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H. Thomas Byron III, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C., 20544
Delivered via email

Nov. 4, 2024

Dear Mr. Byron:

Fix the Court is a national nonpartisan organization advocating for greater transparency and accountability in the federal judiciary. We write today following recommendations issued by the Criminal Rules Subcommittee that may push possible revisions of Rule 53 into 2026 or later. We have serious reservations with these recommendations and pray the Standing Advisory Committee on Criminal Rules rejects them.

To us, the broadcast issue comes down to how the judiciary might answer these two questions:

1. Do you want to create a primary source of what happens in a courtroom on a given day, or have you accepted the fact that thanks to Rule 53 and advanced AI, malign actors will make and distribute misleading videos of the proceedings, which will be the *only* videos of the proceedings?
2. Do you trust judges to maintain decorum in their courtrooms?

Regarding the first question, it's important to note that the move toward using AI to reenact or reimagine court proceedings is already happening. Earlier this year, CNN produced a simulation of what former President Trump's hush-money trial in New York might have sounded like using artificially created voice actors,¹ and during the Sam Bankman-Fried trial last year, an AI-generated sketch of the defendant went viral on social media.²

Once Trump's federal trials get underway, we would imagine content creators would do the same — though we doubt they would stop at fake sketches or audio, seeing as how there were several AI-generated deep-fake photos and videos of Trump's arrest and processing.³ Some of these creators will be malign actors who use AI to take the things that are said in the courtroom out of context and depict events in a way that will help their proverbial side. That's the world we live in nowadays.

If the judiciary were to permit video-recording in criminal trials, the same bad actors might take the official, judiciary-produced courtroom video and manipulate it in some unseemly way. Again, that's to be expected.

But at the end of the day, permitting video in trials means that the majority of Americans, who understand the value of primary sources and who are not easily duped by deepfakes and conspiracy theories, would be able to rely on the videos filmed by the judiciary and released by the judiciary to know what actually took place inside a courtroom. That would be an invaluable resource that AI, no matter how good it is, would not be able to replace.

¹ See "CNN's new 'Inside the Trump Trial' series takes you inside the courtroom with the help of AI." CNN.com, May 28, 2024 ([link](#)).

² See Hurley, Bevan, "A fake courtroom sketch of a hulking Sam Bankman-Fried has gone viral – the court artist is far from impressed." *The Independent*, Nov. 1, 2023 ([link](#)).

³ See Devlin, Kayleen and Cheetham, Joshua, "Fake Trump arrest photos: How to spot an AI-generated image." BBC News, Mar. 24, 2023 ([link](#)).

Second, we must point out that even now, 30 years after Judge Ito, the most common arguments against cameras in the courtroom still hearken back to a trial where a judge did a poor job managing his video-permitting courtroom. Enough already. In the intervening years, judges have learned what it takes to conduct a fair and decorous trial under the watchful lens of a TV camera — even the most challenging of trials under the most high-stakes circumstances.⁴

Federal judges especially — given their universally acknowledged and time-tested skills, and with wide variance in courtroom practice from district to district⁵ — should have the chance to permit cameras in their own courtrooms and not be limited by a decades-old rule.

After all, even if Rule 53 were rescinded, many judges might maintain a full or partial cameras ban in their courtrooms when there are compelling reasons to maintain it (e.g., a trial involving national security issues or testimony of a minor). But the idea that a subcommittee consisting of a few judges would dictate how more than 1,700 jurists nationwide⁶ run their courtrooms reveals a cynical lack of faith in judges' decision-making capabilities.

We say: trust judges' independence and their courtroom management skills.⁷

We all want to limit misinformation and build trust in our nation's judges. Permitting cameras in federal criminal trials will do both, and we thank you for your consideration of our views.

Kind regards,

Gabe Roth
Executive Director
Fix the Court

Manny Marotta
Law Clerk
Fix the Court

Cc: Judge James Dever
Judge Michael Mosman
Judge Tim Burgess
Judge Michael Harvey
Marianne Mariano
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⁴ See Tobin, Charles D. and Walker, Leita, "Revising Federal Rule of Criminal Procedure 53." Oct. 5, 2023: "Minnesota Attorney General Keith Ellison, who initially opposed cameras in the courtroom for this special exception, admitted afterward that 'it worked out better than [he] thought'" ([link](#)).

⁵ It's well-known that although the Constitution and federal law are the same everywhere, judges' courtroom management practices vary greatly from judge to judge and from district to district.

⁶ Our estimate of active district, senior district and magistrate judges in the federal system today.

⁷ The ban may also be seen as a slight to potential courtroom or remote camera operators, whose jobs would depend on their compliance with a judge's instructions, such as "do not film the jury" or "turn the camera off when a minor or victim of violence is testifying." We have no doubt they would comply.