JUROR ANONYMITY IN CRIMINAL TRIALS: THE MEDIA, THE DEFENDANT, AND THE JUROR—PROVIDING FOR THE RIGHTS OF ALL INTERESTED PARTIES

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INTRODUCTION

Getting the mail every day is exciting when one is young, but as people grow older, few good things are in that box. Take, for instance, the jury summons: dreaded by most, sought after by few, and a civic duty to all. No matter what position you take on jury duty, the service involved can be time consuming if you are selected, and probably even if you are not. Jury duty compels citizens to perform their civic responsibility, but it can also infringe upon jurors' privacy rights, afforded to them by the Constitution.[1] The burdens imposed on jurors are both financial and emotional.[2] Furthermore, the need for a jury to decide another's fate is amplified by the long court process, "hostile attorneys or [other] court personnel," and perhaps also by the criminal defendant.[3] Jurors can be required to reveal any type and amount of information, including that which could be detrimental, embarrassing, or damning—information that they would not choose to voluntarily reveal.[4] In recent years, courts and legal scholars have assessed whether juror anonymity is viable, looking at how empaneling anonymous juries invades the constitutional rights of criminal defendants, jurors themselves, and the media, and assessing how to protect juror privacy while not infringing on the rights of other parties involved in litigation matters.[5]

Historically, while communities were small, juror names and

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[1] David Weinstein, *Protecting a Juror's Right to Privacy: Constitutional Constraints and Policy Options*, 70 TEMP. L. REV. 1, 2–3, 5–7 (1997). Disclosure of a juror's organizational affiliation may infringe upon the freedom of association; the revelation of areas of marriage, contraception, and procreation may violate "the 'autonomy' strand of the right to privacy;" inquiries about past criminal backgrounds may violate the Fifth Amendment; and the disclosure of a person's voting history may be a "constraint on the right to vote." *Id.* at 6–7. Furthermore, most state constitutions have privacy clauses which protect against confidential information being disclosed and most states also "recognize tort claims for disclosure of highly offensive, albeit truthful, facts that are not of legitimate concern to the public." *Id.* at 7.

[2] Nancy J. King, *Nameless Justice: The Case for the Routine Use of Anonymous Juries in Criminal Trials*, 49 VAND. L. REV. 123, 124 (1996).

[3] *Id.*

[4] *Id.*

[5] Marc O. Litt, *"Citizen-Soldiers" or Anonymous Justice: Reconciling the Sixth Amendment Right of the Accused, the First Amendment Right of the Media and the Privacy Right of Jurors*, 25 COLUM. J.L. & SOC. PROBS. 371, 371–72 (1992); Karen Monsen, *Privacy for Prospective Jurors at What Price? Distinguishing Privacy Rights from Privacy Interests; Rethinking Procedures to Protect Privacy in Civil and Criminal Cases*, 21 REV. LITIG. 285, 286–87 (2002).

the voir dire process were open to the public and, as a result, generally everyone knew who was on a given jury panel.[6] Within the past few decades, juror privacy, media access, and defendant's' rights have been raised as arguments for juror anonymity and the anonymity of the voir dire process.[7] However, "[j]urors are not [just] instruments" for the many players of a trial or judicial proceeding to "find expression," but instead are individuals who have their own constitutional rights, which they must not be required to surrender by entering the courthouse for their civic obligation.[8] Jury rights stemming from privacy concerns and the Constitution should not and do not trump the rights of all of the other players involved (defendants, litigants, media, etc.), but they should be adequately protected.[9] These privacy concerns include subjecting jurors to "intrusive questioning, disclosure of their answers to the news media, background investigations by counsel, release of their name[s] and address[es] to the defendant and the public, and repeated attempts by the press to obtain post-trial interviews."[10] However, juror privacy rights are not fully protected with the current system. A solution needs to be provided that takes into account the rights of everyone involved in order to balance all arguments, liberties, and privileges, and to ensure that everyone's concerns are taken into account and provided for.

Previously, empaneling an anonymous jury was limited to "cases involving organized crime or violent gangs" in an effort to ensure the safety of the jurors.[11] However, as the practice evolves today, some judges are moving from ensuring safety to emphasizing privacy.[12] Judges are further concerned with privacy as more jurors are compelled to give up private information during the course of the voir dire as well as throughout the trial.[13] This is unmerited because they are

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[6] *See* Robert Lloyd Raskopf, *A First Amendment Right of Access to a Juror's Identity: Toward a Fuller Understanding of the Jury's Deliberative Process*, 17 PEPP. L. REV. 357, 370 (1990).

[7] *See* Abraham Abramovsky & Jonathan I. Edelstein, *Anonymous Juries: In Exigent Circumstances Only*, 13 ST. JOHN'S J. LEGAL COMMENT. 457, 457–58 (1999) (noting that "the first fully anonymous jury in American history" was empaneled in *United States v. Barnes* in 1998).

[8] Weinstein, *supra* note 1, at 51.

[9] *Id.*

[10] *Id.* at 2–3.

[11] Monsen, *supra* note 5, at 286.

[12] *Id.*

[13] Jerry Markon, *Judges Pushing for More Privacy of Jurors' Names*, WALL ST. J., June 27, 2001, at B1.

ordered to court and are therefore "owe[d] the highest standard of care."[14] Furthermore, "protecting jurors from post-verdict harassment [from the media] and invasions of privacy is a legitimate concern."[15]

In August 2008, the Third Circuit handed down a split opinion in *United States v. Wecht*,[16] where the court ultimately ruled for disclosure of prospective juror names prior to the empanelment of the jury.[17] Recently, this has become a relevant issue as the jurors themselves, the defendants, and the media all have separate concerns and rights regarding juror anonymity. Jurors are apprehensive about their privacy, the media is concerned about their right to access trials and gather the news, and defendants are anxious about having a fair trial decided by an impartial jury.[18]

This article suggests that assigning each prospective juror a number prior to empanelment would help to meet the arguments and demands of defendants, the media, and jurors. This number would then be reserved for the actual jurors throughout the trial. This anonymous number system would allow all relevant information to be released to the public, except for the names and addresses of the prospective and actual jurors. The media and the public would still have their right to gather the news at trials and voir dire proceedings without infringing on the privacy concerns of prospective and actual jurors. Additionally, it will be shown that this will not harm the criminal defendant and, moreover, will not impede his or her right to a fair trial.

Part I of this article will examine the history of juries, including the voir dire process, *United States v. Barnes*,[19] the first U.S. case to empanel an anonymous jury, and the recent Third Circuit case, *United States v. Wecht*,[20] which decided against empaneling an anonymous jury. Part II will analyze the arguments in favor of the defendant and the media. The arguments stemming from the Constitution are the media's right to access trials under the First Amendment and the Sixth Amendment right to a fair trial for the defendant. Other arguments will then be analyzed, which include the privacy

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[14] *Id.* (internal quotation marks omitted).
[15] New Jersey v. Neulander, 801 A.2d 255, 265 (N.J. 2002).
[16] 537 F.3d 222, 223–24 (3d Cir. 2008).
[17] *Id.* at 236; *see* Shannon P. Duffy, *History Vexes Judges in Ruling on Access to Juror Names*, PA. L. WKLY., Aug. 18, 2008, at 9.
[18] Litt, *supra* note 5, at 371.
[19] 604 F.2d 121 (2d Cir.1979).
[20] 537 F.3d 222 (3d Cir. 2008).

concerns of the jury, juror fears, the historical presumption of access to trials for the media, a defendant's presumption of innocence, and the need to ensure the administration of justice. These arguments will be analyzed as they are laid out in other relevant case law and argued by legal scholars. Part III will then discuss how the solution posed—the anonymous number system—will benefit all relevant parties without infringing on the rights afforded to them by the United States Constitution.

I. A BRIEF HISTORY

A. The Jury Trial

The "jury trial in criminal cases [was already] in existence in England for [many] centuries" by the time the United States Constitution was written.[21] In the 18th century, William Blackstone wrote about the fact that the law placed the "trial by jury, between the liberties of the people and the prerogative of the crown."[22] The English colonists brought the concept of a jury trial over to America when they arrived and it "received strong support."[23] In the First Congress of the American Colonies, one of the first resolutions adopted was one that gave "the most essential rights and liberties of the colonists": the trial by jury.[24]

The drafters of the Constitution met criticism because the document did not include a bill of rights.[25] This was quickly amended, the Bill of Rights was adopted, and the Sixth Amendment provided that "the accused shall enjoy the right to a . . . trial, by an impartial jury."[26] Furthermore, the separate constitutions of the original states also provided for a guarantee of a jury trial, and each state which came into the Union afterwards similarly had a protection for criminals to be tried by a jury.[27] Presently, each "[s]tate guarantee[s] a . . . jury trial in serious criminal cases; . . . there [are no] significant movements

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[21] Duncan v. Louisiana, 391 U.S. 145, 151 (1968).

[22] 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 349 (T.M. Cooley ed., Callaghan & Co. 1899).

[23] *Duncan*, 391 U.S. at 152.

[24] *Id.* (quoting SOURCES OF OUR LIBERTIES: DOCUMENTARY ORIGINS OF INDIVIDUAL LIBERTIES IN THE UNITED STATES CONSTITUTION AND THE BILL OF RIGHTS 270 (Richard L. Perry ed. 1959)).

[25] *Id.* at 153.

[26] U.S. CONST. amend. VI; *see Duncan*, 391 U.S. at 153.

[27] *Duncan*, 391 U.S. at 153.

underway" to dispense with this right.[28]

B. Voir Dire

Voir dire refers to "[a] preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury."[29] In the federal courts, jury selection is administered by the Federal Jury Selection and Service Act of 1968.[30] This Act was provided

> to ensure that juries are "selected at random from a fair cross section of the community in the district or division wherein the court convenes" and that "[n]o citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status."[31]

It is up to each district court to formulate and employ a jury selection plan that meets these goals.[32]

In the criminal system, each plan put into use must specify where the names of the prospective jurors are to be chosen from (voter registration lists, lists of voters, etc.), and then "provide for a master jury wheel into which the names of at least one-half of one per cent of the names on the source lists are placed."[33] When necessary, a district judge or clerk is to draw names from the jury wheel at random for as many people as are required to form a jury pool.[34] Then, a juror qualification form is sent to each prospective juror chosen.[35] The district judge must determine whether a chosen prospective juror is unqualified for or exempt from jury services.[36] Reasons for exemption include that a person

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[28] *Id.* at 154. The Seventh Amendment was adopted in response to objections to the federal Constitution in that it did not preserve a "right to a jury trial in civil cases." Carlisle v. County of Nassau, 408 N.Y.S.2d 114, 116 (App. Div. 1978). The Seventh Amendment provides that "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." U.S. CONST. amend VII. Furthermore, all states have incorporated similar provisions in their state constitutions for a trial by jury in civil cases. *Carlisle*, 408 N.Y.S.2d at 116.

[29] BLACK'S LAW DICTIONARY 1710 (9th ed. 2009).

[30] 28 U.S.C. §§ 1861–1869 (2006); *see* 6 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 22.2(a), at 42 (3d ed. 2007).

[31] 6 LAFAVE ET AL., *supra* note 30, §22.2(a), at 42–43 (quoting 28 U.S.C. §§ 1861, 1862).

[32] *Id.* at 43.

[33] *Id.* (citing 28 U.S.C. § 1863(b)).

[34] *Id.* at 44 (citing 28 U.S.C. § 1863(b)(4)).

[35] *Id.* (citing 28 U.S.C. § 1864(a)).

[36] *Id.*; *see* 28 U.S.C. §1865(a).

is a non-U.S. citizen, is under eighteen years of age, is illiterate, does not speak or understand English, is mentally or physically incapable of providing jury service, or is someone who has been convicted of a felony.[37] Once the judge has eliminated those people who are unqualified to perform the jury service, the remaining chosen names are to be "placed in a qualified jury wheel, from which the names of persons to be assigned to jury panels are to be publicly drawn from time to time."[38] A summons will then be issued to request a prospective juror to report to the voir dire examination.[39]

In state courts, the process is similar to those procedures followed in the federal system.[40] States differ on what they use to create their lists of potential jurors, with "lists of voters and drivers' license holders . . . tax rolls, city directories, and utility lists" being the most common.[41] Also, there are reasons for a prospective juror to be excused from service, including when the service will result in a long period of time at low pay, poor health, advanced age, the need to take care of children, or the distance that one lives from the courthouse.[42] In addition to the reasons that a person is exempt or unqualified to serve as a juror in the federal courts, in the state courts, most state jury selection statutes typically exempt certain people due to their occupations.[43]

Once the list of prospective jurors is created in a criminal case and the defendant has not waived his right to a jury trial, the voir dire process begins, which selects "from the panel of prospective jurors those individuals who will actually serve as jurors in [the defendant's] case."[44] In this process, the defense and the prosecution both attempt to eliminate each and every juror whom

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[37] 6 LAFAVE ET AL., *supra* note 30, § 22.2(a), at 44 (quoting 28 U.S.C. § 1865(b)).

[38] *Id.* at 44–45; *see* 28 U.S.C. § 1866(a).

[39] 6 LAFAVE ET AL., *supra* note 30, § 22.2(a), at 45; *see* 28 U.S.C. § 1866(b).

[40] 6 LAFAVE ET AL., *supra* note 30, § 22.2(b), at 46 ("In the past several decades, states have adopted procedures similar to the federal system.").

[41] *Id.*

[42] *Id.* at 47.

[43] *Id.* The exemptions differ by state and some states have no occupational exemptions, but common examples of occupations which are exempt include: judicial officers, public officials, elected legislators, physicians, and attorneys. *See* DAVID B. ROTTMAN & SHAUNA M. STRICKLAND, U.S. DEP'T OF JUSTICE, STATE COURT ORGANIZATION 2004, at 223–26 tbl.40 (2006), http://bjs.ojp.usdoj.gov/content/pub/pdf/sco04.pdf (providing a state-by-state breakdown of juror exemptions in "Table 40: Trial Juries: Exemptions, Excusals, and Fees").

[44] 6 LAFAVE ET AL., *supra* note 30, § 22.3(a), at 71.

they believe has bias towards them or is sympathetic to their adversary.[45] Questions are asked at the voir dire in order to uncover any partiality or compassion, but the judge has discretion in deciding what can actually be asked.[46] At times, a judge is "allowed to restrict questioning in order to give some protection to the privacy of prospective jurors."[47] Voir dire can be conducted by the judge or by the attorneys, but if the judge examines the prospective jurors, then he has to allow the attorneys to ask additional questions "that the court considers proper," or to submit additional questions for the court to ask.[48]

With the unveiling of answers, attorneys have two ways to challenge, or effectively eliminate, prospective jurors.[49] The first is the challenge for cause, and the number of these offered is unlimited.[50] The challenge for cause is where the challenging party has to show the judge that the prospective juror is biased in some particular way.[51] The second challenge is the peremptory challenge, which is limited to a certain number in each case.[52] This challenge "is used to eliminate those prospective jurors who are merely suspected of being biased or who simply are believed, by virtue of their backgrounds and experience, to be more likely to favor the trial opponent."[53]

After the questioning of all prospective jurors and all challenges are used, a jury, usually composed of twelve members, will be empaneled.[54] The voir dire process, in effect, is a way to attempt to compile members of a jury who will treat both sides of the case fairly.[55] Also, the federal system, along with most states,

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[45] *Id.*
[46] *Id.* at 72.
[47] *Id.* at 74.
[48] *Id.* at 82 (quoting FED. R. CRIM. P. 24(a)).
[49] *Id.* at 71–72.
[50] *Id.* § 22.3(c), at 98.
[51] *Id.* § 22(a), at 72.
[52] *Id.* The number of peremptory challenges allowed at common law for a defendant in a felony case was thirty-five, while the prosecutor was allowed an unlimited amount. *Id.* § 22.3(d), at 122. Currently, in a federal case "each side [is allowed] 20 peremptor[y challenges] in a capital case," the defense is allowed ten in a felony case, the prosecution six, and in a misdemeanor case each side is allowed three. *Id.* at 123. In the state system, the number of peremptory challenges is similar, although usually each side is allowed the same number of challenges. *Id.* For alternate jurors, the court is allowed to impanel up to six alternates who would replace jurors who were unable to perform their duties or who were found to be disqualified to perform their duties. FED. R. CRIM. P. 24(c).
[53] 6 LAFAVE ET AL., *supra* note 30, § 22.3(a), at 72.
[54] ANDRE A. MOENSSENS ET AL., CRIMINAL LAW 6 (8th ed. 2008).
[55] *Id.* at 7.

provides for two alternative jurors, who will fill in for another juror in the case of illness or disability.[56] The alternative jurors will hear the evidence, but will only participate in the jury deliberations if they are needed to replace an original juror.[57]

C. United States v. Barnes

The use of anonymous juries has been most prevalent in the "New York federal courts since the . . . trial of drug kingpin Leroy 'Nicky' Barnes."[58] In that case, Barnes and ten other co-defendants appealed from a conviction "of conspiracy to violate the federal narcotics laws" and "of engaging in a continuing criminal enterprise involving narcotics."[59] The district court was of the opinion that juror secrecy was necessary due to the serious narcotics charges and the pre-trial publicity given to the case.[60] Barnes argued that "[t]he district court's refusal to disclose petit jurors' identities, residence locales or ethnic backgrounds and the court's restrictive voir dire denied defendants due process."[61]

In the juror selection process for that case, each potential juror was assigned a number.[62] There was a panel drawn of 150 prospective jurors, and each was assigned a number from 1 to 150.[63] Each prospective juror was asked questions about such topics as his or her county of residence, family history, occupation, educational background, and membership in any organized clubs or groups.[64] The district court effectively ensured through questioning, to the extent possible in the voir dire process, that the chosen jurors were not partial to the defendants in that case.[65]

The court of appeals found that the district court conducted the voir dire process in an "entirely appropriate"[66] way because "the 'sordid history' of multi-defendant narcotics cases . . . was sufficient to put the trial court on notice that all safety measures possible should be taken for the protection of prospective jurors,

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[56] *Id.*
[57] *Id.*
[58] Eric Wertheim, Note, *Anonymous Juries*, 54 FORDHAM L. REV. 981, 982 (1986).
[59] United States v. Barnes, 604 F.2d 121, 130 (2d Cir. 1979).
[60] *Id.* at 134–35.
[61] *Id.* at 133.
[62] *Id.* at 135.
[63] *Id.* at 168 (Meskill, J., dissenting).
[64] *Id.* at 135 (majority opinion).
[65] *See id.* (providing an extensive listing of questions asked by the court).
[66] *Id.* at 145.

including complete anonymity."[67] The district court informed all parties, and other public members who were then present, that the jury was to remain anonymous "in the interest of protecting the privacy of the jurors and their families and [to save] them from the resultant embarrassment should any such incident occur."[68] The Second Circuit stated that the prospective jurors were not the ones on trial and that as counsel seeks to find out more information about the jury, people will "be less . . . willing to serve [on a jury] if they know that inquiry into their essentially private concerns will be pressed."[69]

As to the absolute confidentiality of the names and addresses of the jurors, the court noted that a juror's judgment cannot "be as free and impartial as the Constitution requires" if the "juror feels that he and his family may be subjected to violence."[70] Because "[b]oth the prosecutor and the defense were equally in the dark," about the identity of the prospective jurors, "the rights of the parties" had been satisfied.[71]

Disputing the court's ruling, the dissent stated that the district court's failure to "disclose the names and addresses of the prospective jurors . . . was error."[72] The dissenting judge stated that although jurors and their families are entitled to privacy, the appellants were unable to exercise their right to peremptory challenges, an impartial jury trial, and due process.[73] The dissent argued that the peremptory challenge is one of the most important steps to ensure that a jury is impartial, and without empaneling a jury that has to fully disclose everything about their identity, the defendant loses his right to the peremptory challenge.[74]

After the ruling in *Barnes*, courts now look at specific factors when considering whether or not to empanel an anonymous jury.[75] These factors include: "the defendant's involvement in organized crime; his [or her] participation in a group having the capacity to harm jurors . . . ; the potential punishment [that the defendant faces]; the degree of publicity the trial has received;

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[67] *Id.* at 134–35.
[68] *Id.* at 137.
[69] *Id.* at 140.
[70] *Id.* at 140–41.
[71] *See id.* at 142–43.
[72] *Id.* at 168 (Meskill, J., dissenting).
[73] *See id.* at 168–69.
[74] *See id.* at 169–70.
[75] Weinstein, *supra* note 1, at 25–27.

and the possibility of juror harassment."[76]

D. United States v. Wecht

In August 2008, the United States Court of Appeals for the Third Circuit handed down a decision ruling that the names of both prospective and actual jurors must be disclosed.[77] This decision was given by a divided panel of the Third Circuit, and "the crux of the disagreement" was due to a conflict over "the role of history."[78] In the Third Circuit, the question of whether jurors' names are required to be disclosed under the First Amendment was "one of first impression."[79]

Wecht was indicted by a grand jury on January 20, 2006 on eighty-four counts alleging that Wecht "unlawfully used his public office as the coroner of Allegheny County, Pennsylvania, for private financial gain."[80] "[O]n July 13, 2006, . . . an administrative order directing that 'all jurors shall be identified in court during the jury selection process by [their] assigned juror number'" was entered.[81] The district court, on November 26, 2007, also ordered voir dire through a written questionnaire without any jurors present until the pool was reduced to forty people.[82] The judge stipulated that the media would be allowed to have access to the jury questionnaires at the end of the trial, except for "the last page [of the questionnaire] which contained" the identity of the juror.[83] WPXI, Inc., PG Publishing Company, and Tribune-Review Publishing Co. "challenged the District Court's decisions (1) to empanel an anonymous trial jury, and (2) to conduct *voir dire* through use of a written questionnaire and without venirepersons physically present . . . until the pool of prospective jurors was reduced to 40."[84]

The court held that there is "a presumptive First Amendment right of access to obtain the names of both trial jurors and

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[76] *Id.* at 26–27 (citing United States v. Darden, 70 F.3d 1507, 1532 (8th Cir. 1995)).

[77] Duffy, *supra* note 17, at 9.

[78] *Id.*

[79] United States v. Wecht, 537 F.3d 222, 234 (3d Cir. 2008).

[80] *Id.* at 224 (citing United States v. Wecht, 484 F.3d 194, 198 (3d Cir. 2007)).

[81] *Id.*

[82] *Id.* at 225–26.

[83] *Id.* at 226.

[84] *Id.* at 224. This note is only concerned with the challenge to empanel the anonymous trial jury and the requests of the media to disclose juror names, and not with the use and procedure of the juror questionnaire.

prospective jurors prior to empanelment of the jury."[85] This conclusion was based on the fact that historically, juries were "selected from . . . populations in which most people [knew] each other" and that the voir dire has historically been an open proceeding, so the identities of juries were traditionally public information.[86] Also, the court found that there were very few instances in which courts withheld the identities of jurors prior to the 1970s.[87]

The court relied on *In re Globe Newspaper Co.*,[88] finding that giving the public and the media access to the identity of juries "allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness, and public confidence in that system."[89] Although it is up to the judge and attorneys to ultimately ensure that key participants are impartial, the public needs to verify this as well, in order for the public to fully understand the judicial system and to believe that it works as it should.[90] The court did, however, note that public access can hold risks for juries, including influences from "friends or enemies of a . . . defendant," a fear of privacy on the part of juries, and "misrepresentation at the *voir dire*" in an attempt for jurors to withhold potentially embarrassing information.[91] These risks, however, are to be weighed on a case-by-case basis by each judge to assure that there is no "compelling government interest" to require anonymity.[92] The court further held that the "First Amendment right of access to the identities of jurors attaches no later than the swearing and empanelment of the jury."[93] Although there are "stronger reasons to withhold juror names and addresses . . . during trial than after a verdict is rendered," these reasons are not "so compelling that they negate altogether the existence of a

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[85] *Id.* at 235.

[86] *Id.*

[87] *Id.* at 236; *see* Ephraim Margolin & Gerald F. Uelmen, *The Anonymous Jury: Jury Tampering by Another Name?*, 9 CRIM. JUST. 14, 14 (1994) ("Juror anonymity is an innovation that was unknown to the common law and to American jurisprudence in its first two centuries. Anonymity was first employed in federal prosecutions of organized crime in New York in the 1980s.").

[88] 920 F.2d 88 (1990).

[89] *Wecht*, 537 F.3d at 238 (quoting *In re Globe Newspaper Co.*, 920 F.2d at 94).

[90] *See id.*

[91] *Id.*

[92] *Id.* at 239 (quoting United States v. Antar, 38 F.3d 1348, 1359 (3d Cir. 1994)).

[93] *Id.*

First Amendment right of access to the names during trial."[94]

As to the district court's findings that an anonymous jury should be empaneled, the Third Circuit concluded that these reasons were not compelling enough.[95] The fact that the media may publish stories on the jurors or that the defendant has enemies is not a "legally sufficient reason to withhold the jurors' names from the public."[96] Nor is "[t]he mere fact that people might have passionate opinions about a defendant" enough to warrant the empanelment of an anonymous jury.[97]

The dissenting opinion "vigorously disputed" the ruling of the majority and instead supported the anonymity imposed by the trial court.[98] The majority took the traditional approach by "looking [at] the history of modern courts," which reveals that "jurors' identities have nearly always been open to the public."[99] Opposing this, the dissent suggested that "the more relevant inquiry would be the history of [the courts in] the past 40 years, when" the modern media began to rapidly change.[100]

Although the First Amendment provides for the media and the public to have access to proceedings in criminal matters, the dissent contended that "the First Amendment does not require disclosure of the names to the media prior to the empanelment of the trial jury."[101] In making this statement, the dissent relied on a number of other jurisdictions which have implemented plans for jury selection allowing "judges to keep the names of jurors confidential."[102] Furthermore, courts in other jurisdictions have held that juror anonymity is an effective way to deal with "potentially prejudicial media exposure."[103]

Even though juror identities have historically been made available to the media and to the public, the media outlets have grown and now "gather information and report twenty-four hours a day, seven days a week."[104] This fact has led to increased discretion for courts to manage their trials in the way they see

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[94] *Id.* (emphasis omitted) (quoting *In re Globe Newspaper Co.*, 920 F.2d at 91).
[95] *Id.* at 242.
[96] *Id.* at 240–41.
[97] *Id.* at 242.
[98] Kris W. Scibiorski, *Name Those Jurors*, N.J. LAW., Aug. 18, 2008, at 1; *see Wecht*, 537 F.3d at 263–67 (Van Antwerpen, J., dissenting).
[99] Duffy, *supra* note 17, at 9; *see Wecht*, 537 F.3d at 235 (majority opinion).
[100] Duffy, *supra* note 17, at 9; *see Wecht*, 537 F.3d at 255–56 (Van Antwerpen, J., dissenting).
[101] *Wecht*, 537 F.3d at 251.
[102] *Id.* at 253.
[103] *Id.* at 254.
[104] *Id.* at 256.

best fit.[105] Furthermore, the dissent argues that requiring disclosure of juror identities will actually hinder voir dire, as jurors will be worried about the public opinion of their responses.[106]

The dissent agreed that the identity of jurors can be helpful to ensure that the judicial process is open to public scrutiny, but also responded by arguing that "the media will likely use the information it possesses for the purpose of writing stories about the prospective jurors."[107] This will encourage the media to contact prospective jurors, actual jurors, and the families of each, which will bring an unwanted invasion of privacy into the lives of the jurors.[108] Similarly, knowing that serving on a jury will possibly "result in potential harassment and invasions of their privacy," citizens will be less willing to serve on juries.[109]

As these two cases point out, the discussion of juror anonymity is a heated debate between participants in the administration of justice. Although juries have historically not been anonymous to the media, public, or those on trial,[110] these cases show that reasons are emerging for empaneling anonymous juries, at least in some instances. However, as the dissents in both cases discussed above are in strong opposition to the majority ruling, without a clear answer as to if and when anonymous juries are allowed, the debate will likely continue on with strong advocates on both sides of the issue.

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[105] *Id.*
[106] *Id.* at 257–58.
[107] *Id.* at 258.
[108] *Id.*
[109] *Id.*
[110] Raskopf, *supra* note 6, at 370.

II. CONSTITUTIONAL AND HISTORICAL ARGUMENTS ON THE DEBATE ABOUT ANONYMOUS JURIES

A. Constitutional Arguments

1. The First Amendment

The Supreme Court has noted that the public and the press have a constitutional right to access criminal trials, which is embedded in the First Amendment, and also applies to the states through application of the Fourteenth Amendment.[111] The First Amendment not only guarantees the freedom of speech, but also gives the public the "right to receive information," including that which pertains to the "functioning of government."[112] Because the First Amendment provides open admission to the administration of justice, guaranteeing that the judiciary works "honestly and efficiently," the judiciary is subject to a public analysis.[113]

The First Amendment provides a broad protection for two important freedoms: the "freedom of speech and the freedom of the press to publish information."[114] In order for the press to use their freedom to distribute information, they consequently must have an inherent right to gather news.[115] However, there are limits to collecting news, and the media "ha[ve] no greater or lesser right to information pertaining to criminal trials than does the public."[116] The court in *Press-Enterprise Co. v. Superior Court*[117] *(Press-Enterprise I)* "recognized that the right of access [for the media to a jury trial] is not absolute," and that closed proceedings must only be instituted in rare circumstances where "cause [is] shown that outweighs the value of openness."[118] Furthermore, it can be shown from *Press-Enterprise I* that the holding "creates a strong implication that the media has the right to report the identities of jurors," because the identities of the

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[111] Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 603 (1982) (citing Richmond Newspaper, Inc. v. Virginia, 448 U.S. 555, 575–81 (1980) (plurality opinion)).

[112] David S. Willis, *Juror Privacy: The Compromise Between Judicial Discretion and the First Amendment*, 37 SUFFOLK U. L. REV. 1195, 1200 (2004).

[113] *Id.*

[114] Litt, *supra* note 5, at 377.

[115] *Id.*

[116] *Id.* at 377–78.

[117] 464 U.S. 501 (1984).

[118] *Id.* at 509–10; Litt, *supra* note 5, at 386.

jurors are routinely revealed during the voir dire process.[119] However, access to identities of newsworthy sources and people are not explicitly guaranteed by the First Amendment and, therefore, when anonymous juries are empaneled, the media presumptively will not have a right to access or publish the identifying information about the members of the jury.

2. The Sixth Amendment

The Sixth Amendment provides for a right to a fair trial, which includes the notion that a criminal defendant will be prosecuted by an impartial jury.[120] In *Sheppard v. Maxwell*,[121] the Court found that a defendant's right to a fair trial under the Sixth Amendment "outranks the media's First Amendment right of access to criminal trials when there is a 'reasonable likelihood' that such access will lead to 'prejudicial outside interferences.'"[122] If media access to a trial threatens the integrity of the criminal defendant's "Sixth Amendment privilege, the court must decide whether the threat is significant enough to warrant limitations on the First Amendment."[123]

Those who are opposed to releasing the identities of jurors argue that a Sixth Amendment right to a fair trial exists and a jury is likely to decide the case according to the public's thoughts on the issue if they believe that their verdict will be "subject to public scrutiny."[124] This will result in a complete disregard of a defendant's right to have his case decided based "solely on the evidence" presented, and not on public sentiment, therefore resulting in a partial jury.[125] Proponents of disclosure disagree with this argument, stating that it is difficult to prove that public opinion and interrogation by the media biased the jury in their deliberations.[126]

In *United States v. Lawson*, the court stated that "[t]he Sixth Amendment provides defendants with a right to a public *trial* by an impartial jury, but it does not guarantee a right to a public *jury*."[127] Therefore, "the Constitution does not [hold] that [a]

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[119] Litt, *supra* note 5, at 387.
[120] *Id.* at 374.
[121] 384 U.S. 333 (1966).
[122] Litt, *supra* note 5, at 375; *see Sheppard*, 384 U.S. at 363.
[123] Willis, *supra* note 112, at 1202.
[124] *Id.* at 1197.
[125] *Id.*
[126] *Id.* at 1212.
[127] 535 F.3d 434, 440 (2008).

defendant [has] a right to be informed of jurors' identities."[128] Furthermore, the district court stated that although "jurors' names would remain confidential [in this case], the defendants would be informed of each prospective juror's community of residence, education, and type of work experience."[129]

It is also argued that the privacy concerns of the jury are not necessarily at contention with a defendant's right to an impartial jury.[130] In fact, some judges have argued that jurors are actually more likely to speak openly in voir dire if they are assured that the information that they give during this process will not be released to the media or to the public.[131] Although a defendant is guaranteed a fair trial, there is no requirement that the defendant know the identifying information about his jury. A defendant is just as likely to receive an impartial jury with an anonymous jury as with one where the identities are revealed.

B. Other Historical Arguments

1. Privacy Concerns of the Juror

The jury plays an important role and provides a necessary function to the judicial process.[132] However, there is no constitutional right to privacy for prospective jurors.[133] Historically, the jury protected a defendant against a callous prosecutor and a pitiless judge.[134] Citizens are compelled through civic duty to perform the role of a juror and do not volunteer for this job.[135] They are, in essence, forced to serve on a jury, when requested, and then forced to give up their privacy in disclosing certain facts about their lives. This service "include[s] intrusive questioning, disclosure of their answers to the news media, background investigations by counsel, release of their name and address to the defendant and the public, and repeated attempts by the press to obtain post-trial interviews."[136] Because of the results and requirements demanded on jurors, many have complained that the requirement of jury duty invades the privacy

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[128] *Id.*
[129] *Id.*
[130] Weinstein, *supra* note 1, at 11.
[131] *Id.*
[132] Raskopf, *supra* note 6, at 357.
[133] Monsen, *supra* note 5, at 288–89.
[134] Raskopf, *supra* note 6, at 357.
[135] Weinstein, *supra* note 1, at 2.
[136] *Id.* at 2–3.

of the members who compose each jury.[137] Juror honesty in the deliberations of a case "almost always will be coextensive with the juror's own privacy interest."[138]

Proponents of anonymity suggest that jurors who are concerned that their private information will be revealed are less "willing to disclose [personal] information on voir dire that [would establish] their potential bias."[139] The public is apprehensive to take part in the jury or the juror selection process when they know that they will be forced to divulge personal matters.[140] Similarly, in the case of criminal trials, some jurors may fear providing criminal defendants with personal information in trepidation of retaliation or harassment.[141]

The privacy rights of jurors are not only a concern during voir dire and during the trial, but they extend after the trial as well. The media "often seek[s] out jurors after verdicts have been delivered to gain insight into the reasoning behind their decision."[142] Although this information can be beneficial to the public in understanding the duties placed on a juror, there is also a risk of harassment when the media makes an "effort[] to 'get the story.'"[143] Press reports divulge the personal information of the jurors, including their "occupations, marital status, children's ages, and religious beliefs."[144] Therefore, releasing juror names after a trial still poses problems to the jurors, including "threats and harassment" by people who disagree with the verdict they gave and unwanted attention from the press.[145] This shows that keeping jurors' identities anonymous until a certain period after the conclusion of a trial will only delay, not prevent, the media's pursuit of jurors.

Case law on the privacy concerns of jurors and the release of their identifying information is available: *Johnson v. United States* held that there is no right to jurors' addresses[146] and *Wagner v. United States* held that there is no constitutional right to the names of jurors.[147] Similarly, ethnic backgrounds and

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[137] *Id.* at 3.

[138] *In re* Globe Newspaper Co., 920 F.2d 88, 95 (1st Cir. 1990) (quoting *Press-Enterprise I*, 464 U.S. 501, 515 (1984)).

[139] Weinstein, *supra* note 1, at 32.

[140] Monsen, *supra* note 5, at 296.

[141] *Id.* at 296–97.

[142] Litt, *supra* note 5, at 393–94.

[143] *Id.* at 394.

[144] Weinstein, *supra* note 1, at 28.

[145] *Id.*

[146] 270 F.2d 721, 724 (9th Cir. 1959).

[147] 264 F.2d 524, 528 (9th Cir. 1959); *see* Wertheim, *supra* note 58, at 994–95

religious affiliations have been withheld.[148] "In *Journal Publishing Co. v. Mechem* and *In re Express-News Corp.*, [both] courts held that court orders forbidding the media to interview jurors concerning the jury's deliberations or verdict[s] were impermissibly overbroad."[149] With case law available addressing the privacy concerns of jurors, it is likely that courts will continue to find instances where the privacy of jurors outweighs the need to reveal their identities to both the media and the defendant.

2. Juror Fears

Juror "anonymity [could] also improve the deliberations" that take place in the jury room, because the jurors will have less fear of retaliation and/or public disclosure.[150] Similarly, juror anonymity would likely eliminate intimidation.[151] This is because jurors would be less likely to receive "[l]etters, phone calls, [or] other threats" from family members and friends of the defendant, or even from members of the general public who had an interest in the case.[152]

Although fears by jurors do not result in actual difficulties in most instances, their fears are not unfounded. An example of harassment to jurors occurred to those "[j]urors who acquitted the officers who beat Rodney King."[153] The jurors in this case "endured taunts, threats, and disturbing telephone calls."[154] Similarly, the jurors who convicted Dan White (who was on trial for the murder of San Francisco Mayor George Moscone and Supervisor Harvey Milk) of murder were troubled by harassment; "some of these jurors moved or changed [their] jobs," and others bought or slept with weapons.[155] Other instances of juror pestering originate from inmates themselves.[156] Convicted offenders have sent threatening mail to jurors, defendants have telephoned jurors at home to terrorize or hassle them, and jurors

& n.97.

[148] Wertheim, *supra* note 58, at 995 n.97 (providing examples of cases pertaining to ethnic backgrounds and religious affiliations).

[149] Litt, *supra* note 5, at 394–95 (emphasis added) (citing Journal Publ'g Co. v. Mechem, 801 F.2d 1233, 1236, 1237 (10th Cir. 1986); *In re* Express-News Corp., 695 F.2d 807, 810 (5th Cir. 1982)).

[150] King, *supra* note 2, at 137.

[151] *Id.* at 138.

[152] *Id.*

[153] *Id.* at 127–28.

[154] *Id.*

[155] *Id.* at 128.

[156] *Id.*

have been similarly badgered by the public and the media, who are sometimes unable to "accept a verdict."[157]

In *United States v. Borelli*, a conspiracy case, "seven jurors received unsigned letters" which they considered threats.[158] The court found that this "demonstrate[d] the need for precautions assuring that the addresses, and perhaps even the names, of jurors in [high profile conspiracy] cases . . . will be held in confidence."[159] The court went on to say that juror harassment is a disruption to criminal trials and that the courts must "protect the integrity of criminal trials . . . whether [the disruption and threats] emanated from defendants' enemies, from their friends, or from neither."[160]

In *People v. Watts*, the defendant, "a high-level Gotti associate," was indicted for "Murder in the Second Degree and Kidnapping in the First Degree" for the "abduction and murder" of a third person who failed at an attempt to kill John Gotti.[161] "[T]he People [had] moved for an order authorizing . . . an anonymous . . . and . . . sequestered" jury.[162] The defendant opposed this motion.[163] The People requested that the names and addresses of prospective jurors be "exclude[d] from the scope of voir dire."[164] The court found that the statutory right to learn a juror's name and address in N.Y. Criminal Procedure Law (CPL) § 270.15(1-a), could "be forfeited by a defendant's acts warranting such a result."[165] The court further stated that in a case "where the [actions] of a defendant represent a . . . threat to either safety or integrity of the jury, the Court [could] find . . . that the defendant has forfeited his statutory right to the jurors' names and addresses."[166] The court made this finding "even though CPL § 270.15(1-a) states that where there is a 'likelihood' of jury tampering, jurors' addresses must be disclosed to counsel."[167]

In *United States v. Black*, the court stated that "open access to juror [identities] during the pendency of trial . . . [actually] *enhances the risk*" that jurors will not be "free of any outside

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[157] *Id.* at 128–29.
[158] 336 F.2d 376, 392 (2d Cir. 1964).
[159] *Id.*
[160] *Id.*
[161] 661 N.Y.S.2d 768, 769 (Sup. Ct. 1997).
[162] *Id.*
[163] *Id.*
[164] *Id.* at 769–70 (internal quotation marks omitted).
[165] *Id.* at 770–71.
[166] *Id.* at 771.
[167] *Id.*

influence" and will not function in secrecy, as they should.[168] Furthermore, in a case which "garner[s] intense national and international media attention, releasing juror names during the pendency of trial threatens the jurors' ability" to base their ruling on a case only on the evidence presented at the trial.[169] This occurs because disclosure enhances the possibility of contact to the jurors from third-parties, and this "contact is presumptively prejudicial to [a] Defendants' right to a fair trial."[170] Also, the court found that the "external influences" of the media and public will "be borne by [jurors'] families, friends, co-workers and employers," if their identities are disclosed.[171] "These costs should not unnecessarily accompany the fulfillment of civic duty . . . ."[172]

3. The Media Has Historically Been Given Access to Juror Identities

In the past, the identities and addresses of jurors "have been [openly] known to the public."[173] This was because "jurors were [commonly] neighbors of the litigant . . . [and] could [actually] be disqualified if they were not."[174] In some rural communities in America, it is still the case that "residents [know] all the members of any given jury" in the court of their locality.[175] Only relatively recently have jurors in American courts "become strangers" to the other players in the judicial process and to the public as well.[176]

Press-Enterprise Co. v. Superior Court (Press-Enterprise II) reiterated that "the process of [jury selection] has . . . been a public process" since the development of the trial by jury, "with exceptions only for good cause."[177] Although history shows that early colonial times had open juries, where everyone knew each other, the advent of television and internet has made public scrutiny of jurors a greater expectancy.[178] Therefore, as history becomes just that, current times may call for a change in the

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168 483 F. Supp. 2d 618, 628 (N.D. Ill. 2007).
169 *Id.*
170 *Id.*
171 *Id.* at 630.
172 *Id.*
173 Raskopf, *supra* note 6, at 370.
174 *Id.*
175 *Id.*
176 *Id.*
177 478 U.S. 1, 8 (1986) (quoting *Press-Enterprise I*, 464 U.S. 501, 505 (1984)) (internal quotations omitted).
178 Willis, *supra* note 112, at 1215.

amount of identifying information that is disclosed about juries, as it is no longer the case that jurors are necessarily known by their peers.

4. The Defendant's Presumption of Innocence

Arguably, the presumption of innocence that "is an 'axiomatic norm' of the American criminal justice system," is infringed upon with the use of anonymous juries because it "raises the [point] that the defendant is a dangerous person from whom the jurors must be protected."[179] Due to this fact, critics are led to the conclusion that jurors "cannot obey the [judge's] instruction to presume the defendant [is] innocent until the government meets its burden" proving otherwise.[180] In most cases, a trial judge is required to explain to jurors that "anonymity is necessary" in order to prevent the invasion of their privacy, due to the notoriety of the trial itself.[181] Those against the use of anonymous juries argue that due to this instruction from the judge, "no juror would believe he was being insulated from anyone other than the defendants or their sympathizers."[182] In sum, empaneling an anonymous jury provides dangers of an "increase in bias against the defendant and a threat to the presumption of innocence."[183]

Those in support of empaneling anonymous jurors reply that although fears of jurors may be irrational, keeping them anonymous, and thus dispelling those fears, ensures that a dispassionate jury is empaneled which would then provide a judgment that is not based on any trepidation or passion on the part of the jurors.[184] A detached jury will help to ensure that jurors will adhere to the court's instructions to presume the innocence of the defendant if, and until, it is proved beyond a reasonable doubt that he or she is guilty.[185] Additionally, requiring an anonymous jury in every case, instead of singling particular defendants out, would eliminate the "stigma caused by the empanelment of nameless juries in specific cases."[186]

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[179] Abramovsky & Edelstein, *supra* note 7, at 468–69 (quoting United States v. Ross, 33 F.3d 1507, 1519 (11th Cir. 1994)).

[180] Wertheim, *supra* note 58, at 988.

[181] *Id.* at 989.

[182] *Id.*

[183] STACY CAPLOW & LISSA GRIFFIN, MULTIDEFENDANT CRIMINAL CASES: FEDERAL LAW & PROCEDURE § 12:5, at 226 (1998).

[184] Abramovsky & Edelstein, *supra* note 7, at 469–70.

[185] *Id.* at 470.

[186] *Id.*

Furthermore, in *Commonwealth v. Angiulo*,[187] a case from the highest court of Massachusetts, the court specifically recognized that empaneling anonymous juries "taint[s] the jurors' opinion of the defendant, thereby burdening the presumption of innocence."[188] This is due to the fact that when an anonymous jury is empaneled, the judge usually explains that anonymity is necessary because of the notoriety of the trial, the charge involved, and the likelihood of the media invading the privacy of the jurors and the defendant.[189] Similarly, it has been argued that even though jurors may fear the defendant because of the use of the anonymous jury, a juror is likely to find a defendant guilty not because he or she is afraid of him or her, but despite his or her fear.[190] Presumably, this means that the defendant is likely to benefit from an anonymous jury that is afraid to convict him or her.[191] Because a juror may be afraid of retaliation from a defendant, or a person associated with that defendant, some jurors will be "afraid to convict."[192] Ultimately, there are convincing arguments made on both sides of this particular reason concerning the debate on anonymous juries. Therefore, this issue alone is unlikely to cause a significant need for the solution to the problem of anonymous juries.

5. Ensuring the Administration of Justice

By releasing the names and information of jurors, those in favor of disclosure suggest that it benefits the trial process.[193] This is done by increasing the confidence of the public as well as educating the community about the judicial system and the role of the jury.[194] By doing so, juror bias is uncovered and misrepresentation by potential jurors during the voir dire is deterred.[195] The public's knowledge of the identities of jurors allows them "to verify the impartiality of key participants in the administration of justice," which helps the public to have faith in the judicial system.[196]

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[187] 615 N.E.2d 155 (Mass. 1993).
[188] *Id.* at 171.
[189] *See* Wertheim, *supra* note 58, at 989.
[190] *Id.* at 992.
[191] *Id.*
[192] *Id.*
[193] Weinstein, *supra* note 1, at 31.
[194] *Id.*
[195] *Id.*
[196] *In re* Globe Newspaper Co., 920 F.2d 88, 94 (1st Cir. 1990).

In *Press-Enterprise I*, the court found that the fairness of a criminal trial, and the appearance of fairness, which is critical to the public's confidence in the justice system, are enhanced by the openness of the trial, which includes the jury selection process.[197] Similarly, in *In re South Carolina Press Association*, "[t]he district court found that 'frank and forthright responses from potential jurors, which are essential to *voir dire*, would be chilled if they felt that their remarks would be published in the press.'"[198]

Opposing that argument, it has been disputed that because "the jury selection process and the trial . . . are presumptively open proceedings, the public [is able to access] the judicial process without intruding on juror privacy."[199] Similarly, there are jurors who do not have privacy concerns and are willing to share their information and stories with the public, and therefore, the community will still gain material to educate themselves about the jury process and service.[200]

C. Why a Ruling on the Use of Anonymous Juries Is Necessary

"Jurors may be citizen soldiers, but they are soldiers nonetheless, and like soldiers of any sort, they may be asked to perform distasteful duties."[201] However, they should not be forced to give up their rights, in the face of other parties in the litigation system. Instead, a solution needs to be found and imposed which effectively ensures that every person involved gets the best possible result.

Both sides to this argument are meritorious, with proponents strongly and predictably believing that their arguments are better. Critics of juror anonymity say that it "contradict[s] the presumption of openness," and gives way to "a threat to the First Amendment freedom of the press."[202] Those in favor of anonymity suggest that it is necessary "to protect jurors from media probes and the traffic of private information on the Internet."[203]

However, without a solid, clear-cut answer for how to deal with juror anonymity, anonymous juries will continue to be empaneled

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[197] *Press-Enterprise II*, 478 U.S. 1, 9 (1986) (quoting *Press-Enterprise I*, 464 U.S. 501, 508 (1984)).

[198] 946 F.2d 1037, 1039 (4th Cir. 1991).

[199] Weinstein, *supra* note 1, at 32.

[200] *See id.*

[201] *In re Globe Newspaper Co.*, 920 F.2d at 98.

[202] Dee Mcaree, *Jurors' I.D.S to be Sealed in Missouri: Secrecy Grows More Common*, NAT'L L.J., Dec. 9, 2002, at A1.

[203] *Id.*

in only specific instances. In allowing juror anonymity only in selective cases, it creates a stigma that particular defendants are dangerous.[204] Routine juror anonymity would not convey a stigma of guilt on the defendant, just as routine metal detectors do not create apprehension.[205] "Screening every flight generates less individual apprehension than would be the case if detectors were used only to screen the most dangerous flights."[206] Therefore, by requiring anonymous juries in all cases, the pre-determined beliefs and any predisposition about the criminality of the particular defendant would be alleviated.

III. A SOLUTION: ANONYMOUS NUMBER SYSTEM

Times change—there is much more media scrutiny, access, and forms of publication—and changing times create new policy considerations and new ways to conduct judicial proceedings. Providing jurors with anonymous numbers that will carry through from the voir dire process to the end of the trial and thereafter may just be the solution to the problems faced by the jurors, defendants, and the media. In doing so, the concerns and rights of all relevant parties can still be met without any major infringements.

The judicial system (judges, lawyers, etc.) would still be allowed to know the prospective juror and trial juror names and addresses so that they can eliminate jurors based on neighborhood, status, etc. Rule 3.5 of the American Bar Association's Model Rules of Professional Conduct provides for discipline if lawyers act towards a juror in any capacity other than professional.[207] If necessary, federal and state statutes and rules could be further enacted to more closely regulate the legal parties' conduct with prospective and actual jurors.

With the anonymous jury system, there could be a set rule for permissive release of jurors' identities for a showing of "good cause," as there is in California.[208] Under the California statute, "[a]ny person may petition the court" for the names of qualified jurors.[209] However, the petition must include "facts sufficient to establish good cause for the release of the juror's personal

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[204] Abramovsky & Edelstein, *supra* note 7, at 470.
[205] King, *supra* note 2, at 146.
[206] *Id.*
[207] *See* MODEL RULES OF PROF'L CONDUCT R. 3.5 (2007).
[208] Weinstein, *supra* note 1, at 42; *see* CAL. CIV. PROC. CODE § 237 (West 2006).
[209] CAL. CIV. PROC. CODE § 237(b).

identifying information."[210] If the court finds that there is "a prima facie showing of good cause," then "[t]he court shall set the matter for hearing," but if there is a "showing . . . of facts that establish a compelling interest against disclosure," then the court should not set a hearing.[211] If a hearing is set, the affected juror may "protest the granting of the petition."[212] The records shall be disclosed after the hearing, unless the juror's protest is sustained.[213] A protest should be sustained if "the petitioner fails to show good cause, the record establishes the presence of a compelling interest against disclosure . . . or the juror is unwilling to be contacted."[214] Also, the court may require the person to whom the information is disclosed "to agree not to divulge jurors' identities or identifying information to others."[215] The court may similarly "limit disclosure in any [other] matter it deems appropriate."[216] Lastly, the statute makes it a misdemeanor for any person to intentionally disclose the sealed information that he gained, or to soliciting another to access or disclose personal juror identities.[217]

"[A]ccording to the legislative history," the purpose of California's statute, "was to protect 'jurors' privacy, safety and well-being,' along with public confidence in and willingness to participate in the jury system."[218] There was also legislative intent "to close the door to access of juror addresses and telephone numbers to the extent that [the legislature] could,"[219] and "to restrict the defendant from receiving juror personal information unless necessary."[220]

This California statute has effectively been put to use in a number of cases. For instance, in *People v. Wilson*, the court refused to give the addresses and phone numbers of the jury members to the defense counsel because the defense "did not show good cause" for the disclosure.[221] Similarly, in *People v. Phillips*, where the defendant was charged with drug possession,

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[210] *Id.*
[211] *Id.*
[212] § 237(c).
[213] § 237(d).
[214] *Id.*
[215] *Id.*
[216] *Id.*
[217] § 237(e)–(f).
[218] Weinstein, *supra* note 1, at 42.
[219] People v. Granish, 49 Cal. Rptr. 2d 45, 51 (Cal. Ct. App. 1996) (quoting Jones v. Superior Court, 31 Cal. Rptr. 2d 890, 894 (Cal. Ct. App. 1994)).
[220] *Id.* at 53.
[221] 50 Cal. Rptr. 2d 883, 892 (Cal. Ct. App. 1996).

the court held that the lower court's withholding of the names of the prospective jurors during the voir dire was harmless because the defendant had other "substantial information about the prospective jurors," from which they could establish the jurors' potential biases.[222] The court felt that the only thing that the names of the prospective jurors would provide to the defendant would be their ethnicities and this was unnecessary information.[223] As for anonymous numbers, in *People v. Goodwin*, jurors' names were not used in court and their juror identification numbers were used instead.[224] The court here held that this procedure did "not deny [defendant] his [constitutional] right to a public trial [and that t]here is no constitutional requirement that the jurors' names be spoken in the courtroom."[225]

Although the names and addresses would be unavailable, trial courts should allow some inquiry into any possible "group affiliation[]" and to the "approximate community" in which a juror is from.[226] "Juror questionnaires, voir dire proceedings, and all other records and proceedings accessible to the parties, counsel, or the public would contain references to jurors by number rather than by name."[227] Counsel could have the court disclose the name of a particular juror if he or she can show good cause and that the identity will likely "lead to evidence sufficient to impeach the verdict or sustain a challenge for cause."[228] Then, after the trial, a juror could give the court permission to reveal his or her identity if he or she desired.[229] As suggested by *Press-Enterprise I*, "it is better to allow media access to selection proceedings that identify jurors by number than it is to bar the press from the jury selection proceedings altogether."[230] Giving the media access to the entire proceedings would allow for coverage of the jury selection process and the jury activities during the trial in all detail, disclosing all that occurs, except for the names and the addresses of the actual jurors.[231]

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[222] 66 Cal. Rptr. 2d 380, 381 (Cal. Ct. App. 1997).
[223] *Id.* at 382.
[224] 69 Cal. Rptr. 2d 576, 580 & n.4 (Cal. Ct. App. 1997).
[225] *Id.* at 581.
[226] Wertheim, *supra* note 58, at 995.
[227] King, *supra* note 2, at 135.
[228] *Id.*
[229] *Id.*
[230] *Id.* at 155.
[231] *Id.*

A. The Media

The media will still have access to all relevant proceedings and information/answers given by jurors but will not know which juror the information belongs to. Therefore, the media would still be granted its First Amendment right to have admission to trials. Furthermore, the media could still publish any information that it sought to; it would just have to refer to jurors by their numbers instead of by their names. By doing so, any identifying information about a single juror that was released would all relate back to the same number, therefore creating an identity of that juror without using his or her actual name. As a result of continuing to allow the media and the public access to the judicial system, they will maintain their ability to be able to ensure that the trial process is fair.

Although the media and the public have traditionally been given access to the identities of jurors, communities of the past were smaller and closer. As the United States continues to expand, this is no longer the case, and many people are now unaware of the names of their neighbors. As the population changes, it is time for a change in precedent as well. Therefore, what was the norm in the past (juror disclosure) can change into something different (juror anonymity) in the future.

B. The Defendant

With an anonymous jury system, the defendant will be ensured a fair trial by an impartial jury because the jury will not be afraid of disclosure of personal information. The jury members also will not be subject to harassment due to their answers and beliefs. Additionally, the defendant will still be afforded his or her Sixth Amendment right to a fair trial. This is especially so because jurors will be more likely to give their actual opinions as they will not be afraid of public scrutiny due to the fact that the public will not know their actual identity.

Another argument is that because prosecutors and defense attorneys will not be aware of certain "undesirable demographic characteristics" of a prospective juror, they will both be less likely "to weed out jurors" that may be prejudicial to their side.[232] In the end, this may lead to a hung jury and, in effect, favor the defendant. A unanimous verdict is required to convict a

[232] *See* Wertheim, *supra* note 58, at 996.

defendant, and there may be jurors that have demographics that favor the defendant, who end up on the jury.[233] Those jurors that "'slip through' the voir dire" with particular associations may make it more difficult to result in a unanimous verdict.[234]

C. The Jury

Denying access to juror identities will prevent post-trial harassment by the press and limit the audience to personal information disclosed by jurors. Jurors will not be afraid of "enemies" in high profile criminal cases or of harassment from the public after a verdict. The jury will still be able to protect the defendant from the callous prosecutor and pitiless judge.[235] Jurors will more likely be honest during the voir dire process and the deliberation process, as they will not be as afraid of public scrutiny, or of their private information being disclosed to the public at large. Furthermore, concerns of the friends, families, and co-workers of jurors will be eliminated, as the public will not be able to have access to them without knowing the identity of the jurors themselves.

CONCLUSION

Although historically jurors have been openly known to each other because they were typically neighbors, the United States is larger now, ever-growing and continuously changing. Those who do not want to serve on a jury due to privacy reasons, fear, or other personal predilections, can easily find out the correct answers to provide during the voir dire process to ensure that they are not selected for a jury. Fewer and fewer people will be willing to serve on a jury, to take part in their so-called civic duty, as they realize that their personal lives will be scrutinized in the paper, the television, the internet, etc. In order to ensure that defendants continue to receive an impartial jury, jurors in all criminal cases should be anonymous, as this will not give rise to any tendencies to view the defendant as more or less likely to have committed the crime accused of.

The fear of jurors, publicity by the media, and prejudice to the defendants should not be allowed to be the predominate factors in jury cases. An impartial jury is a defendant's constitutional right

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[233] *Id.*
[234] *Id.*
[235] Raskopf, *supra* note 6, at 357.

and also a main component of the American judicial system. In some instances, an anonymous jury is needed to ensure that this goal is met. Using anonymous juries in only certain cases can send signals to the jurors and to the media about the actual criminality or involvement of the defendant. In order to ensure that no particular defendants are signaled out, an anonymous jury should be empaneled in all criminal cases.

The defendant's concerns will be met because he or she will still effectively be able to use his peremptory challenges and will be able to have an impartial jury because the jury members will not be afraid of privacy violations or be consumed by other fears. The media and public will still have access to all of the court proceedings and information other than the actual identity of the jurors. Those jurors who are willing to provide discussions with the media will enhance the media's and public's ability to criticize the judicial process and ensure that the administration of justice is correctly afforded. Lastly, the juror—the citizen who is only providing a function of his or her civic responsibility—will be less guarded and will instead candidly share his or her responses and opinions.

For example, in *United States v. Wecht*,[236] the Third Circuit could have just as easily affirmed the district court's decision to empanel the anonymous jury,[237] and still have been able to provide for protection of the rights of all of the parties involved. Although the court found a "presumptive First Amendment right of access to obtain the names of both trial jurors and prospective jurors," this was based on the fact that juries were historically open and known to the public,[238] and it has already been discussed that this was only due to the fact that communities were small. Furthermore, it can again be stated that history and precedent does not have to always be followed but can be changed as needed.

Similarly, as to the argument of allowing "the public to verify the impartiality of key participants in the administration of justice,"[239] it would still be possible for the public and the media to verify the impartiality of the jury when only knowing them by number instead of name. There would still be a way to identify jurors and all other information about each juror, his or her

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[236] 537 F.3d 222 (3d Cir. 2008).

[237] *See id.* at 224.

[238] *Id.* at 235–36.

[239] *Id.* at 238 (quoting *In re* Globe Newspaper Co., 920 F.2d 88, 94 (1st Cir. 1990)).

views, and his or her decisions (as given during the trial) would still be available to the public. Also, the risks to jurors of harassment by Wecht's friends and family members, influence by other outside parties, and embarrassment would fade away, as it would be more difficult to gain access to the jurors without knowing their names. Wecht would still be entitled to a fair trial, and the jury members would ultimately be impartial, as they would not fear that their privacy would be invaded.

Ultimately, the concerns of jurors should be taken more seriously and given equal weight as to the concerns of the media, the members of the public, and the defendant. Because jurors are compelled and do not choose to perform this civic obligation, they should be carefully considered so as to ensure that citizens do not become reluctant to serve on a jury.