20-CRIM-01

From: Pauline Stang
To: RulesCommittee Secretary
Subject: Releases during virus
Date: Thursday, May 07, 2020 4:16:54 PM

I think the courts should take into account the behaviour of inmates aged over the age of 55 and if they have proved they are not a threat anymore they should be allowed to go home on home detention or released. Especially if there is a medical issue.

Pauline

20-CRIM-02

From: Hayley Phillips
To: RulesCommittee Secretary
Subject: Rules Suggestions
Date: Friday, May 08, 2020 10:29:33 AM

Dear Committee Members,

I have a loved one who is incarcerated. I hear about what the rules mean for the men in the facility and how the rules do not match the science about the virus.

The scientists have said that sunlight can disinfect a surface area in 3 min. Keeping the men locked up without any rec yard time means that you miss the opportunity to have their clothes disinfected. It also means that tensions rise, cases of depression rise, and idol hands are the devil's play things. If the men could get rec time for 1 hour every other day, they could at least get the vitamin D they need, some fresh air, and workouts to keep them mentally and emotionally healthy.

If you bring out one building at a time (no cross building contamination) on sunny days, then there is no risk of cross- contamination.

Now, let's talk about "sex offenders". There needs to be a separation in how child molesters are treated versus guys who had pictures of their girlfriends or even young wives. I know that the regulations say that even if the virus is at a facility, and the offender has less than 2 years of their sentence and are at high risk of death, they are not released even under supervision, if they are a sex offender. There are some terrible people who harmed kids - and I don't think anyone wants them out. But, there are also guys who made stupid mistakes when they were in their early twenties and there was no rape of molestation involved. For those guys (the no touch cases), they should be considered for release when they are at high risk.

Do you think that a 19 yo with asthma should be at risk of death, because he had a consensual photo exchange with a 17 yo girlfriend? What if that young man was caught 2 years later, has been in prison for 10 years of his 15 year sentence and is now 31 yo? Should that 31 yo who made a mistake when he was 19 be sentenced to death by COVID-19 (or bird flu, or whatever the next one may be), because his girlfriend was willing to send him pictures? Not every sex offender raped or molested a child. In fact MOST of them did not. Keep the child molesters in prison, but not the guys who just had pictures of willing participants.

Thank you for considering these points.
Warm Regards,

Hayley Phillips
Concerned Public Citizen

20-CRIM-03

From: araT nosreteP
To: RulesCommittee Secretary
Date: Thursday, May 07, 2020 5:46:57 PM

I strongly believe the prisoners that are locked behind bars should all be released unless they are in due to murder or pedifiles that rape any child under the age of thirteen they should do same for juveniles and shut down all the lockups on them along with closing all treatment centers change consent laws to 13-14 and legally old enough to leave home at 16 shut down drug task force from setting people up and worry about it When they brake the law sentence guidelines also need to be lowered along with fines and restitution leaning towards a more realistic fine and punishment also to put a stop to cps destroying families and stop taking kids away just because 1 parent is dirty just because they use when kids ain't around does not make them bad parents together we are suppose to stand together United but how can we When government has big part in destroying our family's and for what to get a bigger pay check.... Were is the love have we all become so cold that we carry no feelings no more I pray god will bless us all and everyone will be able to look in and open up there hearts god bless you

From: Mary Dirkx Jorn
To: RulesCommittee Secretary
Subject: Urgent Rules Suggestion: Compassionate Release
Date: Sunday, May 31, 2020 10:09:45 PM

Dear Committee Members,

Please add my voice to the many calling for compassionate early release of prison inmates, whose lives and health are compromised by the necessity of communal living, in this time of the deadly coronavirus pandemic. This needs to be quickly accomplished for lives to be saved. Studies in the medical, humanitarian, civil rights, and legal fields have uniformly found this release to be urgently necessary.

I would also ask you to please be aware of one critical aspect of the issue of early release. This issue is the category of sex offender.

The definition of sex offender is broad, and unfortunately the term is used for both a person convicted of sending illegal nude pictures electronically, and someone who is convicted of crimes of violence such as rape.

I do not suggest that actions on the lower level of the category of sex offenses are not crimes, nor that punishment and treatment are not necessary. But I believe that a person incarcerated for this level of crime, where no touching was ever involved, a person close to the end of his sentence with no history of violence, someone who also has a medical condition which would leave him susceptible to the worst effects of the coronavirus -- I believe such a person must be a candidate for compassionate release under today's fearsome pandemic circumstances. Please take these points into consideration instead of dismissing compassionate release for all sex offenders.

I hope many more inmates may be released to their families soon, protecting their lives and health, and the lives and health of prison staff.

Sincerely,
Mary Jorn

20-GEN-16

CONTACT
POLICY DEPARTMENT
ELIZABETH KOCIENDA
[redacted]
MARY MARGULIS-OHNUMA
[redacted]

REPPORT BY THE FEDERAL COURTS COMMITTEE

COMMENTS ON POSSIBLE EMERGENCY PROCEDURES PROPOSED BY THE JUDICIAL CONFERENCE'S COMMITTEE ON RULES OF PRACTICE AND PROCEDURE THAT COULD AMELIORATE FUTURE NATIONAL EMERGENCIES' EFFECTS ON COURT OPERATIONS

The New York City Bar Association ("City Bar") greatly appreciates the opportunity for public comment provided by the Judicial Conference's Committee on Rules of Practice and Procedure (the "Committee") on the subject of possible rule amendments that could ameliorate future national emergencies' effects on court operations.

The City Bar, founded in 1870, has over 24,000 members practicing throughout the nation and in more than fifty foreign jurisdictions. The City Bar includes among its membership many lawyers in virtually every area of law practice, including lawyers generally representing plaintiffs and those generally representing defendants; lawyers in large firms, in small firms, and in solo practice; and lawyers in private practice, government service, public defender organizations, and in-house counsel at corporations. The City Bar's Committee on Federal Courts (the "Federal Courts Committee") is charged with responsibility for studying and making recommendations regarding proposed amendments to the Federal Rules. The Federal Courts Committee respectfully submits the following comments on the subject of the request for input on possible emergency procedures.

On balance, the City Bar has been impressed with the speed and flexibility with which the federal courts have adapted to the conditions forced upon judges and court personnel by the COVID-19 crisis. The use of electronic filing and remote court conferences by video and telephone have allowed cases to proceed as much as possible despite the unavailability of in-person proceedings. To a considerable extent, these proceedings have taken advantage of the fact that the Federal Rules of Civil Procedure afford discretion to the judges to fashion proceedings that advance the goal of a "just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. While protective of the constitutional rights of the accused in criminal cases during the COVID-19 crisis, courts in both civil and criminal cases have nevertheless made recourse to the use of technology to maintain some of the ongoing work of the federal courts during this time.

We offer the following suggestions as areas for possible rulemaking in light of what we have observed during the past several weeks. We do not propose specific rule amendments, and some of these proposals may be better taken as suggestions for clarification of existing rules in

order to make express what already may be implicit. We hope that these suggestions are useful to the Committee:

- Remote proceedings: The federal rules should be amended to make clear that, upon the declaration of a public health emergency by federal, state or local officials, the chief judge in a particular district court or circuit court can shift from in-person court appearances to remote proceedings. The courts should permit those proceedings to be conducted on video or by telephone. In order to make such proceedings effective and open to the public, the judiciary should license software that meets the following requirements: (i) the judge and court staff have the ability to allow participants to speak or to mute them, as appropriate; (ii) each speaker can be identified; (iii) court appearances can be recorded on audio in case the court reporter loses their connection to the proceeding; (iv) members of the public can listen to the proceedings, in order to protect the right of access to court proceedings; and (v) to the extent necessary, Federal Rule of Criminal Procedure 53 should be amended to make clear that such remote proceedings are not considered "the broadcasting of judicial procedures from the courtroom." We also suggest that the courts consider encouraging the routine use of remote proceedings in civil cases even outside of a public health emergency, particularly where more efficient scheduling is possible or cost savings can be achieved and the need for an in-person appearance is minimal (such as a pretrial conference to discuss the status of civil discovery).

- Automatic and global extensions of time: In the immediate aftermath of the COVID-19 crisis, on March 16, 2020, the U.S. Court of Appeals for the Second Circuit issued a general extension of time of 21 days for all cases that had deadlines between the date of the order and May 17, 2020. This extension of time accomplished two ends. First, it made sure that lawyers and clients who were dealing with the business and personal exigencies created by the public health crisis would have the time necessary to complete their briefs. Second, it also ensured that, with a modest delay, appeals would continue to be briefed and cases moved along in the appellate process. The Court also gave discretion to individual panels to direct the parties to follow a different schedule as deemed necessary in a specific case. While extensions of time are already permitted, this approach should be formalized, giving chief judges the option of adjourning all dates by three weeks (or more, as appropriate) in the Courts of Appeals and the District Courts in the event of a public health emergency, except to the extent that such would be contrary to the constitutional rights of the accused in criminal proceedings or as appropriate for the particular exigencies of a given case (for example, a motion for a preliminary injunction or temporary restraining order).

- Electronic filing and service of all papers: One of the key elements that allowed federal courts to continue their business during the COVID-19 crisis was the use of electronic filing and service of papers. The federal rules are generally supportive of service of court filings by ECF, see Fed. R. Civ. P. 5(b)(2)(E), but not all important litigation papers are filed in court. For example, discovery objections, interrogatory responses, and notices of deposition are not filed in court and therefore cannot be sent to opposing counsel by email without the consent of counsel. See id. The rule should be modified

to permit service of all papers by email to opposing counsel using whatever email address that the recipient uses for their ECF filings. There are reasons to require consent from pro se litigants, who may be less accustomed to the court rules, but counsel of record should be required to accept all papers by email after the inception of a case. There is no reason to limit this proposed procedure to emergencies.

- Criminal defendants' choice of remote proceedings: Federal Rule of Criminal Procedure 43 requires the defendant's presence at most critical stages: initial appearance, arraignment, plea, trial and sentencing. These are waivable rights, however, and courts should facilitate virtual proceedings for those defendants who wish to plead guilty or be sentenced without making an in-person court appearance, due to a public health emergency. Rule 43 should be amended to allow courts to provide this option to defendants so long as the proceedings permit them to proceed knowingly and intelligently with their case and with the assistance of counsel. We do not, however, recommend requiring that defendants participate in such proceedings by remote means. Important interests of notice and advocacy are often served by conducting such proceedings in person, even if it results in some delay.

***

We thank the Committee for considering these suggestions and we look forward to providing comments on any amendments that are proposed in the future.

Federal Courts Committee
Harry Sandick, Chair

From:	Elizabeth Kocienda
To:	RulesCommittee Secretary
Subject:	Input on Possible Emergency Procedures
Date:	Monday, June 01, 2020 11:11:03 AM
Attachments:	image001.png 2020718-NatlEmergenciesCourtOperations.pdf

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Good morning,

On behalf of the Federal Courts Committee of the New York City Bar Association, attached please find comments on possible rule amendments that could ameliorate future national emergencies' effects on court operations.

Thank you for your consideration,

Elizabeth Kocienda, Director of Advocacy
New York City Bar Association | [redacted]
www.nycbar.org/150
Twitter | Facebook | Instagram | LinkedIn

REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

[redacted]
www.rcfp.org
Bruce D. Brown
Executive Director
[redacted]

20-GEN-17

June 1, 2020

Rebecca A. Womeldorf, Secretary
Committee on Rules of Practice and Procedure
United States Judicial Conference
One Columbus Circle, NE
Washington, D.C. 20544

Via email: RulesCommittee_Secretary@ao.uscourts.gov

Re: Invitation for Comment on Emergency Rulemaking

Dear Ms. Womeldorf:

The Reporters Committee for Freedom of the Press (the "Reporters Committee") writes in response to the Judicial Conference's request for public input on possible rule amendments that could ameliorate the effects of future national emergencies on court operations.

The Reporters Committee has long championed the public's constitutional and common law rights of access to judicial records and proceedings, and has been monitoring the response of state and federal courts around the country to the current public health crisis.[1] The Reporters Committee appreciates the opportunity to provide input to the Committee on Rules of Practice and Procedure and its advisory committees as they consider whether rule amendments are needed to deal with future emergencies, in accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

I. Public access to judicial proceedings and court records in civil and criminal matters is no less vital in times of national crisis.

Courts have long recognized the central importance of openness to our justice system. Though "[j]udges deliberate in private," they "issue public decisions after public arguments based on public records." *In re Krynicki*, 983 F.2d 74, 74 (7th Cir. 1992). The presumption that court records and proceedings will be open, among other things, "enhances the quality and safeguards the integrity of the factfinding process," "fosters an appearance of fairness," and allows "the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982) (citations and internal quotation marks omitted); *see also*

[1] *RCFP State and Federal Court Responses to COVID-19_From the Reporters Committee for Freedom of the Press (www.rcfp.org/covid19)*, Reporters Committee for Freedom of the Press, https://bit.ly/3dNQSJQ (last visited June 1, 2020) (collecting standing orders from all federal courts).

Sheppard v. Maxwell, 384 U.S. 333, 349 (1966) (noting that secrecy breeds "distrust" of the judicial system). Public oversight has long been understood to be a foundational feature of our criminal justice system, in particular. *See Waller v. Georgia*, 467 U.S. 39, 47 (1984) (Sixth Amendment right of accused to a public trial). As the Supreme Court has recognized, "without the freedom to attend [criminal] trials . . . important aspects of freedom of speech and 'of the press could be eviscerated.'" *See Richmond Newspapers, Inc.*, 448 U.S. at 580 (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)).

By attending judicial proceedings and reporting on civil and criminal matters, the press plays a key role in ensuring "an informed and enlightened public opinion," *Grosjean v. Am. Press Co.*, 297 U.S. 233, 247 (1936), an essential component of a healthy democracy, *see Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983). The public relies on the press to "observe at first hand the operations of [ ] government" and report on them. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491 (1975). With respect to the work of the judicial branch, journalists serve as "surrogates for the public," whose members may not have the time or resources to attend court proceedings or review court records in matters in which they have an interest. *See Richmond Newspapers, Inc.*, 448 U.S. at 573. Access to judicial proceedings and court records is necessary for the press to fulfill its constitutionally recognized mission to inform the public and contribute to "public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 587 (1976) (Brennan, J., concurring).

The presumptive right of members of the press and the public to attend and observe judicial proceedings is secured by both the First Amendment and common law. The Supreme Court has long recognized a qualified right of public access to criminal proceedings in a variety of contexts that is rooted in the First Amendment. *See Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 10 (1986) (preliminary hearings); *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 508–510 (1984) (*voir dire*); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (criminal trials). A number of federal appellate courts have similarly recognized a qualified constitutional right of access to civil trials and proceedings, as well as court records in both civil and criminal matters. *See, e.g.*, *N.Y. Civil Liberties Union v. N.Y. City Transit Auth.*, 684 F.3d 286, 298, 298 n.9 (2d Cir. 2012) (collecting cases from several circuits and noting that "six of the eight sitting Justices in *Richmond Newspapers* clearly implied that the right applies to civil cases as well as criminal ones" (internal quotation marks omitted)); *see also Courthouse News Servs. v. Planet*, 947 F.3d 581, 594 (9th Cir. 2020) (holding that the First Amendment guarantees the public "a right to timely access" newly filed civil complaints); *Doe v. Public Citizen*, 749 F.3d 246, 269 (4th Cir. 2014) (holding that the First Amendment right of access applies to civil docket sheets, memorandum opinions ruling on motions for summary judgment, and the materials relied on by the court in issuing such rulings). The common law also guarantees the public "a general right to inspect and copy public

records and documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978).

Press and public access to judicial proceedings and court records is no less important during times of national crisis. To the contrary, at such times, visibility into the operations of government, including the judiciary, is all the more crucial. As discussed in Part II below, in response to the ongoing COVID-19 pandemic, federal courts have taken laudable steps to facilitate remote public access to judicial proceedings. As the Committee on Rules of Practice and Procedure and its advisory committees consider possible rule amendments to address future emergencies, the Reporters Committee urges continued attention to ensuring that the public's ability to meaningfully observe proceedings in civil and criminal matters is not curtailed due to restrictions on physical access to courthouses in future times of crisis, and that the advances toward greater transparency made during the COVID-19 pandemic are not undone.

II. Public access to judicial proceedings during the COVID-19 pandemic.

In response to the ongoing COVID-19 pandemic, many judicial proceedings typically held in open court have been held remotely—either telephonically or via video conference. To facilitate public access to such proceedings, the Judicial Conference temporarily authorized the use of teleconferencing to provide the press and public audio access to certain civil and criminal proceedings. *See Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic*, United States Courts (Mar. 31, 2020), https://perma.cc/7HAG-L2FB (the "March 31 Press Release"); *Judiciary Provides Public, Media Access to Electronic Court Proceedings*, United States Courts (Apr. 3, 2020), https://perma.cc/VM68-R6N7 (the "April 3 Press Release"). This authorization followed the March 27 enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Section 15002 of which permitted the chief judges of district courts to authorize videoconferencing or teleconferencing for certain criminal proceedings under certain circumstances and with the consent of the defendant. In its March 31 Press Release, the Judicial Conference reported:

> The Executive Committee of the Judicial Conference, acting on an expedited basis on behalf of the Conference, on March 29 approved a temporary exception to the Conference broadcast/cameras policy to allow a judge to authorize the use of teleconferencing to provide the public and media audio access to court proceedings. This exception may be applied when public access to the federal courthouse is restricted due to health and safety concerns during the COVID-19 pandemic, and the authorization will expire when the Judicial Conference finds that emergency conditions are no longer materially affecting the functioning of federal courts.

See March 31 Press Release. Beyond this temporary exception to the Judicial Conference's broadcast/cameras policy, *History of Cameras in Courts*, United States Courts, https://perma.cc/HM4A-35F9 (last visited June 1, 2020), on April 3, the Judicial Conference announced an expansion of that authorization "to permit courts to include the

usual participants and observers of such proceedings by remote access" in certain criminal proceedings, while maintaining that "Federal Rule of Criminal Procedure 53 continues to prohibit broadcasting of court proceedings generally, such as through live streaming on the internet." *See* April 3 Press Release.

Courts and judges across the country relied on that guidance to hold remote proceedings with media and public in attendance and have implemented the policy in different ways.

Several judges have affirmatively provided public access to proceedings in which the public interest is evident. For example, Judge Preska of the U.S. District Court for the Southern District of New York directed the parties in a civil litigation matter to file the dial-in information for a telephonic hearing on the public docket. *See Giuffre v. Maxwell*, 1:15-cv-07433-LAP, ECF No. 1039 (S.D.N.Y. Mar. 30, 2020); ECF No. 1041 (S.D.N.Y. Mar. 30, 2020) (listing dial-in information). Similarly, Judge Boasberg of the U.S. District Court for the District of Columbia granted requests by reporters to listen to a telephonic hearing related to a coronavirus lawsuit and provided members of the news media with dial-in access. *See* Ann E. Marimow, *Federal Courts Shuttered by Coronavirus Can Hold Hearings by Video and Teleconference in Criminal Cases*, Wash. Post (Mar. 31, 2020, 5:59 PM), https://wapo.st/2X1rg6w.

A number of courts have taken a universal approach to providing remote access for the news media and public. As Chief Judge Howell of the U.S. District Court for the District of Columbia stated, her court "is committed to providing the public and the media with access to public court proceedings, including those held by video or teleconference." *See id.* Many other district courts have made similar commitments, implementing policies requiring that all remote proceedings be made available to the public. *See, e.g.*, *MGO 20-13 Suspension of Court Proceedings Effective May 1, 2020*, U.S. District Court District of Alaska (Apr. 21, 2020), https://perma.cc/YM2L-NQ98 (providing that a toll-free conference line will be publicly available for civil and criminal proceedings); *In re: Public and Media Access to Judicial Proceedings During COVID-19 Pandemic*, U.S. District Court District of Columbia (Apr. 8, 2020), https://perma.cc/F99Q-5RTA (providing that video and audio access to judicial proceedings will be available for the public); *Notice Regarding Public Access to Telephonic Hearings During COVID-19 Outbreak*, U.S. District Court Eastern District of Wisconsin, https://perma.cc/98CR-TN7M (last visited June 1, 2020).

State courts too have taken steps to facilitate public access to remote proceedings in response to the COVID-19 pandemic. For example, in Texas, for any judicial proceeding held outside its normal venue courts must provide "reasonable notice and access to the participants and the public." *Background and Legal Standards—Public Right to Access to Remote Hearings During COVID-19 Pandemic*, State of Texas Office of Court Administration, https://perma.cc/X8RQ-3ES9.

As a result of these efforts guided by the Judicial Conference, including its temporary exception to its broadcast/cameras policy, members of the press and public

have been able to continue to observe judicial proceedings even in the face of physical restrictions on access to courtrooms themselves. Remote access has been critical to ensuring the news media's ability to effectively report on matters of public concern, including judicial matters directly connected to this national crisis. For instance, news organizations across the country have been reporting on federal lawsuits arising from COVID-19 outbreaks in jails and prisons. *See* Michael Balsamo & Michael R. Sisak, *Federal Prisons Struggle to Combat Growing COVID-19 Fears*, Associated Press (Mar. 27, 2020), https://perma.cc/FHA7-LDTN?type=image; Timothy Williams et al., *'Jails Are Petri Dishes': Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020), https://perma.cc/R2N5-FHSE. Public access to hearings and other proceedings in those matters has provided invaluable insight into how government operates. *See* Shannon Dooling, *As Nurse Tests Positive, Judge Looks For Ways To Release Some ICE Detainees At Bristol County Jail*, WBUR News (Apr. 2, 2020), https://perma.cc/39JQ-57Q5; Amy Beth Hanson, *Rights Group Asks Justices to Release Inmates over COVID-19*, Associated Press (Apr. 1, 2020), https://perma.cc/NU33-6WDY; Patricia Hurtado, *Federal Jails Are Covid-Free, U.S. Says at Murder Bail Hearing*, Bloomberg (Mar. 17, 2020, 3:52 PM), https://perma.cc/FD5Z-GZVZ; Tulsi Kamath, *Harris County Judge Says She Will Sign Order to Release About 1K Inmates from County Jail Amid Coronavirus Crisis*, Click2Houston (Mar. 31, 2020, 3:55 PM), https://perma.cc/H7G7-6QZS.

To ensure meaningful public access, public notice of when remote proceedings will take place and how members of the public can observe them is crucial. Courts have been inconsistent in this respect during the COVID-19 pandemic. Many district court policies now make clear that presiding judges should provide a publicly accessible link to remote hearings and other proceedings on the docket for the relevant matter, or upon request. Other courts have posted links to remote proceedings on their websites—an approach that has the advantage of reaching a broader swath of the public, as it does not require a PACER account to access. Unfortunately, however, during the pandemic, some members of the press have reported difficulty in obtaining information about when certain proceedings were taking place, or have been required to request access to proceedings on a case-by-case basis. This uncertain terrain poses challenges for journalists and other members of the public attempting to observe specific court proceedings that, absent COVID-19 restrictions, they would have been able to attend in person.

III. Recommendations for future rules amendments and guidance.

The Reporters Committee urges the Judicial Conference to consider rules amendments and guidance that would permanently remove barriers for the broadcast or streaming of both civil and criminal proceedings. It should also make clear that when a proceeding that would normally be held in open court must be held remotely due to some national emergency, courts must provide meaningful notice of such proceeding and a means for members of the public to observe it.

In response to the COVID-19 pandemic, the Judicial Conference temporarily authorized courts to provide the public and members of the news media access to remote teleconferences in certain proceedings. The Reporters Committee urges the Judicial Conference to permanently authorize courts to broadcast or stream their proceedings in both civil and criminal matters, by considering amending Federal Rule of Criminal Procedure 53 and revising or eliminating any contrary policy, including its Cameras in the Courtroom policy.[2] *See History of Cameras in Courts*, United States Courts, https://perma.cc/HM4A-35F9 (last visited June 1, 2020). At least one federal appellate court gave the Judicial Conference's policy against broadcasting civil proceedings "substantial weight" in holding that local rules did not permit a federal district court judge to allow broadcasting of proceedings in a specific civil case. *See In re Sony BMG Music Entm't*, 564 F.3d 1, 6–7 (1st Cir. 2009) (noting that Judicial Conference policies are "not lightly to be discounted, disregarded, or dismissed"). Permanent authorization would remove this hurdle, allowing district courts to quickly adapt to any future emergency necessitating remote proceedings, experiment with finding the best technological means for broadcasting or streaming proceedings, and simultaneously realize many of the benefits to public access that have been highlighted by the Judicial Conference's recent temporary authorization.

The benefits of broadcasting or streaming judicial proceedings cannot be overstated. It enables *all* members of the public—regardless of whether they are able to physically enter a courtroom—to observe the important work of the judiciary in real-time, contributing to creating the informed citizenry necessary to a healthy democracy. *See Minneapolis Star & Tribune Co.*, 460 U.S. at 585 ("[A]n informed public is the essence of working democracy."); *Int'l News Servs. v. Associated Press*, 248 U.S. 215, 235 (1918) ("The peculiar value of news is in the spreading of it while it is fresh."). Not only does such contemporaneous, remote access to judicial proceedings allow for more observers than the physical capacity of a courtroom, but it also enables members of the press and public who may be located hundreds of miles away or otherwise unable to visit a courthouse in person, to exercise their rights to observe judicial proceedings.

The ongoing pandemic has highlighted the public's immense interest in the judiciary's work. SCOTUSblog reports that approximately 500,000 people tuned into livestreamed oral arguments before the Supreme Court on May 12, 2020 in *Trump v. Mazars USA LLP*, No. 19-715, and *Trump v. Vance*, No. 19-635. Amy Howe, *Courtroom Access: Where Do We Go From Here?*, SCOTUSblog (May 13, 2020, 12:37 PM), https://perma.cc/THX9-F8XJ. And, as of June 1, 2020, an estimated 1.9 million people have listened to one of the Supreme Court's recorded oral arguments online. *SCOTUS Oral Argument Numbers*, Reporters Committee for Freedom of the Press,

[2] In some cases, district courts incorporate Judicial Conference policies into local rules or general orders. *See* General Order 58, United States District Court Northern District of California, https://perma.cc/ET6L-JWRV. Even if they are not directly incorporated, the Judicial Conference's policy conclusions are "at the very least entitled to respectful consideration." *See Hollingsworth v. Perry*, 558 U.S. 183, 193 (2010) (citation omitted).

https://bit.ly/2TUql5m (last visited June 1, 2020). Many of the videos posted by the U.S. Court of Appeals for the Ninth Circuit, which regularly livestreams video of its oral arguments, have hundreds of viewers, enough to fill several courtrooms. *See United States Court of Appeals for the Ninth Circuit*, YouTube (last visited May 17, 2020), https://bit.ly/2TgQf2Y. Guidance from the Judicial Conference would help broaden remote access to proceedings to all levels of the federal judiciary.

Moreover, permanent authorization will prepare courts to easily transition to operating remotely in future national crises. Before the pandemic, several federal appellate courts regularly provided live audio or video of oral arguments and archived those recordings. *See* News Release, United States Court of Appeals for the District of Columbia Circuit, Court to Provide Live Audio Streaming of All Arguments at Start of 2018-2019 Term (May 23, 2018), https://perma.cc/Y9W9-G65P; *Audio and Video*, United States Court of Appeals for the Ninth Circuit, https://www.ca9.uscourts.gov/media/ (last visited June 1, 2020). In response to the COVID-19 pandemic, more federal appellate courts, including the Supreme Court, have turned to live audio of oral arguments. *See, e.g.*, Press Release, Supreme Court of the United States, May Teleconference Oral Arguments (Apr. 13, 2020), https://perma.cc/CB72-ESH9; Advisory, United States Court of Appeals for the Federal Circuit, Availability of Live Audio Access to April 2020 Court Session (Apr. 1, 2020), https://perma.cc/7F8J-N8JG. For arguments in which counsel for the parties and/or the court themselves participated remotely during the COVID-19 pandemic, those appellate courts that regularly livestreamed their oral arguments—such as the Ninth and District of Columbia Circuits—were able to quickly adapt to remote, livestreamed proceedings. Permanent authorization to broadcast or stream proceedings at the district court level would be similarly beneficial.

At a minimum, the Reporters Committee urges the Judicial Conference to revisit how its Camera in the Courtrooms policy applies to civil cases. *See History of Cameras in Courts*, United States Courts, https://perma.cc/HM4A-35F9 (last visited June 1, 2020). The Judicial Conference implemented that policy in 2016, after the conclusion of a four-year pilot program that introduced cameras into 14 district court courtrooms from 2011–2015. *Id.* The Federal Judicial Center's report on that pilot program found that more than 70 percent of participating judges and attorneys favored recording court proceedings. Molly Treadway Johnson et al., Fed. Judicial Ctr., Video Recording Courtroom Proceedings in United States District Courts: Report on a Pilot Project 33–34, 55 (2015). By the end of the pilot program, more judges were in support of cameras in the courtroom than against, *id.* at 33–34, and most judges and attorneys said they would be in favor of permitting video recordings of civil proceedings, *id.* at 36, 44–45. Many judges and attorneys who participated in the pilot program also expressed surprise that the cameras were as unobtrusive as they were. *Id.* at 40–41. Now that many more judges have conducted remote and recorded proceedings as a result of the COVID-19 pandemic, the Judicial Conference should revisit its policy.

Finally, the Reporters Committee urges the Judicial Conference to issue guidance making clear that whenever proceedings that would normally be held in open court must

instead be held remotely due to a national crisis or otherwise, courts should provide effective public notice of those proceedings, including instructions for how members of the press and public can easily observe them. Guidance from the Judicial Conference can help to ensure uniformity in the manner in which courts provide such notice, which is necessary for members of the public to effectively exercise their rights of access.

* * *

Thank you for your consideration. Please do not hesitate to contact Reporters Committee Legal Director Katie Townsend (ktownsend@rcfp.org) with any questions. We would be pleased to provide any additional information to the Judicial Conference in aid of this important work.

Sincerely,
Reporters Committee for Freedom of the Press

From:	Lin Weeks
To:	RulesCommittee Secretary
Cc:	Katie Townsend; Bruce Brown
Subject:	Response to Invitation for Comment on Emergency Rulemaking
Date:	Monday, June 01, 2020 2:15:55 PM
Attachments:	6.1.2020-RCFP-Letter to Rules Committee.pdf

Good afternoon, Ms. Womeldorf. Please see the attached correspondence to the Committee on Rules of Practice and Procedure from the Reporters Committee for Freedom of the Press concerning the Rules Committee's request for public input on possible rule amendments that could ameliorate the effects of future national emergencies on court operations.

Sincerely,
Lin Weeks

Lin Weeks - Staff Attorney
[redacted]