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Oral arguments are losing ground in federal appeals courts; would 'hot-court culture' reverse trend?

Fewer cases are being slated for oral arguments in federal appeals courts, according to statistics from the Administrative Office of the U.S. Courts.

Oral arguments were held in 20 percent of cases decided on the merits at the end of the last fiscal year, compared to 27.3 percent of cases a decade ago, and 40.1 percent of cases 20 years ago, the [National Law Journal](#) reports.

The raw numbers are also dropping. There were arguments in just 6,913 cases at the end of the last fiscal year, compared to 8,662 arguments a decade ago, and 10,357 arguments 20 years ago.

The circuits hearing the highest number of cases are the Chicago-based 7th Circuit, where arguments were held in 55 percent of competitive cases, and the D.C. Circuit, where arguments were held in 45 percent of the cases. Three circuits heard oral arguments in fewer than 15 percent of cases: the Philadelphia-based 3rd Circuit, the Richmond, Virginia-based 4th Circuit and the Atlanta-based 11th Circuit.

Eliminating oral arguments can speed decisions in cases, free up court time and cut litigation costs. Some judges have also said that oral arguments rarely change their minds, and they are not needed when the issues are not novel.

Some lawyers are concerned about the decline, however. They say fewer arguments mean fewer opportunities to train oral advocates and missed chances to correct judges' mistaken impressions of a case. Oral arguments are also important to the parties in a case, who feel they have had their day in court. And they can perform a civics function to help people understand the appellate process.

A task force of the American Academy of Appellate Lawyers has developed recommendations to increase the frequency and effectiveness of oral arguments. Its [report](#) has been forwarded to Chief Justice John G. Roberts Jr. and the chief judges of the circuit courts.

The recommendations include establishing pro bono programs that would provide opportunities for argument in pro se cases, putting more stock in requests for oral arguments, issuing more focus letters that give lawyers advance notice of issues of concern, and creating programs to train lawyers on how to be effective.

The report also says courts should develop a "hot-but-courteous oral argument culture" in which judges ask lawyers to respond to case weaknesses and address the potential impact of a ruling. "In a hot-court culture, the court can set argument time case-by-case, based on the complexity of issues," the report says. "Courts should allow at least 10 minutes per side in the simplest cases, with increasing levels for increasing complexity."