U.S. Department of Justice
Civil Rights Division

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October 25, 2012

Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
San Francisco, CA

Re: *United States* v. *Cazares*, *et al.*, Nos. 06-50677, 06-50678, 06-50679, 07-50037 (argued October 11, 2012) (Judges Pregerson, W. Fletcher, Piersol)

Dear Ms. Dwyer:

At oral argument, the panel directed the parties to submit a letter brief addressing whether this Court's decision in *United States* v. *Withers*, 638 F.3d 1055 (9th Cir. 2011), supports the conclusion that questioning jurors for bias and hardship in a private room, adjacent to the open courtroom, violated defendants' Sixth Amendment right to a public trial and was structural error mandating reversal, even though there was no objection by any of the defendants, their counsel, or members of the public. The government maintains that the defendants' failure to object has waived this claim. U.S. Br. 39-42. Even if not waived, however, plain error review frames the analysis here because of defendants' failure to object. See generally *Johnson* v. *United States*, 520 U.S. 461, 466-467 (1997) (reversal under plain error review requires finding of error, that is "plain" (*i.e.*, "clear" or "obvious"), that "affect[s] substantial rights," and that "seriously

affect[s] the fairness, integrity, or public reputation of judicial proceedings") (citation omitted). Under plain error review, there was no error – let alone clear and obvious error – because the challenged method of questioning was akin to the common and widely accepted practice of privately conducting portions of voir dire at sidebar, and therefore did not constitute the kind of total closure of the courtroom that may result in a violation of the right to a public trial. And even if there was clear error, the type and degree of any infringement of the right to a public trial was insufficient to rise to the level of structural error, to violate defendants' substantial rights, or to affect the fairness and integrity of the judicial proceedings, and therefore does not warrant reversal under plain error. See *Puckett* v. *United States*, 556 U.S. 129, 140 (2009) (declining to resolve whether "structural" errors "automatically satisfy the third-prong of the plain error test"); *Johnson*, 520 U.S. at 468-470 (addressing requirements for reversal under plain error, even where claimed error is purportedly structural).

A. The District Court's Questioning Of Prospective Jurors In Private Did Not Violate Defendants' Public-Trial Right, Much Less Constitute Clear And Obvious Error

In *Withers*, this Court recognized that a district court may violate a defendant's public- trial right when it "*totally closes* the courtroom to the public, for a non-trivial duration." 638 F.3d at 1063-1064 (emphasis added) (finding potential violation because "district court closed the courtroom by ordering the

public out before conducting voir dire"). Other cases holding that a defendants' right to a public trial has been violated similarly involve total closure of the courtroom. See, *e.g.*, *Presley* v. *Georgia*, 558 U.S. 209 (2010) (closure of courtroom for voir dire over defendant's objection violated right to public trial); *Waller* v. *Georgia*, 467 U.S. 39, 41-43 (1984) (total closure of seven-day suppression hearing violated right to public trial); *United States* v. *Agosta-Vega*, 617 F.3d 541, 544, 547-548 (1st Cir. 2010) ("total barring of the public" during the "entire jury selection process" was structural error); cf. *United States* v. *Ivester*, 316 F.3d 955, 959-960 (9th Cir. 2003) (not all closures violate Sixth Amendment); *United States* v. *Sherlock*, 962 F.2d 1349, 1356-1357 (9th Cir. 1992) (distinguishing between total and partial closures).

Here, the district court's method of questioning did not result in a total closure of the courtroom that would constitute a violation of defendants' public-trial right under *Withers*. To the contrary, the court's procedures preserved the public's ability to observe and monitor the overall voir dire process: (1) the public was not ordered out of the courtroom, and the courtroom itself was never closed to the public; (2) the court indicated in open court that hardship and bias voir dire would be conducted in an adjacent room rather than at sidebar and made the public aware of the procedures that would be used in the adjacent room; (3) the public could see individual jurors go into the adjacent room with counsel for questioning

and return; (4) the public was otherwise able to observe the six-day voir dire process in the open courtroom, including some individual questioning and the exercise of peremptory challenges; and (5) the hardship and voir dire questioning was transcribed by a court reporter and made public. See generally U.S. Br. 41-42 & n.12.

Indeed, this Court has repeatedly recognized that portions of voir dire may be conducted at sidebar, in chambers, or in a separate room. See, *e.g.*, *Ivester*, 316 F.3d at 959 (trial judge may question a juror in chambers without the public present); *United States* v. *Jackson*, 13 F. App'x 581, 583 (9th Cir. 2001) (noting "side-bar voir dire during jury selection"); *United States* v. *Sherwood*, 98 F.3d 402, 407 (9th Cir. 1996) (attorney-conducted voir dire at sidebar); *United States* v. *McClendon*, 782 F.2d 785, 787-789 (9th Cir. 1986) (hardship voir dire conducted in chambers); *United States* v. *Rewald*, 889 F.2d 836, 864 (9th Cir. 1989) (individual voir dire of jurors possibly exposed to newspaper article conducted in chambers); see also *United States* v. *Johnson*, 677 F.3d 138, 141 (3d Cir. 2012) (court "followed the customary procedure of questioning prospective jurors first in open court and later individually at sidebar."); *Bland* v. *Sirmons*, 459 F.3d 999, 1020 (10th Cir. 2006) (court "conducted a limited *voir dire* of thirty-two individual jurors in chambers"); *United States* v. *Riddle*, 249 F.3d 529, 533-535 (6th Cir.

2001) (after striking 66 jurors for cause, "the court began individually questioning the remaining jurors in chambers, one by one, with defense counsel present").

Moreover, the Benchbook for U.S. District Court Judges expressly recommends that some voir dire be held privately at sidebar. It states that, after the "initial in-depth voir dire of the entire panel," if "there are affirmative responses to any questions, follow-up questions will be addressed to the jurors (at side-bar, if such questions concern private or potentially embarrassing matters)." Benchbook for U.S. District Court Judges, § 2.06, p. 97 (5th ed. 2007) (relevant pages attached). Similarly, a Ninth Circuit Manual on Jury Trial Procedures notes that although "[g]enerally, a court may not close criminal voir dire to the public," where "there are legitimate privacy concerns judges should generally inform the potential jurors of the general nature of the sensitive questions to be asked and allow individual jurors to make affirmative requests to proceed at sidebar or *in chambers*." A Manual on Jury Trial Procedures, § 2.3, p. 38 (2004 ed.) (Jury Instructions Committee of the Ninth Circuit) (emphasis added) (relevant pages attached); see also *id.* at § 1.6C, p. 20 (explaining, in context of defendant's right to be present, that "the court may wish to notify prospective jurors that should a question of the court call for a response that might be the source of embarrassment, the prospective juror may approach the sidebar and answer the question").

Given the widespread and common conduct of portions of voir dire in private at sidebar –where the public cannot hear what is being said (that is the whole point), and likely can only see the backs of the participants – the district court's moving its questioning of jurors from sidebar to an adjacent room did not violate the right to a public trial. With questioning in an adjacent room (as at sidebar), the public can still see individual jurors go into the room (or to the bench) and return, revealing how long such private questioning lasted and any visible reactions by prospective jurors to the questioning. Moreover, whether conducted at sidebar or in an adjacent room, the questioning of the jurors is transcribed and made part of the record for subsequent review by the parties and the public. For these reasons, the Third Circuit has recently stated that "[a]lthough certain portions of the individual voir dire did take place behind 'closed doors,' doing so was the functional equivalent of a sidebar discussion and no more improper than that commonly accepted practice." *United States* v. *Vaghari*, No. 11-2648, 2012 WL 4707063 at *9 (3d Cir. Oct. 4, 2012) (conducting voir dire in robing room did not violate right to public trial where trial judge "did not *close* the courtroom or explicitly exclude any member of the public from observing the voir dire"). Moreover, under circumstances similar to those in this case, the Third Circuit expressly rejected a claim that the court's voir dire procedures resulted in an improper closure of the courtroom. In *United States* v. *Bansal*, 663 F.3d 634, 660-

661 (3d Cir. 2011), the trial court, after screening potential jurors in open court, "individually questioned [jurors] about more sensitive subjects – in the presence of the defendants and attorneys for both sides – *in a closed jury room adjacent to the courtroom*." (emphasis added). The Third Circuit rejected the claim that this violated the defendants' public-trial right, explaining: (1) given the lack of objection, "this is classic sandbagging of the trial judge"; (2) neither the press nor the public requested access to the closed jury-room; and (3) "the entire jury selection process was transcribed and recorded; nothing was sealed or concealed from the public view." *Id.* at 661; see also *United States* v. *Patton*, Nos. 10-3477, 11-3166, 2012 WL 5200568 (3d Cir. Oct. 23, 2012).

Accordingly, defendants' public-trial rights were not violated by the limited, private questioning of potential jurors that occurred here during the otherwise publicly-conducted voir dire proceedings.

But even if this Court were to conclude that conducting portions of voir dire in a room adjacent to the open courtroom infringed defendants' public-trial right, that error was not so clear and obvious under established law to satisfy the plain error standard. *Johnson*, 520 U.S. at 466-467. As we have noted, this Court has repeatedly recognized that portions of voir dire may be conducted at sidebar, in chambers, or in a separate room. See *United States* v. *Lee*, 290 F. App'x 977, 978-979 (9th Cir. 2008) (no plain error where trial court "conducted jury questioning

and peremptory challenges in public, but held for-cause challenges to prospective jurors in chambers"; defendant "cites no case, and we can find none, where closing the courtroom during for-cause challenges alone was deemed to violate the right to a public trial"); *United States* v. *Lii*, 393 F. App'x 498, 501 (9th Cir. 2010) (questioning jurors at sidebar not plain error). This Court has also noted that there can be no clear and obvious error where at least one other circuit has found no such error. *United States* v. *Greer*, 640 F.3d 1022, 1019 (9th Cir. 2011) (finding, "at the very least," no plain error where no circuit has found such an error and at least one circuit has held that it is not error).

B. The District Court's Questioning Of Prospective Jurors In Private Neither Affected Substantial Rights Nor Seriously Affected The Fairness, Integrity, Or Public Reputation Of Judicial Proceedings

Even if this Court were to conclude that conducting portions of voir dire in a room adjacent to the open courtroom constituted error, and that the error was clear and obvious, reversal would nonetheless be unwarranted because any error would neither affect defendants' substantial rights nor seriously affect the fairness, integrity, or public reputation of the judicial proceedings. See *Johnson*, 520 U.S. at 466-67.

As this Court noted in *Withers*, the denial of the right to a public trial due to complete closure of the courtroom of non-trivial duration during voir dire is structural error. *Withers*, 638 F.3d at 1063 (citing *Waller* v. *Georgia*, 467 U.S. 39,

49-50 (1984)). Structural errors are those that affect the framework within which the trial proceeds, that is, "structural defects in the constitution of the trial mechanism," *Arizona* v. *Fulminante*, 499 U.S. 279, 309 (1991), which "affect the trial from beginning to end," *Rice* v. *Wood*, 77 F.3d 1138, 1141 (9th Cir. 1996) (internal quotation marks omitted). In *Waller*, the Court found structural error based on a violation of the public-trial right where a seven-day suppression hearing was closed to the public, reasoning that an open hearing was necessary to enable the public to see that the defendant "is fairly dealt with," and because, by performing their functions "in an open court rather that in secret proceedings," judges, lawyers, witnesses, and jurors "will perform their respective functions more responsibly." *Waller*, 467 U.S. at 46 & n.4. By logical extension, a jury impaneled from a voir dire process entirely closed to the public constitutes structural error, see *Withers*, 683 F.3d at 1063, because the total closure of voir dire prevents public scrutiny that will ensure that the jury was responsibly questioned and selected and casts doubt on whether the defendant will be fairly dealt with throughout the trial by such a clandestinely procured jury. See *Agosta-Vega*, 617 F.3d at 544, 547 ("total barring of the public" during "entire jury selection process" was structural error).

By contrast, the voir dire procedures in this case did not impinge on the central purpose of the public-trial right – permitting public scrutiny of the jury's

selection. For the reasons discussed above, the court's procedures maintained the public's ability to observe and monitor the overall process of jury selection, and thus did not result in structural error of the type contemplated by *Withers*. Therefore, even if this Court concludes that *any* private questioning of a prospective juror conducted outside the courtroom (as opposed to at sidebar) constitutes error because it affects the public-trial right, the private questioning of prospective jurors that occurred in this case would not rise to the level of structural error because it could not have undermined the fairness of the trial proceedings in the same way as a complete closure of the voir dire process. In other words, the limited degree to which the claimed error affected defendants' public-trial right does not warrant a finding of structural error. Cf. *Mickens* v. *Taylor*, 535 U.S. 162 (2001) (noting, with respect to Sixth Amendment right to counsel, that a complete denial of counsel is structural error, whereas a counsel with a conflict of interest is reviewed for harmlessness).

Because any error, even if clear and obvious, was not structural, there is no basis for a finding that the limited private questioning of jurors affected defendants' substantial rights. Defendants have made no showing that the outcome of the proceedings would have been different if the bias and hardship voir dire had been conducted in open court, nor have they even suggested how the voir dire procedures in any way impacted the composition or fairness of the jury that was

impaneled.[1] For these same reasons, the fairness and integrity of the judicial proceedings were not substantially affected such that this Court should exercise its discretion to correct any public-trial right violation by reversing the defendants' convictions on plain error review.

[1] Even if this Court views the district court's voir dire process as structural error, it would not necessarily "automatically satisfy" defendants' obligation to show that their substantial rights were affected. *See United States* v. *Marcus*, 130 S. Ct. 2159, 2164 (2010) (Court has repeatedly reserved the question of whether structural errors automatically satisfy third prong of plain error test).

* * * *

In sum, *Withers* does not support defendants' claim that the district court's voir dire process violated their public-trial right. To the contrary, *Withers* is consistent with the holdings of other cases that limited, private questioning of prospective jurors falls far short of the type of Sixth Amendment public-trial right violation, namely, "totally closing" the voir dire process, that might justify relief, much less reversal under plain error review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2012, I electronically filed the foregoing Letter Brief for the United States as Appellee with the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Thomas E. Chandler
THOMAS E. CHANDLER
Attorney

ATTACHMENTS

ATTACHMENT A

Benchbook

for U.S. District Court Judges

FIFTH EDITION

Federal Judicial Center
September 2007

2.06 Standard voir dire questions—criminal

[*Note:* Under the Crime Victims' Rights Act, 18 U.S.C. § 3771(a)(2) and (3), any victim of the offense has the right to notice of "any public court proceeding . . . involving the crime . . . of the accused," and to attend that proceeding. It may be advisable to ask the prosecutor if there are any victims and, if so, whether the government has fulfilled its duty to notify them.]

A. The following outline for an initial in-depth voir dire examination of the entire panel by the court assumes that
   1. if there are affirmative responses to any questions, follow-up questions will be addressed to the juror(s) (at sidebar, if such questions concern private or potentially embarrassing matters); and
   2. the court and counsel have been furnished with the name, address, age, and occupation of each prospective juror.

B. If the court conducts the entire examination, it should require counsel to submit proposed voir dire questions before trial to permit the court to incorporate additional questions at the appropriate places in this outline.
   1. Have the jury panel sworn.
   2. Explain to the jury panel that the purpose of the voir dire examination is
      (a) to enable the court to determine whether any prospective juror should be excused for cause; and
      (b) to enable counsel for the parties to exercise their individual judgment with respect to peremptory challenges—that is, challenges for which no reason need be given.
   3. Explain to prospective jurors that presenting the evidence is expected to take ___ days, and ask if this presents a special problem for any of them.
   4. Read or summarize the indictment.

NOTE

Fed. R. Crim P. 24(a)(1) provides that the court "may examine prospective jurors or may permit the attorneys for the parties to do so."

5. Ask if any member of the panel has heard or read anything about the case.
6. Ask counsel for the government to introduce himself or herself and counsel associated with the trial, as well as all the witnesses who will testify in the government's presentation of its case in chief. Ask if the jurors
   (a) know any of these persons;
   (b) had any business dealings with them or were represented by them or members of their firms; and
   (c) had any other similar relationship or business connection with any of them.
7. Ask counsel for each defendant to introduce himself or herself and indicate any witnesses that the defendant may choose to call. Ask if the jurors
   (a) know any of these persons;
   (b) had any business dealings with them or were represented by them or members of their firms; and
   (c) had any other similar relationship or business connection with any of them.
8. Ask prospective jurors:
   (a) Have you ever served as a juror in a criminal or civil case or as a member of a grand jury in either a federal or state court?
   (b) Have you, any member of your family, or any close friend ever been employed by a law enforcement agency?
   (c) If you answer yes to [either of] the following question[s], or if you do not understand the question[s], please come forward, be seated in the well of the courtroom, and be prepared to discuss your answer with the court and counsel at the bench.
      (1) Have you ever been involved, in any court, in a criminal matter that concerned yourself, any member of your family, or a close friend either as a defendant, a witness, or a victim?

(2) [Only if the charged crime relates to illegal drugs or narcotics, ask:]

Have you had any experience involving yourself, any member of your family, or any close friend that relates to the use or possession of illegal drugs or narcotics?

(d) If you are selected to sit on this case, will you be able to render a verdict solely on the evidence presented at the trial and in the context of the law as I will give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have encountered in reaching your verdict?

(e) Is there any member of the panel who has any special disability or problem that would make serving as a member of this jury difficult or impossible?

[At this point, if the court is conducting the entire examination, it should ask those questions suggested by counsel that in the opinion of the court are appropriate.]

(f) Having heard the questions put to you by the court, does any other reason suggest itself to you as to why you could not sit on this jury and render a fair verdict based on the evidence presented to you and in the context of the court's instructions to you on the law?

9. If appropriate, permit counsel to conduct additional direct voir dire examination, subject to such time and subject matter limitations as the court deems proper, or state to counsel that if there are additional questions that should have been asked or were overlooked, counsel may approach the bench and discuss them with the court.

ATTACHMENT B

A Manual on Jury Trial Procedures

2004 Edition

Prepared by the
Jury Instructions Committee
of the Ninth Circuit

B. Pretrial Conference

A defendant is not required to be present at a pretrial conference concerning legal issues. *United States v. Veatch*, 674 F.2d 1217, 1225-26 (9th Cir. 1981), *cert denied*, 456 U.S. 946 (1982); Rule 43(b)(3), Fed. R. Crim. P.

C. Voir Dire—Sidebar Conferences with Prospective Juror

At the outset of the voir dire process, the court may wish to notify prospective jurors that should a question of the court call for a response that might be a source of embarrassment, the prospective juror may approach the sidebar and answer the question. This procedure is especially helpful when questioning about arrests, convictions, involvement with drugs and/or other life experiences involving the jurors and/or their families.

The trial judge has several options available to guarantee that the defendant is appropriately apprised of any discussions with potential jurors which may occur outside the presence of the jury panel in open court.

1. *Sidebar Conferences During Voir Dire.* One option available to the trial judge is to speak with the prospective juror at a sidebar conference attended by respective counsel. Because of the close proximity of the defendant, this procedure has been upheld by other circuits. *See, e.g., United States v. Dioguardi*, 428 F.2d 1033 (2d Cir.) (sidebar conference at which prospective juror was questioned and from which defendants were excluded permissible in light of close proximity of defendants and opportunity of counsel to confer with defendants), *cert. denied*, 400 U.S. 825 (1970). *Cf. United States v. Alessandrello,* 637 F.2d 131 (3d Cir. 1980) (questioning of prospective jurors concerning pretrial publicity in judge's anteroom from which defendants were excluded permissible in light of close proximity of defendants and opportunity of counsel to confer), *cert. denied*, 451 U.S. 949 (1981). Some courts have found that any error in conducting a portion of voir dire at sidebar is harmless under certain circumstances. *See*, *e.g.*, *United States v. Feliciano*, 223 F.3d

102, 112 (2d Cir. 2000) (error in conducting limited voir dire at sidebar was harmless where the defendants were present in the courtroom and could consult with counsel about what was revealed at sidebar), *cert. denied*, 532 U.S. 943 (2001); *United States v. Cuchet*, 197 F.3d 1318, 1321 (11th Cir. 1999) (error for conducting voir dire at sidebar was harmless where the defendant was present during general voir dire, sidebar voir dire concerned only limited topics, and defense counsel could question each prospective juror and confer with the defendant afterwards). The Ninth Circuit has stated that "[a]lthough a defendant charged with a felony has a fundamental right to be present during voir dire, this right may be waived." *See United States v. Sherwood*, 98 F.3d 402, 407 (9th Cir. 1996). Waiver may be effected by the defendant's "failing to indicate to the district court that he wished to be present at sidebar." *Id. See also, United States v. McClendon*, 782 F.2d 785, 788 (9th Cir. 1986) (defendant waived his right to be present where he knew of in-chambers voir dire but failed to object).

2. *Sidebar Conference with Interpreter Present*. In cases in which the defendant requires the services of an interpreter and headphones are being used for translation, the court may request that the certified court interpreter attend individual voir dire being conducted at a sidebar conference and transmit the conference to a defendant seated at counsel table.

3. *Sidebar Conference with Defendant*. Generally, it is not desirable to invite the defendant to personally attend bench conferences at which individual prospective jurors are questioned because: (1) prospective jurors may experience discomfort being in such close proximity to the defendant, and (2) when a defendant is in custody, security considerations may require that a guard accompany the defendant to the sidebar conference, which would alert the jury to the fact that the defendant is in custody.

4. *Other Options*. Problems associated with sidebar voir dire proceedings may be avoided if the court conducts examination in open court with the panel excluded or obtains a waiver from the defendant of the right to be present at sidebar conferences.

2.2 Voir Dire Regarding Pretrial Publicity

A suggested procedure for conducting examination of prospective jurors regarding pretrial publicity is as follows:

1. The scope and detail of the court's voir dire on pretrial publicity is dictated by the level of such publicity. In cases involving little pretrial publicity, general questions addressed to the entire panel followed by individual questioning of those who respond affirmatively is sufficient when few prospective jurors have knowledge about the case. *United States v. Baker,* 10 F.3d 1374, 1403 (9th Cir. 1993), *cert. denied,* 513 U.S. 934 (1994), *overruled on other grounds by United States v. Nordby*, 225 F.3d 1053 (9th Cir. 2000); *United States v. Giese*, 597 F.2d 1170, 1183 (9th Cir.), *cert. denied,* 444 U.S. 979 (1979).

2. In circumstances where pretrial publicity has been great, the trial judge must conduct a careful individual voir dire of each prospective juror, preferably out of the presence of the other members of the panel. A general question addressed to the panel as a whole is inadequate. The jurors' subjective assessment of their impartiality is insufficient. *Giese*, 597 F.2d at 1183; *Silverthorne v. United States*, 400 F.2d 627, 635-640 (9th Cir. 1968). Questions concerning the content of the pretrial publicity to which the prospective juror has been exposed might be helpful to trial judges in assessing impartiality, but the failure to make this specific inquiry does not deny a defendant his right to an impartial jury or to due process. *Mu'Min v. Virginia*, 500 U.S. 415, 431 (1991).

3. Inquire of the entire panel if any venireperson has heard anything about the case. Indicate that the venirepersons are to respond only by stating "yes" or raising their hands so the response can be recorded. After the response is recorded, ask the venirepersons if any of them have heard anything about the case through a medium other than radio, television, or newspapers. After that response is recorded, ask those who responded affirmatively if they have already formed an opinion

about the case. If they respond in the affirmative, ask them if they feel they can set that opinion aside and judge the case solely on the basis of the evidence presented during the trial. At that point, the judge will have narrowed the issues to be discussed with the respective jurors during individual voir dire.

4. The court should caution prospective jurors not to disclose the substance of any pretrial publicity to which they have been exposed. If only one or two prospective jurors answer affirmatively to the questions about publicity, then consider questioning those individuals at sidebar. If a substantial number of prospective jurors answered the questions affirmatively or indicated familiarity with the case, then the judge may wish to consider bringing each of the prospective jurors into the courtroom outside the presence of the rest of the panel or into a separate room designated for that purpose, such as the jury room, at which time the prospective jurors can be examined individually.

5. At the time the judge examines each venireperson individually, caution that juror not to discuss the questions or responses given to the questions with any of the other prospective jurors.

2.3 Closed Voir Dire

Generally, a court may not close criminal voir dire to the public. *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) ("*Press-Enterprise I*"). Courts may consider the right of the defendant to a fair trial and the right to privacy of prospective jurors in determining whether or not to close voir dire proceedings. In order to close the proceedings, a court must make specific findings that an open proceeding would threaten those interests and less restrictive alternatives to closure are inadequate. *Id.* at 510-11 (stating that the "presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest."). Where there are legitimate privacy concerns judges should generally inform the potential jurors of the general nature of sensitive questions to be asked and allow individual jurors to make affirmative requests to proceed at sidebar or in chambers. *Id.* at 512. As to criminal cases, *see also* 1.6.C. Before a closure order is entered, members of the press and the public must be afforded notice and an opportunity to object to the closure. *Unabom Trial Media Coalition v. United States Dist. Court*, 183 F.3d 949, 951 (9th Cir. 1999); *United States v. Brooklier*, 685 F.2d 1162, 1167-68 (9th Cir. 1982).