



Thurgood Marshall
Civil Rights Center
School of Law

INSIDE PRINCE GEORGE'S COUNTY BOND HEARINGS:

Analysis, Findings, & Recommendations

Movement Lawyering Clinic 2023

Spring 2023:

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I have witnessed judges hold community members without bond due to failure to appear, even though they were homeless with no address.

I have witnessed judges refuse mental help for ill community members who had already begun treatment.

I have witnessed disparities between the races listed in case search and the actual race of the community member. Many Hispanic/Latino community members were being mislabeled as White.

I have witnessed the Judge blatantly ignore malfunctioning audio and refuse to repeat anything, including the reasoning and the ruling.

I have witnessed the judges disregard the physical health of community members and fail to provide them with the medical assistance needed before sending them to jail.

Testimony from Courtwatch PG Members
2022-2023

Table of Contents

- I. Executive Summary..... 5**
- II. Courtwatch PG’s Observations of Court Violations..... 6**
 - A. High Bonds Violate Maryland Rule 4-216.1..... 6**
 - B. Poor Court Audio Likely Infringes On The Sixth Amendment Constitutional Right to Effective Counsel..... 9**
 - C. Physical Health Concerns of Detained Community Members Raise Issues of Eighth Amendment Protections Against Deliberate Indifference to Serious Medical Needs..... 10**
 - D. Mental Health Concerns of Detained Community Members..... 11**
 - E. The Court Gives Unnecessarily Harsh Rulings to Juveniles, Some Possibly in Violation of the Sixth and Fourteenth Amendments of the U.S. Constitution, and Article 21 of the Maryland Declaration of Rights..... 13**
- III. Courtwatch PG 2023 Report Legal Addendum..... 15**
 - A. Courtwatch PG Has Documented the Possible Violation of U.S. Constitutional and Maryland State Rights, as well as Other Abhorrent Practices..... 15**
 - 1. Right to Effective Assistance of Counsel..... 15**
 - 2. Right to Speedy Trial under the Sixth and Fourteenth Amendments of the U.S. Constitution, and Article 21 of the Maryland Declaration of Rights..... 16**
 - 3. Eighth Amendment Right to be free from Cruel and Unusual Punishment..... 16**
 - 4. High Bonds in Violation of Md. Rule 4-216.1..... 17**
 - B. In Order to Fully Ensure the Public’s First Amendment Rights and Defendant’s Sixth Amendment Right to Public Criminal Trials, Remote Access is Essential..... 17**

- C. In Order to Fully Ensure Compliance with International Human Rights Law, Remote Access to Court Proceedings is Essential..... 19**
- D. The Proposed Legislation Mitigates any Concerns of Damage to the Judicial Process by Implementing Tighter Restrictions on Remote Access Than is Necessitated by Law..... 20**

- IV. Final Summary..... 21**

I. Executive Summary

Since September of 2022, members of the Movement Lawyering Clinic ("the Clinic") at Howard University School of Law have observed bond hearings in Prince George's County District Court. During this time of observation, the Clinic witnessed judges dismissing defendants' needs for medical attention while in jail, dismissing the needs and wishes of defendants with mental health issues and allowing them to ramble in court without a lawyer or procedural guidance, giving harsh rulings to juveniles, setting unaffordable bonds, and proceeding with hearings despite poor audio quality, making effective assistance of counsel impossible. These issues trigger constitutional violations and indicate that audio-visual access is necessary to protect citizens brought into contact with the court system.

The United States Constitution guarantees criminal defendants the right to a fair and public trial. The United States Supreme Court has held that the public and press have the right to attend and access criminal proceedings. The public's right to access criminal proceedings is enumerated within several international human rights treaties to which the United States is a party. Even though the right to public criminal trials has been actualized thus far without virtual access, Courtwatch PG's groundbreaking reports make it clear that the "basic fairness" of the criminal trial is not currently being fulfilled nor properly monitored by non-remote public access. Therefore, a strong legal basis exists for maintaining audio-visual remote court access.

Upon observing many abhorrent practices in bond hearings and acknowledging the current age of technology, Courtwatch PG recognized the need for audio-visual remote court access to protect defendants and facilitate the enforcement of their Constitutional rights. Additionally, adequate audio-visual remote access is necessary because of the inferior existing public access methods. Audio access is insufficient and often inaudible to listeners, which stifles the ability of the public to hold officers of the court accountable. Proper audio-visual remote access would ensure listeners can hear and see the proceedings inside the courtrooms. In turn, lessening mistreatment against defendants that would otherwise remain unaddressed.

It is the Clinic's hope that this report will bring the observed violations to the attention of all court personell, includng judges, prosecutors, and defense counsel, and remind them of their duty to uphold the law, even when their own behavior may run afoul of it. The Clinic also hopes

this report will mobilize advocates and the public to pursue all appropriate measures designed to promote transparency and public access to the functioning of our legal system.

When considering measures to increase transparency and access to our courts, it is essential to consider the positive impact that the change might effect on the Prince George's County Courts' reputation. As abhorrent as some of the Courtwatch PG documentation is, the opportunity for accountability and redemption is far more significant. Even internationally, courtroom audio-video transmission is becoming an important feature of modern criminal justice, and Prince George's County has the infrastructure necessary to make it a permanent fixture in its courts.¹ Ensuring fully functioning public remote access to court proceedings has the potential to set the example for what courts across the U.S. and around the world should do in order to ensure both and embody fairness and equity.

II. Courtwatch PG's Observations of Court Violations

A. High Bonds Violate Md. Rule 4-216.1

The commissioners and judges in Prince George's County have repeatedly set unaffordable bonds for several community members. It is evident that several community members were held without any lawful reason, such as posing a danger to the community or posing a flight risk. It appears that in some instances, community members were held simply for their inability to pay. Community members were often held for simple misdemeanors and nonviolent offenses. This is in direct violation of Maryland Rule 4-216.1 (e)(1). Prince George's County commissioners continue to set unaffordable bonds and should be held accountable for the violation of the new Maryland Rule.

(i) Commissioners Setting Unaffordable Bonds

¹ Alex Clayton, Sarah Moore, and Hector Murphy, *Seeing justice done: Courtroom filming and the deceptions of transparency*, Paige M. Skiba, Ariana R. Levinson, and Erin O'Hara O'Connor, *Is Labor Arbitration Lawless?*, 17 Crime Media Culture, 127–144 (2021).

- Around October 25, 2022, twenty-two commissioners set unaffordable bonds for several community members. In these instances, community members were not released. They were effectively held without bond simply because of their financial inability to pay, not because they were a flight risk or a danger to the community. In one case, a community member was held without bond for a sole possession charge, with no commissioner listed, making it impossible to hold the unnamed commissioner accountable.
- Around November 2, 2022, an Assistant State's Attorney advocated a high bond precisely on the premise that it would be unaffordable for the community member to pay it. However, this degree of unaffordability would make the bond illegal, according to Maryland Rule 4-216.1.

(ii) Judges Setting Unaffordable Bonds in Violation of Maryland Rule 4-216.1

- Around December 6, 2022, a community member was charged with misdemeanor thefts of less than \$1500. The commissioner set a bond of \$1500, which the community member could not afford. Instead, the judge ordered that he be held without bail. The judge's decision to hold this community member without bail for a non-violent misdemeanor charge seemed excessive.
- Around December 6, 2022, a community member was held and the commissioner set the initial bond of \$5,000. The community member was unaware of the warrant against him and voluntarily turned himself in when he was aware. Further, he could not afford the initial bond. The judge kept the bond the same but allowed for Pretrial Release at Level 4. Level 4 supervision is usually given when there is a concern that the community member may pose a danger to others. However, setting a cash bond indicates that there was no belief he posed a danger to the community. The judge's decision seemed contradictory.
- Around December 21, 2022, a community member was held without bond for non-violent misdemeanor charges. Another community member has been held for over a month without bond for causing a disturbance in a store because he was homeless. All

charges against him are misdemeanors. The Assistant State's Attorney stated that nuisance crimes affect the community's quality of life, using this reasoning to deny this community member a reasonable bond.

- Around December 21, 2022, a homeless community member faced alleged car theft charges and had multiple "failure to appear" incidents because he was unhoused. The community member did not indicate any propensity for danger. He was held for almost two weeks simply because he could not immediately provide an address. He also was not allowed to call his community to assist in arranging housing.
- Around January 17, 2023, a community member was detained on a bench warrant and issued a \$500 bond which he could not afford. He had four incidents of "failure to appear" due to his homelessness and unstable living conditions. The Assistant State's Attorney did not object to converting the \$500 bond to unsecured, making it of no cost to the community members. However, the judge revised the bond to a \$5000 unsecured bond. This approach seemed insensitive and hostile to the unhoused low income person in this case.
- Around January 17, 2023, a community member informed the court that his family was on their way to pay his bond of \$2,500 set by the commissioner and requested that the bond be kept the same. He had no prior convictions. Despite his family being en route to pay his bond, the judge detained him without bond.
- Around January 17, 2023, a community member was heard on a possession charge without probable cause. He had no violent convictions on the record. Despite one drug charge and no probable cause, the judge ruled to detain him without bond. Subsequently, he spent five days in jail for a misdemeanor charge without probable cause.

B. Poor Court Audio Likely Infringes on the Sixth Amendment Constitutional Right to be Informed and to Effective Assistance of Counsel

During the COVID-19 pandemic, Prince George's County began implementing audio and video recordings from the jail to the courtroom so that the community members did not have to be transferred from the jail to the courthouse. The court audio has been so poor on numerous occasions that the community members could not hear the judge's reasoning and ruling. Subsequently, this poor court audio has infringed on the community members' Sixth Amendment right to be informed of the nature and cause of the accusation and to have effective assistance of counsel for their defense. Because audio and video usage in the courthouse is still prevalent, Prince George's County must make an effort to ensure that all equipment is working properly and that each party can hear. Furthermore, judges must ensure the parties can hear their reasoning and ruling. If they cannot, the judges must repeat their reasoning and judgment or stop the hearing until audio and visual problems are resolved.

- Around November 9, 2022, a community member represented himself as his own attorney because he could not hear the judge's warnings refraining him from doing so.
- Around January 17, 2023, a community member's public defender represented her defense when the jail and the online public lost their audio feed until after the judge's ruling. Instead of allowing the discussion to be repeated, the judge continued and refused to allow for any further discussion. The judge gave a court date no one in the court could hear. The judge knew the community member had not heard the ruling and refused to repeat it. This compromised the community member's right to attend his own hearing, participate in his defense, and his right to assistance.
- Around January 17, 2023, a community member was denied a proper hearing because the sound connection to the jail was lost. Despite being told that the community member could not hear, the judge simply informed him of her ruling to hold him without bond once the sound was restored. The judge could easily have restarted the process once sound was restored and ensured that the community member could participate in his own hearing.

C. Physical Health Concerns of Detained Community Members Raise Issues of Eighth Amendment Protections Against Deliberate Indifference to Serious Medical Needs.

We observed the court failing to clearly acknowledge physical impairments when ruling on cases. This also translates to a lack of concern regarding community health needs while in jail. The Clinic observed judges referring community members with health conditions to the Office of Pretrial Services in response to concerns about not receiving medicine in jail instead of making sure that the community members are provided with the appropriate medication.

Prince George's County continues to incarcerate community members with significant health issues for which the jail is unable to provide timely or sufficient care, limiting their access to medication and/or medical services and ultimately creating unnecessary health risks. No matter the circumstances, the health of community members should be viewed with the utmost importance. It is particularly egregious when this expectation is not met during a deadly pandemic.

- On December 1, 2022, an attorney for the community member informed the judge that the community member takes medication for bipolar disorder, depression, and PTSD. However, he had not received his medication while in jail. The judge did not address this concern, and instead gave the community member the option of release through the Office of Pretrial Services. Choosing this option could result in the community member remaining incarcerated for up to two months while awaiting his trial date.
- During another hearing, the attorney on the case informed the court that the community member had a medical condition that placed him at higher risk of contracting COVID-19 as well as experiencing COVID-19 complications. The judge granted the community member the option of release through the Office of Pretrial Services which would result in him remaining incarcerated for several weeks pending his court date.
- On October 14, 2022, during a preliminary hearing for a community member before the judge, the public defender informed the court that the community member was disabled and had upcoming doctor appointments for hip and lung-related issues. The judge ordered the community member to be held without bond and did not address her health needs. Her trial date was not set to occur until March 21, 2023.

- On December 1, 2022, an attorney for a community member alerted the judge that his client had not received the necessary medication for his condition while in jail. Again, the judge only granted him the option of release through the Office of Pretrial Services, meaning he could remain incarcerated for several weeks while waiting for his next court date without his medication.

D. Mental Health Concerns of Detained Community Members

The clinic has observed presiding judges refer community members to Mental Health Court without their consent and, in some cases, appearing to make unilateral determinations without thorough consideration of the full circumstances of the defendants situation. We find this practice extremely concerning and ask that the court take all necessary action to prevent judges from making similar referrals in the future.

- On September 26, 2022, a community member's bond reviews were heard by a judge. The community member was temporarily committed on allegations of theft and trespassing. His attorney requested that he be released on personal recognizance or an unsecured bond, noting that he has no prior convictions suggesting violence. Instead, the presiding judge decided to "leave bond the same" and referred the community member to Mental Health Court despite failing to ask the Attorney if his client was interested in or willing to be referred to Mental Health Court.

Additionally, judges can be dismissive of clients with mental health issues, often talking over them and ignoring them while in court.

- On October 6, 2022, a community member's bond review was heard before the judge. The community member decided to represent himself during his bond review and spoke directly to the judge during the proceedings. Courtwatch PG noted the exchange between the judge and the community member as incredibly dismissive and concerning. The community member made several attempts during the hearing to provide information about his case and ask questions that were largely ignored or spoken over by the judge. The judge asked the client twice about a referral to Mental Health Court, and both times, the client indicated that this was not how he wanted to proceed. The judge ultimately

referred the client to Mental Health Court without his consent or additional discussion. The judge also failed to answer the client's repeated questions about the outcome of the hearing and basic information about his referral to Mental Health Court. This included his requests for critical information about his hearing date, where to find the doctor he was referred to, and who he should speak to for more information about his case. The judge provided vague, unsatisfactory responses that felt abusive and uncommunicative. He made an inappropriate comment that the client "should be glad to be in jail because it's cold outside." The outcome of this exchange is that the client left his bond hearing without information fundamental to advocating for himself. While it is always important that court officials work to make members understand proceedings, this is especially critical for community members who decide to represent themselves.

- On November 9, 2022, a community member appeared before the judge. The community member was facing charges of trespass, violation of a peace order, and disorderly conduct in two separate cases, and the commissioner initially set a bond of \$500 at 10% for each case (requiring \$100 cash in total). The community member informed the court that she wished to represent herself and then began talking about her case in open court. At no point during the several minutes that she was talking did the judge caution her not to divulge facts about her case. The judge also failed to help the community member frame her argument regarding her release or take any other steps to guide her in her self-representation, as is the duty of a court officer. Moreover, it appeared to Courtwatch PG observers that the community member's words were out of touch with reality, and yet the judge took no steps to inquire about her mental health, about any prescribed medication, or about her desire to participate in Mental Health Court. Instead, the judge simply let her go on and on for several minutes and then ruled that she enter Mental Health Court. As a result, the community member—despite the minor nature of her charges and her not consenting to Mental Health Court—had to be jailed from November 9 to November 23, her Mental Health Court date.

E. The Court Gives Unnecessarily Harsh Rulings to Juveniles, Some Possibly in Violation of the Sixth and Fourteenth Amendments of the U.S. Constitution and Article 21 of the Maryland Declaration of Rights

The Clinic has observed instances displaying overcriminalization of juveniles.

- On November 18, 2022, a juvenile community member appeared before the judge for his bond review. The public defender told the court his client is a lifetime resident of Prince George's County and a current full-time student at Bowie High School. His mother explained to the court that the incident that gave rise to the charges was out of character for him. The community member recently lost his father and has been acting out due to the grief and trauma of this loss. He has never been in trouble before and is heavily involved in his community. He is an incredible athlete—the fastest on the varsity track team, a computer lover, and a hard worker with a job at a pizza place and another part-time gig starting soon. In addition to his mother, he has a sister. He has a strong support system, which extends to his high school staff members who had hoped to attend the hearing to vouch for his character but could not make it on the day of. The Public Defender requested that the judge order pretrial release or private home detention to continue his studies and remain within the support system he desperately needed after such a traumatic loss. The public defender argued that the community's safety could be ensured through conditions like a GPS ankle bracelet. Still, despite the available options, the strong support system, and the many mitigating circumstances, the judge ruled to hold the community member without bond. Though the judge did agree to transfer the community member to a juvenile facility, the ruling still condemned him to weeks of detention, separation from his life, isolation, and trauma.
- On October 11, 2022, a juvenile community member appeared before the judge. The community member had just turned 17—the day of his hearing was his birthday. The incident for which he was brought before the court had occurred several months before. He had been identified and then released as a juvenile. The delay in serving the warrant was apparently a result of some mistake about his first name. The incident involved the juvenile community member and a 21-year-old adult. All charges against the adult have been dropped, and the felony charges dismissed, according to the Public Defender. The

community member's mother testified that he could live with her if released. The judge said she would give the Office of Pretrial Services (OPS) the option of releasing David under supervision but refused to order it, saying that ordering it would jump the community member ahead of others waiting for OPS to act.

- On October 21, 2022, a 15-year-old community member appeared before the judge. This child was held without bond in adult jail on carjacking and related charges. As far as we can tell, he had been there since September 16, 2022. His attorney says that because of exposure to COVID-19, the child could not be transferred to a juvenile facility until the 28-day quarantine period was up. The attorney also informed the court that the child's younger brother was recently murdered, traumatizing him. The attorney stated that his eyes and face were red from crying each time she had seen him. Quarantined in an adult facility, he had no access to family or other support services. His attorney requested that the child be granted some form of release allowing him to attend his brother's funeral. The Assistant State's Attorney stated she was sympathetic to the community member's situation and would not object to private home detention. According to the Statement of Charges, the community member was only identified as the driver of the car containing the alleged carjackers, not the perpetrator of the alleged violence. (The allegation is that four individuals were in the car, and only three got out and confronted the alleged victim.) Yet he was charged with firearm use in the commission of a violent crime and first- and second-degree assault. The judge, noting that he has no prior contact with the legal system, gave the Office of Pretrial Services the option of releasing him on supervision. However, we know from our own data that when OPS is given an option rather than an order, the community member will wait about a month on average.
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III. Courtwatch PG 2023 Report Legal Addendum

A. Courtwatch PG Has Documented the Apparent Violation of Community Members' Constitutional and Maryland State Rights, As Well As Other Abhorrent Practices.

The previous sections reveal that the Prince George's County Court System appears to be failing to protect the rights of the community members it seeks to serve. Courtwatch PG's observations reveal potential violations of criminal defendants' Sixth Amendment rights to both effective assistance of counsel and speedy trial, as well as detainee health issues that raise Eighth Amendment concerns and high bonds that raise concerns regarding the violation of the Maryland code. Additionally, some judicial refusal to exercise their power to release first-time offenders and juveniles without involving the Office of Pretrial Services calls into question whether judicial discretion is being exercised properly and compassionately to further justice. The following legal concerns underlie the purpose of this report which is to illustrate that in order to protect community members' rights effectively, Prince George's County courts must be required to maintain audio-visual remote access.

(1) Right to Effective Assistance of Counsel

The Sixth Amendment guarantees criminal defendants' right to representation and public trial without unnecessary delay.² The Supreme Court has established that the government violates the right to effective assistance of counsel when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct defense.³ In several cases, poor court audio kept community members from exercising their right to representation when they could not comprehend the Judge's direction to stop speaking, in turn divulging prejudicial information that could potentially interfere with the judicial process, in violation of the Sixth Amendment.

(2) Right to Speedy Trial under the Sixth and Fourteenth Amendments of the U.S. Constitution and Article 21 of the Maryland Declaration of Rights

² U.S. Const. amend. VIII.

³ *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

Another possible violation brought to light by Courtwatch PG was the infringement of right to a speedy trial in violation of the Sixth and Fourteenth Amendments of the U.S. Constitution and Article 21 of the Maryland Declaration of Rights.⁴ This was especially prevalent in cases involving juveniles. Whether the right to a speedy trial has been violated depends on a four-factor balancing test that considers: (1) length of delay; (2) the reason for the delay; (3) the juvenile’s assertion of the speedy right to trial; (4) any prejudice to the juvenile.⁵ Although the aforementioned balancing test requires a fact-specific inquiry for each case, Courtwatch PG’s observations of juveniles’ bail hearing delays—causing said juveniles to age out of juvenile court jurisdiction or miss their siblings’ funeral—amounts to the level of prejudice actionable under the aforementioned federal and state laws.⁶

(3) Eighth Amendment Right to be Free of Cruel and Unusual Punishment

The Eighth Amendment protects both detainees found guilty of an offense and pretrial detainees from unnecessary and wanton infliction of pain, ensuring the treatment a prisoner receives in prison and the conditions under which they are confined.⁷ Under the Eighth Amendment, an individual is liable if they display deliberate indifference to a serious medical need; a medical need that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.⁸ A violation occurs when an individual exposes detainees to conditions that pose a substantial threat of serious risk to said detainees’ health.⁹ Even though the inquiry into liability under Eighth Amendment protections is fact specific, courtwatch PG’s observations of severely medically compromised and disabled individuals’ detainment raise Eighth Amendment concerns that could warrant injunctive relief upon evaluation.¹⁰

(4) High Bonds in Violation of Md. Rule 4-216.1

⁴ See, e.g., *State v. Kanneh*, 403 Md. 678, 687 (2008); *In re Thomas J.*, 372 Md. 50, 70 (2002).

⁵ *In re Aaron C.*, No. 2599 Sept. Term 2015, 2016 WL 6355102, at *3 (Md. Ct. Spec. App. Oct. 28, 2016).

⁶ See *In re Thomas J.*, 372 Md. 50, 72 (2002); see also *In re Aaron C.*, *supra* note 3, at 9.

⁷ *Seth v. McDonough*, 461 F. Supp. 3d 242, 248 (D. Md. 2020).

⁸ *Id.* at 258.

⁹ *Id.*

¹⁰ *Id.* at 257.

One of the most frequently observed violations throughout the courtwatch PG's observation was the setting of high bonds that community members were unable to pay. Bonds that amount to pretrial detention simply because the defendant cannot pay the bail amount set by the court violate Maryland Rule 4-216.1.¹¹ Rule 4-216.1 was revised in 2017 to address concerns surrounding low-income defendants that were being incarcerated pending trial merely because they could not afford financial conditions for release.¹² As revised, Rule 4-216.1 specifically prioritizes release over detention, release on own recognizance over release with conditions, and non-financial conditions over financial conditions.¹³ The Rule requires judicial officers to consider each defendant's individual circumstances when setting conditions for release, and specifically to consider “the ability of the defendant to meet a special condition of release with financial terms.”¹⁴ Even though financial conditions are still available to the court, any financial condition set cannot cause what amounts to pretrial detention simply because the defendant cannot afford to pay the bail amount set by the court.¹⁵

B. In Order to Fully Ensure the Public’s First Amendment Right and Defendant’s Sixth Amendment Right to Public Criminal Trials, Remote Access is Essential.

The First Amendment of the United States Constitution reads, “Congress shall make no law . . . abridging the freedom of speech, or of press.”¹⁶ The United States Supreme Court has held that the press and public have a First Amendment right to attend criminal trials and access preliminary hearings.¹⁷ Furthermore, the Sixth Amendment grants criminal defendants the right to a “speedy and public trial by an impartial jury.”¹⁸ The Supreme Court has noted that the First and Sixth Amendments have a reciprocal purpose in that “the explicit Sixth Amendment right of

¹¹ Md. Rule 4-216.1(e)(1)(A).

¹² *Bradds v. Randolph*, 239 Md. App. 50, 79 (2018).

¹³ *Id.* at 82.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ U.S. Const. amend. I, § 2.

¹⁷ *Press-Enter. Co. v. Superior Ct. of California for Riverside Cnty.*, 478 U.S. 1, 7 (1986).

¹⁸ U.S. Const. amend. VI, § 1.

the accused is no less protective of a public trial than the implicit First Amendment right of the press and public.”¹⁹

In, *Press-Enter. Co. v. Superior Ct. of California*, the Supreme Court contemplated the First Amendment right of access to criminal proceedings and whether it should extend to preliminary hearings.²⁰ The court reinforced that “openness in criminal trials . . . ‘enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.’”²¹ Further, the court explained that openness in criminal trials serves a community therapeutic value: “Criminal acts, especially certain violent crimes, provoke public concern, outrage, and hostility. ‘When the public is aware that the law is being enforced and the criminal justice system is functioning, an outlet is provided for these understandable reactions and emotions.’”²² The court held that public access to preliminary hearings is a qualified First Amendment right and, more importantly, is essential to the proper function of the criminal justice system, further solidifying the notion that public confidence in the criminal justice system is an integral facet of its function.²³

Press-Enter was decided in 1986.²⁴ In 2023, the remote Courtwatch PG experiment calls into question the legitimacy of “public openness” and whether non-remote public access adequately instills public confidence in the criminal justice system. Since the pandemic required courts to provide remote access, Courtwatch PG observers have documented abuses of Constitutional rights and generally detestable practices that had not been detected before remote access was made available.

Even though right to public criminal trials was actualized without virtual access, Courtwatch PG’s groundbreaking reports make it clear that the “basic fairness” of the criminal trial, emphasized as an essential facet of the criminal justice system by the Supreme Court, is not currently being fulfilled nor properly monitored by non-remote public access. Further, now that these documented abuses have been publicized, the appearance of fairness and community therapeutic value ‘public openness’ seeks to provide have been gravely compromised. In order to

¹⁹ *Waller v. Georgia*, 467 U.S. 39, 46 (1984).

²⁰ *Press-Enter.*, *supra* note 16, at 3.

²¹ *Press-Enter.*, 478 U.S. at 9 (quoting *Press-Enter. Co. v. Superior Ct. of California, Riverside Cnty.*, 464 U.S. 501 (1984)).

²² *Press-Enter.*, *supra* note 16, at 13.

²³ *Id.*

²⁴ *Id.*

keep with the purpose of public access to criminal courts outlined so many years ago, the court must make the proper adjustments to reinvigorate public confidence and ensure fairness in the criminal justice system.

C. In order To Fully Ensure Compliance With International Human Rights Law, Remote Access to Court Proceedings is Essential.

Human rights are implicated in the need for transparency and public access to court proceedings. The Universal Declaration of Human Rights—hereinafter referred to as “UDHR”—enumerates rights essential to all humans that the U.S. and other signing countries have since recognized.²⁵ Article 10 of the UDHR declares, “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”²⁶

Another international treaty—which the United States has ratified—that enumerates a human right to a public hearing is the International Covenant on Civil and Political Rights—hereinafter referred to as ICCPR.²⁷ Article 14 of the ICCPR mirrors the Sixth Amendment, stating, “In the determination of any criminal charges against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”²⁸ Even though the U.S. judiciary has yet to grant merit to legal claims based solely on international human rights law, these treaties signify an important standard that the federal government has agreed to abide by to uphold a reputation for maintaining fairness and equity in the eyes of the rest of the world.

²⁵ *Universal Declaration of Human Rights*, 10 December 1948, 590 UNTS art 10 (entered into force 20 February 1967) [UDHR].

²⁶ *Id.*

²⁷ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS art 14 (entered into force 23 March 1976) [ICCPR].

²⁸ *Id.*

D. The Proposed Legislation Mitigates Any Concerns of Damage to the Judicial Process by Implementing Tighter Restrictions on Remote Access Than is Necessitated by Law.

Some argue that filming in court will be damaging to witnesses and the process of trial; however that concern is meritless. When the Supreme Court established the First Amendment right to allow public access to criminal trials and preliminary hearings, the Court did so as a qualified right, simultaneously establishing that proceedings can be closed when specific on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest.²⁹

It is not proposed, nor would the law allow for all court proceedings to be filmed regardless of potential prejudice. Rather, the proposed bill allows for a presiding judge to restrict remote access to any portion of a proceeding on the request of any party, witness, or counsel involved in the proceeding if the presiding judge finds there is clear and convincing evidence that remote access would endanger an important interest of the state, defendant, or the public, and the restriction is narrowly tailored to address the danger.³⁰ Additionally, it is proposed that certain proceedings, that might otherwise be open to the public, be exempted entirely from the remote audio-visual access requirement in order to protect sensitive information. Such proceedings include: (a) divorce proceedings; (b) civil domestic violence proceedings; (c) orphans' court; (d) tax court; (e) juvenile court.³¹ The law, as well as the more stringent safeguards written into the proposed legislation, controls for any concerns that allowing public remote access to court proceedings will impede on the judicial process.

²⁹ *Press-Enter.*, *supra* note 16, at 2.

³⁰ Proposed Amended Version of HB133 and SB43 from Courtwatch PG 1-206(A)(4).

³¹ *Id.* at 1-206(A)(2).

IV. Final Summary

For over two years, Courtwatch PG and the Howard University School of Law Movement Lawyering Clinic have diligently observed and documented an alarming number of abhorrent discretionary practices and outright violations of community members' Constitutional and State rights. The COVID-19 pandemic required Prince George's County courts to navigate uncharted territory, resulting in the implementation of virtual court proceedings. These virtual court proceedings enabled Courtwatch PG to illuminate disconcerting concerns regarding common practices in the Prince George's court system, ensuring a practical means of holding the court officials, prosecutors, and defense counsel accountable.

We assert that in order to properly ensure Prince George's County community members' Constitutional and State rights are protected, the Prince George's County court system must maintain public audio-visual access to court proceedings. Otherwise, the Prince George's County court system is in danger of falling back into old patterns and effectively failing to protect the rights of the community members it seeks to serve.