

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. ANÍBAL ACEVEDO VILÁ, et al., Defendants.	CRIMINAL NO. 08-00036 (PJB)
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MOTION TO REQUEST ORAL ARGUMENT AND RECONSIDERATION

TO THE HONORABLE COURT:

Comes now the undersigned attorney, Oscar J. Serrano, on behalf of Asociación de Periodistas de Puerto Rico (Asppro), Overseas Press Club (OPC), Luis Guardiola, and Manuel E. Rivera, to respectfully state and pray:

1. Asppro and OPC are bona fide representatives of the press in Puerto Rico. Mr. Guardiola and Mr. Rivera are two of the reporters who have represented the press during the voir dire process in the captioned case under a pool arrangement provided for by this Court.
2. After almost two days of voir dire, which the press has covered under the pool arrangement, attorneys for defendant Aníbal Acevedo Vilá and the government have suddenly and without pointing to "specific, on the record findings" [*Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984)] solicited to bar the press and public from witnessing the remainder of the proceedings. After noting its "unusual" nature, this Honorable Court has granted the motion.
3. The moving parties submitted three arguments to support their motion to close: that if a potential juror's expressions in court are published, the jury pool might be contaminated; that the presence of press and public might cause potential jurors to lie about their political preferences; and that the presence of press and public might compromise potential juror's identities before they are sequestered. They have tried to bolster their argument by pointing abstractly to some local "tradition" as to voir dres.
4. A clear line of Supreme Court cases sustain that it is unconstitutional to restrict access to voir dire proceedings and that "the right to an open public trial is a shared right of the accused and the public". *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1 (1986).
5. The Supreme Court has provided that the party who moves for restricting access has to point to "specific, on-the-record findings" that demonstrate that the closure is "necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." These cases indicate judges should hold a hearing on the need for secrecy and listen to the media's position on the issue. See also *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980) (criminal trials); *Globe Newspaper Co. v. Superior Court*,

457 U.S. 596 (1982) (criminal trials); *In re Washington Post Co.*, 807 F.2d 383 (4th Cir. 1986) (sentencing hearings).

6. The above named parties respectfully solicit this Court to reconsider its February 10, 2009 order after taking into consideration the following points which were not before the Court at the time of the parties' joint motion.

7. Neither the United States nor the defendants have provided the kind of specific, bedrock findings that the Supreme Court requires to defeat the presumption of openness that criminal proceedings have been afforded under the First Amendment.

8. As to the supposed jury pool contamination because of the publication of any hypothetical expression a potential juror might make during the voir dire, the moving parties' reasoning comes down to a very not artful argument of prejudicial publicity. As this Court is aware, there are several methods to deal with the effects of any publicity during a potential second round of jury selection. Closing proceedings is the absolute last recourse. We have to point that, after being indicted, the defendant has repeatedly and voluntarily interacted publicly with potential jurors in front of television cameras and reporters. We find it awkward that he now argues that the almost nonexistent interaction potential jurors might have with the press during the voir dire could infringe his rights.

9. Next we have the parties' fear that the presence of the press might cause potential jurors some fear of disclosing their political preference. The parties are trying to have the Court believe this case exists in a vacuum. Public discussion about this case harkens back to almost three years ago when it was just an inquiry by agents of the Federal Bureau of Investigations. The defendant is a former Governor who participated in last year's elections after being indicted. Before being Governor, he was Resident Commissioner and, before that, a member of the Puerto Rico House of Representative. All in all, he's been an important and recognized leader of a political party for almost 20 years. If anyone's presence in the courtroom will affect a potential juror's proclivity to disclose political affiliation it is his own. No member of the press casts such a loomy presence over the political will of potential jurors.

10. Finally, we address the mind-boggling argument that the presence of the press might somehow lead to the jurors being identified before they are impaneled and sequestered. A jury's sequestration serves to curtail their exposure to public discussion of the case and to foster their deliberations to be based predominantly on what they see and hear in the courtroom. The sequestration process does not exist to guarantee anonymity to jurors. Anonymous juries are a medieval nightmare that do not belong in a judicial system based on openness and transparency. The communities' trust in its legal system is severely threatened when that system is shrouded in anonymity and secrecy. We call on this Court to protect the public's trust in its judicial system.

11. The Court should completely disregard any reference to local "tradition" or "custom". This district has never witnessed the criminal prosecution of a former Governor for acts supposedly committed while in office and under color of official right, so there's no "tradition" or "custom" to fall back on. No other case in this district has the potential to generate the levels of public interest that this case does. And if the Court were to consider any "tradition", it should observe that the courts of the Commonwealth of Puerto Rico conduct open voir dire proceedings.

12. In sum, the parties' arguments in favor of closure fall outside of the scope of the balance the Court must strike when faced with a request to close proceedings that are presumed open under the Constitution of the United States.

13. This Honorable Court's instincts were impeccable when it remarked that the motion to close the voir dire was "unusual". We respectfully pray that this Court realign itself with its instincts and do away with the superficial, and highly speculative string of "ifs" with which the parties pretend to strike at the solid foundations of our basic freedoms. This Court has already tailored narrowly the public's and the press' access to the voir dire. It should not move to fix what is not broken.

WHEREFORE, it is respectfully requested that this Honorable Court reconsider its order to close the remainder of the jury selection process in the above captioned case and allow access to the public and the press in the manner it should see fit.

Respectfully submitted.

In San Juan, Puerto Rico, February 11, 2009.

I HEREBY CERTIFY that on this date, I have filed the foregoing with the Clerk of the Court, and have caused the parties to be personally notified with a courtesy copy of this filing.

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