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## **PROTECTING THE JUROR'S RIGHT TO PRIVACY**

Each year nearly two million Americans report for jury duty, the hallmark of the American system of justice. These prospective jurors are asked to provide extensive information about themselves and sometimes their families.

Although they do this in response to a summons and order of a court, most understand the necessity for and function of this information in selecting an impartial jury. But, while they might be willing to share personal information for a limited, legitimate purpose, most Americans cherish their privacy and expect others to respect it. While the Bill of Rights does not specifically refer to the right to privacy, the U.S. Constitution has been interpreted to include such a right. U.S. Supreme Court Justice Brandeis summarized it as the “...right to be let alone—the most comprehensive of rights and the right most valued by civilized men.”<sup>[1]</sup>

Some point out that identity theft is one of the fastest growing crimes in the United States<sup>[2]</sup> and protecting privacy should be a top priority. Others dismiss concerns about juror privacy as hysteria fomented by civil libertarians. The September 11, 2001 terrorist attacks on the World Trade Center and the

Pentagon have fueled both sides of the debate; one side clamoring for a national ID system, the other concerned about invasions of privacy. Such debates about competing interests—national/personal security vs. personal privacy—are not uncommon and require tradeoffs to ensure the common good. The point here is, there is a right to privacy and citizens do not give up that right when summoned to jury duty, nor should they be expected to do so. However, there are the rights of the defendant to an impartial jury and the public's right to observe court proceedings that must be balanced with the jurors' right to privacy.

The research question investigated here was: "Is the juror's right to privacy adequately protected in the 22<sup>nd</sup> Judicial Circuit of Missouri?" To answer the question, three objectives were established:

1. Judges, lawyers and jurors would be surveyed about juror privacy to determine which, if any, issues of juror privacy exist in the circuit.
2. Those issues that garnered a statistically significant view would be examined to determine whether current laws, rules and procedures adequately addressed them.
3. Recommend changes to the laws, rules or procedures if necessary.

The significance of this evaluation to the court is that citizens may be reluctant to serve as jurors if they believe their private lives will be examined in public or, if they fear criminal defendants or others could harass them. These citizens may take steps to avoid jury duty, thus effecting the representative cross section of the pool of prospective jurors. Also, jurors may be reluctant to

divulge information they consider private if they think it will not be treated confidentially thus effecting the litigants' ability to determine real bias.

The literature review for this research included a review and analysis of statutes, case law and articles dealing with the issue of privacy and more specifically juror privacy. The following were key materials in developing this paper:

*Protecting A Juror's Right to Privacy: Constitutional Constraints and Policy Options* by David Weinstein. This article, published in the Temple Law Review, provided a thorough historical background on the issue of "juror privacy" in the context of the 6<sup>th</sup> amendment rights of a defendant and the 1<sup>st</sup> amendment rights of the media. It was an excellent resource for relevant case law on this topic.

*"Citizen-Soldiers" or Anonymous Justice: Reconciling the Sixth Amendment Right of the Accused, the First Amendment Right of the Media and the Privacy of Jurors* by Marc O. Litt. This article also discussed the competing rights of jurors, defendants and the media and was another excellent resource for case law and other references.

*Safeguarding Juror Privacy* by Paula Hannaford in the journal Judicature, looked at juror information in terms of its relevance to voir dire and selecting an impartial jury. Ms. Hannaford points out that the majority of information collected about prospective jurors is administrative or qualifying information that is not relevant to fairness or impartiality. Restricting access to these type

data would go a long way in protecting privacy and probably does not run the same risk of conflicting with the rights of defendants and the media. The article presented some common sense ideas on safeguarding the privacy of prospective jurors.

*Expectations of Privacy? Jurors' views of voir dire questions* by Mary R. Rose, also in the journal Judicature, presented an analysis of juror's views about voir dire questioning. Ms. Rose surveyed jurors to get their opinion about questions that might be very personal and questions that might be of questionable relevance. Comparing Ms. Rose's results to those in my own juror survey were very useful in my analysis.

*Improving Jury Selection: How to Spot UFO Jurors* by Judge Gregory E. Mize in the journal Court Review was another study in human behavior. Judge Mize was interested in why some people do not respond during voir dire when the question has relevance to them. The judge presented his own technique for ferreting out these silent jurors; a technique I incorporated in my recommendations.

*Press-Enterprise v. Superior Court of California*. There were many federal and state court cases reviewed for this project; however, Press-Enterprise is the case having principle relevance to this issue. A juror's right to privacy is recognized by the majority on the Supreme Court, and the framework for balancing the various rights is laid out in this case.

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This [research paper](#) is available in its entirety in portable document format. To access, you must first obtain and install the Adobe Acrobat Reader



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[1] *Olmstead v. United States*, 277 U.S. 438, J. Brandeis dissenting

[2] David Ho. "Identity Theft Leads List of Fraud complaints." St. Louis Post Dispatch 24 Jan. 2002: C1