

Criminal Justice Reform Needs to Catch Up With the Meaning of “Public”

“Join me,” US Representative Marjorie Taylor Greene (R-GA) tweeted on November 29, “in demanding the #GislaineMaxwellTrial be public.”

In reply, attorney (and former Libertarian National Committee chair) Nicholas Sarwark tweeted “Is the Congresswoman unaware that all Federal criminal trials are public, as required by our Constitution?”

Mr. Sarwark is correct, but Congresswoman Greene has a point.

The Sixth Amendment specifies that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.”

Traditionally, that’s been taken to mean that members of the public (and press) may plant their posteriors in seats in the courtroom and watch the proceedings. But don’t bet the ranch on even that seemingly reasonable concession to transparency. I’ve seen municipal courts get around it by filling the courtroom with a whole day’s worth of defendants, then having a bailiff stop would-be spectators outside the door, claiming there’s only room for those defendants and their attorneys.

Additionally, many courts — including US federal courts such as the one hearing the Maxwell case — either don’t allow, or only selectively allow, recording and/or broadcast of trials.

As a libertarian, I’m not big on appeals to “there ought to be a law.” Or on agreeing with Marjorie Taylor Greene.

But in this case, I do agree with her.

It’s 2021, not 1821. Allowing an artist to draw pictures, and a reporter to take notes, for publication in a newspaper is neither necessary nor sufficient to make a trial “public.”

There ought to be a law.

Not a law that applies only to sensational or controversial trials like that of Gislaine Maxwell, accused of procuring young girls for Jeffrey Epstein’s sexual predations.

A law requiring that all trial proceedings, from the local level to the US Supreme Court, be made “public” for real.

By law, all trial proceedings should be live streamed — audio and video — to publicly

accessible platforms, with links to those streams prominently posted on the web sites of the courts in which those proceedings occur.

Just as the availability of everything from tape recorders to photocopiers to social media has extended the reach of the First Amendment, cameras and live streaming platforms can expand the application, and make real the promise, of the Sixth.

Yes, controversial trials will get the most attention. But the ability to see American justice in action at all levels and without filters is a key first step toward making it truly just.