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Frederick W. Goundry III

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When Can the Courtroom Be Closed In Criminal Proceedings?

by Frederick W. Goundry, III

The sixth amendment provides that “in all criminal prosecutions, the accused shall enjoy the right to a . . . public trial . . .”¹ At the same time, the public and the press, under the first amendment, have a right to open criminal proceedings, including pretrial suppression hearings, *voir dire*, and the trial itself.² The right to an open trial is, however, not absolute — the trial judge has some discretion on whether to close the courtroom to the public and press.³ Closure of the courtroom has been held to be proper to protect witnesses,⁴ to preserve order in the court,⁵ and to avoid prejudice to either party.⁶

This article reviews the development of federal and state case law concerning the right to an open trial. It suggests that a specific, articulable factual determination should be made, in all circumstances, by a trial judge before the courtroom can properly be closed to the public and press. The judge must first consider other alternatives before ordering closure. This article also concludes that a closure order should be no broader than absolutely necessary.

Supreme Court Decisions on the Right to a Public Trial

In the case of *In re Oliver*,⁷ the United States Supreme Court examined whether a judge has the right to charge, convict, and sentence a witness to ninety days in jail, on the belief that the witness committed perjury in his courtroom.⁸ The *Oliver* Court described the facts as amounting to a secret “one-man grand jury”⁹ and held that the proceeding was unconstitutional under the Due Process Clause of the fourteenth amendment.¹⁰

In addition, the *Oliver* Court noted that the public trial guarantee was exclusively for the benefit and protection of the accused.¹¹

In 1966, the Court decided the case of *Sheppard v. Maxwell*.¹² In *Sheppard*, the Court addressed the effect adverse publicity had on a defendant’s right to a fair trial.¹³ In reversing the defendant’s conviction, the Court held that the defendant was deprived of a fair trial because the trial judge failed to prevent “inherently prejudicial publicity.”¹⁴ The Court indicated that a trial judge has a duty to ensure that prejudicial publicity never outweighs a defendant’s right to a fair trial.¹⁵ This issue did not receive judicial scrutiny again for more than a decade¹⁶ until the Court decided the case of *Gannett Co. v. DePasquale*.¹⁷

In *Gannett*, the trial judge ordered a pretrial hearing closed to the public and press upon motion by the defendant.¹⁸ In upholding the closure order, the *Gannett* Court held that the constitution did not give the public an affirmative right to open pretrial proceedings where both the prosecution and defense agreed that the defendant’s fair trial rights would be put in serious jeopardy.¹⁹ The *Gannett* majority declined to consider whether the first amendment carries an independent “right of access” for the public and press to attend criminal proceedings.²⁰ In dissent, Justice Blackmun argued that the fourteenth amendment prohibited courts from ordering closure without first considering the public’s interest in maintaining an open proceeding.²¹

The following year, the Supreme Court in *Richmond Newspapers v. Virginia*²²

held for the first time that the constitution guarantees the right of the public and press to attend criminal trials.²³ In *Richmond Newspapers*, a defendant accused of murder requested that his trial be closed to avoid potential prejudice.²⁴ Petitioner, a newspaper publishing company, argued that the trial judge should have first considered the alternatives before ordering the proceedings closed.²⁵

In agreeing with the petitioner’s position, the Court concluded that there is a “presumption of openness” in criminal trials in the United States.²⁶ The majority further noted that justice was best served by allowing the public to observe the proceedings,²⁷ and absent an overriding interest, the first amendment guaranteed this right of access.²⁸ The Court noted, however, that the newly recognized right of access was not absolute, and that trial courts would still be permitted to impose reasonable restrictions to ensure that the defendant was given a fair trial.²⁹

Two years after *Richmond Newspapers*, the Court further defined the limitations of courtroom closure in *Globe Newspaper Co. v. Superior Court*.³⁰ The trial court in *Globe Newspaper* construed a Massachusetts statute as requiring mandatory closure during the testimony of a minor victim in a sex-offense trial.³¹ On appeal, the Supreme Court held that the statute, as applied by the trial court, violated the first amendment.³²

The *Globe Newspaper* Court set forth a strict test for justifying closure in such cases. First, there must be a compelling governmental interest which requires denial of the public’s right of access, and

second, the right must be narrowly tailored to serve that interest.³³ Applying the above test, the Court held that the state's interest in protecting minor victims of sex crimes from further trauma and embarrassment was not sufficiently compelling to permit mandatory closure.³⁴ The Court also suggested that the trial court's closure order should have been more narrowly tailored to satisfy the requirements of the first amendment.³⁵

In *Press-Enterprise Co. v. Superior Court*³⁶ (hereinafter "*Press-Enterprise I*"), the Supreme Court considered whether constitutional guarantees of public trial extended to *voir dire* proceedings.³⁷ In *Press-Enterprise I*, the trial judge allowed access during the "general *voir dire*," but then closed the remainder of the *voir dire* proceeding.³⁸ After the jury was empaneled, the petitioner requested a transcript of the closed portion of *voir dire*, but the motion was denied by the trial judge in order to protect the privacy of the jurors.³⁹

The *Press-Enterprise I* Court applied the two-part test of *Globe Newspaper*⁴⁰ and held that the presumption of openness may be overcome only by a finding that an open proceeding would threaten an overriding interest, such as the defendant's right to a fair trial or the prospective jurors' privacy interests.⁴¹ By implication, the Supreme Court extended the guarantee of public trial to *voir dire* proceedings.⁴² Chief Justice Burger, writing for the majority, said that closure must be "narrowly tailored to serve that [overriding] interest."⁴³ Also, the interest is to be clearly articulated along with specific findings so that an appellate court can determine the propriety of the closure order.

This presumption, according to the Court, had not been rebutted in this case. In addition, the Court held that the trial judge had made no findings indicating that the alternatives to closure had even been considered.⁴⁴ The decision appears to have rested on three key facts: (1) the trial judge refused to release the transcripts of the *voir dire* proceedings; (2) the trial judge failed to make particularized findings; and (3) the trial judge neglected to consider alternatives to closure.⁴⁵

The standard enunciated in *Press-Enterprise I* has been applied in subse-

quent cases in defining the constitutional right to an open trial. For example, in *Waller v. Georgia*,⁴⁶ the prosecution moved to close a pretrial suppression hearing, seeking to avoid unnecessary publicity which may have rendered some evidence inadmissible.⁴⁷ The trial judge granted the motion and issued a closure order over the defendant's objection.⁴⁸

In reversing the trial court's decision, the Supreme Court held that the defendant's sixth amendment right to a public trial applied to pretrial suppression hearings.⁴⁹ The Supreme Court noted that the "explicit sixth amendment right of the accused is no less protective of a public trial than the implicit first amendment right of the press and public."⁵⁰ As a result, the *Waller* decision expanded the "overriding interest" standard to criminal defendants who object to closure based on their sixth amendment right to a public trial.⁵¹

"the interest is to be clearly articulated along with specific findings. . . ."

The most recent word from the Supreme Court on the right to public trial came in *Press-Enterprise Co. v. Superior Court*⁵² (hereinafter "*Press-Enterprise II*"). In *Press-Enterprise II*, the presiding magistrate denied a motion by members of the news media to obtain access to transcripts of a preliminary hearing, citing potential prejudicial publicity, and ordered the record sealed.⁵³ On a writ of mandate, the California Supreme Court held that *Press-Enterprise I* and *Globe Newspaper* extended only to criminal trials.⁵⁴

The Supreme Court, in *Press-Enterprise II*, held that the qualified first amendment right of access attaches at criminal preliminary hearings as conducted in California.⁵⁵ Chief Justice Burger reasoned that "[b]ecause of its extensive scope, the preliminary hearing is often the final and most important step in the criminal proceeding."⁵⁶ Therefore, such preliminary hearings cannot be closed absent specific findings dem-

onstrating a "substantial probability" that closure was essential to preserve an overriding interest and unless such closure was closely tailored to serve that interest.⁵⁷ The majority concluded that the closure order and the shielding of the preliminary hearing transcripts were inappropriate in such a case.⁵⁸

Circumstances Where Closure Has Traditionally Been Justified

The preceding Supreme Court decisions define the scope of the sixth amendment right to a public trial and the first amendment right to access, and thus enunciate the constitutional standard for closure. Next, appellate court decisions where compelling interest sufficient to warrant excluding the public and press from the courtroom was found will be discussed.

It should be noted that when the trial judge wrongfully excludes the public or press from the courtroom, and the defendant enters a timely objection, prejudice will be presumed; that is, the defendant will not have to show he was actually prejudiced.⁵⁹ At the same time, a defendant or his attorney may waive defendant's right to a public trial either expressly or by failing to object to the closure order in a timely fashion.

Closure to Prevent Disturbance by Spectators or Defendant

Appellate courts have generally held that where, during the course of a trial, it appears that a disturbance caused by the defendant or spectators may lead to violence, the trial judge will be justified in excluding individuals from the courtroom.⁶⁰ At the same time, the trial judge must still explore the reasonable alternatives in order to ensure that the defendant has not been denied his sixth amendment right to a public trial.⁶¹ A closure order which extends beyond the actual need to prevent the disruption may violate the defendant's right to a fair trial.⁶²

Exclusion of Spectators to Avoid Intimidation of Witness

Where a factual showing on the record is made that a witness was intimidated or threatened, an exclusion order, limited to the particular spectators responsible for the threats, has been held as not violative of the defendant's right

to a public trial.⁶³ On the other hand, appellate courts have been reluctant to approve an exclusion order in the absence of overtly menacing behavior on the part of the excluded spectators.⁶⁴ Also, it should be noted that some state constitutions contain provisions which may provide broader protection to the right to a public trial than the United States Constitution.⁶⁵ Therefore, the applicable state provisions should be considered, along with the first and sixth amendments, in assessing the limitations on the trial court in excluding spectators from the courtroom.⁶⁶

Closure to Prevent Emotional Disturbance of Witness

Generally, it is within a trial judge's discretion to exclude spectators from the courtroom during the testimony of a witness if it can be shown that such exclusion is reasonably necessary to prevent emotional disturbance of the witness or to enable the witness to testify.⁶⁷ This rule has been held to be particularly applicable if the witness is a minor.⁶⁸ Removal of all spectators from a courtroom, including the defendant's family,⁶⁹ has been upheld where the trial judge has made specific findings that the nature of the testimony would be embarrassing to the witness and that the witness would be more comfortable testifying without spectators.⁷⁰ Also, it should be noted that it may be reversible error for the court to keep the courtroom locked, without further justification, during the testimony of other witnesses.⁷¹

Exclusion of Spectators Due to Overcrowding of Courtroom

It is generally recognized that a trial judge may exclude persons not having an immediate connection with the trial to the extent that such exclusion is necessary to the prevention of overcrowding of the courtroom.⁷² Though there are few recent appellate cases on this issue, it seems clear that such necessary exclusion of spectators does not deprive the defendant of his sixth amendment right to a public trial.⁷³

Locking Courtroom Door During the Jury Charge

It is common in both state and federal courts to lock the courtroom doors during the jury charge, thus prohibiting

any additional entrants.⁷⁴ This practice has been justified on the ground that the jury could be distracted during this critical phase of the trial.⁷⁵ Many jurisdictions lock the courtroom doors during the jury charge without making a determination whether a particular interest could be prejudiced by keeping the courtroom closed.⁷⁶

Exclusion by Way of Conducting Proceeding at Other than Regular Place or Time

One alternative to actually locking the doors of the courtroom, which some trial courts have employed, is holding the criminal proceeding at a time or place different from the common time or place.⁷⁷ Such a practice gives rise to many of the same concerns regarding the right to a public trial as closure of the courtroom. Appellate courts have had difficulty formulating rules for this issue and have generally analyzed cases on a factual basis. For example, courts presented with the problem have decided that proceedings held on a weekend⁷⁸ or at night⁷⁹ did not violate the defendant's sixth amendment right to a public trial. On the other hand, courts have split on the question of the propriety of holding a criminal proceeding in the judge's chambers.⁸⁰

"it may be reversible error . . . to keep the courtroom locked. . . ."

Conclusion

Even though the right to a public trial is not absolute, the right may be limited only under very compelling circumstances. A trial judge has the discretion to exclude spectators only upon a finding of an overriding interest which warrants closure. Even where such an interest is found, the trial judge must consider the reasonable alternatives before ordering closure. Also, the closure order must be narrowly tailored so that it is no broader than necessary to protect that interest. This nation's tradition of open criminal proceedings should be considered in light of the defendant's right to a public trial, the public's right of access, and most importantly, the defendant's right to a fair trial.

Endnotes

- ¹U.S. Const. art. VI.
- ²See generally C. Whitebread, *Criminal Procedure* §27.08 (2d ed. 1986).
- ³See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597-99 (1978); *Estes v. Texas*, 381 U.S. 532, 548 (1965); *United States ex rel. Orlando v. Fay*, 350 F.2d 967, 970-71 (2d Cir. 1965), cert. denied, 384 U.S. 1008 (1966); see also Note, *Extension of a Criminal Defendant's Right to a Public Trial: Access to the Courtroom During the Jury Charge*, St. John's L. Rev. 277, 278 (1987) [hereinafter Note, *Access to the Courtroom*].
- ⁴See, e.g., *United States ex rel. Lloyd v. Vincent*, 520 F.2d 1272 (2d Cir.), cert. denied, 423 U.S. 937 (1975). See generally Annotation, *Exclusion of the Public from State Criminal Trial in Order to Avoid Intimidation of Witness*, 55 A.L.R. 4th 1196 (1987) [hereinafter Annotation, *Avoid Intimidation*].
- ⁵See, e.g., *Orlando*, 350 F.2d at 970; *Snyder v. Coiner*, 510 F.2d 224, 230 (4th Cir. 1975). See generally Annotation, *Exclusion of Public from State Criminal Trial in Order to Prevent Disturbance by Spectators or Defendant*, 55 A.L.R.4th 1170 (1987) [hereinafter Annotation, *Prevent Disturbance*].
- ⁶See, e.g., *United States v. Rios Riuz*, 579 F.2d 670 (1st Cir. 1978); *United States ex rel. Laws v. Yeager*, 448 F.2d 74 (3d Cir. 1971), cert. denied, 405 U.S. 967 (1972); *United States ex rel. Mayberry v. Yeager*, 321 F. Supp. 199 (D.N.J. 1971). See also Note, *Access to Courtroom*, supra note 3, at 278-79.
- ⁷333 U.S. 257 (1948).
- ⁸*Id.* at 258-59.
- ⁹*Id.*
- ¹⁰*Id.* at 273, 278.
- ¹¹*Id.* at 270 n.25. Subsequent decisions and related commentary have consistently limited the assertion of the right to a public trial to the accused, rejecting the theory that the public should be permitted to assert the sixth amendment right. See Casenote, *Constitutional Law — Constitutional Guarantees of Open Public Proceedings in Criminal Trials Extend to Voir Dire Examination of Potential Jurors*. *Press-Enterprise Co. v. Superior Court*, 14 U. Balt. L. Rev. 359, 360 (1985) [hereinafter Casenote, *Constitutional Guarantees*].
- ¹²384 U.S. 333 (1966).
- ¹³Dr. Sam Sheppard was convicted of the murder of his wife; the Court of Appeals

for Cuyahoga County and the Ohio Supreme Court affirmed the conviction. *Id.* at 335.

¹⁴*Id.* at 363. The Court noted that the jurors had received phone calls and letters from members of the press, and jurors had been photographed during the trial. *Id.* at 343-44.

¹⁵*Id.* at 362. The *Sheppard* Court reasoned that the trial judge could have avoided much of the prejudice by sequestering the jury, permitting change of venue, and taking other similar actions *Id.* at 357-63.

¹⁶See *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 561 (1976) (refusing to establish a priority between the rights, the Court instead reversed the closure order because other measures would have been more appropriate). See also Recent Decision, *Constitutional Law — Right to Access to Criminal Proceedings — Qualified First Amendment Right of Access Attaches to Pretrial Hearings Absent Overriding Interest Protected Only by Closure*, 56 Miss. L.J. 417, 422 (1986) [hereinafter Recent Decision, *Right to Access*].

¹⁷443 U.S. 368 (1979).

¹⁸*Id.* at 374-75.

¹⁹*Id.* at 394. The *Gannett* Court also reaffirmed the notion that the public had no affirmative sixth amendment right to attend criminal trials, *id.*, because the sixth amendment public trial right was for the defendant alone. *Id.* at 380. See also Recent Decision, *Right to Access*, *supra* note 16, at 423-24.

²⁰*Gannett*, 443 U.S. at 392. *Cf. id.* at 397-403 (Powell, J., concurring) (first amendment should be recognized as having such a "right of access"); *id.* at 403-06 (Rehnquist, J., concurring) (rejecting any notion that the first amendment gives the public and press a "right of access").

²¹*Id.* at 432-33 (Blackmun, J., concurring in part, dissenting in part).

²²448 U.S. 555 (1980).

²³*Id.* at 580.

²⁴*Id.* at 560.

²⁵*Id.*

²⁶*Id.* at 573-75.

²⁷*Id.* at 572.

²⁸*Id.* at 580-81.

²⁹*Id.* at 581 n.18.

³⁰457 U.S. 596 (1980).

³¹*Id.* at 600.

³²*Id.* at 603-07.

³³*Id.* at 606-07. See also Casenote, *Con-*

stitutional Guarantees, supra note 11, at 362.

³⁴*Globe Newspaper*, 457 U.S. at 607-10.

³⁵*Id.*

³⁶464 U.S. 501 (1984).

³⁷*Id.* at 503. After *Richmond Newspapers*, the Eighth Circuit, in *In re United States ex rel. the Pulitzer Publishing Co.*, 635 F.2d 676 (8th Cir. 1980), held that an in-chambers *voir dire* proceeding was unconstitutional because of failure to consider alternative solutions. *Id.* at 679. This contrasts with the position of the Ninth Circuit which, in *United States v. Brooklier*, 685 F.2d 1162 (9th Cir. 1982), held that the first amendment right of access does not apply to *voir dire* proceedings, and therefore the public does not have a right to be present. *Id.* at 1167.

³⁸*Press-Enterprise I*, 464 U.S. at 503. *Press-Enterprise I* involved a rape case in which the prosecution moved to close the *voir dire* proceedings to protect the defendant's right to a fair trial and to facilitate jurors' responses. Petitioner, a newspaper publishing company, argued the proceedings should be open to the public. *Id.*

³⁹*Id.* at 505.

⁴⁰ See *supra* note 33 and accompanying text.

⁴¹*Press-Enterprise I*, 464 U.S. at 509-10.

⁴²*Id.* at 510.

⁴³*Id.*

⁴⁴*Id.* at 511.

⁴⁵ See Casenote, *Constitutional Guarantees, supra* note 11, at 365.

⁴⁶467 U.S. 39 (1984).

⁴⁷*Id.* at 41-42.

⁴⁸*Id.* at 42.

⁴⁹*Id.* at 43. The *Waller* majority set forth the following standard:

[T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.

Id. at 48.

⁵⁰*Id.* at 46.

⁵¹ See Note, *Access to the Courtroom, supra* note 3, at 284.

⁵²478 U.S. 1 (1986). Note that the trial in *Press-Enterprise II* was unrelated to the trial in *Press-Enterprise I*.

⁵³*Id.* at 4-5.

⁵⁴*Id.* at 5.

⁵⁵*Id.* at 13.

⁵⁶*Id.* at 12.

⁵⁷*Id.* at 13-14. The California Supreme Court adopted the standard that "the magistrate shall close the preliminary hearing upon finding a *reasonable likelihood* of substantial prejudice." *Id.* at 14 (emphasis added). See also ABA Standards for Criminal Justice Standard 8-3.2 (1986) (recommending procedure for determining the propriety of excluding the public and sealing the record in pretrial proceedings).

⁵⁸*Press-Enterprise II*, 478 U.S. at 15.

⁵⁹ See, e.g., *Sirratt v. State*, 240 Ark. 47, 398 S.W.2d 63 (1966); *Commonwealth v. Marshall*, 356 Mass. 432, 253 N.E.2d 333 (1969); *State v. Schmit*, 273 Minn. 78, 139 N.W.2d 800 (1966). See generally Annotation, *Exclusion of Public During Criminal Trial*, 48 A.L.R.2d 1436 §1454-55 (1956 & Supp. 1989) [hereinafter Annotation, *Exclusion of Public*].

⁶⁰ See, e.g., *Commonwealth v. Berrigan*, 509 Pa. 118, 501 A.2d 226 (1985) (closure justified in *voir dire* proceedings where defendants and spectators persistently disregarded the court's rulings), *cert. denied*, 110 S. Ct. 219 (1989). See generally Annotation, *Prevent Disturbance, supra* note 5, at 1173-74.

⁶¹ See Annotation, *Prevent Disturbance, supra* note 5, at 1174-75. See, e.g., *State v. Robillard*, 146 Vt. 623, 508 A.2d 709 (1986).

⁶² See, e.g., *Sirratt*, 240 Ark. 47, 398 S.W.2d 63 (defendant's right to a public trial was denied when the closure order extended from the second day of the trial through the trial's conclusion).

⁶³ See generally Annotation, *Avoid Intimidation, supra* note 4, at 1199-2000.

⁶⁴ See, e.g., *People v. Hargrove*, 60 A.D.2d 636, 400 N.Y.S.2d 184 (1977) (court held that the defendant's sixth amendment right to a public trial was denied when two spectators, a former attorney for the witness and a former business associate of the witness, were excluded from the courtroom after they took front row seats in the courtroom while the witness testified), *cert. denied*, 439 U.S. 846 (1978).

⁶⁵ See Annotation, *Avoid Intimidation, supra* note 4, at 1201-02.

⁶⁶ See, e.g., *Commonwealth v. Contakos*, 499 Pa. 340, 453 A.2d 578 (1982) (reversing trial judge's decision to close the courtroom to all spectators, where

a threat had been made on a prosecution witness's life, as a violation of defendant's right to a public trial under the Pennsylvania Constitution).

⁶⁷See generally Annotation, *Exclusion of Public*, *supra* note 59, at 1450-51.

⁶⁸See, e.g., *State v. Ucero*, 450 A.2d 809 (R.I. 1982); *State v. Burney*, 302 N.C. 529, 276 S.E.2d 693 (1981).

⁶⁹See, e.g., *People v. Jones*, 82 A.D.2d 674, 442 N.Y.S.2d 999 (1982).

⁷⁰See *People v. Joseph*, 59 N.Y.2d 496, 452 N.E.2d 1243, 465 N.Y.S.2d 915 (1983) (defendant's right to a public trial was not infringed where court made findings of sensitive and embarrassing nature of testimony, and witness indicated she would be more comfortable testifying without spectators). See also, *State v. Smith*, 123 Ariz. 243, 599 P.2d 199 (1979); *State v. Raymond*, 447 So. 2d 51 (La. Ct. App.), *cert. denied*, 449 So. 2d 1347 (La. 1984); *Jones*, 82 A.D.2d 674, 442 N.Y.S.2d 999. *But cf. People v. Matao*, 138 A.D.2d 412, 525 N.Y.S.2d 696 (1988) (defendant's right to a public trial was violated when trial judge failed to conduct inquiry or articulate specific findings sufficient to warrant closing courtroom), *affd*, 73 N.Y.2d 928, 536 N.E.2d 1146, 530 N.Y.S.2d 565 (1989).

⁷¹See, e.g., *People v. Ludolph*, 63 A.D.2d 77, 407 N.Y.S.2d 85 (1978) (although it was not error to clear courtroom during the testimony of two minor witnesses, it was reversible error to keep the courtroom clear thereafter during testimony by an adult witness).

⁷²See, e.g., *United States v. Kobli*, 172 F.2d 919 (3rd Cir. 1949); *People v. Jelke*, 308 N.Y. 56, 123 N.E.2d 769 (1954); *Murray v. State*, 202 Miss. 855, 33 So. 2d 291, *cert. denied*, 333 U.S. 869 (1948); *People v. Pearl*, 66 Misc. 2d 502, 321 N.Y.S.2d 986 (App. Div. 1971); *Wilson v. State*, 305 A.2d 312 (Del. Super. Ct. 1973); *E.W. Scripps Co. v. Fulton*, 100 Ohio App. 157, 125 N.E.2d 896, *appeal dismissed*, 164 Ohio St. 261, 130 N.E.2d 701 (1955).

⁷³See Annotation, *Exclusion of Public*, *supra* note 59, at 1449-50.

⁷⁴See, e.g., *United States v. Romano*, 684 F.2d 1057, 1065 (2d Cir.), *cert. denied*, 459 U.S. 1016 (1982); *Hayes v. United States*, 296 F.2d 657, 668 (8th Cir. 1961), *cert. denied*, 369 U.S. 867 (1962); *People v. Venters*, 124 A.D.2d 57, 511 N.Y.S.2d 283 (1987).

⁷⁵See Note, *Access to Courtroom*, *supra* note 3, at 279.

⁷⁶*Id.* At least one commentator believes that locking the courtroom doors during the jury charge, without a finding of a compelling interest, deprives the defendant of his sixth amendment right to a fair and open trial. *Id.* at 280-81.

⁷⁷See generally Annotation, *Exclusion of Public from State Criminal Trial by Conducting Trial or Part Thereof at Other than Regular Place or Time*, 70 A.L.R.4th 632 (1989).

⁷⁸See *State v. Von Reeden*, 104 Ariz. 404, 454 P.2d 149 (1969).

⁷⁹See *State v. Gibb*, 303 N.W.2d 673 (Iowa 1981).

⁸⁰ Compare *People v. Thomas*, 46 Mich. App. 312, 208 N.W.2d 51 (1973); *State v. White*, 285 A.2d 832 (Me. 1972); *Caudill v. Peyton*, 209 Va. 405, 164 S.E.2d 674 (1968) (cases holding that proceeding held in judge's chambers did not infringe on defendant's right to a public trial) with *Taylor v. State*, 284 Ark. 103, 679 S.W.2d 797 (1984); *State ex rel. Storer Broadcasting Co. v. Gorenstein*, 131 Wis. 2d 342, 388 N.W.2d 633 (Ct. App. 1986) (cases holding that *in camera* proceedings violated defendant's right to a public trial).

Frederick W. Goundry, III is currently in his third year at the University of Baltimore School of Law, the Articles Editor of *The University of Baltimore Law Review*, and will be an associate at Miles & Stockbridge after taking the July 1991 bar exam.



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