



March 25, 2020

Via email publicaffairs@jud.ca.gov

The Hon. Tani G. Cantil-Sakauye
Chief Justice of California
Chair of the California Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Re: **Public Access to Court Proceedings and Records Amid COVID-19 Crisis**

Dear Chief Justice Cantil-Sakauye,

I am writing on behalf of the First Amendment Coalition and a coalition of organizations listed below that advocate for government transparency. As the California judiciary takes steps to protect public health amid the COVID-19 pandemic, we write today to urge the courts to ensure the press and public continue to have access to public proceedings and records.

We recognize the severe health crises we all face as a society and applaud your leadership in issuing the March 23 [Statewide Order](#). At the same time, we need to recognize that important civil liberties and constitutional rights should not be unduly restricted. While courts are closing buildings, halting proceedings and holding some hearings telephonically, we are concerned members of the press and public will face insurmountable barriers to access judicial records and proceedings.

The California Supreme Court has long been a champion of public access to judicial records and hearings. The Court's seminal decision in [NBC Subsidiary \(KNBC-TV\), Inc. v. Superior Court](#), 20 Cal 4th 1178 (1999) should remain top of mind as new, temporary procedural rules are adopted. The public's constitutional access rights under Article 1, Section 3(b) of the California Constitution and the First Amendment can continue to guide us in these troubled times.

As you provide additional direction to California court leaders, we urge the Judicial Council to take steps that will help ensure public access.

First, telephonic hearings must be conducted on conference lines that make some allowance for free public usage. And dial-in information must be readily available to the public in advance of the hearing.

Second, criminal proceedings, such as arraignments and sentencing, that take place in courtrooms or via video must in some way be open to the public and press. See, Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986). Gov. Newsom correctly designated the press as “essential” and therefore they are exempt from the state’s “shelter in place” order. Reporters, who serve as the eyes and ears of the public, should not be blocked from access to courthouses to observe proceedings, even as courts take reasonable measures to restrict access for health reasons.

Third, court records must remain publicly available. Access will come to a screeching halt if clerks’ offices are closed to the public. This is yet another reason courts should move toward making all records available on their websites. If records cannot be made available online, courts should make arrangements for access in some other manner. Moreover, courts should waive any fees for online access at least until normal operations resume.

We commend the California Supreme Court for live-streaming oral arguments and hope other additional courts will embrace this option. Accordingly, we respectfully urge the Judicial Council to issue additional guidance to all California courts on how to institute closures and restrictions while also ensuring meaningful access to all public proceedings and records.

We are very glad to discuss this matter further with you or court staff.

Sincerely,

David Snyder
Executive Director
First Amendment Coalition

Joined by:
Californians Aware
ACLU of Northern California
ACLU of Southern California
ACLU of San Diego and Imperial Counties
California News Publishers Association
Electronic Frontier Foundation
Informed California Foundation
Reporters Committee for Freedom of the Press
Society of Professional Journalists, Greater Los Angeles Chapter
Society of Professional Journalists, Northern California Chapter