



March 25, 2020

Via email media@scscourt.org, BRada@scscourt.org

The Hon. Deborah A. Ryan
Presiding Judge
Santa Clara Superior Court
191 North First Street
San José, California 95113

Re: **Public Access to Court Proceedings Amid COVID-19 Emergency**

Dear Judge Ryan,

I am writing on behalf of the First Amendment Coalition to urge you to reconsider the total ban on public access to judicial proceedings as described in the March 23 order, **“General Order Restricting Courthouse Entry and Permitting Access to Only Those Persons Required to Appear in Person at Any Santa Clara County Superior Courthouse.”**

We recognize the severe health crisis we all face as a result of COVID-19 and understand that government agencies at all levels must take extraordinary steps to address it. However, in addressing these needs, the General Order fails to acknowledge crucial rights of access under both the state and federal constitution and, indeed, would compromise those rights if it remains in effect as written.

The General Order makes passing reference to constitutional rights but pays no heed to the numerous decisions of both the U.S. Supreme Court and the California Supreme Court affirming constitutional public access rights to court proceedings. See, e.g., Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986) (right of public access to criminal preliminary hearings); Richmond Newspapers v. Virginia, 448 U.S. 555 (1980) (right of access to criminal trials); NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal 4th 1178 (1999) (right of access to civil and criminal proceedings).

The California Supreme Court has long championed access to judicial records and hearings. The Court’s seminal decision in NBC Subsidiary, 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.

Gov. Newsom order designated the press as "essential" and therefore exempt from the state's "shelter in place" order. Reporters, who serve as the eyes and ears of the public, should not be completely blocked from access to courthouses to observe proceedings, even as courts take reasonable measures to restrict access for health reasons.

The General Order presumes there are no less restrictive means to preserve some measure of public access to court proceedings. We make the following recommendations as you lead the Santa Clara Superior Court through this crisis, and respectfully request that you modify the General Order to account for and accommodate the fundamental constitutional rights at issue.

First, telephonic hearings should 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. Pool arrangements can reduce the number of reporters who need to be present.

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 all public records should be made available on court websites. If records cannot be made available online, courts should make arrangements for access in some other timely manner.

Too often in our nation's past, a crisis has led to summary denial of civil liberties and constitutional rights. Our present circumstances may not permit "business as usual." But we believe that preserving public health does not require complete abandonment of constitutional access rights.

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

Sincerely,

David Snyder
Executive Director
First Amendment Coalition
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