



**ACLU**  
Pennsylvania

PENNSYLVANIA  
**NewsMedia**  
ASSOCIATION

*Institute for*  
Constitutional Advocacy and Protection  
GEORGETOWN LAW

September 2, 2020

**Via Electronic Mail**

Hon. Idee Fox  
Hon. Jacqueline F. Allen  
Hon. Leon Tucker  
1301 Filbert Street  
Philadelphia, PA 19107

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

Dear Judges Fox, Allen, and Tucker:

We write on behalf of the Judge Accountability Table, the Pennsylvania NewsMedia Association, and the ACLU of Pennsylvania regarding recent problems concerning the public's ability to access criminal proceedings in the First Judicial District (FJD). Although we appreciate FJD's efforts to provide members of the public with remote access to such proceedings during the current pandemic, we wish to call your attention to some recurring problems that our members have encountered in seeking to observe criminal hearings over the past several weeks. We ask that you rectify these problems in order to avoid any further infringement of the public's right of access to court proceedings—a right protected under both the First Amendment and the Pennsylvania Constitution. *See generally Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982); *Commonwealth v. Cantakos*, 453 A.2d 578, 580 (Pa. 1982) (“In Pennsylvania it is *specifically* and constitutionally mandated that courts shall be open.”).

**First, court officials have failed to respond to requests for video-conference links on several occasions.** In July alone, more than half a dozen of our requests for hearing links were either ignored entirely or disregarded until the relevant hearings had concluded.<sup>1</sup> On July 10, for instance, we sent two requests to the court's designated email address but never received any response. Similarly, on July 15, court officials failed to respond to several of our requests for hearing links. And, on July 21 and July 27, court officials did not respond to our requests for hearing links until after all hearings had ended. These and other similar incidents highlight the pitfalls of requiring members of the public to request remote access to hearings in advance and

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<sup>1</sup> Consistent with FJD's [Remote Hearing Guidelines](#), we submitted all of our requests via email to CourtroomPublicAccess@courts.phila.gov.

via email. To avoid these problems in the future, we ask that FJD either post all video-conference links on its website every morning (before court convenes) or, alternatively, simply live-stream all proceedings. Numerous state and federal courts around the country—including state trial courts in [Indiana](#), [Michigan](#), [Texas](#), [Rhode Island](#), and [Wisconsin](#)—have recently adopted these approaches to ensure public access during the pandemic.<sup>2</sup>

**Second, technological problems have effectively precluded the public from accessing certain hearings.** We have repeatedly been denied access to hearings because court officials either provided us with faulty video-conference links or provided us with links to the wrong courtroom. On other occasions, court officials have failed to properly initiate the video-conference session or terminated our access to the session prior to its conclusion. And, on several other occasions, judges and litigants have failed to activate their video feeds or communicate clearly into their microphones, effectively precluding the public from hearing what transpires during the proceedings. We therefore ask that FJD adequately train court staff and inform litigants how to properly use the video-conferencing system to ensure that members of the public can see and hear what is happening at each hearing.

**Third and finally, court officials have sometimes denied requests for video-conference links without adequate explanation.** On July 24, for example, court officials responded to a request for video-conference links with an email stating that “[n]o virtual courtroom public access hearings are scheduled for today,” even though over 300 hearings were listed on the court’s posted docket. To the extent that the court intends to restrict the public’s remote access to any criminal hearing, the court must identify compelling, case-specific reasons for doing so, and it must identify those reasons on the record. *See Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 509–10 (1984).

We understand that FJD has also lagged in providing timely preliminary hearings, trials, or contested violation-of-probation hearings for nearly all incarcerated people under its jurisdiction. Nothing in this request should impede FJD from expeditiously moving forward to ensure that all incarcerated people have access to timely hearings.

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<sup>2</sup> Furthermore, the American Bar Association adopted [a resolution](#) earlier this month that expressly “urge[d] that advance notice be provided to the public of all virtual or remote proceedings and that full and meaningful public access to such proceedings be guaranteed.”

As FJD prepares to resume jury trials in early September, it is especially important that the court take steps to protect the public's right of access. We therefore ask that you respond to this letter within one week with any information about FJD's plans to rectify the problems outlined above, so that we can determine whether or not we must take further action. Thank you for your prompt attention to this matter and please do not hesitate to contact us if you would like to discuss anything.

Sincerely,

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