

August 11, 2023

The Honorable Roslynn R. Mauskopf
Judicial Conference Secretary
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544
rmauskopf@ao.uscourts.gov

Dear Judge Mauskopf:

We are a coalition of civil society and press organizations that advocate for greater access by the public and the press to court proceedings. We write to urge the Judicial Conference to permit remote public audio access to civil and bankruptcy proceedings, including those in which a witness is testifying.¹

Because of the COVID-19 pandemic, in March 2020, the Conference approved a temporary exception to its broadcast/cameras policy that allowed judges to authorize the use of teleconferencing to give the public and media audio access to court proceedings in federal civil and bankruptcy cases.² The Conference had previously authorized a pilot program to study livestreaming audio of civil and bankruptcy proceedings, which ended on March 31, 2023.³

More recently, the Conference announced that the temporary broadcasting exception for civil and bankruptcy proceedings would end on September 21, 2023.⁴ According to news reports, in September, the Committee on Court Administration and Case Management will recommend that the Conference authorize remote public audio access to civil and bankruptcy proceedings in which a witness is not testifying.⁵

We agree that district courts should be permitted to provide remote public audio access to civil and bankruptcy proceedings without witnesses. **However, we urge the Conference to authorize district courts to permit remote public audio access to *all* civil and bankruptcy proceedings, including those with witness testimony.**

Federal and state courts successfully gave the public remote audio access to proceedings with witness testimony during the pandemic. As this experience shows, the public and the judicial

¹ We understand that at its upcoming September meeting, the Conference will consider providing the public only with remote audio access to civil and bankruptcy proceedings. As a result, this letter does not address remote video access to those hearings or remote video or audio access to criminal proceedings, although we encourage the Conference to grant the public full video and audio access to all proceedings.

² [Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic](#), United States Courts (Mar. 31, 2020)

³ [Audio Streaming Pilot](#), United States Courts (last visited Aug. 1, 2023).

⁴ [Judiciary Ends COVID Emergency: Study of Broadcast Policy Continues](#), United States Courts (May 11, 2023).

⁵ Lydia Wheeler, [US Judiciary to Consider Limited Public Broadcasting After Covid](#), Bloomberg Law (July 15, 2023).

system benefit tremendously from remote public audio access to proceedings with witness testimony, and it is possible to provide this access without compromising the integrity of proceedings or the courts' work.

For example, in February 2022, the Eastern District of Michigan ordered that the first civil trial over lead contaminated drinking water in Flint, Michigan — considered a bellwether for future trials over the Flint water crisis — be made available to the public via Zoom because of social distancing requirements.⁶ Zoom access allowed the press in Michigan and beyond to follow and report on the trial, including witness testimony.⁷ For instance, journalists for the Engineering News-Record “monitor[ed] events via the court’s Zoom video system” throughout the 21 week hearing and testimony of 43 witnesses,⁸ allowing ENR to publish multiple stories about newsworthy testimony during the trial.⁹

During the pandemic, a Minnesota trial court also permitted the livestreaming of the trial of Derek Chauvin, the former police officer accused (and later convicted) of murdering George Floyd.¹⁰ Although the Chauvin case was a criminal trial, it demonstrates the feasibility and benefits of remote audio access to witness testimony. The livestream permitted the public to view the trial (including witness testimony)¹¹ and journalists to report on it.¹² The successful broadcast of the trial¹³ is credited with improving public access to and oversight of courts,¹⁴ especially by people of color.¹⁵ Following the Chauvin trial, the Minnesota Supreme Court

⁶ Ron Fonger, [First civil trial tied to Flint water crisis starts Tuesday. Here’s how to watch it live](#), MLive (Mar. 6, 2023).

⁷ See, e.g., Arpan Lobo, [Firms knew of lead contamination in Flint and failed to act, lawyers argue in civil trial](#), Detroit Free Press (July 20, 2022) (reporting on witness testimony); Steve Carmody, [Evidence suggests consultant was aware of lead “problem” months before Flint water issues became public](#), Michigan Radio (Mar. 30, 2022) (reporting on witness testimony); Andy Olesko, [Flint water crisis trial against engineering firms nears end](#), Courthouse News Serv. (July 20, 2022) (reporting on closing arguments).

⁸ Richard Korman, [How and Why ENR Covered the Flint Trial](#), Engineering News-Record (Aug. 25, 2022)

⁹ See, e.g., Jeff Yoders, [Ex-Mich. Governor: I Would Have Acted Earlier in Flint Crisis If Warned](#), Engineering News-Record (June 29, 2022) (reporting on video deposition of the former Michigan Governor played for the jury); James Leggate, [Flint Water Engineers’ Case Goes to Jury After Five-Month Trial](#), Engineering News-Record (July 21, 2022); Richard Korman & Jeff Yoders, [Engineer at Flint Negligence Trial Details Government Water Errors](#), Engineering News-Record (Mar. 15, 2022) (reporting testimony claiming that city officials conducted inadequate water softening and testing of water in Flint); Richard Korman, [Key Flint Negligence Lawsuit Witness Seeks to Drop Trial Role](#), Engineering News-Record (Apr. 28, 2022) (reporting on testimony).

¹⁰ Rochelle Olson, [Chauvin trial puts cameras front and center of the Hennepin County courtroom](#), Star Tribune (Mar. 19, 2021).

¹¹ Nicholas Bogel-Burroughs, [Here’s how to watch the Derek Chauvin trial](#), N.Y. Times (Mar. 29, 2021).

¹² E.g., Bill Chappell, [‘It Wasn’t Right.’ Young Woman Who Recorded Chauvin And Floyd On Video Tells Court](#), NPR (Mar. 30, 2021); Rachel Ramirez, [The sympathy and authority of the witnesses in the Chauvin trial](#), Vox (Apr. 1, 2021).

¹³ Matt Sepic, [Chauvin trial eases concerns of courtroom camera skeptics](#), MPR News (Apr. 29, 2021).

¹⁴ Alissa Wilkinson, [The power of televising Derek Chauvin’s trial](#), Vox (Apr. 7, 2021).

¹⁵ Tami Abdollah, [‘They need to be watched’: How livestreaming the Derek Chauvin trial lets people of color monitor the justice system](#), USA Today (Mar. 29, 2021).

adopted new rules giving judges discretion to provide video and audio coverage of proceedings on a case-by-case basis.¹⁶

These are just two examples of the widespread success of remote audio access to judicial proceedings with witnesses during the pandemic. Because of COVID-19, federal courts across the country — from the Northern District of California¹⁷ to the Eastern District of Virginia¹⁸ — held full virtual trials including witness testimony that the public could access remotely. The Administrative Office of United State Courts highlighted the success of virtual trials conducted in Boston, Seattle, and Florida during the pandemic.¹⁹ It also noted that the Bankruptcy Court for the Southern District of Texas successfully used video conferencing to continue proceedings during the pandemic.²⁰

District courts' experience during the pandemic with remote audio access to proceedings demonstrates its feasibility. In the past, some have raised logistical concerns about permitting remote audio access, such as the space and personnel needed to record and transmit the audio, possible burdens on court security, or the risk of distracting witnesses. The fact that so many district courts successfully provided remote audio access to proceedings, including those with witnesses, shows that these concerns can be readily addressed.

In addition, the public would benefit greatly from continuing to allow remote audio access to civil and bankruptcy proceedings with witness testimony, as a supplement to in-person access. Remote audio access would let the public and journalists who live or work far from the courthouse or are otherwise unable to attend proceedings in person listen to testimony and report their observations to others. This access would improve public understanding of and trust in the judicial system.²¹

The judicial system would also benefit from continuing to allow remote audio access to civil and bankruptcy proceedings with witness testimony. As the Supreme Court has explained, public scrutiny of witness testimony enhances the functioning of our court system by discouraging perjury and other misconduct.²² Continuing to permit remote audio access to proceedings with

¹⁶ Kim Hyatt, [Minnesota Supreme Court orders expanded camera access in courtrooms](#), Star Tribune (Mar. 15, 2023).

¹⁷ <https://apps.cand.uscourts.gov/telhrq/> (remote hearing webpage); <https://www.cand.uscourts.gov/notices/access-to-court-hearings/> (notice)

¹⁸ Ryan Davis, [After 5 Weeks, Zoom Patent Trial In Cisco Case Nears End](#), Law360 (June 11, 2020); Ryan Davis, [Cisco Patent Trial Kicks Off Over Zoom Without A Hitch](#), Law360 (May 6, 2020) (noting that the public and reporters had audio access to the trial)

¹⁹ [As Pandemic Lingers, Courts Lean Into Virtual Technology](#), United States Courts (Feb. 18, 2021).

²⁰ [Courts Deliver Justice Virtually Amid Coronavirus Outbreak](#), United States Courts (Apr. 8, 2020).

²¹ *Richmond Newspapers v. Virginia*, 448 U.S. 555, 572 (1980) (explaining that public access enhances public trust by allowing the public to understand how the judicial system works in general and in a particular case).

²² *Id.* at 569. Because of the history of public access to witness testimony and the significant role it plays in the functioning of the judicial system, the Court has rejected some attempts to close witness testimony to the public. See generally *Globe Newspaper Co. v. Superior Court*, 457 US 596 (1982).

witness testimony would strengthen our judicial system by increasing public oversight of testimony.

We recognize that there may be instances in which a district court should be permitted to decline to provide remote audio access to witness testimony. We urge the Conference to adopt a policy that encourages district courts to provide remote audio access of all court proceedings and to promulgate rules and procedures to determine when a district court may decline to provide remote access.

We appreciate the important steps the Conference took during the pandemic to ensure public access to court proceedings. We urge the Conference to continue to allow and encourage district courts to provide remote audio access to all civil and bankruptcy proceedings, including those with witness testimony.

If you would like to discuss this further, please contact Caitlin Vogus, Deputy Director of Advocacy at Freedom of the Press Foundation, at caitlin@freedom.press.

Sincerely,

Freedom of the Press Foundation
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American Civil Liberties Union
American Society of Magazine Editors
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