

**United States House of Representatives
Committee on the Judiciary**

Subcommittee on Courts, Intellectual Property, and the Internet

**Hearing
Bringing Justice Closer to the People:
Examining Ideas for Restructuring the Ninth Circuit**

March 16, 2017

**Written Testimony of
Alex Kozinski
Circuit Judge
United States Court of Appeals for the Ninth Circuit
The Richard H. Chambers Courthouse
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Pasadena, CA 91105**

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Judge Alex Kozinski

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Statement of Circuit Judge Alex Kozinski
To the Committee on the Judiciary's Subcommittee on Courts, Intellectual
Property, and the Internet

Re: Bringing Justice Closer to the People: Examining Ideas for Restructuring the
Ninth Circuit

I appreciate the opportunity to appear before you today. My name is Alex Kozinski. I was appointed to the Ninth Circuit in 1985 by President Ronald Reagan, and I maintain my chambers in Pasadena, California. I served as Chief Judge of the Circuit from 2007-2014. I am here today to speak in opposition to the pending proposals to split the Ninth Circuit and explain why a circuit as large as ours is, in fact, better situated to bring justice closer to the people than a smaller one.

As I have stated many times before, dividing a circuit is not something to be done to make judges' lives easier, or because one might disagree with some of the court's decisions. Proposals that virtually isolate California in a circuit of its own are directly contrary to the idea of regional consistency and the need to have judges from diverse backgrounds at the appellate level. Nor are we any less efficient than other circuits. The only measure of efficiency that we lag behind on is the median processing time, which does not take into account the procedural disposition of many cases. Even on that measure, we are only a few months behind the geographically much smaller First or D.C. Circuits. And no conceivable split will reduce the travel time from Billings or Anchorage to Phoenix, or from Honolulu to San Francisco. If anything, our numbers show that we have been able to leverage our size and scope to efficiently administer justice despite our chronic shortage of judges, a problem that no circuit split can address.

There are many advantages to having a large circuit with a greater geographic scope. I want to focus on some of the ways our size and geographic scope allow us to increase access to the federal courts.

The most obvious way in which we make our proceedings accessible is to offer live video streaming of all our oral arguments. We began in 2000 with audio recordings posted on our website, in 2010 we added video recordings, and in 2013 we began live streaming videos of our en banc hearings. Finally, in 2014 we began live streaming audio, and in 2015, we completed our project and began live streaming high definition videos of every hearing from every location. We have also successfully implemented a program in three of our district courts (Western Washington, Northern California and Guam) that allows proceedings in their courtrooms to be recorded for later broadcast. And we stand ready to expand that program to other districts whenever we are permitted to do so by the Judicial Conference of the United States.

In a recent case, we all saw the benefits of opening our proceedings to the public. A few weeks ago, the Western District of Washington granted a request to record the proceedings in a TRO hearing for later broadcast. A few days later, after the appeal was filed, we live streamed audio of the panel's hearing on the emergency motion. That hearing—in Washington v. Trump—had 137,300 listeners through our site and another 1.5 million people who listened via the direct stream we provided to CNN. Multiple news organizations broadcast CNN's live feed, and Twitter and other outlets offered live analysis. Since the hearing, we have had another 138,615 people listen to the recording. Think about that—well over two million people from all over the country and beyond listened to a 60-minute oral argument. On top of this, as we do in all our high-profile cases, we made available on our website the video from the district court and all the relevant documents for free. Our public information officer kept the press in the loop throughout the process, and the press and public didn't have to hunt for the video or pay for PACER.

High viewership is not unique to Washington v. Trump. We have had cases with 37,600 viewers; 21,951 viewers and 10,609 viewers. As for the video recordings that we keep on our site indefinitely, we have had some with tens of thousands of views over time. In these high-profile cases, in addition to live-streaming, we regularly rearrange courtrooms to allow as many people in as

possible, as well as arrange for overflow rooms throughout the circuit where people can watch the live stream together. Even in an average case, we usually get at least 50 viewers watching the argument live, and then another 200 watching it later. We currently have 4,041 videos on the Ninth Circuit website, and during 2016 our videos were viewed 1,314,146 times for a total of 16 million minutes.

In addition to making our courts more accessible to the public, we are committed to making our courts more user-friendly for the parties and practitioners. Our extensive network of video conferencing equipment and expert staff regularly provides for often last minute arrangements for attorneys to attend hearings when distance, weather or personal emergency makes travel impossible. Just this past month I myself heard two cases in Hawaii where the lawyers appeared from Saipan via video because their clients couldn't afford to pay for their lawyers to travel to Honolulu.

We also provide educational materials for practitioners and law students. Lawyers and law students can watch our training programs for free in the convenience of their offices or libraries without incurring any travel costs. Last year these sessions included four on immigration (San Francisco, Pasadena, Seattle and Phoenix) and one on habeas corpus. This year we will focus on general appellate programs and host them in additional locations including Oregon, Idaho and Montana. We also make available a variety of practice guides on immigration, jurisdiction and general practice on our website and these have been accessed thousands of time.

Our efforts to increase access to our courts for lawyers, students, researchers, the press and ordinary citizens across the country and around the world would be thwarted without the economies of scale and geographic scope we enjoy. Our size has allowed us to develop expertise in AV issues, software development, education programs and materials that we can share with the district courts, other circuits and the public.

Especially when it comes to technology, we have been a national leader. We were among the first circuits to embrace electronic filing, and since 2014, we have been one of only two appellate pilot courts testing the Next Generation system. Our programmers are currently developing software to allow attorneys to prepare their excerpts of record electronically, similar to the way TurboTax helps tax filers

with their 1040s. Another program seeks to seamlessly transfer briefs and records to our iPads so I can work from anywhere at any time.

In fact, some technological innovations that were developed in our circuit have helped save money nationwide. For example, the software designed to better monitor the use of Criminal Justice Act funds was first developed in the District of Nevada. The software was then deployed throughout the circuit and is now being deployed nationwide. Thanks to the software, funds are more closely monitored, attorneys get paid faster, and millions of dollars have been saved—a win-win for all.

Our geographic reach is also an asset. It allows us to bring together lawyers from different states, and these meetings often generate innovative ideas for facilitating access to the courts. In 2015, we hosted the Corrections Summit—the first of its kind in the nation—that brought together federal judges, state attorneys general, corrections officials and members of the bar from all nine states within the Ninth Circuit. They are now working together to develop programs and strategies to facilitate better access to the courts for indigent prisoners and more efficiently manage prisoner litigation. One idea is to provide prison libraries with iPads that would be loaded with forms, shell briefs and legal outlines.

Our geographic size has forced us to experiment and innovate. The size of our judicial corps has given us the resources to develop and deploy innovative techniques. Because circuits are funded based on the number of judicial positions they have, we have the resources with which to hire staff and purchase equipment that will bring our courts closer to the people we serve.

Access in all forms is central to our mission, and because of our size and geographic scope, we are uniquely positioned to lead the nation in developing innovative ways to carry out this mission. The various proposals to divide the circuit will only exacerbate the problems they purport to address.