

Virginia State Crime Commission

Confidentiality of Juror Information

2007

CONFIDENTIALITY OF JUROR INFORMATION

House Bill 2423, introduced by Delegate H. Morgan Griffith in the 2007 General Session of the Virginia General Assembly, proposed to make all “personal information” about the jurors in a criminal case confidential upon the conclusion of the trial. Under the bill, “personal information” is defined to include “name, age, occupation, home and work addresses, telephone numbers, e-mail addresses, and any other identifying information that would assist another in locating or contacting the person.” At the conclusion of the trial, the judge would “seal” all personal information automatically. Thereafter, the information could only be released “upon motion for good cause shown, with restrictions upon its use and further dissemination as may be deemed appropriate by the court.”

This bill was passed by the House of Delegates. The engrossed bill was referred to the Senate Courts of Justice Committee, which sent a letter to the Crime Commission, asking it to review the bill. Commission staff reviewed the bill, along with applicable case law concerning the pertinent First Amendment issues. A review of other states’ criminal procedure statutes was also conducted to see if any similar legislation had been enacted elsewhere in the country.

Public policy typically favors transparency in most aspects of the criminal justice process once formal charges have been brought against a defendant. Generally, the public and the press are allowed to review court documents in criminal cases involving adults, and are allowed to attend all court hearings.

The immediate impact of HB 2423 would make it more difficult, though not impossible, to contact or interview jurors after the conclusion of a criminal case. There are a number of possible, legitimate reasons why someone would wish to interview jurors after a criminal trial is completed. Law enforcement officers might seek to interview jurors in cases where allegations of bribery or corruption have been made. Habeas counsel for defendants routinely interview jury members to determine if any misconduct, such as deliberately refusing to follow the instructions of the court, occurred during deliberations. Criminologists, sociologists, and social psychologists have conducted studies in recent years where the decision making processes of jurors are analyzed; interviews with actual jury members are frequently crucial to such studies. And, newspaper reporters, or even historians, might wish to interview the members of a jury as part of a thorough review of an important criminal case.

In accord with the many legitimate reasons people have for being informed about the particulars of criminal cases, the United States Supreme Court has recognized, in a number of rulings, that the public and the press have a right to access court documents and judicial records. In Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978), the Court noted that there existed under the common law, and is still present today, a general right to “inspect and copy...judicial records and documents.” In addition to this common law right, the Supreme Court has also held there to be a First Amendment right to access particular judicial records and documents. In a case involving the sealing of court documents, the United States Court of Appeals for the Fourth Circuit held, in Stone v. University of Md. Med. Sys. Corp., 855 F.2d 178, 182 (1988), that “regardless of whether the right of access arises from the First Amendment or the common law, it may be abrogated only in unusual circumstances.”

The right of the public to inspect court documents is present in criminal cases as well as civil cases. In Press-Enterprise Co. v. Superior Court of Cal., 464 U.S. 501, 503 (1984), the United States Supreme Court held that the press had a right to receive transcripts of a closed voir dire hearing conducted in a criminal case involving rape and murder, even though the lawyers’ questions to the veniremen explored “personal problems...which could be somewhat sensitive as far as publication of those particular individuals’ situations are concerned.”

While the press and the public have enormous rights when it comes to accessing court documents and other information pertaining to criminal trials, most states do have some mechanism by which a court, for good cause shown, can seal juror information. Only one state, though, was identified as having a provision which mandates juror information be sealed automatically, in all criminal cases, as proposed by HB 2423. In 1995, California Code of Civil Procedure § 237 was amended, requiring that the names of the jurors in all criminal cases are to be sealed upon the rendering of a verdict. They remain sealed unless a person with a valid interest petitions the court to release the information.

To date, there have not been any facial challenges to this California statute; i.e., no one has argued that the statute is intrinsically unconstitutional, although a few appellants have argued that the application of the statute in their particular cases led to an unconstitutional result. It would appear, based on the very small number of appellate cases in California that have involved the statute, that most petitioners having a valid interest in contacting jurors after a

trial are successful in obtaining the necessary information from the trial court.

Therefore, while implementing HB 2423 would apparently be a radical change in Virginia, it would not necessarily be unconstitutional—provided that the model offered by California was followed, and the personal information of jurors were released, upon petition, to any person having a legitimate purpose or need for contacting them. This could even include, hypothetically, the defendant himself, if circumstances so dictated.

While HB 2423 appears to be a radical change, enactment of the proposed statute would not greatly modify the status quo. An informal review of several circuit court clerks' offices around the state revealed that, while the court files in criminal jury cases do contain the names of the jurors who decided the case, they do not contain any other contact information. The deputy clerks who were interviewed all maintained that any such contact information was never kept in the case file, and was never released to anyone, for any reason. Therefore, the only information that is currently available to the public, which would not be available if the bill were passed, would be the names of the jurors. If HB 2423 were enacted, acquiring the names would still be possible, for legitimate reasons, but would require the approval of the court.

Based upon this analysis, the Crime Commission voted to endorse the concept behind HB 2423. After discussing whether the sealing of the juror information should occur automatically in all criminal cases, or only if a specific motion were made by the Commonwealth's Attorney, the Commission voted to endorse the former policy, and recommend HB 2423 in its original form.