

Open The Federal Courthouses

By **David Oscar Markus** (August 27, 2018)

In the era of instantaneous 24-hour news, two of the most important and newsworthy events of the year just occurred: The president's former campaign manager went to trial, and on the same day that the jury split its verdict, the president's former personal lawyer pled guilty to federal crimes and implicated the president in the process. Shockingly, the public did not see any of it.



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We were not able to see the government's main cooperating witness, Rick Gates, and judge for ourselves whether he was telling the truth or lying. We were not able to see the lawyers debate about important legal issues related to the special counsel's office. We were not able to see Michael Cohen's expression as he told the judge that he broke the law at the instruction of the president of the United States.

Forget about cameras, reporters in the Paul Manafort trial were not even permitted in the courtroom with their phones, tablets or computers. That meant no live reporting on Twitter and no emails to the newsrooms with updates. In a world focused on information and news as it happens, this is unacceptable.

If this trial or the plea hearing took place in any state court in the country, or if related hearings were held by Congress, the public would have the benefit of watching what was happening, either live or on their DVRs or on the nightly news. They would be able to follow instant reports on social media. In other words, the public would have access to the courtrooms, as guaranteed by the Constitution. And there could be no allegation that the reporting was "fake."

If there was a vote on whether cameras should be allowed in our federal courthouses, it would pass — overwhelmingly. In fact, the only group of people who seem to be against cameras in the courtroom are federal judges.

And even those federal judges are starting to break ranks. Recently confirmed Fifth Circuit Judge Don Willett (who is on President Donald Trump's short list for the U.S. Supreme Court and who previously sat on the Texas Supreme Court) said that it was "overwhelmingly positive" that the state courts in Texas webcast proceedings.

The federal judges stuck on keeping cameras out of the courtroom continue to make four arguments against cameras in their courtrooms: (1) cameras would be disruptive; (2) lawyers would play to the cameras instead of to the court; (3) the public would not understand the proceedings or the proceedings would be twisted by sound bites on the news; and (4) there could be a safety issue with the public being able to see the judge's or prosecutor's actual face.

Each of these arguments fails, as proven by a large sample size from state court. There is no evidence that state court proceedings have been disrupted by a single small pool camera in the back of the courtroom or by live-streaming. Lawyers have not played to the camera in televised high-profile cases, as they have clients to represent and those clients generally are not well-served by such tactics. There is a broad consensus that cameras would increase social awareness and improve accuracy of reporting, not the other way around. Now we

must rely on a few reporters to tell us how they viewed the proceedings instead of seeing it for ourselves. And no safety issues have resulted from open courtrooms. In fact, the reporters who are stuck in federal court without their phones have commented that being disconnected from their family (some have older parents or young children) presents the real safety issue. There is no reported case of violence as a result of live-streaming or a camera.

Congress is divided on many important issues. But this is not one of them. It's time to open up our federal courthouses so that the public can witness history instead of having to read about it through someone else's lens.

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