the Court has created the annual report to make it easier to access and comprehend the information provided and to put it in context." In addition to providing general information about the German Court's structure, its institutional role in the overall constitutional order, and its daily work, the report contains a detailed overview of several important judicial decisions that were rendered in the previous year, together with short summaries of other decisions in a section titled "Cases in Brief." The report concludes with an outlook on cases expected to be decided by the German Court in the following year.

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In 2021, on the 70th anniversary of the founding of the Federal Constitutional Court, the Court also launched a series of short films aimed at the general public. These films, which feature the Justices, along with dramatic music and advanced cinematic techniques, are sophisticated, highly professional examples of public relations work. The first film, "Behind the Justices' Decisions — An Inside Look at the Federal Constitutional Court," shows viewers how judgments and orders are prepared; introduces the Justices, the law clerks, and other staff members; explains the Court's role in the German constitutional scheme as well as its internal procedures; and provides a unique glimpse inside the Court's building in Karlsruhe. Another film presents a compilation of news broadcasts by German television channels on major decisions issued by the German Court over the years.

This film includes audio-visual footage of the Federal Constitutional Court's judgment concerning the prohibition of the communist party KPD in 1956 as well as a news report on the Court's 2021 order concerning climate change. At bottom, the publication of the annual report and the new "corporate videos" represent the most obvious attempt by the Court to find new ways to reach out to the public and to additional audiences, and it exemplifies former President Vosskule's emphatic assertion that "courts . . . must repeatedly confront themselves critically with the question of how the law can be made clearer and more understandable."

THE SUPREME COURT OF ISRAEL: THE CITIZENS' COURT

The Supreme Court of Israel has been regarded since its inception as a strong, independent, and prestigious institution within the Israeli polity. Israel's Supreme Court wears two hats: it is the highest appellate court, and it also sits as the High Court of Justice (HCJ or *Bagatz*). Like several other formerly British-ruled territories, Israel inherited the British common law and continues to function without a formal, integrated document known as "the constitution." Instead, the legislature (*Knesset*) has enacted several Basic Laws that the Supreme Court of Israel proclaimed — in a landmark decision in 1995 — to enable it to review the constitutionality of ordinary laws. Thus, in its capacity as the HCJ, the Israeli Court functions today as a court of first instance, the original jurisdiction for all constitutional review cases in the country: petitions are brought to it directly, rather than coming up on appeal from lower courts.

Moreover, access to the HCJ is extremely easy. The Israeli Supreme Court has virtually eliminated judicial access doctrines, such as standing and justiciability, and it has severely curtailed or softened other procedural barriers. Today, therefore, as Professor Yoav Dotan observes, "whenever a petition raises an issue of important constitutional merit,

or when there is a suspicion of serious governmental violations of the principle of the rule of law, any person is entitled to bring the petition into court, regardless of their personal interest in the outcome of the litigation." Professor Dotan further asserts that "[t]here is hardly a political controversy, an issue of public importance, or a contemporary moral dilemma that does not find its way, sooner rather than later, as a subject of a petition to this judicial forum." Robert Bork has been more critical in his assessment: "Pride of place in the international judicial deformation of democratic government goes not to the United States, nor to Canada, but to the State of Israel. The Israeli Supreme Court is making itself the dominant institution in the nation, an authority no other court in the world has achieved."

The growing role of the Israeli Supreme Court and the ensuing criticism from politicians and academics have been accompanied by an increase in coverage of legal affairs by the press. These developments have pushed the Court to acknowledge over the years that it has something to gain from a more open communications approach. To be sure, judicial distance from the media and an ethos of letting the decisions "speak for themselves" still dominate the attitude of the Justices. Indeed, the Code of Judicial Ethics, which several Justices helped to draft, includes ethical canons that underscore the fact that judges should avoid all direct interactions with the media. The Code states, for example, that "a judge speaks only through written judgments and decisions. As a rule, a judge should not grant interviews or give any sort of information to the media." The Code further provides that "a judge should refrain from appearing or giving interviews to the media. An appearance or interview of a judge in the media — including in the press, radio, television, internet, at a press conference, or in any other way — must get a prior approval of the President of the Supreme Court." Perhaps most notably, the Code of Judicial Ethics requires that "a judge should refrain from publicly expressing an opinion on a matter that is essentially non-legal and is publicly controversial." Likewise, cameras and audio recordings — except on very rare occasions — are banned from all Israeli courtrooms. Aside from photographing the judges entering the courtroom, or broadcasting ceremonial occasions such as when a judge reads his or her last decision before retiring, there is a strict prohibition on any type of broadcast from any courtroom.

But it seems that the Israeli Supreme Court, as an institution, is refusing to stay passive in light of attacks against it and is beginning to test new ways of communicating its work to the media and the public. In 2014, for example, the Court decided for the first time to allow the live broadcasting of oral arguments in a constitutional case. This was part of an experiment to test the viability of televising cases deemed to be of special public interest. There was some speculation at that time that the only reason the Israeli Court permitted this broadcast was to forestall the enactment of proposed legislation that would have allowed unrestricted radio and television broadcasts of hearings at the HCJ. After that bill failed to gain momentum, and until recently, it seemed that the 2014 broadcast was indeed a one-off. However, at the beginning of 2020, Esther Hayut, then-President of the Supreme Court of Israel, announced her support for a more open communications approach and set out a tentative plan for streaming proceedings from the HCJ. This announcement came at a time when strict restrictions and lockdowns went into effect due to a widespread surge in COVID-19 infections. President Hayut emphasized the significance of allowing the public a chance to tune in to live broadcasts from the HCJ, given the limits that were imposed on large gatherings. While the pandemic that restricted the access of journalists and citizens to courtrooms was a notable catalyst, it should be noted that plans to allow television broadcasts from the Court had long been contemplated.

The Israeli Supreme Court has since authorized the broadcasts of hearings in several constitutional cases. Perhaps most prominent was the challenge that the HCJ heard to then-Prime Minister Benjamin Netanyahu's leading a new government while facing criminal indictments for potential bribery and fraud. Interestingly, President Hayut offered at the beginning of each hearing day an introduction to the issues in ordinary language. This had never been done before, and it surely was intended to help the national audience better understand the case. The ratings were exceptional. The overall viewing across the range of broadcasting platforms during the two days the hearing took place was estimated at about one and a half million views. Nitzan Chen, the Director of the Government Press Office who orchestrated the recent broadcastings from the HCJ, has noted that "it was an unforgettable, fascinating, and historical learning experience." Chen believes that "the ratings show that we may have spotted a real need in the Israeli society to understand the legal debate not through intermediaries but directly. Until today, only journalists would come to the hearing. There is something in this new development that can be taught in journalism and media schools. The quality of journalistic reporting has definitely improved thanks to the broadcasts." ▸

Furthermore, the Israeli Supreme Court is trying to facilitate timely and accurate news reporting through short summaries of important decisions, which are distributed to reporters at the same time that the decisions are released to the public. This facilitates the work of journalists and helps them grasp more quickly the finer points of the decisions. It is noteworthy that each Justice is allowed to write his or her own outline of the opinion to be included in the summary. While this means that summaries still make use of complex legal jargon, it maintains the autonomy of the Justices and their distinctive views on the matters at issue.

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A few years ago, the Israeli Court took the unusual step of releasing a Q&A document shortly after the announcement of a major constitutional ruling on the right to citizenship for foreigners who converted to Judaism in non-Orthodox communities within Israel. The document was written in plain language, with the deliberate purpose to better explain the reasons for the long-awaited and contested decision to reporters and the public. In a similar vein, at the end of each year the Israeli Supreme Court compiles and publishes reviews of its most significant decisions divided into the various areas of law. Unlike the case summaries mentioned above, these annual reviews are written in reader-friendly language with "ready-to-use" information that is routinely reprinted by the press. This practice encourages the media to report on the decisions in more mundane cases and thereby draw public attention to the Court's broader body of work and its impact on citizens' everyday lives.

In recent years, some presidents of the Supreme Court of Israel have reportedly consulted public relations experts. Justice Dorit Beinisch, who served as President of the Court from 2006 to 2012, was reported to have secretly consulted with a private public relations firm that volunteered to plan a campaign against reforms that were proposed by the Minister of Justice that would have constrained the Court's jurisdiction. In 2018, then-President Hayut also reportedly hired a public relations advisor whose main task was to build a digital media strategy and improve the Court's public image. One reporter recently noted that, "President Hayut's decision to hire a professional communications consultant was largely at odds with the Supreme Court's ethos — an ethos in which the Justices, distanced from the people, 'speak' to the public only through the written decisions. Hayut has apparently come to the conclusion that the old-fashioned ethos is no longer relevant, and that it can no longer exist in a world of social networks, frenetic public discourse, and weekly attacks on the Supreme Court's Justices and their rulings by highly regarded politicians." The reporter went on to say that "the President realized that times had changed, that the Justices could no longer afford the luxury of sitting in the ivory tower and treating the media as a nuisance — a luxury that led the Supreme Court to become the punching bag of right-wing politicians looking to gain sympathy in their electoral base." Taken together, these recent developments seem to reflect the Israeli Supreme Court's understanding that it must engage in "the media wars" or suffer the consequence of a diminished public image.

CONCLUSION

The U.S. Supreme Court keeps faith with a notion that judges must speak only through their written opinions — and that those opinions must speak entirely for themselves. This self-imposed restraint generates an air of mystery around the Court, reinforcing the idea that the judiciary, unlike the elected branches, stands apart from the realities of everyday life. More importantly, given the prolixity, complexity, and nuance of its opinions, the Court has sometimes generated a similar air of mystery around what it understands the Constitution to mean. Since few people read the Court's opinions, and fewer still can understand them without help, most people rely on the press to understand the Court's pronouncements. But reporters who cover the Court are invariably left to their own devices as they attempt to decipher the Court's opinions and write stories about them under strict time constraints. The Court's seeming indifference hinders the people's understanding of their Constitution and distances us from the ideal of a republican government.

Despite this, the U.S. Supreme Court has consistently resisted innovations — adopted, as we have shown, by other apex courts — that could make its work more accessible and intelligible. Its uncompromising stance not only limits the public's ability to understand the Court's constitutional interpretations but is also not entirely consistent with the Court's own historical conduct. Since the earliest days of the Republic, the Justices have from time to time ignored the convention that the Court speaks only through its opinions, thereby suggesting an awareness that the Court's aloofness is self-defeating. These Justices have understood the importance, in a democratic society, both of the public's understanding of the Court's work and the press's invaluable role in informing and educating the public. In other words, the legitimacy of the Court depends in part on the way in which its decisions are reported and how they are understood beyond the realm of professional elites. And in that regard, there is something to be learned from the Canadian, German, and Israeli experiences.

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[1] This excerpt is adapted, with light editing, from Barry Sullivan & Ramon Feldbrin, *The Supreme Court and the People: Communicating Decisions to the Public*, 24 U. Pa. J. Const. L. 1 (2022). In particular, it should be noted that a section concerning the specific experience of the Supreme Court of the United States has been omitted. See original article at https://scholarship.law.upenn.edu/jcl/vol24/iss1/2/ for the full text and all citations.