

Transparency Across the Judiciary

How Federal Appeals Courts Stack Up



November 2019

Introduction

The U.S. Supreme Court is notorious for its opacity. No live broadcast. No ethics code. No way to know when the justices are flying around the world on a politico's dime.

But for all the ink spilled on SCOTUS, there is little discussion on how the rest of the federal appeals courts are faring when it comes to basic transparency and accountability measures.

In this report, we hope to demystify the U.S. Courts of Appeals and show that they can learn from one another – and from us – on how to open up. We'll discuss some courts' experiments with livestreaming and how others have found unique ways to interact with the public. We'll describe the courts' (in)ability to lay down basic workplace conduct guidelines, and we'll home in on a universal few bright spots, namely the ease at which members of the press and public can, for the most part, locate judicial opinions and oral argument calendars.

Finally we'll rate and rank each circuit court according to a points system we've developed. We'll rank SCOTUS, too, but spoiler alert: it comes in last.

Broadcast Access

Broadcast access to government institutions is a basic method of ensuring transparency and accountability. If Americans can watch the president and members of Congress on C-SPAN or on their favorite YouTube channel, they should be able to see the supposedly public exercises of the federal courts – i.e., oral arguments, and for the Supreme Court, oral arguments and opinion announcements – in the same manner. Unfortunately, the federal court system has largely and famously resisted increasing broadcast access, despite its potential benefits and low opportunity costs and financial costs.

Not surprisingly, the high court ranks last on our list in this category. It routinely posts audio of arguments at the end of the week, a slower turnaround than any other appeals court. In only two instances since Apr. 2015, and only 27 times overall, has the court agreed to release audio on the day an argument occurred¹. In the modern era of fast-paced media and a short national attention span, audio released at the end of the week plays almost no role in coverage of

How We Determined Points:

- **Oral argument audio timing:** Courts received two points for live audio, one for same-day and zero for next-day or end-of-week audio
- **Live audio permitted:** Circuits received one point for permitting live audio in all cases or in cases with heightened public interest
- **Oral argument audio quality:** Circuits received two points for exceptional audio quality and one for good quality audio
- **Oral argument video recording:** Circuits received one point for allowing video in all cases or in exceptional cases

¹<https://fixthecourt.com/2018/04/supreme-court-allow-day-audio-travel-ban-case/> (accessed Nov. 15, 2019)

the Supreme Court. Instead, the public is forced to rely on the filtered (and, in some cases, partisan) coverage of court reporters, who are the only ones positioned to regularly observe the court’s business in real time. The public would greatly benefit from live, or even same-day, access to oral arguments at SCOTUS.

The Ninth and D.C. Circuits provide a model that other appellate courts, including the Supreme Court, should follow.

Though circuit courts vary greatly in the allowance of broadcast access, they all allow better access than the Supreme Court. The vast majority of courts post audio of oral arguments on the very day on which an argument occurs, with the Second,² Fourth³ and Tenth⁴ Circuits posting argument audio either the same day *or* by the next day at the

latest. Meanwhile, the Eleventh Circuits commits to posting audio “as soon as practical,” typically within a day or two. Each of the other circuits provides same-day audio.

On the other side of the spectrum, the D.C. Circuit⁶ provides live audio of oral arguments, and the Ninth Circuit⁷ provides live audio and video. These courts provide a model that other appellate courts, including the Supreme Court, should follow to increase public access.

In addition to most circuits routinely providing same-day audio, and two circuits routinely providing live audio, several circuits allow live audio or video in certain cases. The Second and Fourth Circuits have provided live audio in select cases – twice each – for two Trump tax cases in 2019 and two travel ban cases in 2017, respectively. The Second⁸, Third⁹, and Seventh Circuits¹⁰ provide video in some cases. Fix the Court hopes these and other circuits expand on these policies to provide live audio and video as a matter of course.

One way of thinking of broadcast access is a “ladder of engagement.” Appellate courts may start with offering same-day audio access, see how that works, move to live audio, then try end-of-week or same-day video and eventually live video.

Fix the Court has spent much of 2019 applying pressure to circuit courts to move up the ladder. In collaboration with the Atlanta Press Club, Georgia Press Association,

The Broadcast-in-Courts Ladder of Engagement:

End-of-Week Audio → Same Day Audio → Live Audio →
End-of-Week Video → Same-Day Video → Live Video

²http://www.ca2.uscourts.gov/oral_arguments.html (accessed Nov. 15, 2019)

³<http://www.ca4.uscourts.gov/oral-argument/listen-to-oral-arguments> (accessed Nov. 15, 2019)

⁴<https://fixthecourt.com/wp-content/uploads/2019/11/CA10-on-audio-7.19.png> (accessed Nov. 15, 2019)

⁵https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/Rules_Bookmark_AUG19.pdf (accessed Nov. 15, 2019)

⁶[https://www.cadc.uscourts.gov/internet/sixtyday.nsf/mastercalendar?SearchView&query=\(%5BEntryDate%5D%3E=10/02/2019%20AND%20%5BEntryDate%5D%3C=10/02/2019\)&tab=1&SearchMax=1000](https://www.cadc.uscourts.gov/internet/sixtyday.nsf/mastercalendar?SearchView&query=(%5BEntryDate%5D%3E=10/02/2019%20AND%20%5BEntryDate%5D%3C=10/02/2019)&tab=1&SearchMax=1000) (accessed Nov. 15, 2019)

⁷https://www.ca9.uscourts.gov/media/live_oral_arguments.php (accessed Nov. 15, 2019)

⁸ <https://www.c-span.org/video/?c4824334/user-clip-2nd-circuit-trump-vance> (accessed Nov. 15, 2019)

⁹ <https://www.ca3.uscourts.gov/oral-argument-recordings-video> (accessed Nov. 15, 2019)

¹⁰ <http://www.ca7.uscourts.gov/opinions-and-oral-arguments/opinions-arguments.htm> (accessed Nov. 15, 2019)

North Carolina Press Association, Nebraska Press Association, National Association of Black Journalists, Radio Television Digital News Association, Reporters Committee for Freedom of the Press, former U.S. Senator Russ Feingold of Wisconsin, and other organizations, we have requested live audio or video from the Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits in recent months – though to little avail, even as we’ve chosen cases here with significant national interest, addressing issues from the death penalty to presidential immunity.

It hasn’t all been a lost cause, though. For *Trump v. Vance* (19-3204) on whether the president must turn his tax returns over to the Manhattan district attorney, a Second Circuit case on presidential immunity and the President’s tax returns argued Oct. 23, 2019, we worked with C-SPAN and the Reporters Committee on live audio request, which was granted. More than 40,000 people streamed the arguments within hours of the conclusion of the case, and as of Nov. 19, more than 290,000 people had listened to the arguments on C-SPAN.org or YouTube¹¹.

In a Fifth Circuit case concerning abortion, *In re: Rebekah Gee* (19-30353), our live audio request was rejected on July 23, but the court agreed to post audio “within one hour of the completion of the hearing”¹² and has done so for other cases of heightened interest this fall.

All of our Seventh Circuit video requests this year have been rejected, and of late we figured out why: circuit rules require that the requests be made one week before arguments¹³, and yet the calendar is only coming out one week before arguments. Recently, though, and thanks to our researchers’ persistence, circuit leadership has agreed to look into changing their policy to provide more advanced notice of arguments¹⁴.

Our most successful interactions on live audio date back to 2017 with the D.C. Circuit. Fix the Court requested live audio for the Oct. 20, 2017, argument in a case concerning the reproductive rights of an undocumented minor in federal custody, *Garza v. Hargan* (17-5236). Chief Judge Merrick Garland granted our request and permitted live audio for several subsequent cases during the 2017-18 term. The court announced in May 2018 that it would livestream audio of all arguments at the start of the next term, which began in Sept. 2018¹⁵.

With a very modest investment of financial and personnel resources, Congress or the Administrative Office of the U.S. Courts could facilitate public access to our taxpayer-funded courts. One court official whose circuit has livestreamed audio told us on background that the circuit “spent about \$25,000 for the equipment [it] needed on our end to live stream audio.”

¹¹<https://fixthecourt.com/2019/10/tens-thousands-tune-live-hear-second-circuit-debate-trump-docs-will-scotus-allow-similar-access/>(accessed Nov. 15, 2019)

¹² <https://fixthecourt.com/wp-content/uploads/2019/11/CA5-audio-7.23.19.png> (accessed Nov. 15, 2019)

¹³ <http://www.ca7.uscourts.gov/rules-procedures/rules7.htm> (accessed Nov. 15, 2019)

¹⁴ <https://fixthecourt.com/wp-content/uploads/2019/11/CA7-on-video-9.5.19.png> (accessed Nov. 15, 2019)

¹⁵<https://fixthecourt.com/2018/05/d-c-circuit-livestream-audio-arguments-starting-next-term/> (accessed Nov. 15, 2019)

While each of the circuits provides better broadcast access than the Supreme Court, there is still room for improvement. The Ninth Circuit’s policy of providing a live video stream of oral arguments is the gold standard and should be adopted everywhere. Fix the Court will continue to apply pressure on a case-by-case basis, but ultimately, improved access will likely only be achieved through legislation or a change in the policy of the Judicial Conference of the U.S. or the AO.

In addition to examining the timing of the audio and video release, we also watched and listened to the quality. We are pleased to report that the quality of audio and video in all circuits was good: no circuits had unusually high quality or terrifically crisp audio or video, but no circuits provided content that was unwatchable or incomprehensible. We gave each circuit one point here.

Broadcast Access: Total Point Distribution

	When is argument audio typically posted?	Allow live audio?	Allow video?	How is audio / video quality?	Total for broadcast
First Circuit	1	0	0	1	2
Second Circuit	1	1	1	1	4
Third Circuit	1	0	1	1	3
Fourth Circuit	0	1	0	1	2
Fifth Circuit	1	0	0	1	2
Sixth Circuit	1	0	0	1	2
Seventh Circuit	1	0	1	1	3
Eighth Circuit	1	0	0	1	2
Ninth Circuit	2	1	1	1	5
Tenth Circuit	0	0	0	1	1
Eleventh Circuit	1	0	0	1	2
Federal Circuit	1	0	0	1	2
D.C. Circuit	2	1	0	1	4
Supreme Court	0	0	0	1	1

Oral Argument Calendars and Judicial Opinion Releases

Considering the dearth of livestreamed oral arguments throughout the federal judiciary, transparency in the scheduling of arguments takes on a heightened importance. Many of the circuits (Second¹⁶, Fourth¹⁷, Fifth¹⁸, Ninth¹⁹, Tenth²⁰, Federal²¹ and D.C.²²), as well as the Supreme Court²³, seem to acknowledge this fact by posting the oral argument calendar months in advance.

Others fall short, however. As mentioned, the Seventh Circuit only provides the oral argument calendar one week in advance²⁴, leaving very little time for interested members of the public to arrange to be at the court – the only way to see the proceedings live. The First²⁵, Third²⁶, Sixth²⁷, Eighth²⁸ and Eleventh²⁹ Circuits, on the other hand, post their calendars weeks in advance.

Judicial opinions have long been the primary way the courts have sought to communicate with the public, not to mention eager litigants, so unsurprisingly, the federal judiciary as a whole diligently uploads both the opinions rendered in cases as well as judicial council orders and opinions that settle ethics complaints.

In terms of the latter, recent orders related to complaints against Justice Brett Kavanaugh³⁰ and Judge Carolos Murguia³¹, both in the Tenth Circuit, and against an unnamed magistrate judge in the Fourth Circuit³², were posted online upon release.

All judicial opinions across all circuits are generally posted on the day they are released, so all circuits received one point. SCOTUS scored two due to its timely posting; the press and public generally know that opinions are handed down at 10 a.m. on designated “opinion days,” and the opinions arrive on time.

How We Determined Points

- **When is oral argument calendar posted?:** Courts received two points for posting months in advance, one for posting weeks in advance and zero for posting less than weeks in advance
- **Are judicial council opinions and orders posted online?:** Circuits received one point for posting judicial council opinions and orders online
- **When are opinions generally posted?:** Circuits all received one point for generally posting opinions on the same day they are made

¹⁶ <http://www.ca2.uscourts.gov/calendar.html> (accessed Nov. 15, 2019)

¹⁷ <http://www.ca4.uscourts.gov/oral-argument/oral-argument-calendar> (accessed Nov. 15, 2019)

¹⁸ <http://www.ca5.uscourts.gov/clerk/calendar/int-cal.htm> (accessed Nov. 15, 2019)

¹⁹ <https://www.ca9.uscourts.gov/calendar/> (accessed Nov. 15, 2019)

²⁰ <https://www.ca10.uscourts.gov/calendar> (accessed Nov. 15, 2019)

²¹ <http://www.cafc.uscourts.gov/argument/upcoming-oral-arguments> (accessed Nov. 15, 2019)

²² <https://www.cadc.uscourts.gov/internet/sixtyday.nsf/fullcalendar?OpenView&count=1000> (accessed Nov. 15, 2019)

²³ As we were writing this section on Nov. 8, the Supreme Court announced its oral argument schedule for its January sitting (cases to be argued Jan. 13-22, 2020)

²⁴ <http://www.ca7.uscourts.gov/calendar/calendar.htm> (accessed Nov. 15, 2019)

²⁵ <https://www.ca1.uscourts.gov/calendar-information> (accessed Nov. 15, 2019)

²⁶ <https://www.ca3.uscourts.gov/calendar> (accessed Nov. 15, 2019)

²⁷ <https://www.ca6.uscourts.gov/oral-argument-calendars> (accessed Nov. 15, 2019)

²⁸ <https://www.ca8.uscourts.gov/argument-calendars> (accessed Nov. 15, 2019)

²⁹ <http://www.ca11.uscourts.gov/oral-argument-calendars> (accessed Nov. 15, 2019)

³⁰ <https://www.uscourts.gov/courts/ca10/10-18-90038-et-al.I.pdf> (accessed Nov. 15, 2019)

³¹ <http://www.ca10.uscourts.gov/sites/default/files/misconduct/10-18-90022.I.pdf> (accessed Nov. 15, 2019)

³² <http://www.ca4.uscourts.gov/JCOrders/JCOrders/04-16-90088--jcorder.pdf> (accessed Nov. 15, 2019)

(Advanced notice of which opinions are being released on which day would be a boon for transparency, of course, not to mention the general stress of the Supreme Court press corps, especially in June.)

Finally, we felt two points was deserved here since Supreme Court opinion and order releases never require PACER as a backup. Taking a wider view, SupremeCourt.gov remains one of the better federal court websites out there in terms of the amount of information it contains³³.

An additional category we considered for this section but ultimately left out was the timing of the disclosure of panel members' identities. Even with courts of appeals all assigning panels randomly, typically by electronic means, they differ in when they announce the identities of the judges on a given panel to litigants and the public. According to a 2011 Federal Judicial Center report³⁴, "some courts announce it [up to two weeks] early" – presumably good for transparency – "while others withhold panel members' identities so that attorneys do not spend time and effort tailoring arguments in their briefs to the anticipated panel" – an important point for neutrality.

Though recently the subject of a House Judiciary Committee hearing, we did not include the growing frequency with which federal courts seal documents as a marker in this report.

Opinions and Orders: Total Point Distribution

	When is oral argument calendar posted?	When are opinions posted?	Are judicial council opinions / orders posted online?	Total for opinions / orders
First Circuit	1	1	1	3
Second Circuit	2	1	1	4
Third Circuit	1	1	1	3
Fourth Circuit	2	1	1	4
Fifth Circuit	2	1	1	4
Sixth Circuit	1	1	1	3
Seventh Circuit	0	1	1	2
Eighth Circuit	1	1	1	3
Ninth Circuit	2	1	1	4
Tenth Circuit	2	1	1	4
Eleventh Circuit	1	1	1	3
Federal Circuit	2	1	1	4
D.C. Circuit	2	1	1	4
Supreme Court	2	2	N/A	4

³³ Though tempted, we did not rate and rank circuit court websites. They are all bad – and in so many ways that it would require an entirely different report to describe.

³⁴ "Case Management Procedures in the Federal Courts of Appeals," Federal Judicial Center, <https://www.fjc.gov/sites/default/files/2012/CaseMan2.pdf> (accessed Nov. 18, 2019)

Communicating with the Public

As with other metrics of transparency and access, the circuits vary widely in their commitment to community engagement. To evaluate public communication, Fix the Court examined press releases, community programming and judges' speaking activities, though only assigned points for the first category.

Press releases and other online announcements provide an easy opportunity for courts to engage directly with the public. Several circuits make a point of regularly posting releases online to keep the public informed of (proposed) rule updates, technological issues and personnel changes.

To tally points, we counted the number of press releases and other online announcements that the courts made in Oct. 2019. The Fourth Circuit³⁵ and the Federal Circuit³⁶ had the most with five each. These releases informed the public of a new Bankruptcy Judge in the District of Maryland³⁷, a Fourth Circuit rules change³⁸ and an electronic filing outage in the Federal Circuit, among other bits of news³⁹. Such announcements may seem mundane, but they represent an attempt on behalf of the courts to engage with the public they serve.

By contrast, many courts almost entirely failed to use press releases or other public announcements to engage with the public. The First⁴⁰, Third⁴¹, Fifth⁴², Sixth⁴³, Seventh⁴⁴ and Eighth⁴⁵ Circuits and the Supreme Court⁴⁶ each released zero or one announcement last month. SCOTUS has a page for press releases and another for media advisories⁴⁷, but the court posted only once on either page during the month we looked at.

Given the Supreme Court's large volume of work, and the public's significant interest, a single public release in the first month of a term seems quite low, especially as we believe the regular release of

How We Determined Points

- **Number of Press Releases in October:** Courts received two points if they published three or more press releases in Oct. 2019, one point if they published one or two release, and zero points if they published zero releases
- Points were not subtracted for attendance at seminars that could be construed as partisan

³⁵ <http://www.ca4.uscourts.gov/news-announcements> (accessed Nov. 15, 2019)

³⁶ <https://www.ca9.uscourts.gov/news.php> (accessed Nov. 15, 2019)

³⁷ <http://www.ca4.uscourts.gov/news-announcements/article/2019/10/16/fourth-circuit-selects-david-l-bissett-as-bankruptcy-judge-for-the-northern-district-of-west-virginia> (accessed Nov. 15, 2019)

³⁸ <http://www.ca4.uscourts.gov/news-announcements/article/2019/10/21/rule-amendment-notice-on-october-21-2019> (accessed Nov. 15, 2019)

³⁹ <http://cafc.uscourts.gov/announcements/notice-regarding-electronic-filing-outage-october-18-2019> (accessed Nov. 15, 2019)

⁴⁰ <https://www.ca1.uscourts.gov/news> (accessed Nov. 15, 2019)

⁴¹ <https://www.ca3.uscourts.gov/news/> (accessed Nov. 15, 2019)

⁴² <http://www.ca5.uscourts.gov/feeds/circuitnews> (accessed Nov. 15, 2019)

⁴³ <https://www.ca6.uscourts.gov/news> (accessed Nov. 15, 2019)

⁴⁴ <http://www.ca7.uscourts.gov/news/news7.htm> (accessed Nov. 15, 2019)

⁴⁵ <https://www.ca8.uscourts.gov/news/> (accessed Nov. 15, 2019)

⁴⁶ <https://www.supremecourt.gov/publicinfo/media/mediaadvisories.aspx> (accessed Nov. 15, 2019)

⁴⁷ Link to Media Advisories: <https://www.supremecourt.gov/publicinfo/media/mediaadvisories.aspx> (accessed Nov. 15, 2019); link to Press Releases: <https://www.supremecourt.gov/publicinfo/press/pressreleases.aspx> (accessed Nov. 15, 2019)

information would be an easy way for these courts not only to keep the public informed but also to improve public confidence in the historically cloistered third branch.

In recent years, the Supreme Court press office has posted a media advisory when there's been "heightened interest" in a case – in other words, when media seating is at a premium. For a time, such a notice would also imply that the justices might grant same-day audio for that argument.

There were nine such advisories between Mar. 2018 and Oct. 2019 for cases on guns, gerrymandering and the census. None has been accompanied by a same-day audio release⁴⁸.

In addition to press releases and website announcements, several circuits make a point to engage with the community in an educational capacity⁴⁹.

Chief Judge Robert Katzman of the Second Circuit, for example, started a civic education initiative entitled "Justice for All: Courts and the Community⁵⁰." The initiative prepares educational materials and hosts events for students, teachers and the community. The Sixth Circuit has a similar program in the Civics and Outreach Committee⁵¹. The Eighth⁵² and Ninth⁵³ Circuits list contact information on their websites for outreach events and public education requests.

These initiatives purport to provide education about, and access to, the judiciary. Other circuits would do well to create this type of programming when examining their own levels of public engagement.

One last metric we examined, though also not quantified for the scorecard, was public speaking engagements. Many appellate judges and Supreme Court justices travel for the country and the world as guest speakers. Unfortunately, sometimes these events cast a shadow of partisanship on the federal courts.

Judges from the Third, Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh and D.C. Circuits, as well as the Supreme Court, attended the conservative Federalist Society National Lawyers Convention in 2019⁵⁴. Each of these judges and justices were appointed by Republicans, affirming the popular belief that judges and justices remain somewhat loyal to the political ideology of their appointing president.

The same is true for judges tapped by Democratic presidents and the liberal American Constitution Society. Democratic-appointed judges from the First, Third and D.C. Circuits attended the ACS National Convention in 2019⁵⁵.

⁴⁸ <https://www.supremecourt.gov/publicinfo/media/mediaadvisories.aspx> (accessed Nov. 15, 2019)

⁴⁹ We note some of these programs here, though the research is not quantified for purposes of the scorecard, since it would be difficult to track their effectiveness.

⁵⁰ https://justiceforall.ca2.uscourts.gov/about_us.html (accessed Nov. 15, 2019)

⁵¹ <https://connections.ca6.uscourts.gov/> (accessed Nov. 15, 2019)

⁵² <https://www.ca8.uscourts.gov/public-education> (accessed Nov. 15, 2019)

⁵³ https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000113 (accessed Nov. 15, 2019)

⁵⁴ <https://guidebook.com/g/nlc2019/> (accessed Nov. 15, 2019)

⁵⁵ <https://www.acslaw.org/wp-content/uploads/2019/05/2019-National-Convention-Schedule.pdf> (accessed Nov. 15, 2019)

Only one judge attended a national convention associated with a different party than their appointing president. Judge Jeffrey Sutton of the Sixth Circuit⁵⁶, who has recently written a popular book on federalism and state constitutions, attended the ACS event and was appointed by George W. Bush.

The stark ideological division between judges attending liberal and conservative conventions presents the courts with a public relations problem as well as the more fundamental question: are there Republican judges and Democratic judges?

Perhaps in the future, judges and justices could make a point of entertaining speaking opportunities across the ideological spectrum.

Press Products: Total Point Distribution

	Press releases / media advisories in October
First Circuit	0
Second Circuit	2
Third Circuit	1
Fourth Circuit	2
Fifth Circuit	0
Sixth Circuit	1
Seventh Circuit	1
Eighth Circuit	1
Ninth Circuit	2
Tenth Circuit	2
Eleventh Circuit	2
Federal Circuit	2
D.C. Circuit	1
Supreme Court	1

⁵⁶ <https://www.acslaw.org/wp-content/uploads/2019/05/2019-National-Convention-Schedule.pdf> (accessed Nov. 15, 2019)

Workplace Conduct and Conduct-Related Transparency Issues

In recent years, and for good reason, there has been a renewed focus on ensuring the judiciary is a safe place to work. The Judicial Conference and several circuits and districts have incorporated explicit protections for workers and processes to follow to ensure complaints are taken seriously and those lodging complaints do not face retaliation.

One of the reforms has been the establishment a Judiciary Workplace Conduct Working Group in 2018 to review its personnel procedures and provide recommendations for policy reforms. The Judicial Conference in 2019 approved the reform package⁵⁷, and though we'd argue that these reforms do not go far enough, they are better than no reforms. Even so, we find it odd that to date, only the Eighth⁵⁸, Ninth⁵⁹ and Tenth⁶⁰ Circuits have made a point to explicitly highlight the changes – i.e., either through a press release or other posting on their websites.

The First⁶¹, Second⁶², Third⁶³, Fourth⁶⁴, Fifth⁶⁵, Eleventh⁶⁶, Federal⁶⁷ and D.C.⁶⁸ Circuits have updated the rules on their websites, though without making mention of the update in a release or other posting. Meanwhile, as of the publication of this report, the Sixth⁶⁹ and Seventh⁷⁰ Circuits still have outdated rules posted on their websites.

How We Determined Points

- **Have they acknowledged/incorporated JCUS workplaces policies?:** Courts received two points for highlighting changes, one for updating the rules without mention and zero for having the old rules posted
- **Do they have a workplace conduct committee?:** Circuits received two points for having a workplace conduct committee and zero for anything less
- **Do they have a judicial wellness plan or committee, and are details about it posted online?:** Courts received two points for a formal plan/committee, one an informal plan/committee and zero for anything less
- **Are any financial disclosures posted online?:** Circuits received one point for having a posting and zero for no postings

⁵⁷ <https://www.uscourts.gov/news/2019/03/12/judicial-conference-approves-package-workplace-conduct-reforms> (accessed Nov. 18, 2019)

⁵⁸ <https://www.ca8.uscourts.gov/judicial-complaints> (accessed Nov. 15, 2019)

⁵⁹ <https://www.ca9.uscourts.gov/news.php> (accessed Nov. 15, 2019)

⁶⁰ <https://www.ca10.uscourts.gov/ce/misconduct> (accessed Nov. 15, 2019)

⁶¹ <https://www.ca1.uscourts.gov/sites/ca1/files/oce/nationalmisconductrules.pdf> (accessed Nov. 15, 2019)

⁶² <http://www.ca2.uscourts.gov/Docs/CE/rules-for-judicial-conduct-and-judicial-disability-proceedings.pdf> (accessed Nov. 15, 2019)

⁶³ https://www.ca3.uscourts.gov/sites/ca3/files/judicial_conduct_and_disability_rules_effective_march_12_2019_0.pdf (accessed Nov. 15, 2019)

⁶⁴ https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019_0.pdf (accessed Nov. 15, 2019)

⁶⁵ http://www.ca5.uscourts.gov/docs/default-source/default-document-library/jud_conduct_and_disability_308_app_b_rev-1_0 (accessed Nov. 15, 2019)

⁶⁶ http://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/Addendum_Three_Final_MAR19.pdf (accessed Nov. 15, 2019)

⁶⁷ <http://www.cafc.uscourts.gov/workplace-conduct> (accessed Nov. 15, 2019)

⁶⁸ https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019_0.pdf (accessed Nov. 15, 2019)

⁶⁹ https://www.ca6.uscourts.gov/sites/ca6/files/documents/circuit_executive/rules_dis_proc.pdf (accessed Nov. 15, 2019)

⁷⁰ http://www.ca7.uscourts.gov/forms/rules_for_judicial_complaint.pdf (accessed Nov. 15, 2019)

Seven circuits (First, Third, Fourth, Fifth, Seventh, Ninth and D.C.⁷¹) have created their own workplace conduct committee to date, modeled after the national one.

Federal judges are granted life tenure, and so long as that is the case, it will be important to ensure that judges and justices have a support system around them in order to protect against the infirmities that many of us will encounter as we reach advanced age. Judicial wellness committees and judicial wellness plans can be important resources to ensure that as judges age their work does not suffer.

The First⁷², Third⁷³, Fifth⁷⁴, Eighth⁷⁵, Ninth⁷⁶, Tenth⁷⁷ and D.C.⁷⁸ Circuits all have judicial wellness plans or committees and have advised the public that such resources exist, either through website postings, press releases or interviews in the press.

The Second, Fourth, Sixth, Eleventh and Federal Circuits, as well as the Supreme Court, do not have these plans or committees. (The Seventh Circuit has had internal monitoring by judges of judges and periodically offers wellness seminars at their annual meetings.⁷⁹)

Federal judges are required to complete financial disclosure reports each year. While these are purportedly public documents, we were only able to find two judges – out of several hundred active and senior judges – who have posted their most recent disclosure reports online on their court’s respective websites: Judge Lynn Hughes of the Southern District of Texas⁸⁰ (in CA5) and Judge Richard Kopf of the District of Nebraska⁸¹ (in CA8).

Relatedly, we checked around (though not comprehensively given time constraints) to see if any judges or justices have posted information about potential conflicts of interest on their webpages. We only found one such judge in the entire judiciary, Chief Judge Patricia Gaughan of the Northern District of Ohio (in CA6).

She lists the “Squires (*sic*), Sanders & Dempsey” law firm as a “conflict”⁸² on her page, presumably since one of her brothers-in-law, James P. Murphy, works in the firm’s Washington, D.C., office⁸³ (though following a 2014 merger, the firm is now called Squire Patton Boggs).

⁷¹ Several of these are noted online, while others are noted in e-mail correspondence with Fix the Court.

⁷² <https://www.ca1.uscourts.gov/committees> (accessed Nov. 15, 2019)

⁷³ We had e-mail confirmation of this but lost it during a recent cloud update.

⁷⁴ <http://www.ca5.uscourts.gov/other/judicial-council> (accessed Nov. 15, 2019)

⁷⁵ <https://fixthecourt.com/wp-content/uploads/2019/11/CA8-IWC.png> (accessed Nov. 15, 2019)

⁷⁶ https://www.ca9.uscourts.gov/images/judicial_council/jud_council_org_chart.pdf (accessed Nov. 15, 2019)

⁷⁷ <https://www.seattletimes.com/nation-world/9th-circuit-addresses-senility-among-federal-judges-head-on/> (accessed Nov. 15, 2019)

⁷⁸ <https://fixthecourt.com/wp-content/uploads/2019/11/CA9-IWC.png> (accessed Nov. 15, 2019)

⁷⁹ <https://slate.com/news-and-politics/2011/01/federal-judges-are-getting-older-and-more-often-senile.html> (accessed Nov. 15, 2019)

⁸⁰ <https://www.txs.uscourts.gov/sites/txs/files/scan0069.pdf> (accessed Nov. 15, 2019)

⁸¹ <https://www.ned.uscourts.gov/internetDocs/jpar/RGK-FinDisc-2018.pdf> (accessed Nov. 15, 2019)

⁸² <https://www.ohnd.uscourts.gov/content/chief-judge-patricia-gaughan> (accessed Nov. 15, 2019)

⁸³ https://pview.findlaw.com/view/2201655_1 (accessed Nov. 18, 2019)

Workplace Conduct: Total Point Distribution

	Are any disclosures or conflicts posted online?	Do they have a judicial wellness plan / committee, and is it posted online?	Do they have workplace conduct committee?	Have they acknowledged / incorporated JCUS workplace policies?	Total for workplace conduct / wellness
First Circuit	0	2	2	1	5
Second Circuit	0	0	0	1	1
Third Circuit	0	2	2	1	5
Fourth Circuit	0	0	2	1	3
Fifth Circuit	1	2	2	1	6
Sixth Circuit	1	0	0	0	0
Seventh Circuit	0	1	2	0	3
Eighth Circuit	1	2	0	2	5
Ninth Circuit	0	2	2	2	6
Tenth Circuit	0	2	0	2	4
Eleventh Circuit	0	0	0	1	1
Federal Circuit	0	0	0	1	1
D.C. Circuit	0	2	2	1	5
Supreme Court	0	0	0	N/A	0

Conclusion

First Place: **Ninth Circuit** (17 points)

Second Place: **D.C. Circuit** (14)

Third Place (tie): **Third Circuit** (12)

Fifth Circuit (12)

Last Place: **Supreme Court** (6)

It should come as no surprise that the Supreme Court is the least transparent federal court by a host of measures. As our report demonstrates, other federal appeals courts are making strides across categories of openness and accountability, from wellness to workplace conduct to broadcast. Those lagging behind, including the Supreme Court, should learn from those ahead of the curve.

As you'll see on the next page, most of the circuits were clustered in the middle, with 10 of the 14 courts we examined scoring within one standard deviation of the mean (10.6 +/- 2.8 points). Two scored higher (Ninth and D.C. Circuits), and two scored lower (Sixth Circuit and the Supreme Court).

In the coming months and years, any number of circuits could move up the rankings by communicating more frequently with the press and public, improving their audio quality or posting their judges' financial disclosures online. We'll be tracking these metrics and look forward to seeing how they move in the future.

Just as with the Supreme Court, there is some tension inherent in our work to push federal appeals courts toward greater transparency: should the focus be on getting this done administratively or legislatively? Our preference is always the former. The U.S. Courts should want to demonstrate to the public – in public – that they're operating relatively well compared to other federal government institutions that shall remain nameless.

That said, having done this work for five years now, waiting on administrative action is no longer an option, and we believe Congress should stay involved – drafting laws, holding hearings and writing letters that show their disappointment (we know they are disappointed!) with the judiciary's continued stonewalling of basic good-government reforms.

Final Point Distribution (Gold, Silver and Bronze Highlighted)

	When is argument audio posted?	Allowed live audio?	Allowed video?	How is the audio / video quality?	When is oral argument calendar posted?	When are opinions posted?	Are any judges' disclosures and / or conflicts posted online?	Press releases / media advisories in October	Are judicial council opinions/orders posted online?	Do they have a judicial wellness plan / committee, and is info on it posted online?	Do they have workplace conduct committee?	Have they acknowledged / incorporated new workplace policies?	Totals
First Circuit	1	0	0	1	1	1	0	0	1	2	2	1	10
Second Circuit	1	1	1	1	2	1	0	2	1	0	0	1	11
Third Circuit	1	0	1	1	1	1	0	1	1	2	2	1	12
Fourth Circuit	0	1	0	1	2	1	0	2	1	0	2	1	11
Fifth Circuit	1	0	0	1	2	1	1	0	1	2	2	1	12
Sixth Circuit	1	0	0	1	1	1	1	1	1	0	0	0	7
Seventh Circuit	1	0	1	1	0	1	0	1	1	1	2	0	9
Eighth Circuit	1	0	0	1	1	1	1	1	1	2	0	2	11
Ninth Circuit	2	1	1	1	2	1	0	2	1	2	2	2	17
Tenth Circuit	0	0	0	1	2	1	0	2	1	2	0	2	11
Eleventh Circuit	1	0	0	1	1	1	0	2	1	0	0	1	8
Federal Circuit	1	0	0	1	2	1	0	2	1	0	0	1	9
D.C. Circuit	2	1	0	1	2	1	0	1	1	2	2	1	14
Supreme Court	0	0	0	1	2	2	0	1	N/A	0	0	0	6
<i>Best possible score</i>	2	1	1	2	2	2	2	2	1	2	2	2	21