

It's Time to Modernize the Right of Court Access to Provide True Judicial Transparency

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Former President Donald Trump is facing four criminal cases totaling more than 80 felony counts in New York, Georgia, and Florida. These trials will be the most important criminal proceedings in our nation's history. But nearly all the public, including millions of voters, will be shielded from seeing—or hearing—at least three of the trials (all but Georgia) because recording those proceedings will be barred. Although the U.S. Supreme Court has generally recognized a First Amendment right to physically attend certain court proceedings, this fundamental right has never been extended to recording audio or video of court proceedings. Instead, in federal courts, audio and video recording are essentially banned, except for in a few circumstances. States have a patchwork of archaic policies that similarly favor secrecy. These rigid rules render the right of court access a narrow privilege for only the few who have the time, physical ability, and resources to travel to a court typically miles away. A right is only as robust as the ability to exercise it. To truly recognize the right of court access in 2024, courts should allow audio and video recording.

History of the right of court access

The right of court access is based on the First Amendment's protections for freedom of speech ("Congress shall make no law . . . abridging the freedom of speech") and the Sixth Amendment's "right to a speedy and public trial."

In *Richmond Newspapers, Inc. v. Virginia*, the U.S. Supreme Court held in 1980 that the public has a presumptive right to attend criminal trials under the First Amendment. In a pair of cases in the mid-1980s, the U.S. Supreme Court acknowledged a right of access to attend jury selections in criminal cases and preliminary criminal proceedings. The Supreme Court has never directly addressed whether the public has a constitutional right of access to civil proceedings, but in *Richmond Newspapers* it noted that "historically both civil and criminal trials have been presumptively open." On the other hand, many federal appellate courts have found a First Amendment qualified right of access to civil proceedings. Federal Rule of Civil Procedure 77(b) reflects this view, stating that that "[e]very trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom."

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