



October 8, 2020

Via Electronic Mail

President Judge Idee C. Fox
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Re: Remote public access to proceedings in the First Judicial District

Dear President Judge Fox, Mr. Moulton, and Mr. Dunlap:

We write as representatives of several civic, media, and legal organizations regarding the recent changes to the First Judicial District's (FJD) policy for ensuring public access to court proceedings. In particular, we wanted to commend FJD on its decision to livestream civil proceedings on YouTube, which represents an important step forward for the public's ability to access the courts. We also appreciated FJD's recent effort to livestream criminal proceedings, and we encourage FJD to restore that practice. Although we understand that the District Attorney's Office (DAO) expressed concerns with the livestreaming policy, we believe those concerns are overstated: indeed, numerous other jurisdictions currently livestream their criminal trial proceedings over the internet in order to promote public access during the COVID-19 pandemic, without experiencing the potential harms raised by the DAO. Given the success that those jurisdictions have enjoyed, we believe FJD's effort to join the growing trend toward livestreaming was both reasonable and justified.

That said, if FJD is not going to restore its livestreaming policy, we would urge FJD to restore its [prior practice](#) of providing members of the public with remote access (via Zoom) to individual criminal proceedings upon request. That practice, which had been in place for months prior to FJD’s move to livestreaming, provides the next best means of ensuring meaningful public access to criminal proceedings during the pandemic. We are concerned about the recent change to dispense with that practice in the new public-access policy (as revised on September 25, 2020). The new policy appears to erect several unnecessary barriers to the public’s ability to access criminal proceedings.

First, the new policy exposes the press and the public to unnecessary health risks by requiring them to visit the courthouse in person in order to observe criminal proceedings that are being held virtually. The new policy states that FJD will not provide the public with remote access to any proceeding as long as the public can observe a video feed of the proceeding at the Criminal Justice Center. Critically, the no-remote-access rule applies “even when the proceeding is conducted using advanced communication technologies.” In other words, even when the parties to a proceeding are appearing remotely, members of the public and the press must still physically visit the courthouse in order to observe that proceeding. Requiring members of the public and the press to expose themselves to such risks in the middle of a pandemic is neither safe nor reasonable, especially when FJD can easily provide them with remote access to the proceedings.¹ No explanation is provided for its new policy that “[o]nly the participants to the proceedings will be sent a digital invite or will be able to participate remotely utilizing advanced communication technologies.”

Second, the new policy exacerbates confusion about how the public and the press can access certain judicial proceedings. The [“Coronavirus Information” page of FJD’s website](#) currently states that “[t]he Juanita Kidd Stout Center for Criminal Justice remains generally closed to the public” and that “[o]nly individuals who have been authorized by the court will be permitted into the facility.” Those statements conflict with the new policy’s suggestion that members of the public and the press are now able to attend proceedings in person. The text of the policy itself is also vague as to what level of access FJD intends to provide the public for certain types of proceedings. For instance, section (4)(b) of the policy states that

¹ Requiring members of the public and the press to visit the courthouse in person is especially unreasonable in light of FJD’s own recent efforts to limit the number of in-person proceedings taking place inside the courthouse. *See, e.g., In re: Motions to Lift Bench Warrants* (Oct. 1, 2020) (facilitating the withdrawal of certain bench warrants in order “to reduce in-person proceedings in order to safeguard the health and safety of court personnel, court users and members of the public”).

livestreams of civil proceedings “may include video, audio or both.” But the policy never explains which types of civil proceedings will feature audio-video coverage and which will feature merely audio coverage, or how that will be determined. Similarly, section (7) of the policy states that “[j]udicial proceedings conducted utilizing the Ring Central platform will be made available to the public as specifically provided in a separate protocol or policy.” But the policy never specifies which types of proceedings will be conducted using that platform, nor does it say where the public might find the “separate protocol or policy.”

Third and finally, the new policy itself is not easily accessible to the public. The policy does not appear on the “Coronavirus Information” page of FJD’s website, where all other pandemic-related policies are posted. Although an [older version of the access policy](#) (from September 18) can be found via a Google search, the latest version of the policy does not. The difficulty in finding the new policy creates an additional, unnecessary barrier to the public’s ability to observe judicial proceedings.

Restoring FJD’s prior practice of ensuring public Zoom access to every criminal proceeding would alleviate these concerns. Among other benefits, the prior practice provided the public with a uniform procedure for accessing every proceeding as well as a central source of information about how to access each proceeding. Under the prior practice, members of the public would send an email to FJD’s public-information office to request a Zoom link to any public court hearing. That procedure was not only safer and less confusing than FJD’s current policy, but it also avoided all of the concerns that the DAO recently raised in its [King’s Bench petition](#) objecting to FJD’s former livestreaming policy. Indeed, the DAO’s petition expressly endorsed the use of Zoom or other remote-access platforms as an acceptable alternative to livestreaming. *See* DAO Petition at 31.

As noted above (and in our [prior letter](#) to FJD), numerous trial courts around the country—including in most major cities—have been providing the public with some form of remote access to criminal proceedings during the pandemic.² The experience of those jurisdictions reaffirms what FJD’s prior practice already made clear: that providing the public with remote access to criminal proceedings is not simply feasible, but appropriate in light of the unprecedented public-health challenges

² For instance, the cities of [Chicago](#), [Dallas](#), [Austin](#), [San Francisco](#), [Detroit](#), [San Diego](#), [Indianapolis](#), [Las Vegas](#), and [Atlanta](#) all currently livestream trial-court proceedings online, while various other major cities (including [Phoenix](#), [Boston](#), [Charlotte](#), [Denver](#), and the [District of Columbia](#)) permit the public to view or listen to proceedings using virtual or teleconference systems.

posed by the current pandemic. Moreover, providing remote access to all proceedings would ensure the public's right to access court proceedings under the Pennsylvania and U.S. Constitutions, and also ensure compliance with Title II of the Americans with Disabilities Act.

We recognize the challenges posed by the current pandemic and appreciate FJD's recent effort to fulfill its public-access obligations. Although we continue to believe that livestreaming represents the best means of ensuring public access to those proceedings, we believe that FJD's prior access policy represents the next best alternative and offers significant advantages over the current policy. For that reason, we respectfully ask that FJD restore the prior policy as soon as possible. Thank you for your prompt attention to this matter and please do not hesitate to contact us if you would like to discuss this matter further.

Sincerely,

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