

Tribunals

By: **Wayne C. Fricke; July 2006**

On June 29, 2006, the Washington Supreme Court rendered a decision once again upholding open trials for the public. In State v. Modest, Washington Supreme Court Docket No. 76458-1 filed June 29, 2006, the court held that the trial court committed an error of constitutional magnitude when it held that a courtroom be fully closed to a co-defendant and the public during a joint trial without satisfying the requirements set forth in State v. Bone-Club, 128 Wn.2nd 254, 906 P.2d 325 (1995).

Modest involved a trial of two co-defendants. Counsel for one co-defendant had requested, in addition to a motion to sever, a closed courtroom hearing in order to discuss a prior negotiated agreement involving testimony against his co-defendant, Easterling. Subsequently, the co-defendant pleaded guilty while agreeing to testify against Easterling.

In reversing the conviction, the Supreme Court noted that “although the public trial right may not be absolute, protection of this basic constitutional right clearly calls for a trial court to resist a closure motion except under the most unusual circumstances.” Citing Bone-Club at 259. The trial court is required to weigh five requirements prior to closing the courtroom under any situation. In ruling against the state on the admittedly unique question, the court found that while the co-defendant’s motion to sever was independent of Easterling’s, it nevertheless involved Easterling’s right to a public trial under the Washington Constitution.

Moreover, the court noted that fairness of the process was undermined because Easterling was precluded from arguing for or against the motion to sever during the closed proceeding. Regardless of whether Easterling’s right was violated, the court still noted a violation of the public’s right to an open trial under Article 1, Section 10 of the Washington Constitution. The court noted that the trial court’s decision ran contrary to the position that has been in existence for decades that strictly protects the public and the press’s right to view the administration of justice. Additionally, the court found that no decision such as this could be considered trivial or de minimis and as a result Easterling’s conviction was reversed and remanded for a new trial.

The Washington Supreme Court has again made it clear that courts need to go through the balancing tests as required by prior decisions. Closing the courtroom to the public will not be tolerated absent unwarranted circumstances and absent balancing the required factors. There

is a presumption that courtrooms remain open. It's also important that attorneys approach these matters under fundamental principals of fairness for their client and the public. This is a matter that applies to both civil and criminal matters. All practitioners need to ensure that proper procedures are followed or risk having a civil verdict reversed.

End

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