



April 2016

U.S. SUPREME COURT

Policies and Perspectives on Video and Audio Coverage of Appellate Court Proceedings

GAO Highlights

Highlights of [GAO-16-437](#), a report to congressional requesters

Why GAO Did This Study

The U.S. Supreme Court—the highest appellate court in the country—hears high-interest cases potentially affecting millions. The Court generally hears oral arguments for these cases, which are open to the public. Seating in the Court is limited and media organizations, as well as members of Congress, have requested video coverage of oral arguments. GAO was asked to review video and audio coverage of proceedings in the U.S. Supreme Court and other appellate courts.

This report addresses (1) the U.S. Supreme Court's policy regarding video and audio coverage of oral arguments and the policies of other selected appellate courts and (2) perspectives of selected stakeholders on the benefits of and concerns with allowing such coverage.

GAO analyzed policies on video and audio coverage of oral arguments in the U.S. Supreme Court and other selected appellate courts—13 U.S. courts of appeals and the highest appellate courts in the 50 states and the District of Columbia and three foreign countries—chosen because of comparability to the U.S. Supreme Court. GAO obtained information from administrative officials in 8 courts, selected based on video and audio policies, and perspectives on the benefits of and concerns with coverage from (1) 16 judges in 6 of these courts and 9 attorneys in 5 of these courts and (2) the PIO of the U.S. Supreme Court and 4 attorneys who have argued before the Court. Results are not generalizable but provided insights on video and audio coverage of oral arguments. GAO also reviewed studies on this issue.

View [GAO-16-437](#). For more information, contact Diana C. Maurer at (202) 512-9627 or maurerd@gao.gov.

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What GAO Found

The U.S. Supreme Court (the Court) posts audio recordings of oral arguments on its website at the end of each argument week, but does not provide video coverage of these arguments. In addition, starting in 2000, the Court began granting requests for access to audio recordings of oral arguments on the same day arguments are heard in selected cases. As of October 4, 2015, the Court had received media requests for access to same-day audio recordings in 58 cases and had granted them in 26 cases.

Other selected appellate courts have varying policies on video and audio coverage of oral arguments. For example,

- Two of the 13 U.S. courts of appeals allow media video coverage of oral arguments. Also, 9 of these 13 courts generally post audio recordings of arguments on their websites the same day arguments are heard.
- The highest appellate courts in 49 states have written policies that allow media video and audio coverage of oral arguments and almost all of these courts have video or audio of oral arguments available online.
- The highest appellate courts in Australia, Canada, and the United Kingdom have policies that provide video coverage of oral arguments by the court itself.

Stakeholders in selected courts stated that the benefits of video or audio coverage of oral arguments in their courts include educating the public on the judicial system, among others, but also expressed concerns with regard to how the media might use such coverage. For example,

- Fourteen of the 16 judges and seven of the nine attorneys GAO interviewed in the selected appellate courts cited public education on the judiciary as a benefit or potential benefit of video or audio coverage of arguments. One judge noted that video coverage is useful for providing a window into how the courts think about the issues in a case.
- Five judges and eight attorneys stated that coverage might potentially result in portions of the arguments being distorted by the media. However, four judges and four attorneys said that the court providing coverage itself might help mitigate these concerns. For example, one attorney stated that this allows the court to control and release the coverage as it sees fit.

With regard to the U.S. Supreme Court allowing video coverage of oral arguments, the four attorneys GAO interviewed who have argued before the Court also cited similar educational benefits and concerns regarding the media potentially distorting coverage. Further, three of the four attorneys and the Court's Public Information Officer (PIO) raised concerns that coverage may potentially affect court participants' behavior. The PIO stated that individual Justices have commented that televising proceedings could adversely affect the dynamics of the oral arguments, among other concerns, and have expressed caution about introducing changes that could create misconceptions about the Court.

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Abbreviations

CPAC	Canadian Public Affairs Channel
PIO	Public Information Officer

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April 28, 2016

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate

The Honorable Richard J. Durbin
Ranking Member
Subcommittee on the Constitution
Committee on the Judiciary
United States Senate

The Honorable Mike Quigley
House of Representatives

The U.S. Supreme Court—the highest appellate court in the country—hears high-interest cases potentially affecting millions, such as cases involving affirmative action, abortion, campaign finance, national healthcare, voting rights, and same-sex marriage.¹ During the cases it reviews, the Court generally hears oral arguments, or discussions between the attorneys and the Justices that focus on the legal issues in the case. Oral arguments are open to the public and the U.S. Supreme Court courtroom has approximately 400 seats in the public seating section.² In cases of high public interest, the media has reported that long lines form to get a seat in the courtroom for oral arguments. Media organizations, as well as members of Congress, have requested greater access to video and audio coverage of oral arguments for public

¹Generally, appellate courts are courts of law that have the authority to review lower courts' decisions and include, for example, federal courts of appeals and state appellate courts.

²According to the U.S. Supreme Court's Public Information Officer, the courtroom contains approximately 400 seats, which includes about 240 seats in the public seating section and seats for U.S. Supreme Court bar members, guests of the Justices, and members of the media. In addition to those 400 seats, there is a section of about 30 seats that rotate every 3 to 5 minutes for members of the public who wish to observe the proceedings only briefly. The Public Information Officer stated that approximately 21,000 people observe oral arguments each year.

dissemination.³ Figure 1 shows a line outside of the U.S. Supreme Court before oral arguments.

Figure 1: Line Outside the U.S. Supreme Court before Oral Arguments



Source: GAO. | GAO-16-437

You asked us to review access to video and audio coverage of proceedings in the U.S. Supreme Court and other appellate courts. This report addresses (1) the U.S. Supreme Court's policy regarding access to video and audio of oral arguments and the policies of other selected appellate courts and (2) perspectives of selected stakeholders on the benefits of and concerns with allowing video and audio coverage of oral arguments in appellate courts, including the U.S. Supreme Court.

³For the purposes of this review, video and audio coverage refers to coverage for public dissemination, which includes, for example, coverage of court proceedings by the media for televising or broadcasting and by the courts for posting online or broadcasting. Such coverage does not include court recordings for solely judicial administrative purposes, such as making an official record of proceedings or presenting evidence.

To address these objectives, we compiled and analyzed the policies on access to video and audio of oral arguments of the U.S. Supreme Court and other selected appellate courts, specifically the U.S. courts of appeals for the 13 federal circuits, courts of last resort—the highest courts in a given jurisdiction—in the 50 states and the District of Columbia, and courts of last resort in Australia, Canada, and the United Kingdom (U.K.).⁴ We selected these appellate courts because their decisions may be directly appealed to the U.S. Supreme Court under certain circumstances and/or because they are the highest court in their respective jurisdictions. We selected foreign courts of last resort based on their countries having a similar type of legal system as the United States, large populations, and English as an official language and the language predominantly spoken.⁵ We obtained documentation of the video and audio policies by conducting searches on court websites and other sources and requesting information from administrative officials in these courts. We also analyzed available data on requests for media video and audio coverage, among other things, from these courts.⁶ We have assessed the reliability of these data and determined them to be reliable for the purposes of this report. This assessment included comparing these data with other available sources and obtaining information from the courts on how these data are compiled and maintained.

In addition, we conducted interviews in-person and on the phone or had written correspondence with court administrative officials to obtain information on the implementation of video and audio policies in selected U.S. courts of appeals, state courts of last resort, and foreign courts of last resort—the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits; the supreme courts in California and Florida; and the High Court of Australia, Supreme Court of Canada, and U.K. Supreme Court. We

⁴The 13 U.S. courts of appeals are intermediate federal appellate courts that sit below the U.S. Supreme Court. We did not include the U.S. Court of Appeals for the Armed Forces, the U.S. Court of Appeals for Veterans Claims, and the U.S. Tax Court because they are specialized subject matter courts and not part of the judicial branch. The U.S. Court of Appeals for the Armed Forces was the first federal court of appeals to allow video coverage of oral arguments. Specifically, according to Department of Defense officials, the court allowed C-SPAN to broadcast video of its oral arguments for 5 cases from 1989 to 2000, and as of January 2016, has not allowed media video coverage of any additional oral arguments.

⁵If a country did not have an official language, we included it if English was the language predominantly spoken.

⁶The time periods for the data provided varied by court.

also conducted semi-structured interviews with (1) 16 judges in the selected U.S. courts of appeals and state courts of last resort, as well as the U.K. Supreme Court, and (2) nine attorneys who practice in the selected U.S. courts of appeals and state courts of last resort to discuss their experiences with video and/or audio coverage of oral arguments and perspectives on the benefits of and concerns with allowing such coverage in appellate courts.⁷ We selected these courts based on their video and audio policies, caseloads, and other factors, and interviewed selected judges and attorneys who have had experience with video or audio coverage based on recommendations from the courts.

Further, we obtained written responses from the Public Information Officer of the U.S. Supreme Court regarding the Court's policies and Justices' perspectives on video coverage of the Court's oral arguments. We also conducted semi-structured interviews with four attorneys who have argued before the U.S. Supreme Court to obtain their perspectives on such coverage in the Court. We selected these attorneys based on the number of cases argued from the Court's 2012 through 2014 terms and their availability.⁸ We also interviewed representatives from selected legal associations and media organizations—chosen based on our review of relevant literature and their work in this area, among other things—to obtain their perspectives on video and audio coverage of oral arguments in appellate courts, including the U.S. Supreme Court.

The information collected from these interviews cannot be generalized to all appellate courts, administrative officials, judges, attorneys, or legal and media organizations. However, the interviews provided us with valuable information about stakeholder experiences with and perspectives on a variety of policies regarding access to video and audio coverage of oral arguments in appellate courts, including the U.S. Supreme Court. Further details on our scope and methodology are contained in appendix I.

We conducted this performance audit from January 2015 to April 2016 in accordance with generally accepted government auditing standards.

⁷We interviewed 10 judges from U.S. courts of appeals, 4 justices from state courts of last resort, and 2 justices from the U.K. Supreme Court. The justices in the High Court of Australia and Supreme Court of Canada were not available to speak with us.

⁸The U.S. Supreme Court term begins the first Monday in October and continues until the first Monday in October the following year. For example, the 2014 term began on October 6, 2014, and ended on October 4, 2015.

Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Overview of Appellate Courts

Generally, an appellate court is a court of law that has the authority to review a lower court's decision. Proceedings in appellate courts are different from those in trial courts. For example, unlike trial courts, which determine the factual issues in a case, in most situations, appellate courts determine only whether the lower courts correctly applied the law. There are no juries or witnesses in appellate courts. Rather, parties file written briefs and often present oral arguments to a panel of judges focusing on the questions of law in a case.

Each appellate court has its own policies on video and audio coverage of oral arguments for public dissemination, and the development of such policies is determined by the relevant policy-making entity or each court. For instance, in March 1996, following a federal judiciary pilot program on cameras in the courtroom, the Judicial Conference—the policy-making body of the federal judiciary—authorized each circuit court of appeals to decide for itself whether to allow video and audio broadcasting of appellate proceedings.⁹

U.S. Supreme Court

The U.S. Supreme Court is the highest appellate court in the country and has the power of judicial review, which is the ability to declare legislative and executive acts unconstitutional. The Court is part of the federal court

⁹The pilot program and the results of the Federal Judicial Center's evaluation of the program are discussed in appendix II of this report. Rule 53 of the Federal Rules of Criminal Procedure prohibits the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom. According to the Administrative Office of the U.S. Courts, the Judicial Conference does not have a position on whether this rule applies to appellate criminal proceedings. The office stated that, recognizing that there are differing interpretations of the rule's applicability to appellate proceedings, the Judicial Conference explicitly authorized courts of appeals to decide whether to permit video or audio coverage of appellate arguments in March 1996.

system, which also includes U.S. courts of appeals and U.S. district courts, among others. The Court has original jurisdiction—the authority to hear a case for the first and only time—over certain cases, and appellate jurisdiction—the authority to review a lower court’s decision—on most other cases that involve a question of constitutional or federal law.¹⁰ Most of the cases the U.S. Supreme Court hears are appeals from lower courts.

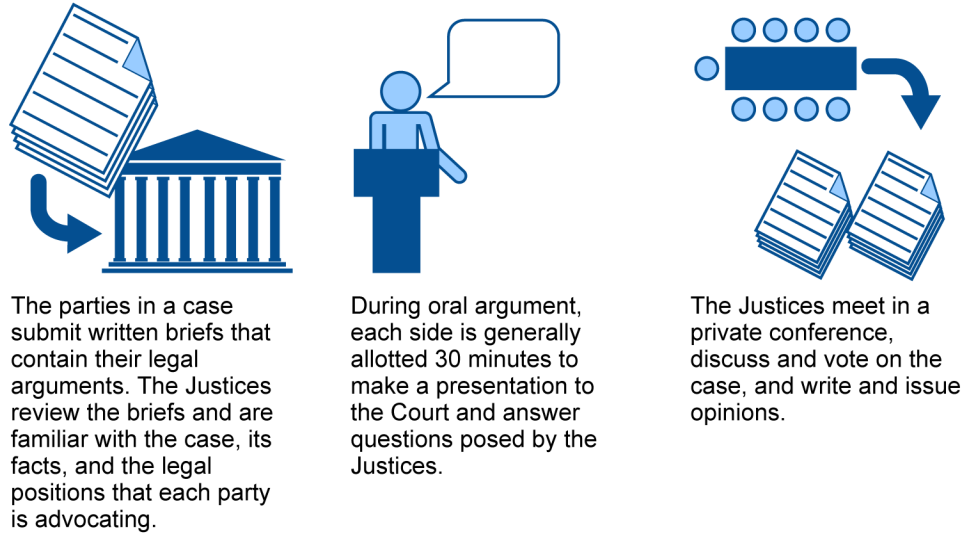
The U.S. Supreme Court has discretion over which appeals it hears and parties file petitions for writs of certiorari to ask the Court to hear cases. According to the Court’s website, the Court grants review and hears oral arguments in about 80 cases from the approximately 7,000 to 8,000 petitions it receives each Court term. The Court only grants a petition for a writ of certiorari for compelling reasons. U.S. Supreme Court rules state that such reasons may include, among other things, a U.S. court of appeals has entered a decision in conflict with the decision of another U.S. court of appeals on the same important matter; a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or U.S. court of appeals; or a state court or U.S. court of appeals has decided an important question of federal law in a way that conflicts with relevant decisions of the U.S. Supreme Court.¹¹ If a petition is granted, the case will be scheduled for oral argument. Oral arguments occur when the Court is in session on Mondays, Tuesdays, and Wednesdays, with up to two arguments scheduled per day, and generally last an hour for each case. The Court’s term begins the first Monday in October and continues until the first Monday in October the following year.¹² Figure 2 provides additional information about how cases progress in the U.S. Supreme Court.

¹⁰The U.S. Supreme Court’s jurisdiction, or authority to decide a case, is established by Article III, Section 2 of the Constitution as well as various statutes. In addition to discretionary appellate jurisdiction, the Court has original and exclusive jurisdiction over cases between two or more states. The Court has original but not exclusive jurisdiction of (1) cases to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties; (2) cases between the United States and a state; and (3) cases involving action by a state against the citizens of another state or against aliens. 28 U.S.C. § 1251.

¹¹See *Rules of the Supreme Court of the United States*, Rule 10 (July 2013).

¹²The Court’s term is divided between sittings, when the Justices hear cases and deliver opinions, and intervening recesses, when they consider the business before the Court and write opinions. Sittings and recesses alternate at approximately two-week intervals.

Figure 2: U.S. Supreme Court Process after Petition for Review Has Been Granted in a Case



Source: GAO analysis of information from U.S. Supreme Court documents and the Court's website. | GAO-16-437

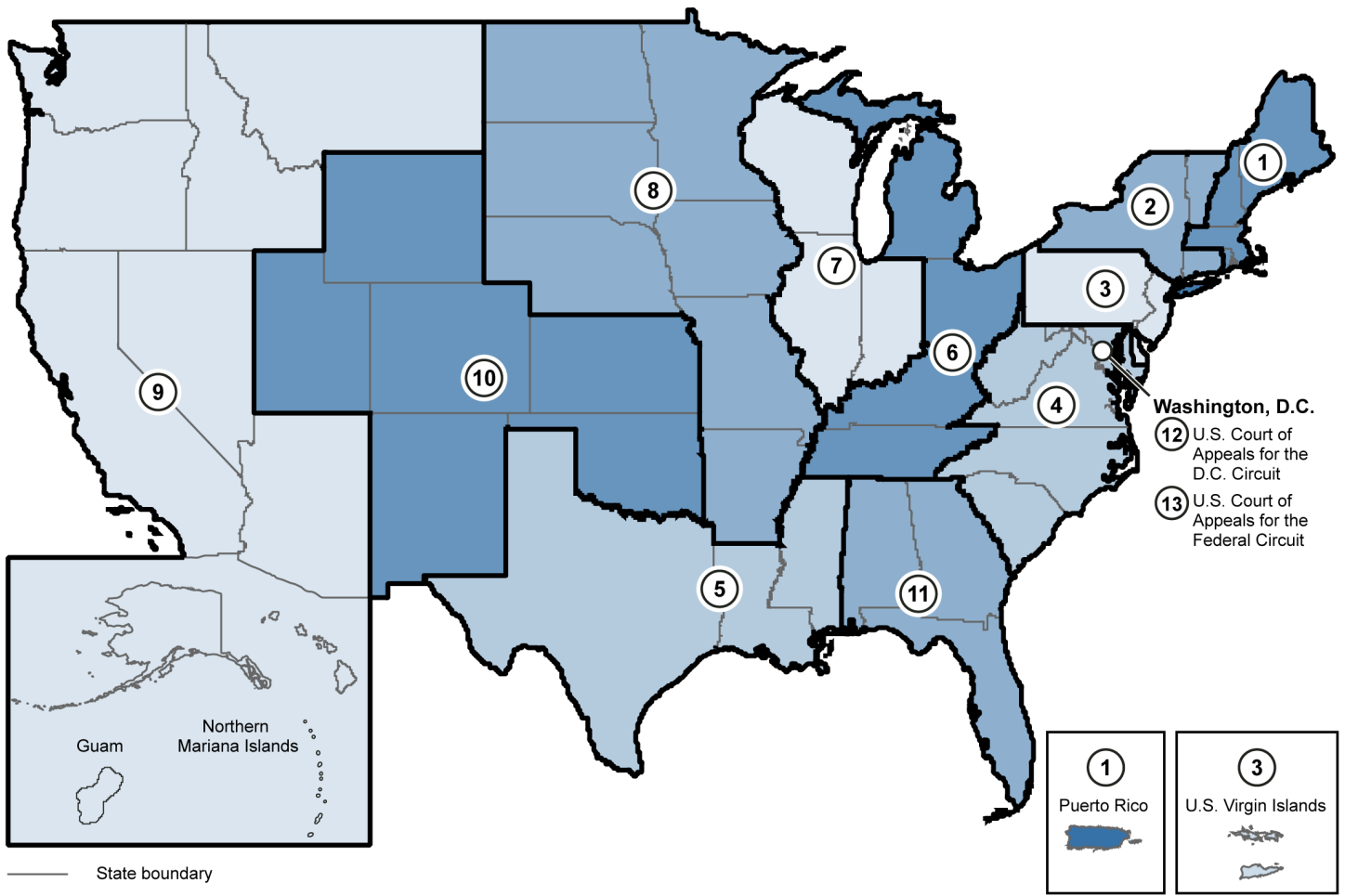
U.S. Courts of Appeals

The federal courts have jurisdiction in cases in which the United States is a party, cases involving the U.S. Constitution or federal laws, certain disputes between citizens of different states, or actions against foreign governments, among other matters.¹³ Sitting below the U.S. Supreme Court are 13 U.S. courts of appeals, which are lower appellate courts.¹⁴ These U.S. courts of appeals hear challenges to decisions by U.S. district courts located within their circuits, as well as appeals of certain federal administrative agencies' decisions. Figure 3 shows the geographical boundaries of the circuits.

¹³See 28 U.S.C. ch. 85.

¹⁴There are 94 federal judicial districts that are organized into 12 regional circuits. Each circuit has a U.S. court of appeals. In addition, the U.S. Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, including those involving international trade, government contracts, patents, and trademarks, among other areas. The court also takes appeals of certain administrative agencies' decisions, including the U.S. Merit Systems Protection Board and Boards of Contract Appeals, among other agencies. See 28 U.S.C. § 1295.

Figure 3: Geographical Boundaries of U.S. Courts of Appeals



Source: Administrative Office of the U.S. Courts; MapInfo (map). | GAO-16-437

Note: There are 12 regional U.S. courts of appeals and the U.S. Court of Appeals for the Federal Circuit, which has nationwide jurisdiction to hear appeals in specialized cases, including those involving international trade, government contracts, patents, and trademarks, among other areas.

Cases in the U.S. courts of appeals can be decided based on written briefs alone, but many cases are selected for oral argument. Appeals are generally decided by panels of three judges, but some cases can be

heard before more than three judges, or en banc.¹⁵ Oral arguments before U.S. courts of appeals usually last about 30 minutes per case. Most decisions of the U.S. courts of appeals are final, but parties may petition the U.S. Supreme Court to review the case.

State Courts of Last Resort

Each state and the District of Columbia generally have one court of last resort and states may also have intermediate appellate courts. State courts of last resort are generally the final arbiters of state laws and constitutions, although their decisions can be appealed under certain circumstances. State court systems vary from state to state. State courts generally have broad jurisdiction and can hear cases not under the exclusive jurisdiction of federal courts. However, they may not hear cases against the United States and those involving certain specific federal laws. Cases in state courts of last resort that interpret federal law or the U.S. Constitution may be appealed to the U.S. Supreme Court.

Foreign Courts of Last Resort

The courts of last resort in the selected countries included in our review—Australia, Canada, and the United Kingdom—are the final courts of appeals in their respective countries, and each court's decisions are generally binding to all lower courts in that country.¹⁶ Table 1 has additional information on the courts of last resort in the selected countries, as well as the U.S. Supreme Court.

¹⁵In federal appellate courts, en banc hearings may be ordered by a majority of the active circuit judges when necessary to secure or maintain uniformity of the court's decisions or when a case involves a question of exceptional importance. Practices vary; however, an en banc panel generally includes more than three judges and may include all of the active judges in the court and/or senior judges, depending on local rules.

¹⁶The U.K. Supreme Court is the final court of appeal in the United Kingdom for civil cases and for criminal cases from England, Wales, and Northern Ireland.

Table 1: Information about Courts of Last Resort in Selected Countries and the U.S. Supreme Court

	High Court of Australia	Supreme Court of Canada	U.K. Supreme Court	U.S. Supreme Court
Year established	1901	1875	2009 ^a	1789
Number of justices	7	9	12	9
Discretionary review over appellate cases ^b	Yes	Yes	Yes	Yes
Judicial review of the constitutionality of legislation	Yes	Yes	No ^c	Yes
Approximate number of oral arguments per year ^d	60 ^e	65-80	100	80
Typical length of oral argument	5 ½ hours	2 ½ to 3 hours	10 to 12 hours over 2 days	1 hour

Source: GAO analysis of court documents and websites and interviews with court officials. | GAO-16-437

^aPrior to October 2009, the highest court of appeal for the United Kingdom was in the House of Lords, one of the chambers in the U.K. Parliament, which makes laws and examines the work of government, among other roles and responsibilities.

^bThese courts have discretionary authority to decide which cases they will review from petitions to appeal lower court decisions.

^cThe U.K. Supreme Court does not make rulings on the constitutionality of legislation because the United Kingdom does not have a single written constitution.

^dThis is the approximate number of oral arguments heard per year according to court documents or court officials.

^eThis is the approximate number of oral arguments that are heard by the full court, excluding arguments for special leave applications, which are petitions for the high court to grant appellate review of lower court decisions.

The U.S. Supreme Court Provides Audio of Oral Arguments; Two U.S. Courts of Appeals and Almost All Other Selected Appellate Courts Have Policies that Allow Video Coverage

The U.S. Supreme Court Provides Audio Recordings of Oral Arguments and Releases Recordings on the Same Day of Arguments in Selected Cases

The U.S. Supreme Court does not provide or allow video or live-audio coverage of oral arguments, but provides taped audio coverage of arguments. Specifically, beginning in the October 2010 term, the Court has posted audio recordings of all oral arguments on its website at the end of each argument week. Prior to the 2010 term, the recordings from one term of Court were not available until the beginning of the next term. The Court also provides transcripts of oral arguments on its website the same day arguments are heard and its decisions—the Court’s most important work, according to the Court’s Public Information Officer (PIO)—within minutes of their release.

Further, starting with the presidential election cases in 2000, the Court began granting requests for access to audio recordings of oral arguments on the same day arguments are heard in selected cases.¹⁷ According to the PIO, media organizations submit written requests for such access to the Court’s Public Information Office, which forwards them to the Chief Justice for consideration. If a request is granted, the office issues a press release to inform the public in advance that the Court will provide expedited audio recordings for a given case. The Court’s Marshal, Public Information Office, and Office of Information Technology jointly make the arrangements for release of the recordings, which require advanced

¹⁷ *Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70, 148 L. Ed. 2d 366 (2000); *Bush v. Gore*, 531 U.S. 98, 148 L. Ed. 2d 388 (2000).

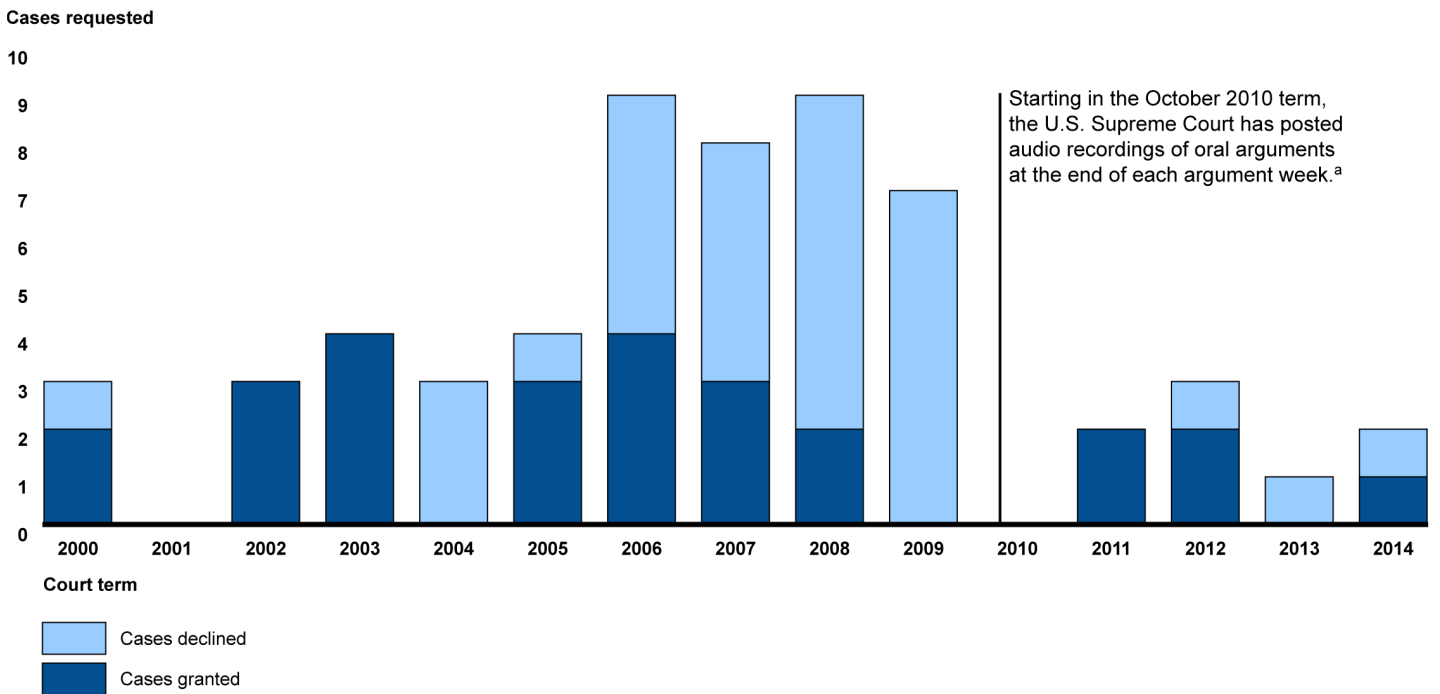
preparations for the significant increase in website traffic that may result.¹⁸

The PIO stated that the Court has made audio recordings of oral arguments available on the same day as the argument in rare cases, generally in response to extraordinarily high interest among the public and the media. From the 2000 through 2014 terms, the Court received media requests for access to same-day audio recordings of oral arguments in 58 cases.¹⁹ At its discretion, the Court granted these requests in 26 cases and declined them in 32 cases. Figure 4 shows U.S. Supreme Court decisions on media requests for access to same-day audio of oral arguments.

¹⁸The Marshal's roles are to call the Court to order, maintain decorum in the courtroom, tape the audio portions of argument, and time the oral presentations so that attorneys do not exceed their one-half hour limitations.

¹⁹Consolidated cases—in which two or more related cases were combined and heard in one oral argument session—were counted as one case. According to the Court's website, the Court hears oral arguments in about 80 cases each term.

Figure 4: U.S. Supreme Court Decisions on Media Requests for Access to Same-Day Audio of Oral Arguments



Source: GAO analysis of U.S. Supreme Court data on media requests for same-day audio of oral arguments. | GAO-16-437

Notes: Consolidated cases—in which two or more related cases were combined and heard in one oral argument session—were counted as one case.

^aThe U.S. Supreme Court term begins the first Monday in October and continues until the first Monday in October the following year. For example, the 2014 term began on October 6, 2014, and ended on October 4, 2015. Prior to the 2010 term, the recordings from one term of Court were not available until the beginning of the next term.

As figure 4 illustrates, since October 2010, when the Court began its current practice of posting audio recordings of oral arguments at the end of each argument week, the Court has received media requests for same-day access to recordings in fewer cases—8 cases from the 2010 through 2014 terms, compared to 37 cases from the 2005 through 2009 terms. According to the General Counsel of C-SPAN, which has requested access to video or same-day audio of oral arguments in almost all of the 58 cases in which same-day audio access was requested, the network has made requests more sparingly since the Court began posting recordings of oral arguments at the end of each argument week and has limited requests to very prominent high-profile cases. See appendix III for a list of cases in which media organizations requested access to same-

day audio of oral arguments and whether the Court granted or declined requests.

Two of the 13 U.S. Courts of Appeals Allow Video Coverage of Oral Arguments; 10 Post Audio of Oral Arguments on Their Websites

Two of the 13 U.S. courts of appeals—the U.S. Courts of Appeals for the Second and the Ninth Circuits—allow media video coverage of oral arguments.²⁰ In addition, 10 of the 13 U.S. courts of appeals regularly post audio recordings of oral arguments on their websites. Officials from 9 of these 10 courts stated that their court generally posts audio recordings on the same day arguments are heard. Table 2 summarizes the video and audio coverage and oral argument recording policies and practices in the U.S. courts of appeals for the 13 circuits.

Table 2: Summary of U.S. Courts’ of Appeals Media Video and Audio Coverage and Oral Argument Recording Policies and Practices

Circuit court of appeals	Allows media video and audio coverage of oral arguments	Year court instituted media coverage policy ^a	Audio recordings of oral arguments regularly available on court’s website	Year court began posting audio of oral arguments on its website ^b	Recordings of oral arguments generally posted same day arguments are heard ^b
First			•	2008	•
Second	•	1996			
Third			•	late 2008 or 2009	•
Fourth			•	2011	^c
Fifth			•	2008	•
Sixth			•	2013	•
Seventh			•	2002	•
Eighth			•	2000	•
Ninth	•	1996	•	2003	• ^d
Tenth			^e		
Eleventh					
D.C.			•	2013	•
Federal			•	2007	•

Source: GAO analysis of U.S. Court of Appeals video and audio policies and practices and information provided by court officials. | GAO-16-437

²⁰In March 2014, the U.S. Court of Appeals for the Third Circuit formed a committee of its judges to assess whether to allow video coverage of oral arguments, according to the court’s Deputy Circuit Executive. The committee is considering whether to allow video coverage by the media, as well as provide coverage using the court’s own equipment to stream or post video on the court’s website. The Deputy Circuit Executive stated that he expects the committee to present its recommendations to the court in spring 2016.

^aYear listed does not include video and audio coverage during the 1991–1993 federal judiciary electronic media coverage pilot program.

^bInformation was provided by officials in each U.S. court of appeals.

^cOfficials from the U.S. Court of Appeals for the Fourth Circuit stated that audio recordings of oral arguments are generally posted by the next business day, but in cases of public interest or upon request, recordings are posted on the same day arguments are heard by the court.

^dAccording to officials from the U.S. Court of Appeals for the Ninth Circuit, video and audio of oral arguments are generally posted the same day arguments are heard; however, the published deadline for posting is the following business day at 12 p.m. to account for any technical delays.

^eAccording to officials from the U.S. Court of Appeals for the Tenth Circuit, the court does not post recordings on a regular basis, but has a practice of posting recordings, with the panel's permission, from all high-profile cases to its public website as soon as possible. The court has posted such audio recordings of oral arguments on its website since 2012.

The policies and practices of these U.S. courts of appeals differ because, as discussed earlier in the report, each court has discretion to determine whether to allow video and audio coverage of appellate proceedings and how to do so. Among the courts we visited—the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits—the policies and practices ranged from allowing media video and audio coverage of oral arguments conducted in open court upon request and streaming live video of arguments using the court's own equipment (in the Ninth Circuit) to providing audio recordings of oral arguments on the court's website (in the D.C. Circuit). The information below illustrates the range of policies and practices in these courts.

- **U.S. Court of Appeals for the Second Circuit.** The court's guidelines allow media video and audio coverage of oral arguments conducted in open court, except for criminal matters.²¹ The guidelines state that the panel of judges assigned to hear oral argument has sole discretion to prohibit coverage of any proceeding, and will normally exercise this authority upon the request of any member of the panel. In practice, according to the court's Clerk, the media is required to submit a request for video or audio coverage and the panel of judges must affirmatively grant permission to allow coverage. From its 2010 through 2014 terms, the court received requests for video coverage of

²¹*Cameras in the Courtroom—Second Circuit Guidelines* (March 1996). The guidelines state that "criminal matters" include not only direct appeals of criminal convictions but also any appeal, motion, or petition challenging a ruling made in connection with a criminal case (such as bail motions or appeals from the dismissal of an indictment) and any appeal from a ruling concerning a post-conviction remedy (such as a habeas corpus petition). In addition, cameras are not permitted in criminal or civil *pro se* (representing oneself) matters.

oral arguments in 15 cases.²² Of these cases, 6 were granted and 9 were denied based on judicial discretion. The court does not post oral argument recordings on its website but provides CDs of audio recordings upon request for a \$30 fee. According to the Clerk, the court's video and audio policies require minimal resources to implement and there have been no implementation challenges.

- **U.S. Court of Appeals for the Ninth Circuit.** The court's guidelines allow media video and audio coverage of oral arguments conducted in open court.²³ According to court officials, such coverage is allowed for both criminal and civil cases. The guidelines require media organizations to submit a request for coverage and state that the panel of judges assigned to hear oral argument has sole discretion to grant or prohibit video or audio coverage of any proceeding. Court officials stated that the court requires a majority of the judges on the panel to grant or deny coverage. From January 1, 2010, through August 30, 2015, the court received requests for video coverage of oral arguments in 92 cases and granted them in 66 cases.

The court also posts archived video recordings of arguments on its website and on YouTube.com, and in January 2015, began streaming live video of all oral arguments using its own equipment.²⁴ According to the 2014 Ninth Circuit Annual Report and court officials, there were some initial technical challenges with providing live coverage, such as assembling and installing the video production systems and finding a reliable and cost-effective means to stream the arguments, but officials stated that implementation has generally been smooth. In addition, the officials said that live streaming oral arguments has decreased the number of media requests for video coverage. This has reduced the time and resources that the clerk's office expends processing these requests, including reviewing the request forms and contacting the judges on the panel to decide upon requests. Figure 5 shows images of a courtroom camera in the U.S. Court of Appeals for

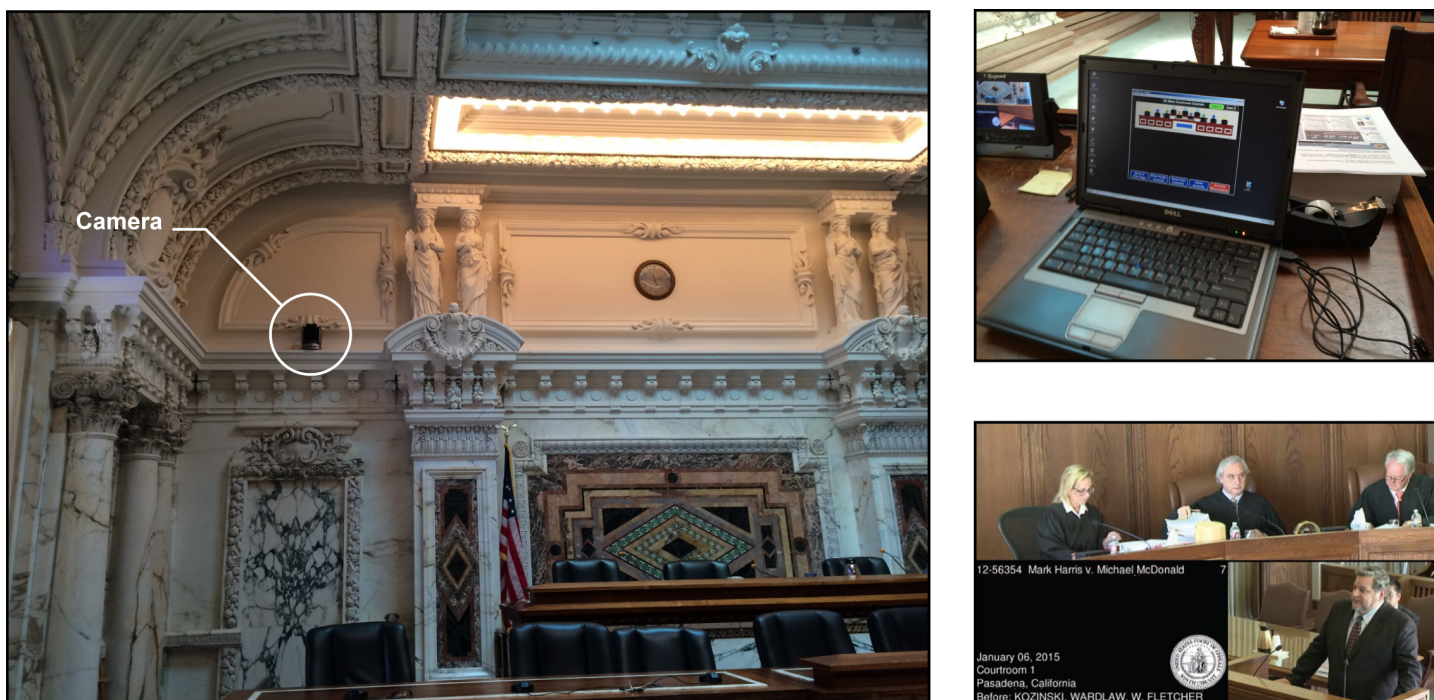
²²According to the Clerk, the court operates on an annual term that begins and ends in mid-August. For example, the August 2014 term began on August 18, 2014, and ended on August 16, 2015.

²³*The United States Court of Appeals for the Ninth Circuit. Guidelines for Broadcasting, Recording, and Still Photography in the Courtroom* (April 2014).

²⁴The court began streaming live video of en banc oral arguments on its website in December 2013.

the Ninth Circuit's San Francisco courthouse, laptop controlling cameras, and oral argument video produced by the court.

Figure 5: Courtroom Camera in the U.S. Court of Appeals for the Ninth Circuit's San Francisco Courthouse, Laptop Controlling Cameras, and Image of Oral Argument Video Produced by the Court



Source: GAO and 2014 Ninth Circuit Annual Report. | GAO-16-437

- **U.S. Court of Appeals for the D.C. Circuit.** The court does not allow media video or audio coverage of oral arguments, but, beginning in September 2013, has provided audio recordings of arguments on its website using the court's own equipment. Arguments are to be posted by 2 p.m. the same day they are heard by the court. Court officials stated that providing such audio coverage requires minimal resources and there have been no implementation challenges.

See appendix IV for additional details on the video and audio policies and procedures, coverage requests and online views, and policy implementation for the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits.

The Policies of the Courts of Last Resort in 49 States Allow Media Video and Audio Coverage of Oral Arguments, Though Policies and Procedures Vary

Courts of last resort in 49 states have written policies that allow media video and audio coverage of oral arguments and almost all of these courts have video or audio of oral arguments available online.²⁵ The D.C. Court of Appeals—the District of Columbia’s court of last resort—has no written policies on media video or audio coverage of oral arguments, and according to the court’s Clerk, does not allow such media coverage. However, the court itself streams live audio of all oral arguments on its website and, according to the Clerk, streams live video of some arguments.²⁶ Although the written policies of the courts in 49 states allow media video and audio coverage, the features of these policies vary. For instance, some state policies prohibit coverage of oral arguments in certain types of cases, such as juvenile proceedings, or unless parties affirmatively consent to it, which may limit coverage, while policies in other states require that judges make an on-the-record finding in order to prohibit coverage, which indicates that there is a strong presumption that coverage is allowed.²⁷ Table 3 summarizes media video and audio policy features and availability of oral arguments online of state and D.C. courts of last resort. See appendix V for information on the courts of last resort in each of the 50 states and the District of Columbia.

²⁵Our analysis of the media video and audio policies of state courts of last resort is based on the written policies of these courts. We compiled these policies from January through May 2015. We contacted each court to confirm our analysis of their policies from June through August 2015 and again in February 2016, but did not review policy implementation. Courts of last resort in 42 states and the District of Columbia confirmed their policies as of January 2016 and those in the 9 remaining states were confirmed as of June through August 2015. Oklahoma’s two courts of last resort—the Supreme Court and the Court of Criminal Appeals—do not have written policies on media video and audio coverage. According to the office of the Chief Justice of the Oklahoma Supreme Court, the supreme court has left it up to each presiding judge to determine whether to allow coverage. The Chief Justice noted that the supreme court has allowed video coverage of oral arguments on a few occasions and is in the process of developing a written policy for such coverage.

²⁶The Clerk stated that the court streams live video of en banc oral arguments and some arguments heard before three-judge panels.

²⁷For example, Arizona’s rules of the court state that a judge may deny a request for coverage only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of factors—such as the impact of coverage upon the right of privacy of any party and the likelihood that coverage would distract participants—and that the harm outweighs the benefit of coverage to the public.

Table 3: Summary of State and D.C. Courts' of Last Resort Media Video and Audio Policy Features and Availability of Oral Arguments Online

	Number of states ^a
Courts of last resort written media video and audio policy features^b	
Allows coverage	49
Excludes coverage of certain types of public cases	1 ^c
Requires parties to affirmatively consent to coverage	2 ^d
Requires judges to make an on-the-record finding to prohibit coverage	10 ^e
Availability of oral arguments online	
Video	24
Audio	10
Both video and audio	12
Live video or audio	37

Source: GAO analysis of state and D.C. court of last resort video and audio policies and websites and information provided by court officials. | GAO-16-437

Notes: We compiled these policies from January through May 2015. We contacted each court to confirm our analysis of their written policies from June through August 2015 and again in February 2016, but did not review policy implementation. Courts of last resort in 42 states and the District of Columbia confirmed their policies as of January 2016 and those in the remaining 9 states were confirmed as of June through August 2015.

^aThese numbers include the District of Columbia.

^bOur analysis of the media video and audio policies of state courts of last resort is based on the written policies of these courts. We did not review policy implementation.

^cStates with courts of last resort whose policies prohibit media video or audio coverage of oral arguments that are not conducted in open court—for example, arguments for cases that closed to the public, sealed, or confidential under law—are not included in this number.

^dStates with courts of last resort whose policies require judges or the court to permit coverage of oral arguments are not included in this number.

^eThis number does not include states whose courts of last resort have policies that require judges to make findings on the record to both grant or prohibit requests for coverage or rule on an objection to coverage on the record. It also only includes policies that require findings before coverage has begun, and not findings to terminate coverage after it has commenced.

While courts of last resort in 49 states have written policies that allow media video and audio coverage of oral arguments, the procedures they follow to do so vary. For instance, the Supreme Court of California, which we visited, both allows media organizations to use their own cameras in the court and provides a live video feed that media organizations can access upon request, while the Florida Supreme Court, which we also visited, partners with a local public broadcasting station to provide video coverage. The information that follows further illustrates variations in the policies and procedures of these two courts.

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- **Supreme Court of California.** The court's rules allow video and audio coverage of oral arguments by the media upon request and list 18 factors for judges to consider when deciding whether to grant or prohibit coverage, such as the importance of promoting public access to the judicial system and the privacy rights of all participants in the proceeding.²⁸ The court permanently began allowing coverage in 1984. From 2010 through 2014, the court received requests for media video coverage in 17 cases and granted all of them.

According to court officials, if the media has missed the deadline to request coverage, or based on other extenuating circumstances, the court also has the discretion to provide access to its live closed-circuit video feed of oral arguments, which the court records using its own equipment.²⁹ Media organizations must obtain permission from the court's Public Information Office to access this feed through a multibox—a box that allows multiple individuals to directly connect to a video and audio source—in the press rooms of each of the court's locations.³⁰ The officials noted that they prefer that media organizations use the court's feed, rather than bring in their own cameras, to reduce the likelihood of any distractions or other effects on proceedings, but may still receive requests for media coverage of high-profile cases.

In addition, the court periodically posts archived audio recordings and a small number of video recordings of oral arguments for selected high-profile cases on its website. According to court officials, the court also conducts annual special oral argument sessions for students, usually in October, where live video of arguments are broadcast on The California Channel, a public broadcasting station, and streamed

²⁸*California Rules of the Court*. Rule 1.150. Photographing, Recording, and Broadcasting in Court (January 2015).

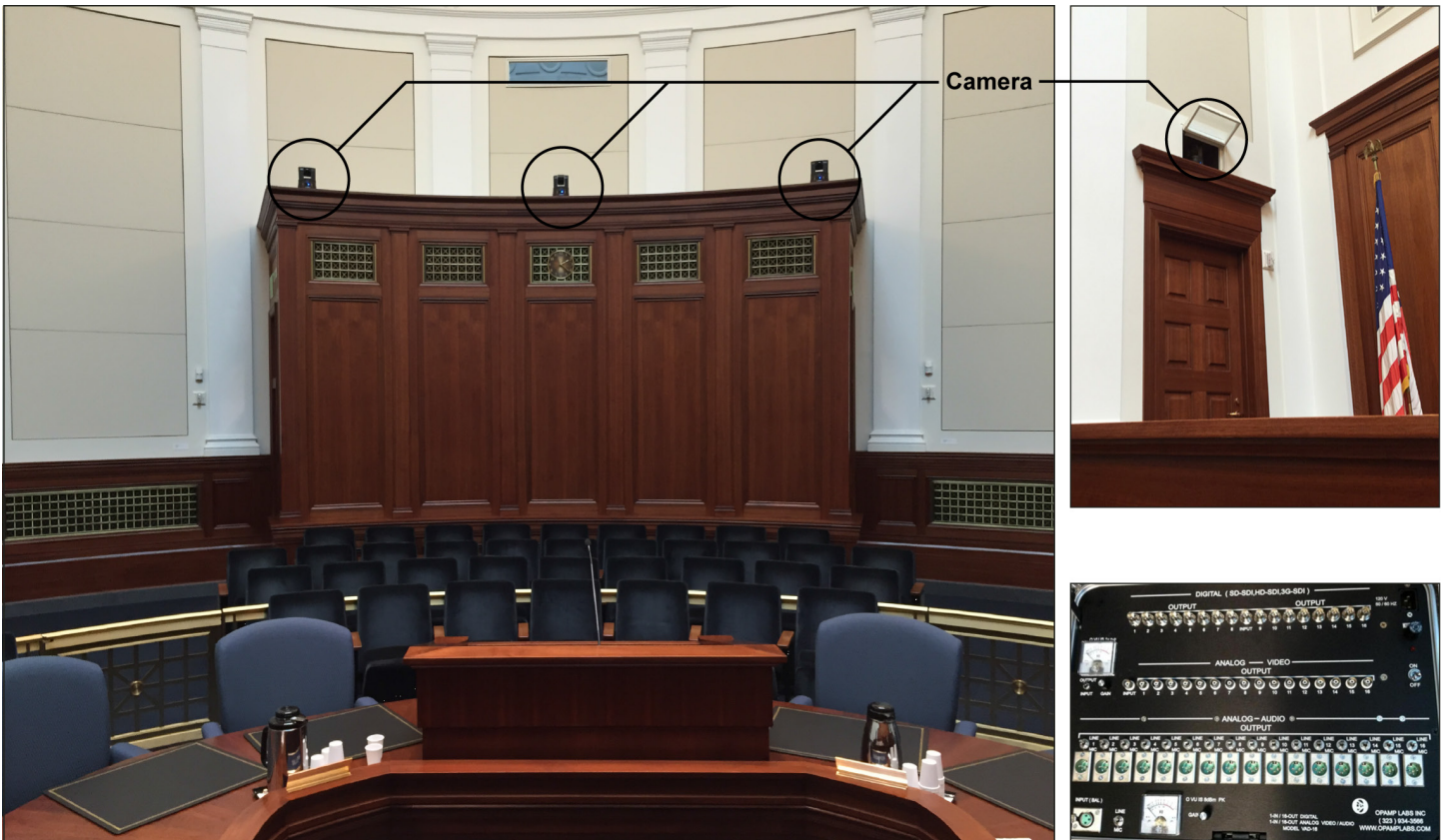
²⁹The court's rules require media organizations to submit a request to cover oral arguments using their own cameras or recording devices at least five court days before the argument to be covered unless good cause is shown.

³⁰The Supreme Court of California is headquartered in San Francisco and also hears oral arguments in its courtrooms in Los Angeles and Sacramento. According to court officials, the court has provided a live video feed of oral arguments in its San Francisco courtroom since 1999 and began providing the feed in high definition starting in 2013. Officials said that the court provides a high-definition feed of oral argument video in its Sacramento courtroom and a standard-definition feed in its Los Angeles courtroom, which is currently being upgraded to high definition.

on the channel's website. Archived recordings of some of these arguments are also available on The California Channel's website and other hosting sites, such as the CaliforniaCourts channel on Youtube.com. Court officials stated that there have been no challenges with implementing the court's policies. In March 2016, the court announced that it plans to begin live streaming video of oral arguments on its website in May.³¹ Figure 6 shows pictures of the Supreme Court of California's cameras in its San Francisco courtroom and mult box in the press room.

³¹According to the Public Information Officer for the Judicial Council of California, the court plans to live stream oral arguments held in its San Francisco courtroom starting in May 2016 and arguments held in its Sacramento courtroom starting in November 2016. Infrastructure upgrades are required before live streaming can begin in its Los Angeles courtroom.

Figure 6: Cameras in the Supreme Court of California's San Francisco Courtroom and Mult Box in the Press Room



Source: GAO and Judicial Council of California. | GAO-16-437

Note: A mult box is a device that allows multiple individuals to directly connect to a video and audio source.

- **Florida Supreme Court.** The court's rules allow media video and audio coverage of oral arguments, and Florida case law establishes a presumption that coverage is allowed and requires judges to make an on-the-record finding to prohibit coverage.³² Coverage was permanently allowed in 1979 and, according to the court's Public Information Officer, the court has never prohibited coverage of oral argument in a case.

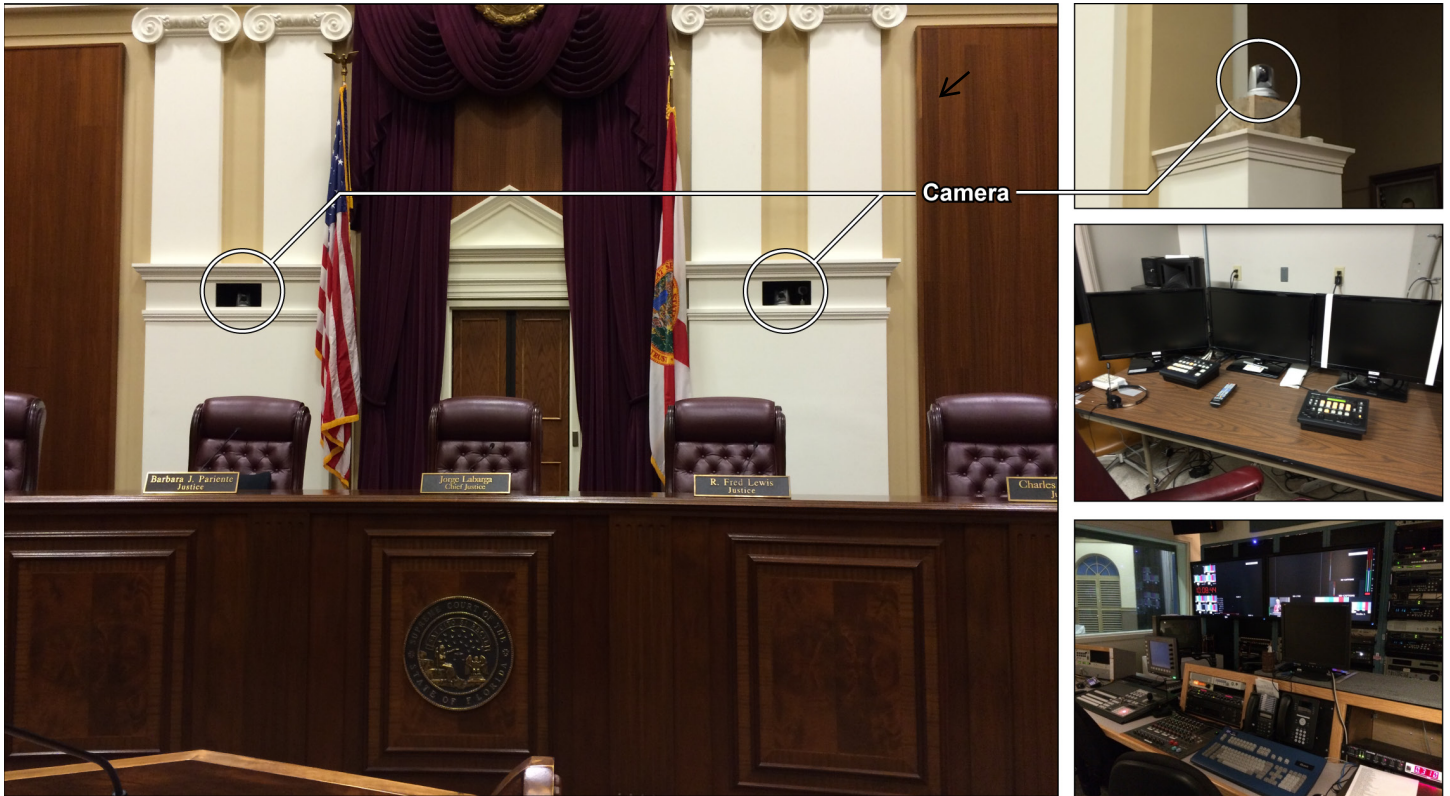
³²Florida Rules of Judicial Administration. Rule 2.450 (January 2015). Judicial decisions include those in *In re Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764, 779 (Fla.1979) and *State v. Palm Beach Newspapers, Inc.*, 395 So. 2d 544 (Fla. 1981).

The court does not allow freestanding video cameras in the courtroom during oral arguments, but partners with WFSU-Television (WFSU-TV)—a public broadcasting station—to record, broadcast, live stream online, and archive video of arguments. The court and WFSU-TV have an annual interagency agreement that details the services WFSU-TV is to provide, the court’s responsibilities, and the monthly payment the court is to make to WFSU-TV for its services. WFSU-TV staff operate the courtroom cameras and produce the videos of oral arguments. The agreement states that WFSU-TV is to be responsible for the purchase and maintenance of all equipment necessary, including the courtroom cameras, to fulfill the terms of the agreement. In addition, The Florida Channel, which is produced and operated by WFSU-TV, televises live and tape-delayed video of oral arguments.³³ Per the agreement, The Florida Channel is required to show all broadcasts of oral arguments in their entirety and is not permitted to show only partial segments of arguments. Arguments that are broadcast on The Florida Channel are also transmitted to all interested parties via a satellite feed, which media and other organizations can access without going to the court. Further, live and archived video of all oral arguments are also available on the Florida Supreme Court Gavel to Gavel website, which is maintained by WFSU-TV. WFSU-TV officials stated that archived video is generally posted within 48 hours of arguments.

According to the Public Information Officer, the close partnership between the court and WFSU-TV is key to providing access to video coverage of oral arguments. He stated that the partnership allows the court to leverage WFSU-TV staff, technical expertise, and production capabilities. For example, the court would not be able to devote the same number of staff to broadcasting oral arguments as WFSU does. In addition, WFSU has more advanced technology than the court would have been able to purchase. Figure 7 shows pictures of the Florida Supreme Court’s cameras, the court’s video and audio control room, and WFSU-TV’s production room.

³³The agreement states that WFSU-TV will make its best effort to distribute the proceedings of the Florida Supreme Court live, subject to integration of this programming with other governmental affairs programming provided by The Florida Channel. According to WFSU-TV’s production manager, cases of exceptional public interest generally receive higher priority for live Florida Channel coverage.

Figure 7: Cameras in the Supreme Court of Florida's Courtroom, the Court's Video and Audio Control Room, and WFSU-Television's Production Room



Source: GAO. | GAO-16-437

See appendix VI for additional details about the Supreme Court of California's and Florida Supreme Court's video and audio policies and procedures, coverage requests and online views, and policy implementation.

The Policies of the Courts of Last Resort in Three Countries Provide Video Coverage of Oral Arguments, Though Procedures and Allowable Use of Footage Vary

The courts of last resort in the three countries included in our review—Australia, Canada, and the United Kingdom—have policies that provide video coverage of oral arguments by the court itself and do not allow media organizations to record oral arguments using their own equipment. These courts have varying procedures for providing coverage and mechanisms to help control who can use the footage and how the footage can be used. For example:

- **High Court of Australia.** Beginning in October 2013, the court has posted on its website video recordings of oral arguments heard before the full court—at least five of the court’s seven justices—in its Canberra courthouse.³⁴ The court’s 2014-2015 Annual Report states that recordings are generally available at the end of each sitting day. According to the court’s Senior Executive Deputy Registrar, recordings may be posted on the next business day following arguments for some cases because they require editing to remove sensitive information, such as the names of victims in sexual assault cases. He said that this is one benefit of providing recordings of oral arguments instead of live coverage. He also stated that the court already had the technical capacity in place to record and post video of oral arguments and the costs are minimal for the court to provide such coverage. In addition, he noted that having the court use its own equipment and maintain control of the video recording process helped justices acclimate to the court’s providing video coverage and alleviate concerns about cameras being a distraction.

The terms of use for the video recordings state that viewers may not modify, reproduce, publish, broadcast, or use the video of proceedings in any other way without prior written approval of the court. However, schools and universities may use video of proceedings in a classroom setting for educational purposes without prior approval. The Senior Executive Deputy Registrar stated that the court receives about 10 to 15 requests to use video recordings in a given calendar year and has approved all of them.

- **Supreme Court of Canada.** The court records video of oral arguments using its own equipment and, since February 2009, has streamed live video of arguments on its website. According to court

³⁴The high court may hear oral arguments for special leave applications, which are petitions for the high court to grant appellate review of decisions of lower courts. Video coverage of these arguments is not provided.

officials, the court has never prohibited video coverage of a public proceeding.³⁵ The court also has an agreement with the Canadian Public Affairs Channel (CPAC) which allows CPAC to televise and live stream arguments.³⁶ The agreement states that CPAC will broadcast arguments in their entirety, but may use clips, sound bites, or excerpts for its programming, provided that they are balanced and fair to the parties and all concerned in the appeal.³⁷ In addition, CPAC is authorized and has agreed to make broadcast feeds of oral arguments available to other broadcast members of the Canadian Parliamentary Press Gallery at a central node for news and public affairs broadcasts only.³⁸ The court and CPAC also provide archived video recordings of oral arguments on their websites.

Parties and individuals who are not members of the news media must submit a request to the court to obtain permission to use oral argument recordings. Requests are made using an electronic form on the court's website, which requires information such as a description of the video or webcast requested, how it will be used, and the medium in which it will be used (e.g., Internet, video, film, DVD). If approval is granted, the requester is required to sign an agreement detailing the terms of use. Agreements may include provisions to, for example, use footage in a context that presents the case and the positions of the litigants in a fair and balanced way and does not harm

³⁵Court officials stated that staff ensure that counsel are aware that they should not make reference to any matter that is covered by a publication ban or a confidentiality or sealing order. Matters that are covered by such bans and orders are not webcast live, and are uploaded to the website after review by supreme court staff to ensure that such bans and orders have not been breached. This review process can take several days.

³⁶According to court officials, the court has had a formal agreement with CPAC since 2002. The current agreement is effective from August 31, 2013, to August 31, 2018.

³⁷The agreement allows CPAC to edit hearings to keep within the allocated time slot or to address technical problems with the production or transmission of the hearings, provided that the arguments of the parties are represented in full and in both official languages, French and English.

³⁸The Canadian Parliamentary Press Gallery consists of journalists and other professionals whose principal occupation is reporting on Parliamentary or federal government news, among other membership requirements. The agreement between CPAC and the Supreme Court of Canada states that CPAC will keep the broadcast members of the press gallery apprised of the terms and conditions of the agreement and will relay the court's request that clips, sound bites, and excerpts used be balanced and fair to the parties and all concerned in the appeals.

the reputation of the court or of the counsel or justices appearing in the footage.

- **The U.K. Supreme Court.** The court records video of oral arguments using its own equipment and, in October 2014, began streaming live video of oral arguments on its website. In addition, Sky News, a U.K. broadcasting organization, has streamed the court's live video of oral arguments on its website since May 2011. According to the court's Head of Communications, media organizations can access the court's video feed in a nearby broadcast studio. He stated that the court's recording of its own video allows it to control what is filmed and interrupt or terminate coverage if necessary. The court also began making archived video recordings of oral arguments available on its website in May 2015. According to the court's press release, footage is uploaded the next working day after an argument is heard and is available until about a year after the date of the argument.³⁹

The court has established rules for how videos of oral arguments can be used by broadcasters. For example, the rules only allow use in news, current affairs, and educational programs and prohibit use in light entertainment, satirical, and other types of programs. In addition, the rules state that any stills produced from the video must be used in a way that has regard to the dignity of the court and its functions as a working body. According to the Head of Communications, all of the U.K.'s main media broadcasting organizations have agreed to these rules. He stated that the court enforces its policy to the best of its ability with limited resources and that, to his knowledge, there have not been any violations of the rules.

See appendix VII for additional details about the video policies and procedures, online video views, and policy implementation of these foreign courts of last resort.

³⁹The Head of Communications stated that the archived recordings will be funded until March 2016, after which the service will be reviewed for continued funding based on factors such as the court's funding priorities and the number of views that the videos have received.

Stakeholders Cited Educational Benefits and Media Distortion, Among Others, as Potential Effects of Video or Audio Coverage in Appellate Courts, Including the U.S. Supreme Court

Judges and Attorneys in Selected Appellate Courts Stated that Enhanced Access and Education Were Among Key Benefits of Video or Audio Coverage of Oral Arguments

The judges and attorneys we interviewed in selected appellate courts who have experience with video and audio coverage of oral arguments cited several benefits of such coverage, including greater public access to the courts and educating the public on the judicial system, among others. Administrative officials in selected courts also provided additional examples of these benefits.

Public access. Fifteen of the 16 judges and all nine attorneys stated that they believed that coverage has enhanced or could potentially enhance the public's access to the courts, particularly as the public relies more heavily on television as a principal source of information.⁴⁰ For instance, one attorney and one judge said that, in high-profile cases or those of interest to the public, the public could be more informed about both the process and the issues in the case through video coverage. Further, the one attorney noted that providing greater access to the court through video or audio coverage is valuable because, as more information about court proceedings is available to the public, more people will understand the courts and the judicial system. In addition, two judges with whom we spoke said that a benefit of same-day audio coverage is that attorneys or other interested persons do not have to physically go to the court to hear an oral argument, but instead could access same-day audio recordings of the argument on the court's website. Two attorneys who practice in the

⁴⁰The one remaining judge did not respond to our question regarding whether or not coverage enhanced the public's access to the courts.

same court voiced some of the same benefits, stating that they believed that same-day audio coverage has provided more access to the court, information about what happens in the court, and is useful for persons who are not able to attend the oral argument. Moreover, another attorney with whom we spoke stated that he believed video or audio coverage of oral arguments increases the information available to the public and the media, which could also result in a more complete and neutral representation of oral arguments by the media.

Administrative officials in selected courts also described instances in which they believed that video or audio coverage of arguments in their courts had enhanced public access. For example, according to a U.K. Supreme Court official, one of the main reasons the court provides video coverage of its proceedings is to ensure that the country's citizens are able to watch the proceedings in their highest court and hear important points related to principles in the development of common law. In addition, an official in the High Court of Australia said that providing video recordings of proceedings allows more of the public to view proceedings because Australia is a large country and most of its population does not reside in Canberra, where the court is located. Moreover, according to officials from the U.S. Court of Appeals for the Ninth Circuit, live streaming oral arguments has increased public access to the court, particularly in cases of high public interest. For example, in November 2014, the court heard arguments in a case regarding an incident in which a high school student aimed a laser pointer at an incoming passenger jet as it approached an airport near his home. Officials stated that the courtroom was not able to accommodate the large number of students from his high school who were interested in viewing oral arguments, but students were able to watch the live-streamed video of arguments at the school.

Education. Fourteen of the 16 judges and seven of the nine attorneys with whom we spoke cited public education on the judiciary as a benefit or potential benefit of video or audio coverage of oral arguments. For instance, one judge said that because the work of the courts can easily be misunderstood and is not in the headlines as much as the work of other branches of the government, video coverage is useful for providing the public a window into how the courts think about the issues in a case. Moreover, one attorney with whom we spoke stated that video coverage of oral arguments is a useful learning tool because she can review her arguments to identify areas for improvement. Additionally, this same attorney said that video coverage is useful for junior attorneys to watch so they can learn about how to conduct oral arguments and the legal issues

of the case. However, another attorney stated that coverage of oral arguments may be more misleading than illuminating because, for those watching to have an accurate view of the arguments, they would need to understand the entire case and the judicial process. Additionally, ten of the 16 judges stated that they believed that coverage of oral arguments, which is only part of the decision making process, may not be helpful for understanding the case in its entirety.⁴¹ For instance, one judge stated that the public might attain a general understanding of the issues in a case and what was of concern to the court, but may not have all the information needed to fully understand a case after viewing arguments. Another judge noted that the written briefs that parties submit to the court are critical to understanding the case, and that oral arguments frequently address narrow aspects of the case that the judges are concerned about.

Court administrative officials with whom we spoke also provided examples of instances in which video or audio coverage of oral arguments in their courts has provided educational benefits. For example, an official from the Florida Supreme Court stated that high-profile, controversial cases can be misunderstood by the public and broadcasting oral arguments in their entirety can help dispel misconceptions about the case and how the court operates. For instance, this official stated that broadcasting oral arguments in the 2000 presidential election cases that were before the Florida Supreme Court helped educate the public about the judicial system and noted that it was beneficial for the public to be able to see the arguments and draw their own conclusions. In addition, officials from the U.S. Court of Appeals for the Ninth Circuit stated that law schools have used live-streamed and archived oral arguments as a learning tool for their students. A U.K. Supreme Court official also stated that video coverage helps educate attorneys, law students, and others in the legal profession who can watch the justices in action and see how attorneys conduct arguments.

Public confidence in the courts. Seven of the 16 judges and seven of the nine attorneys with whom we spoke believed that coverage has enhanced or could potentially enhance confidence in the courts. For instance, 1 judge stated that if a good judicial system is in place, video or audio coverage of arguments, which demonstrates how the system

⁴¹The remaining 6 judges believed that coverage has helped or could be helpful in understanding the case in its entirety.

works, would increase the public's understanding of and confidence in the courts. Further, one attorney said that providing coverage of oral arguments would show the public the work the courts conduct, as well as the quality and quantity of the work the court puts into each case. However, 7 judges with whom we spoke believed that coverage may not enhance confidence. For instance, 4 judges noted that it would be hard to identify the effect of coverage on the public's confidence in the courts. In particular, 1 judge stated that it would depend greatly on what a person already thinks of the court before seeing any video or audio coverage of oral arguments, while 2 judges said that it would be hard to determine the specific impact of coverage on public confidence.

Judicial accountability. Eight of the 16 judges and five of the nine attorneys with whom we spoke stated that coverage has increased or could potentially increase judicial accountability, although 7 judges felt that it did not affect accountability.⁴² For example, 1 judge stated that video coverage is a form of accountability in that it demonstrates how judges reason and think through cases, and helps explain the judicial process and justify the court's results. Moreover, 1 judge said that he believed that video or audio coverage would increase the accountability of any public official whose work was covered, including judges, although he noted that the public does not and should not have access to the judges' deliberative process. However, 4 U.S. courts of appeals judges explained that judicial accountability is already very high, and if judges make mistakes, they are documented in publicly issued opinions; therefore, they did not believe that coverage would increase judicial accountability.

⁴²The one remaining judge stated that he did not know whether or not coverage had or could have an effect on judicial accountability, but believed that judges do what they have to do regardless of cameras.

Few Judges or Attorneys Said Video or Audio Coverage Affected Court Participants' Behavior, Privacy, or Security, but Many Had Concerns about the Media's Use of Such Coverage

The judges and attorneys we interviewed in the selected appellate courts raised some concerns with video or audio coverage of oral arguments, including how the media might use such coverage, among others.

Effect on court participants. Almost all judges and attorneys we interviewed stated that they did not believe video or audio coverage had affected court participants' behavior or did not believe that such coverage would affect the behavior of court participants. For example, at least 12 of the 16 judges and eight of the nine attorneys we interviewed said that they personally were not affected by video or audio coverage and had not observed judges or attorneys appearing to grandstand, talking in sound bites, or being more attentive or courteous to others; judges altering their methods of questioning; effects on court decorum; or other changes in behavior. Three attorneys we interviewed explained that coverage did not affect their behavior because, during oral arguments, they are so focused on the arguments themselves that it is not possible to think about anything else, including video coverage. Two judges stated that judges or attorneys could grandstand and be more courteous, potentially because their questioning might be misinterpreted as badgering attorneys. However, one judge noted that he was not sure if this behavior would be caused by audio coverage.

Privacy and security. Fifteen of the 16 judges and all nine attorneys with whom we spoke did not have concerns with the effect of coverage on their own privacy and security, while 1 judge we interviewed expressed concerns. Specifically, this judge recounted having personally experienced security concerns in a particular case in which a video clip during questioning by the judge was posted and disseminated on social media. The judge received threats as a result of the video coverage. In addition, 6 judges and four attorneys said that there was the potential for coverage to affect the privacy and security of court participants even though they had not experienced issues themselves.

Media use of coverage. Some judges and most of the attorneys with whom we spoke also raised some concerns with how the media might use coverage of oral arguments. For instance, 5 of the 16 judges and eight of the nine attorneys we interviewed stated that they believed that video or audio coverage might potentially result in portions of the proceeding being distorted by the media. However, 11 of the 16 judges we interviewed stated that they did not believe that coverage might result in such distortions. In addition, three attorneys noted that distortions happen even without audio or video coverage. For instance, one attorney stated that the media regularly distort proceedings, including some of her

own oral arguments, regardless of video or audio coverage. Another attorney stated that, in her experience, proceedings have been inaccurately covered by the media. For instance, the reporters listening to an argument are often not lawyers and may not understand the oral argument; as a result, members of the media may focus on a segment of the case that they think is interesting and use that segment in their reporting of the argument even if they have taken that segment out of context. She noted that same-day audio coverage may help prevent distortion because it allows reporters to review and confirm what actually occurred before reporting on the case and allows the public to independently listen to the entire oral argument.

Four judges and four attorneys with whom we spoke stated that they believe that coverage by the court itself—such as the court recording oral arguments using its own equipment—versus coverage by the media, might help or could potentially help mitigate these concerns, including potential distortion of proceedings by the media. For example, one attorney stated that if the court produces the coverage, then the court can control it and release it as the court sees fit. He also noted that while the media generally have an incentive to promote coverage to gain viewers, the court does not have such an incentive. Further, 1 judge stated that when the court shows coverage of the entire oral argument, people have the opportunity to make their own judgements about what they see, while the media may insert their own views. Moreover, 12 of the 16 judges and five of seven attorneys with whom we spoke stated that the media showing edited segments of oral arguments is not sufficient to provide a complete or accurate understanding of court proceedings. For example, one attorney stated that the public may misunderstand the proceeding if the media show edited segments and do not provide proper context for the case.

In addition, 1 judge stated that a local channel broadcasts the court's oral arguments in their entirety, which is preferable to the media showing edited snippets. He noted that television networks rarely have the air time to broadcast an entire oral argument and will not do so unless it is for a landmark case. A representative from one media organization explained that some media outlets selectively cover oral arguments, which may appear to some as distortions, because they must report on the case in a short news segment during their broadcast. He stated that, while his organization generally broadcasts oral arguments in their entirety, other media outlets have such time constraints and cannot do so. A small number of studies have also addressed the effects of video coverage on appellate courts. See appendix II for information about these studies.

Selected Stakeholders Cited Potential Benefits of and Concerns with Allowing Video Coverage of U.S. Supreme Court Arguments, and Some Said Coverage Could Affect Participant Behavior

Perspectives of Appellate Judges and Attorneys

In our interviews with selected appellate judges and attorneys who have had experience with video or audio coverage, we asked for their perspectives on the extent to which the benefits, concerns, or potential effects of coverage discussed previously might also apply to video or live-audio coverage of the U.S. Supreme Court's oral arguments, if such coverage were to be allowed. Twelve of the 16 judges and eight of the nine attorneys we interviewed in selected appellate courts said that they believed that the potential benefits, concerns, and effects might apply to the U.S. Supreme Court. For example, 3 of the 16 judges and two of the nine attorneys we interviewed identified benefits to the public of video or same-day audio coverage, such as providing the public with access to the Court's proceedings, or enhancing the public's perception or understanding of the Court's proceedings. One judge noted, however, that video coverage of oral arguments could distort the public's perception of what the Court does, as the coverage would likely focus on a small number of high-profile cases and little attention would be given to the other cases the Court hears.

In addition, 7 of the judges and two of the attorneys noted that, given the greater media or public interest in the U.S. Supreme Court and the higher profile or sensitivity of the cases it hears, the potential concerns and effects may be magnified. For instance, 3 judges and three attorneys felt that coverage could affect the behavior of court participants, such as justices adjusting their lines of questioning or attorneys grandstanding. Further, 5 judges and one attorney said that privacy and security concerns associated with coverage of oral arguments at the U.S. Supreme Court would be greater than at the appellate level because of the increased interest and profile of the Court and its cases. One judge explained that, because U.S. Supreme Court cases are so often high-profile, the Justices could face threats against them after every argument, compared to a small number of such instances at the appellate court level.

Perspectives of the U.S. Supreme Court and Attorneys Who Have Argued Before the Court

We also requested perspectives on the potential benefits of and concerns with video coverage of oral arguments from the U.S. Supreme Court's Public Information Officer, as well as four attorneys who have argued before the Court.⁴³ Three of these four attorneys believed that the Court should allow additional access to coverage of its oral arguments. Of these three attorneys, two stated that the Court should allow video coverage and one stated that allowing more same-day audio access to oral arguments would be a good starting point. The fourth attorney stated that he would support additional access to coverage if the Court allowed it but that the Justices are in the best position to determine whether such access should be allowed.

All four attorneys stated that there would be potential benefits to allowing video coverage of U.S. Supreme Court proceedings. Specifically, all of them stated that they believed allowing video coverage of U.S. Supreme Court oral arguments would enhance access to the Court. For example, one attorney said that the courtroom has a limited number of seats available and it can be costly to travel to the Court. He noted that allowing video coverage would be more equitable because all members of the public could view coverage on the television or the Internet. Another attorney stated that there is a substantial difference between access to transcripts of oral arguments, which the Court provides, and viewing oral arguments. He noted that individuals are more likely to be interested in viewing arguments. In addition, all four attorneys stated that they believed allowing video coverage would help educate either the public about the judicial system or law students and professionals on how to conduct arguments. For instance, one attorney stated that video coverage would allow individuals to see the judicial branch operating at the highest level and help increase understanding of the U.S. Supreme Court's work. Further, three of the four attorneys believed that allowing video coverage would increase the public's confidence in the Court. For example, one attorney stated that such coverage would allow the public to see the rigor

⁴³We also interviewed representatives from the American Bar Association. In February 2016, the association adopted a resolution that urged the U.S. Supreme Court to record and make available video recordings of its oral arguments. (American Bar Association, House of Delegates, Resolution 110). In addition, we contacted the Federal Bar Association and were directed to its statement on cameras in the courtroom on its website, which states that the association "encourages a discussion of the competing considerations vis-a-vis proposed legislation which would authorize federal judges, in their discretion, to permit photographing, electronic recording, broadcasting, and televising of federal court proceedings in appropriate circumstances."

and seriousness with which the Court conducts its business. Another attorney noted that it could help alleviate the potential public perception that the Court is a partisan institution.

The U.S. Supreme Court's Public Information Officer (PIO) and the attorneys with whom we spoke also raised potential concerns with video coverage of oral arguments. According to the PIO, individual Justices have commented on the need to ensure the fairness and efficiency of its decision-making process. They have noted that televising U.S. Supreme Court proceedings could adversely affect the dynamics of the oral arguments, diminishing the frankness and extemporaneity of the exchanges, and reducing their usefulness for both the counsel and Justices. Three of the four attorneys also shared concerns related to potential changes in the behavior of court participants, such as changes to how attorneys prepare for oral arguments and the manner in which oral arguments are conducted. For example, one attorney stated that allowing video or live-audio coverage of the Court's oral arguments might change the tenor of the argument, which currently focuses on the genuine search for truth and is a very effective process. He noted that attorneys may feel the need to choose their words more carefully during arguments because of the potential for negative public reactions. In addition, three attorneys stated that allowing video coverage might potentially result in inexperienced attorneys playing to the public or grandstanding, but noted that such behavior would be detrimental to their case.

The U.S. Supreme Court's PIO and the attorneys we interviewed further noted concerns related to the information and perceptions the public could potentially get from viewing oral arguments. Specifically, the PIO stated that Justices have observed that oral argument is a small part of the advocacy process. According to the PIO, because oral argument merely supplements the extensive and often technical written submissions, it is generally indispensable to read the written briefs in order to understand the oral arguments.⁴⁴ She also noted that the Justices have emphasized that the Court's written decisions stand as the Court's most important and enduring work—work that should not be overshadowed by one piece of the decision-making process. All four attorneys with whom we spoke stated that they believed viewing oral

⁴⁴Rule 28.1 of the *Rules of the Supreme Court of the United States* states that oral argument should emphasize and clarify the written arguments in the briefs on the merits.

arguments would not provide a complete understanding of a case, but could still provide useful information. These four attorneys also stated that there is the potential for the media to distort video coverage of oral arguments to varying degrees. For example, one attorney stated that there is the potential for statements to be taken out of context or misrepresented but the benefits of coverage outweigh the risks, and another attorney stated that such distortion could be a significant problem. This attorney noted that the Court providing coverage of arguments in their entirety, as opposed to edited coverage by the media, could help alleviate this concern. Finally, the PIO stated that, above all, the Justices are trustees of an institution that has functioned well and earned the public's confidence. The Justices have expressed caution about introducing changes that could diminish the public's respect for and create misconceptions about the Court. The PIO stated that the Court is proceeding carefully in evaluating whether it should make changes to its current practice of not providing video camera coverage of its proceedings.

Agency Comments

We provided a draft of this report to the U.S. Supreme Court, the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Department of Defense for review and comment. They had no written comments on the draft report. The Administrative Office of the U.S. Courts provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the U.S. Supreme Court; Administrative Office of the U.S. Courts; the Federal Judicial Center; the state and foreign courts of last resort in which we conducted interviews—the Supreme Court of California, the Florida Supreme Court, the High Court of Australia, the Supreme Court of Canada, and the U.K. Supreme Court; the Department of Defense; appropriate congressional committees and members, and other interested parties. In addition, this report is available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions, please contact Diana Maurer at (202) 512-9627 or maurerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page

of this report. GAO staff who made significant contributions to this report are listed in appendix VIII.

A handwritten signature in black ink that reads "Diana Maurer". The signature is written in a cursive style with a large, looped initial "D" and a distinct "M" for the last name.

Diana C. Maurer
Director, Homeland Security and Justice

Appendix I: Objectives, Scope, and Methodology

We addressed the following questions as part of this review:

1. What is the U.S. Supreme Court's policy regarding access to video and audio of oral arguments and what are the policies of other selected appellate courts?
2. What do selected stakeholders report are the benefits of and concerns with allowing video and audio coverage of oral arguments in appellate courts, including the U.S. Supreme Court?

To address the first question, we analyzed information on the U.S. Supreme Court's policy regarding access to video and audio of oral arguments that we obtained from Court documents, the Court's website, and its Public Information Officer, including the process by which the Court decides whether to grant media requests to release audio recordings of oral arguments on the same day of the arguments. We also analyzed data from the Public Information Officer on the cases for which the Court received requests for same-day audio recordings of oral arguments and whether the requests were granted or declined from the Court's 2000 term—the term in which same-day audio was first made available—through the Court's 2014 term. We assessed the reliability of these data and determined them to be reliable for the purposes of this report. This assessment included comparing these data with other available sources and obtaining information from the Court about the accuracy and completeness of these data.

We also analyzed information about policies regarding access to video and audio of oral arguments from selected appellate courts. We focused on appellate courts because these courts conduct oral arguments and, as such, their proceedings and participants are most similar to those of the U.S. Supreme Court. The selected appellate courts included the U.S. courts of appeals for the 13 federal circuits and courts of last resort—the highest appellate courts in a given jurisdiction—in the 50 states and the District of Columbia. These courts were chosen because their decisions may be directly appealed to the U.S. Supreme Court under certain circumstances and/or because they are generally the highest court in their respective jurisdictions.¹ We also included foreign courts of last resort because they are the highest appellate courts in their respective

¹We did not include the U.S. Court of Appeals for the Armed Forces, the U.S. Court of Appeals for Veterans Claims, and the U.S. Tax Court because they are specialized subject matter courts and not part of the judicial branch.

countries. We selected the High Court of Australia, Supreme Court of Canada, and United Kingdom Supreme Court because their countries have common law legal systems in which judicial decisions establish legal precedents of law that are unwritten in statutes or codes, as does the United States; populations of over 20 million; and English as an official language and the language predominantly spoken.² We identified and compiled rules, court and administrative orders, guidelines, and other documentation of video and audio policies of the courts we selected by searching court websites and lexis.com and reviewing literature that discussed the video and audio policies of the courts. We also contacted administrative officials in these courts to confirm that the written policies we identified were complete and current and to obtain information on and documentation of policies not available online. We compiled the information on state courts of last resort from January through May 2015, and confirmed that our analysis of the policies was accurate, complete, and current as of January 2016 for 42 states and the District of Columbia and June through August 2015 for the 9 remaining states.³

In addition, we conducted interviews in person and on the phone or had written correspondence with court administrative officials in 8 selected U.S. courts of appeals, state courts of last resort, and foreign courts of last resort to obtain information on the implementation of video and audio policies in the courts, such as resource requirements or challenges. We selected U.S. courts of appeals to reflect a range of video and audio policies. As such, we visited the U.S. Courts of Appeals for the Second and the Ninth Circuits because they are the two U.S. courts of appeals that currently allow media video coverage of oral arguments, and the U.S. Court of Appeals for the D.C. Circuit because it is one of the U.S. courts of appeals that does not allow video coverage of oral arguments. We selected state courts of last resort based on their (1) range of video and audio policies, including limitations on coverage such as whether certain types of cases are excluded from coverage and whether consent of parties is required; (2) having relatively high caseloads to increase the likelihood of cases with media interest and coverage; (3) extent of

²If a country did not have an official language, we included it if English was the language predominantly spoken.

³We contacted each court to confirm our analysis of its policies from June through August 2015 and again in February 2016. We received responses to our February 2016 requests for confirmation from some courts and not others.

experience in allowing video or audio coverage; and (4) proximity to selected U.S. courts of appeals. Using these criteria, we visited state courts of last resort in Florida and California. We also contacted courts of last resort in 3 other states that require the consent of parties before coverage is allowed or do not allow video coverage of oral arguments to arrange interviews, but officials in these states either did not respond to our requests or declined to meet with us. In addition, we conducted interviews with or received written responses from court administrative officials in our three selected foreign courts of last resort—the High Court of Australia, Supreme Court of Canada, and United Kingdom Supreme Court. The information collected from the interviews with officials in these selected appellate courts cannot be generalized to all administrative officials or appellate courts. However, the site visits and interviews provided us with valuable information about court officials’ experiences with and perspectives on a variety of policies regarding access to video and audio of oral arguments. In addition, where available, we obtained data from these courts on the number of cases for which media video or audio coverage has been requested or granted and the number of views video or audio recordings of oral arguments that are posted online have received.⁴ We assessed the reliability of these data and determined them to be reliable for the purposes of this report. This assessment included obtaining and reviewing information from court administrative officials on how the data are collected and maintained.

To address the second question, we conducted semi-structured interviews with 16 judges and nine attorneys who have had experience with video or audio coverage. Specifically, we interviewed 14 judges and nine attorneys who practice in the selected federal circuit courts of appeals and state courts of last resort described above—the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits, and courts of last resort in Florida and California—to discuss their experiences with video and/or audio coverage of oral arguments, and their perspectives on the benefits of and concerns with allowing such coverage in appellate courts, including the U.S. Supreme Court.⁵ We also interviewed 2 justices of the

⁴The time periods for the data provided varied by court and ranged from periods between 2010 and 2015.

⁵We interviewed 10 judges from U.S. courts of appeals and 4 justices from state courts of last resort. We also contacted the Department of Justice regarding interviewing attorneys to discuss their experiences and perspectives. The department declined to be included in our review.

United Kingdom Supreme Court.⁶ We selected the judges and attorneys based on recommendations from the courts. The information obtained from these interviews cannot be generalized to all appellate courts, judges, or attorneys; however, they provided us with insights regarding the benefits of and concerns with video and audio coverage of oral arguments in these courts. In addition, we obtained written responses from the U.S. Supreme Court regarding the Justices' perspectives on video coverage of the Court's oral arguments. We also conducted semi-structured interviews with four attorneys who have argued before the U.S. Supreme Court to obtain their perspectives on allowing video and audio coverage of oral arguments at the Court. We selected these attorneys because they had argued nine or more cases before the Court from the 2012 through 2014 terms and based on their availability.⁷ Their perspectives cannot be generalized to all attorneys who have argued before the U.S. Supreme Court, but provide insights regarding allowing video and audio coverage of the Court's oral arguments. Finally, we contacted or interviewed representatives from selected legal associations and media organizations to obtain their perspectives on the potential benefits of and concerns with allowing video and audio coverage of oral arguments in appellate courts, including the U.S. Supreme Court. We selected these organizations based on our review of relevant literature, their work in this area, and recommendations from others. The organizations included the American Bar Association, Federal Bar Association, C-SPAN, and the Coalition for Court Transparency, and Radio Television Digital News Association. Their perspectives cannot be generalized, but provided insights into potential benefits of and concerns with such coverage.

We conducted this performance audit from January 2015 to April 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁶Justices in the High Court of Australia and Supreme Court of Canada were not available to meet with us.

⁷The U.S. Supreme Court term begins the first Monday in October and continues until the first Monday in October the following year. For example, the 2014 term began on October 6, 2014, and ended on October 4, 2015.

Appendix II: Few Studies Have Been Conducted on the Effects of Video and Audio Coverage in Appellate Courts

Through searches of databases, Internet websites, and other sources available as of April 2015, we identified almost 400 documents that addressed video and audio coverage of court proceedings.¹ We reviewed these documents and identified 53 studies.² Of these 53 studies, 2 were studies that included findings on the effects of video coverage in appellate courts, while most of the remaining studies focused on trial courts.³ According to one of two researchers we interviewed who have conducted work in this area, more studies have been conducted in trial courts, rather than appellate courts, because of a greater interest in the potential effects on victims, witnesses, and jurors—stakeholders who are not involved in appellate court proceedings.⁴ Both of these researchers also stated that, in general, there is insufficient empirical or experimental research on the effects of coverage in courts. They said that conducting a rigorous study on the effects of coverage in court proceedings requires funding and time

¹Specifically, we (1) conducted key word searches of social science research databases, such as Analytical Abstracts, PAIS International, PASCAL, ProQuest Dissertations and Theses Professional, PsycINFO, Social SciSearch, HeinOnline Law Journal Library, ArticleFirst, ECO, WorldCat, and PolicyFile; (2) searched court and legal research related websites, such as those of the U.S. federal courts, National Center for State Courts, and bar associations; (3) reviewed bibliographies; and (4) asked court officials and researchers to identify potential studies for our review. We included studies on courts within the United States and courts in Australia, Canada, Ireland, New Zealand, and the United Kingdom, which were selected because these countries have common law legal systems in which judicial decisions establish legal precedents of law that are unwritten in statutes or codes, as does the United States; populations of over 4 million; and English as an official language and the language predominantly spoken. If a country did not have an official language, we included it if English was the language predominantly spoken.

²The other documents were determined not to be studies and included guidelines related to establishing court rules to allow video coverage of court proceedings and journal articles on the topic of video coverage of court proceedings, among other things.

³Of the 53 studies, we identified 5 that potentially included findings on appellate courts. Two social scientists reviewed each of the 5 studies to determine whether the design, implementation, and analyses of the study were sufficiently sound to support the study's results and conclusions based on generally accepted social science principles. On the basis of these reviews, we excluded 3 studies that were designed to include both trial and appellate courts but either lacked data or findings on the effects of video coverage in appellate court proceedings or did not provide enough information about the research methods used to assess the findings and conclusions.

⁴We interviewed Eugene Borgida, whom the Federal Judicial Center recommended we contact and who has conducted studies on media coverage of court proceedings, and Paul Lambert, who authored a book on empirical research on the effects of television courtroom broadcasting. Paul Lambert, *Television Courtroom Broadcasting Effects: The Empirical Research and the Supreme Court Challenge* (Lanham, MD: University Press of America, Inc., 2013).

Appendix II: Few Studies Have Been Conducted on the Effects of Video and Audio Coverage in Appellate Courts

from both researchers and stakeholders involved, such as judges, attorneys, and court personnel.

Neither of the two studies we identified used an experimental or quasi-experimental methodology. Instead, they reported findings on the perceived effects of video coverage in appellate courts and relied on data from surveys and interviews with stakeholders, which provided useful information on stakeholder experiences with video coverage.⁵ Table 4 describes these studies.

Table 4: Summary of Studies That Reported on Perceived Effects of Video Coverage in Appellate Courts

Study, author(s), source, and, year published	Description	Methods	Findings
<i>Task Force on Photographing, Recording and Broadcasting in the Courtroom</i> , Judicial Council of California, Administrative Office of the Courts (1996)	Review of California's court rule allowing video and audio coverage of trial and appellate proceedings in the state. ^a	The study included a survey of judges and attorneys in state trial and appellate courts and municipal courts on their attitudes and perspectives on the effects of the court rule on court proceedings. ^b	<ul style="list-style-type: none"> • The study did not separate conclusions about appellate courts from trial courts. • The study compared judges' responses for six selected questions in the survey and found that type of jurisdiction—trial or appellate—did not tend to affect judges' responses to the selected survey questions.^c For example, 63 percent of all responding judges indicated that the courtroom presence of video cameras impairs judicial dignity and courtroom decorum "a lot" or "some" and the type of jurisdiction did not tend to affect responses. The only exception observed was that appellate court justices were less likely to indicate that video cameras created a distraction. Specifically, 44 percent of responding appellate justices indicated that cameras create a distraction compared to 67 percent of responding trial court judges.

⁵Experimental methodologies employ designs that compare outcomes for a randomly assigned participating group and a nonparticipating control group, and quasi-experimental methodologies compare outcomes for program participants and a comparison group closely matched to them on key characteristics.

**Appendix II: Few Studies Have Been
Conducted on the Effects of Video and Audio
Coverage in Appellate Courts**

Study, author(s), source, and, year published	Description	Methods	Findings
<i>Electronic Media Coverage of Federal Civil Proceedings</i> , Molly Treadway Johnson and Carol Krafka, Federal Judicial Center (1994)	Review of a three year pilot program allowing coverage of civil proceedings in six federal district courts and two federal courts of appeals.	The study included a survey of all judges in the pilot courts on their opinions about the effects of coverage on court participants and the public. ^d The survey was conducted at the start of the pilot and again after the pilot had been in operation for one year. ^e	<ul style="list-style-type: none"> • The study did not separate conclusions about appellate courts from trial courts. • The study found that the majority of responding appellate judges surveyed after the start of the pilot program indicated that effects on courtroom participants occurred “to little or no extent” or “to some extent.”^f For example, when asked about the extent to which electronic media coverage caused judges to change the emphasis or content of their questions at oral argument, 65 percent of responding appellate judges answered “to little or no extent,” 30 percent answered “to some extent,” and 4 percent answered “to a moderate extent.” The study also found that experience with coverage did not change appellate judges’ ratings of the effects of cameras.

Source: GAO analysis of studies. | GAO-16-437

^aThe task force recommended changes to the rules based on the study’s findings, such as prohibiting coverage in all pre-trial proceedings, prohibiting all photography of jurors and minors who are parties or witnesses, and adding factors for judges to consider in making coverage decisions.

^bThirty-one out of 95 appellate judges (33 percent) responded to the survey.

^cThe questions included the following: (1) the effect of cameras on judicial dignity and courtroom decorum, (2) the effect of broadcast media on parties’ right to a fair trial, (3) whether the court should require consent of both parties before cameras are allowed in the courtroom, (4) whether judges would prefer that video cameras be banned from the courtroom, (5) whether the state’s current rule regarding camera coverage should be modified, and (6) whether the presence of cameras creates a distraction.

^dThe study also sent questionnaires to attorneys from trial and appellate cases covered by the media during the pilot. Of the 110 total responding attorneys, 23 responded to the appellate questionnaire. The overall results from questionnaires sent to attorneys were not separated by appellate or district courts. The study also used other methods, such as telephone interviews, content analysis of news broadcasts, and reviews of other studies. Conclusions from these methods were either focused on trial proceedings or did not separate responses by appellate and district courts.

^eJudges who did not respond to the one-year follow-up received the same follow-up questionnaire after the program had been in operation for two years. Overall, 34 out of 51 appellate judges responded to both the initial and follow-up questionnaires.

^fThe potential effects rated by judges included the following: (1) prompts attorneys to come to oral argument better prepared, (2) causes attorneys to be more theatrical in their presentation, (3) causes attorneys to change the emphasis or content of their oral argument, (4) increases judges’ attentiveness at oral argument, (5) prompts judges to be more courteous in questioning attorneys, (6) causes judges to change the emphasis or content of their questions at oral argument, (7) disrupts courtroom proceedings, and (8) educates the public about the work of the court of appeals.

Appendix III: U.S. Supreme Court Cases in Which Media Organizations Requested Same-Day Audio of Oral Arguments

October Term	Date Argued	Case	Granted/ Declined
2000	12/1/00	<i>Bush v. Palm Beach County Canvassing Board</i>	Granted
	12/11/00	<i>Bush v. Gore</i>	Granted
	3/27/01	<i>Penry v. Johnson</i>	Declined
2002	4/1/03	<i>Grutter v. Bollinger</i>	Granted
	4/1/03	<i>Gratz v. Bollinger</i>	Granted
	9/8/03	<i>McConnell v. Federal Election Commission</i>	Granted
2003	4/20/04	<i>Rasul v. Bush; and Al Odah v. U.S. (Consolidated)</i>	Granted
	4/27/04	<i>Cheney v. USDC District Of Columbia</i>	Granted
	4/28/04	<i>Hamdi v. Rumsfeld</i>	Granted
	4/28/04	<i>Rumsfeld v. Padilla</i>	Granted
2004	10/13/04	<i>Roper v. Simmons</i>	Declined
	3/2/05	<i>Van Orden v. Perry</i>	Declined
	3/2/05	<i>McCreary County v. ACLU of Ky.</i>	Declined
2005	11/30/05	<i>Ayotte v. Planned Parenthood of Northern New England</i>	Granted
	12/6/05	<i>Rumsfeld v. Forum for Academic and Institutional Rights</i>	Granted
	3/1/06	<i>League of United Latin American Citizens v. Perry; Travis County, Tex. v. Perry; Jackson v. Perry; and GI Forum of Texas v. Perry (Consolidated)</i>	Declined
	3/28/06	<i>Hamdan v. Rumsfeld</i>	Granted
2006	10/31/06	<i>Philip Morris USA v. Williams</i>	Declined
	11/8/06	<i>Gonzales v. Carhart</i>	Granted
	11/8/06	<i>Gonzales v. Planned Parenthood Federation of America</i>	Granted
	12/4/06	<i>Parents Involved in Community Schools v. Seattle School District No. 1</i>	Granted
	12/4/06	<i>Meredith v. Jefferson County Board Of Education</i>	Granted
	1/10/07	<i>Davenport v. Washington Education Association; and Washington v. Washington Education Association (Consolidated)</i>	Declined
	2/20/07	<i>Rita v. United States</i>	Declined
	2/20/07	<i>Claiborne v. United States</i>	Declined
	4/25/07	<i>FEC v. Wisconsin Right to Life; and McCain v. Wisconsin Right to Life (Consolidated)</i>	Declined
2007	10/9/07	<i>Stoneridge Investment v. Scientific-Atlanta</i>	Declined
	10/10/07	<i>Medellin v. Texas</i>	Declined
	12/5/07	<i>Boumediene v. Bush; and Al Odah v. United States (Consolidated)</i>	Granted
	1/7/08	<i>Baze v. Rees</i>	Granted
	1/9/08	<i>Crawford v. Marion County Election Board; and Indiana Democratic Party v. Rokita (Consolidated)</i>	Declined
	3/18/08	<i>District Of Columbia v. Heller</i>	Granted

**Appendix III: U.S. Supreme Court Cases in
Which Media Organizations Requested Same-
Day Audio of Oral Arguments**

October Term	Date Argued	Case	Granted/ Declined
	3/25/08	<i>United States v. Ressam</i>	Declined
	4/16/08	<i>Kennedy v. Louisiana</i>	Declined
2008	10/6/08	<i>Altria Group, Inc. v. Good</i>	Declined
	10/8/08	<i>Winter v. Natural Resources Defense Council, Inc.</i>	Declined
	11/4/08	<i>FCC v. Fox Television Stations, Inc.</i>	Declined
	11/12/08	<i>Pleasant Grove City, Utah v. Summum</i>	Declined
	12/3/08	<i>Philip Morris USA, Inc. v. Williams</i>	Declined
	12/10/08	<i>Ashcroft v. Iqbal</i>	Declined
	3/3/09	<i>Caperton v. A.T. Massey Coal Co., Inc.</i>	Declined
	4/29/09	<i>Northwest Austin Municipal Utility District No. 1 v. Holder</i>	Granted
	9/9/09	<i>Citizens United v. FEC</i>	Granted
2009	11/2/09	<i>Jones v. Harris</i>	Declined
	11/9/09	<i>Graham v. Florida</i>	Declined
	11/9/09	<i>Sullivan v. Florida</i>	Declined
	2/23/10	<i>Holder v. Humanitarian Law Project; and Humanitarian Law Project v. Holder (Consolidated)</i>	Declined
	3/1/10	<i>Skilling v. United States</i>	Declined
	3/2/10	<i>McDonald v. City of Chicago, Illinois</i>	Declined
	4/19/10	<i>Christian Legal Society Chapter v. Martinez</i>	Declined
2011	3/26/12 – 3/27/12	<i>Department of Health and Human Services v. Florida</i>	Granted
	3/28/12	<i>National Federation Of Independent Business v. Florida; and Florida v. Department of Health and Human Services (Consolidated)</i>	Granted
2012	2/27/13	<i>Shelby County v. Holder</i>	Declined
	3/26/13	<i>Hollingsworth v. Perry</i>	Granted
	3/27/13	<i>United States v. Windsor</i>	Granted
2013	3/25/14	<i>Burwell v. Hobby Lobby Stores, Inc.; and Conestoga Wood Specialties Corp. v. Burwell (Consolidated)</i>	Declined
2014	3/4/15	<i>King v. Burwell</i>	Declined
	4/28/15	<i>Obergefell v. Hodges; Tanco v. Haslam; DeBoer v. Snyder; and Bourke v. Beshear (Consolidated)</i>	Granted

Source: GAO analysis of U.S. Supreme Court data on media requests for same-day audio of oral arguments. | GAO-16-437

Appendix IV: Video and Audio Policies and Procedures for the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits

The three U.S. courts of appeals that we visited—the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits—have varying policies and procedures for video and audio coverage of oral arguments, with different levels of usage and resource requirements. Tables 5, 6, and 7 summarize the policies and procedures, coverage requests and online views, and policy implementation for these courts.

Table 5: U.S. Court of Appeals for the Second Circuit—Summary of Video and Audio Policies and Procedures, Coverage Requests and Online Views, and Policy Implementation

Policy on media video and audio coverage of oral arguments	The court's guidelines state that coverage is allowed for all oral arguments conducted in open court, except for criminal matters. ^a
Process for requesting coverage and deciding on requests	According to the court's guidelines, media organizations must notify the clerk's office of their interest in covering oral arguments at least two days in advance of the argument. The guidelines state that the panel of judges assigned to hear oral argument retains the authority, in its sole discretion, to prohibit video or audio coverage of any proceeding, and will normally exercise this authority upon the request of any member of the panel. In practice, according to the Court Clerk, the media is required to submit a request for video coverage and the panel of judges must affirmatively grant permission to allow coverage.
Court-provided audio coverage	The court provides CDs of audio recordings of oral arguments upon request for a \$30 fee. The Clerk stated that, in high-profile cases, her office prepares CDs on the same day as the oral arguments and makes them available to the media.
Coverage requests and online views of oral argument video	<ul style="list-style-type: none"> From its 2010 through 2014 terms,^b the court received requests for video coverage of oral arguments in 15 cases, with the number ranging from 2 to 4 cases per term.^c Of these cases, 6 were granted and 9 were denied. C-SPAN has posted video of some oral arguments on its website. As of February 18, 2016, the oral argument with the highest number of views—6,631—was for the <i>ACLU v. Clapper</i> case (September 2, 2014), which addressed the National Security Agency's program of bulk data collection of telephone records.^d Other posted oral arguments received from 96 to 3,251 views.
Resources and Implementation	According to the Clerk, the court's video and audio policies require minimal resources to implement and there have been no implementation challenges.

Source: GAO analysis of Second Circuit Court of Appeals video and audio policies and procedures and interviews with and data provided by court officials. | GAO-16-437

^a*Cameras in the Courtroom—Second Circuit Guidelines* (March 1996). The guidelines state that "criminal matters" include not only direct appeals of criminal convictions but also any appeal, motion, or petition challenging a ruling made in connection with a criminal case (such as bail motions or appeals from the dismissal of an indictment) and any appeal from a ruling concerning a post-conviction remedy (such as a habeas corpus petition). In addition, cameras are not permitted in criminal or civil pro se (representing oneself) matters.

^bAccording to the Clerk, the court operates on an annual term that begins and ends in mid-August. For example, the August 2014 term began on August 18, 2014, and ended on August 16, 2015.

^cThe Clerk stated that she has instructed court staff to provide all requests for media video coverage to her; however, she would not be aware of any requests that were made but not provided. According to the Clerk, the court heard about 855 oral arguments in 2014.

^dSee 785 F.3d 787 (2d Cir. 2014).

Table 6: U.S. Court of Appeals for the Ninth Circuit—Summary of Video and Audio Policies and Procedures, Coverage Requests and Online Views, and Policy Implementation

Policy on media video and audio coverage of oral arguments	The court’s guidelines state that coverage of all oral arguments in open court may be permitted unless prohibited by rule or statute. ^a According to court officials, media video and audio coverage is allowed for both criminal and civil cases.
Process for requesting coverage and deciding on requests	The guidelines require media organizations to submit requests for coverage more than two business days in advance of the argument date using the application form found on the court’s website. The guidelines state that the panel of judges assigned to hear oral argument retains the authority, in its sole discretion, to grant or prohibit video or audio coverage of any proceeding. According to court officials, the court requires a majority of the judges on the panel to grant or deny a media request for video or audio coverage.
Court-provided video and audio coverage	<ul style="list-style-type: none"> • The court began live streaming video of en banc oral arguments on its website in December 2013 and video of all oral arguments in January 2015.^b (http://www.ca9.uscourts.gov/media/live_oral_arguments.php) • The court posts archived video and audio recordings of arguments on its website, which court officials stated are generally available the same day arguments are heard by the court. (http://www.ca9.uscourts.gov/media/) • Archived videos are also available on YouTube.com, where the court has a channel. (https://www.youtube.com/user/9thcirc)
Coverage requests and online views of oral argument video	<ul style="list-style-type: none"> • From January 1, 2010, through August 30, 2015, the court received requests for video coverage of oral arguments in 92 cases and granted them in 66 cases.^c • From January 1, 2015, through June 11, 2015, there were about 16,000 views of live-streamed video of oral arguments and about 140,000 views of archived video recordings of oral arguments posted on the court’s website and on YouTube.com, according to court officials. • Court officials stated that live streaming oral arguments and providing access to same-day video of oral arguments has resulted in a decrease in the number of media requests for video coverage of arguments. This has reduced the time and resources that the clerk’s office expends processing these requests, including reviewing the request forms; contacting the judges on the panel to decide upon requests, sometimes within short time frames; and recording their decisions. Court officials noted that the media may still make requests for high-profile cases because the court’s own coverage may not meet all media organizations’ needs.
Resources and implementation	<p>According to the 2014 Ninth Circuit Annual Report, ten courtrooms in five Ninth Circuit courthouses are equipped for video streaming and four of these courtrooms have high-definition video cameras. Court officials stated that each courtroom generally uses two stationary cameras—one focused on the judges’ bench and one focused on the attorney lectern. The cameras are motorized and have pre-set frames, which the courtroom deputy controls.</p> <p>The live and archived videos on the court’s website are hosted by YouTube, which handles public distribution. The 2014 Annual Report states that having YouTube distribute the videos is essential as the court’s own network lacks the bandwidth to stream them.</p> <p>According to the 2014 Annual Report and court officials, there were some initial technical challenges with providing live video of oral arguments, such as assembling and installing the video production systems and finding a reliable and cost-effective system to stream the arguments, but officials stated that implementation has generally been smooth.</p>

Source: GAO analysis of Ninth Circuit Court of Appeals video and audio policies and procedures and interviews with and data provided by court officials. | GAO-16-437

^a*The United States Court of Appeals for the Ninth Circuit. Guidelines for Broadcasting, Recording, and Still Photography in the Courtroom* (April 2014).

Appendix IV: Video and Audio Policies and Procedures for the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits

^bThe U.S. Court of Appeals for the Ninth Circuit began live streaming audio of all oral arguments on its website in January 2014.

^cAccording to the 2014 Ninth Circuit Annual Report, the court of appeals hears oral arguments in about 2,100 cases each year.

Table 7: U.S. Court of Appeals for the D.C. Circuit—Summary of Video and Audio Policies and Procedures, Audio Downloads, and Policy Implementation

Policy on media video and audio coverage of oral arguments	The court’s guidelines state that the use of any device that has the capability to photograph, record, or videotape is prohibited except in connection with ceremonial and educational functions of the courts (naturalization proceedings, investitures of new judges, memorial services, portrait presentation ceremonies, etc.). ^a
Court-provided audio coverage	<ul style="list-style-type: none"> • Beginning in September 2013, the court has provided audio recordings of oral arguments on its website.^b (https://www.cadc.uscourts.gov/recordings/recordings.nsf/) Arguments are to be posted by 2 p.m. the same day arguments are heard by the court. According to the court’s news release, the judges of the court of appeals voted unanimously to adopt this policy. • Prior to September 2013, individuals could request a CD of an oral argument recording after the case was completely closed for a \$30 reproduction cost. CDs of oral arguments are still available upon request. • Court officials stated that in 2001, the court provided live audio of oral argument for the United States v. Microsoft Corporation case, which concerned an anti-trust lawsuit against Microsoft.^c Audio of the argument was broadcast on television (e.g., C-SPAN), radio, and the Internet. Officials noted that the court has not expressed an interest in providing live audio access to oral arguments for additional cases.
Audio downloads and requests	<ul style="list-style-type: none"> • The court’s online audio recording files received 50,537 downloads in the court’s 2013 term and 41,473 downloads in the court’s 2014 term. • The court received a total of 23 requests for CDs of oral argument audio from the 2010 through 2012 terms and 2 requests in the 2013 and 2014 terms, after same-day audio recordings became available online.^d
Resources and implementation	Court officials stated that providing same-day audio recordings on the court’s website requires minimal resources and that there have been no implementation challenges.

Source: GAO analysis of D.C. Circuit Court of Appeals audio policies and procedures and interviews with and data provided by court officials. | GAO-16-437

^a*U.S. Court of Appeals for the D.C. Circuit. Policy Guidelines for the Use of Cameras and Recording and Videotaping Devices* (amended March 2008).

^bThe court heard oral arguments in 310 cases in its 2014 term. The court operates on an annual term that begins on September 1 and ends on August 31. For example, the 2014 term began on September 1, 2014, and ended on August 31, 2015.

^cSee 253 F.3d 34 (D.C. Cir. 2001).

^dIndividuals can also request transcripts of arguments to be made at the requester’s expense. The court received approximately 85 requests for transcripts of oral arguments per year from the 2010 through 2014 terms. The number requested has remained about the same before and after same-day audio became available.

Appendix V: Summary of Media Video and Audio Policies and Online Availability of Oral Arguments for State Courts of Last Resort

State	Written policies allow media video and audio coverage	Written policies exclude coverage of certain types of public cases (e.g., civil, criminal, juvenile) ^a	Written policies require parties to affirmatively consent to coverage ^b	Written policies explicitly state that judges must make an on-the-record finding to prohibit coverage ^c	Oral arguments generally posted on court's website or other website ^d	Video and/or audio posted	Oral arguments generally streamed live
Alabama*	•		• ^e				
Alaska*	•		• ^f		•	video	•
Arizona*	•			•	•	video	•
Arkansas*	•				•	video	•
California*	•				• ^g	video and audio	
Colorado	•				•	video and audio	•
Connecticut*	•			•	•	video	•
Delaware	•				•	video and audio	
District of Columbia*	^h				•	video and audio ⁱ	•
Florida*	• ^j			•	•	video	•
Georgia*	•				•	video	•
Hawaii*	•			•	•	audio	
Idaho	•				•	video	•
Illinois*	•				•	video and audio	^k
Indiana*	•				•	video and audio	•
Iowa	•			•	•	video	•
Kansas*	•				•	video	•
Kentucky*	•				•	video	•
Louisiana*	• ^l				•	video	•
Maine*	•				•	audio	•
Maryland*	•				•	video	•
Massachusetts*	•				•	video	•
Michigan*	•			•	•	video	•
Minnesota*	•				•	video	
Mississippi*	•	^m			•	video	•
Missouri*	•	ⁿ			•	audio	•

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Montana*	•				•	video and audio	•
Nebraska*	•				•	video and audio	•
Nevada*	•				•	video	•
New Hampshire	•				•	video and audio	•
New Jersey	•	^o			•	video and audio	•
New Mexico*	•						
New York*	•				•	video	•
North Carolina*	•	^p					
North Dakota*	•			•	•	audio	•
Ohio	•				•	video	•
Oklahoma*	^q						
Oregon*	•				•	video	•
Pennsylvania*	• ^r				•	video	
Rhode Island*	•						
South Carolina*	•				•	video	•
South Dakota*	•				•	audio	•
Tennessee*	•			•	•	audio	
Texas*	•				• ^s	video and audio	•
Utah*	•			•	•	audio	•
Vermont*	•				•	audio	
Virginia*	•	• ^t			•	audio	
Washington*	•			•	•	video	•
West Virginia	•				•	video	•
Wisconsin*	•				•	video and audio	•
Wyoming	•				•	audio	•

Source: GAO analysis of state court of last resort video and audio policies and websites and information provided by court officials. | GAO-16-437

Notes: Our analysis of the media video and audio policies of state courts of last resort is based on the written policies of these courts. We compiled these policies from January through May 2015. We contacted each court to confirm our analysis of its written policies in February 2016 and from June

Appendix V: Summary of Media Video and Audio Policies and Online Availability of Oral Arguments for State Courts of Last Resort

through August 2015, but did not review policy implementation. Courts of last resort in 42 states and the District of Columbia confirmed their policies as of January 2016 and those in the 9 remaining states were confirmed as of June through August 2015. The states with asterisks were confirmed as of January 2016.

^aThis category does not include policies that prohibit media video or audio coverage of oral arguments that are not conducted in open court, such as arguments for cases that are closed to the public, sealed, or confidential under law.

^bThis category does not include policies that require judges or the court to permit coverage of oral arguments.

^cThis category does not include policies that require judges to make findings on the record to both grant or prohibit requests for coverage or rule on an objection to coverage on the record. It also only includes policies that require findings before coverage has begun, and not findings to terminate coverage after it has commenced.

^dThis category includes both live-streamed and archived oral arguments.

^eAlabama's Canons of Judicial Ethics and an Alabama Supreme Court order (October 1976) require attorneys involved in the hearing and the parties present to give their written consent to coverage.

^fAlaska Rules of Administration require all parties, including the guardian ad litem, to consent to media video or audio coverage of a divorce, dissolution of marriage, domestic violence, child custody and visitation, paternity, or other family proceedings.

^gVideo and audio of selected oral arguments are available on the Supreme Court of California's website and other websites. In March 2016, the supreme court announced that it plans to begin live streaming video of oral arguments on its website in May.

^hThe D.C. Court of Appeals has no written policies on media video or audio coverage of oral arguments, and according to the court's Clerk, does not allow such media coverage.

ⁱThe D.C. Court of Appeals streams live audio of all oral arguments on its website and, according to the court's Clerk, streams live video of en banc oral arguments and some arguments heard by three-judge panels.

^jThe Florida Supreme Court partners with WFSU-Television, a public broadcasting station, to provide video coverage of oral arguments. Freestanding video cameras are not permitted in the courtroom during arguments.

^kAlthough oral arguments in the Supreme Court of Illinois are not generally streamed live, video of arguments for four cases in the court were streamed live on another website in November 2015.

^lLouisiana Canon 3 states that a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions except as provided by guidelines on media coverage. The guidelines for extended media coverage in appellate courts require media organizations to notify the court clerk of their intention to provide such coverage at least 20 days in advance of the proceedings and allow the chief justice to prohibit or limit coverage of Louisiana Supreme Court proceedings, among other provisions. According to the Deputy Judicial Administrator of the Louisiana Supreme Court, there is a presumption that coverage is not allowed, although exceptions may be made for cases with high public interest.

^mMississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings prohibit media coverage of certain matters, such as those involving divorce, neglect of minors, domestic abuse, and trade secrets, but the presiding justice can allow coverage by order.

ⁿMissouri Court Operating Rules prohibit media video and audio coverage of juvenile, adoption, domestic relations, and child custody hearings. The Communications Counsel of the Supreme Court of Missouri stated that this limitation does not apply to the supreme court, although the court reserves the right to make a case-by-case determination about whether such coverage would be allowed.

^oSupreme Court Guidelines for Still and Television Camera and Audio Coverage of Proceedings in the Courts of New Jersey state that coverage is prohibited in certain proceedings, such as juvenile proceedings and those involving trade secrets, child abuse or neglect, and charges of sexual contact when the victim is alive. The Director of Communications and Community Relations for the New Jersey Courts stated that this limitation does not apply to the Supreme Court of New Jersey.

^pNorth Carolina court rules state that media video and audio coverage is prohibited in certain judicial proceedings, such as juvenile and child custody proceedings and proceedings involving trade

Appendix V: Summary of Media Video and Audio Policies and Online Availability of Oral Arguments for State Courts of Last Resort

secrets. The Clerk of the Supreme Court of North Carolina stated that this limitation does not apply to the supreme court.

⁹Oklahoma's two courts of last resort—the Supreme Court, which determines all issues of a civil nature, and the Court of Criminal Appeals, which decides all criminal matters—do not have written policies on media video and audio coverage. The office of the Chief Justice of the Oklahoma Supreme Court noted that the supreme court has left it up to each presiding judge to determine whether to allow coverage. According to the Chief Justice, the supreme court has allowed video coverage of oral arguments on a few occasions and is in the process of developing a written policy for such coverage.

⁷According to the Supreme Court of Pennsylvania's Court Crier, the Pennsylvania Cable Network is the only media organization that can record proceedings.

⁸Texas has two courts of last resort—the Supreme Court, which has final appellate jurisdiction for civil and juvenile cases, and the Court of Criminal Appeals, which has final appellate jurisdiction for criminal cases. The Texas Supreme Court has live and archived video, as well as audio recordings, of its oral arguments available online and the Court of Criminal Appeals posts archived audio recordings of arguments on its website.

⁴Virginia Code § 19.2-266 prohibits media video or audio coverage in certain judicial proceedings, such as juvenile, adoption, and child custody proceedings and proceedings concerning sexual offenses or trade secrets. A court official stated that due to an inadequate history of requests to cover such cases on appeal, it is unclear how the court would interpret this statute with regard to media coverage of appellate proceedings.

Appendix VI: Video and Audio Policies and Procedures for the Supreme Court of California and Florida Supreme Court

The courts of last resort in the two states we visited—California and Florida—have varying policies and procedures on video and audio coverage of oral arguments, with different levels of usage and resource requirements. Tables 8 and 9 summarize the policies and procedures, coverage requests and online views, and policy implementation for these courts.

Table 8: Supreme Court of California—Summary of Video and Audio Policies and Procedures, Coverage Requests and Online Views, and Policy Implementation

Policy on media video and audio coverage of oral arguments	California Rules of the Court allow media video and audio coverage of oral arguments. ^a The court permanently began allowing coverage in 1984.
Process for requesting coverage and deciding on requests	The rules allow coverage only on written order of the judge and give the judge discretion to permit, refuse, limit, or terminate coverage. The rules require media organizations to submit requests for coverage at least five court days before the argument date using an application form available on the court's website. The rules also list 18 factors that are to be considered by the judge in deciding whether to grant or prohibit coverage, including, for example, the importance of promoting public access to the judicial system, the parties' support of or opposition to the request, the privacy rights of all participants in the proceeding, and the security and dignity of the court. The rules state that the judge ruling on the request for coverage is not required to make findings or a statement of decision.
Court-provided video and audio coverage	<ul style="list-style-type: none"> • According to court officials, if the media has missed the deadline to request coverage, or based on other extenuating circumstances, the court has the discretion to provide access to its live closed-circuit video feed of oral arguments, which the court records using its own equipment. Media organizations must obtain permission from the court's Public Information Office to access this feed through a multibox—a box that allows multiple individuals to directly connect to a video and audio source—in the press rooms of the court's San Francisco, Los Angeles, and Sacramento locations.^b Court officials stated that the court has provided such access in its San Francisco courtroom since 1999 and began providing the video in high definition in 2013. • The court periodically posts archived audio recordings and a small number of video recordings of oral arguments for selected cases on its website. (http://www.courts.ca.gov/2961.htm) Court officials stated that the arguments posted are for those cases that have high public and media interest. • Court officials stated that the court also conducts annual special oral argument sessions for students, usually in October, where live video of arguments are broadcast on The California Channel, a public broadcasting station, and streamed on the channel's website. Archived recordings of some of these arguments are also available on The California Channel's website and other hosting sites, such as the CaliforniaCourts channel on Youtube.com. • In March 2016, the court announced that it plans to begin live streaming video of oral arguments on its website in May.^c
Coverage requests and online views of oral argument audio and video	<ul style="list-style-type: none"> • From 2010 through 2013, the court received requests for media video coverage of oral arguments in 17 cases and granted all of them.^d No video requests were received in 2014, but media organizations made 8 requests for audio recordings of oral arguments, which the court provided the same or next day. • The court's archived audio and video recordings of oral arguments on its website received 10,102 downloads from June 12, 2014, through June 12, 2015. Court officials stated that the four videos of oral arguments posted on the CaliforniaCourts channel on YouTube.com received 23,010 views as of December 31, 2015.

Appendix VI: Video and Audio Policies and Procedures for the Supreme Court of California and Florida Supreme Court

Resources and implementation

According to court officials, there are five unmanned robotic high-definition cameras in the court’s San Francisco courtroom. The court’s Sacramento courtroom has three high-definition cameras and the Los Angeles courtroom has three standard-definition cameras, which are currently being upgraded to high definition. These cameras generally are programmed with pre-set, fixed frames, but can be operated (e.g., panned, tilted, zoomed) by a technician outside the courtroom in a nearby control booth.

Court officials said that they prefer media organizations to use the court’s feed, rather than bring in their own cameras, to reduce the likelihood of any distractions or other effects on proceedings. According to these officials, if the media makes a request to cover an oral argument, the court often suggests that the media use the court’s cameras, which can be operated from a control booth to alter the normally fixed image, if necessary. However, media organizations may still make requests for video coverage of oral arguments, particularly for high-profile cases. If multiple requests are received, media organizations are required by rule to agree upon pooling arrangements.

Source: GAO analysis of Supreme Court of California video and audio policies and procedures and interviews with and data provided by court officials. | GAO-16-437

^a*California Rules of the Court*. Rule 1.150. Photographing, Recording, and Broadcasting in Court (January 2015).

^bThe Supreme Court of California is headquartered in San Francisco and also hears oral arguments in its courtrooms in Los Angeles and Sacramento.

^cAccording to the Public Information Officer for the Judicial Council of California, the court plans to live stream oral arguments held in May 2016 in its San Francisco courtroom and arguments held in November 2016 in its Sacramento courtroom. Infrastructure upgrades are required before live streaming can begin in its Los Angeles courtroom.

^dAccording to the Court Clerk, the court heard oral arguments for 86 cases in 2014.

Table 9: Florida Supreme Court—Summary of Video and Audio Policies and Procedures, Online Video Views, and Policy Implementation

Policy on media video and audio coverage of oral arguments

Florida Rules of Judicial Administration allow media video and audio coverage of court proceedings, including oral arguments, subject at all times to the authority of the presiding judge to control the conduct of proceedings before the court, ensure decorum and prevent distractions, and ensure the fair administration of justice in the pending cause.^a The court permanently began allowing coverage in 1979.

Presumption of coverage and process for prohibiting coverage

Florida case law establishes a presumption that coverage is allowed. According to the court’s Public Information Officer, the media is not required to request coverage. The case law establishes a standard of review for the presiding judge, providing that a judge may exclude media video or audio coverage of a particular participant only upon a finding that such coverage will have a substantial effect upon the particular individual which would be qualitatively different from the effect on members of the public in general and such effect will be qualitatively different from coverage by other types of media.^b Case law also provides that in order to make such a finding, judges must hold a hearing, in which the media must be permitted to participate.^c

Appendix VI: Video and Audio Policies and Procedures for the Supreme Court of California and Florida Supreme Court

Court-provided video coverage

Since 1997, the court has partnered with WFSU-Television (WFSU-TV), a public broadcasting station, to record, broadcast, live stream online, and archive video of oral arguments.^d Specifically,

- The court and WFSU-TV provide a direct feed of oral argument video via a mult box located in the press room in the court building. Because this feed is available, freestanding video cameras are not permitted in the courtroom during oral arguments.
- The Florida Channel, which is produced and operated by WFSU-TV, televises live and tape-delayed video of oral arguments. According to WFSU-TV officials, The Florida Channel has discretion over whether arguments are broadcast live and usually will do so unless other governmental affairs programming, such as state legislative sessions, are scheduled.^e Oral arguments that are broadcast on the channel are also transmitted to interested parties via satellite. According to the court's Public Information Officer, news organizations routinely downlink the broadcasts without needing to send satellite trucks to the courthouse.
- In addition, live and archived video of oral arguments are available on the Florida Supreme Court Gavel to Gavel website, which is maintained by WFSU-TV. WFSU-TV officials stated that archived video is generally posted within 48 hours of arguments. (<http://wfsu.org/gavel2gavel/>)

Online video views

- According to the court's Public Information Officer, the court has never prohibited video coverage of oral argument in a case.
- From January 2014 through June 2015, the Gavel to Gavel website received 108,127 unique page views.

Resources and implementation

The Florida Supreme Court and WFSU-TV have an annual interagency agreement that details the services WFSU-TV is to provide, the court's responsibilities, and the monthly payment the court is to make to WFSU-TV for its services. The agreement states that WFSU-TV is to be responsible for the purchase and maintenance of all equipment necessary, including the courtroom cameras, to fulfill the terms of the agreement.

According to the court's Public Information Officer and WFSU-TV officials, one to two WFSU-TV staff operate the court's four cameras from a control room in the court. The cameras have pre-set frames for the justices and attorneys. During oral arguments, WFSU-TV staff in the court's control room coordinate with the producer and graphics operator in the control room at WFSU-TV's production facilities, who select which shots to use, insert closed captioning, and distribute the final video, among other production tasks.

Per the interagency agreement, The Florida Channel is required to show all broadcasts of oral arguments in their entirety and is not permitted to show only partial segments of arguments. In addition, the agreement states that video and audio of oral arguments may not be used for any political or commercial purpose, except as expressly authorized by the chief justice of the court.^f

According to the Public Information Officer, the close partnership between the court and WFSU-TV is key to providing access to video coverage of oral arguments. He stated that the partnership allows the court to leverage WFSU-TV staff, technical expertise, and production capabilities. For example, the court would not be able to devote the same number of staff to broadcasting oral arguments as WFSU-TV does. In addition, WFSU-TV has more updated technology than the court would have been able to purchase.

Source: GAO analysis of Florida Supreme Court video and audio policies, procedures, and judicial decisions, and interviews with and data provided by court officials and WFSU-TV. | GAO-16-437

^a *Florida Rules of Judicial Administration*. Rule 2.450 (January 2015).

^b *In re Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764 (Fla.1979).

^c *State v. Palm Beach Newspapers, Inc.*, 395 So. 2d 544 (Fla. 1981); *State v. Green*, 395 So. 2d 532 (Fla. 1981).

^d According to the court's Public Information Officer, the court heard 86 oral arguments in 2014.

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Procedures for the Supreme Court of
California and Florida Supreme Court**

⁶WFSU-TV's production manager stated that cases of exceptional public interest generally receive higher priority for live Florida Channel coverage.

⁷According to the interagency agreement, a political purpose includes use in any campaign for elective public office or any campaign supporting or opposing a ballot proposition submitted to the electorate or other similar activities. Commercial purpose does not include any of the following: (1) use of the television signal by an accredited news organization or any nonprofit organization for educational or public affairs programming, (2) use of the television signal by an accredited news organization for routine news programming, or (3) use of the television signal as authorized by the chief justice of the court. The agreement states that WFSU-TV agrees to use its best efforts to ensure that all persons or entities that access the signal by any means will respect these prohibitions.

Appendix VII: Video Policies and Procedures for the High Court of Australia, Supreme Court of Canada, and U.K. Supreme Court

The courts of last resort in Australia, Canada, and the United Kingdom (U.K.) have policies that provide video coverage of oral arguments by the court itself, with varying procedures for doing so and mechanisms to help control who can use the footage and how the footage can be used. Tables 10, 11, and 12 summarize the policies and procedures, online views and usage requests, and policy implementation for these courts.

Table 10: High Court of Australia—Summary of Video Policies and Procedures, Online Video Views and Usage Requests, and Policy Implementation

Court-provided video coverage	Beginning in October 2013, the court has posted video recordings on its website of oral arguments heard before the full court—at least five of the court’s seven justices—in its Canberra courthouse. ^a (http://www.hcourt.gov.au/cases/recent-av-recordings) The court’s 2014-2015 Annual Report states that recordings are generally available at the end of each sitting day. According to the court’s Senior Executive Deputy Registrar, recordings may be posted on the next business day following arguments for some cases because they require editing to remove sensitive information, such as the names of victims in sexual assault cases. This official stated that media organizations are not allowed to record oral arguments using their own equipment because this might increase the likelihood of disruptions of proceedings or distortions of video coverage.
Policies on how the court’s video can be used	The terms of use for the video recordings state that viewers may not modify, reproduce, publish, broadcast, or use the video of proceedings in any other way without prior written approval of the court. However, schools and universities may use proceedings in a classroom setting for educational purposes without prior approval.
Online video viewers and requests for use of recordings	<ul style="list-style-type: none"> • According to the court’s 2014-2015 Annual Report, there were over 27,000 views of the court’s video recordings of full court hearings from July 1, 2014, through June 30, 2015. • The Senior Executive Deputy Registrar stated that the court receives about 10 to 15 requests to use video recordings in a given calendar year and has approved all of them.
Resources and implementation	<p>According to the Senior Executive Deputy Registrar, the court has one stationary unmanned camera in each of its three courtrooms in Canberra. He stated that the court already had the technical capacity in place to record and post video of oral arguments and the costs are minimal for the court to provide such coverage. In addition, he noted that having the court use its own equipment and maintain control of the video recording process helped justices acclimate to the court providing video coverage and alleviate concerns about cameras being a distraction.</p> <p>The Senior Executive Deputy Registrar said that he is primarily responsible for approving or denying requests to use the court’s video recordings of oral arguments, but may forward the requests to the justices if necessary. He said that there is no formal process or form that is used to make requests and noted that the court takes a very permissive view with regard to these requests because it is a public institution.</p>

Source: GAO analysis of High Court of Australia video policies and procedures and interview with the court’s Senior Executive Deputy Registrar. | GAO-16-437

^aThe high court does not provide video coverage of oral arguments for special leave applications, which are petitions for the high court to grant appellate review of decisions of lower courts. According to the court’s 2014-2015 Annual Report, there were approximately 60 full court hearings from July 1, 2014, through June 30, 2015, excluding those for special leave applications. The report states that approximately two-thirds of all sitting days of the full court are in Canberra. The court holds the remainder of its sitting days in other cities, including Adelaide, Brisbane, Hobart, and Perth, but according to the Senior Executive Deputy Registrar, does not provide video coverage of these proceedings because the courtrooms in these cities are generally not equipped to do so. The court

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also provides transcripts of oral arguments online, which are usually available the day after arguments are heard in Canberra.

Table 11: Supreme Court of Canada—Summary of Video Policies and Procedures, Requests for Use of Video Recordings, and Policy Implementation

Court-provided video coverage	<ul style="list-style-type: none"> • The Supreme Court of Canada records video of oral arguments using its own equipment and, since February 2009, has streamed live video of arguments on its website.^a (http://www.scc-csc.ca/case-dossier/info/webcasts-webdiffusions-eng.aspx) The court also posts archived video of arguments on its website. According to court officials, the court has never prohibited video coverage of a public proceeding.^b These officials stated that media organizations are not allowed to record arguments using their own equipment. • The court has an agreement with the Canadian Public Affairs Channel (CPAC) which allows CPAC to televise oral arguments and live stream and archive them on its website.^c CPAC broadcasts arguments in a dedicated weekly timeslot. In addition, CPAC is authorized and has agreed to make broadcast feeds of oral arguments available to other broadcast members of the Canadian Parliamentary Press Gallery at a central node for news and public affairs broadcasts only.^d
Policies on how the court’s video can be used	<ul style="list-style-type: none"> • The court’s agreement states that CPAC will broadcast arguments in their entirety, but may use clips, sound bites, or excerpts for its programming, provided that they are balanced and fair to the parties and all concerned in the appeal.^e It also states that CPAC will keep the broadcast members of the press gallery apprised of the terms and conditions of the agreement and will relay the court’s policy regarding use of argument excerpts. • Parties and individuals that are not members of the news media must submit a request to the court to obtain permission to use oral argument recordings. Requests are made using an electronic form on the court’s website, which requires information such as a description of the video or webcast requested, how it will be used, and the medium in which it will be used (e.g., Internet, video, film, DVD). If approval is granted, the requester is required to sign an agreement detailing the terms of use and pay a \$35 fee to obtain a DVD copy of the proceeding. Agreements may include provisions to, for example, use footage in a context that presents the case and the positions of the litigants in a fair and balanced way and does not harm the reputation of the court or of the counsel or justices appearing in the footage.
Requests for use of oral argument recordings	<ul style="list-style-type: none"> • The court does not track the number of views or downloads that video of oral arguments posted on its website have received. • According to court officials, the court receives about 80 requests per year for DVDs of full oral arguments, generally for private use. It also receives approximately 15 requests per year for use of excerpts of proceedings in seminars, educational materials, or in documentaries. Officials stated that requests are rarely denied, but that certain requests have been denied where the proposed use is for purely commercial purposes.

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Resources and implementation

According to court officials, administering and implementing the court's video and audio procedures require the use of resources in its Registry, Information Technology, and Communications branches. They estimated that implementing these policies requires about 2 to 2.5 full-time employees. Officials stated that the court is equipped with four robotic cameras—two in the front of the courtroom and two in the back. They noted that the cost of purchasing equipment in 2008 was about \$700,000 and the annual cost of archiving and bandwidth is approximately \$30,000 per year.

According to court officials, the Deputy Registrar reviews the requests to use oral argument recordings and is responsible for deciding whether to grant or deny requests. On occasion, he or she will discuss the request with the Chief Justice's Executive Legal Officer. One key factor considered in making decisions is whether the proposed use is for non-commercial (e.g., education, private use) or commercial purposes. Specifically, where the use is for commercial purposes, further information is requested as to the portion of the proceeding to be used and the context in which it will be presented. Where the use is in line with principles of education and public information, permission will generally be granted, which is most often the case with documentary film makers. Officials stated that, other than requesting a date of broadcast if court footage is used in a documentary, there is very little monitoring of usage.

Source: GAO analysis of Supreme Court of Canada video policies and procedures and information provided by court officials. | GAO-16-437

^aAccording to its website, the court hears on average between 65 and 80 appeals per year.

^bCourt officials stated that staff ensure that counsel are aware that they should not make reference to any matter that is covered by a publication ban or a confidentiality or sealing order. Matters that are covered by such bans and orders are not webcast live, and are uploaded to the website after review by supreme court staff to ensure that such bans and orders have not been breached. This review process can take several days.

^cAccording to court officials, the court has had a formal agreement with CPAC since 2002. The current agreement is effective from August 31, 2013, to August 31, 2018.

^dThe Canadian Parliamentary Press Gallery consists of journalists and other professionals whose principal occupation is reporting on Parliamentary or federal government news, among other membership requirements.

^eThe agreement allows CPAC to edit hearings to keep within the allocated time slot or to address technical problems with the production or transmission of the hearings, provided that the arguments of the parties are represented in full and in both official languages, French and English.

Table 12: U.K. Supreme Court—Summary of Video Policies and Procedures, Online Video Views, and Policy Implementation

Court-provided video coverage	<ul style="list-style-type: none"> • The U.K. Supreme Court records its own video of all oral arguments and, in October 2014, began streaming live video of arguments on its website.^a (https://www.supremecourt.uk/live/court-01.html) Sky News, a U.K. broadcasting organization, has streamed the court’s live video of oral arguments on its website since May 2011. (http://news.sky.com/supreme-court-live) • According to the U.K. Supreme Court’s Head of Communications, media organizations are not allowed to record oral arguments using their own equipment but can access the court’s video feed in a nearby broadcast studio. He stated that this allows the court to control what is recorded, including interrupting or terminating coverage if necessary. • The court also began making archived video recordings of oral arguments available on its website in May 2015. According to the court’s press release, footage is uploaded the next working day after an argument is heard and is available until about a year after the date of the argument. The Head of Communications stated that the archived recordings will be funded until March 2016, after which the service will be reviewed for continued funding based on factors such as the court’s funding priorities and number of views that videos have received.
Policies on how the court’s video can be used	<ul style="list-style-type: none"> • The court has established rules for how videos of oral arguments can be used by broadcasters. Specifically, the rules state that the video is made available solely for the use of news, current affairs, and educational or legal training programs. The rules prohibit usage in light entertainment programs, satirical programs, party political broadcasts, and advertising or promotion. They note that extracts from proceedings may be included in a broadcast magazine program that also contains music or humorous features, provided the different types of items are kept separate. In addition, the rules state that any stills produced from the video must be used in a way that has regard to the dignity of the court and its functions as a working body. According to the Head of Communications, all the U.K.’s main media broadcasting organizations have agreed to these rules. • The court’s website states that the re-use, capture, re-editing or redistribution of archived video recordings in any form is not permitted and that any such use could attract liability for breach of copyright or defamation and, in some circumstances, could constitute a contempt of court. The website also states that because of copyright purposes, users are not able to download the footage for long term storage or editing. • The court’s Head of Communications stated that the court enforces its policy to the best of its ability with limited resources and that, to the court’s knowledge, there have not been any violations of the rules.
Online video viewers	<p>According the Head of Communications, the court’s live videos of oral arguments on its website receive about 20,000 unique viewers per month and its archived video recordings receive about 10,000 unique viewers per month.</p>
Resources and implementation	<p>According to the Head of Communications, the three courtrooms where oral arguments are held are each equipped with four stationary cameras. The court has two broadcast engineers under contract who are responsible for maintaining and operating the cameras and recording system and distributing the video of oral arguments.</p> <p>The Head of Communications stated that initial implementation challenges included concerns with the use of extracts of oral arguments and a presumption that material produced by a government entity should be considered public property with an open license to use and redistribute. He stated that the court has effectively addressed these issues.</p>

Source: GAO analysis of U.K. Supreme Court video policies and procedures and interview with the court’s Head of Communications. | GAO-16-437

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^aAccording to the U.K. Supreme Court's 2014-2015 Annual Report, the court heard 89 oral arguments from April 1, 2014, through May 31, 2015. The Head of Communications stated that arguments are generally held over two days and last 10 to 12 hours total. He said that, about once or twice a year, an oral argument will not be broadcast at the discretion of the justices because of the sensitive nature of the case, such as when a child victim is involved.

Appendix VIII: GAO Contact and Acknowledgments

GAO Contact

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