

AN OPEN LETTER TO THE CHIEF JUSTICE OF THE UNITED STATES REGARDING  
VIDEO AND STILL PHOTOGRAPHY COVERAGE OF U.S. v. DONALD J. TRUMP

The Honorable John G. Roberts, Jr.  
Chief Justice of the United States  
Supreme Court of the United States  
1<sup>st</sup> St., N.E.  
Washington, D.C. 20543

Re. Video and still photography coverage of U.S. v. Donald J. Trump

Dear Mr. Chief Justice:

On June 15, 2023, following the indictment of Donald J. Trump in the District Court for the Southern District of Florida, I wrote to urge a lifting of restrictions on audio and video coverage of that trial. I write again following the indictment of Donald J. Trump in the United States District Court for the District of Columbia for criminal activity in aid of overturning the 2020 election to allow him to illegally remain in office notwithstanding an electoral defeat.

There was a time in our society where a significant portion of the population had the time and ability to attend trials in person. Since no former president has been indicted and tried for criminal activity there is no direct historical parallel, but the treason trial of former vice president Aaron Burr provides historical context. The trial judge was one of your predecessors, Chief Justice John Marshall. The number of persons interested in attending the trial exceeded the capacity of the courthouse requiring the trial to be moved to the Hall of the Virginia House of Delegates to facilitate attendance by more members of the public.

Open and public trials have been a feature of our judicial system from its roots in British common law. Another of your predecessors, Chief Justice Warren Burger, writing in the case of *Richmond Newspapers, Inc. v. Virginia* explained that citizens have difficulty accepting that which they are prohibited from observing, writing:

People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.

Given the constant refrain that the prosecution of Mr. Trump is a political gambit by the current administration it is vital that the public have unfiltered access to the trial and related proceedings so that any outcome can be most broadly accepted. A guilty verdict on any of the counts in either indictment will be discounted unless the public has had an opportunity to observe the trials. Our democracy is at risk if a sizeable portion of the population is precluded from direct observation of the process.

I served recently as liaison between a trial court and the media in the highest profile case in South Carolina history, the prosecution of a prominent lawyer for the murder of his wife and a

son. The presiding judge recognized the importance of allowing the public to view the trial as it took place, and issued an order establishing pool requirements for audio, video, and photographic coverage of the trial. The trial lasted six weeks and proceeded without interference, distraction or disruption from the pool coverage. As a result of the judge's decision regarding coverage millions of persons had an opportunity to observe a real criminal trial, the features of which differed from those commonly shown in fictional trials in movies and television.

As you consider what I anticipate to be many pleas for expanded camera access to these trials I would hope you are guided by the significance of the language in the opening clause of the Preamble of the United States Constitution: "We the people of the United States...." In our democratic society we elect and appoint representatives, not rulers, and it is the people of the United States who will benefit from expanded access to these momentous criminal prosecutions which have been initiated on their behalf.

Yours very truly,

Jay Bender