IN THE COMMON PLEAS COURT FOR PUTNAM COUNTY, OHIO
JUVENILE DIVISION

In the matter of:	)	Case nos. 2013-2067 & 2013-2062
MICHAEL AARON RAY,	)	Hon. Michael Borer, Judge
alleged delinquent child.	)	OPPOSITION OF THE TOLEDO BLADE CO., WLIO, AND WTVG TO THE MOTION OF MICHAEL AARON RAY TO EXCLUDE MEDIA, CLOSE THE COURTROOM, ETC.

Michael Aaron Ray, the alleged delinquent child in the above-captioned case, has moved the Court for an order that would "exclude the media" from all pre-trial evidentiary hearings in this case,"close the courtroom," and forbid "disclosure of personal information of the juvenile parties."[1] The stated objective of the requested order is "to insulate prospective jurors from information that would taint their neutrality." *Motion*, p. 1. For the reasons stated below, the motion should be

[1] The Toledo Blade Company, an operating division of Block Communications, Inc., publishes *The Blade*, a daily newspaper of general circulation that covers local, regional, and national news. WLIO-TV is an NBC-affiliated television station licensed in Lima, Ohio, whose news operation covers local and regional news. It is owned and operated by Lima Communications Corporation. WTVG-TV is an ABC-affiliated television station licensed in Toledo, Ohio, whose news operations cover local and regional news. All three of thee news organizations have devoted and intend to continue to devote resources to covering court proceedings involving Michael Aaron Ray. Each of these media entities has a settled right to participate in the proceedings regarding closure and to assert their constitutional rights, which are infringed by closure. *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 111 Ohio St. 3d 56, 2006-Ohio-4437, ¶ 46

overruled. Indeed, because the motion is wholly without merit on its face, the Court would be warranted in summarily overruling the request without an evidentiary hearing.[2]

As a preliminary matter, it is unclear whether the movant desires to "close the courtroom" only to the media (as is suggested by the first branch of the motion) or to the public at large (as is suggested by the second branch). If it is the former, then the order would be plainly contrary to the long-settled principle that a court may not "close a courtroom to the media when other members of the public are afforded access."[3] Such an order would, moreover, require the Court to determine which members of the public constitute "media" for purposes of the order and which do not. In a world in which some newspapers exist only online and in which one-person web-blogs are increasingly common sources of news reporting, any such effort at definition would lead inexorably to the drawing of constitutionally forbidden lines between types of media.[4]

In any event, whether movant seeks exclusion of the public at large or only exclusion of the media, he would be entitled to such relief only if he could satisfy the stringent constitutional, statutory, and common-law standards for denying public access. Here, he cannot.

As the Ohio Supreme Court has expressly held, "[t]he exclusion of the public should be applied sparingly, and the doors to the courtroom may be closed to the general public only on a

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[2] *State ex rel Dispatch Printing v. Lias* (1994), 68 Ohio St. 3d 497, paragraph one of the syllabus (providing for summary denial of facially meritless closure motions).

[3] *State ex rel. Dispatch Printing Co. v. Louden*, 91 Ohio St. 3d 91, 65, 2001-Ohio-268. *Accord*: 23 CJS, *Criminal Law* § 1552.

[4] *See, e.g., Cable News Network, Inc. v. American Broadcasting Companies, Inc.* (N.D. Ga. 1981), 518 F.Supp. 1238 (representatives of television news media organizations could not constitutionally be excluded from White House events that representatives of print media were permitted to attend).

rare occasion after a determination that in no other way can justice be served."[5] This observation flows directly from the Court's "conclu[sion] that the rationale underlying the public right of access in criminal trials pertains, with minor exceptions, to juvenile court proceedings."[6]

Because the remedy of courtroom closure is extraordinary, the party seeking closure bears the burden of proving that it is required, and falls within the narrow exceptions to the general constitutional requirement of openness.[7] Indeed, the Ohio Supreme Court has held that unless the party seeking closure demonstrates by convincing evidence that established grounds for closure have been shown, "the juvenile court cannot close the proceedings."[8]

The established grounds require the party seeking closure to produce evidence establishing three distinct factual points:

(1) there exists a reasonable and substantial basis for believing that public access could harm the child or endanger the fairness of the adjudication,

(2) the potential for harm outweighs the benefits of public access, and

(3) that there are no reasonable alternatives to closure.[9]

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[5] *Lias, supra*, 68 Ohio St. 3d at 503-04 [emphasis in original](internal quotations and cites omitted).

[6] *Id.*, 68 Ohio St. 3d at 502, citing *In re T.R.* (1990), 52 Ohio St. 3d 6, and *Richmond Newspapers, Inc. v. Virginia* (1980), 448 U.S. 555, 567.

[7] *State ex Rel. Plain Dealer Publishing Company v. Geauga County Court of Common Pleas, Juvenile Division* (2000), 90 Ohio St. 3d 79, 85-86.

[8] *Id.* (Emphasis supplied.)

[9] *State ex rel. Plain Dealer Publishing Co. v. Floyd, supra*, 111 Ohio St. 3d 56, 2006-Ohio-4437, ¶ 27, *quoting Geauga County Court of Common Pleas, supra*, 90 Ohio St. 3d 79, 85.

Unless the party seeking closure establishes, by competent evidence, each of these criteria, "a closure order is not justified."[10]

The first two prongs of this test have been settled law since 1990, when the Supreme Court decided *In re T.R.*.[11] But the Supreme Court's emphasis on the importance of the third factor was the result of a tragedy that occurred in the aftermath of that decision. Specifically, the father of the juvenile in *In re T.R.* was shot to death by the mother one week after the juvenile court made a custody award after a closed hearing.[12]

When called upon to revisit the issue of closure of a juvenile-court hearing, the Supreme Court recalculated the balance between the interests of protecting the welfare of the child, on the one hand, and, on the other hand, the important interest of public access to juvenile proceedings:

> We remain cognizant that care must be taken to protect the best interests of children in certain legal matters but, conversely, we are also aware that excessive secrecy is in itself dangerous. Courtroom secrecy can very well lead to festering emotions resulting in tragedy.[13]

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[10] *Id.*

[11] *In re T.R.*, *supra*, 52 Ohio St. 3d 6, paragraph 3 of the syllabus.

[12] See Columbus Dispatch, August 29, 1990 "With dad dead, Tessa Reams is parentless again", "Judge's decision detailed," and "Unfolding of a Tragedy"

[13] *State, ex rel. Dispatch Printing Co. v. Lias, supra,* 68 Ohio St. 3d at 503-04. The same point has been made more generally by the United States Supreme Court:

> When a shocking crime occurs, a community reaction of outrage and public protest often follows. [Citation omitted.] Thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. **** Civilized societies withdraw both from the victim and the vigilante the enforcement of criminal laws, but they cannot erase from people's consciousness the fundamental, natural yearning to see justice done – or even the urge for retribution. The crucial prophylactic aspects of the administration of justice cannot function in the dark ***. It is not enough to say that results alone will satiate the natural community desire for "satisfaction." A result considered untoward may undermine public confidence, and where the trial has been

(continued...)

This observation led the Ohio Supreme Court to place great emphasis on the rule of law that "any restriction shielding court proceedings from public scrutiny should be narrowly tailored to serve the competing interests of protecting the welfare of the child or children and of not unduly burdening the public's right of access.[14] And as a result, the Court ruled, "the exclusion of the public should be applied sparingly."[15] That is, as noted above, Ohio law permits closure "only on a rare occasion after a determination that in no other way can justice be served."[16]

Thus, at the closure hearing, counsel for the juvenile bears the formidable burden of establishing – not by speculation or argument, but by competent, concrete evidence – that each of the three requirements the Supreme Court has identified are met. In the absence of such a convincing and comprehensive showing, the effort to close the hearing must fail.

The burden is especially high – if it is surmountable at all – where, as here, the movant seeks closure solely to prevent publicity of the hearing.[17] The Supreme Court has addressed precisely this

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[13](...continued)
concealed from public view an unexpected outcome can cause a reaction that the system at best has failed and at worst has been corrupted.

Richmond Newspapers, Inc. v. Virginia (1980), 448 U.S. 555, 571 (plurality opinion).

[14] *Lias, supra,* 68 Ohio St. 3d at 503-04. citing *State ex rel. The Cincinnati Post v. Second Dist. Court of Appeals* (1992), 65 Ohio St.3d 378, 381 (emphasis in original).

[15] *Id,* quoting State v. Lane (1979), 60 Ohio St. 2d 112, 121.

[16] *State, ex rel. Dispatch Printing Co. v. Lias, supra,* 68 Ohio St. 3d at 503-04 (emphasis in original).

[17] While the motion itself says that it is grounded solely on concerns that publicity will "taint" the jury pool, movant's argument suggests an additional concern that his safety will somehow be impaired if his name is widely publicized. *See Motion*, p. 4. That concern is unfathomable, however, in view of the fact that – as the motion itself recites – the story, including movant's name, has already been widely published on a national basis. *See id.*, p. 3 & exhibit 1.

issue, reversing a closure order while expressing the utmost skepticism about such grounds for closure:

> Closing the courthouse doors and excluding the press and the public, if it is ever to be justified solely to prevent possible publicity, should be a matter of strictest necessity, for free access to the traditionally public proceedings of our courts and tribunals is too fundamental a value to be sacrificed if an alternative exists.[18]

As to the specifics requirements for closure, nothing in movant's motion suggests that he can meet the requirements for such an order. As to the first, the mere fact of pre-trial publicity – even extensive publicity – is not enough to "taint" a jury pool or otherwise imperil the fairness of an impending trial.[19] As to the second (the balance of the potential harm against the damage to the public interest from closure), the Court's function is **not** to trade one set of rights off against the other; it is, rather, to reach a result that fully serves both.[20] Which is, of course, the function of the third requirement: a showing that closure is the **only** available means to protect the movant's fair-trial rights. In this case, as in every other case where fair-trial rights have been advanced as the basis for a closure request, the answer remains the same: no closure is permissible unless it is clearly shown that the constitutional right to a fair trial cannot be protected "by the traditional methods of voir dire, continuances, changes of venue, jury instructions or sequestration of the jury."[21]

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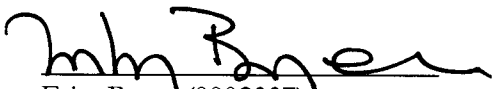
[18] *State ex rel Dispatch Printing Co. v. Louden* (2001), 91 Ohio St. 3d 61, 65, quoting *State ex rel Dayton Newspapers, Inc. v. Phillips* (1976), 46 Ohio St. 2d 457, 477

[19] *State ex rel Toledo Blade Co. v. Henry County Court of Common Pleas*, 125 Ohio St. 3d 149, 2010-Ohio-1533, ¶ 39 ("Pre-trial publicity – even pervasive, adverse publicity – does not inevitably lead to an unfair trial"). *See, e.g., State v. McKnight*, 107 Ohio St. 3d 101, 2005-Ohio-6046 (death-penalty case in which every member of the seated jury had some pretrial knowledge of the case, and one juror "leaned toward" an opinion on the merits; *held*: publicity did not deprive defendant of fair trial).

[20] *Henry County Court of Common Pleas, supra*, 2010-Ohio-1533 at ¶ 37.

[21] *Id.*, 2010-Ohio-1533 at ¶ 30, *quoting State ex rel. Beacon Journal Publishing Co. v. Kainrad* (1976), 46 Ohio St.2d 349, syllabus.

The United States Supreme Court and the Supreme Court of Ohio have established beyond question that the closure of court proceedings is not the means by which the fair-trial rights of adult and juvenile defendants are to be secured. On its face, the present motion for closure fails and should be denied.[22] But if the court proceeds to hearing, movant faces the enormous burden of meeting the well-settled test for closure. Nothing about the motion, or the surrounding circumstances, even remotely suggests that the movant can meet this burden.



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[22] *State ex rel Dispatch Printing v. Lias, supra,* 68 Ohio St. 497, paragraph one of the syllabus (providing for summary denial of facially meritless closure motions).

Certificate of Service

This will certify that a true and correct copy of the foregoing Opposition was served by fax and by ordinary U.S. Mail, postage prepaid, on the following counsel of record this 26th day of June, 2013:

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