

Clearing the courtroom – Closed circuit television



Know Your Rights
by Atty. Jay C. Howell

One of our Florida laws provides for a partial closure of a criminal trial courtroom when a person under the age of 16 or a person suffering from mental retardation is testifying concerning any sexual offense. The same law also provides for partial closure of the courtroom upon the request of the victim, regardless of the age or mental capacity. Where there is a partial closure, the law allows the parties to the case and their families, attorneys and their employees, reporters, court reporters, and

victim advocates to remain. Everybody else must leave the courtroom.

In a recent Miami case, the defendant was convicted for the crime of sexual battery on a minor child and lewd and lascivious molestation of a child under 12 years of age. The Assistant State Attorney prosecuting the case moved for a partial closure of the courtroom during the child's testimony, arguing that it would reduce the trauma and intimidation of a full courtroom. The trial judge granted the State's motion; however, the court, on its own initiative, ordered that a television monitor be set up outside the courtroom. Those who were required to leave the courtroom during the child's

testimony were able to see and hear contemporaneously by television link.

The jury found the defendant guilty. He appealed the judge's decision saying that it violated his right to have a public trial. The secret word is security.

The history of the law on this issue was outlined by the appellate court in its decision. Since both the Sixth Amendment to the Constitution and a section of the Florida Constitution provide the accused with the right to a public trial, any denial of that right is necessitated by what the law calls a compelling governmental interest. There are specific prerequisites that must be satisfied before the courtroom can be partially enclosed. The closure must be no broader than necessary to protect the victim and the

trial court must consider reasonable alternatives to closing the proceedings.

The appeals court emphasized that the trial judge decided that the 11-year-old victim would find the proceedings less traumatic and speak more freely in front of a small audience rather than a large one. It was not necessary that expert testimony be received from a physician or psychologist before the judge could make such a finding. Since the excluded persons in this case were able to see and hear the victim's testimony contemporaneously by a television link to the courtroom, the appeals court ruled that the courtroom was not in fact closed, but simply extended by the television link beyond the confines of the physical room. Accordingly, neither the defendant's right to an open and public trial nor his

right to confrontation was compromised by the steps that the trial court took.

Finally, the court also ruled that the trial court judge was correct in rejecting an argument by the defendant that three of his relatives be allowed to remain in the courtroom in addition to his immediate family.

The defendant's convictions were affirmed by the appeals court.

This case is *Lena v. State*, decided by the Third District Court of Appeal on December 8, 2004, and can be found in legal publications at 2004 W.L. 2823044.

— Jay Howell, a Jacksonville attorney in the law office of Anderson and Howell, has been a State Prosecutor, a US Senate Investigator and the founder of the National Center for Missing and Exploited Children. He represents crime victims in civil claims for damages and advocates for the legal rights of all victims.



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Hidden in the text of the Victims' Advocate is the **SECRET WORD** for the month of **April**. The rules are simple:

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2. Telephone the Justice Coalition office 783-6312.
3. The first person who telephones the correct Secret Word wins a \$10.00 Gift Certificate to Sonny's Real Pit Barbeque Restaurant.
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