

Recent rulings keep courts open



‘Media attention’ no excuse for secrecy

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Missouri, in its Constitution, states in Article I that the courts of this state “shall be open to every person.” Further, case law in this state has upheld that “knowledge of juror identities allows the public to verify the impartiality of key participants in the administration of justice and thereby ensures fairness.”

Therefore, it is a rare occasion in this state when a judge closes access to information on jurors. As many in the media remember, just last January our Supreme Court decided, in its operating rules, that there is a presumption of openness in juror lists in the state. This is not the case in every state.

Several months ago, the court in New York which is hearing the trial of Martha Stewart decided to close to the media the juror selection process in that courtroom. Potential jurors called to a Detroit courtroom in March last year were greeted with unusual efforts at secrecy, set up in conjunction with the trial of a terrorist suspect implicated in the Sept. 11, 2001, assault.

In light of the security issues likely to arise in the upcoming Michael Jackson trial, it will not be a surprise if the judge in that case — who has already attempted to gag the prosecutors and defense attorneys — decides there must be efforts made to secure the potential jurors for that trial.

Just recently, a step in the name of access was made when a court of appeals in New York overturned the lower court orders barring the media from the Martha Stewart jury selection process. Providing the media with a transcript of the proceedings was not sufficient, the court of appeals held. “One cannot transcribe an anguished look or a nervous tic,” the appellate court stated. “Emotions, gestures, facial expressions, and pregnant pauses do not appear on the reported transcript.” the court said.

Clearly, the court held, there is a presumption of openness in such activities. There must be evidence of a “substantial probability” that Stewart’s right to an impartial jury would be prejudiced by publicity that closure would prevent. An unsubstantiated concern that exposure might result in potential jurors failing to give fully truthful answers did not rise to that standard, the court held.

In another interesting observation, the court considered the potential for pretrial prejudice on the part of the jurors. “We note that prospective jurors are likely to have preconceptions about the defendants in almost every criminal case that attracts media attention. If this fact alone were sufficient to warrant closure, then courts could routinely deny the media access to those cases of most interest to the public, and the exception to openness would swallow the rule,” the court held.

The court concluded it was unlikely a potential juror would be intimidated by the media, but not intimidated by the defendants who were present in the courtroom, in regard to revealing personal prejudices regarding the defendants and potential conflicts to serving. “The mere fact that the suit has been the subject of intense media coverage is not, however, sufficient to justify closure. To hold otherwise would render the First Amendment right of access meaningless; the very demand for openness would paradoxically defeat its availability,” the court concluded.

Access to juror information plays an important role in ensuring the public that the judicial process is working. Reporters who interview jurors have uncovered evidence of misconduct, such as that discovered in a case in Ohio where a juror voted for a verdict because he was anxious to end his service and return home.

In the case last year of the trial in Detroit of the accused terrorist, a university professor who had earlier as-

sisted in the defense of a man charged in the 1993 World Trade Center bombing noted that such restrictions on the jury-selection process, rather than comfort the potential jurors, may actually lead to an “atmosphere of fear.”

The Detroit News, in pointing out that the order closing the entire process was over-broad, noted that “closing everything to the public sacrifices the very rights that we are defending in the war against terrorism.” As the representatives of the public, we must be constantly vigilant that efforts made to close information in the name of “security” do not overreach the risk and create a secret society.

Missouri Press Association, at this time of the year, is in a constant struggle to reign in overly zealous efforts by law enforcement interests to restrict access to information that is important to all of us. Whether we are talking about access to security plans for buildings or whether we are talking about access to the names of your neighbors who are serving on the jury at the courthouse this week, we the public need to understand that access to information protects us from abuse. It does not harm us, instead it is the sole platform that protects the rights which we have been granted in this country.