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Supreme Court Spectator Line Acts as a Toll Booth

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Doug Mills/The New York Times

People waited outside the Supreme Court last month before hearings on same-sex marriage. In some cases, "line standers" were paid \$50 an hour to hold places for others.

WASHINGTON — [Dale Carpenter](#) wanted to see last month's pair of [same-sex marriage](#) arguments at the [Supreme Court](#). He bought a plane ticket from Minneapolis, where he teaches law, and he turned up at the court a little after 3 o'clock on the morning of the first argument.

Professor Carpenter's first surprise on that cold night was that most of the people in front of him in line were not waiting to get in. They were "line standers" who had been paid to hold places for others.

"Many of them seemed to be homeless or very poor," Professor Carpenter said. "It seemed very shady to me."

The going rate, he learned, was about \$50 an hour, some of which went to a company that had made the arrangements. Such place holding is common at Congressional hearings and is [on the rise at the Supreme Court](#), where seats for last month's arguments [went for as much as \\$6,000](#).

[Michael J. Sandel](#), a political philosopher at Harvard, said the phenomenon was disturbing.

“Allowing line-standing companies and scalpers to sell seats in the Supreme Court is yet another instance of letting money dominate democracy,” he said. “It’s at odds with equal access and undermines the dignity of the court.”

There are two lines for Supreme Court arguments, one for the public and one for members of the court’s bar. Professor Carpenter was a member of the bar, and so he chose the shorter line.

Membership in the Supreme Court bar sounds like a high distinction, but it is not. All it takes is a check for \$200, three years of law practice and the endorsements of two current members of the bar.

More than 200,000 lawyers have satisfied those requirements. Vanishingly few of them will ever argue before the justices.

In effect, Professor Carpenter had joined a fan club little different from the ones that let you get good seats at a rock concert. At the Supreme Court, too, the best seats are set aside for members of its bar.

“I paid the \$200 just to get into the line,” Professor Carpenter said.

The scene outside the court troubled [Suzanne B. Goldberg](#), a law professor at Columbia and member of the Supreme Court bar.

“I had never heard of paid line standers before, and I had been to all of the major gay rights arguments in the past two decades,” she said, adding that she had reluctantly used a line-standing service to see the second of the two same-sex marriage arguments last month.

“Particularly for the public line,” she said, “allowing line standers privileges people who can pay or law firms and businesses that can. I wish the court would find better ways to handle the situation.”

Professor Carpenter made it into the courtroom for the first same-sex marriage argument, on March 26, but it was close. He got to court earlier for the second one the next day, arriving at 2:15 a.m. That time, though, he encountered a new phenomenon: Washington’s toniest lawyers were cutting the line.

They would arrive in groups of two or three and take the place of a single line stander, Professor Carpenter said. “We had no authority to appeal to,” he said. “It was a state of nature.”

For that second argument, Professor Carpenter made it only as far as a lounge reserved for lawyers, though it did have an audio feed. (There is no similar overflow room for the public.)

There are about 400 seats in the courtroom, but many of them are set aside for guests of the justices and for the news media. For the first argument, there were 105 seats available for members of the bar and about 70 for the public, said Kathleen Arberg, the court’s public

information officer. On the next day, there were 78 seats for members of the bar and about 70 for the public. Another 30 seats each day were set aside for people who rotated through for a three- to five-minute glimpse of an argument.

The demand for seats, in other words, far exceeded the supply, and the court basically let the marketplace allocate this scarce and valuable public commodity. What else might it have done?

One obvious partial solution would have been to allow live broadcasts of the arguments. That would have dampened but not eliminated the demand for seats. People still want to go to televised baseball games.

The second thing the court could have done is police the lines. "Just having a uniformed person walk around would help," Professor Carpenter said. "I don't think it would take a lot. Even just minimal monitoring would have an effect."

Line-cutting aside, many economists say the current system works just fine and allocates the available seats efficiently. In his book "What Money Can't Buy: The Moral Limits of Markets," Professor Sandel wrote that line-standing arrangements might well be acceptable on libertarian and utilitarian grounds.

But he added that the arrangements also corrupt, in the broader sense of the word. "To corrupt a good or social practice is to degrade it, to treat it according to a lower mode of valuation than is appropriate to it," he wrote.

Put another way: A Supreme Court argument over the meaning of equality is a grave and weighty moment in the history of the nation. It is not a Van Halen concert.

There are, of course, many steps the court could take to manage the lines. Lotteries, wristbands and nontransferable tickets linked to government-issued identification come to mind.

However it is accomplished, Professor Carpenter said, only people who actually stand in line should be allowed to sit in the courtroom.

I asked him if he would ever pay for a seat if the rules do not change. "Depends on the price," he said.