

## JUROR PRIVACY VIA ANONYMITY

Jayne S. Ressler\*

*Anonymous juries delivered verdicts in the hush-money criminal trial of Donald J. Trump, as well as both of E. Jean Carroll's defamation cases against him. After the defamation cases concluded, the judge cautioned the jurors against ever publicly revealing their identities. This was sound advice, as recent doxing, threats of violence, and online posts filled with hatred and vitriol illustrate the dangers facing American jurors. The scholarly literature analyzing anonymous juries focuses primarily on the propriety of their use in criminal cases to protect jurors from physical harm. Missing from the conversation, however, is an examination of anonymity's role in protecting jurors—in both criminal and civil cases—from privacy harm. Privacy harms can impose significant costs not only on the over thirty million citizens called to jury duty annually, but on the jury system itself.*

*This Article fills the gap in the literature by assessing the institution of anonymous juries through the lens of juror privacy. It examines concerns regarding citizen participation in the jury process, faith in the judicial system, juror truthfulness, trial fairness, and public access. As a procedural reform to counter the effects that rapid advances in social media and technology have on juror privacy, the author of this Article argues that anonymous juries should become the default practice in most criminal and civil trials. This Article explains how routinely impaneling anonymous juries can meet the challenge of protecting juror privacy in the twenty-first century while safeguarding fair trials and protecting public access to the judicial process.*

---

\* Associate Professor of Law, Brooklyn Law School. J.D., University of Pennsylvania Law School; B.S., Wharton School at the University of Pennsylvania; B.A., University of Pennsylvania. I acknowledge with appreciation the funding I received from the Brooklyn Law School Summer Research program. Derek Bambauer, Anita Bernstein, Amy Gajda, Abbe Gluck, Brian Lee, Anna Roberts, Dan Solove, and Eugene Volokh provided inspiring conversations and comments on previous drafts of this Article; Lloyd Carew-Reid and Gavin Goldstein contributed varied supports, sometimes at a moment's notice; and Dacia Cocariu, Rahmel Lee Robinson, and Miri Reinhold furnished invaluable research assistance. My gratitude to two judges who lead the nation in the use of anonymous juries, Lewis Kaplan of the Southern District of New York and Penney Azcarate, Chief Judge of the Fairfax Circuit Court in Virginia, for speaking to me about *Carroll v. Trump* and *Depp v. Heard*, respectively. Judges Kaplan and Azcarate provided insights that strengthened this Article. My thanks as well to the two jurors on the *People v. Chauvin* case who spoke with me about their experiences being anonymous jurors. Finally, all my love to the Rose men—Ken, Nate, and Benny—and the Rose cats, Merlin and Resa.

INTRODUCTION .....	612
I. JUROR EXPOSURE .....	617
A. <i>Voir Dire</i> .....	619
B. <i>Voir Bias</i> .....	623
II. JUROR PRIVACY RIGHTS AND INTERESTS .....	627
A. <i>Information Collection</i> .....	630
B. <i>Information Processing</i> .....	632
C. <i>Information Dissemination</i> .....	633
III. THE ANONYMOUS JURY .....	634
A. <i>Authority to Impanel an Anonymous Jury</i> .....	636
B. <i>Defining the Anonymous Jury</i> .....	638
1. Type of Juror Information Withheld .....	638
2. From Whom Juror Information Is Withheld.....	639
3. Temporal Restrictions.....	641
4. Other Restrictions .....	641
IV. EFFECTS OF JUROR ANONYMITY .....	642
A. <i>Juror Truthfulness, Citizen Participation, and Faith in the         Judicial System</i> .....	643
B. <i>Fairness for Criminal Defendants</i> .....	647
V. TOWARD JUROR PRIVACY VIA ANONYMITY.....	648
CONCLUSION.....	655

## INTRODUCTION

“We would like the public to allow us to return to our private lives as anonymously as we came.”<sup>1</sup>

Anonymous juries delivered verdicts in the criminal hush-money case against Donald J. Trump,<sup>2</sup> as well as both of E. Jean Carroll’s defamation cases against him.<sup>3</sup> At the conclusion of the first defamation case, the judge

---

1. *Reaction to Jackson Verdict*, CNN (June 13, 2005, 7:50 PM), <http://www.cnn.com/2005/LAW/06/13/jackson.reax/index.html> [<https://perma.cc/63GW-FFGH>] (jury statement in the 2005 Michael Jackson child molestation trial).

2. See Adam Reiss, Tom Winter, Lisa Rubin & Dareh Gregorian, *Judge Restricts Access to Jurors’ Identities in Trump Hush Money Trial*, NBC NEWS (Mar. 7, 2024, 6:36 PM), <https://www.nbcnews.com/politics/donald-trump/judge-restricts-access-jurors-identities-trump-hush-money-trial-rcna142348> [<https://perma.cc/FH8E-QWDS?type=image>]; see also Zachary Folk, *Trump’s Hush Money Trial Jurors Will Be Kept Secret From Public, Judge Rules*, FORBES (Mar. 7, 2024, 4:11 PM), <https://www.forbes.com/sites/zacharyfolk/2024/03/07/trumps-hush-money-trial-jurors-will-be-kept-secret-from-public-judge-rules/?sh=69111cc93f61> [<https://perma.cc/GN6H-AMK3>].

3. See Marcia Cramer & Benjamin Weiser, *In Trump’s Defamation Trial, the Nine Most Important People Are Enigmas*, N.Y. TIMES (Jan. 25, 2024), <https://www.nytimes.com/2024/01/25/nyregion/trumps-defamation-trial-carroll-jury.html> [<https://perma.cc/EQB4-4R6T>]; see also Benjamin Weiser, Maggie Haberman, Maria Cramer & Kate Christobek, *Jury*

warned the jurors that they “might not want to publicly identify themselves—‘not now and not for a long time.’”<sup>4</sup> At the conclusion of the second case, the judge stated simply, “My advice to you is that you never disclose that you were on this jury, and I won’t say anything more about it.”<sup>5</sup>

Persistent threats to jurors in the United States demonstrate that American jurors are in danger. For example, in Georgia—as per usual practice—officials released the names of the grand jurors who indicted Trump for election fraud.<sup>6</sup> Truth Social users and others quickly doxed them.<sup>7</sup> The jurors’ names, photos, and addresses appeared on multiple websites, including sites linked with violent extremist attacks<sup>8</sup> and one belonging to a Russian company.<sup>9</sup> One online comment recommended “a swift bullet to the head” for the jurors, and another suggested that “[e]veryone on that jury should be hung.”<sup>10</sup> Likewise, threats to the jurors began as soon as the guilty verdict was announced in the Trump criminal hush-money case. “Hope these jurors face some street justice,” a user on a pro-Trump forum posted, while another wrote, “[w]ouldn’t [it] be interesting if just one person from Trump’s legal team . . . leaked the names of the jurors?”<sup>11</sup> Additional posts included

---

*Selection in Trump’s Defamation Trial Has Watchful Eyes: His*, N.Y. TIMES, <https://www.nytimes.com/2024/01/16/nyregion/trump-e-jean-carroll-defamation-trial.html> [https://perma.cc/2HL4-47XS] (Jan. 17, 2024); see also Larry Neumeister, *Judge, Citing Trump’s ‘Repeated Public Statements,’ Orders Anonymous Jury in Defamation Suit Trial*, AP NEWS (Nov. 3, 2023, 5:44 PM), <https://apnews.com/article/trump-carroll-rape-lawsuit-defamation-trial-748d205569b0e90d79826cf9477ad67e> [https://perma.cc/C5A3-HBAP].

4. Juliette Kayyem, *An Ominous Warning to the E. Jean Carroll Jury*, THE ATLANTIC (May 10, 2023), <https://www.theatlantic.com/ideas/archive/2023/05/jean-carroll-donald-trump-trial-judge/674011/> [https://perma.cc/8YYY-2RVM].

5. Brent D. Griffiths & Laura Italiano, *Judge in Trump Defamation Trial Advises Jurors to ‘Never Disclose That You Were on This Jury’*, BUS. INSIDER (Jan. 26, 2024, 5:36 PM), <https://www.businessinsider.com/judge-lewis-kaplan-trump-defamation-trial-jury-advice-2024-1> [https://perma.cc/92DZ-RFCF].

6. Angelo Fichera, *No, Georgia Officials Didn’t Err in Releasing Trump Indictment with Grand Jurors’ Names*, AP NEWS (Aug. 17, 2023, 12:46 PM), <https://apnews.com/article/fact-check-georgia-trump-indictment-grand-jurors-names-786743008561> [https://perma.cc/5GU7-ELV4] (“[I]t’s common practice [in Georgia] to list the names of the grand jurors on the indictment.”).

7. See, e.g., Ella Lee & Zach Schonfeld, *Grand Jurors in Georgia Trump Case Face Threats, Racist Attacks*, THE HILL (Aug. 17, 2023, 12:25 PM), <https://thehill.com/regulation/court-battles/4156983-grand-jurors-in-trump-georgia-case-face-threats-racist-abuse/> [https://perma.cc/6RJK-TX8X].

8. See Donie O’Sullivan, Marshall Cohen & Nick Valencia, *Purported Names, Photos and Addresses of Fulton County Grand Jurors Circulate on Far-Right Internet*, CNN (Aug. 18, 2023, 4:25 AM), <https://www.cnn.com/2023/08/17/politics/fulton-county-grand-jurors-far-right-internet/index.html> [https://perma.cc/6ZJZ-PMVZ].

9. Alex Nguyen, *Russian Company Refuses to Remove Doxing Info of Trump Grand Jurors*, DAILY BEAST (Sept. 7, 2023, 1:27 PM), <https://www.thedailybeast.com/russian-company-refuses-to-remove-info-of-grand-jurors-in-trump-georgia-case> [https://perma.cc/FRZ3-6PR3].

10. Lee & Schonfeld, *supra* note 7; see also Kelly Rissman, *Truth Social Users Are Doxing Grand Jurors Who Indicted Trump in Georgia: ‘Karma Is a B’*, INDEPENDENT (Aug. 16, 2023, 2:54 AM), <https://www.the-independent.com/news/world/americas/us-politics/grand-jurors-dox-trump-indictment-b2393831.html> [https://perma.cc/F4CW-SKXS].

11. Donie O’Sullivan & Sean Lynngass, *After Trump’s Guilty Verdict, Threats and Attempts to Dox Trump Jurors Proliferate Online*, CNN (May 31, 2024),

“[w]e need to identify each juror. Then make them miserable. Maybe even suicidal,” and “I hope every juror is doxxed and they pay for what they have done.”<sup>12</sup>

It is not only cases against Trump where jurors are at risk. Jurors received threats in the hate crime case arising from the shooting at the Tree of Life Synagogue in Pennsylvania<sup>13</sup> and in a gang-related murder case in Connecticut.<sup>14</sup> Citizens are aware of the perils of jury service. A member of the jury pool in the Kyle Rittenhouse trial, for example, said, “[e]ither way this goes, half the country is upset with you . . . . It’s just scary. I don’t want people to have my name. I don’t want to be seen on TV.”<sup>15</sup>

One means of protecting jurors is to impanel them anonymously. Anonymous juries delivered verdicts in several high-profile trials, including not only the various cases against Trump,<sup>16</sup> but also the prosecution of Derek Chauvin for the murder of George Floyd,<sup>17</sup> lawyer Alex Murdaugh’s murder trial,<sup>18</sup> and Johnny Depp’s defamation lawsuit against Amber Heard,<sup>19</sup> among others.<sup>20</sup> The scholarly literature analyzing anonymous juries focuses

<https://www.cnn.com/2024/05/31/tech/threats-doxxing-trump-jurors/index.html> [https://perma.cc/6G64-MLLU].

12. Ryan J. Reilly, *Trump Supporters Try to Dox Jurors and Post Violent Threats After His Conviction*, NBC NEWS (May 31, 2024, 4:27 PM), <https://www.nbcnews.com/politics/donald-trump/trump-supporters-try-dox-jurors-violent-threats-conviction-rcna154882> [https://perma.cc/J86E-Y785].

13. Press Release, U.S. Dept. of Just., West Virginia Man Admits to Obstructing Tree of Life Trial (Sept. 19, 2023), <https://www.justice.gov/opa/pr/west-virginia-man-admits-obstructing-tree-life-trial> [https://perma.cc/C75M-UK85]; see also Aliza Chasan, *Police Arrest Man Accused of Threatening Jury in Trial of Pittsburgh Synagogue Gunman*, CBS NEWS (Aug. 10, 2023, 5:25 PM), <https://www.cbsnews.com/news/hardy-carroll-lloyd-pittsburgh-synagogue-shooting-jury-threats-robert-bowers-trial/> [https://perma.cc/78MW-L8M7].

14. Pat Tomlinson, *Jurors in Stamford Murder Trial Express Safety ‘Concerns’ After Alleged Recording Incidents, One Arrest*, STAMFORD ADVOC. (July 20, 2022, 2:34 AM), <https://www.stamfordadvocate.com/news/article/Jurors-in-Stamford-murder-trial-express-safety-17316329.php> [https://perma.cc/8PEP-YZRD].

15. Ashley Collman, *Potential Jurors in Kyle Rittenhouse’s Trial Were Asked Their Opinions on AR-15 Rifles, and Some Said They Were Afraid They’d Face Threats If Chosen to Serve*, BUS. INSIDER (Nov. 1, 2021, 6:24 PM), <https://www.insider.com/kyle-rittenhouse-homicide-trial-potential-jurors-questioned-guns-2021-11> [https://perma.cc/4A3N-WCWE].

16. See Cramer & Weiser, *supra* note 3.

17. See Marco della Cava, *Anonymous Jury in Derek Chauvin Trial Part of a Growing Trend That Has Some Legal Experts Worried*, USA TODAY (April 25, 2021, 7:47 AM), <https://www.usatoday.com/story/news/nation/2021/04/25/chauvin-trial-jury-anonymous-concerning-trend-us-justice/7342909002/> [https://perma.cc/4ECR-F9YH].

18. See Steve Ardary, *Court Orders Identity of Jurors in Murdaugh Murder Trial Hidden*, WCSC TELEVISION (Dec. 29, 2022, 8:19 PM), <https://www.live5news.com/2022/12/29/court-orders-identity-jurors-murdaugh-murder-trial-hidden/> [https://perma.cc/R2G3-ZXUN].

19. Joshua Zitser, *The Jurors Who Gave Johnny Depp Victory in Amber Heard Lawsuit Will Have Their Identities Kept Secret for a Year*, BUS. INSIDER (June 2, 2022), <https://www.yahoo.com/video/jurors-gave-johnny-depp-victory-112203105.html> [https://perma.cc/JFK3-TPPP].

20. See Steve Karnowski, *Anonymous Jury Ordered for Ex-cop in Daunte Wright’s Death*, ASSOC. PRESS (Aug. 11, 2021), [https://www.wsiltv.com/news/national/anonymous-jury-ordered-for-ex-cop-in-daunte-wright-s-death/article\\_6468561b-057e-57a2-9f69-739f2ad372c3.html](https://www.wsiltv.com/news/national/anonymous-jury-ordered-for-ex-cop-in-daunte-wright-s-death/article_6468561b-057e-57a2-9f69-739f2ad372c3.html) [https://perma.cc/PME2-ZAH8]; Leonardo Mangat, *A Jury of Your (Redacted): The Rise and Implications of Anonymous Juries*, 103 CORNELL L. REV. 1621, 1623 nn.12–16

primarily on the propriety of their use in criminal cases, as a means to protect jurors from *physical* harm.<sup>21</sup> Missing from the conversation, however, is an examination of anonymity's role in protecting jurors—in both criminal and civil cases—from *privacy* harm. This neglected issue is critical as rapid advances in technology and social media make privacy increasingly fragile.<sup>22</sup> The same fragility extends to the privacy interests of prospective and seated jurors.<sup>23</sup>

The law mandates responding to jury summonses,<sup>24</sup> and the jury selection process often requires potential jurors to expose personal information.<sup>25</sup> Esteem for the notion of open judicial processes can cause enthusiasts to overlook exposure of those obligated to be part of the jury system.<sup>26</sup> This

---

(2018) (noting the use of anonymous juries in cases involving neo-Nazis, the Casey Anthony trial, the murder of Trayvon Martin trial, the FIFA trial, and the Rod Blagojevich trial); Hal Boedeker, *Zimmerman Juror from Chicago Talks of Death Threats*, CHI. TRIB. (June 18, 2018, 9:18 PM), <https://www.chicagotribune.com/2013/10/31/zimmerman-juror-from-chicago-talks-of-death-threats/> [<https://perma.cc/9B6A-CAQZ>] (noting that after the jury found George Zimmerman not guilty for the death of Trayvon Martin and their names were released to the public, a juror reported that she and her son received death threats); Order Granting in Part Motion to Intervene for the Limited Purpose of Seeking Release of Juror Information Once Jury is Discharged at 2, *State of Florida v. Marie*, No. 48-2008-CF-015606-AO (Fla. Cir. Ct. July 26, 2011) (noting that when the jury acquitted Casey Anthony for the murder of her daughter, protestors declared the jurors themselves were guilty of murder).

21. See, e.g., Nancy J. King, *Nameless Justice: The Case for the Routine Use of Anonymous Juries in Criminal Trials*, 49 VAND. L. REV. 123, 125 (1996) (proposing routine use of anonymous juries in criminal cases as a means to alleviate juror fear); Mangat, *supra* note 20, at 1636–44 (reviewing implications of juror anonymity). See generally Christopher Keleher, *The Repercussions of Anonymous Juries*, 44 U.S.F. L. REV. 531 (2010) (describing and criticizing the use of anonymous juries in both federal and state courts); Eric Wertheim, *Anonymous Juries*, 54 FORDHAM L. REV. 981 (1986) (arguing that when necessary, anonymous juries do not undermine defendants' constitutional right to fair trial, nor the presumption of innocence).

22. See generally DANIELLE KEATS CITRON, *THE FIGHT FOR PRIVACY: PROTECTING DIGNITY, IDENTITY AND LOVE IN OUR DIGITAL AGE* (2022); AMY GAJDA, *SEEK AND HIDE: THE TANGLED HISTORY OF THE RIGHT TO PRIVACY* (2022); DANIEL J. SOLOVE, *UNDERSTANDING PRIVACY* (2008).

23. John G. Browning, *Voir Dire Becomes Voir Google: Ethical Concerns of 21st Century Jury Selection*, AM. BAR ASS'N. (Apr. 25, 2019), [https://www.americanbar.org/groups/tort\\_trial\\_insurance\\_practice/publications/the\\_brief/2016\\_17/winter/voir\\_dire\\_becomes\\_voir\\_google\\_ethical\\_concerns\\_of\\_21st\\_century\\_jury\\_selection/](https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2016_17/winter/voir_dire_becomes_voir_google_ethical_concerns_of_21st_century_jury_selection/) [<https://perma.cc/CJ2C-LGSE?type=standard>] (“Welcome to jury selection in the digital age, where, with a few mouse clicks, an attorney can learn all about a prospective juror . . .”).

24. See 28 U.S.C. § 1866(g) (imposing (1) a fine of \$1,000, (2) imprisonment of up to three days, or (3) performance of mandatory community service, or any combination thereof, for failure to respond to a jury summons as directed); 42 PA. CONS. STAT. § 4584 (2024) (providing that a prospective juror who fails to appear as summoned be held in contempt of court and fined up to five hundred dollars or imprisoned for up to ten days or both); MISS. CODE ANN. § 13-5-34 (2024) (providing that noncompliance with a jury summons may result in contempt of court and a five hundred dollar fine, imprisonment for not more than three days, or both); *In re Mauldin*, 529 S.E.2d 653, 654 (Ga. App. 2000) (sentencing prospective juror to criminal contempt for failure to appear for jury duty and sentencing him to three days incarceration).

25. See *infra* Part I (discussing juror exposure).

26. As Professor Mary Anne Franks discusses, a cultlike obsession with free expression is evolving that is used to justify harassment and violence against the vulnerable. See generally MARY ANNE FRANKS, *THE CULT OF THE CONSTITUTION* (2019).

oversight is troubling because the costs that privacy harms can impose are significant not only to the over thirty million citizens called to jury duty in state courts annually,<sup>27</sup> but to the jury system itself. The goal of this Article is to fill the gap in the literature by focusing attention on anonymity as a means to protect juror privacy. The Article's aim is to reframe, categorize, modernize, and regularize a process that is ill-defined, inconsistent, and anachronistic.

Part I of this Article explores how information about jurors is exposed. This Article begins with an overview of the juror selection process and the types of information that members of the jury pool<sup>28</sup> are required to reveal.

Part II examines the notion of juror privacy. Here, the Article adapts Professor Daniel J. Solove's privacy taxonomy to current privacy concerns facing jurors. Building on his concepts of "information collection," "information processing," and "information dissemination,"<sup>29</sup> the Article draws on examples from case law to illuminate how various jury practices invade juror privacy.

Part III assesses the anonymous jury. First, this part examines the authority to impanel an anonymous jury and how courts decide whether to exercise that authority. Next, it addresses definitional ambiguity in the phrase "anonymous jury." There is both temporal confusion about the term—does anonymity attach pretrial, during trial, posttrial, or some combination of the above?—as well as substantive ambiguity: withholding what information, and from whom, specifically makes a jury "anonymous"?

Part IV addresses effects of juror anonymity. First, this part discusses concerns regarding citizen participation in the jury process, faith in the judicial system, and juror truthfulness. It includes information that two jurors in the Derek Chauvin murder case shared with the author of this Article about their experience serving as anonymous jurors. This part then explores the impact of juror anonymity on trial fairness.

Part V offers recommendations to address the deficiencies that earlier parts bring to light. The author of this Article first proposes a universal definition of "anonymity" in the context of juries. The author then argues that anonymous juries should be the default practice in most criminal and civil trials—taking the discretion to impanel an anonymous jury away from judges and making a named jury the exception rather than the rule.

---

27. See *Jury Duty: Who Gets Called, and Who Actually Serves*, NPR (June 7, 2015, 7:26 AM), <https://www.npr.org/2015/06/07/412633577/jury-duty-who-gets-called-and-who-actually-serves> [<https://perma.cc/H495-Q32U>].

28. The traditional terms for those who are members of the jury pool are "veniremen" or "venire" or "members of the venire." The members of the venire who are chosen to sit on a case are "jurors." However, courts and scholars often refer only to jurors when they mean both jurors and members of the venire. This Article endeavors to use the terms separately, as appropriate. When the context is clear, however, the Article follows routine practice and uses the term jurors to include both jurors and venire members.

29. See generally Daniel J. Solove, *A Taxonomy of Privacy*, 154 U. PA. L. REV. 477 (2006).

Part VI concludes by returning to the quotation that began this Article, and emphasizes that those compelled to jury service should not be forced to relinquish their privacy. The author of this Article suggests that routinely impaneling anonymous juries can meet the challenge of protecting juror privacy in the twenty-first century, while safeguarding fair trials and maintaining public access to the judicial process.

### I. JUROR EXPOSURE

The U.S. Constitution provides criminal defendants the right to a jury trial for matters not considered petty offenses.<sup>30</sup> Additionally, the Seventh Amendment guarantees a jury trial in most civil cases.<sup>31</sup> Consequently, the U.S. Supreme Court has proclaimed that jury service is a duty of citizenship.<sup>32</sup> Further, the Jury Selection and Service Act<sup>33</sup> provides that “[i]t is . . . the policy of the United States that all citizens . . . shall have an obligation to serve as jurors when summoned for that purpose.”<sup>34</sup> All fifty states and the District of Columbia have similar statutes.<sup>35</sup>

The prospect of jury duty has the potential to affect over 300 million Americans.<sup>36</sup> It appears that “all citizens” really does mean “all”—even former President Barack Obama, then-presidential candidate Trump, and Taylor Swift were summoned and appeared for jury duty.<sup>37</sup> Approximately

30. See U.S. Const. art. III, § 2, cl. 3; *id.* amend. VI; *Cheff v. Schnackenberg*, 384 U.S. 373, 378–79 (1966) (holding that petty offenses do not require a jury trial).

31. See U.S. CONST. amend. VII.

32. See, e.g., *Thiel v. S. Pac. Co.*, 328 U.S. 217, 224 (1946); *cf.* *United States v. Bonas*, 344 F.3d 945, 950 (9th Cir. 2003) (“Serving is a public duty . . . .”); *Jones v. Sec’y, Dep’t of Corrs.*, No. 17-CV-1834-T-36SPF, 2020 WL 5628970, at \*11 (M.D. Fla. Sept. 21, 2020) (same); *St. Clair v. Commonwealth*, 451 S.W.3d 597, 622 (Ky. 2014) (same); *Celotex Corp. v. Wilson*, 607 A.2d 1223, 1228 (Del. 1992) (same); *Penn v. Eubanks*, 360 F. Supp. 699, 702 (M.D. Ala. 1973) (“Jury service on the part of citizens of the United States is considered under our law in this country as one of the basic rights and obligations of citizenship. Jury service is . . . a responsibility . . . that should be shared by all citizens.”); Andrew Ferguson, *Private: Jury Duty Is Constitution Duty*, AM. CONST. SOC’Y (Feb. 21, 2023), [https://www.acslaw.org/?post\\_type=acsblog&p=9421](https://www.acslaw.org/?post_type=acsblog&p=9421) [<https://perma.cc/JUK6-AD7B>] (“[J]ury duty . . . is [a] constitution[al] duty.”).

33. 28 U.S.C. §§ 1861–1878 (1992).

34. 28 U.S.C. § 1861.

35. See, e.g., Alexander E. Preller, *Jury Duty Is a Poll Tax: The Case for Severing the Link Between Voter Registration and Jury Service*, 46 COLUM. J.L. & SOC. PROBS. 1 (2012); *How Are Jurors Selected, and for How Long Do They Serve?*, CTR. FOR JURY STUDS., <https://www.ncsc-jurystudies.org/state-of-the-states/jury-data-viz> [<https://perma.cc/L7NT-YW6E>] (select “Juror Selection & Service Terms” on Jury Data Dashboard).

36. The estimated population of the United States as of October 1, 2024, is 345,891,440. See *United States Population*, WORLDOMETER, <https://www.worldometers.info/world-population/us-population/> [<https://perma.cc/Z86M-LPGA>]. A conservative estimate assumes that roughly forty million of those living in the United States are not citizens and are thus not affected by jury service obligations. See, e.g., HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., IF11806, CITIZENSHIP AND IMMIGRATION STATUSES OF THE U.S. FOREIGN-BORN POPULATION (Oct. 19, 2023), <https://sgp.fas.org/crs/homesec/IF11806.pdf> [<https://perma.cc/7J27-DBCUI>].

37. See Steve Schmadeke & Elvia Malagón, *Obama Does the Unthinkable at Daley Center: Makes Jury Duty a Thrill*, CHI. TRIB. (Nov. 9, 2017, 7:00 AM), <https://www.chicagotribune.com/news/breaking/ct-met-obama-jury-duty-20171107-story.html> [<https://pe>

thirty-two million Americans are summoned for jury duty annually.<sup>38</sup> Because the government mandates jury service, failure to comply can be considered contempt of court, which might result in a fine, jail time, or both.<sup>39</sup>

The jury selection process varies across jurisdictions, courts, judges, and even cases.<sup>40</sup> Nonetheless, most selection practices have several common stages. The typical first step is the court's compilation of a master jury list. This list is drawn from various sources, such as a list of registered voters, a list of driver's license holders, and/or a list of income tax filers.<sup>41</sup> Next, the court mails those on the master list a short questionnaire, often called a "Qualification Questionnaire," the answers to which confirm potential jurors' eligibility to serve.<sup>42</sup> The content of qualification questionnaires varies across state courts. In federal courts, the statutory qualifications for jury service require "yes" answers to the first three qualifying questions below, and "no" answers to the latter two:<sup>43</sup>

1. Are you a citizen of the United States?
2. Are you eighteen years of age or older?
3. Do you speak the English language?
4. Does a mental or physical infirmity render you incapable of providing satisfactory jury service?
5. Do you have a pending felony charge against you or have you been convicted of a penalty and your civil rights have not been restored?

---

rma.cc/DVT6-AVR3]. Then-presidential candidate Trump was also summoned to jury duty. *See Donald Trump Reports for Jury Duty, Gets 'No Special Treatment'*, ABC NEWS (Aug. 17, 2015, 11:21 AM), <https://abcnews.go.com/Politics/donald-trump-reports-jury-duty-special-treatment/story?id=33132883> [<https://perma.cc/B8U4-9WJ4>]; *see also* James McKinley Jr. & Andy Newman, *Jury Duty for Donald Trump: 'Amazing,' 'Really Good' and Done in a Day*, N.Y. TIMES (Aug. 17, 2015), <https://www.nytimes.com/2015/08/18/nyregion/jury-duty-for-donald-trump-amazing-really-good-and-done-in-a-day.html> [<https://perma.cc/GB2L-WGF3>]; Fred Barbash, *So You Show Up for Jury Duty and There's Taylor Swift*, WASH. POST (Aug. 30, 2016, 8:30 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2016/08/30/so-you-show-up-for-jury-duty-and-theres-taylor-swift/> [<https://perma.cc/8ZBZ-EYWR>].

38. *See Jury Duty: Who Gets Called*, *supra* note 27.

39. *See* 28 U.S.C. § 1866(g).

40. For a detailed description of the jury management process, see generally JOINT TECH. COMM., JURY MANAGEMENT SYSTEM REQUIREMENTS ADOPTED STANDARDS (2014), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0029/17885/jury\\_management\\_system\\_requirements\\_final\\_12\\_16\\_14.pdf](https://www.ncsc.org/__data/assets/pdf_file/0029/17885/jury_management_system_requirements_final_12_16_14.pdf) [<https://perma.cc/9BCR-3KHL>].

41. *See* PAULA HANNAFORD-AGOR, MIRIAM HAMILTON & ERIKA BAILEY, ELIMINATING SHADOWS AND GHOSTS: FINDINGS FROM A STUDY OF INCLUSIVENESS, REPRESENTATIVENESS, AND RECORD ACCURACY IN MASTER JURY LISTS AND JUROR SOURCES LISTS IN THREE STATES 3 (2022), [https://www.ncsc-jurystudies.org/\\_\\_data/assets/pdf\\_file/0025/82681/Master-Jury-List.pdf](https://www.ncsc-jurystudies.org/__data/assets/pdf_file/0025/82681/Master-Jury-List.pdf) [<https://perma.cc/F6PT-GJK8>]; *see, e.g.*, WASH. REV. CODE § 2.36.055 (2005). The issue of the failure of these methods to select a diverse and representative venire is well-documented and beyond the scope of this paper. *See, e.g.*, HANNAFORD-AGOR ET AL., *supra*.

42. *See* JURY MANAGEMENT SYSTEM REQUIREMENTS, *supra* note 40.

43. *See* 28 U.S.C. § 1865.



After the court deems the prospective juror qualified to serve, members of the eligible jury pool, otherwise known as the venire, are served with summonses via mail to appear at a specific courthouse on a certain date and time to begin their jury service. Once there, individuals are customarily (1) screened via metal detector, (2) required to surrender their cell phones and other electronic devices, and (3) otherwise obligated to follow the rules of the court and judge to whom they have been assigned.<sup>44</sup> This process is inconvenient and intrusive even for those ultimately not selected for jury duty. Any member of the venire who objects to jury service must communicate directly with the judge. Those who are selected to sit on a jury must take time off from work or other obligations, are restricted in where they can go and with whom they can speak, receive minimal financial compensation, and live with the uncertainty of what will be expected of them and when it will end. Some even must serve while sequestered.<sup>45</sup>

#### A. *Voir Dire*

After the members of the venire have gathered, the next stage in jury selection is voir dire.<sup>46</sup> Voir dire is the process whereby the judge, counsel, or both question potential jurors to assess and ensure their suitability for fair and unbiased jury service.<sup>47</sup> The Sixth Amendment to the Constitution includes the right in all criminal prosecutions to an impartial jury.<sup>48</sup> Indeed, the Supreme Court has stated that if a jury is to be provided, irrespective of whether the Sixth Amendment applies, the jury “must stand impartial and indifferent.”<sup>49</sup>

Neither the Federal Rules of Criminal Procedure nor the Federal Rules of Civil Procedure requires a voir dire process. Each, however, permits the

---

44. See, e.g., *Juror Information*, MCLENNAN CNTY. TEX., <https://www.co.mclennan.tx.us/408/Juror-Information> [<https://perma.cc/M8KD-5C5Q>]; *SCL-Jury Duty, FAQs*, SNOHOMISH CNTY. GOV'T WASH., <https://snohomishcountywa.gov/Faq.aspx?TID=19> [<https://perma.cc/6FQU-TF46>]; *Jury Duty Frequently Asked Questions*, U.S. DIST. CT. S. DIST. OF N.Y., <https://www.nysd.uscourts.gov/jurors/jury-duty-faqs> [<https://perma.cc/3NND-4KYY>].

45. *Sequester*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/sequester> [<https://perma.cc/9WF7-9W6G>] (last visited Oct. 12, 2024).

46. The definition of “voir dire” is “to speak the truth.” See Jill Holmquist, *To Tell the Truth: Voir Dire in the Age of Neuroscience*, CIV. JURY PROJ., <https://civiljuryproject.law.nyu.edu/to-tell-the-truth-voir-dire-in-the-age-of-neuroscience/> [<https://perma.cc/HG8P-TR5N>].

47. See, e.g., *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (“Voir dire plays a critical function in assuring the . . . right to an impartial jury will be honored.”); *Bellas v. Superior Ct. Alameda Cnty.*, 102 Cal. Rptr. 2d 380, 382 (Cal. Ct. App. 2000) (“[T]he raison d’être of juror questionnaires is to assist both sides and counsel in the selection of a fair and impartial jury . . .”); see also Joseph A. Colquitt, *Using Jury Questionnaires; (Ab)using Jurors*, 40 CONN. L. REV. 1, 9–10 (2007); Marvin Zalman & Olga Tsoudis, *Plucking Weeds from the Garden: Lawyers Speak About Voir Dire*, 51 WAYNE L. REV. 163, 174 (2005) (“[M]ost questioning should be about personal juror information and . . . jurors should do most of the talking.”).

48. U.S. CONST. amend. VI.

49. See, e.g., *Morgan v. Illinois*, 504 U.S. 719, 727 (1992) (“[I]f a jury is to be provided the defendant, regardless of whether the Sixth Amendment requires it, the jury must stand impartial and indifferent to the extent commanded by the Sixth Amendment.”).

practice to occur. The Federal Rules permit the court itself, or the attorneys—but not the parties—to conduct voir dire.<sup>50</sup> Federal Rule of Criminal Procedure 24(a)(1) states that “[t]he court may examine prospective jurors or may permit the attorneys for the parties to do so.”<sup>51</sup> Federal Rule of Civil Procedure 47(a) contains effectively identical language.<sup>52</sup> As a matter of practice, in federal court, it is usually the judge who conducts the voir dire.<sup>53</sup>

All states permit a voir dire process.<sup>54</sup> State court practice of voir dire varies, however, with attorneys more frequently than judges questioning the venire.<sup>55</sup> A State-of-the-States national survey documents the extent to which state courts employ various practices and procedures regarding who conducts voir dire.<sup>56</sup> In New York, for example, by rule, it is the attorneys who conduct voir dire.<sup>57</sup> A few states’ rules give the parties the right to conduct voir dire. For example, Florida Rule of Civil Procedure 1.431 provides “[t]he parties have the right to examine jurors orally on their voir dire.”<sup>58</sup>

---

50. See *Hamer v. United States*, 259 F.2d 274, 279 (9th Cir. 1958) (“[T]here . . . exists a line of cases determining that there is no constitutional right to a personal voir dire of the jury.” (citing *Frederick v. United States*, 163 F.2d 536 (9th Cir. 1947); *Paschen v. United States*, 70 F.2d 491 (7th Cir. 1934); *Bonness v. United States*, 20 F.2d 754 (9th Cir. 1927); *Kurczak v. United States*, 14 F.2d 109 (6th Cir. 1926); *Underleider v. United States*, 5 F.2d 604 (4th Cir. 1925))).

51. FED. R. CRIM. P. 24(a)(1).

52. Federal Rule of Civil Procedure 47(a) states, “The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.” FED. R. CIV. P. 47(a).

53. See, e.g., *Montoya v. Vill. of Cuba*, No. 11-0814, 2013 WL 6504263, at \*7 (D.N.M. Nov. 30, 2013) (“Voir dire is within the sound discretion of the trial court, and the court’s exercise of that discretion will not be disturbed, absent a clear showing of abuse.” (quoting *United States v. Whitt*, 718 F.2d 1494, 1497 (10th Cir. 1983))); see also Jonathan S. Tam, *Jury Selection in Federal Court*, PRAC. L. WESTLAW (2020), <https://docslib.org/doc/287870/jury-selection-in-federal-court> [<https://perma.cc/Y8VM-E99H>].

54. See, e.g., Alexander E. Preller, *Jury Duty Is a Poll Tax: The Case for Severing the Link Between Voter Registration and Jury Service*, 46 COLUM. J.L. & SOC. PROBS. 1 (2012); see also *About Jury Data*, THE CTR. FOR JURY STUD., <https://www.ncsc-jurystudies.org/state-of-the-states/jury-data-viz> [<https://perma.cc/EB9X-WPCF>].

55. See Tam, *supra* note 53; see also HON. GREGORY E. MIZE (RET.), PAULA HANNAFORD-AGOR & NICOLE L. WATERS, NAT’L CTR. FOR STATE COURTS & THE STATE JUST. INST., THE STATE OF THE STATES SURVEY OF JURY IMPROVEMENT EFFORTS: A COMPENDIUM REPORT 27 (2007), [https://www.ncsc-jurystudies.org/\\_data/assets/pdf\\_file/0016/5623/soscompendiumfinal.pdf](https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0016/5623/soscompendiumfinal.pdf) [<https://perma.cc/X6QX-86VY>]. Some studies indicate that members of the venire are more prone to lie to judges when being questioned, than to lawyers. It is hypothesized that this is due to the power imbalance between laymen and judges. See Roger W. Shuy, *How a Judge’s Voir Dire Can Teach a Jury What to Say*, 6 DISCOURSE & SOC’Y 207, 219–20 (1995) (discussing the power asymmetry between judges and jurors and questioners and the questioned); see also Susan E. Jones, *Judge- Versus Attorney-Conducted Voir Dire: An Empirical Investigation of Juror Candor*, 11 LAW & HUM. BEHAV. 131, 143–44 (1987) (same).

56. See MIZE ET AL., *supra* note 55.

57. See N.Y. COMP. CODES R. & REGS. tit. 22, § 202.33 (2024).

58. FLA. R. CIV. P. 1.431.

Oftentimes the judge or lawyer conducting voir dire will request that members of the venire complete a juror questionnaire.<sup>59</sup> This involves the disclosure of broader and more detailed information than do the qualifying questionnaires. Traditional questions included on a standard federal court jury questionnaire in a criminal case include the following:

- [•] What are your principal leisure time activities? . . .
- [•] Have you or any member of your immediate family ever owned a gun or belonged to any kind of anti-gun or pro-gun club or organization? . . .
- [•] Have you or has any member of your family or a close friend ever been the victim of any kind of crime, whether it was reported to law enforcement authorities or not (including domestic violence, spousal abuse, robbery, burglary, assault, sexual assault, etc.)? . . . If yes, please describe each incident. . . .
- [•] Do you believe that you, any member of your family or a close friend has ever been treated unfairly or been the victim of misconduct by the local or state police or federal law enforcement authorities, including the Federal Bureau of Investigation? . . . If yes, please explain.<sup>60</sup>

Judges often permit lawyers to add additional questions—many of which are personal and invasive—to these forms.<sup>61</sup> Questions might include inquiries about a juror’s sexual orientation, use of legal and illegal medications and drugs, religious and political beliefs, infidelity, interracial relationships, involvement with incest, and experiences with child molestation.<sup>62</sup> As Professor Albert Alschuler noted, “[W]e subject jurors to lengthy, privacy-invading voir dire examinations, requiring them to answer questions that would be considered inappropriate and demeaning in other contexts.”<sup>63</sup> In addition to, or in lieu of a written questionnaire, some judges and attorneys pose questions to the entire assembled venire, with instructions to answer via a show of hands.<sup>64</sup> These questions, and individual venire

---

59. See MIZE ET AL., *supra* note 55.

60. See *Sample Juror Questionnaire*, U.S. DIST. CT. S. DIST. OF N.Y., <https://www.fjc.gov/sites/default/files/2012/dpen0022.pdf> [<https://perma.cc/J4MR-Y8TT>].

61. See Daniel J. Solove, *Being a Juror Can Result in a Huge Loss of Privacy*, TEACHPRIVACY (June 30, 2014), <https://teachprivacy.com/juror-can-result-huge-loss-privacy/> [<https://perma.cc/6YKM-2BDY>]; see also Holmquist, *supra* note 46 (stating that a jury consultant proffers that “[i]n a case involving child sexual abuse, it is important to ask whether the juror or someone close has been the victim of sexual abuse”); *infra* Part I.B.

62. See generally Melanie D. Wilson, *Juror Privacy in the Sixth Amendment Balance*, 2012 UTAH L. REV. 2023; see also Associated Press, *Fast Facts: Kobe Jury Questionnaire*, FOX NEWS (Aug. 30, 2004), <https://www.foxnews.com/story/fast-facts-kobe-jury-questionnaire> [<https://perma.cc/2TCJ-NNWK>].

63. Albert W. Alschuler, *The Supreme Court and the Jury: Voir Dire Peremptory Challenges, and the Review of Jury Verdicts*, 56 U. CHI. L. REV. 153, 155 (1989); see also Zalman & Tsoudis, *supra* note 47, at 210 (quoting one lawyer as stating, “I try to incorporate into the voir dire as many questions as possible that will give me a psychological profile of the jurors—as opposed to just sticking with the facts of the case”).

64. See MIZE ET AL., *supra* note 55, at 27.

members' responses to them, are sometimes made available to the public,<sup>65</sup> typically at the discretion of the judge.<sup>66</sup>

Professor and blogger Catherine Stahl chronicled her experience when summoned for jury duty in a New York County courthouse. She described an initial process whereby the venire was gathered together into large rooms and individual names were called.<sup>67</sup> Each person was required to respond "here" in a "booming voice."<sup>68</sup> Later, Professor Stahl was called by first and last name along with others into an individual courtroom.<sup>69</sup> There the venire members were instructed that if anyone wanted to make a case to be excused, that person had to speak directly with the judge and attorneys.<sup>70</sup> These conversations were one-on-one and thus theoretically private, but Professor Stahl overheard, documented, and published many of them.<sup>71</sup>

Next, the judge asked the remaining members of the jury pool "yes" or "no" questions before everyone present.<sup>72</sup> If a venire member answered "no," then "that person had to elaborate more in front of everyone in the room."<sup>73</sup> The next day, "[a] microphone was passed around so that everyone could hear the responses [to] . . . questions [that] were personal in nature . . ."<sup>74</sup> In recounting her jury duty experience, Professor Stahl stated, "What I hope to convey is just the very personal nature of the questions. Potential jurors were asked to give their opinion, to share their moral values and philosophies, and to imagine hypothetical situations and share what they would do/could do/unable to do/etc."<sup>75</sup>

---

65. See, e.g., *In re Jury Questionnaires*, 37 A.3d 879, 885–86 (D.C. 2012) (holding that First Amendment right to access jury questionnaires applies whether questionnaires are written or oral).

66. See *id.*

67. Catherine Stahl, *First Time Serving My Jury Duty in New York City (Manhattan): An Account of My Experience*, BOOK SMART ST. SMART BLOG (Jan. 18, 2020), <https://www.books martstreetsmart.com/blog/2020/jury-duty-service-in-new-york-city> [<https://perma.cc/7MYS-64YD>].

68. *Id.*

69. See *id.*

70. See *id.*

71. See *id.* Professor Stahl overheard some of the situations in which the judge permitted excusal: (1) a woman had a scheduled work trip to Ireland; (2) someone had a planned "skiing trip" to which the judge stated "have fun, but don't hurt yourself"; (3) a physician on call who had to be available to answer phone calls and also go to the hospital for urgent situations; (4) a teacher who taught a "high-need population" at a charter school; and (5) individuals starting new employment. *Id.* Another person writing about her experience being selected as a juror in a federal criminal trial in New York stated, "I heard it all," when describing the various excuses venire members used to get out of jury service, including "I am going on vacation next week and can't serve, my dad's a cop and I think I'd be biased, I don't speak or understand English very well, [and] I have a knee replacement and can't sit for long periods of time." See Ali Arnone, *All Rise: My Experience as a Juror*, MEDIUM (July 19, 2018), <https://alisona15.medium.com/all-rise-my-experience-as-a-juror-90d942644bd0> [<https://perma.cc/KMU2-B9XL>].

72. See Stahl, *supra* note 67.

73. *Id.*

74. *Id.*

75. *Id.*

### B. *Voir Bias*

Although the historical purpose of voir dire was to find and select unbiased members of the venire to be seated as jurors, the current goal is often quite the opposite. Lawyers today routinely use the voir dire process not to identify and select fair and impartial jurors, but rather to ascertain and seat jurors who are most likely to rule in their clients' favor.<sup>76</sup> Seating a juror with bias can mean the difference between a win or a loss. Indeed, many experts say that the composition of the jury—that is, who each individual juror is—is more determinative of the case outcome than the facts themselves.<sup>77</sup> The author of this Article conceived the term “voir bias” to capture the current practice of actively seeking members of the venire who have a bias in favor of one of the parties.

Studies show, however, that attorneys are not reliably skilled in uncovering juror biases.<sup>78</sup> Thus, a practice known as “scientific jury selection” has become a mainstay of the voir dire process.<sup>79</sup> Scientific jury selection, at its basic level, is the use of social science by “jury consultants,” to aid lawyers in selecting jurors who are most likely to favor their clients.<sup>80</sup> Often this bias is implicit bias.<sup>81</sup>

The American Bar Association tasked the Achieving an Impartial Jury Project (AIJ) to determine how to reduce juror implicit bias.<sup>82</sup> The AIJ proposed the use of open-ended questions during voir dire, such as the following:

76. See Browning, *supra* note 23.

77. See JOEL D. LIEBERMAN & BRUCE D. SALES, SCIENTIFIC JURY SELECTION 28 (2007) (“[T]he jury selection process is the single most important aspect of the trial proceedings. . . . In fact, once the last person on the jury is seated, the trial is essentially won or lost” (quoting Margaret Covington, *Jury Selection: Innovative Approaches to Both Civil and Criminal Litigation*, 16 ST. MARY’S L. REV. 575, 575–76 (1985))).

78. Christopher Robertson & Michael Elias Shammass, *The Jury Trial Reinvented*, 9 TEX. A&M L. REV. 109, 129 (2021) (citing DENNIS J. DEVINE, JURY DECISION MAKING 46–48 (2012)). The voir dire process exposes venire members and jurors in a manner that has not been proven to be successful in uncovering implicit bias. See, e.g., Ryan J. Winter & Jon Vallano, *Lies During Jury Selection: What Are the Costs?*, AM. PSYCH. ASSOC. (Sept. 2014), <https://www.apa.org/monitor/2014/09/jn> [<https://perma.cc/D3P9-3XW5>] (psychology experts opine that it is exceedingly difficult to detect lies and biases in potential and actual jurors). Also missing from the conversation is how lawyers’ own implicit biases affect their questions to—and reactions to the responses of—the venire members. Discussing these issues in depth is beyond the scope of this Article.

79. LIEBERMAN & SALES, *supra* note 77, at 3.

80. *Id.*; see also Zalman & Tsoudis, *supra* note 47, at 237 (“Jury consulting . . . appears to be a growth industry.” (citing NEIL J. KRESSEL & DORIT K. KRESSEL, STACK AND SWAY: THE NEW SCIENCE OF JURY CONSULTING 137–70 (Westview Press 2002))).

81. See, e.g., Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL’Y REV. 149 (2010). See generally *Breaking Down the Barriers to Bias: How to Uncover Bias During Jury Selection*, DUBIN RSCH. AND CONSULTING, <https://www.dubinconsulting.com/Breaking-Down-Barriers-to-Bias-How-to-Uncover-Bias-During-Jury-Selection.pdf> [<https://perma.cc/WJ5V-6NGT>].

82. AM. BAR ASS’N., ACHIEVING AN IMPARTIAL JURY (AIJ) TOOLBOX, [https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire\\_toolchest.pdf](https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.pdf) [<https://perma.cc/WL47-Q648>].

- What is your work environment/neighborhood like? . . .
- Where did you grow up? What was it like growing up there? . . .
- What experiences have you had with people who are different from you (e.g., from a culture other than your own)? . . .
- Do you have children in school here in [this area], and, if so, what kind of school do they attend? What is this experience like?<sup>83</sup>

Rooting out bias, as evidenced by the AIJ's proposal, involves retrieving and gathering detailed personal information from the members of the venire—even going so far as to inquire about venire members' school-age children. Although the end goal of this process is aimed at achieving fairer judicial practices, obtaining this knowledge is antithetical to juror privacy.

In addition to directly questioning the venire in formal court proceedings, lawyers routinely research the social media profiles and online postings of prospective jurors.<sup>84</sup> The goal is to gather as much information as possible in order to paint the biggest picture of each member of the venire. Indeed, “thanks to the internet and the explosive growth of social networking sites like Facebook and Twitter, lawyers and litigants now have a digital treasure trove of information right at their fingertips accessible with the speed of a research engine.”<sup>85</sup> Lawyers even research the venire online in real time, while in the courtroom during the course of jury selection.<sup>86</sup> Sometimes venire members are directly aware that this practice is occurring, while on other occasions lawyers conduct this research covertly.

The American Bar Association has issued a formal opinion endorsing lawyers' research of venire members' and jurors' online profiles.<sup>87</sup> That opinion states that “a lawyer may review a juror's or potential juror's Internet presence, which may include postings by the juror or potential juror in advance of and during a trial.”<sup>88</sup> The opinion requires lawyers to take remedial measures, including reporting uncovered evidence of venire members' and jurors' misconduct.<sup>89</sup> The Pennsylvania Bar Association has issued a similar opinion,<sup>90</sup> as has the Oregon Bar Association.<sup>91</sup> Likewise,

83. *See id.*

84. Browning, *supra* note 23.

85. *Id.*

86. *See* Sonia Chopra, *Using the Internet and Social Media in Jury Selection*, PLAINTIFF MAG. (Feb. 2012), <https://plaintiffmagazine.com/recent-issues/item/using-the-internet-and-social-media-in-jury-selection> [<https://perma.cc/FJ2F-278C>].

87. ABA Comm. on Ethics & Pro. Resp., Formal Op. 466 (2014), [https://www.abajournal.com/files/Formal\\_Opinion\\_466\\_FINAL\\_04\\_23\\_14.pdf](https://www.abajournal.com/files/Formal_Opinion_466_FINAL_04_23_14.pdf) [<https://perma.cc/347B-TCNU>].

88. *Id.* at 1.

89. *See id.* (“In the course of reviewing a juror's or potential juror's Internet presence, if a lawyer discovers evidence of juror or potential juror misconduct that is criminal or fraudulent, the lawyer must take reasonable remedial measures including, if necessary, disclosure to the tribunal.”)

90. *See* Pa. Bar Ass'n, Formal Op. 2014-300 (2014), <https://www.pabar.org/site/Portals/0/Ethics%20Opinions/Formal/F2014-300.pdf?ver=2014-09-16-125056-867> [<https://perma.cc/N59C-9LZD>].

91. *See* Or. State Bar, Formal Op. 2013-189, at 577 (2013), [https://www.osbar.org/\\_docs/ethics/2013-189.pdf](https://www.osbar.org/_docs/ethics/2013-189.pdf) [<https://perma.cc/LV2N-FMDC>].

the New York State Bar Association issued a set of ethical guidelines for lawyers' social media research of venire members and jurors.<sup>92</sup> These guidelines state that "it is 'not only permissible for trial counsel to conduct Internet research on prospective jurors, but [] it may even be expected.'"<sup>93</sup> As a result, some believe that failing to conduct internet searches of the venire and jurors—including their social media profiles—could be grounds for malpractice.<sup>94</sup>

Taking things further, companies offer, for a fee, to conduct social media surveillance and online activity monitoring of venire members and jurors. A company called Magna Legal Services offers a service called "JuryScout," which promises to "gather information [and] compile detailed reports to enhance . . . trial strategy."<sup>95</sup> Another service—"Magna"—says that it will "monitor the [juror's] online activity throughout the trial [and] post-verdict."<sup>96</sup> Likewise, a company called Vijilent promises that "Human Intelligence" and "Artificial Intelligence" will "simplify[] legal collection of social media and public data for jury consultants, lawyers [and] the legal industry."<sup>97</sup> Lawyers at times even hire private investigators to scrutinize jurors' private lives.<sup>98</sup>

A judge in the U.S. District Court for the Eastern District of Texas has issued a standing order regarding attorneys' research of potential jurors in his

---

92. See COM. & FED. LITIG. SECTION, N.Y. STATE BAR ASSOC., SOCIAL MEDIA ETHICS GUIDELINES (2019), <https://nysba.org/app/uploads/2020/02/NYSBA-Social-Media-Ethics-Guidelines-Final-6-20-19.pdf> [<https://perma.cc/Z74X-9S9M>].

93. *Id.* at 32 (citing COM. & FED. LITIG. SECTION, N.Y. STATE BAR ASSOC., SOCIAL MEDIA JURY INSTRUCTIONS REPORT (2015)). A Florida judge proposed that lawyers be required to run background checks on jurors. See Stephen Nohlgren, *Pinellas Judge: New Process May Be Needed to Screen Jurors*, TAMPA BAY TIMES (July 8, 2014), <https://www.tampabay.com/news/courts/civil/pinellas-judge-new-process-may-be-needed-to-screen-jurors/2187689/> [<https://perma.cc/CXC9-ARWL>]. A scholar suggests that lawyers have an affirmative duty to "Google" jurors. See Michael Thomas Murphy, *The Search for Clarity in an Attorney's Duty to Google*, 18 LEGAL COMM. & RHETORIC: JALWD 133, 148 (2021) ("[A]ttorneys are not just permitted to Google jurors. They may be required to Google jurors to preserve a right on appeal." (citation omitted)). These recommendations are warranted, as some jurors do lie and engage in misconduct. See, e.g., Browning, *supra* note 23 (discussing an Oklahoma murder case in which during voir dire a juror denied having expressed an opinion on the case while she in fact had made a detailed Facebook post about it); see also *Sluss v. Commonwealth*, 381 S.W.3d 215, 222 (Ky. 2012) (finding a juror stated during voir dire that she did not use Facebook or know the victim or her family, while, in fact, the juror was "friends" on Facebook with the victim's mother). The consequences of this misbehavior have included mistrials and overturned verdicts. See, e.g., *Dimas-Martinez v. State*, 385 S.W.3d 238, 246–49 (Ark. 2011) (overturning a capital murder conviction because of juror's tweets from jury box); *State v. Abdi*, 45 A.3d 29, 33–37 (Vt. 2012) (setting aside a conviction for child sexual assault when a juror did independent online research).

94. See Lauren Kellerhouse, *Comment 8 of Rule 1.1: The Implications of Technological Competence on Investigation, Discovery, and Client Security*, 40 J. LEGAL PRO. 291, 297 (2016).

95. See *Social Media Surveillance: JuryScout*, MAGNA LEGAL SERVICES, <https://magnals.com/services/juryscout/> [<https://perma.cc/59GW-E3RD>].

96. *Id.*

97. See VIJILENT, <https://www.vijilent.com> [<https://perma.cc/2PYS-VWB3>].

98. See Solove, *supra* note 61.

courtroom.<sup>99</sup> His order prohibits attorneys and their agents from directly contacting venire members or jurors on social media via friend solicitations or “request[s] to ‘[f]ollow.’”<sup>100</sup> However, the order also states:

[A]ll attorneys, parties, and their respective employees and agents, including jury consultants . . . are *not* prohibited from conducting . . . any type of online investigation merely because a juror or potential juror may become aware that his or her [electronic social media] is being reviewed. For example, lawyers are not prohibited from reviewing the LinkedIn accounts of jurors or potential jurors even if network settings would alert that juror or potential juror to the fact that a lawyer from the case has reviewed his or her LinkedIn account. . . . The Court recognizes the critical role that informed jury selection plays in any jury trial. The Court recognizes the duty imposed on diligent parties to secure as much useful information as possible about venire members, acting within the ethical and legal parameters of our profession.<sup>101</sup>

This order appears to actively encourage lawyers to research venire members and jurors online, and to obtain as much information about them as possible.<sup>102</sup>

Some judges affirmatively expect lawyers to research the venire in real time, and effectively punish them if they do not. For example, in a federal personal injury case, the defendant’s counsel conducted posttrial internet juror research and discovered that two jurors had failed to disclose material information on their initial juror questionnaires.<sup>103</sup> In denying the defendant’s motion for a new trial, the court noted that the defendant could have searched the internet *during* voir dire and discovered the discrepancies then.<sup>104</sup> Having failed to do so, the court held that the defendant’s lawyer had waived the right to object.<sup>105</sup>

Courts that have opposed the use of online searches of venire members or seated jurors recognize the threat to privacy that such searches create. A judge in Maryland stated that internet research of potential jurors was “totally

---

99. See U.S. DIST. CT. FOR THE E. DIST. OF TEX., STANDING ORDER REGARDING RESEARCH AS TO POTENTIAL JURORS IN ALL CASES ASSIGNED TO U.S. DISTRICT JUDGE RODNEY GILSTRAP (2017), <https://www.txed.uscourts.gov/sites/default/files/judgeFiles/Standing%20Order%20-%20Juror%20Research%20%28signed%29.pdf> [https://perma.cc/Q48A-WCNK].

100. *Id.* at 2.

101. *Id.*

102. In a New Jersey medical malpractice case, the plaintiff’s lawyer who Googled the venire panel in real time told the trial judge, “[W]e[] . . . do[] it all the time, everyone does it. It’s not unusual. It’s not.” See *Carino v. Muenzen*, No. A-5491-08T1, 2010 WL 3448071, at \*4 (N.J. Super. Ct. App. Div. Aug. 30, 2010). Nonetheless, the judge ordered the lawyer to “close the laptop for the jury selection process.” *Id.* On appeal, the Appellate Division of the Superior Court of New Jersey stated, “Despite the deference we normally show a judge’s discretion in controlling the courtroom, we are constrained . . . to conclude that the judge acted unreasonably in preventing use of the internet by [plaintiff’s] counsel.” *Id.* at \*10; see also *Browning*, *supra* note 23 (noting that the appellate court in *Carino v. Muenzen* “explicitly recognized the right to use the Internet to investigate potential jurors during voir dire”).

103. See *Burden v. CSX Transp., Inc.*, No. 08-CV-04, 2011 WL 3793664, at \*1 (S.D. Ill. Aug. 24, 2011).

104. See *id.* at \*9.

105. See *id.*



inappropriate and could have a chilling effect on jury service if individuals knew they were going to be ‘Googled’ as soon as they walked into the courthouse.”<sup>106</sup> Likewise, a judge in the U.S. District Court for the Northern District of California stated:

Trial judges have such respect for juries—reverential respect would not be too strong to say—that it must pain them to contemplate that, in addition to the sacrifice jurors make for our country, they must suffer trial lawyers and jury consultants scouring over their Facebook and other profiles to dissect their politics, religion, relationships, preferences, friends, photographs, and other personal information.<sup>107</sup>

In a 2014 survey of federal judges, over 25 percent stated that they banned attorneys from using social media during voir dire.<sup>108</sup> Even so, almost 90 percent of the responding judges admitted to not knowing whether attorneys were accessing venire members’ social media profiles during voir dire.<sup>109</sup>

## II. JUROR PRIVACY RIGHTS AND INTERESTS

Although the U.S. Constitution does not explicitly grant Americans the right to privacy, the Supreme Court has held that the penumbras of the Constitution provide general privacy rights to all citizens.<sup>110</sup> Several state constitutions go further and specify that their citizens have privacy rights.<sup>111</sup>

---

106. Sharon R. Klein, Angelo A. Stio III & Brian Zurich, *Ethical Issues That Arise from Social Media Use in Courtrooms*, JD SUPRA (Oct. 14, 2013) (citing John BARNED-SMITH, *Montgomery Judge Denies Internet Searches for Jury Selection*, GAZZETTE.NET (May 15, 2013) (on file with author)), <https://www.jdsupra.com/legalnews/ethical-issues-that-arise-from-social-me-60538/> [<https://perma.cc/X97S-D5AU>].

107. Oracle Am., Inc. v. Google Inc., 172 F. Supp. 3d 1100, 1101 (N.D. Cal. 2016).

108. See Browning, *supra* note 23.

109. See *id.* Perhaps more problematic is that many judges are not technologically savvy enough to appreciate the ubiquity of sensitive personal information available on the internet. Although courts endeavor to protect jurors’ personal data, such as Social Security numbers, bank account numbers, and the like, questions about intimate information are free game. As Professor Danielle Citron has stated, “Intimate privacy is fundamental to our development in a way that a bank ledger will never be.” CITRON, *supra* note 22, at xiii. Professor Citron defines “intimate privacy” to include “the extent to which others have access to and information about our . . . health, sexual orientation . . . and close relationships.” *Id.* at xii.

110. See *generally* Griswold v. Connecticut, 381 U.S. 479, 484 (1965) (“[S]pecific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.”); see also Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (“If the right of privacy means anything, it is the right of the individual . . . to be free from unwarranted governmental intrusion . . .”). But see Nat’l Aeronautics & Space Admin. v. Nelson, 562 U.S. 134, 157 (2011) (Scalia, J., concurring) (“A federal constitutional right to ‘informational privacy’ does not exist.”).

111. See, e.g., ALASKA CONST. art. I, § 22 (“The right of the people to privacy is recognized and shall not be infringed.”); CAL. CONST. art. I, § 1 (“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”); FLA. CONST. art. I, § 23 (“Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.”).

Various authorities, ranging from U.S. senators to national security experts, posit that privacy is a fundamental American right.<sup>112</sup>

With respect to *jurors'* privacy in particular, in 1984 the U.S. Supreme Court acknowledged that “[t]he jury selection process may . . . give rise to . . . privacy interests of such a prospective juror.”<sup>113</sup> Despite the majority’s use of the phrase “privacy interests,”<sup>114</sup> and Justice Harry A. Blackmun’s concern in his concurring opinion that “recognition of a juror’s privacy ‘right’ would unnecessarily complicate the lives of trial judges attempting to conduct a *voir dire* proceeding,”<sup>115</sup> lower courts often refer to jurors’ “privacy rights.” The U.S. District Court for the Northern District of New York, for example, discussed “the privacy rights of the prospective jurors.”<sup>116</sup> The Superior Court of Delaware noted, “Delaware has routinely recognized a juror’s right to privacy as to personal information of a sensitive nature.”<sup>117</sup> The Michigan Court of Appeals stated that “jurors have rights to . . . privacy,”<sup>118</sup> while a California Court of Appeals stated that juror privacy is an issue of “constitutional dimension.”<sup>119</sup>

Regardless of whether jurors have a right to or an interest in privacy, current jury service practices often invade privacy boundaries. Professor Solove observed that “there is a hunger to learn about the private lives of jurors, and serving on a jury can entail a huge loss of privacy.”<sup>120</sup> Because

112. See, e.g., Press Release, Bernie Sanders, Senator, U.S. Senate, Sanders Welcomes Court Ruling on NSA (May 7, 2015), <https://www.sanders.senate.gov/press-releases/sanders-welcomes-court-ruling-on-nsa/> [<https://perma.cc/4LU6-SPYD>] (“[W]e must . . . protect[] the constitutional rights of the American people . . . without living in an Orwellian world where the government and private corporations know every . . . website we visit, everyplace we go.”); Jackie Speier, AZ QUOTES, [https://www.azquotes.com/author/70932-Jackie\\_Speier\\_Glenn](https://www.azquotes.com/author/70932-Jackie_Speier_Glenn) [<https://perma.cc/7JK3-7DCU>] (“Privacy isn’t negotiable. It’s the right of every American.”) (last visited Oct. 12, 2024); Glenn Greenwald, AZ QUOTES, <https://www.azquotes.com/quote/1338526> [<https://perma.cc/CP3T-FC59>] (“Transparency is for those who carry out public duties and exercise public power. Privacy is for everyone else.” (quoting GLENN GREENWALD, NO PLACE TO HIDE: EDWARD SNOWDEN, THE NSA, AND THE U.S. SURVEILLANCE STATE (2014))).

113. Press-Enter. Co. v. Superior Ct., 464 U.S. 501, 511–12 (1984).

114. *Id.* at 512 (emphasis added). In his concurrence, Justice Blackmun stated, “Certainly, a juror has a valid interest in not being required to disclose to all the world highly personal or embarrassing information simply because he is called to do his public duty. We need not decide, however, whether a juror, called upon to answer questions posed to him in court during *voir dire*, has a legitimate expectation, rising to the status of a privacy right, that he will not have to answer those questions.” *Id.* at 514 (Blackmun, J., concurring).

115. *Id.* at 515; see also Lauren A. Rousseau, *Privacy and Jury Selection: Does the Constitution Protect Prospective Jurors from Personally Intrusive Voir Dire Questions?*, 3 RUTGERS J. L. & URB. POL’Y 287 (2006).

116. United States v. Bruno, 700 F. Supp. 2d 175, 178 n.3 (N.D.N.Y. 2010).

117. State v. Pennell, 583 A.2d 1348, 1353 (Del. Super. Ct. 1990).

118. People v. Sherrill, No. 358371, 2023 WL 4044590, at \*10 (Mich. Ct. App. June 15, 2023), *appeal denied*, 998 N.W.2d 681 (Mich. 2024).

119. See Copley Press, Inc. v. San Diego Cnty. Super. Ct., 273 Cal. Rptr. 22, 25–26 (Ct. App. 1990) (referring to a juror’s right to privacy); see also People v. Hughes, No. C060242, 2010 Cal. App. LEXIS 2723, at \*6 (Cal. Ct. App. Apr. 14, 2010) (discussing “a juror’s right to privacy”).

120. Solove, *supra* note 61.

jury service is compulsory,<sup>121</sup> venire members and jurors have not voluntarily relinquished their right to a reasonable expectation of privacy.<sup>122</sup> Voir dire practice, however, often strips away fundamental privacy protections.<sup>123</sup> Indeed, compared to other countries that utilize juries, “the disclosure of private jury information in the United States is typically far more extensive.”<sup>124</sup>

Juror privacy is important, both for the individuals involved as well as the jury system itself. As one court noted, “It is important that the public knows that their privacy may be respected so that they will readily participate when they are subpoenaed by the Court to fulfill their [jury] obligation. The public does not seek this duty; the Court demands it subject to contempt of court proceedings . . . .”<sup>125</sup> Indeed, several studies have concluded that “insensitivity to juror privacy is the primary cause of jury dissatisfaction with jury service. . . . [J]urors try to avoid the disclosure of personal information by evading service—many people are simply unwilling to serve on juries when disclosure of personal matters is required.”<sup>126</sup> Some citizens have intentionally refused to register to vote specifically as a means to avoid being called for jury service.<sup>127</sup> Others simply ignore jury summonses.<sup>128</sup> When members of the public see jurors and their families doxed, threatened, shunned, teased at school, driven out of business, victimized by identity theft, or otherwise mistreated, they become less willing to serve as jurors. As a result, it is more difficult to seat jurors who are a cross section of the community, and faith in the system as a whole is negatively impacted.

---

121. See *supra* Part I.

122. See 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, 389–90 (1992) (“Although individuals may voluntarily give up their privacy rights, such voluntariness is lacking where jurors are summoned to appear at voir dire and are compelled to answer truthfully under oath at public proceedings. In the process, jurors may be forced to disclose private matters that may prove to be damaging or embarrassing.”).

123. See Solove, *supra* note 61 (“Jurors lack the basic privacy protections that people have in other contexts.”).

124. See Natalia Antolak-Saper, *Public Duty Versus Private Information: Jury Privacy in the Information Age*, 30 BOND L. REV. 217, 228 (2018).

125. *State v. Pennell*, 583 A.2d 1348, 1352–53 (Del. Super. Ct. 1990) (quoting *State v. Pennell*, 1989 WL 167445, at \*12 (Del. Super. Ct. Oct. 2, 1989)).

126. Wilson, *supra* note 62, at 2027 n.21 (quoting Rousseau, *supra* note 115); see also Damien Fisher, *Zhukovskyy Jurors Keep Privacy After Threats, AG and Sununu Comments*, INDEPTHNH.ORG (Apr. 4, 2023), <https://indepthnh.org/2023/04/04/3355548> [<https://perma.cc/S8UU-4YH7>]; *United States v. Chin*, 913 F.3d 251, 262 (1st Cir. 2019) (“The obligation of jury service is one of the most important that our government imposes on its citizens. It is, therefore, important to ensure that the fulfillment of this obligation is not made so burdensome that it becomes more than a citizen should have to bear.”).

127. See John Paul Ryan, *The American Trial Jury: Current Issues and Controversies*, 63 SOC. EDUC. 458, 461 (1999).

128. *Id.* at 460–61.

Although individuals have expressed fear of privacy invasion at the prospect of serving on the jury,<sup>129</sup> the concept of privacy harm itself is nuanced and contextual. As Professor Danielle K. Citron and Professor Solove explain, identifying “privacy harms”—harm being a prerequisite to recognize a privacy violation—“has become one of the biggest challenges in privacy law.”<sup>130</sup> Professors Citron and Solove note that privacy harms often involve a future risk of damage with a varied range of possible injuries.<sup>131</sup> As a means to define the elusive concept of privacy and organize the disorder surrounding the term, Professor Solove developed a taxonomy of various forms of privacy invasions.<sup>132</sup> The author of this Article builds on several of Professor Solove’s categories to illuminate privacy issues pertaining to jurors.

#### A. Information Collection

Professor Solove identifies one classification of privacy invasion as “information collection.”<sup>133</sup> Information can be collected via privacy-invading interrogation.<sup>134</sup> Professor Solove defines “interrogation” as “the pressuring of individuals to divulge information.”<sup>135</sup> According to Solove, “[i]nterrogation forces people to be concerned about how they will explain themselves or how their refusal to answer will appear to others.”<sup>136</sup>

Voir dire involves information collection.<sup>137</sup> During voir dire, venire members are typically asked a wide range of questions, via written interrogation, oral questioning, or both.<sup>138</sup> These individuals often feel strong pressure to answer all queries, including those with which they are uncomfortable. In a Missouri state court case, for example, the plaintiffs’ lawyer emphasized to the venire members the importance of responding to questions:

[B]ecause if for some reason you weren’t to respond to a question that had been asked and [thus not] give the information, sometimes that means we have to do this all over again. . . . And it is really hard on the system when cases have to be tried twice.<sup>139</sup>

---

129. See PAULA L. HANNAFORD, STATE JUSTICE INSTITUTE, MAKING THE CASE FOR JUROR PRIVACY: A NEW FRAMEWORK FOR COURT POLICIES AND PROCEDURES 1 (2001), <https://cdm16501.contentdm.oclc.org/digital/collection/juries/id/31> [<https://perma.cc/Q24E-AN2L>].

130. Danielle Keats Citron & Daniel J. Solove, *Privacy Harms*, 102 B.U. L. REV. 793, 796 (2022). See generally HELEN NISSENBAUM, PRIVACY IN CONTEXT (2010) (arguing that privacy concerns vary depending on what norms govern certain social contexts).

131. See Citron & Solove, *supra* note 130, at 817.

132. See generally Solove, *supra* note 29.

133. *Id.* at 499.

134. See *id.*

135. *Id.* at 500.

136. *Id.* Professor Solove states that the law regarding interrogation and privacy is “nearly nonexistent.” *Id.* at 504.

137. See *supra* Part I.

138. See *supra* Part I.

139. King v. Sorensen, 532 S.W.3d 209, 212 (Mo. Ct. App. 2017).

As Professors Citron and Solove document, privacy invasions can cause deep emotional distress.<sup>140</sup> In one case, a juror began to cry during voir dire after revealing “that her mother was an alcoholic and her maternal grandfather died from alcoholism.”<sup>141</sup> A juror in a different case lied about the arrest of her daughter and the criminal conviction of her husband.<sup>142</sup> She did so “because of both the emotional pain involved in discussing these experiences and her desire to avoid the humiliation of sharing them.”<sup>143</sup> One juror felt pressured to reveal that her stepfather had raped her—something she had not told anyone—not even her husband.<sup>144</sup>

The practical consequences to venire members who refuse to answer voir dire questions can be severe. When a venire member in Texas refused to answer questions about her political affiliation, religious preference, television viewing and reading habits, medical history, and other personal issues, she was held in contempt and sentenced to three days in jail.<sup>145</sup> In another case, a venire member was held in contempt and sentenced to one day in jail for refusing to disclose whether she had a husband.<sup>146</sup>

Information collection can also have negative consequences to venire members who disclose too much information. A judge threatened a venire member with a fine or up to thirty days in jail for truthfully answering a question during voir dire.<sup>147</sup> When the judge asked the potential juror if he could be fair and impartial toward a defendant on trial, he responded “I have been held up three times at gunpoint . . . I am already looking at him; I think he is a scumbag.”<sup>148</sup> After that experience, the venire member stated, “I’m a little disillusioned with the whole legal process right now. . . . I feel like I’m being punished for being honest.”<sup>149</sup>

---

140. See Citron & Solove, *supra* note 130, at 841.

141. King, *supra* note 21, at 124 n.2 (citing Kirk Loggins, *Claypole Jury Pressed on Alcohol Issues*, TENNESSEAN, July 12, 1995, at B1).

142. Sampson v. United States, 724 F.3d 150, 162–63 (1st Cir. 2013).

143. *Id.* at 163.

144. See 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, 285–86 (2002); see also Zalman & Tsoudis, *supra* note 47, at 261 (noting how sometimes jurors “shout out that they were raped as a child or whatever the case may be. And the scary thing about it is that sometimes . . . [it] is the first time they ever told anyone.”).

145. See *Brandborg v. Lucas*, 891 F. Supp. 352, 353–55 (E.D. Tex. 1995).

146. See *Bobb v. Mun. Ct.*, 143 Cal. App. 3d 860, 863 (Ct. App. 1983). On the other hand, some potential jurors seem to overshare personal information. A prospective juror for the sentencing of Parkland school shooter Nicholas Cruz told the judge that she, the prospective juror, could not sit on the panel because, although she was married, she needed to see her “sugar daddy” every day. See Yaron Steinbuch, *Potential Nikolas Cruz Juror Says She Can’t Be on Jury Because of ‘Sugar Daddy’*, N.Y. POST (Apr. 7, 2022), <https://nypost.com/2022/04/07/nikolas-cruz-juror-says-she-cant-be-on-jury-because-of-sugar-daddy/> [<https://perma.cc/DP5W-CUBM>]. The judge dismissed her from the jury pool. See *id.*

147. See Andrew Jacobs, *For Potential Juror, ‘Honest Response’ to Judge Backfires*, N.Y. TIMES (July 2, 2005), <https://www.nytimes.com/2005/07/02/nyregion/for-potential-juror-honest-response-to-judge-backfires.html> [<https://perma.cc/UET2-54P9>].

148. *Id.*

149. *Id.*

*B. Information Processing*

Another form of privacy violation Professor Solove classifies as “information processing.”<sup>150</sup> Information processing can involve (1) aggregation—“the combination of various pieces of data about a person”—which creates a picture of an individual not readily accessible when looking at individual sources;<sup>151</sup> (2) identification—the subsequent connection of that information to an individual “in the flesh”;<sup>152</sup> and (3) secondary use—“the use of data for purposes unrelated to the purposes for which the data was initially collected.”<sup>153</sup>

“Voir Google” involves information processing. “Voir Google” is the process whereby lawyers conduct self-directed internet searches of venire members and combine those results with the responses to questions asked during voir dire as a means to paint a deeper picture of each potential juror.<sup>154</sup> The threat of information processing has incentivized members of the venire to lie during the jury selection process. In one case, for example, a member of the venire lied on the juror questionnaire regarding his drug use.<sup>155</sup> He stated that he was afraid that if he had answered truthfully, charges would be brought against him.<sup>156</sup> Some venire members avoid the embarrassment of being publicly excluded from the jury by concealing information about themselves that they know will result in dismissal.<sup>157</sup> Judge Penney S. Azcarate, Chief Judge of the Circuit Court in Fairfax County, Virginia<sup>158</sup> who presided over the *Depp v. Heard*<sup>159</sup> defamation trial, told the author of this Article that some of the questions in voir dire venture into political territory, and the venire members’ responses can harm them at work, with future employment prospects, or in the community.<sup>160</sup> Even seemingly innocent questions such as “are you taking care of someone at home?”—something that is relevant in terms of the venire member’s ability to attend daily court proceedings—might be negatively perceived if known by a

---

150. Solove, *supra* note 29, at 488.

151. *Id.* at 490.

152. *Id.* at 510–11.

153. *Id.* at 519.

154. *See* Browning, *supra* note 23.

155. *See* Hatten v. Quarterman, 570 F.3d 595, 602 (5th Cir. 2009).

156. *See id.*

157. *See generally* Andrew Weis, *Peremptory Challenges: The Last Barrier to Jury Service for People with Disabilities*, 33 WILLAMETTE L. REV. 1 (1997); *see also* Study: Blacks Routinely Excluded from Juries, NPR (June 20, 2010, 2:18 PM), <https://www.npr.org/templates/story/story.php?storyId=127969511> [<https://perma.cc/72V9-PDBN>].

158. *See* Julia Jacobs, *Who is Judge Penney Azcarate?*, N.Y. TIMES (June 1, 2022), <https://www.nytimes.com/live/2022/06/01/arts/johnny-depp-amber-heard-verdict?smid=nyt-core-ios-share&referringSource=articleShare#who-is-judge-penney-azcarate> [<https://perma.cc/RPU3-3FBC>].

159. 108 Va. Cir. 382 (2021).

160. Telephone Interview with Hon. Penney S. Azcarate, Presiding Judge, Chief Judge, Fairfax Circuit Court, Fairfax, Virginia (Jan. 10, 2024) (notes on file with author). Judge Azcarate emphasized that venire members are often asked their beliefs regarding gun ownership. *Id.*

current or potential employer.<sup>161</sup> Further, information processing leaves jurors vulnerable to identity theft<sup>162</sup> and various other scams.<sup>163</sup> The more information a potential juror exposes, the more vulnerable that person becomes to artificial intelligence, deepfakes, inferential analysis, and other forms of rapidly advancing technology.

### C. Information Dissemination

“Information dissemination” is another category of privacy invasion Professor Solove devised. Information dissemination involves the disclosure to others of personal information.<sup>164</sup> Professor Lior Jacob Strahilevitz asserted that this type of disclosure involves spreading information beyond expected boundaries.<sup>165</sup> In the late 1990s, the National Center for State Courts conducted a survey of jurors, asking them about their experiences and reactions to jury service.<sup>166</sup> Even before the explosion of the internet and social media, jurors were uncomfortable with the intrusion on privacy that information dissemination caused. One juror stated, “I don’t think the defendant and his friend and family have to know what my name is, where I live and where I work. We could have kept some of that information confidential. This information was all given to anyone in that courtroom.”<sup>167</sup>

A juror in the Derek Chauvin murder case stated publicly that jurors were wary of having their personal information released to the media. He reported that “[m]ost of [the jurors] really just want to stay low-key and stay behind the scenes. . . . They’re scared of . . . becoming a public figure instead of

---

161. *Id.*

162. See generally DANIEL J. SOLOVE, *THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET* (2007).

163. See Kayla Jimenez, *Scam Warning: Criminals Are Posing as Judges and Threatening People with Arrest, Feds Say*, USA TODAY (Jan. 9, 2024), <https://www.usatoday.com/story/news/nation/2024/01/09/juror-duty-phone-scams-nationwide/72153470007/> [<https://perma.cc/QV6A-CWVF>]; see also *Juror Scams*, U.S. COURTS, <https://www.uscourts.gov/services-forms/jury-service/juror-scams> [<https://perma.cc/P8F8-5JMZ>].

164. See Solove, *supra* note 29, at 531 (“Disclosure can also be harmful because it makes a person a ‘prisoner of [her] recorded past.’ People grow and change, and disclosures of information from their past can inhibit their ability to reform their behavior, to have a second chance, or to alter their life’s direction. Moreover, when information is released publicly, it can be used in a host of unforeseeable ways, creating problems related to those caused by secondary use.”). In holding that the penumbras of the Constitution provide a “right to privacy,” the U.S. Supreme Court recognized that this right encompasses the “individual’s ‘interest in avoiding disclosure of personal matters.’” *Whalen v. Roe*, 429 U.S. 589, 598–99 (1977).

165. See Solove, *supra* note 29, at 532; see also Lior Jacob Strahilevitz, *A Social Networks Theory of Privacy*, 72 U. CHI. L. REV. 919, 974 (2005) (arguing that an individual has a reasonable expectation of privacy where there is a low risk that the information will spread beyond the individual’s social network).

166. See NAT’L CTR. FOR STATE CTS., *THROUGH THE EYE OF THE JUROR: A MANUAL FOR ADDRESSING JUROR STRESS* 18 (1998), [https://www.ncsc-jurystudies.org/\\_data/assets/pdf\\_file/0022/7438/through-the-eyes-of-the-juror.pdf](https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0022/7438/through-the-eyes-of-the-juror.pdf) [<https://perma.cc/N885-XSQU>].

167. *Id.*

spending their lives in peace.”<sup>168</sup> Even adolescents are wary of the information dissemination associated with jury service. A teenaged member of the Girl Scouts of the USA asserted that “she would *never* want to be summoned for jury service,” adding, “[i]t’s dangerous. . . . Everyone gets to know everything about you—where you live, where you work, where your kids go to school. Even criminals get to know that information. You’re not allowed to keep anything private.”<sup>169</sup>

An extreme example of juror information dissemination occurred with the grand jury in the Trump election fraud case in Georgia. Although members of grand juries are typically seated anonymously, in Georgia it is standard practice to include their names in indictments.<sup>170</sup> Almost immediately after the indictment was publicly released, someone on a far-right website posted the grand jurors’ full names, ages, and addresses.<sup>171</sup> This doxing was rife with threats and derogatory slurs,<sup>172</sup> and was clearly a “target list.”<sup>173</sup>

### III. THE ANONYMOUS JURY

Anonymity has transformed U.S. history. “Between 1789 and 1809, six presidents, fifteen cabinet members, twenty senators, and thirty-four congressmen published anonymous political writings . . .”<sup>174</sup> The Federalist Papers and their rebuttal were authored under a pseudonym.<sup>175</sup> Benjamin Franklin used over forty pen names over the course of his life.<sup>176</sup> The grand jury, whose origins trace back as far as the fourteenth century, has always proceeded in secret.<sup>177</sup> The Supreme Court has supported the use of anonymity in various contexts, including the right to anonymously distribute

168. Nicholas Bogel-Burroughs, *Jurors Who Convicted Derek Chauvin Are Identified for First Time*, N.Y. TIMES (Nov. 1, 2021), <https://www.nytimes.com/2021/11/01/us/derek-chauvin-trial-jury.html> [<https://perma.cc/2EVH-A2AE>].

169. Paula L. Hannaford, *Safeguarding Juror Privacy: A New Framework for Court Policies*, JUDICATURE, July/Aug. 2001, at 1, 18; *see also* King, *supra* note 21, at 127 (citing a 1995 study in which 84 percent of young women surveyed stated that jurors should be anonymous in all criminal trials. One respondent stated, “The court system should take no chances with jurors’ safety and should offer anonymity in all trials.” Another respondent, however, said, “Jurors are citizens who are sworn to seek truth and determine justice. Where is the honor in anonymity?”).

170. *See* Odette Yousef & Sam Gringlas, *Threats, Slurs and Menace: Far-Right Websites Target Fulton County Grand Jurors*, NPR (Aug. 18, 2023, 10:06 AM), <https://www.npr.org/2023/08/18/1194471162/trump-indictment-fulton-county-grand-jurors-threats> [<https://perma.cc/8SLW-ZYFH>].

171. *See id.*

172. *See id.*

173. *Id.*

174. SOLOVE, *supra* note 162, at 139–40.

175. *See* McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 343 n.6 (1995); *Primary Documents in American History*, LIB. OF CONG., <https://www.loc.gov/tr/program/bib/our-docs/federalist.html> [<https://perma.cc/2VSM-PNH3>].

176. *See* ROBERT ELLIS SMITH, BEN FRANKLIN’S WEB SITE: PRIVACY AND CURIOSITY FROM PLYMOUTH ROCK TO THE INTERNET 43 (2000).

177. *See generally* Grand Jury Clause: Historical Background, LEGAL INFO. INST., <https://www.law.cornell.edu/constitution-conan/amendment-5/grand-jury-clause-historical-background> [<https://perma.cc/6KMY-48UX>].



campaign literature,<sup>178</sup> the right to anonymous speech on the internet,<sup>179</sup> the right to bring a lawsuit under a pseudonym,<sup>180</sup> and, most recently, the right of charitable nonprofits to refuse to reveal their donor lists to the state attorney general.<sup>181</sup> Anonymity has a paradoxical effect: its secrecy generates information.<sup>182</sup>

The use of anonymous petit juries, however, is a relatively recent phenomenon. Most credit the U.S. District Court for the Southern District of New York as the first court to impanel an anonymous jury in a 1977 criminal trial.<sup>183</sup> That court feared for the safety of the jurors due to several attempts to influence jurors in previous similar cases and the serious charges pending against the allegedly violent defendants.<sup>184</sup> As early as 1951, however, the U.S. District Court for the Southern District of California ordered in a drug case that “neither the Clerk nor the Marshal shall reveal to anyone the names or addresses of persons called for jury duty, or jurors.”<sup>185</sup> The U.S. Court of Appeals for the Ninth Circuit upheld that order, noting that withholding the jurors’ names resulted in neither an unfair trial nor denied the defendant the

---

178. *See, e.g., McIntyre*, 514 U.S. at 334.

179. *Id.*; *see also* Jessica Melugin & Clyde Wayne Crews, *Protecting Publius: Online Anonymity Is Critical for Protecting Freedom to Dissent*, USA TODAY (Feb. 25, 2021, 8:00 AM), <https://www.usatoday.com/story/opinion/2021/02/25/importance-protecting-anonymous-speech-online-facebook-twitter-column/4386076001/> [https://perma.cc/38L8-RJQQ].

180. *See* Jayne S. Ressler, *Privacy, Plaintiffs, and Pseudonyms: The Anonymous Doe Plaintiff in the Information Age*, 53 U. KAN. L. REV. 195, 213 (2004) (collecting cases in which the U.S. Supreme Court “implicitly recognized the propriety of permitting certain plaintiffs to proceed pseudonymously”).

181. *See, e.g., Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021). In its amicus curiae brief to the U.S. Court of Appeals for the Ninth Circuit, the Nonprofit Alliance Foundation and others stated:

Anonymous speech and association by organizations and their supporters has long been enshrined in our nation’s history and values, even before their constitutional protection was guaranteed by the First Amendment. Generally, major donors do not want their name and association with a particular issue or cause in the hands of . . . the public [] for any number of reasons - e.g., family, religion, modesty, privacy, fear of reprisal personally or professionally, or harassment[].

Brief for Nonprofit Alliance, at \*8, *Ams. for Prosperity Found. v. Becerra*, 2021 WL 827025 (9th Cir. Mar. 1, 2021).

182. *See* Jayne S. Ressler, *Workplace Anonymity*, 70 BUFF. L. REV. 1495, 1536 (2022); Jayne S. Ressler, *Anonymous Plaintiffs and Sexual Misconduct*, 50 SETON HALL L. REV. 955, 965 (2020).

183. *See* *United States v. Barnes*, 604 F.2d 121, 140–41 (2d Cir. 1979) (affirming district court’s use of an anonymous jury); *see also* Mangat, *supra* note 20, at 1622 (2018) (citing Abraham Abramovsky & Jonathan I. Edelstein, *Anonymous Juries: In Exigent Circumstances Only*, 13 ST. JOHN’S J. LEG. COMM. 457, 457–58 (1999) (“[In 1977,] a federal trial judge in the Southern District of New York empaneled the first fully anonymous jury in American history.”)); Jane E. Kirtley, “Fairness, the Appearance of Fairness, and Public Confidence in the System”: *The Case Against Anonymous Juries*, LITIG., Fall 2021, at 27, 28.

184. *See Barnes*, 604 F.2d at 121.

185. *See Hamer v. United States*, 259 F.2d 274, 277 (9th Cir. 1958) (quoting a court order from the Southern District of California).

right to trial by an impartial jury.<sup>186</sup> In the decades since the first anonymous jury in a petit trial, their use has increased significantly.<sup>187</sup>

A. *Authority to Impanel an Anonymous Jury*

The relevant section of the Jury Selection and Service Act of 1968, which governs the process for jury selection, is titled “Plan for random jury selection,” and provides that each district court shall devise a plan for random selection of jurors.<sup>188</sup> Among the congressional mandates is that the plan “shall . . . fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public.”<sup>189</sup> This implies that the names of all potential jurors, chosen at the initial stages of jury selection (determining eligible jurors from voter registration lists and the like), must be disclosed. However, the next sentence of the statute states that “[i]f the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential.”<sup>190</sup> By including the conditional conjunction “if,” the statute leaves room for district courts to choose to withhold the names of potential jurors, at least at this early stage of the process.<sup>191</sup>

Although the Supreme Court has stated that the selection of jurors has been a presumptively public proceeding,<sup>192</sup> there is an absence of guidance regarding whether revealing jurors’ names and personal information, to whom, and when, is part of that process. Although the Court has held that there is a First Amendment guarantee of public access to voir dire examinations in criminal trials,<sup>193</sup> it has not addressed whether this access extends to learning jurors’ names,<sup>194</sup> or to obtaining juror selection questionnaires.<sup>195</sup>

---

186. *See id.* at 280–81.

187. *See* Mangat, *supra* note 20, at 1623 (stating that the use of anonymous juries is “on the rise”); *see also* della Cava, *supra* note 17 (same).

188. 28 U.S.C. § 1863(a).

189. 28 U.S.C. § 1863(b)(7). The jury wheel contains the names obtained through voter lists and the like. *See supra* Part I.

190. *Id.*

191. *See* Pointer v. United States, 151 U.S. 396, 407–08 (1894) (“[T]he mode of designating and impaneling jurors for the trial of cases in the courts of the United States is within the control of those courts, subject only to the restrictions [C]ongress has prescribed . . .”).

192. *See, e.g.,* Press-Enter. Co. v. Super. Ct., 464 U.S. 501, 505 (1984) (“[T]he process of selection of jurors has presumptively been a public process with exceptions only for good cause shown.”).

193. *See id.* at 516 (Stevens, J., concurring).

194. *See* United States v. Blagojevich, 612 F.3d 558, 563 (7th Cir. 2010) (“[T]he United States Supreme Court . . . has [not] decided under what circumstances, and after what procedures, jurors’ names may be kept confidential . . .”); Morgan v. Dickerson, 511 P.3d 202, 205 (Ariz. 2022) (noting that the Supreme Court has not addressed whether there is a First Amendment right to access to juror selection questionnaires); United States v. Holmes, 572 F. Supp. 3d 831, 834 (N.D. Cal. 2021) (same).

195. *See, e.g.,* Holmes, 572 F. Supp. 3d at 834.

As early as 1959, the Ninth Circuit distinguished between the public right to attend court proceedings, and the government's lack of obligation to provide identifying information about the venire members:

In our view the fact that a person might be able to acquire [the names and addresses of prospective jurors] for himself [by being present when the names are drawn] does not establish his right to have [them] supplied to him by the government . . . . If there is such a right, one would expect it to be evidenced by some statutory or constitutional provision. . . . [No] statute called to our attention makes provision for the supplying of such information to parties or their counsel . . . . We . . . conclud[e] that there is no constitutional requirement that this be done.<sup>196</sup>

Aside from the U.S. Court of Appeals for the Tenth Circuit, every federal circuit court has approved of the use of an anonymous jury.<sup>197</sup> Federal courts often examine various factors when determining the propriety of impaneling an anonymous jury in a criminal case. For example, the U.S. Court of Appeals for the Fifth Circuit evaluates (1) the defendants' involvement in organized crime; (2) the defendants' participation in a group with the capacity to harm jurors; (3) the defendants' past attempts to interfere with the judicial process or witnesses; (4) the potential that, if convicted, the defendants will suffer a lengthy incarceration and substantial monetary penalties; and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation and harassment.<sup>198</sup> The U.S. Court of Appeals for the Seventh Circuit examines practically identical factors.<sup>199</sup> The Southern District of New York focuses on three factors: (1) whether the charges against the defendant are serious, (2) whether there is a substantial potential threat of corruption to the judicial process, and (3) whether considerable media coverage of the trial is anticipated.<sup>200</sup>

---

196. *Wagner v. United States*, 264 F.2d 524, 528 (9th Cir. 1959).

197. See *The Right of Access to Juror Names and Addresses*, REPS. COMM. FOR FREEDOM OF THE PRESS (citing *United States v. Ramírez-Rivera*, 800 F.3d 1 (1st Cir. 2015); *United States v. Barnes*, 604 F.2d 121, 130 (2d Cir. 1979); *United States v. Scarfo*, 850 F.2d 1015 (3d Cir. 1988); *United States v. Dinkins*, 691 F.3d 358 (4th Cir. 2012); *United States v. Krout*, 66 F.3d 1420 (5th Cir. 1995); *United States v. Deitz*, 577 F.3d 672 (6th Cir. 2009); *United States v. Crockett*, 979 F.2d 1204 (7th Cir. 1992); *United States v. Darden*, 70 F.3d 1507 (8th Cir. 1995); *United States v. Shryock*, 342 F.3d 948 (9th Cir. 2003); *United States v. Ross*, 33 F.3d 1507 (11th Cir. 1994); *United States v. Edmond*, 52 F.3d 1080 (D.C. Cir. 1995)), [https://www.rcfp.org/journals/news-media-and-law-summer-2016/right-access-juror-names-an/#\\_ftn6](https://www.rcfp.org/journals/news-media-and-law-summer-2016/right-access-juror-names-an/#_ftn6) [<https://perma.cc/AM8M-WCX7>] (last visited Oct. 12, 2024).

198. *United States v. Portillo*, 969 F.3d 144, 162 (5th Cir. 2020) (citing *Krout*, 66 F.3d at 1427); see also *United States v. Harris*, 763 F.3d 881, 884 (7th Cir. 2014) (citing almost identical factors).

199. See *Harris*, 763 F.3d at 884.

200. See *United States v. Mostafa*, 7 F. Supp. 3d 334, 336–37 (S.D.N.Y. 2014). Indeed, although it was a civil suit, in the first case of *Carroll v. Trump*, 663 F. Supp. 3d 380 (S.D.N.Y. 2023), Judge Lewis A. Kaplan emphasized the risk of corruption and unwanted media attention that the case would impart on the jurors. See *id.* at 384 (holding that the jurors would be anonymous because if their identities were disclosed “there would be a strong likelihood of unwanted media attention to the jurors, influence attempts, and/or harassment or worse of jurors by supporters of Mr. Trump”); see also Jonathan Stempel, *Trump to Face Anonymous*

State statutes vary with respect to anonymous juries. As discussed in Part III.B,<sup>201</sup> the propriety of the use of anonymous juries in state cases depends on how anonymity is defined. Nevertheless, some states' highest courts have specifically addressed the constitutionality of anonymous juries. In 2022, the Arizona Supreme Court ruled that anonymous juries are constitutional.<sup>202</sup> That court acknowledged the "statewide importance" of the issue of "the constitutionality of the innominate jury system."<sup>203</sup> The Supreme Court of Ohio has expressed that "[t]he use of an anonymous jury does not necessarily involve the violation of a fundamental right. There is no unqualified constitutional right to know the identity of jurors."<sup>204</sup>

### B. Defining the Anonymous Jury

There are varying and often vague definitions of the term "anonymous jury."<sup>205</sup> An anonymous jury means different things on different axes, including the type of information withheld, from whom it is withheld, and the temporal limitations, if any, on information disclosure. There is inconsistency between jurisdictions, within jurisdictions, and even within the same court.<sup>206</sup> The author of this Article endeavors to categorize various forms of juror anonymity, although these classifications sometimes overlap.

#### 1. Type of Juror Information Withheld

The most common information that is withheld is a venire member's or juror's name. Indeed, Justice Blackmun has stated that "[t]he definition of 'anonymous' is 'not named or identified.'"<sup>207</sup> Withholding jurors names is primarily achieved by referring to the venire member or juror by number.<sup>208</sup> Using numbers to identify jurors is a common practice in countries outside

---

*Jury in High-Profile New York Defamation Trial*, REUTERS (Mar. 23, 2023, 1:32 PM), <https://www.reuters.com/legal/trump-face-anonymous-jury-high-profile-new-york-defamation-trial-2023-03-23/> [<https://perma.cc/7CT2-TUVY>].

201. See *infra* Part III.B.

202. See *Morgan v. Dickerson*, 511 P.3d 202, 213 (Ariz. 2022).

203. *Id.* at 209; see also Michael McDaniel, *Arizona Supreme Court Affirms Constitutionality of Anonymous Juries*, COURTHOUSE NEWS SERV. (June 14, 2022), <https://www.courthousenews.com/arizona-supreme-court-affirms-constitutionality-of-anonymous-juries/> [<https://perma.cc/JC2E-DGP7>].

204. *State v. Hill*, 749 N.E.2d 274, 282 (Ohio 2001).

205. See *United States v. Dinkins*, 691 F.3d 358, 371 (4th Cir. 2012) ("The term 'anonymous jury' does not have one fixed meaning."); see also Christopher Keleher, *The Repercussions of Anonymous Juries*, 44 U. SAN. FRAN. L. REV. 531, 531 (2010) ("The definition of an 'anonymous jury' is a shifting one.").

206. See *infra* Part III.B.4.

207. See *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 529–30 (1990) (Blackmun, J., dissenting) (citing WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 88 (1983)).

208. See, e.g., *People v. Rizo*, 302 P.3d 284, 287 (Colo. App. 2011); *People v. Robles*, 302 P.3d 269, 275–77 (Colo. App. 2011). In the federal corruption case against U.S. Senator Robert Menendez, the "[j]urors were identified only by numbers during the selection process." Mike Catalini & Larry Neumeister, *Openings Expected Wednesday in Menendez Corruption Trial*, ASSOC. PRESS (May 14, 2024), <https://apnews.com/article/bob-menendez-bribery-trial-gold-bars-f2aeb26cb574e447bee814847710dedc> [<https://perma.cc/KLJ7-3DT2>].

the United States.<sup>209</sup> Other types of information withheld may include a venire member's or juror's place of employment, address of employment, spouse's name, and spouse's employer.<sup>210</sup>

Some states have codified the use of numbers rather than names to refer to venire members and jurors. The Maryland Rules, for example, read:

(b)(2) *Jurors Not to Be Addressed by Name*. In any proceeding conducted in the courtroom or in chambers, a juror shall be referred to by juror number and not by name. . . . [Jurors] may disclose their names to each other if they wish and, when not in open court, refer to each other by name, but they may not specifically disclose the names of other jurors to anyone else unless authorized by the judge.<sup>211</sup>

In California, it is standard practice to refer to jurors by number rather than name.<sup>212</sup> An Oregon statute provides that “[a] juror may not be identified by name in any court proceeding open to the public,”<sup>213</sup> while in Oklahoma “[n]ames and personal information concerning prospective and sitting jurors shall not be disclosed . . . except upon order of the court.”<sup>214</sup> Even without a specific mandate to refer to venire members and jurors by number, some state courts have instructed that their names be withheld.<sup>215</sup>

## 2. From Whom Juror Information Is Withheld

Another component of juror anonymity concerns from whom venire member and juror information is withheld. Options include the parties, counsel, the court, the government record, and the public. The Seventh Circuit deems the jury to be anonymous when identifying information is

---

209. In Victoria, Australia, recent legislation limited impanelment to disclosure of only the juror's number and occupation. *See* Antolak-Saper, *supra* note 124, at 228 (citing *Jury Act 2000* (Vic) s 36 (Austl.)). In New South Wales, Australia, jurors are impaneled by number only. *See id.* (citing *Jury Act 1977* (NSW) s 48 (Austl.)). Although the default procedure in both Canada and England is that the jurors' names, occupations, and addresses are disclosed in open court during the impanelment process, both countries provide for exceptions to that practice. *See id.* at 228–29.

210. *See* Mangat, *supra* note 20, at 1626–27.

211. MD. R. GEN. 4-312(b)(2).

212. *See* *People v. Lopez*, 65 Cal. App. 5th 484, 489 (2021).

213. OR. REV. STAT. ANN. § 10.097 (West 2022).

214. OKLA. STAT. ANN. tit. 38, § 36 (West 2024).

215. *See, e.g.,* *Perez v. People*, 302 P.3d 222, 226–27 (Col. 2013) (ordering that jurors be referred in open court only by number); *see also* N.Y. CRIM. PROC. LAW. § 270.15 (McKinney 2024). In a 2017 case, a New York appellate court held that impaneling an anonymous jury was improper, as it was a violation of New York Criminal Procedure Law § 270.15. *People v. Flores*, 153 A.D.3d 182, 207 (N.Y. App. Div. 2017), *aff'd*, 114 N.E.3d 141 (N.Y. 2018). A dissenting judge opined that the 1983 law was obsolete, stating, “In today's world of Internet technology, it may be reasonably argued that CPL 270.15(1–a), which expressly limits a protective order to jurors' business and residential addresses, affords no real or practical protection whatsoever to jurors.” *Id.* at 207 (Dillon, J., dissenting). The New York statute does not permit withholding of venire members' names, but does allow the court to restrict, “upon a showing of good cause,” disclosure of a venire member's business or residential address. CRIM. PROC. LAW. § 270.15(c)1-a.

withheld from the parties.<sup>216</sup> That circuit has noted that “[k]eeping the jurors’ information from the public, but nevertheless making it available to the parties, would defeat the very reasoning behind permitting anonymous juries.”<sup>217</sup> The Supreme Court of the State of Hawaii stated that because the defense counsel and the prosecution knew the full names of prospective jurors, the jury was not anonymous.<sup>218</sup> The Colorado Supreme Court likewise declared that the jury was not anonymous because the parties knew the jurors’ identifying information.<sup>219</sup> In Oklahoma, “[p]ersons serving as jurors during a trial shall not be asked or required to give their complete residence address or telephone number in the presence of the defendant.”<sup>220</sup>

On the other hand, Oregon enacted a law in 2022 that makes all jurors anonymous to the public, while their names are disclosed to the parties.<sup>221</sup> A judge on the Delaware Supreme Court deemed a jury to be anonymous when he disclosed the names of jurors to the parties, but refused to provide that information to the media.<sup>222</sup> Similarly, the judge presiding over a Florida murder trial released the jurors’ identities to the attorneys alone, but not the press.<sup>223</sup> In the Trump hush-money criminal trial, New York State Judge Juan Manuel Merchan ordered that the jurors’ names be released only to the parties and their counsel, but specifically “expand[ed] the universe of those permitted access to the names to include the staff and consultants of the respective parties.”<sup>224</sup>

---

216. *See, e.g.*, *United States v. Harris*, 763 F.3d 881, 884 (7th Cir. 2014) (holding that “[a]n ‘anonymous jury’ is selected from a venire whose members’ identifying information—such as names, occupations, addresses, exact places of employment, and other such facts—has been withheld from the parties in order to protect potential jurors and their families” (quoting *United States v. Morales*, 655 F.3d 608, 620 (7th Cir. 2011))); *see also* *United States v. DiDomenico*, 78 F.3d 294, 302 (7th Cir. 1996).

217. *Harris*, 763 F.3d at 885; *see also* *United States v. Black*, 483 F. Supp. 2d 618, 624 (N.D. Ill. 2007) (withholding jurors’ names from the parties).

218. *See* *State v. Lafoga*, 526 P.3d 506, 510–11 (Haw. 2023) (citing *Harris*, 763 F.3d at 885–86).

219. *See Perez*, 302 P.3d at 223.

220. OKLA. STAT. ANN. tit. 38, § 36 (West 2024).

221. OR. REV. STAT. ANN. § 10.097 (West 2022) (“(1) A juror may not be identified by name in any court proceeding open to the public. (2) Notwithstanding subsection (1) of this section, a court shall ensure that the names of jurors are available to the parties to a proceeding unless the court determines that there is good cause to order otherwise.”). In deliberations regarding the passage of the bill, an Oregon representative stated, “Jury duty is one of our most important civic responsibilities, but those who accept that responsibility deserve to have their privacy respected.” Press Release, Or. State Democrats, Oregon Legislature Passes Bill to Protect Juror Privacy (June 4, 2021), [https://www.oregonlegislature.gov/sollman/Documents/Press%20Release\\_Oregon%20Legislature%20Passes%20Bill%20to%20Protect%20Juror%20Privacy.pdf](https://www.oregonlegislature.gov/sollman/Documents/Press%20Release_Oregon%20Legislature%20Passes%20Bill%20to%20Protect%20Juror%20Privacy.pdf) [<https://perma.cc/3QMG-3BC4>]. Interestingly, however, there is nothing in the statute that prohibits the parties from providing juror identifying information to the press. *Id.*

222. *See Gannett Co. v. State*, 571 A.2d 735, 751 (Del. 1990).

223. *See King*, *supra* note 21, at 150 n.108 (citing Associated Press, *Trial Moved to Shield Jury in Case of Burned Tourist*, N.Y. TIMES, June 17, 1993, at B10; Sue Carlton, *Jurors’ Privacy at Issue in Case*, ST. PETERSBURG TIMES, June 16, 1993, at 1B).

224. Decision and Order on People’s Motion for a Protective Order Regulating Disclosure of Juror Information at 2–3, *People v. Trump*, 208 N.Y.S.3d 440 (N.Y. Sup. Ct. 2023) (No. 71543), <https://www.nycourts.gov/LegacyPDFS/press/PDFs/People-v.DJT-Dec-OrderAnony>

### 3. Temporal Restrictions

Another aspect of the anonymous jury enigma involves the duration that information is withheld. Information can be withheld pretrial, during trial, posttrial for a limited duration, or permanently.<sup>225</sup> In one case, the U.S. District Court for the District of Massachusetts, “[g]ave the jurors a single day” before making their names part of the public record.<sup>226</sup> In Oklahoma, the period of withholding is even more brief: the state statute provides that “[n]ames and personal information concerning prospective petit jurors may be provided to the attorneys of record after the general panel jurors have been selected and summoned.”<sup>227</sup> In a murder trial of an accused police officer in Florida, the court barred the release of the jurors’ identities until six months after the end of the trial.<sup>228</sup> The judge in the Derek Chauvin murder trial released the jurors’ names nearly seven months after the trial ended.<sup>229</sup> In the *Depp v. Heard* defamation case, Judge Azcarate ordered that the jurors remain anonymous for twelve months after the trial.<sup>230</sup> Judge Lewis A. Kaplan of the U.S. District Court for the Southern District of New York ruled that the jurors’ names will never be released in either of the E. Jean Carroll defamation cases against Trump.<sup>231</sup>

### 4. Other Restrictions

Some states employ means other than those in the above categories to keep their venire members and jurors anonymous. In Minnesota, voir dire in civil cases is not conducted on the record.<sup>232</sup> In Oklahoma, “[a] request for disclosure of petit jurors’ names and personal information shall be made in

---

mousJury.pdf [https://perma.cc/K44X-ZTF5]. A New York statute that permits the court to issue a protective order regarding venire members’ business or personal addresses excludes counsel for either party from such concealment. *See* N.Y. CRIM. PROC. LAW § 270.15 (McKinney 2024) (“The court may for good cause shown, upon motion of either party or any affected person or upon its own initiative, issue a protective order . . . regulating disclosure of the business or residential address of any prospective or sworn juror to any person or persons, other than to counsel for either party.”).

225. *See generally* Mangat, *supra* note 20; King, *supra* note 21.

226. *United States v. DiMasi*, 795 F. Supp. 2d 115, 117 (D. Mass. 2011); *see also* *United States v. Doherty*, 675 F. Supp. 719, 725 (D. Mass. 1987) (providing a seven day grace period before permitting jurors’ names to be made public); *United States v. Butt*, 753 F. Supp. 44, 45–46 (D. Mass. 1990) (postponing disclosure for seven days); *Sullivan v. Nat’l Football League*, 839 F. Supp. 6, 7 (D. Mass. 1993) (postponing disclosure for ten days); *United States v. Espy*, 31 F. Supp. 2d 1, 2–3 (D.D.C. 1998) (postponing disclosure for seven days).

227. OKLA. STAT. ANN. tit. 38, § 36 (West 2024).

228. *See Ethnically Mixed Jury to Hear Lozano Trial*, S. FLA. SUN SENTINEL, <https://www.sun-sentinel.com/1993/05/15/ethnically-mixed-jury-to-hear-lozano-trial-2-hispanics-1-black-selected-for-panel/> [https://perma.cc/4KTE-XAWD] (Sept. 25, 2021).

229. *See* Bogel-Burroughs, *supra* note 168.

230. *See* Zitser, *supra* note 19.

231. *See* Nick Robertson, *Judge Rules Jury Will Be Kept Anonymous in Trump E. Jean Carroll Defamation Case*, THE HILL (Nov. 3, 2023, 9:57 PM), <https://thehill.com/regulation/court-battles/4293167-e-jean-carroll-trump-defamation-jury-anonymous/> [https://perma.cc/W5S3-LJBL].

232. *See* Hannaford, *supra* note 169, at 44.

writing” and “[t]he court shall order juror names and personal information to be kept confidential unless the interests of justice require otherwise.”<sup>233</sup> In a local Ohio court, a statute provides that “[t]he Clerk of Courts, the Jury Commission, Jury Manager, Fairfield County Sherriff [*sic*], and the Court shall have access to the [jurors’] names and addresses for administrative purposes. The Prosecutor may have access to the names of the grand jurors on an as needed basis.”<sup>234</sup> There is a standing order for limited access to juror information in Maine. That order provides that an attorney or unrepresented party is entitled to request to review all juror information at the clerk’s office, and to receive a list of the jurors’ names but not their questionnaires.<sup>235</sup>

Federal courts’ definitions of juror anonymity are in disarray. The Eastern District of New York itself has impaneled various inconsistent versions of anonymous juries. In 2019, Judge Pamela K. Chen seated a “partially anonymous and semi-sequestered” jury.<sup>236</sup> In that case, the court kept the jurors’ identities from the public but informed the lawyers and the parties of the venire members’ and jurors’ names.<sup>237</sup> Judge Chen permitted the lawyers and “all parties” to review the venire members’ written questionnaires and conduct extensive voir dire.<sup>238</sup> The previous year, the same court, in the infamous El Chapo case, impaneled its version of an anonymous jury. In that case, however, the judge withheld the names, addresses, and specific places of employment of prospective and selected jurors from the public and the parties.<sup>239</sup> In an even earlier Eastern District of New York case, the government moved for an anonymous jury, requesting that the court order “that the names, addresses, and workplaces of members of both the *venire* and *petit* juries not be revealed.”<sup>240</sup> The court granted the government’s motion, but neither that motion nor the court’s opinion defined the term “anonymous” or stated from whom information would be withheld.<sup>241</sup>

#### IV. EFFECTS OF JUROR ANONYMITY

Juror anonymity has effects beyond addressing venire members’ and jurors’ privacy concerns. These include (1) effects on juror truthfulness, citizen participation, and faith in the judicial system and (2) reduction in bias

---

233. OKLA. STAT. ANN. tit. 38, § 36 (West 2024).

234. *State v. Hill*, 749 N.E.2d 274, 278 (Ohio 2001) (first alteration in original); *see also* N.Y. JUD. LAW § 509 (McKinney 2024) (discussing that despite its criminal procedural law that does not permit withholding of jurors’ names, New York judiciary law mandates that jury questionnaires and records be deemed confidential and shall not be disclosed).

235. STATE OF ME., SUPERIOR CT., STANDING ORDER FOR LIMITED ACCESS TO JUROR INFORMATION (2014), <https://www.courts.maine.gov/adminorders/so-jb-05-20.pdf> [<https://pe.rma.cc/5A65-Z897>].

236. *United States v. Napout*, 963 F.3d 163, 188 (2d Cir. 2020).

237. *See id.* at 189.

238. *Id.*

239. *See United States v. Guzman Loera*, No. 09-cr-0466, 2018 U.S. Dist. LEXIS 185689, at \*11 (E.D.N.Y. Oct. 30, 2018).

240. *United States v. Herron*, 2 F. Supp. 3d 391, 395 (E.D.N.Y. 2014) (emphasis added).

241. *See id.* at 405.



against criminal defendants. Additionally, as Professors Citron and Solove note, privacy harms can be small in the individual, but substantial in the aggregate.<sup>242</sup> This is true with respect to citizen participation and faith in the judicial system. When individuals purposely evade jury service to protect their privacy, the ideals of the jury representing a cross section of the community are not realized. This leads to skepticism about juries and court processes in general, thereby weakening courts' ability to provide justice.

*A. Juror Truthfulness, Citizen Participation, and  
Faith in the Judicial System*

Professor Melanie D. Wilson advises that venire members lie for at least three reasons: (1) to avoid jury service, (2) to protect their privacy, and (3) to get seated on the jury.<sup>243</sup> For some, the first two reasons are related—in other words, certain members of the venire lie to avoid jury service because of its impact on their privacy. Indeed, the Arizona Supreme Court noted that lack of anonymity might motivate jurors to lie “to avoid public embarrassment about very sensitive matters, like disabilities, medications, and past experiences as crime victims. And in this internet age, where jurors’ names can trigger lightning-fast access to a wealth of . . . information, . . . divulging jurors’ names to the public . . . risk[s] . . . jury integrity.”<sup>244</sup>

Indeed, “[n]inety percent of those responding to one survey about jury service said that they would be more willing to serve on a criminal trial if juror anonymity were guaranteed.”<sup>245</sup> This sentiment is not limited to jurors in the United States: 76 percent of respondents to a survey in the Australian state of Victoria said that they would prefer to be identified by number only.<sup>246</sup> Judges there who adopted the number practice saw “a drop in the number of excuse applications.”<sup>247</sup> To the extent that concerns about privacy and jury service incentivize American citizens to forgo their right to vote, the costs to the public are too high.<sup>248</sup>

When venire members and jurors are anonymous they will be more comfortable speaking openly and honestly, which will reduce the number of citizens who protect their privacy by lying to avoid jury service.<sup>249</sup> An anonymous juror in the Alex Murdaugh murder case came forward and revealed that the court clerk had communicated inappropriately with the jurors during the course of the trial.<sup>250</sup> The juror was identified only as “Juror

---

242. See Citron & Solove, *supra* note 130, at 816.

243. See Wilson, *supra* note 62, at 2027 n.21 (citing Rousseau, *supra* note 115, at 299–300); see also *Gannett Co. v. State*, 571 A.2d 735, 750 (Del. 1989) (refusing to adopt the “cynical view” that jurors would not respond truthfully unless the press has access to jurors’ names).

244. *Morgan v. Dickerson*, 511 P.3d 202, 208 (Ariz. 2022).

245. King, *supra* note 21, at 139 (emphasis in original).

246. See Antolak-Saper, *supra* note 124, at 246.

247. *Id.*

248. See Ryan, *supra* note 127 at 461.

249. See, e.g., King, *supra* note 21, at 139.

250. See, e.g., Associated Press, *Alex Murdaugh Is Denied a New Trial After a Judge Hears Jury Tampering Allegations*, NPR (Jan. 29, 2024), <https://www.npr.org/2024/01/29>

Z.”<sup>251</sup> It is probable that Juror Z felt comfortable revealing this important information because she remained publicly anonymous when doing so.

Those opposed to juror anonymity express concern that anonymity creates a lack of accountability, and, as a result, venire members and jurors will be incentivized to be untruthful.<sup>252</sup> One scholar suggested that “an anonymous juror . . . might lose out on the sense of agency and responsibility-taking that result in a meaningful jury experience”<sup>253</sup> and that “anonymous juries partly shroud a criminal trial and may blunt the beneficial effects of civic engagement, thus affecting the legitimacy of the verdict, an interest ‘essential to respect for the rule of law.’”<sup>254</sup> Furthermore, proponents of revealing venire members’ names during voir dire argue that doing so makes the process optically and substantively more just.<sup>255</sup> It is evident, however, that requiring venire members and jurors openly to disclose what they consider private information does not ensure that they are truthful.<sup>256</sup>

Another effect of juror anonymity is that it frees jurors to focus their attention on the case and evidence at hand, instead of being preoccupied with their own privacy exposure. “If the jury believes its verdict is subject to public scrutiny . . . jurors may be inclined to decide the case in accordance with public sentiment, disregarding the defendant’s right to judgment

---

/1227691743/alex-murdaugh-juror-says-clerk-made-him-seem-guilty-murder-appeal [https://perma.cc/NHW9-FYVR].

251. *Id.*

252. *See, e.g.*, Catherine Gewertz, *Courthouse Makes Blanket Use of Juror Anonymity*, L.A. TIMES (July 25, 1994, 12:00 AM) (quoting Professor Paul F. Rothstein, of Georgetown University Law Center: “Accountability to the community is an important pressure on [jurors] to do the right thing”), <https://www.latimes.com/archives/la-xpm-1994-07-25-mn-19641-story.html> [https://perma.cc/7NB5-T6EK].

253. *See* Mangat, *supra* note 20, at 1640.

254. *Id.* (citing *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 860 (2017)).

255. *See, e.g.*, *United States v. Bruno*, 700 F. Supp. 2d 175, 182 (N.D.N.Y. 2010) (“The interest in protecting jurors’ privacy rights strengthens the integrity of our justice system by assuring their rights to safety and privacy and by encouraging the candor of impaneled and prospective jurors and future venire.” (citing *United States v. King*, 140 F.3d 76, 79 (2d Cir. 1998))); *see also King*, 140 F.3d at 79 (“Prospective jurors, if made aware that their views will be publicly disseminated in the next day’s newspapers or radio or television broadcasts, will be under pressure not to express unpopular opinions relevant to their choice as trial jurors.” (quoting *United States v. King*, No. 94 CR. 455, 1998 WL 50221, at \*2 (S.D.N.Y. Feb. 5), *aff’d*, 140 F.3d 76 (2d Cir. 1998))).

256. *See supra* Part I. One juror proclaimed, “Jurors take their job seriously whether you use their names or not.” *King, supra* note 21, at 142. The Arizona Supreme Court stated, “[W]e are unconvinced that providing open access to jurors’ names would cause prospective jurors to be more forthcoming during voir dire.” *Morgan v. Dickerson*, 511 P.3d 202, 208 (Ariz. 2022) (citing *Gannett Co. v. State*, 571 A.2d 735, 750 (Del. 1989) (refusing to adopt the “cynical view” that jurors would not respond truthfully unless the press has access to jurors’ names)). However, if the attorneys have the jurors’ personal information, they can in fact monitor the jury’s online behavior. It is unclear what impact, if any, juror anonymity will have with respect to Professor Wilson’s third category—those who lie with the goal of being seated on a panel. Perhaps anonymity will embolden venire members to respond untruthfully in ways that are aimed at getting them chosen as jurors. Given the general disdain for jury service, however, it is likely that anonymity will impact more jurors who were otherwise prone to lie to avoid jury service rather than those who lie with the goal of being seated on a panel.

founded solely on the evidence.”<sup>257</sup> Judge Azcarate recounted that one of the primary reasons she chose to impanel the *Depp v. Heard* jurors anonymously was to “take one thing to worry about off their plate.”<sup>258</sup> She said, “The rise of social media makes jurors feel uncomfortable. I am all about protecting my jurors. Keeping their names out of the public record . . . allows them to be more focused during the case and in deliberations. I want them to focus on my instructions.”<sup>259</sup>

If citizens know that their privacy will be maintained when serving as jurors, they will be more willing to participate in the jury process.<sup>260</sup> Jury duty will become less daunting and juror panels will become more diverse. An increase in the number of citizens who participate in jury service will provide the public with more knowledge about the process, which can lead to more confidence in the system. Paradoxically, an increase in confidence in the judicial system can lead to less skepticism about providing jurors with anonymity.

The author of this Article spoke with two jurors on the Derek Chauvin case.<sup>261</sup> The jurors’ names in that case were released more than six months after the trial.<sup>262</sup> Although both jurors authorized publication of their comments, only one of the two permitted use of her name. Neither has previously spoken publicly about their experience. Sherri Hardeman stated

---

257. David S. Willis, *Juror Privacy: The Compromise Between Judicial Discretion and the First Amendment*, 37 SUFFOLK U. L. REV. 1195, 1197 (2004); see also Seth A. Fersko, *United States v. Wecht: When Anonymous Juries, the Right of Access, and Judicial Discretion Collide*, 40 SETON HALL L. REV. 763, 801–02 (2010) (“[T]he risk that the media will contact prospective jurors can heighten jurors’ fears. For instance, it can increase juror anxiety where a juror might already have concerns about privacy and intimidation. The increased anxiety can pressure a juror into taking a position without listening to the evidence. Some empirical studies have confirmed that increased media scrutiny and exposure to views expressed in the press can pressure jurors. The result is a tendency amongst non-anonymous juries to conform their decisions to the public’s views.”). Professor Nancy J. King suggests that anonymity encourages jurors to be less intimidated during deliberations, and therefore, they feel more comfortable speaking out about unpopular opinions. See King, *supra* note 21, at 137–39; see also *United States v. Black*, 483 F. Supp. 2d 618, 628 (N.D. Ill. 2007) (stating that public access to jurors’ names during trial “enhances the risk that the jury will [not be] able to function as it should, in secrecy and free of any outside influence” (emphasis omitted)).

258. Telephone Interview with Hon. Penney S. Azcarate, *supra* note 160.

259. *Id.*

260. See generally King, *supra* note 21. It should be noted, however, that being impaneled anonymously does not protect jurors from public exposure when they are outside of the courtroom. In a murder trial in Stamford, Connecticut, jurors expressed safety concerns after they were videotaped and photographed leaving the courthouse. See Tomlinson, *supra* note 14. The judge in the case admitted that “[t]he court [cannot] control what happens out on the public highway out in front of the building.” *Id.* He did, however, excuse a juror from service after she reported a suspicious vehicle that had entered her driveway and whose occupant possibly took photos of her home. See *id.*

261. Telephone Interview with Sherri Hardeman (Apr. 12, 2024) (notes on file with author); Telephone Interview with “Pat” (Apr. 15, 2024) (notes on file with author). Although the author of this Article reached out to several of the jurors on the *Depp v. Heard* case, none returned the calls. One *Depp v. Heard* juror who answered the phone when called said that she was “too busy” and was not interested in discussing with anyone her experience as an anonymous juror on the case.

262. See Bogel-Burroughs, *supra* note 168.

that being anonymous “worked both ways” for her.<sup>263</sup> On the one hand, she said, anonymity caused her initially to be fearful. Hardeman noted that the anonymity, combined with all the security that was in place to keep the jurors protected, “reinforced how serious the threat could be.”<sup>264</sup> On the other hand, she still believes anonymity is a good idea for all jurors. She said, “When people are serving on a jury, trying to do their civic duty, they should have a right to privacy.”<sup>265</sup> The other juror with whom the author of this Article spoke (this person will be called “Pat” and will be referred to by they/them pronouns to keep their identity private) stated that “anonymity made me feel comfortable” because safety was Pat’s main concern.<sup>266</sup> Indeed, Pat said that they “wouldn’t have stayed on the trial if my name was going to be released right away.”<sup>267</sup>

Both jurors explained that the anonymity process was not airtight. Hardeman, for example, noted that although the jurors’ faces were not televised, the audio portion of voir dire was broadcasted and anyone who recognized jurors’ voices would know who they were. Pat told me that because they were absent from work for several weeks in the middle of the COVID-19 pandemic, their coworkers figured out that Pat was sitting on the Derek Chauvin case. Pat said that when the verdict was read the media had already found out their identity, because that day they received a voicemail and a text from a member of the press. Pat reported having a person showing up at their home and calling them at work.

The fact that their identities would eventually be publicly released weighed on both jurors. Before the trial began, Hardeman met with a security specialist who advised her to scrub her social media presence. She was very anxious, “particularly as a Black woman,” when she was notified that the jurors’ names had been made public.<sup>268</sup> Hardeman received phone calls and emails after her name was released, and she installed a Ring doorbell system. When people come to the door, she tells them to contact the local police. Pat too was concerned about the jurors’ names being released but was hopeful that interest in the case would die down by that time. Both Hardeman and Pat noted that one juror in particular expressed especially strong anxiety about being outed.

Hardeman and Pat repeatedly conveyed deep pride in having served on the jury. They emphasized that they believed that it was their civic duty to serve. Neither expressed any feeling that being anonymous gave them license or opportunity to be untruthful.<sup>269</sup>

---

263. Telephone Interview with Sherri Hardeman, *supra* note 261.

264. *Id.*

265. *Id.*

266. Telephone Interview with “Pat”, *supra* note 261.

267. *Id.*

268. Telephone Interview with Sherri Hardeman, *supra* note 261.

269. *See* Telephone Interview with Sherri Hardeman, *supra* note 261; Telephone Interview with “Pat”, *supra* note 261.

### B. Fairness for Criminal Defendants

One factor courts evaluate in determining whether to impanel an anonymous jury is the dangerousness of the defendant. Critics of jury anonymity—specifically in the context of criminal cases—argue that this creates a bias against the defendant.<sup>270</sup> The notion is that if the venire members and jurors know that they are anonymous to protect their safety, they will have already formed a negative opinion of the defendant. Characterizing the defendant as dangerous can indeed be prejudicial. One scholar noted:

[T]here is opportunity for systemic bias to occur if . . . a judge drifts perilously close to prejudging the merits of the case. For example, whether a defendant is involved in organized crime is a conclusory fact that ought to be determined by the factfinder, not the presiding judge, at the end of an adversarial proceeding and after each party has been given all the process that they are due.<sup>271</sup>

Impanelling only *select* juries anonymously, however, is what creates the possibility of unfairness. If the use of anonymous juries becomes routine, this concern is eliminated.<sup>272</sup> When the motivation behind anonymity is to protect the privacy rights of all venire members and jurors in every case, there will be no inherent prejudice.<sup>273</sup> An instructive example can be found in Ohio. There, a trial judge explained the routine use of jury anonymity by referring only to the venire members' and jurors' privacy interests. At the commencement of voir dire, the judge said to the venire:

---

270. See, e.g., Mangat, *supra* note 20, at 1641–42; see also *id.* 1637–38 (“[A]nonymity ‘rais[es] the specter that the defendant is a dangerous person from whom the jurors must be protected.’” (quoting *United States v. Ochoa-Vasquez*, 428 F.3d 1015, 1048 (11th Cir. 2005) (Barkett, J., concurring in part and dissenting in part))).

271. *Id.* at 1641–42 (citation omitted). In contrast, it should not be assumed that juror anonymity can only harm the defendant. In some cases, it is the defendant who seeks to keep jurors' identifying information confidential. For example, in the Elizabeth Holmes criminal trial, Holmes argued that maintaining the juror questionnaires under seal would support her Sixth Amendment right to a fair and impartial jury trial. Even Trump supported the use of an anonymous jury while defending the civil rape allegations E. Jean Carroll brought against him. Trump's lawyer said that anonymity would prevent jurors from “feel[ing] any outside pressure or influence” at the trial. Jennifer Peltz, *Judge Allows Anonymous Jury for Trump Rape Lawsuit Trial*, AP NEWS (Mar. 23, 2023, 7:00 PM), <https://apnews.com/article/trump-columnist-carroll-lawsuit-rape-allegation-jury-47dd33a515378683b25c03dcd898eda0> [<https://perma.cc/XN5T-LM8E>].

272. The U.S. Court of Appeals for the Second Circuit has held that juror anonymity does not render the voir dire process inadequate. See *United States v. Paccione*, 949 F.2d 1183, 1193 (2d Cir. 1991) (“We see no inadequacy in the procedural precautions taken by the court to prevent prejudice to the defendants as a result of the anonymity of the jurors. Defendants do not contend that the *voir dire* was in any way inadequate.”).

273. See, e.g., *United States v. Scarfo*, 850 F.2d 1015, 1026 (3d Cir. 1988) (“[I]f the judge had not made a point of discussing anonymity, the jurors might have simply assumed that to be the normal procedure. Those who never before served on a jury could have concluded that identification by number was standard in all criminal cases. The anonymity feature, therefore, is not intrinsically suggestive of any inference of guilt.”); see also Antolak-Saper, *supra* note 124, at 246 (“If jurors understand that names are routinely withheld they will not infer from the use of anonymity that a particular accused is dangerous—a concern commonly voiced when anonymous juries are used selectively.”).

Ladies and gentlemen . . . notice that you are given a number. We used to have names and addresses and phone numbers on our list of jurors that came in. . . . It's not that we want to relate to you impersonally, it's for your anonymity, your privacy. . . . [T]hat's the reason for it. And counsel may refer to you as your number. They may refer to you as sir or ma'am or something like that. Certainly, they would rather be more personal, but with numbers, sometimes it appears to be more impersonal. But that's the reason for that.<sup>274</sup>

## V. TOWARD JUROR PRIVACY VIA ANONYMITY

This Article proposes that only the court and the attorneys have access to venire members' and jurors' personal identifying information before and during the trial, and that both remain under a continuing obligation to restrict public access to the information indefinitely. In other words, this Article suggests routine indefinite jury anonymity—defined to mean that only the court and the attorneys know the identities of the venire members and the jurors—in all criminal and civil cases.<sup>275</sup> This will give venire members and seated jurors maximum assurance that their privacy will be respected and maintained.<sup>276</sup>

An Oklahoma statute is instructive with respect to the attorneys' obligation to keep personal juror information private:

Names and personal information concerning prospective petit jurors may be provided to the attorneys of record after the general panel jurors have been selected and summoned, unless otherwise directed by the court. The names and information will be provided in written form only, hereafter referred to as "the jury list". The attorneys shall not share the jury list or information contained in the jury list except as necessary for purposes of jury selection. Following jury selection, the attorneys shall return the original jury lists and any copies to the court. Counsel shall be under a continuing duty to protect the confidentiality of juror information.<sup>277</sup>

---

274. *State v. Hill*, 749 N.E.2d 274, 279 (Ohio 2001).

275. An interesting situation arises when a party proceeds pro se. In that case, this Article proposes that the judge have discretion regarding sharing venire members' and jurors' personal information with the party. To support this proposal, states such as Florida that permit parties to conduct voir dire would have to eliminate this practice or curtail the scope of permissible questioning. *See, e.g.*, FLA. R. CIV. P. 1.431.

276. Absent statutory mandate to impose these restrictions, judges could ease into this practice by initially providing venire members and jurors routine anonymity lasting a year. This would permit judges to test out the process, while mollifying critics. Judges could gauge the impact of anonymity on venire members and jurors and develop methods to ensure that their information remains private. As the court becomes more acclimated with the process and the public becomes more comfortable with it, the time frame of anonymity could become indefinite. Additionally, in practical terms, withholding venire member and juror information from the public is not much different than the de facto way in which the jury process operates now. There are very few high-publicity trials—most cases are of little public interest. The press does not report on the majority of cases, and the public does not care about the venire members' or jurors' identities. As far as public knowledge about specific jurors is concerned, routine juror anonymity will feel akin to the status quo.

277. OKLA. STAT. ANN. tit. 38, § 36 (West 2024).

Nevertheless, as this Article describes below, courts should make available to the public select information about the jurors. The guiding principle for public disclosure should be a focus on preventing the identification of specific individuals. What is informative for the public is to know the overall composition of the jury, not the specific identity of individual jurors. It does not matter if juror number three is Bob Smith or John Jones, if other important details about the juror are public. For example, in a 1993 Florida murder trial of a police officer, the court impaneled the jurors anonymously and referred to them by number rather than name.<sup>278</sup> At the same time the following information about individual jurors was made available to the public:

[•] JUROR 68: A white woman apparently in her 40s or early 50s with at least two grown daughters. She does not work, and is married to a lawyer. She has traveled extensively in Central and South America.

[•] JUROR 132: A white man apparently in his 30s. A Navy veteran who formerly worked in a hospital, he now manages a 7-Eleven convenience store. His brother is a Philadelphia police officer.

[•] JUROR 88: A Hispanic man apparently in his 40s. He lived in both New York and Boston before moving to Orlando a few years ago. He is divorced and has children. He did not say what he does for a living, but he formerly worked as a driver and loading boxes.

[•] JUROR 310: A black woman apparently in her 40s. She is a nursing assistant at a nursing home. Her husband died about 15 years ago. She owns a home and has at least one son.

[•] JUROR 264: A Hispanic woman apparently in her 30s. She is an office administrator for a research company for water systems. She has a 16-year-old son. She lived in Panama for seven years, and India for three. She is seeking an undergraduate degree at the University of Central Florida.

[•] JUROR 232: A white woman apparently in her 40s who works as a training assistant, helping write brochures and put on seminars for sales personnel. She used to be a legal secretary. She has a daughter in high school.<sup>279</sup>

Although this release of limited information is commendable, there is too much personal information provided that is of little value to the public. Specifically, it is not necessary to include that Juror 132 works at a 7-Eleven, or that Juror 264 was then attending the University of Central Florida or previously lived in Panama and India. This information could lead to the identification of specific individuals. Referring simply to employment at a convenience store, working toward a college degree, and previously living in South Asia and Central America would have been sufficient.

---

278. See *Ethnically Mixed Jury to Hear Lozano Trial*, *supra* note 228.

279. *Id.*

This information is similar to the publicly distributed particulars about the jurors nearly three decades later in the Derek Chauvin case.<sup>280</sup> The released Chauvin juror details included their age, race, gender, professional background, opinions about law enforcement and the Black Lives Matter movement, and prior knowledge of the case:<sup>281</sup>

[• Juror] No. 2: White man, 20s[.] He described himself as a chemist and environmental studies scientist who said he typically views life through an analytical lens . . . [and stated,] “I support the message that every life should matter equally. . . . I don’t believe that the organization Black Lives Matter necessarily stands for that.” . . . [H]e said he believes the criminal justice system is biased against racial and ethnic minorities.

[• Juror] No. 9: Multi/mixed race woman, 20s[.] . . . In her questionnaire, she said she had somewhat negative impressions of Chauvin but that she could keep an open mind and be fair. She also said she believes the Black Lives Matter movement, along with Blue Lives Matter, has turned into a disingenuous marketing scheme for corporations. She has an uncle who’s a police officer in central Minnesota but said that wouldn’t affect her opinion. When the judge told her she was chosen, she said, “Awesome.”

[• Juror] No. 19: White man, 30s[.] He said he’s in client services and has had to resolve conflicts before. In his questionnaire, he indicated that his view of Chauvin was “somewhat negative” because he didn’t resuscitate Floyd and that he supports Black Lives Matter in a general context. He also said he has some unfavorable views of Blue Lives Matter. He said he has a “friend of a friend” who is a Minneapolis K-9 officer but that he hasn’t spoken to him about the case or seen him since the pandemic. He said he’s seen the bystander video about two or three times, not in full, as part of news articles. . . .

[• Juror] No. 52: Black man, 30s[.] He said he works in the banking industry and is a youth sports coach. In his questionnaire, he said he was neutral on Chauvin and Floyd. He said he had seen the video and has wondered why the other officers didn’t intervene. Prosecutor Steve Schleicher questioned one of the juror’s statements made during questioning by the defense. The man had said he didn’t think anyone had the intent to cause Floyd’s death. Schleicher said Chauvin’s intentions would be contested during the trial and asked him if he’d have a problem setting aside his opinion. “I don’t think it would be that difficult at all,” he said. “I think I can definitely look at it with an objective point of view.”

[• Juror] No. 55: White woman, 50s[.] She said she works in health care as an executive assistant. The juror said she couldn’t watch the full video because she found it too disturbing. She also said in her questionnaire she has a somewhat negative opinion of Chauvin but that he’s innocent until

---

280. See Amy Forliti, *The 12 Jurors Deliberating in the Trial of Derek Chauvin*, ASSOC. PRESS (Apr. 19, 2021, 6:08 PM), <https://apnews.com/article/race-and-ethnicity-trials-coronavirus-pandemic-death-of-george-floyd-racial-injustice-a9808912cfb568f1811ef0cae992dbf5> [<https://perma.cc/6FEH-DWZW>].

281. MPR News Staff, *What We Know About the Jurors in the Chauvin Trial*, NPR (Apr. 20, 2021), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/20/989149400/what-we-know-about-the-jurors-in-the-chauvin-trial> [<https://perma.cc/CSY5-YCYF>].



proven otherwise. She said she has a somewhat unfavorable opinion of Black Lives Matter, acknowledging she perceives it possibly to mean that other lives don't matter. She wrote on her questionnaire, "I believe all lives matter" . . . .

[• Juror] No. 79: Black man, 40s[.] He said that he works in management capacity and that he has not formed an opinion about who is responsible for Floyd's death. In his questionnaire, he said he had a neutral opinion of Chauvin and a "somewhat positive" impression of Floyd. He said he strongly disagreed with defunding police, noting that his house was burglarized once and he had to call the police. The man said he immigrated to the United States. . . .

[• Juror] No. 91: Black woman, 60s[.] She said that she's retired from a job in marketing and that she has a degree in psychology. She volunteers with underserved youth. She grew up in south Minneapolis near where Floyd died. She said she watched a few minutes of the bystander video of Floyd's arrest before shutting it off. She has a relative who is a Minneapolis police officer but they are not close. She said she believes Blacks and whites do not receive equal treatment, noting that a white U.S. Capitol riot suspect was allowed to go on vacation in Mexico after she was charged. She said she doesn't follow the news closely and does not know enough yet to judge the case one way or another.<sup>282</sup>

Although the Chauvin jury was impaneled anonymously, the trial was also considered "the most open trial in American history. Millions watched the[] public proceedings gavel to gavel, vindicating 'the concerns of the victims and the community in knowing that' . . . Chauvin was tried 'by jurors fairly and openly selected.'"<sup>283</sup> The Chauvin case demonstrates that there is no need to release venire members' and jurors' personal identifying information to the public in order to achieve the objective of public monitoring of the judicial system.

On the other hand, one could argue that releasing so much detailed information about the jurors does not maintain their privacy. For example, the media reported that one of the jurors in Derek Chauvin's murder trial had a history of type 1 diabetes—something the juror had revealed during voir dire questioning.<sup>284</sup> Requesting this kind of information from a venire member in the first place might be an example of an information collection privacy violation. To the extent that it is not relevant to any aspect of the case, restricting inquiry about it should be done at the voir dire stage. However, if this information is pertinent to the case—perhaps to ensure that

---

282. *See id.*

283. Order and Mem. Op. on Media Coalition Motion to Unseal Juror Names and Associated Juror Information at 9, *State v. Chauvin*, No. 27-CR-20-12646 (D. Minn. Oct. 25, 2021), [https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/27CR2012646\\_Order\\_10-25-2021.pdf](https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/27CR2012646_Order_10-25-2021.pdf) [<https://perma.cc/ZHX6-2T53>]. *But see* Nancy S. Marder, *A Viewer's Role Is Nothing Like a Juror's*, N.Y. TIMES (July 19, 2013, 7:46 AM), <https://www.nytimes.com/roomfordebate/2013/07/18/you-the-jury-televising-trials/a-viewer-s-role-is-nothing-like-a-jurors> [<https://perma.cc/UJ67-ZLK3>] (arguing that televising trials actually misinforms the public and provides a distorted view of the system).

284. *See* Forliti, *supra* note 280.

the venire member is able to meet the physical demands of jury service—its public disclosure should be permissible, provided that it does not effectively lead to disclosure of the venire member’s identity.

In the Trump hush-money case, Judge Merchan ordered that the jury would remain anonymous to the public.<sup>285</sup> Nonetheless, a seated juror revealed to the judge that her anonymity had been compromised because some members of the press had reported her place of employment.<sup>286</sup> This disclosure caused the juror’s friends, family, and colleagues to reach out to her and question whether she was a juror on the case.<sup>287</sup> Indeed, different media sources reported varying degrees of specificity about the jurors. The New York Times, for example, described the jurors in what at first glance appears to be great detail<sup>288</sup>:

[•] Juror 1, who will be the foreman, works in sales and lives in West Harlem. He said that he enjoyed outdoor activities. He said he got his news from The New York Times and watched Fox News and MSNBC. He said he had heard about some of Donald J. Trump’s other criminal cases, but he did not have an opinion about him.

[•] Juror 2 works in finance and lives in Hell’s Kitchen. He said he liked hiking, music, concerts and enjoying New York City. He said he followed Mr. Trump’s former fixer, Michael D. Cohen, who is expected to be a key witness, on social media. But he also said he followed figures like former Trump adviser Kellyanne Conway. He said he believed Mr. Trump had done some good for the country, adding, “it goes both ways.”

[•] Juror 3 works in the legal field and lives in Chelsea. He said he did not follow the news closely but, when he did, he read The New York Times and The Wall Street Journal and found articles using Google. He added that he was not very familiar with Mr. Trump’s other criminal cases.

[•] Juror 4 is an engineer from the West Village. Asked how he was during jury selection, he responded, “I am freezing.” When a lawyer asked if he had strong feelings about Mr. Trump, he responded, “No, not really.”

[•] Juror 5 works in education and is from Harlem. She said she tried to avoid political conversations and didn’t care for news. She said that she appreciated Mr. Trump’s candor. “President Trump speaks his mind,” she said. “I would rather that in a person than someone who’s in office and you don’t know what they’re doing behind the scenes.”

---

285. See Reiss et al., *supra* note 2.

286. *Id.*

287. See Ben Metzger, *Trump Hush-Money Trial Juror Shows Peril of Being Identified*, NEW REPUBLIC (Apr. 18, 2024, 11:51 AM), <https://newrepublic.com/post/180794/trump-hush-money-juror-danger-anonymous> [<https://perma.cc/726N-NCQP>]; see also *Fear of Identity Exposure Leads to Empaneled Juror Being Excused from Trump Case*, CNN (Apr. 18, 2024), <https://www.cnn.com/videos/politics/2024/04/18/juror-excused-trump-hush-money-trial-digvid.cnn> [<https://perma.cc/ADP7-JC8L>].

288. See Kate Christobek & Wesley Parnell, *Meet the 12 Manhattan Jurors Who Will Decide Donald J. Trump’s Fate*, N.Y. TIMES (May 1, 2024), <https://www.nytimes.com/2024/04/18/nyregion/trump-trial-jury-hush-money.html> [<https://perma.cc/U5M5-B4JB>].

[•] Juror 6 works in technology and lives in Chelsea. She said she got her news from The New York Times, Google, Facebook and TikTok. She said she probably had different beliefs than Mr. Trump, but that “this is a free country.”

[•] Juror 7 works in the legal field and lives on the Upper East Side. He said that he was aware of Mr. Trump’s other cases but he did not have an opinion about Mr. Trump’s character. He said he had “political views as to the Trump presidency,” agreeing with some Trump administration policies and disagreeing with others.

[•] Juror 8 is from the Upper East Side and worked in finance. He said he read The New York Times and The Wall Street Journal and watched CNBC and the BBC. He enjoys fly fishing, skiing and yoga. During jury selection, he said he had no opinions or beliefs that would prevent him from being impartial.

[•] Juror 9 works in an educational setting and is from the Upper East Side. She said of Mr. Trump that “he was our president. Everyone knows who he is,” adding that when he was in office, “everyone was kind of talking about politics.”

[•] Juror 10 is a businessman who lives in Murray Hill. He said he did not follow the news, adding, “if anything, it’s The New York Times.” But he said he liked listening to podcasts on behavioral psychology, adding, “it’s my little hobby.” He said he did not have a strong opinion on Mr. Trump.

[•] Juror 11 is a product manager and lives in Upper Manhattan. She said she did not have strong opinions about Mr. Trump but added, “I don’t like his persona, how he presents himself in public.” She then added, “I don’t like some of my co-workers, but I don’t try to sabotage their work,” drawing laughter from the jury box.

[•] Juror 12 works in health care and lives on the Upper East Side. She said she liked listening to live music and hiking, and she also listens to religious podcasts.<sup>289</sup>

Politico, on the other hand, identified the same jurors more succinctly, and thereby presumably more opaquely:<sup>290</sup>

- A man who lives in the Hell’s Kitchen neighborhood and works in investment banking.
- A man who lives in the West Village, works as a security engineer and has three children.
- An Upper East Side man originally from Lebanon who is retired and enjoys fly fishing.
- An Upper East Side woman who works as a speech therapist.

---

289. *Id.*

290. See Ben Feuerherd, *Here’s What We Know About the 12 People Who Will Decide Trump’s Fate*, POLITICO (Apr. 18, 2024), <https://www.politico.com/live-updates/2024/04/18/trump-hush-money-criminal-trial/what-we-know-about-the-jury-00153194> [https://perma.cc/9TE3-2394].

- A Murray Hill man who works at an eyewear company and enjoys the outdoors.
- A woman originally from California who lives in Upper Manhattan and works in product development.
- An Upper East Side woman who works as a physical therapist and enjoys tennis and paddle boarding. . . .
- A West Harlem man originally from Ireland who works in sales and will serve as the jury's foreperson.
- A man who lives in Chelsea and works as a corporate lawyer.
- A woman who has lived in Harlem her whole life and works in education.
- A woman who lives in Chelsea and works as a software engineer.
- An Upper East Side man who works as a lawyer practicing civil litigation.<sup>291</sup>

A comparison between the two publications, however, shows that Politico included potentially identifying information about some of the jurors. For example, the New York Times identified the jury foreman as living in West Harlem and working in sales, along with information about the man's news sources and feelings about Trump.<sup>292</sup> Politico published that the jury foreman lives in West Harlem and works in sales, but added to that information that the man was originally from Ireland.<sup>293</sup> The specificity of the juror's country of origin provides too much personal detail. The same occurred regarding Juror 8. Although the New York Times printed more verbiage about him, Politico included that he is originally from Lebanon. The court should not have permitted the release to the media of the juror's specific country of origin. That information has a probability of violating the jurors' privacy while providing little value to public monitoring of the judicial system.

It is important to emphasize that jurors retain the option to publicly reveal their identities (but not those of their fellow jurors). Those jurors who choose to openly share information about their experience with the trial process provide insight into the workings of the judicial system. Two of the jurors in the Derek Chauvin case decided to speak with the press immediately upon the conclusion of the trial, months before their names were scheduled to be officially released.<sup>294</sup> Similarly, the forewoman of the Georgia special grand jury charged with investigating whether Trump meddled in the 2020 election chose to reveal her identity to the press.<sup>295</sup> She gave several lengthy

---

291. *Id.*

292. See Christobek & Parnell, *supra* note 288.

293. See Feuerherd, *supra* note 290.

294. See Bogel-Burroughs, *supra* note 168.

295. See Charles Homans, *The Trump Juror Who Got Under America's Skin*, N.Y. TIMES (Mar. 15, 2023), <https://www.nytimes.com/2023/03/14/magazine/emily-kohrs-trump-juror.html> [https://perma.cc/BA7H-X9PQ].

interviews with various media outlets and was labeled the “most famous grand juror in the history of jurisprudence.”<sup>296</sup>

Removing the discretion currently afforded to trial judges to impanel anonymous juries is important for several reasons. First, given the disarray regarding the legal concept of privacy harm,<sup>297</sup> judges are forced to decide whether to impanel an anonymous jury based more on personal values and experiences than on instructive precedent. Judges have different views on what constitutes privacy and privacy harm. They might not be aware of the wide reach and scope of privacy harm that the internet and rapidly changing technology can inflict. Without a uniform understanding of possible privacy harms and the means by which they can be perpetrated, leaving the trial judge with discretion regarding anonymity results in inconsistent and anachronistic outcomes.

Furthermore, the varied practices of voir dire across jurisdictions, courts, and judges create stress and confusion for venire members and jurors.<sup>298</sup> Venire members and jurors have no advocate to directly represent their privacy interests throughout jury selection and the course of the trial. Knowing that their personal information will not publicly be disclosed will alleviate venire members’ and jurors’ concerns and enable them to focus on the tasks at hand.<sup>299</sup> Although it is likely that not all venire members and jurors will be confident that the court and the attorneys in the case will, in fact, keep their identities confidential,<sup>300</sup> having an official policy prohibiting the information from being revealed should assuage the concerns of many.<sup>301</sup>

#### CONCLUSION

Privacy harms can impose significant costs not only on the over thirty million citizens called to jury duty annually, but on the jury system itself. Impaneling anonymous juries as a normative practice in most criminal and civil trials can counter the effects that rapid advances in social media and technology have on juror privacy. In 2005, a California judge read aloud from the bench the quotation that started this Article: “We would like the public to allow us to return to our private lives as anonymously as we came.”<sup>302</sup> Jurors wrote those words as a farewell after they acquitted Michael

---

296. *Id.*

297. *See supra* Part II.

298. *See Zalman & Tsoudis, supra* note 47, at 267 (“[P]eople are there under unusual circumstances—everyone is confused about the process, despite the fact that jurors are now routinely shown a film, etcetera. But the jurors [still complain that they are ordered about and don’t comprehend what is happening]. People are . . . asking some pretty personal questions . . . and I find in general people are reluctant to open up.”).

299. *See supra* Part IV.A.

300. Ironically, “[a]nonymity was promised” to a group of lawyers in a study about their voir dire practices. *See Zalman & Tsoudis, supra* note 47, at 187.

301. This prohibition against releasing information should not be a hardship for the attorneys. Attorneys already have strict obligations under the Rules of Professional Responsibility to keep client information confidential. *See, e.g.,* MODEL RULES OF PROFESSIONAL CONDUCT r. 1.6 (Am. Bar Ass’n 2024).

302. *See supra* note 1 and accompanying text.

Jackson of multiple criminal charges. The trial consumed four months and thirty hours of jury deliberation.<sup>303</sup> It enlisted ordinary American citizens into tasks, scrutiny, and attention they did not seek. “[A]s anonymously as we came” is the right exit for most jurors as they conclude civic service. Those compelled to jury service should not be forced to relinquish their privacy. Routinely impaneling anonymous juries can meet the challenge of protecting juror privacy in the twenty-first century, while safeguarding fair trials and maintaining public access to the judicial process.

---

303. See Luka Neskovic, *How the Media Shattered the Man in the Mirror*, HUFFPOST (June 12, 2012, 12:38 PM), [https://www.huffpost.com/archive/ca/entry/how-the-media-shattered-the-man-in-the-mirror\\_b\\_1589692](https://www.huffpost.com/archive/ca/entry/how-the-media-shattered-the-man-in-the-mirror_b_1589692) [<https://perma.cc/S4H3-TJHA>].