

Broadcasting Federal Criminal Proceedings

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The August 1, 2023, criminal [indictment of former President Donald Trump](#) has prompted public discussion of whether federal criminal proceedings can be televised or otherwise broadcast to the public. Whether, and potentially how, video of federal court proceedings can be made available has been a topic of interest to [policymakers](#) and [commentators](#) for decades. The anticipated publicity surrounding the criminal proceedings involving former President Trump has brought renewed attention to the issue, with some [lawmakers](#), observers, and [participants](#) calling for the proceedings to be broadcast.

While most state courts allow video coverage of courtroom proceedings [under certain circumstances](#), recording and broadcasting of federal court proceedings is much more limited. In particular, subject to limited exceptions, broadcasting of federal criminal proceedings is prohibited. This Insight explains the current authorities that govern broadcasting of federal criminal proceedings, briefly compares the rules for criminal cases with those that apply to federal civil litigation, and concludes with considerations for Congress related to cameras in federal courts.

Federal Rules and Practice Regarding Courtroom Video

Prior to 1990, the [Code of Conduct](#) for [United States Judges](#) prohibited any photography or broadcasting of federal cases. The Judicial Conference of the United States then adopted a [policy enabling judges to authorize](#) cameras in the courtroom under certain circumstances. Separate procedural rules apply to federal criminal and civil proceedings and affect the use of courtroom cameras.

Federal Criminal Cases

Former President Trump’s criminal case based on the August 1 indictment is proceeding in federal district court. The [Federal Rules of Criminal Procedure](#) (Criminal Rules) [govern procedure in all criminal proceedings](#) in U.S. district courts, courts of appeals, and the Supreme Court. [Federal Rule of Criminal Procedure 53](#) (Criminal Rule 53) provides: “Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs . . . or the broadcasting of judicial proceedings from the courtroom.”

As authorized in Criminal Rule 53, certain exceptions to this prohibition have been made, generally involving using video technology to facilitate courtroom proceedings rather than to broadcast them. [Criminal Rules 5\(g\), 10\(c\), 40\(d\), and 43\(b\)\(2\)](#) allow courts to conduct limited categories of criminal

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proceedings by “video teleconferencing” with the defendant’s consent. In addition, [Section 15002\(b\)](#) of the [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES Act), enacted March 27, 2020, allowed federal courts to authorize the handling of certain criminal proceedings by video or audio conference in response to the COVID-19 pandemic; this authorization ended [May 10, 2023](#).

The U.S. Court of Appeals for the Ninth Circuit [allows cameras](#) with advance permission. The court also provides [live video streaming](#) of oral arguments and posts videos of arguments in both civil and criminal appeals [online](#).

Federal Civil Cases

The [Federal Rules of Civil Procedure](#) govern procedure in all civil actions and proceedings in federal district courts, and the [Federal Rules of Appellate Procedure](#) govern procedure in federal courts of appeals. These rules do not contain provisions comparable to Criminal Rule 53 limiting photography or broadcasting in federal civil proceedings.

Most federal courts, however, do not allow recording or broadcasting of civil cases. Some federal district and appellate courts allowed video in certain civil proceedings under two limited Judicial Conference [pilot programs that have since concluded](#). [Three district courts](#) currently allow some video coverage. In addition to the Ninth Circuit, the Second Circuit also allows cameras in the courtroom in some cases (expressly [excluding criminal matters](#)), and the Third Circuit provides video of [some oral arguments](#).

Considerations for Congress

Because Criminal Rule 53 prohibits such broadcasting, it appears that a change or exception to the rule would be required before broadcasting could be permitted in a federal criminal case. Such a change could come from the Supreme Court via a rulemaking process (typically involving the [Judicial Conference](#)) subject to congressional review, or from Congress via legislation.

The [Rules Enabling Act](#) grants the Supreme Court primary authority to “[prescribe general rules of practice and procedure](#) . . . for cases in [federal] district courts . . . and courts of appeals.” The statute requires the Supreme Court to transmit any proposed rule change to Congress by May 1 of the year in which such amendment would take effect. Amendments take effect automatically unless Congress legislates to reject, modify, or delay a proposed change.

In practice, rule changes typically originate from [the Judicial Conference](#). Pursuant to the Rules Enabling Act, Judicial Conference standing committees [propose amendments](#), solicit public comments, then submit the amendments to the Judicial Conference’s Committee on Rules of Practice and Procedure. Amendments approved by that committee and the Judicial Conference are then transmitted to the Supreme Court for adoption as outlined in the Act.

In the past, the Judicial Conference [declined to recommend](#) a general expansion of video coverage of federal court proceedings, and the Supreme Court has not proposed any similar rule changes. In early August 2023, some called on the [Judicial Conference](#), or [Chief Justice John Roberts](#) in his capacity as its presiding officer, to permit broadcasting of former President Trump’s criminal proceedings. Under the Rules Enabling Act, any recommended change to the Criminal Rules adopted by the Judicial Conference would then go to the Supreme Court for possible approval and transmission to Congress.

The Rules Enabling Act does not authorize a specific lower federal court or an individual judge to modify the Federal Rules of Criminal Procedure. [The Act](#) and the [Criminal Rules](#) empower lower federal courts to make their own procedural rules, but such local rules must be “consistent with Acts of Congress and rules of practice and procedure prescribed” under the Rules Enabling Act. Similarly, the Criminal Rules allow individual judges to “[regulate practice](#)” by issuing procedural orders in specific cases or standing

orders that apply generally to cases before them, but such orders must be “consistent with federal law, [the Criminal Rules], and the local rules of the district.”

As an alternative to the amendment process laid out in the Rules Enabling Act, Congress has the authority to amend or create exceptions to the federal procedural rules. Congress has typically deferred to the judiciary in determining many of its own procedures, and some have raised concerns about the [appropriate role of Congress](#) in addressing courtroom broadcasts. In recent Congresses, legislation has been introduced related to cameras in federal courts. For example, the [Sunshine in the Courtroom Act](#) would allow a presiding judge in a federal district or appellate court to permit recording or broadcasts of courtroom proceedings at the judge’s discretion.

Related legislation from previous Congresses has varied on multiple dimensions, including

- which federal courts would be covered;
- whether courts would be required to provide video or authorized to permit video use;
- what guidelines would regulate use of cameras or video footage and who would determine them; and
- under what conditions certain proceedings or participants would not be subject to video coverage.

[Debates](#) regarding whether to expand video broadcasting in the federal courts often weigh an interest in [providing public information](#) about proceedings against preserving the integrity of the legal process and [due process](#) rights of parties. [Judges](#) and observers have also raised concerns about ensuring proper privacy protections for courtroom participants, including [witnesses and jurors](#), particularly in criminal trials.

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