

**FILED**  
SEP 05 2008  
THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE**

In re the Detention of:	)	
	)	No. 06-2-03843-1
KEVIN COE	)	
	)	MOTION TO CLOSE THE COURTROOM
A/K/A FREDRICK HARLAN COE	)	DURING QUESTIONING OF
	)	INDIVIDUAL JURORS ON THEIR
	)	RESPONSES TO THE JUROR
	)	QUESTIONNAIRE
<u>Respondent.</u>	)	

**INTRODUCTION**

Respondent, Mr. Kevin Coe, by and through his attorney Timothy D. Trageser, requests that the courtroom be closed during individual voir dire. This Court should close the courtroom in order to ensure the privacy of prospective jurors and encourage prospective jurors to answers sensitive voir dire questions in a forthright manner. The courtroom should also be closed because members of the Coe family have a significant privacy interest in not allowing this proceeding to act as a public forum for potential jurors to air all manner of rumors and innuendo that will harm certain members of the the Coe family.

Motion to Close the Courtroom  
During Questioning of Individual  
Jurors on the Responses to the  
Juror Questionnaire

TRAGESER LAW OFFICE, P.S.  
TIMOTHY D. TRAGESER • ATTORNEY AT LAW  
MARLA L. POLIN • ATTORNEY AT LAW  
1425 W. MONTGOMERY  
SPOKANE, WASHINGTON 99205  
(509) 327-3993 • FAX (509) 327-2060

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LAW

1 "In order to protect the accused's constitutional public trial right, a trial court may not close  
2 a courtroom without, first applying and weighing five requirements set forth in *Bone-Club* and,  
3 second, entering specific findings justifying the closure order." *State v. Easterling*, 157 Wn.2d 167,  
4 175, 137 P.3d 825 (2006). The court in *Bone-Club* set forth the five-part analysis required to  
5 determine whether the courtroom can be closed:  
6

7 "1. The proponent of closure or sealing must make some showing [of a compelling  
8 interest], and where that need is based on a right other than an accused's right to a fair trial,  
9 the proponent must show a 'serious and imminent threat' to that right.  
10

11 2. Anyone present when the closure motion is made must be given an  
12 opportunity to object to the closure.

13 3. The proposed method for curtailing open access must be the least restrictive  
14 means available for protecting the threatened interests.

15 4. The court must weigh the competing interests of the proponent of closure  
16 and the public  
17

18 5. The order must be no broader in its application or duration than necessary to  
19 serve its purpose."

20 *State v. Duckett*, 141 Wn. App. 797, 802, 173 P.3d 948, 952 (2007) (review pending) (citing *State v.*  
21 *Bone-Club*, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995)).

ARGUMENT

23 This writer has submitted a proposed jury questionnaire to the Court. The State has  
24 submitted its own proposed jury questionnaire. The purpose of the jury questionnaire is to  
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1 determine whether a juror can be fair and impartial. There are several reasons why a juror may not  
 2 be able to be fair and impartial in this case. First, this case involves sexual assault, which is a  
 3 sensitive subject. Second, this case involves a Respondent who is well known in this community.  
 4 A jury questionnaire is designed to determine whether, despite the sensitive subject matter and the  
 5 notoriety of the Respondent, Mr. Kevin Coe, a prospective juror could still be fair and impartial.

6 In accord with the first *Bone-Club* factor, the compelling interest of **privacy** necessitates the  
 7 closure of the courtroom during the questioning of individual jurors in their responses to the jury  
 8 questionnaire. The prospective jurors are likely to be asked whether they or someone close to them  
 9 has ever been the victim of sexual assault. The juror questionnaire solicits candid responses as to  
 10 whether a prospective juror or a person close to them has ever been the victim of sexual assault or  
 11 accused of sexual assault. A juror's candid discussion of their answer to this question is critical to  
 12 Mr. Coe receiving a fair trial. The prospective juror may also be asked whether there has ever been  
 13 an accusation that the prospective juror committed a crime of a sexual nature. These are extremely  
 14 private issues. This may be information that a prospective juror has never revealed to family  
 15 members or close friends. These prospective jurors are being asked to disclose sensitive, emotional,  
 16 and potentially embarrassing information in open court. If jurors are required to discuss these issues  
 17 with members of the public watching, there is a significant likelihood that the jurors will not be  
 18 forthcoming and candid in their responses. Again, a candid discussion regarding these extremely  
 19 sensitive and private issues is necessary to ensure that a juror can be fair and impartial.

22 The jury questionnaire will also ask prospective jurors whether they are familiar with Mr.  
 23 Coe. In order for Mr. Coe to receive a fair trial this writer must know what they believe about Mr.  
 24 Coe and how they feel about him based on those beliefs. The compelling interest of **privacy** of

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1 certain members of the Coe family necessitates that the courtroom be closed during this questioning.  
 2 *Attached and Labeled Exhibit "A" is a newspaper article that summarizes the effect that the case*  
 3 *has had on certain members of the Coe family that have no culpability, but are for their commitment*  
 4 *to a loved one.*

5 There are likely to be questions in the jury questionnaire that will solicit the opinions of  
 6 prospective jurors about Mr. Coe. Individual voir dire is likely to elicit beliefs and feelings about  
 7 the Coe family in general. The Coe family has undoubtedly been the subject of rumor and  
 8 speculation for the last twenty-seven (27) years. There have been scores of outlandish rumors and  
 9 accusations directed toward the Coe family. This was and has been extremely harmful to certain  
 10 members of the Coe family. A member of the immediate Coe family is going to testify as a witness  
 11 at this trial. Family dynamics are relevant to SVP cases, as experts are expected to testify regarding  
 12 Mr. Coe's relationship with his family, and thus, we do need to know a prospective juror's feelings  
 13 about his family. The Coe family certainly has a significant privacy interest in not having rumors,  
 14 opinions, and accusations disseminated to the public via a court of law.  
 15

16 While questions regarding Mr. Coe and his family are necessary, there is a significant  
 17 potential for prospective jurors to disclose rumors and innuendo, which have no basis in fact and  
 18 would only have the effect of harming and embarrassing certain members of the Coe family.  
 19 Members of the Coe family have suffered as a result of the attention surrounding Mr. Coe. Feelings  
 20 about Mr. Coe and his family are no doubt very strong. It is necessary to solicit candid discussion  
 21 regarding responses to a jury questionnaire, but this should not be the basis for giving members of  
 22 the public a platform from which they can convey every unsubstantiated and embarrassing rumor  
 23 about Mr. Coe and members of his family. A courtroom should not be a platform for those  
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1 prospective jurors who will no doubt have very strong feelings toward Mr. Coe and his family and  
2 potentially express feelings and beliefs that will cause significant harm to certain members of the  
3 Coe family.

4 Finally, just as jurors would be less likely to be open about their victimization, they may  
5 also be less likely to be open in their beliefs about Mr. Coe and his family. Jurors may harbor  
6 extreme prejudice and unfounded beliefs regarding certain members of the Coe family. If the  
7 courtroom is open during individual voir dire, prospective jurors may be less likely to be candid in  
8 their responses if their responses are negative or outlandish. The jurors need to be comfortable in  
9 disclosing their thoughts and feelings, but may be hesitant to reveal their feelings and the bases for  
10 them if the courtroom is open.  
11

12 **CONCLUSION**

13 In order to protect the privacy of prospective jurors and certain members of the Coe family,  
14 the courtroom should be closed to the public during individual voir dire.  
15

16 Dated at Spokane, Washington, this 5<sup>th</sup> day of SEPTEMBER, 2008.  
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19  
20 Timothy D. Trageser, WSBA #18704  
21 Attorney for Respondent  
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