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October 5, 2023

Via Email and Fedex

H. Thomas Byron III, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Revising Federal Rule of Criminal Procedure 53

Dear Secretary Byron:

This firm represents a coalition of media organizations[1] who write to request that the Judicial Conference revise Rule 53 of the Criminal Rules of Procedure to permit broadcasting of criminal proceedings or to at least create an "extraordinary case" exception to the prohibition on broadcasting. We make this request now because of the fast-approaching trial in *United States v. Donald J. Trump*, 23-cr-257-TSC (D.D.C.), and respectfully request that the Advisory Committee on Criminal Rules consider including this on the agenda of its upcoming October 26, 2023 meeting in Minneapolis.

We understand that, even at the most expedited pace, rule changes take significant time and that it may not be possible to revise the rule before the unprecedented and historic trial of a former President begins. Nevertheless, we ask that every effort be made to change

[1] The media organizations are Advance Publications, Inc., American Broadcasting Companies, Inc. d/b/a ABC News, The Associated Press, Bloomberg L.P., Cable News Network, Inc., CBS Broadcasting, Inc., Dow Jones & Company, Inc., publisher of The Wall Street Journal, The E.W. Scripps Company (operator of Court TV), Los Angeles Times Communications LLC, National Association of Broadcasters, National Cable Satellite Corporation d/b/a C-SPAN, National Press Photographers Association, News/Media Alliance, The New York Times Company, POLITICO LLC, Radio Television Digital News Association, Society of Professional Journalists, TEGNA Inc., Univision Networks & Studios, Inc., and WP Company LLC d/b/a The Washington Post.

the rule as quickly as possible. Indeed, even if the Judicial Conference declines to expedite this request, the case against former President Donald J. Trump shows why the prohibitions of Rule 53 should be reconsidered. We respectfully request, therefore, that the Judicial Conference begin the rule-change process now, regardless how long the process takes, so that a revised rule is in place for the next trial of such significant public interest and concern.

In the case pending in the U.S. District Court for the District of Columbia, former President and current presidential candidate Mr. Trump has been indicted for conspiring to obstruct the certification of the 2020 presidential electoral vote in Congress on January 6, 2021. The jury trial is scheduled for March 4, 2024. This case is of interest to all American voters still struggling to make sense of the 2020 presidential election and its aftermath, and who have an opportunity to vote for or against Mr. Trump should he become his party's nominee in the 2024 presidential election. If Americans do not have confidence that Mr. Trump is being treated fairly by the justice system, there is a very real chance they will reject the verdict (whatever it is) and that their faith in democracy and our institutions will be further diminished. Recent and painful events in our Nation's Capital show that, taken to an extreme, this sort of doubt and cynicism can lead to violence.

Yet currently Rule 53 prohibits all but a few Americans—those who have the resources and wherewithal to travel to the courthouse and wait in line for a limited number of seats—from watching a trial the likes of which the nation has never experienced. At best, Americans will learn about the trial by consuming news reports about it. Of course, those news reports cannot replicate the experience of watching the trial itself, and there is no guarantee that Americans will trust the secondhand reporting they read, watch or hear. At worst, Americans will turn to social media and other unreliable sources, and they will be manipulated by those who seek to spin the events of the day and who have no regard for the truth.

The media coalition has extensive experience livestreaming and broadcasting court proceedings. The overwhelming majority of state courts permit some electronic coverage of criminal and civil court proceedings, certain federal courts permit cameras in the courtroom during civil proceedings, and all federal appellate courts and the U.S. Supreme Court provide audio recordings of hearings online, in both criminal and civil cases, without redistribution limitations. Judges and attorneys who have participated in trials where cameras were present report that, far from causing disruptions, the cameras were hardly noticed, and full video coverage increased the public's confidence in the process.

The media coalition therefore requests that the Judicial Conference revise Rule 53 to permit broadcasting of proceedings in federal court. Alternatively, the coalition requests a revision to Rule 53 that would create an "extraordinary case" exception to the ban on broadcasting so that, at the very least, cases like the one against Mr. Trump can be monitored in real time by the American public. The media coalition stands at the ready to sort out the

logistics of camera coverage with the Judicial Conference (or the trial judge) if the rule is revised.

Several Other Congressional and Judicial Proceedings Were Initiated Against Mr. Trump for His Claims About the 2020 Election; All Have Been or Will Be Televised

On November 3, 2020, Joseph R. Biden, Jr. was elected President of the United States. Then-President Trump, however, refused to concede, "claiming that the election was 'rigged' and characterized by 'tremendous voter fraud and irregularities[.]'"[2] On January 6, 2021, ahead of the Joint Session of Congress to certify the election results, "President Trump took the stage at a rally of his supporters on the Ellipse, just south of the White House."[3] Following Trump's speech, supporters "– including some armed with weapons and wearing full tactical gear – marched to the Capitol and violently broke into the building to try and prevent Congress's certification of the election results."[4] "The events of January 6, 2021 marked the most significant assault on the Capitol since the War of 1812."[5]

On August 1, 2023, the United States government indicted Mr. Trump in the U.S. District Court for the District of Columbia on four counts of criminal conspiracy for "spread[ing] lies that there had been outcome-determinative fraud in the election and that he had actually won" the 2020 presidential election, and having done so "to make his knowingly false claims appear legitimate, create an intense national atmosphere of mistrust and anger, and erode public faith in the administration of the election."[6] Mr. Trump's rhetoric proved to be effective, and many Americans still believe that Biden illegitimately won the 2020 election.[7]

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[2] *Trump v. Thompson*, 20 F.4th 10, 17 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1350 (2022).

[3] *Id.* at 17-18.

[4] *Id.* at 18.

[5] *Id.* at 18-19.

[6] *See* Indictment, *United States v. Trump*, No. 23-cr-257-TSC (D.D.C. Aug. 1, 2023) (ECF 1) at ¶ 2.

[7] "The poll finds that 3 in 10 Americans (30%) – including two-thirds (68%) of Republicans – believe that Joe Biden only won the presidency because of voter fraud." *Most Say Fundamental Rights Under Threat - Partisan identity determines which specific rights people feel are at risk*, Monmouth Univ. (June 20, 2023), https://www.monmouth.edu/polling-institute/reports/monmouthpoll_US_062023/.

The case in Washington D.C. is just one of many proceedings against Mr. Trump for his speech and conduct leading up to the January 6 riots. First, one week after the riots, the U.S. House of Representatives adopted an Article of Impeachment against Mr. Trump for incitement of insurrection.[8] In February 2021, House Impeachment Managers conducted a five-day trial before the U.S. Senate voted to acquit Mr. Trump.[9] Then, on June 28, 2021, the House created a Select Committee to investigate the "facts, circumstances, and causes relating to" the January 6 attack on the Capitol, and "factors related to such attack."[10] The Final Report of the Select Committee referred Mr. Trump and others for possible prosecution. On August 14, 2023, Mr. Trump and 18 co-defendants were indicted in Georgia state court for allegedly violating Georgia's RICO Act and other charges related to the 2020 election.

Each of these other proceedings against Mr. Trump have been or will be televised, and the public has watched. For Mr. Trump's second impeachment trial, "an average of 11 million viewers watched the opening arguments across MSNBC, CNN, Fox, ABC and CBS."[11] At least 20 million watched the first day of the House Select Committee hearings, and on average, 13 million viewers watched over the following days.[12] Note these numbers

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[8] H.R. Res. 24, 117th Cong. (Jan. 13, 2021), https://www.congress.gov/bill/117th-congress/house-resolution/24.

[9] *See* Nicholas Fandos & Emily Cochrane, *Impeachment Trial: Trump Is Acquitted by the Senate*, N.Y. Times (Feb. 13, 2021), https://www.nytimes.com/live/2021/02/13/us/impeachment-trial. Notably, when the Senate sits for an impeachment trial, it does so as a "High Court." *See Impeachment*, United States Senate, https://www.senate.gov/about/powers-procedures/impeachment/senate-impeachment-role.htm.

[10] H.R. Res. 503, 117th Cong. § 3(1) (2021) at 4-5, https://rules.house.gov/sites/republicans.rules118.house.gov/files/BILLS-117hres503ih.pdf.

[11] Brian Stelter, *How many people are watching the impeachment trial? Here are the numbers…*, CNN (Feb. 12, 2021), https://www.cnn.com/2021/02/11/media/us-senate-impeachment-trial-reliable-sources/index.html.

[12] John Koblin, *At Least 20 Million Watched Jan. 6 Hearing*, N.Y. Times (June 10, 2022), https://www.nytimes.com/2022/06/10/business/media/jan-6-hearing-ratings.html; Rick Porter, *TV Ratings: January 6 Hearings Draw 17.7M in Primetime*, Hollywood Reporter (July 22, 2022), https://www.hollywoodreporter.com/tv/tv-news/tv-ratings-thursday-july-21-2022-1235185046/.

do not include online viewers. And in Georgia, the presiding judge has made all hearings available on the court's YouTube channel and permitted broadcast news media to have "pool" cameras, where groups of news organizations combine their resources and share camera access, in the courtroom. By all accounts, this has gone smoothly, and videos of entire proceedings remain available online.[13]

In sum, the public has become accustomed to watching proceedings against Mr. Trump for his claims about the 2020 election results. The federal trial in Washington D.C. is of at least equal public interest and historical import as these other proceedings, and the public should be able to watch that trial, just as it was able to watch Mr. Trump's impeachment trial, and just as it will be able to watch state court trials of the additional charges brought against Mr. Trump.

Trials Are Already Public Events; Permitting Cameras Simply Transforms the Constitutional Right of Access from a Theoretical Right Into One Citizens Can Actually Exercise

"A trial is a public event. What transpires in the court room is public property." *Craig v. Harney*, 331 U.S. 367, 374 (1947). The First Amendment guarantees this right of access because it "enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982). "[P]ublic access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process." *Id.*; *see also Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 508 (1984) ("[K]nowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known."). Access also serves a therapeutic and "prophylactic purpose, providing an outlet for community concern, hostility, and emotion." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 571 (1980). "Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated and may manifest themselves in some form of vengeful 'self-help' . . . ." *Id.*

In other words, trial participants generally have no expectation of privacy when in court, and transparency serves all interests. Cameras do not present some new threat to privacy or fair trial rights. Our Founders decided long ago that transparency and the orderly administration of justice go hand in hand. As the U.S. Supreme Court recognized seventy-

[13] *E.g., WATCH: Fulton County court holds hearing on 2020 election subversion case*, Wash. Post (Sept. 6, 2023), https://www.youtube.com/watch?v=lqNPqAWhta8; *Georgia Election Interference Court Hearing*, C-SPAN (Sept. 14, 2023), https://www.c-span.org/video/?530445-1/georgia-election-interference-court-hearing.

five years ago, "This nation's accepted practice of guaranteeing a public trial to an accused has its roots in our English common law heritage," which long ago came to "distrust . . . secret trials."[14]

The trial of a former President presents serious impediments to physical attendance. Indeed, for Mr. Trump's arraignment on August 11, in addition to the courtroom, the court set aside 100 seats in two separate media rooms for members of the media, as well as a public overflow rooms with 80 additional seats.[15] Yet even if every single courtroom (other than the trial courtroom) in the Elijah Barrett Prettyman U.S. Courthouse were used for overflow seating, only a minute fraction of the 81.3 million people who voted for President Biden—the victims of this alleged conspiracy—would be able to attend and observe the proceedings for themselves. And even if more seats are made available, it is unreasonable to believe that ordinary Americans (who have jobs other than covering trials) can afford to take time off work, find childcare, get themselves to the courthouse, and spend hours—if not days—not only sitting in a courtroom but also waiting in line for a seat. In all likelihood, no more than a few ordinary, non-journalist citizens within the District will be able to attend. Clearly, Americans who live hundreds, or thousands of miles away cannot attend the trial—though they were just as impacted by the allegations at the center of it, and by the outcome of the trial, as any other American.

To that end, Mr. Trump's attorney has repeatedly stated that he wants cameras in the courtroom for the D.D.C. trial:

> "If I appear in court, I'm going to be representing not only the President of the United States, but the sovereign citizens of this country, who deserve to hear the truth. The first thing we would ask for is let's have . . . cameras in the courtroom, so all Americans can see what's happening in our criminal justice system. And I would hope that the Department of Justice would join in that effort so that we take that curtain away and all Americans get to see what's happening."[16]

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[14] *In re Oliver*, 333 U.S. 257, 268 (1948).

[15] *Pub. & Media Advisory*, U.S. Dist. Ct. for the Dist. of Columbia, https://www.dcd.uscourts.gov/sites/dcd/files/Public%20and%20Media%20Advisory%20for%20Friday,%20August%2011,%202023.pdf.

[16] *He did 'absolutely nothing wrong': Trump attorney John Lauro*, Fox News (July 21, 2023), https://www.foxnews.com/video/6331632263112, at 6:05-6:31; *see also* Anders

Many others are also urging that the District Court in Washington D.C. should permit broadcasting of Mr. Trump's proceeding:

- A spokesperson for the Republican-majority House Judiciary Committee told *The Washington Examiner* that they "support cameras in this limited but extraordinary circumstance" of Mr. Trump's trial for alleged attempts to subvert the 2020 election results.[17]

- Jon Sale, who served as an Assistant Special Watergate Prosecutor, recently stated that he used to be against cameras in the courtroom, but in the D.C. case, "I strongly believe this case needs to be televised because the American people need to see the story, so we don't become numb to this."[18]

- Dozens of Democratic lawmakers have also suggested that the Conference permit the trial to be televised, for "[i]f the public is to fully accept the outcome, it will be vitally important for it to witness, as directly as possible, how the trials are conducted, the strength of the evidence adduced and the credibility of witnesses."[19]

- Former Acting U.S. Solicitor General Neal Katyal has advocated for broadcasting the trial, arguing a broadcast "would be less vulnerable to the distortions and

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Hagstrom, *Trump attorney calls for Jan. 6 trial to be televised, accuses prosecutors of hiding trial*, Fox News (Aug. 6, 2023), https://www.foxnews.com/politics/trump-attorney-calls-jan-6-trial-be-televised-accuses-prosecutors-hiding-trial; *Trump lawyer: I personally want cameras in courtroom*, CNN (Aug. 6, 2023), https://www.cnn.com/videos/politics/2023/08/06/sotu-lauro-court-cams.cnn.

[17] Kaelen Deese, *House Judiciary Republicans favor Trump courtroom cameras due to 'extraordinary circumstance'*, Wash. Examiner (Aug. 9, 2023), https://www.washingtonexaminer.com/policy/courts/donald-trump-indicted-jim-jordan-schiff-cameras-courtroom.

[18] *Former Watergate prosecutor 'strongly believes' cameras should be in courtroom*, MSNBC (Aug. 17, 2023), https://www.youtube.com/watch?v=i0Uo5ztMbn8, at 2:21-2:34.

[19] Adam Schiff et al., *Letter to The Hon. Roslynn R. Mauskopf* (Aug. 3, 2023), https://schiff.house.gov/imo/media/doc/trump_trial_transparency_letter.pdf.

> misrepresentations that will inevitably be part of the highly charged, politicized discussion flooding the country as the trial plays out."[20]

Providing citizens with remote video access of the trial would provide many benefits to observers, including "(1) education about the timing and procedural handling of litigation events; (2) acculturation to the tone, tenor, and mechanics of the courtroom; (3) the opportunity to judge the fairness of the court's procedures; and (4) the ability to form impressions about the judge and other courtroom actors."[21]

These interests are all the more acute here, where Mr. Trump is now claiming the criminal proceedings are "election interference" by the prosecutors, and were initiated to derail his 2024 campaign for President.[22] In fact, prosecutors have told the court that Mr. Trump's "relentless public posts marshaling anger and mistrust in the justice system, the Court, and prosecutors have already influenced the public[,]" and have asked the court to enter an order limiting Mr. Trump's extrajudicial statements about the case to prevent prejudicing the jury pool.[23]

In summary, Mr. Trump, as well as lawmakers and attorneys from diverse backgrounds and political perspectives, all acknowledge that political candidates, pundits, and all major news outlets will be providing condensed coverage of the proceedings for those unable to attend in person. The public should not be limited to relying on secondhand

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[20] Neal Katyal, *Opinion - Why the Trump trial should be televised*, Wash. Post (Aug, 3, 2023), https://www.washingtonpost.com/opinions/2023/08/03/trump-trial-tv-broadcast/.

[21] Jordan M. Singer, *Judges on Demand: The Cognitive Case for Cameras in the Courtroom*, 115 Colum. L. Rev. 79 (2015) ("*Singer*"), https://columbialawreview.org/content/judges-on-demand-the-cognitive-case-for-cameras-in-the-courtroom/.

[22] Donald Trump (@realDonaldTrump), Truth Social (Aug. 30, 2023, 3:21 PM) https://truthsocial.com/@realDonaldTrump/posts/110980188106641474; *see also* @realDonaldTrump, Truth Social (Aug. 8, 2023, 9:54 PM) https://truthsocial.com/@realDonaldTrump/posts/110857162338915853 ("The system is Rigged & Corrupt, very much like the Presidential Election of 2020.").

[23] Gov't's Opposed Mot. To Ensure That Extrajudicial Statements Do Not Prejudice These Proceedings, *United States v. Trump*, No. 23-cr-00257-TSC (D.D.C. Sept. 15, 2023) (ECF 57) at 12.

accounts when video technology is readily available for them to observe and form their own conclusions regarding the legitimacy of the proceedings.

Previously Expressed Concerns About Cameras in Courts Were Never Supported by Any Evidence and Have Been Proven Wrong

Times have changed in the decades since Rule 53's ban on cameras was adopted in 1946. In terms of logistics, camera technology has become much less conspicuous. Even as early as 1996, "equipment [wa]s no more distracting in appearance than reporters with notebooks or artists with sketch pads," and the technology has only become more discrete.[24] Now, the media will typically use a single, stationary pool camera, which produces no noise and requires no lighting other than existing courtroom lighting, and can be operated remotely if necessary. Often cameras are mounted near the ceiling and trial participants do not even know they are there (or they soon forget). Microphones affixed to tables can be as small as the erasers found on the ends of pencils.

Cameras and recording devices are also becoming less remarkable because of their ubiquity. Forty-nine states and the District of Columbia either permit journalists to capture proceedings on their own cameras, or authorize courts to provide video or audio webcast proceedings, or both, and all federal appellate courts and the U.S. Supreme Court make audio of arguments *in both civil and criminal cases* available online.[25] In 1990 and in 2011, the Judicial Conference authorized pilot programs permitting electronic media coverage of civil proceedings in federal courts for a certain number of years, and video is still permitted for certain Ninth Circuit arguments and in certain civil proceedings in three districts in the Ninth Circuit.

Common concerns have been that cameras could intimidate witnesses, influence jury deliberations, or that attorneys and judges might play to the cameras. But study after study of state programs has concluded that in-court cameras have not impaired the administration of justice.[26] In 1994, the Federal Judicial Center published a comprehensive study of its first

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[24] *Katzman v. Victoria's Secret Catalogue*, 923 F. Supp. 580, 582 (S.D.N.Y. 1996).

[25] *Cameras In The Courts – A State-By-State Coverage Guide*, Radio Television Digital News Ass'n, https://courts.rtdna.org/cameras-overview.php.

[26] *See, e.g., In re Petition of Post-Newsweek Stations, Fla., Inc.*, 370 So. 2d 768, 775 (Fla. 1979) (finding that, after a one-year experiment, concern that cameras in the courtroom would negatively affect lawyers, judges, witnesses or jurors was "unsupported by any evidence."). *See also* N.Y. State Comm. to Review Audio Visual Coverage of Ct. Proceedings, *An Open Courtroom: Cameras in N.Y. Cts. 1995-1997 (*Apr. 4, 1997); *Report of the Comm. on Audio-Visual Coverage of Ct. Proceedings* (May 1994); Ernest H. Short & Assocs., *Evaluation of Cal.'s Experiment with Extended Media Coverage of Cts.* (Sept.

pilot program, which reported that "[j]udges and attorneys who had experience with electronic media coverage under the program generally reported observing small or no effects of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice," and most "believe electronic media presence has minimal or no detrimental effects on jurors or witnesses."[27] Judge's attitudes about electronic media coverage "were initially neutral and became more favorable after experience under the pilot program."[28] Similarly, the 2011 pilot program proved to be "an extraordinary resource for federal adjudication, providing a modern window into the courthouse for busy lawyers, anxious litigants, and a curious public."[29] According to a Federal Judicial Center study, nearly three-fourths of judges and attorneys who participated in a video-recorded proceeding during this pilot program stated that they were in favor of video recording proceedings, and nearly two-thirds of judges polled, including those who participated and those who did not, said they would allow video recordings if the Judiciary permitted them.[30]

The biggest and most extensive camera experiment was during the COVID-19 national emergency, when state and federal courts were forced to adjust to social distancing, stay-at-home orders, and remote access. All courts had to switch to video or teleconferencing to function.[31] Minnesota in particular had two pandemic-induced camera experiences with high-profile criminal trials of intense public interest: first Derek Chauvin's trial for the murder of George Floyd, and then Kimberly Potter's trial for the manslaughter of Daunte Wright. Both were livestreamed, gavel-to-gavel, due to pandemic restrictions that severely limited the number of spectators allowed to attend the trials in person. And the livestreaming of both received praise from many, even most, quarters, including some unexpected ones:

1981), *Report of the Chief Admin. Judge to the Legislature, the Governor, and the Chief Judge of the State of N.Y. on the Effect of Audio-Visual Coverage on the Conduct of Jud. Proceedings* (Mar. 1989).

[27] Fed. Jud. Ctr., *Elec. Media Coverage of Fed. Civil Proceedings* at 7 (1994).

[28] *Id.*

[29] *Singer*, https://columbialawreview.org/content/judges-on-demand-the-cognitive-case-for-cameras-in-the-courtroom/.

[30] Fed. Jud. Ctr., *Video Recording Courtroom Proceedings in United States District Courts: Report on a Pilot Project* (2016).

[31] *Jud. Authorizes Video/Audio Access During COVID-19 Pandemic* (Mar. 31, 2020), https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic.

- Attorney General Keith Ellison, whose office opposed camera coverage of the Chauvin trial and filed an unsuccessful motion asking the court to reconsider its decision to allow such coverage, said in an interview after trial concluded: "It worked out better than I thought. I'll say, hey, I can be wrong and I guess I was a little bit." In the same interview, prosecution team member Steve Schleicher compared the cameras to "shopping at Target. You didn't really notice. You just go in and you do your thing." Prosecution team member Jerry Blackwell, now a federal judge for the U.S. District Court for the District of Minnesota, agreed. "When you're in the courtroom there's no cognizance or awareness or thought …of who's watching," he said.[32]

- Mary Moriarty, the Public Defender in Hennepin County, Minnesota, for more than thirty-one years and now the Hennepin County Attorney, tweeted, "I was against cameras in the courtroom at the beginning of this trial, but I may have to move off that position because this trial exposed so much of what happens the public has no way of knowing."[33]

- The Chief Judge of the U.S. District Court for the District of Minnesota Patrick J. Schiltz told the *Star Tribune* that when he learned the Chauvin trial would be livestreamed, "I thought that was a huge mistake but by the time he was done I admitted I was wrong." Judge Schiltz explained his change of heart this way: "It really helped people see what a criminal trial looked like"; they were able to see how "careful" such trials are often managed while also observing the more monotonous, technical moments of a trial.[34]

- Perhaps most notably, the judge who oversaw the Chauvin trial—The Honorable Peter A. Cahill—explained in a written comment to the Minnesota Advisory Committee on Rules of Criminal Procedure that although he had previously "opposed the use of cameras in the courtroom in criminal cases," his "recent experience in *State v. Chauvin* has changed my opinion such that I now believe cameras in the courtroom can be helpful in promoting trust and confidence in the

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[32] Paul Blume (@PaulBlume_FOX9), Twitter (Apr. 26, 2021, 4:47 PM), https://twitter.com/PaulBlume_FOX9/status/1386784094911008768 at :01-:05, 2:09-2:16.

[33] *See* Mary Moriarty (@MaryMoriarty), Twitter (Apr. 21, 2021, 8:18 PM), https://twitter.com/MaryMoriarty/status/1385025113867702273.

[34] Stephen Montemayor, *New chief federal Judge Patrick Schiltz sees caseloads, security as Minnesota court's top issues*, Star Tribune (July 11, 2022), https://www.startribune.com/new-chief-federal-judge-patrick-schiltz-sees-caseloads-security-as-minnesota-courts-top-issues/600189351.

judicial process and are sometimes necessary to safeguard both the defendant's right to a public trial and the public's right of access to criminal trials."[35]

- And although she was less vocal than Judge Cahill in advocating for a rule change, The Honorable Regina Chu, who oversaw the Potter trial, told the *Star Tribune* that both the Potter and Chauvin trials proved to her that cameras can be present in the courtroom without being disruptive. "I forgot they were even there . . . ."[36]

In the wake of the success of these televised trials, the Minnesota Supreme Court issued an order amending the general rules of practice for state district courts in order to provide judges broad discretion to allow video coverage at most criminal trials.[37] Following the COVID-19 videoconferencing experiment, Colorado similarly passed legislation to provide remote public access to criminal court proceedings with limited exemptions.[38] Colorado Judge William Bain, who led committee recommending the rules change, commented "I think it's been revolutionary, what we've done not only for the benefit of the parties and attorneys, but the public is much more easily seeing a whole lot more of what we do than they did three years ago, when the only way to see what was going on in court was to come to the courtroom."[39]

This has also been the experience of other countries. In his recent annual address to the Commonwealth's judges and magistrates, Lord Chief Justice Burnett of Maldon, the

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[35] Letter from Hon. Peter A. Cahill to Advisory Comm. On Rules of Crim. Proc. re: Cameras in the courtroom (Jan. 28, 2022), *see* https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12951-TKL/KLT-EmmyParsonsDeclaration.pdf at Ex. A.

[36] Paul Walsh, *As retirement looms, Judge Regina Chu reflects on a long career, impact of Kimberly Potter trial*, Star Tribune (Apr. 1, 2022), https://www.startribune.com/regina-chu-judge-who-presided-over-kimberly-potter-trial-is-retiring/600161338/.

[37] Order Promulgating Amendments to the Gen. Rules of Practice for the Dist. Cts., *In re Rules of Crim. Proc.*, No. ADM10-8049 (Minn. Mar. 15, 2023).

[38] H.R. 23-1182, 74th Gen. Assemb., Reg. Sess. (Colo. June 7, 2023), https://leg.colorado.gov/sites/default/files/2023a_1182_signed.pdf.

[39] Jeffrey A. Roberts, *Legislation or a new judicial branch policy could make livestreaming of court proceedings more commonplace in Colo.*, Colo. Freedom of Info. Coalition (Feb. 6, 2023), https://coloradofoic.org/legislation-or-a-new-judicial-branch-policy-could-make-livestreaming-of-court-proceedings-more-commonplace-in-colorado/.

highest sitting jurist in England and Wales, titled his speech "Open Justice Today." He spoke of the positive outcomes of broadcasting proceedings during the COVID emergency, and commented that "[i]n the context particularly of controversial constitutional challenges, the contemporaneous broadcasting of proceedings has been seen to enhance public understanding, support the legitimacy of the decision made by the court and the willingness of the public and politicians to accept the outcome."[40]

Any Concerns About the Integrity of Mr. Trump's D.D.C. Trial Would Not Be Intensified by Cameras; Rather Those Concerns Would Be Alleviated

Allowing cameras at Mr. Trump's trial will not increase the publicity it receives. Mr. Trump's attorney already is regularly appearing on national news syndicates to present his client's case, and the case is already a presidential campaign talking point. Without doubt, the public and media will be closely watching the D.D.C. trial, regardless whether cameras are present. If the trial is not televised, secondhand extrajudicial interviews and summaries will be the only information that the public receives. Cameras simply ensure that Americans can see what transpires for themselves.

In a similarly high-profile context, Judge Cahill took this into account when addressing objections by Chauvin's co-defendants to broadcasting of their trial, after Chauvin was convicted:

> As the notoriety of these cases is neither enhanced nor diminished by livestreaming, the defense arguments fail. The joint trial of these defendants, as was the case with the trial of their co-defendant Derek Chauvin, can be expected to receive ubiquitous media coverage given the vast public interest whether or not the joint trial is livestreamed. That is simply the nature of highly publicized trials in which the public and media have an intense interest.[41]

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[40] Speech by the Lord Chief Justice: Commonwealth Judges & Magistrates Conf. 2023 (Sept. 10, 2023), https://www.judiciary.uk/speech-by-the-lord-chief-justice-commonwealth-judges-and-magistrates-conference-2023/. The Lord Chief Justice, noting that sentencings have been broadcast in England and Wales since July 2022, observed that the "innovation has been a success, and successful beyond our expectations." *Id.* He added, "When people have the whole picture they are less likely to criticise unfairly. It has become clear that the availability of [sentencings] to commentators and journalists has improved the quality of reporting. If I may say so, it has also helped enhance understanding . . . amongst politicians and policy makers." *Id.*

[41] Order Denying Mot. to Reconsider Nov. 4 Order Allowing Audio & Video Coverage of Trial, *State v. Thao et. al*, Nos. 27-CR-20-12949, 27-CR-20-12951, 27-CR-20-12953 (Minn.

Mr. Trump's lawyer has already stated the former President believes televising the trial will make it *more* fair to him. And it is certainly more fair to the American public to provide audiovisual access to the criminal trial of the man they elected as President (and may elect again). Some 155 million people voted in the 2020 election, but unless audiovisual recording and telecasting of the proceedings is allowed, only a few dozen people will be able to watch the proceedings.

Beyond the often-raised argument that cameras somehow increase publicity and jeopardize a defendants' fair trial rights, opponents of cameras in courts argue that cameras may dissuade witnesses from participating or impact the attorneys' or the jurors' abilities to fulfill their respective duties. Those concerns have not been borne out by evidence, and they certainly have no merit with regard to the trial of Mr. Trump.

Witnesses are already subject to public scrutiny. The witnesses will be named, their pictures will be published, and their testimony will be picked apart. This will happen regardless whether cameras are in the room. The witnesses should know this from firsthand experience, as the trial of Mr. Trump is not likely to be their first time testifying. Many witnesses in the case against the former President will likely have already had to testify in video depositions during the January 6 Committee's investigation, or live at the January 6 Committee hearings, and video of their testimony is available online.[42] And, within hours of the indictment coming down in the D.D.C. case, almost all of the unnamed "co-conspirators" mentioned had been identified—and all are well-known because of the congressional proceedings and Georgia case concerning election interference claims.[43]

Likewise, any potential juror almost certainly will be familiar with the highly publicized nature of this case. Questions they are asked during *voir dire* will be reported.

4th Jud. Dist. Jan. 11, 2022) at 4, https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12951-TKL/Order.pdf.

[42] *See* Select Jan. 6th Comm. Final Report & Supporting Materials Collection, https://www.govinfo.gov/collection/january-6th-committee-final-report.

[43] *E.g.,* Holly Bailey et al., *Here are the Trump co-conspirators described in the DOJ indictment*, Wash. Post (Aug. 1, 2023), https://www.washingtonpost.com/national-security/2023/08/01/doj-trump-indictment-trump-coconspirators/; Anders Hagstrom, *Who are the 6 co-conspirators named in Trump's Jan. 6 indictment? Here's what we know*, Fox News (Aug. 2, 2023), https://www.foxnews.com/politics/who-6-co-conspirators-named-trumps-jan-6-indictment-heres-what-we-know.

Even their names may ultimately be released to the public after trial. The judge can address any risk that cameras will impact their deliberations by addressing the issue during *voir dire*, and by giving explicit instructions throughout the trial and before the jury retires to deliberate. Additionally, the media coalition will not film or photograph the jury if so instructed. The media regularly televise proceedings in courtrooms where rules prohibit taking photos or video of the jury and the media abide by these rules.

The attorneys and judge will likewise be fully aware their conduct will be closely watched by the public and media. And more than that, attorneys and judges who have participated in filmed trials state the cameras did not affect their ability to do their jobs.[44] As for the concern that certain trial participants may be motivated to "play to the camera," the more logical view is that cameras, given the public scrutiny they facilitate, cause trial participants to be on their best behavior, not their worst.

Without cameras, "sound bites" from out-of-court interviews will be played, perhaps juxtaposed against photographs of participants. Citizens will judge the proceedings with whatever information made available to them, however truncated, salacious, biased, or inaccurate. For millions of citizens with a democratic interest in the trial, a *per se* rule that closes the courthouse door to all but the few dozen people who manage to secure a spot on a court bench fails to vindicate their access rights.

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"People in an open society do not demand infallibility from their institutions," the Supreme Court has explained, "*but it is difficult for them to accept what they are prohibited from observing." Richmond Newspapers*, 448 U.S. at 572 (emphasis added). Cameras are an important part of transparency and access. And, increasingly, previously hypothesized risks attendant to cameras in the courtroom are being proven wrong, not by legal arguments, but by the experience of courts that are permitting cameras in courtrooms all around this country every day.

Decades ago, the Court recognized that a "responsible press has always been regarded as the handmaiden of effective judicial administration, *especially in the criminal field*." *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) (emphasis added). Because few citizens have time to attend criminal trials, the First Amendment empowers the media to act as their surrogates and "bring to bear the beneficial effects of public scrutiny upon the administration of justice." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975). As Justice Stewart (joined by a plurality of Justices) observed nearly fifty years ago, "The Constitution requires sensitivity to [the press's] role [as a surrogate], and to the special needs

[44] *Supra* at 10-12.

of the press in performing [that role] effectively," including by using "cameras and sound equipment" to convey "sights and sounds to those who cannot personally visit the place." *Houchins v. KQED, Inc.*, 438 U.S. 1, 17 (1978) (Stewart, J., concurring in judgment); *see also id.* at 39 n.36 (Stevens, J., dissenting) (noting that permitting the press's use of audio/visual equipment "redound[s] to the benefit of the public interested in obtaining information" about the government). The best way to do this is to allow the media to use the best technology at its disposal. That's not a notepad and paper. It's not a typewriter or even a laptop. It's a camera.

We all share an equal stake in the historic trial of our former President. Without cameras in the courtroom, the public will not have equal opportunity to assess the process and the result.

Very truly yours,

Charles D. Tobin

Leita Walker