

Federal Judge Conducts Entire Trial Behind Closed

Digital Media and Data Privacy Law Blog

on 08.10.2009

Posted in Access to Court Dockets

In a stunning move of questionable constitutionality, a federal court in late July conducted an entire two-day trial behind closed doors, with no access to the public or media “from the swearing in of the first witness through closing arguments.” As the Reporters Committee for Freedom of the Press reported, even the judge’s ruling was filed under seal.

The highly unusual move came in a trial involving a civil suit filed against the federal government by the family of a Jewish Defense League activist Earl Krugel who was beaten to death by white supremacists while in federal custody. Though United States District Court Judge Stephen Wilson has not explained his decision on the record (that was sealed as well), according to the *Los Angeles Times*, a clerk for the Central District of California judge said the closure was required because the case involved “testimony that concerned confidential ways prison officials identify gang members, especially the Aryan Brotherhood, which is a very dangerous gang.”

Last week, a coalition of media organization, including the *Times*, filed a motion to intervene and to unseal the trial transcript and other related records. The motion to intervene was granted three days later, and the judge requested briefing on the motion to unseal.

In their motion, the media intervenors point to a long line of Supreme Court authorities affirming that the public and the press enjoy a presumptive right of access to civil trials and court records. Any order abrogating that presumptive right must be based on “compelling reasons,” laid out on the record in specific findings of fact. The judge must determine specifically that the sealing of court records or closing of court proceedings is “essential to preserve higher values and is narrowly tailored to serve that interest.”

As the intervenors point out in their motion, it is exceedingly difficult to understand what the compelling reasons for secrecy are or whether the order is indeed narrowly tailored when *everything in the case is under seal*, including the government’s request for closure. In any case, intervenors pointed out to the court that any supposed security concerns are undermined by the fact that “a description of the relevant parts of the Bureau of Prison’s Program Statement” and other documents relevant to classifying inmates were contained in the court’s previous order ruling on the government’s motion to dismiss. In his order granting the media groups’ motion to intervene, the judge expressed particular interest in briefing on this possible waiver of any security claims.

Federal Judge Conducts Entire Trial Behind Closed Doors

We will let you know of any developments in this troubling case, including any rulings on the motion to unseal.