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A camera in every appellate court

Erwin Chemerinsky is dean and distinguished professor of law, Raymond Pryke Professor of First Amendment Law, University of California, Irvine School of Law.



On Dec. 2, the 9th U.S. Circuit Court of Appeals announced that it would begin live video streaming of its en banc proceedings. There are about 20 such instances each year when a group of 11 judges hear a case that had been decided by a three-judge panel. The live video streaming in these cases is an excellent

development, but it is far too limited: there should be live video streaming of every appellate argument, including in the U.S. Supreme Court.

Audio tapes of appellate arguments, in the federal Courts of Appeals and the Supreme Court, long have been available. When there is a high profile case, the Supreme Court makes the audio tape available as soon as the argument is over. C-Span usually broadcasts it with still photographs of the justice asking the question and the lawyer who is answering it. Is there really any difference between watching the argument live and listening to it an hour later and seeing the real event rather than still photographs?

Court hearings are government events and there should be a strong presumption that people should be able to watch all government proceedings. Arguments in the Supreme Court always have been open to the public, but relatively few can attend in person. There are only 250 seats and people literally camp out all night, or for even longer, to be able to attend arguments in high profile cases. Appellate courtrooms generally have much more limited seating, though obviously fewer people seek to attend.

Broadcasting appellate arguments would allow the entire nation to watch a crucial branch of government at work. It could enhance public understanding of the law and also help society understand the judicial process. The reality is that cases are heard in the Supreme Court because there is no clear right or wrong answer; every case presents a choice and rarely, if ever, does the court hear a case where there are not reasonable arguments on each side. Allowing people to listen and watch oral arguments would make this clear and apparent.

Broadcasting arguments would allow people to better understand the courts. They would see that cases are heard and decided by human beings, each with their own personalities. I believe that people of all political persuasions would be impressed and see that the Supreme Court and federal Courts of Appeals are comprised of very intelligent individuals who work very hard to decide cases based on their best understanding of the law.

California Courts of Appeal

Judges get raises, but their staff go without
State judicial officials recently announced that judges will receive their first pay raise in five years. Now employees at the state appellate courts are wondering: what about us?

Litigation

Huge win for California counties in lead paint lawsuit

Companies that once manufactured lead paint must pay \$1.1 billion toward neutralizing its hazards in 10 California counties and cities, a Santa Clara County judge tentatively ruled Monday.

U.S. Court of Appeals for the 9th Circuit

A camera in every appellate court

The 9th Circuit recently announced that it would begin live video streaming of its en banc proceedings, but this is far too limited. By **Erwin Chemerinsky**

Judges and Judiciary

Interpreters' union strikes agreement with NorCal courts

Labor negotiations have been ongoing for months.

Mergers & Acquisitions

Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

Law Practice

President-elect of LA's consumer bar jumps to Kabateck Brown Kellner

With the hire of litigator Joseph M. Barrett for its Los Angeles office, the firm now boasts two leaders in the state's plaintiffs' bar.

Litigation

Bratz doll maker settles disputes with its insurers

An undisclosed settlement has been reached between Bratz doll-maker MGA Entertainment Inc. and its multiple insurance providers over their share of its \$137 million legal fees award.

Irell partner guides trust to multibillion dollar win

A judge has ruled that a massive petroleum company must pay between \$5 billion and \$14 billion in one of the largest bankruptcy fraudulent

Is there really any difference between watching the argument live and listening to it an hour later and seeing the real event rather than still photographs?

Unfortunately, the Supreme Court's rules prohibit live broadcasting of oral arguments and the 9th Circuit is one of only two federal Courts of Appeals that allow broadcasting of arguments and even then only in exceptional circumstances and now en banc proceedings. I always have been struck that many of the arguments against allowing cameras in the courtroom are really arguments against allowing the public and reporters to be there at all, something that is thankfully unthinkable as well as unconstitutional.

What possible rationale is there for excluding cameras from federal Court of Appeals proceedings? One concern is that broadcasting arguments will change the behavior of lawyers and justices. Perhaps that concern has some basis in trial courts where there is worry about the effect of cameras on witnesses. Even there, however, the experience of many jurisdictions with cameras in the courtrooms and many studies refute any basis for concern.

But especially in the appellate courts, there seems little reason to worry. The lawyers, who are focused on answering intense questioning from the justices and judges, are unlikely to alter their arguments to play to the cameras. Besides, anyone who has witnessed an appellate argument knows that the justices and judges are firmly in control of the proceedings. Perhaps more importantly, the judges and the lawyers know that audio tapes of the arguments will be available, sometimes immediately after they conclude. It is hard to believe that live as opposed to tape delayed broadcasts will affect the behavior of judges and lawyers.

I have heard the concern raised that if there are video tapes that the media excerpt them out of context to the embarrassment of the participants. The fear is that excerpts will show up on "The Daily Show" or David Letterman. But this is not a reason to keep cameras out of the courtrooms. Government officials, including judges, should not be able to protect themselves from possible embarrassment by limiting coverage of their proceedings. Statements by the president or members of Congress might be excerpted to their chagrin. But that is the price of taking an important public office in a democracy.

The national trend was towards cameras in the courtroom, both trial and appellate, until the O.J. Simpson murder trial in 1995. Reasonable people can differ as to whether the cameras had an undesirable effect; I do not believe they did. But there was a widespread perception that the cameras harmed the trial. The effect was to end the trend towards cameras, especially in federal courts.

It is now almost two decades since the O.J. case ended. It is time to get past it and to learn from the experience of many states that routinely broadcast appellate proceedings with no adverse effects. The 9th Circuit's decision to allow live video streaming of en banc arguments is a long overdue first step. But it and other appellate courts should quickly adopt a policy of doing this for all oral arguments.

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Law Practice

Managing partners more confident about legal industry

A quarterly survey of law firm managing partners showed growing optimism for the legal industry in 2014.

Litigation

Lawyer, accused of 'fronting' for disgraced immigration attorney, settles with SF

The former president of a San Francisco immigration law firm has agreed to pay more than \$400,000 to resolve charges accusing him of partnering with an ex-lawyer who resigned from the State Bar amid disciplinary charges.

Mergers & Acquisitions

Latham, Skadden brought on for \$6.6 billion semiconductor deal

Latham & Watkins LLP is providing counsel to longtime client Avago Technologies Ltd. in the chip manufacturer's planned \$6.6 billion acquisition of LSI Corp., a semiconductor and software developer headquartered in San Jose.

Government

San Francisco Law Library finds new home

After more than 18 years of occupying temporary quarters, the San Francisco Law Library has found a permanent home down the street from its old one.

Intellectual Property

Microsoft fights to ban Google phones

In a win for Microsoft Corp., the U.S. Court of Appeals for the Federal Circuit upheld a U.S. International Trade Commission decision that certain older-generation Google Inc. smartphones infringed its patent.

Tread lightly reining in patent litigation abuse

The Innovation Act, which aims to curb abusive patent litigation behavior by entities whose sole business is to license patents, recently passed the House. By **Stephen S. Korniczky and Graham M. Buccigross**

California Courts of Appeal

Wage and hour class actions are alive and well in California

Since October, the 2nd District Court of Appeal has reversed three trial court orders that had denied class certification in the wage and hour context. By **Noah B. Steinsapir**

Labor/Employment

ERISA defense bar: The sky is not falling

A recent case is no ordinary denial-of-benefits