

# In Rare Departure From Norm,

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The sanctum has sprung a leak.

Someone within the Supreme Court, which guards its secrecy with a zeal that would honor the most security-minded spy agency, has leaked advance word of two constitutional law decisions.

Twice this week ABC News reporter Tim O'Brien has broadcast results of the justices' deliberations—including details of their closed-door debates—before the opinions in the cases had been formally issued. That kind of anticipatory journalism, although standard for other government agencies, rarely happens at the court.

On Monday night, O'Brien reported that the court, with Justice Byron White writing the majority opinion, was about to rule that journalists might be questioned in libel actions about their thoughts while preparing news stories. Yesterday the court, in an opinion written by White, did just that.

The next night, O'Brien reported that Chief Justice Warren has written an opinion for the court holding that prison inmates are not entitled to full due process protection in parole hearings. The court has not yet announced its decision in the prisoners' case.

The court, true to form, has had

nothing to say about the O'Brien reports, but if the past is a guide, the justices can be expected to respond by cracking down on security measures. Past leaks from the court—there was one in 1973 and another in 1977—have prompted questioning of suspected employes and stern warnings about the need to keep all court business secret.

O'Brien, true to reporter's form, has had nothing to say about how he got the information or whether he will have more.

However, it seems safe to say that

the leaks had to originate with somebody employed in the court's building on Capital Hill, because the justices see to it that all details of their work are kept within that structure. The court even has its own print shop in the basement so that decisions will never leave the premises until they are formally issued.

When the nine justices gather to debate a case, they meet in a locked room that has been checked for hidden listening devices. No one—not law clerks, clerical staff, or custodians—is allowed to enter the room during a decision conference.

Once the nine have agreed how a

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case will be decided, however, their law clerks—who sometimes draft opinions for the justices—and some other employes necessarily find out how a case will be decided before it is issued. All are instructed never to discuss pending cases with reporters or anyone else outside the court.

Reporters occasionally try to pierce this veil of secrecy, partly for the sheer challenge it offers, and partly because there are indications that there is a rich vein of story material behind the closed doors.

When former chief justice Harlan Fiske Stone died in 1946, his widow turned over the justice's complete files to a biographer. The resulting bi-

ography, the most extensive look to date into the court's operations, revealed an intriguing catalogue of discussion and arguments among the justices, including one to-do in which some liberal members of the court refused to sign a collegial farewell letter to a retiring conservative.

The ABC report on the Herbert case said that the justices got into an angry quarrel over the libel law case during their decision conference, shouting so loudly that marshals rushed to the door to "make sure everything was all right," as O'Brien put it.

O'Brien reported that Justice John Paul Stevens disagreed with White

during the debate over the decision. Yesterday Stevens joined in White's opinion for the court, indicating either that O'Brien was wrong or that Stevens prevailed upon White to change something before the opinion was issued.