

A defendant was on trial for a highly publicized capital murder in a federal district court. The court issued an order that prohibited public attendance during voir dire to protect the prospective jurors' privacy, especially concerning sensitive issues. The court issued findings on the record and concluded that public attendance during voir dire would prevent the prospective jurors from answering sensitive questions without suffering personal embarrassment.

Several television networks that are televising the trial have challenged the order, arguing that it is unconstitutional.

Is the court's order likely constitutional?

- A. No, because the First Amendment guarantees the press and the public the right to attend criminal trials.
- B. No, because there are less restrictive means to protect the privacy of the prospective jurors.
- C. Yes, because the court has an interest in protecting prospective jurors from personal embarrassment.
- D. Yes, because the court-issued findings on the record warranted closing the proceedings to the public.

## Explanation:

The **First Amendment** generally guarantees the press and the public the **right to attend** every stage of a **criminal trial**, including voir dire.\* However, this right is not absolute, and a court can order that trial proceedings be closed if the court's findings on the record demonstrate that the closure satisfies **strict scrutiny (Choice A)**. This requires the court to show that the closure is the **least restrictive means** to serve a **compelling government interest**.

Here, the court prohibited the public from attending voir dire in the defendant's murder trial to protect the prospective jurors from personal embarrassment. This promotes the compelling interests of encouraging the prospective jurors to speak frankly about sensitive issues and protecting their privacy—but less restrictive means were available to serve these interests **(Choice C)**. For example, the court could have allowed prospective jurors to answer any sensitive questions outside the presence of the public. Therefore, the order is likely unconstitutional.

\*The Supreme Court has not conclusively ruled whether the First Amendment guarantees the press and the public the right to attend civil trials.

**(Choice D)** The court-issued findings on the record did *not* warrant closing the proceedings to the public because these findings did not demonstrate that the closure was the least restrictive means to protect the prospective jurors' privacy.

## Educational objective:

The First Amendment generally guarantees the press and the public the right to attend criminal trials. However, criminal trial proceedings may be closed when the court demonstrates that the closure satisfies strict scrutiny—ie, that it is the least restrictive means to serve a compelling government interest.

## References

- Press-Enter. Co. v. Super. Ct. of Cal., 464 U.S. 501, 511 (1984) (holding that closing all voir dire proceedings in a criminal trial to the public and press is unconstitutional).

## Right to open courtroom

