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MEDIA LAWYERS CHALLENGE COURT'S CLOSED HEARING

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The Associated Press

A year after the transcript of a closed court hearing was released, media lawyers were at the state Supreme Court Tuesday still asking the justices to rule the closing was improper and to set some guidelines.

"There is a threat facing the First Amendment," said John Kerr, a lawyer for The (Charleston) Post and Courier. "It was eight months before we received the transcripts, and that should never happen again." On Feb. 19, 1996, Circuit Judge Duane Shuler threw the public and the media out of the pretrial hearing, saying he did not want potential jurors in an alleged bribery case to be prejudiced before they were seated.

The following day, former TV talk show host Bob Waters pleaded guilty to conspiracy and bribery and was sentenced to 90 days in jail. Two other men pleaded guilty to related charges,

Waters attempted to bribe North Charleston City Council members to appoint a prominent Charleston businessman to the commission overseeing redevelopment of the Charleston Naval Base.

Shuler knew that an alleged confession by Waters was to be discussed during the pretrial hearing and said if that information was made public, it could make jury selection difficult.

The judge refused requests to wait a day so the pretrial motions could be held in open court after the jury was selected.

Kerr and Thomas Tisdale, a lawyer for WCIV-TV in Charleston, said a defendant's fair-trial right sometimes outweighs the right of public access.

However, they asked the Supreme Court to establish a rule that a trial judge must release the transcript of a closed hearing as soon as there was no longer the possibility of prejudice. In this case, the newspaper and television station say they should have found out what happened as soon as the guilty pleas were entered.

The state attorney general's office originally did not take a stand on the case, but on Tuesday an agency lawyer argued the case was moot because the transcript was released.

Jack Swerling, who represented former highway Commissioner Margaret Rush in the Waters

case, told the justices Shuler did the right thing. Charges against Rush were dismissed.

"Everybody agreed the hearing had to be closed," **Swerling** said. "It would have been difficult, even impossible, to select a jury."

Justice E.C. Burnett III asked **Swerling** if it was unreasonable to consider moving the trial to another city to prevent jury tainting.

"The people of Charleston as well as the defendants wanted that trial in Charleston," **Swerling** said.

The justices did not indicate when they would rule.



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