June 10, 2020

The Honorable John G. Roberts, Jr.
Chief Justice
Supreme Court of the United States
Washington, DC 20543

Dear Chief Justice Roberts:

On behalf of the American Bar Association, which is the largest voluntary association of lawyers and legal professionals in the world, I commend the court for providing the public with live audio access to the ten oral arguments heard in May by teleconference due to the COVID-19 pandemic and urge you to continue to experiment with this policy change by providing live audio streams of oral arguments during the October 2020 term, even when the Court reopens its doors to the public.

Many ABA members across the country joined the nearly two million people who tuned into the live streams of the various arguments. From all accounts, live streaming has been a watershed event that has been roundly praised by the legal community, the media, and most importantly, by the public who have appreciated the increased transparency, accountability, and opportunity to improve their understanding of the vital role of the Supreme Court in their daily lives.

The ABA, like the Federal Judiciary, has a long and cautious history with respect to broadcast coverage of judicial proceedings. In fact, in 1937, the ABA announced its opposition to any form of broadcast coverage by including a prohibition against it in our then Canons of Judicial Ethics. Over the years, the ABA has reevaluated and revised its position several times, based on the extensive and positive experience of state courts and the more limited experience of some lower federal courts that permit electronic access to some proceedings.

Current policy of the ABA supports efforts by the Judicial Conference to authorize and expand experimentation with electronic coverage of civil proceedings, and our Fair Trial and Free Press Criminal Justice Standards advise courts to develop their own plans for electronic media coverage of criminal proceedings. Our most recent policy, adopted in 2016, urges the Supreme Court to record and make available video recordings of its oral arguments. It makes perfect sense that the policy was developed by our Young Lawyers Division, whose members view technology as an essential and ordinary part of their daily lives. We know the Supreme Court is not ready to embrace such a change at this time, but we hope it will in due course.
While we understand that some Members of Congress and the public are frustrated over the pace at which the federal courts have embraced technological access to its proceedings, our own history enables us to appreciate the now oft-quoted statement from your 2014 Year-End Report that “the courts will always be prudent whenever it comes to embracing the next big thing.” Progress may be slow, but it has been steady.

We hope the Supreme Court and the Judicial Conference will continue to demonstrate a willingness to reevaluate and expand its policies on audio and video coverage of court proceedings in light of recent experiences during this COVID-19 pandemic. In consideration of the potential for increasing civic engagement through enhanced transparency, as aptly demonstrated by last month’s enthusiastic public response, the ABA urges you to extend live-streaming of oral arguments at least through the October term.

Sincerely,

Judy Perry Martinez