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JUDGES CLOSING COURTS TO PUBLIC BACKLASH FROM FAMED CASES LEADS TO SECRECY

Lisa Greene, Staff Writer

Before Richard George Anderson pleaded guilty to murdering a state senator's daughter last week, his lawyers met with prosecutors and the judge. But nobody knows what happened -- even though the Newberry County case is one of the most closely watched in the state -- because Circuit Judge Costa Pleicones closed the hearing to the public.

Pleicones is not alone. Last week's closed hearing is the latest in what one media lawyer calls ``an alarming trend.'' In the wake of the Susan Smith and O.J. Simpson trials, many judges are less willing to be open. Across South Carolina, courtroom doors are slamming shut.

Several judges have closed hearings on pretrial issues this year. Others have banned cameras from the courtroom. Some have issued gag orders to keep lawyers from discussing their cases.

The cases in question aren't run-of-the-mill. They number among the most intriguing cases in the state and often involve prominent people. They are the cases that the public is watching.

The trend reverses several years of increasing openness from the state's high court and flies in the face of established case law that courtrooms are open to the public in all but the rarest circumstances.

``It's a very definite trend, and I think it's contrary to U.S. Supreme Court and state Supreme Court decisions that weigh heavily in favor of keeping the courts open,'' said John Shurr, Columbia bureau chief for The Associated Press and Freedom of Information chairman for the S.C. Press Association.

But some lawyers say closing the courtroom is sometimes needed to protect a criminal defendant's rights. More often, judges are deciding that defendants can't get a fair trial if the public and potential jurors know about certain parts of the case before the trial.

``The public has an absolute right to know what's going on in the courtrooms. That keeps us an open and free society,'' said defense lawyer **Jack Swerling**. ``On the other hand, anyone charged with a crime has an absolute right to a fair trial. You have to balance those competing interests.''

Swerling is representing Steve Beckham, the Episcopal bishop's son who is charged with

hiring Anderson to kill his estranged wife, Vickie Beckham. But **Swerling**, like every other lawyer who discussed the issue after being involved in a closed hearing, stressed he wasn't discussing his case specifically. Doing so would mean violating a gag order.

Other recent cases in which hearings have been closed include that of a prominent Charleston lawyer charged with murder in the hit-and-run death of a jogger; a former Charleston TV talk-show host who recently pleaded guilty to trying to bribe city council members; a murder case in Gaffney; and allegations that a law enforcement agent had sex with a juror in an Anderson County murder case.

Greater scrutiny. Media lawyer Jay Bender said it's ironic that judges are closing courts as the state's chief justice is inviting greater scrutiny of the courts by asking state lawmakers to give the courts more money.

``The reason you have public courts is to enhance public confidence of how courts work," he said. ``That's what made these cases so troubling in Charleston. They both involved individuals with substantial political connections. Automatically, the public might believe there was some home cooking going on."

Others said the defendants' political connections were coincidental. Beckham defense attorney Dick Harpootlian, who was a strong advocate for open courts when he was 5th Circuit Solicitor, said the public isn't really being hurt when pretrial hearings are closed.

``Is the public being denied their right to know? The answer is no," he said. ``The public is having their right to know delayed. (Evidence presented) will be public at some point."

But Bender said judges aren't considering alternatives to closing the courts. In the Charleston hit-and-run case, the media asked Circuit Judge Duane Shuler to consider alternatives, including delaying the hearing until after the jury was selected and questioning the jury about media accounts. Shuler turned down all three options, saying he ``wasn't going to waste another day's time."

Like several other judges, Shuler also refused to conduct a full hearing on whether to close the court, despite higher court instructions to do so.

Bender, who is scheduled to discuss closing the courts with state judges next month, said one problem is that most judges are rarely faced with closure issues.

Most court watchers say last year's sensational Simpson and Smith trials are causing judges to think differently about openness and the media. The Simpson trial couldn't have been more public. Many lawyers complained it was a media circus, and many saw how the trial shook America's confidence in the judicial system.

In contrast, Circuit Judge Bill Howard tossed TV cameras from the courtroom during the Smith trial. And he was widely praised for his handling of the case.

``It's an aftershock of O.J. Simpson," **Swerling** said. ``On the one hand, you had an absolute circus in la-la land, versus the dignified and orderly process you had up in Union."

Swerling acknowledged, however, that despite that perception, geographic differences in rules

of evidence and courtroom traditions may have done more than cameras to set the two trials apart.

TV vs. right to know. Bender also said Howard's decision to bar camera should not have influenced judges to close courtroom proceedings altogether. After all, he said, court rules say a judge can choose whether to allow cameras. But the public has a constitutional right to be present in court.

Howard agreed, saying it is a ``totally different issue.'' Even so, he said, it may have had an effect.

``Sometimes in the everyday complications at the trial level, it is certainly possible for those things to be confused,'' he said.

Shurr said both trials ``sent messages to judges.'' He agrees the Simpson case showed there are problems in the judicial system -- but he sees the problems stemming from defense attorneys.

``The irony in all this is a lot of blame is being put on the news media,'' he said. ``I think it's largely due to defense attorneys. . . . It's becoming more and more difficult to find the kind of juries that defense lawyers want.''

Shurr and Bender said too many defense lawyers want jurors who know nothing about a case, even if it has been highly publicized. Fifth Circuit Solicitor Barney Giese also pointed out that jurors are asked under oath whether they can put aside anything they've heard outside the courtroom.

``There are safeguards in the case to protect the defendant's rights even if there is pretrial publicity,'' he said.

Still, Giese wouldn't say whether he thinks judges are closing courts too quickly. He can't discuss the hit-and-run case he's prosecuting, and he doesn't know enough about the others -- which were, after all, secret.

But Harpootlian said cautioning jurors to disregard news reports sometimes isn't enough.

``They're being told to remember to forget,'' he said. ``That's just not human nature. It's difficult to do that.''

CLOSING THE COURTS

According to U.S. and state Supreme Court decisions, a judge should close the court to the public only if:

The closure would protect a vital, protected interest, such as a defendant's right to a fair trial.

That interest can be protected only by closing the courtroom, and in no other way.

Without closure, that interest would be damaged beyond repair.

Closure would effectively protect that interest -- the information isn't already public knowledge.

And closure is ``narrowly tailored" to protect the vital interest without hurting the public's First Amendment right to access.

SOURCE: Jay Bender, Virginia Ravenel

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Correction: PUBLISHED WEDNESDAY, APRIL 17, 1996

Judge Duane Shuler closed a court hearing in the Charleston bribery case against former TV talk-show host Bob Waters. A story about closed court hearings in Monday's editions reported the wrong case.