

May 28, 2020

Hon. Kim Berkeley Clark
330 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Hon. Jill E. Rangos
326 Courthouse
436 Grant Street
Pittsburgh, PA 15219

Re: Remote public access to proceedings in the Fifth Judicial District

Dear President Judge Clark and Administrative Judge Rangos:

We write on behalf of the Abolitionist Law Center, the Pennsylvania NewsMedia Association, and the ACLU of Pennsylvania regarding the public's current inability to observe any criminal hearings in the Fifth Judicial District. Although we understand that physical access to the courthouse must be temporarily restricted for public-health reasons, we ask that the Fifth Judicial District provide the public with remote access—by telephonic and, where available, audiovisual means—to any proceedings in criminal cases. Several other courts in Pennsylvania and around the country have provided the public with remote access to their proceedings via telephone and video-conference during this crisis, and the Pennsylvania Supreme Court has specifically instructed all Pennsylvania courts to do the same. We respectfully request that the Fifth Judicial District comply with that directive.

As you know, the Supreme Court has extended the statewide judicial emergency, but it has carefully balanced the constitutional rights of litigants and the public in doing so. In its latest Order, it specified that:

In proceedings as to which a right to public and press access would otherwise exist, provision **must** be made to ensure some reasonable means of access. For example, with respect to a proceeding conducted using audio-visual means, such public access may be effectuated during the proceeding by providing live-stream access, or by making a recording available as soon as possible after the proceeding has been concluded.¹

¹ *In re: General Statewide Judicial Emergency* (April 28, 2020), at 8 (emphasis added).

This Order reflects the fundamental constitutional rights at issue, which obligate the Fifth Judicial District to provide the public with access to criminal proceedings. The U.S. Supreme Court and the U.S. Court of Appeals for the Third Circuit have held that the First Amendment protects the public’s right to attend criminal trials, preliminary hearings, plea hearings, and various pretrial hearings. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982) (trials); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 9 (1986) (preliminary hearings); *United States v. Thomas*, 905 F.3d 276, 282 (3d Cir. 2018) (plea hearings); *United States v. Criden*, 675 F.2d 550, 557 (3d Cir. 1982) (suppression and other pretrial hearings). Under these and other precedents, court officials generally cannot restrict the public’s access to judicial proceedings absent a compelling, narrowly tailored justification. *See In re Avandia Marketing*, 924 F.3d 662, 673 (3d Cir. 2019). It is unlikely that the Fifth Judicial District could identify such a justification for its blanket restrictions on public access.

Moreover, the separate right of public access under Article 1, Section 11 of the Pennsylvania Constitution has been strictly enforced by the Pennsylvania Supreme Court. “In Pennsylvania it is *specifically* and constitutionally mandated that courts shall be open. In other words, the public shall not be excluded from trials, the courts shall not be closed. . . . Exclusion of the public would strike at the essence and meaning of our mandate for an open court, for the public counterbalances what might otherwise become a tyranny of the media, and the public and the media together counterbalance the possible emergence of a corrupt or biased judiciary.” *Commonwealth v. Cantakos*, 453 A.2d 578, 580 (Pa. 1982) (reversing conviction where public was excluded from trial).

The Pennsylvania Supreme Court has already directed the Fifth Judicial District to begin conducting its proceedings via teleconference. *In re: Amended Fifth Judicial District Emergency Operations Plan* (May 6, 2020), at 4 (“All court proceedings will be conducted by Advanced Communication Technology . . . pursuant to the protocol for teleconference hearings issued by the Court.”). The recent experience of numerous other jurisdictions—including the First Judicial District—strongly suggests that the Fifth Judicial District can extend hearing access to the public electronically at minimal cost, without any adverse consequences. For example, if the Court conducts video proceedings using Microsoft Teams, the public can easily join and watch streams (as, for example, the Allegheny County Jail Oversight Board recently did for a public meeting). Similarly, in-person hearings at the Municipal Court or Common Pleas Court can be live-streamed, or a recording can be made available promptly following the conclusion of the hearing. Given that the Administrative Office of Pennsylvania Courts “stands ready to provide guidance to courts concerning local implementation of technological resources,” there should be no barrier to providing that public access.

Thank you very much for your prompt attention to this matter. We ask that you respond to this letter within one week so that we can determine whether or not to consider taking further action. (We never received a response to our prior written inquiries regarding this matter.) Please do not hesitate to contact us if you would like to discuss anything in the meantime

Sincerely,

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