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Jury service is burdensome. At the very least, persons summoned for jury duty have their ordinary lives disrupted for a couple of weeks or longer. In addition, during voir dire, jurors may be required to reveal private information. In fact, following jury service, people frequently complain about the invasion of privacy incident to jury service. Generally, this intrusion comes to an end within a few weeks and persons summoned for jury duty are able to return to their chosen lives and occupations. Unfortunately, this is not always the case.

In recent years, we have witnessed increased attempts by the press to conduct post-verdict interviews of jurors. In highly-publicized cases, it has become fashionably newsworthy to discover the reasons for the verdict of the interviewed juror, as well as the other jurors. As a result, private citizens, having concluded their services as jurors, are sometimes subjected to repeated and harassing solicitations from the press. In some cases, newspapers will assign teams of reporters to badger jurors. Jurors and former jurors have been physically pursued with questions, filmed while attempting to eat, telephoned at home, approached at their homes, followed by camera crews and forced to deal with the press camped outside their homes. Former jurors have been forced to move quickly away from trailing reporters, to tell reporters to get away, to physically push away harassing reporters and to live away from their homes to avoid the press. Jurors have been contacted during deliberations by the press. Jurors whose identities have been published have been threatened, as have their families. One such juror was even himself the victim of a retaliatory criminal act. The awful experiences of some former
jurors caused one court to judicially notice that the jurors had been “harassed” by the media.\textsuperscript{22} One court warned that former jurors “need not become unwilling pawns in the frenzied media battle . . . \textsuperscript{23}” while another described the situation as “the media’s seemingly insatiable demand for unlimited intrusions into these citizens’ lives . . . \textsuperscript{24}”

The solution to this situation is fairly straightforward. Whether by statute, court rule or ad hoc judicial order, the following steps should be taken in any case about which there is any significant press coverage.\textsuperscript{25}

1. Members of the jury venire from which the actual jurors on the case will be selected should be alerted to the possibility that the press might seek to learn the names, addresses or phone numbers of jurors who will be seated on the case. Each juror should be advised to elect whether he wishes such contact information to be released to the press if it should be requested.\textsuperscript{26} Jurors should be informed that they have the right to change their election at any time prior to returning a verdict. They should be told that disclosure of addresses and like information would not be revealed, in any event, until after the verdict.

2. Potential jurors should be advised that there is no guarantee of confidentiality for any information revealed by them in open court during voir dire. They should be informed that, if a truthful answer to a question posed during voir dire would require a potential juror to reveal information which she does not wish to reveal publicly, she can request to give the response solely in the presence of the judge and counsel for the parties, and that the judge has the authority to keep that matter from public disclosure if the judge agrees that it is a private matter.

3. As to any potential jurors who request nondisclosure to the press of identifying personal information, steps should be taken to honor that election. For example, the court and counsel can refer to potential jurors by use of numbers (rather than names) during voir dire.
Furthermore, any motion by the press to acquire the names and addresses of such jurors should be denied.

4. The determination to honor the wishes of specific jurors not to have their names and addresses revealed does not apply to disclosures to the parties and counsel. Absent some unusual concern (such as a credible threat to the safety of jurors), the parties and their counsel should have access to all identifying information about potential jurors. Parties and counsel should be ordered not to disclose identifying information about jurors to the press or to anyone, except for disclosures to consultants and the like to aid counsel during jury selection. Parties and counsel should be directed to inform such persons that the court’s nondisclosure order extends to them as well.

5. Potential jurors should be truthfully informed that their election of nondisclosure will not, and does not, apply to disclosure to the parties and counsel, but that those persons will be, or have been, directed not to make further disclosures to the press.

6. As to jurors who elect not to object to disclosure, at the appropriate time, the court should advise these individuals that, should they be interviewed by the press,

   (a) they are obligated to respect the wishes of their fellow jurors who elected nondisclosure, and that any inquiries seeking to identify other jurors should be directed to the court; and

   (b) there are good and several reasons why jury deliberations are secret, including entitlement of each and every juror to speak freely during those deliberations without fear that his remarks will become known to those outside the jury room. Consequently, each juror’s respect for the process and for his fellow jurors ought to set the boundaries upon the scope of any interviews with the press.
If ordinary citizens were to become aware of the experiences of some former jurors, they might be surprised and disappointed at the government’s -- and particularly the courts’ -- failure to protect its jurors in a manner such as detailed above. Those same citizens might be shocked and appalled to learn that their government’s role in these incidents is not merely one of nonfeasance. The reality is that our courts potentially facilitate these episodes of harassment. How? They do so by providing the press, upon request, with the names, addresses or other identifying information concerning former jurors.27 In several of these cases, the jurors had previously requested that their names and addresses not be released to the press.28 In some of these cases, the jurors were promised confidentiality.29 In all of these cases, the press appeared, represented by counsel. In none of these cases, however, were the former jurors represented by counsel, in attendance or even provided with notice of the proceedings in which their privacy interests were subordinated to the desires of the press.30

Why have several courts acquiesced to the press on this issue? The explanation is that many courts are misguided by a popular, but erroneous, reading of a quartet of United States Supreme Court decisions regarding the First Amendment. The long version will follow, but here is the nutshell rendition. The First Amendment provides, in relevant part, that there shall be “no law . . . abridging the freedom of speech, or of the press . . . .”31 These explicit rights support the implicit right of access to government proceedings, functions and information traditionally open to the public, a right that covers, with limited exceptions, criminal trials.32 From this general right of access to criminal trials, some courts and commentators have concluded that the press enjoys a right of access to the names and addresses of jurors.33
This last step is a misstep. Because the flaw in the sequence is a misconstruction of the Supreme Court’s First Amendment right of access opinions, it is to those cases that our attention must next be directed.

The First Amendment right of access was born in Richmond Newspapers, Inc. v. Virginia,\(^{34}\) which in turn arose from events surrounding the fourth murder trial of an individual named Stevenson.\(^{35}\) Stevenson’s first trial resulted in a conviction that was reversed on appeal because of the erroneous admission of a bloodstained shirt linked to Stevenson.\(^{36}\) The second trial resulted in a mistrial when a juror asked to be excused.\(^{37}\) A third trial also resulted in a mistrial, apparently because a prospective juror had read, and shared with other prospective jurors, a newspaper account reporting on the bloodstained shirt.\(^{38}\) As the fourth trial commenced, Stevenson’s counsel requested, without opposition from the prosecution, that the courtroom be closed to the public.\(^{39}\) Exercising discretion authorized by a Virginia statute, the trial court, both before and following a hearing granted to the newspaper’s reporters, granted Stevenson’s motion.\(^{40}\)

On review of a denial of a petition for a writ of mandamus,\(^{41}\) the Court, in a plurality opinion, held that the First Amendment includes a right of the public -- and hence also of the press -- to attend criminal trials.\(^{42}\) Conceding that no constitutional provision expressly grants a public right of access to criminal trials,\(^{43}\) the Court nevertheless concluded that such a right is to be inferred from those rights specified in the First Amendment. The enumerated freedoms of speech, the press, assembly and petition “share a common core purpose of assuring freedom of communication on matters relating to the functioning of government."\(^{44}\) These express prohibitions against curtailing expression, said the Court, carry with them an implicit proscription against limiting the receipt of information concerning government functions.\(^{45}\)
In a hint of future developments, the Court explained that this right of access is to “places traditionally open to the public.” Traditionally, criminal trials have been open, and historically, commentators have thought open criminal trials essential to a democratic society. For places and events not traditionally open to the public, no such right exists. Moreover, the First Amendment right of access is not absolute; the right of access only is vital when it furthers “discussion of public questions.” Finally, even the right to attend a criminal trial may be overcome by “an overriding interest articulated in findings.”

Concurring in the result, Justice Brennan, joined by Justice Marshall, described the Court’s holding as one recognizing a “privilege of access to government information.” This right may be restrained, depending upon the information sought and the countervailing interests invaded. General rhetoric about public access is insufficient; there must be a specific demonstration that “access to a particular government process is important in terms of that very process.” Thus, for example, no right of access exists for bench conferences, and trials may be partially closed in some circumstances to protect witnesses providing sensitive testimony.

Just under two years after Richmond Newspapers, the Court provided further guidance on the First Amendment right of access in Globe Newspaper v. Superior Court. In Globe, the Court, in an opinion authored by Justice Brennan, struck down a Massachusetts statute requiring the closure of a criminal trial during the testimony of a sex offense victim under the age of eighteen. The Court concluded that the statute violated the First Amendment because of its mandatory nature. The Court allowed that the “well-being of a minor is a compelling . . . interest,” and that a case-specific determination that the “well-being of the minor victim necessitates closure” could survive constitutional scrutiny. In restating the principle of a First Amendment right of access, the Court emphasized, as had Justice Brennan in his concurring
opinion in *Richmond Newspapers*,\(^6^2\) that the purpose of the right of access is to promote “free discussion of government affairs”\(^6^3\) and “to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.”\(^6^4\)

Two years later, in *Press-Enterprise Company v. Superior Court* (“PE I”),\(^6^5\) Press-Enterprise moved that the voir dire in a rape-murder trial be open to the public and the press.\(^6^6\) Agreeing with the prosecution that the presence of the press would inhibit the candor of the potential jurors, the trial court closed the substantial majority of the voir dire to the public and press.\(^6^7\) At the conclusion of jury selection, Press-Enterprise moved for a release of the transcript of the voir dire.\(^6^8\) Both the prosecution and the defense opposed the motion, arguing in favor of the privacy of the jurors and that the jurors had been implicitly promised confidentiality in answering questions during the voir dire.\(^6^9\) Again the trial court denied the motion.\(^7^0\) Following the conviction and sentencing of the criminal defendant, Press-Enterprise once again moved for the release of the voir dire transcript.\(^7^1\) The trial court denied the motion, indicating that some of the jurors had revealed sensitive information inappropriate for public discussion.\(^7^2\)

Eventually the case made its way to the Supreme Court, which ruled that the trial court’s closure of voir dire, under the circumstances, was inconsistent with the First Amendment right of access. The Court reiterated that a criminal trial must be open absent “an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.”\(^7^3\) Voir dire is included within that principle because an open voir dire insures that the procedures are fair and insures that the public is confident in the system.\(^7^4\) Moreover, jury selection has historically been an open process, both in the United States and earlier.\(^7^5\)
While an accused’s right to a fair trial is an interest of unparalleled magnitude, the trial court made no specific findings indicating that interest was threatened. Moreover, a juror might have a compelling interest “when interrogation touches on deeply personal matters.” However, in this case the trial court fatally “failed to consider whether alternatives were available to protect the interests of the prospective jurors.” Instead of closing the voir dire, a trial judge should simply advise prospective jurors of their options to request presenting sensitive information “to the judge in camera but with counsel present and on the record.” The court can then determine if closure is necessary for that particular portion of the voir dire. In the circumstance in which closure is ordered, the trial judge should later determine whether to release a transcript of the closed position or whether the juror’s valid privacy interest requires sealing that portion of the transcript or releasing it while withholding the name of the juror.

Finally, in Press-Enterprise Co. v. Superior Court (“PE II”), the Court formalized the various considerations that had informed its earlier First Amendment right of access cases. In PE II, a death penalty murder case, the trial court had granted the accused’s motion, unopposed by the prosecution, to close the preliminary hearing pursuant to a statute authorizing closure to protect the defendant’s right to a fair trial. At the conclusion of the preliminary hearing, Press Enterprise, in a motion later supported by the prosecution but opposed by the accused, sought release of the transcript of the preliminary hearing. The trial court denied the motion, only later releasing the transcript after the accused had waived his right to a jury trial.

The Court reversed, ruling “that the qualified First Amendment right of access to criminal proceedings applies to preliminary hearings as they are conducted in California.” The criteria used to determine whether the First Amendment right of access applies to a particular component of a criminal proceeding are the “tests of experience and logic,” i.e., “whether the place and
process have historically been open to the press and the general public,” and “whether public access plays a significant role in the functioning of the particular process in question.” Because of the “tradition of accessibility” to preliminary hearings, the experience prong of the test is satisfied. Moreover, for all of the reasons that public access to criminal trials promotes fairness and the appearance of fairness, public access to preliminary hearings also meets the logic prong of the test. In fact, the absence of a jury at the preliminary hearing “makes the importance of public access…even more significant.”

The Court reiterated that the First Amendment right of access is not absolute. However, when the right of access applies, the proceeding cannot be closed absent case-specific findings that closure is necessary to preserve higher values, that no reasonable alternatives will be sufficient and that the closure is narrowly tailored to accomplish its goal.

The judges and scholars who have concluded that the Supreme Court’s “right of access” jurisprudence mandates release of the names and addresses of jurors have determined the following. First, disclosure meets the “experience” prong of the PE II test. Second, disclosure meets the “logic” prong of the PE II test. And third, any interest of the jurors in nondisclosure is either nonexistent or insufficient to overcome the First Amendment right to disclosure.

The experience prong is met, we are told, because back in the day when jurors were chosen from small population centers in which every person was known to every other person, the identity of the jurors was known to the general public. Moreover, at least at some times and in some places, jurors have been called forward or addressed by name at the commencement of the voir dire.

Regarding the logic prong, First Amendment values are supposedly accomplished in several specifics. First, explanations from former jurors regarding their verdicts will increase
public confidence in the fairness of the process and the justness of the result.\textsuperscript{100} Second, interviews with former jurors could educate the general public about the criminal justice system and jury service.\textsuperscript{101} Third, information from former jurors can fuel public discussion and debate about these same subjects.\textsuperscript{102} Fourth, disclosure of juror identities might lead to the exposure of illegal, discriminatory practices during jury selection.\textsuperscript{103} Fifth, disclosure of juror information would permit the public to discover mistakes and improprieties during jury deliberations.\textsuperscript{104} Sixth, public scrutiny will allow the public to check the impartiality of jurors and thereby promote honest responses from potential jurors during voir dire.\textsuperscript{105}

For many authorities, once a First Amendment right of access to juror names and addresses is found to exist, any juror interest in privacy and avoiding harassment is overwhelmed. The fact that jurors expressly request that information about themselves not be released is, on occasion, consciously disregarded.\textsuperscript{106} The interests of the jurors are simply outweighed by First Amendment values.\textsuperscript{107} One popular rhetorical device is to label jurors as “citizen-soldiers” who are, apparently, obligated to take a bullet from the press in service to their country.\textsuperscript{108}

Even among the courts that have ordered disclosure to the press, there is a great deal of variety, and even schizophrenia. At one end of the spectrum is a rule requiring disclosure of names and addresses, not only of jurors following the verdict, but also of potential jurors when or before the jury is impaneled.\textsuperscript{109} At the other end of the spectrum are results which seem to confess the most grudging compliance with a perceived mandate.

For example, several courts have specifically endorsed advising jurors not to discuss their deliberations with the press.\textsuperscript{110} One court has specifically suggested that “jurors may avoid many problems by flatly refusing press interviews when approached,”\textsuperscript{111} and “nothing said herein is
meant to encourage individual jurors to grant interviews. Nothing compels or encourages a juror to be interviewed.”

What mixed signals do we send to jurors when we tell them that we have supplied their names and addresses to the press and that we discourage them from talking to the press? What mixed signals does the law send when it touts the First Amendment values of post-verdict interviews and then verbally crosses its fingers and asks the jurors to make sure those interviews do not occur?

A second “mixed signal” comes with a ruling that, while the names and addresses will be revealed, the disclosure is delayed until seven to ten days following the verdict. As a matter of legal policy, this practice has little justification. If there truly exists a First Amendment right of access to this information, then an arbitrary delay in release is still a constitutional violation, albeit a temporary one. On the other hand, if juror privacy is the countervailing consideration, “[i]t is not much of a comfort to a juror to learn that the court has guaranteed that all harassment, intimidation or retaliation will be postponed for a little while . . . .”

However, as a matter of practical politics, the delayed disclosure approach manifests a certain disingenuous genius. As one federal judge has challenged, “[i]f the newspaper companies are seriously interested in confirming the jurors’ impartiality, that information may be sought out with equal ease when the names and addresses of the jurors are disclosed ten days after the verdict.” However, if, as some of these judges clearly believe, the press is predominately interested in selling newspapers, then postponing access until the public has lost interest in last week’s trial might be calculated to cause the press to leave the former jurors alone.

A third qualification on a disclosure order implemented by some courts is a judicial directive that, in the event that a former juror indicates a refusal to be interviewed, no additional attempt to secure an interview may be made by the press. Such a concession is virtually
meaningless. Such a court order cannot possibly have any legally coercive impact upon members of the press not parties to the motion that generated the order. Moreover, the press is a diverse and heavily-populated industry: when a former juror informs the visitor or caller from Channel 5 Action News that no interview will be granted, it is naïve to believe that each other television station, radio station and newspaper will get the word and understand and accept that the refusal is general and not limited to just the folks at Channel 5. Finally, it is further “unlikely” that there would be “a more-or-less polite request from the media seeking comment, followed by a similarly polite media retreat in the face of a flat ‘no’. “\textsuperscript{118} “Even if a juror declines to be interviewed, the news media can nonetheless force that reluctant juror into the spotlight.”\textsuperscript{119}

Finally, a fourth judicial attempt to allow access while throwing some bone to the jurors is the compromise presented by the Supreme Court of Pennsylvania in \textit{Commonwealth v. Long}.\textsuperscript{120} There, the court decided that the First Amendment mandates the disclosure of the names, but not the addresses, of the former jurors.\textsuperscript{121} Exactly what this is supposed to accomplish is difficult to fathom. As far as juror privacy is concerned, the court’s ruling would appear to foil only a reporter unable or unwilling to use a telephone directory. Moreover, if, as the court allows, there is a First Amendment right of access to identify jurors, then the court’s restriction could only survive constitutional scrutiny if it is completely ineffectual in protecting the jurors from the press, a test it undoubtedly passes.

While a majority of courts that have addressed the issue have concluded that there exists a right of access to juror names and addresses,\textsuperscript{122} a few courts have denied press demands for disclosure of juror identification information.\textsuperscript{123} Of these, most found a compelling justification for denying access only on the facts of the case.\textsuperscript{124} Fewer courts have determined, upon consideration of the two-prong PE II test of experience and logic, not to recognize a First
Amendment right of access to juror identities. Only rarely has a court considered the compelling possibility that the Supreme Court’s right of access jurisprudence, which by its own terms is applicable to access to criminal trial proceedings, has no application to jurors’ names and addresses, which are not proceedings.

Before exploring the details of this possibility, it will, I think, be useful to step away from the specific issue and appreciate the larger implications of extending the First Amendment right of access to the names and addresses of jurors. From the very outset, the Court has made very clear that the First Amendment right of access is not a right of the press as such, but rather a right of the public, and hence a right enjoyed by the press as a member of the public. The press enjoys no greater right of access than any other member of the public. The press may access a criminal trial, a voir dire and a preliminary hearing because, and to the same extent as, anyone may access those proceedings.

It follows, then, that under any circumstances in which the press would be entitled to the names and addresses of jurors, so too any member of the public would be entitled to the same information. To any person unhappy with an acquittal, to any disgruntled relative or friend of a convicted defendant, to any socially frustrated individual who would prefer to select future companions from the jury pool, to any stalker, to any mugger, to any rapist, the name and address of the person in whom you are interested is yours for the asking.

These frightening possibilities, as well as actual press abuses, ought to give anyone pause before extending the First Amendment right of access to juror identities. Nevertheless, the question for even reluctant lower courts is whether they are commanded to do so by the Court’s First Amendment right of access decisions.
As has been pointed out, the Court’s right of access cases apply to proceedings, and jurors’ names and addresses are not themselves proceedings.\textsuperscript{132} After all, the names and addresses of the jurors are facts that exist prior to, and independent of, the criminal trial process. Information about individual jurors, the argument might go, is not information about a government function or process, and therefore falls outside the reach of the right of access principle.

However, the matter cannot be so easily resolved. Voir dire is clearly a government proceeding, and one to which the right of access attaches.\textsuperscript{133} And what is voir dire, except the revelation by potential jurors of sometimes private, and always preexisting, information about themselves? Jurors’ names, the counterargument might go, are simply a part of voir dire to which the right of access has already attached.\textsuperscript{134}

The counterargument here is stilted. In no real sense is the name of a juror a meaningful part of the jury selection process. A potential juror’s name might be called, but only for attendance purposes or to alert the juror to the fact that she is being addressed, but these are matters of social custom, not jury selection. “[P]ersonal information that is relevant only to juror identification . . . [is] not properly part of the voir dire process.”\textsuperscript{135}

A juror’s name might reveal something about the ethnic background of the juror, but such considerations are almost surely constitutionally infirm and therefore a juror’s name is irrelevant to the process.\textsuperscript{136} A juror’s name might suggest a relationship with a party or witness, but all potential jurors are routinely asked about any prior relationships with parties or witnesses. Finally, an address might reveal proximity to a relevant location, such as living very near a crime scene. Again, however, specific inquiries of all potential jurors about prior knowledge or familiarity with relevant people, places, things and events are a part of any competent voir dire.
Standing alone, then, a juror’s name and address serve only ministerial purposes and are not substantive components of the voir dire.

If one is willing to look beyond the purely formalistic reality that a juror’s name and address might be revealed, if at all, during the voir dire process, the claim that disclosure is required by the right of access doctrine collapses under its own weight. The Court has made clear that the right of access to criminal trials extends only to traditionally open portions of the trial.\textsuperscript{137} So, for example, there is no right of access to conferences customarily held at the bench or in chambers.\textsuperscript{138}

Today, when the press seeks identifying information about jurors, it is a virtually sure bet that they do so with the intention of seeking interviews from those jurors.\textsuperscript{139} It is equally certain that the interviewers intend to inquire about why the jurors voted as they did; \textit{i.e.}, about the jury deliberations.\textsuperscript{140} Yet, there is no more historically private aspect of the criminal trial than the jury deliberations.\textsuperscript{141} It has been long accepted that jurors, in order that they may communicate freely, must be assured that their deliberations will not be later revealed.\textsuperscript{142} Federal law criminalizes eavesdropping on such deliberations.\textsuperscript{143} Evidentiary rules render jurors incompetent to testify concerning internal jury deliberations, virtually insuring that the jury deliberations will be insulated from post-verdict scrutiny.\textsuperscript{144} Traditionally, post-verdict interviews of jurors were extraordinarily rare.\textsuperscript{145} “The lack of public scrutiny into the jury’s function contrasts significantly with other aspects of criminal proceedings that fall within the First Amendment right to access, such as pretrial hearings, voir dire, and the trial itself.”\textsuperscript{146} Consequently, if one looks beyond the superficial association of jurors’ names and addresses with the voir dire proceeding, and instead recognizes that this information is sought as a means to access the nonpublic deliberations of the
jury, then nothing in the Court’s First Amendment right of access rule supports a right to
discover the names and addresses of jurors.

Moreover, up to this point the analysis has conceded what it should not, *i.e.*, that a former
juror contacted for an interview will provide it. In reality, however, the real issue is presented
only in the situation in which the juror does not wish to be interviewed. I am not suggesting that
jurors be prohibited from providing interviews. Nor am I suggesting that the press be denied the
names and addresses of willing former jurors. The issue is whether the press is constitutionally
entitled to the name and address of a juror who does not wish to provide an interview. No
information about a criminal trial is accessed when the press pursues an interview that never
materializes. Moreover, none of the democratic ideals the Court envisioned in its right of access
decisions is realized when the press torments a former juror who simply wishes to be left alone.
As one court has described these circumstances,

> [e]ven if a juror declines to be interviewed, the news media can nonetheless force that
reluctant juror into the spotlight. . . . [T]he news media can, and unhesitatingly will,
investigate jurors’ lives without necessarily even speaking to the juror. The media may
examine all aspects of a juror’s background and could, in theory, even wait outside a
juror’s home to take photographs or request interviews. Today, even a photograph or
video of a juror declining an interview or evading a reporter is newsworthy. This is so
despite the fact that some might fail to see how it advances the public’s understanding
of how well our courts do the government’s business.147

Not only does juror identification information fall outside the literal scope of the First
Amendment right of access to criminal trial procedures, it also lies outside the principles that
support the right. All of the rights expressly stated in the First Amendment, as well as the
implicit right of access, “share a common core purpose of assuring freedom of communication on matters relating to the functioning of government.”\textsuperscript{148} The right of access allows the public to monitor and check their government.\textsuperscript{149} Jurors, however, are not the government. They do not work for the government or act on its behalf. In fact, the jury system is itself a mechanism by which the public, by its representatives on the jury, checks governmental action.\textsuperscript{150} Nothing in the Court’s right of access opinions mandates scrutiny by one private party (the press) upon another private party (the jury). However, allowing unwanted press access to jurors requires that “[t]he jury must now be representative to instead of representative of the community.”\textsuperscript{151}

This sleight of hand, by which jurors have somehow become the government itself, has had an additional consequence: the distortion of our fundamental notions of due process. The Court tells us that, before there can be a judicial determination that there exists a sufficient government interest to warrant denial of public right of access to a criminal trial, “representatives of the press and general public ‘must be given an opportunity to be heard on the question of their exclusion.’”\textsuperscript{152} This is a perfectly sensible rule when the press or public seeks access to truly governmental proceedings.

As courts have attempted to transfer this directive into the juror identity context, the result has further exposed the poor fit of the right of access formula in the juror identity setting. While the press appeared, represented by counsel, in each of these cases, in none of them were the jurors represented by counsel. In none of these cases were the jurors invited to appear. In fact, in none of these cases does it appear that the jurors were even given notice of the pending motion.

Nor can it be assumed that either of the original parties -- the prosecution or the criminal defendant -- took a position consistent with the interests of the jurors. Particularly with regard to
post-verdict disclosures, ordinarily neither the prosecution nor the defense will have any self-interest in opposing the motion.

Once one recognizes that the real parties in interest are both private parties, this situation ought surely to be unacceptable. One private party, the press, seeks to compel the court to disclose information about another private party, the juror. We insure that the moving party is given every opportunity to be heard. How could it not occur to us that the party potentially harmed by the granting of the motion should also be entitled to notice and an opportunity to be heard on the motion?\textsuperscript{153}

Of course, jurors are unlikely to be in a position, financially or otherwise, to hire counsel and protect their interests. The reality is that the jurors are entirely dependent upon the court to protect them from post-verdict harassment. The further reality is that, if the court is to learn from the jurors what their wishes are regarding post-verdict interviews, the time to do so is before they are discharged and, better yet, before trial and before deliberations.

In a case generating much publicity, should the trial court be solicitous toward the privacy concerns of the jurors? Absolutely. Even “citizen soldiers” deserve gratitude and consideration from their government.\textsuperscript{154} A trial court has a duty to prevent juror harassment,\textsuperscript{155} a duty to, as one trial court recognized, “minimiz[e] the invasion of the legitimate expectations of privacy of a jury that has served the public long and well.”\textsuperscript{156} Jurors are not merely chattels to be used and discarded by the courts, litigants and the press.\textsuperscript{157} They are real people who should not be made to suffer unnecessary harms at the hands of their own government.\textsuperscript{158}

While there is some debate about whether jurors possess a constitutionally-protected right to privacy,\textsuperscript{159} there is no requirement that a right be constitutionally-protected to be worthy of consideration. A rational judicial system should recognize that its jurors are entitled to some
degree of privacy and to be free from harassment in connection with jury service,\textsuperscript{160} and it ought to be a strong government interest to protect its jurors in that regard.\textsuperscript{161} This is particularly compelling in an individual case in which the jurors have expressed these concerns.\textsuperscript{162} So when jurors complain about invasions of their privacy, as they frequently do,\textsuperscript{163} is it not time for the courts to assign greater weight to the rights and expectations of their jurors?\textsuperscript{164}

While greater consideration for jurors’ privacy expectations is a worthy ambition in its own right, that effort is likely to generate systemic benefits as well. Post-trial harassment from the press likely discourages willing participation by persons (both former jurors and persons who learn of the experiences of former jurors) summoned for jury duty in the future.\textsuperscript{165} Correspondingly, if the risks of compromised privacy and harassment are reduced, the improved attitude of summoned citizens to serve willingly will likely make jury selection more efficient and produce better results.\textsuperscript{166}

A trial court’s authority to protect its jurors, even after the conclusion of the trial, is unquestioned.\textsuperscript{167} However, the court’s range of options is limited by constitutional and pragmatic considerations. Once the press has access to information, any attempt to restrict publication of that information would, with virtual certainty, be an unconstitutional prior restraint.\textsuperscript{168} Orders directed at the press prohibiting contact with former jurors are also constitutionally infirm,\textsuperscript{169} and in any event a court would have no jurisdiction to enforce such an order against any member of the press not a party to the proceeding before the court.\textsuperscript{170}

The only legally acceptable and pragmatically effective way to protect jurors is to conceal their names and addresses and like information along the lines proposed here. It is only necessary to do this for jurors who prefer to be so shielded. Respect for the welfare and privacy of persons who have served as jurors ought to include a commensurate respect for the autonomy
of these individuals. Compelled privacy is patronizing and likely to be ineffective in any event; a former juror who wishes to be interviewed should not, and will not, be obstructed from doing so.\footnote{171}

Moreover, the proposal offered here does not create anonymous juries, not even at the election of the jurors. Jurors are hardly anonymous when, as proposed, their identifications are fully disclosed to the parties and their counsel.\footnote{172} It is the parties whose interests will be affected by the verdict who have the greatest incentive to discover any inadequacies in prospective jurors,\footnote{173} and this proposal does not in any way hamper litigants’ opportunities to investigate fully potential jurors.\footnote{174}

Nevertheless, some will argue that permitting jurors to elect not to have their identities revealed to the press is bad policy. Even if, some would say, no constitutional right mandates disclosure to the press, it makes good sense to do so anyway. Essentially, all of the arguments advanced under the “logic” prong of the PE II right of access test\footnote{175} can be employed to support a nonconstitutional case for disclosure.

The first argument in favor of mandatory public disclosure of juror identities is that it will supposedly maintain public confidence in the justice system and in the validity of particular verdicts.\footnote{176} The argument is not at all persuasive. It is not the actual publication of juror identities that arguably fuels public confidence; at most it is the knowledge that these identities are known to the parties that does so. In the very small percentage of cases in which jurors’ names might be published in a newspaper, that additional information will mean nothing to the vast majority of readers. The reader, in all likelihood, will not recognize the name and consequently still knows nothing of any significance about the juror.
However, it could be claimed, the reader will have confidence that some other reader might recognize the name. But it is difficult to imagine that consideration being of any importance to the reader. At most, what actually might be some of the consequence to the reader is learning that the persons with a real dog in the fight, *i.e.*, the parties, know the jurors’ identities, and of this the reader can be assured without himself learning the names of the jurors.

Moreover, the “public confidence” rationale for disclosure, taken to its logical destination, hardly supports only disclosure in the relatively small percentage of cases that generate interest from the press. If we seriously believe that public confidence is linked to public disclosure of jurors’ names, should not the government be purchasing air time or print space to announce the names of jurors in all cases? The truth is that we do not believe that the public confidence generated by the openness of criminal trials depends in any way upon the revelation of the identities of the jurors. Why else would every jurisdiction that permits televised trials disallow filming of jurors themselves?¹⁷⁷ Why else would journalist sketch artists be prohibited from drawing likenesses of the jurors?¹⁷⁸

The further truth is that the public itself does not believe that public confidence will wane if the public does not know of the jurors’ names and addresses. Public surveys indicate that the vast majority of people responding would favor indulging a juror’s desire not to be identified publicly.¹⁷⁹ Publicly revealing jurors’ identities against the wishes of the jurors might scratch the public’s curiosity itch, but it will do nothing for public confidence in the criminal justice system. If anything, publication may erode confidence because the public might be concerned about the impact that public exposure of juror identities might have upon the jurors’ task of reaching a fair verdict.¹⁸⁰ It is only by honoring the election of jurors not to have their names and addresses
revealed that there can be “public confidence that the courts will shield jurors from danger and abuse.”

The second argument in favor of mandatory public disclosure of juror identities is that it will educate the public about jury service and the criminal justice system. This rationale fails because it addresses not at all the class of former jurors affected by my proposal. Some jurors will not oppose disclosure of their names and addresses and will agree to be interviewed. These former jurors can provide more than adequate data to meet the “public education” objective. On the other hand, a juror who has indicated her desire not to be interviewed is not likely to later acquiesce. The educational mission is hardly accomplished by coverage of failed attempts at an interview, and even less so by the more likely scenario in which the press fails to obtain an interview and therefore does not report anything.

The third argument for disclosure of juror identities is that it will foster public discussion and debate about issues that might surface during, or incidental to, a criminal trial. This rationale crashes upon the same rock that defeated the second rationale. This latest rationale presupposes that a juror is interviewed and reveals something spawning or fueling public debate about an issue in the trial. Nothing in my proposal would interfere with that sequence of events. My concern is for the juror who wishes not to be bothered for an interview. In that case, it is likely that no interview will ever be granted. Consequently, only private harassment, and not public debate, will be curtailed.

The fourth argument for disclosure is that the press can discover and expose discriminatory practices during jury selection. This argument is largely disingenuous, because in nearly all cases the press is seeking interviews about the jurors’ personal and group deliberations and is entirely unfocused upon the possibility of discriminatory jury selection.
practices. Furthermore, counsel for the parties is fully-informed about the jurors and well-equipped to block any discriminatory practices by the opponent. Finally, the voir dire is open to the press and public, who are, if they wish, in position to observe any discriminatory practices, such as race-based or gender-based challenges to prospective jurors. Truly useful information about the jurors, such as race, age, gender, political affiliations and occupation, are available to the press from voir dire or juror questionnaires.\textsuperscript{189} It is difficult to imagine how releasing the names and addresses of jurors to the press would further the anti-discrimination objective.\textsuperscript{190}

The fifth argument for allowing press access to juror names and addresses is that it will allow the public to verify the fairness of the verdict of the jurors.\textsuperscript{191} Once again, this is an argument that is misdirected. Any benefit derived from the discovery of mistakes or improprieties during jury deliberations can only occur if the jurors reveal their views on the merits of the case, \textit{i.e.}, what was thought and discussed during the deliberations. This can only take place if the juror grants the interview. However, the issue here is whether to supply the press with the names and addresses of jurors who do not wish to be interviewed, and therefore will not end up revealing anything whatsoever. The only issue here is what indignities and harassments must these former jurors suffer before securing their status as persons who have made no contribution whatsoever to the discovery of mistakes or improprieties during jury deliberations.

The “mistake and improprieties” rationale for disclosure does not fail merely because it proves too little. It also perishes because, taken seriously, it proves far too much. For centuries we have been committed to the idea that jury deliberations have to be secret if they are to be conducted with the integrity that comes only with free and open discussions.\textsuperscript{192} Nothing has changed today in that regard, except, among those trying to sell more newspapers or increase broadcast ratings, a burgeoning focus upon the jurors and their thoughts in high profile cases.
It is naïve to think that mistakes and improprieties do not, on occasion, occur during jury deliberations. We take comfort in the probability that these will have only minimal impact because the defect in cognition or character is not likely to have affected all of the jurors. Even if the problem does infect the verdict, we will not hear from jurors to correct the error (unless the problem involves an influence outside the flaws of jurors’ own deliberations.) \(^{193}\)

If we now have decided that the discovery of mistakes and improprieties during jury deliberations justifies facilitating post-verdict interviews with unwilling jurors, then why stop there? Relying upon the press to interview jurors only in the high profile cases that interest them is no more than a scattershot weapon against mistakes and improprieties. Perhaps trial judges should interview jurors in all cases to be certain that no mistake or impropriety goes undetected. Or, better yet, perhaps jury deliberations should be televised so that the press and the public can check for themselves to be sure that there are no mistakes or improprieties.

As ridiculous (hopefully) as these ideas may be, each is merely a logical extension of the principal that discovering deliberation errors justifies creating a window into the deliberations themselves. It is true that providing the press with the names and addresses of jurors is a much smaller intrusion than either of the alternatives suggested above. However, a bad idea does not become a good idea merely because it is offered in a smaller size.

The sixth, and final, argument for disclosure is that it will improve the reliability of voir dire. \(^{194}\) This is supposedly accomplished first, by allowing a public check on juror responses, and second, by deterring less than completely truthful responses because of the possibility of a public check on these responses. The former consideration is, in reality, of trivial significance, and the latter point is surely incorrect. The scenario envisioned by the “honest voir dire” rationale requires that (1) a juror gives a false or incomplete answer during voir dire, (2) the parties and
their counsel do not discover the problem,\textsuperscript{195} (3) the press, despite the refusal of the juror to provide an interview,\textsuperscript{196} publishes or broadcasts the juror’s name, (4) a person reading the publication or receiving the broadcast knows both the juror and some information about the juror that causes him to surmise that the juror must have been dishonest during voir dire, and (5) the person comes forward to report the juror. Unremarkably, then, the cases in which this has occurred are extremely few. In fact, I have discovered no case in which a verdict was disturbed following the sequence of events listed above.

The idea that the threat of the press will compel candor during voir dire is not very convincing. Given the extreme unlikelihood of the five-step sequence detailed above, a prospective juror might well regard the risk of nondisclosure as extremely minute. When balanced against a juror’s reluctance to reveal what the juror considers to be very private or embarrassing information, the press provides little incentive for candor. If anything, the presence of the press, and the possibility that the personal information might therefore reach a much larger audience (including, perhaps, some people whom the juror in particular would like to keep in the dark), provides an even greater incentive for concealment. Relatively speaking, if a prospective juror was assured that his identity would not be published, she would be much more likely to be forthcoming.\textsuperscript{197}

Improved incentives for candid voir dire responses is not the only systemic advantage to the proposal advocated here. Particularly in high profile cases, in which opinions and emotions may be elevated, jurors are likely to be more willing to express their views during deliberations if they can be reasonably assured that their identities will not be revealed.\textsuperscript{198} For the same reason, jurors are more likely to employ independent judgment if they do not have to anticipate public attention thereafter.\textsuperscript{199}
Moreover, most jurors do not want the attention from the press that accompanies service in high-profile cases. Consequently, shielding jurors from post-verdict distress at the hands of the press will surely enhance the willingness of many to serve as jurors in such cases. Increasing the numbers of persons willing to serve would not only enhance the efficiency of the jury selection process, it also likely would improve the quality of the juries that result.

The framework for courts to implement rules such as proposed here is already in place. A federal statute requires each United States district court to devise a plan for jury selection, and specifically allows the court to keep confidential the names of jurors in the interests of justice. Many states have similar provisions.

That courts have not often been willing to exercise this authority may sometimes be because they do not see the wisdom in doing so. More often, however, it is because it is because they believe they are handcuffed by an unfortunately expansive reading of the United States Supreme Court’s First Amendment right of access decisions. That reading simply is not correct. Jurors’ identities are not among the components of a criminal trial to which the First Amendment right of access applies. Moreover, when the press seeks to acquire the names and addresses of jurors, it inevitably is for the purpose of exploring the reasons for the verdict. Essentially, then, the press seeks to access the jury’s deliberations, to which the right of access plainly does not apply.

Nothing does, or should, prohibit the press from interviewing a willing former juror. The question is whether the government should assist the press in potentially harassing former jurors who want only to be left alone. There is very little that can be said for answering that question in the affirmative. There are several good reasons for answering “no,” but chief among them is the basic human consideration that citizens ought to receive from their government.
Jurors are not “citizen-soldiers” who have volunteered to devote, and if necessary
sacrifice, their lives for their country. However, even if that analogy were apt, it would not
support the disclosure to the press of the names and addresses of objecting jurors. Jurors are
obligated to serve, and only for a brief period of time. When their service is over, so should be
the burdens of that service. No rational government would facilitate the harassment of its soldiers
after their service to their country. It should be an equally obvious conclusion that no rational
government should facilitate the harassment of its jurors when their service is concluded.

It is true, of course, that the press, even without the assistance of the court, might very
well discover the identities of the jurors and subject them to the same unwanted attentions. That
might be objectionable, but it is not disgraceful. What is disgraceful is when the
government summons private citizens for special duty and then, despite their express desires to
the contrary, singles them out for burdens at the hands of other private citizens. What is
incomprehensible is when a government inflicts this burden upon its most deserving citizens
solely because of the perceived benefits of interviews, interviews it has every reason to believe
will never take place.

The solution is plain. Simply ask the jurors what they wish and respect their responses. If
jurors have no objection to disclosure of their names and addresses, then neither should anyone
else have an objection. On the other hand, if jurors do object to disclosure of their names and
addresses, then the only sensible course of action is to deny the motion for disclosure. The First
Amendment might, to some extent, restrict government efforts to restrain the press from
harassing private citizens. However, it certainly does not require the government to aid the press
in doing so.
Professor of Law, Creighton University School of Law. Thanks to Vanessa Strazdas, Patrice Andersen, Jessica Kelly and Sean Watts for their assistance.


2 Id.


6 Weinstein, supra note 3, at 2-3; King, supra note 1, at 125-26; Litt, supra note 5, at 394.

7 Bennett H. Beach, The Juror as Celebrity, TIME (August 16, 1982).

8 Goldstein, supra note 4, at 296.


10 Id.

11 King, supra note 1, at 126.

12 Fred Strasser, Jurors in Big Trials Face Media Pressures, 14 NAT. L.J. 3 (December 23, 1991).

13 Beach, supra note 7.


15 Id.

16 Strasser, supra note 12.

17 Weinstein, supra note 3, at 38; Beach, supra note 7.

18 NEW YORK TIMES (April 4, 1990) at A20.

19 Nunn, supra note 5, at 430-31; Beach, supra note 7.

20 Id.
21 Nunn, supra note 5, at 430-31; Beach, supra note 7.

22 King, supra note 1, at 129, citing State v. Bowles, 530 N.W.2d 521, 531 n.15 (Minn. 1995).


25 This ought to be a very small percentage of cases. Unfortunately, perhaps, crime in this country is fairly routine. Unless the crime or the accused is unusually notorious, the vast majority of criminal cases sail through the criminal justice system without any attention from the press. Moreover, by the time jury selection rolls around, the relatively few cases at issue would be easy to identify. Media attention to criminal prosecutions, when it occurs, begins long before the commencement of the trial.

26 It might be more convenient administratively to accomplish this election as part of the standard juror qualification forms completed by all those summoned for jury duty. The fact that, in many cases, potential jurors might indicate a desire not to be contacted by a press which, as it turns out, does not wish to contact them, is harmless.


28 In re Disclosure of Juror Names and Addresses, 592 N.W.2d at 800; Espy, 31 F. Supp. 2d at 2; Doherty, 675 F. Supp. at 721.

29 Forum Communications Co., 752 N.W.2d at 179; George, 1992 WL at 2. See Weinstein, supra note 3, at 41.

30 See Weinstein, supra note 3, at 41.

31 U.S. Const., Amend 1.

32 See notes 34-97, infra, and accompanying text.

34 448 U.S. 555 (1980).

35 Id.

36 Id.

37 Id.

38 Id. at 559, 559 n.1.

39 Id. at 559-60.

40 Id. at 560-61.

41 Id. at 562.

42 Id. at 580.

43 Id. at 575. A right to a public trial is specified in the Sixth Amendment. However, that right is afforded to the accused, not to the media or the public. Gannett Co. v. DePasquale, 443 U.S. 368 (1979).

44 Richmond Newspapers, 448 U.S. at 575.

45 Id. at 575-76.

46 Id. at 577.

47 Id. at 564-68.

48 Id. at 576 n.11.

49 Id. at 581.

50 Id., quoting Cox v. New Hampshire, 312 U.S. 569, 574 (1941).

51 Richmond Newspapers, 448 U.S. at 581.

52 Id. at 586 (Brennan, J., concurring).

53 Id. at 586, 588.

54 Id. at 589.

55 Id. at 598 n.23.

56 Id. at 600 n.5.

58 *Id.* at 598.

59 *Id.* at 602.

60 *Id.* at 607.

61 *Id.* at 609, 611 n.27. The Court added that the press must have an opportunity to be heard in connection with any such case-specific determination. *Id.* at 609.

62 See note 52, *supra*, and accompanying text.


64 *Globe Newspaper*, 457 U.S. at 604.


66 *Id.* at 503.

67 *Id.*

68 *Id.*

69 *Id.* at 503-04.

70 *Id.* at 504.

71 *Id.*

72 *Id.*

73 *Id.* at 510.

74 *Id.* at 508.

75 *Id.* at 507.

76 *Id.* at 508.

77 *Id.* at 510-11.

78 *Id.* at 511.

79 *Id.*

80 *Id.* at 512.

81 *Id.*

82 *Id.* at 512-13.

83 478 U.S. 1 (1986).

84 *Id.* at 3-4.
Mr. Zansberg offers the hypothesis that the riots in the Los Angeles area, following the acquittal of the police officers accused of beating Rodney King, might have been avoided if the public had “[a]ccess to juror information.” Zansberg, supra note 33, at 12. Really? Do we really believe that years of racial tension between African-American residents and the Los Angeles police department, as well as the fact that those same residents watched on their televisions as four white police officers repeatedly kicked and beat a prone Rodney King, would have been all smoothed over if the public had just been supplied the names and addresses of the jurors who acquitted the officers? Fortunately for us (but unfortunately for the jurors), we do not have to speculate about that. This is because the names of those former jurors were released to the public, whereupon the jurors “endured taunts, threats, and disturbing telephone calls.” King, supra note 1, at 127-28. One of those former jurors later wrote to the trial judge, “[W]hy were we thrown to the sharks? How do I protect my children?” Id. at 128 n.22.

102 *Wecht*, 537 F.3d at 238; *Espy*, 31 F. Supp. at 3; *In re Globe Newspaper Co.*, 920 F.2d at 94; Zansberg, *supra* note 33, at 12; Raskopf, *supra* note 33, at 373-74.


104 Zansberg, *supra* note 33, at 12; Raskopf, *supra* note 33, at 372.


109 *Wecht*, 537 F.3d at 239.


111 *Id.* at 97.

112 *Id.* at 98.


114 King, *supra* note 1, at 157-58.
See also Doherty, 675 F. Supp. at 725 (“a postponement of one week will not injure the values to be furthered by a searching press inquiry into the lives of the jurors.”)

State ex rel. Beacon Journal Publishing Co. v. Bond, 781 N.E.2d 180, 194 (Ohio 2002); Sullivan, 839 F. Supp. at 7; Doherty, 675 F. Supp. at 726. In Doherty, the district court arguably acted in violation of its own order when it released the names and addresses of the jurors after those same jurors had unanimously reported to the court that they did not wish to be interviewed by the press. Id. at 721.


Id.

922 A.2d 892 (Pa. 2007).

Id. at 904.


Brown, 250 F.3d at 922; Goodman, 552 N.Y.S.2d at 968; Edwards, 823 F.2d at 119; Thomas, 757 F.2d at 1365.

Black, 483 F. Supp. 2d at 623-30; Gannett, 571 A.2d at 743-51.


To the best of my knowledge, no court has undertaken this exercise, at least not publicly. The failure to do so might account for the insufficiently considered assumption that the PE II test governs the issue.

In Richmond Newspapers, Inc., v. Virginia, 448 U.S. 555 (1980), the Court specified that the right of access derives, not solely from the First Amendment’s guarantee of freedom of the press, but rather from the common foundation of the specified freedoms of speech, association and the press. Id. at 575, 577. Repeatedly, the Court described the right of access as a “right of access to places traditionally open to the public,” id. at 577, as a “right of
the public to attend trials,” id. at 579, and as a proscription against the government “limiting the stock of information from which members of the public may draw,” id. at 576, quoting First National Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978). The Court also stated that media representatives “are entitled to the same rights [to attend trials] as the general public.” Id. at 577 n.12, quoting Estes v. Texas, 381 U.S. 532, 540 (1965).

130 United States v. Brown, 250 F.3d 907, 914 (5th Cir. 2001); United States v. Gurney, 558 F.2d 1202, 1209 (5th Cir. 1977). Goldstein, supra note 4, at 303.

131 It is difficult to see how this alarming intrusion into the privacy, and potentially into the safety, of former jurors can be justified by labeling jurors as “citizen soldiers.” See note 108, supra. Even real soldiers, who have volunteered to sacrifice their lives for their country if necessary, are not asked to tolerate this type of intrusion.

132 See notes 126-27, supra, and accompanying text.


134 Litt, supra note 5, at 406.


136 Weinstein, supra note 3, at 8-9. As to the contention that publicizing jurors’ identities might allow the press to expose such improprieties, see notes 188-190, infra, and accompanying text.

137 Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 8 (1986).


139 United States v. Brown, 250 F.3d 907, 920 n.20 (5th Cir. 2001) (“what they are really complaining about is the enhanced difficulty of contacting former jurors to interview them”); In re Disclosure of Juror Names and Addresses, 592 N.W.2d 798, 808 (Mich. Ct. App. 1999) (“the Free Press is, in effect, requesting the trial court to facilitate its coverage of the trial by assisting its efforts to question jurors”); Litt, supra note 5, at 393-94.

140 State ex rel. Beacon Journal Publishing Co. v. Bond, 781 N.E.2d 180, 194 (Ohio 2002) (“juror names and addresses are traditionally requested for the purpose of interviewing jurors about jury room deliberations’’); In re Disclosure of Juror Names and Addresses, 592 N.W.2d at 808 (“the likely reason the Free Press wants this information relates to jury room deliberations and jurors’ reactions to and opinions of the evidence -- information that is rarely revealed in conjunction with courtroom proceedings’’); United States v. Harrelson, 713 F.2d 1114, 1117 (5th Cir. 1983) (“reporters are persistent and tenacious in pursuing information and . . . they seek it regarding the nonpublic portions of legal proceedings (jury deliberations, bench conferences between court and counsel,
excluded evidence, etc.) as well as the public ones. These are truisms known to all . . .

). Weinstein, supra note 3, at 38 (“reporters often will spare no effort in contacting members of the jury and subjecting their deliberations and personal lives to intense scrutiny”).

141 Goldstein, supra note 4, at 295.

142 Tanner v. United States, 482 U.S. 107, 120-21 (1987); Nunn, supra note 4, at 433; Goldstein, supra note 4, at 295.


144 FED. R. EVID. 606(b); Nunn, supra note 4, at 432-33; Goldstein, supra note 4, at 299.

145 Nunn, supra note 4, at 406.

146 United States v. Black, 483 F. Supp. 2d 618, 626-27 (N.D. Ill. 2007). There can be no doubt that there is no First Amendment right of access to the jury deliberations themselves. E.g., In re Globe Newspaper Co., 920 F.2d 88, 94 (1990); Harrelson, 713 F.2d at 1118; United States v. Gurney, 558 F.2d 1202, 1211 (5th Cir. 1977).


149 Id. at 580.

150 Nunn, supra note 4, at 414.

151 Id. at 429.


153 Weinstein, supra note 3, at 49 (“at the very least, jurors should be allowed some means to raise their privacy concerns, even if the parties do not”).


157 Weinstein, supra note 3, at 51.

158 Id.; Gaza, supra note 154, at 344.

159 Compare Weinstein, supra note 3, at 9, with Litt, supra note 5, at 390.
160 United States v. Edwards, 823 F.2d 111, 120 (5th Cir. 1987).

161 United States v. Brown, 250 F.3d 907, 918, 921 (5th Cir. 2001).


163 Weinstein, supra note 3, at 3; King, supra note 1, at 126.

164 See Weinstein, supra note 3, at 51.

165 United States v. Antar, 38 F.3d 1348, 1351 (3d Cir. 1994).


167 United States v. Brown, 250 F.3d 907, 918-19 (5th Cir. 2001); United States v. Harrelson, 713 F.2d 1114, 1117 (5th Cir. 1983); Litt, supra note 5, at 394.


169 Weinstein, supra note 3, at 39; Litt, supra note 5, at 394-95.


171 See United States v. Brown, 250 F.3d 907, 920 n.20 (5th Cir. 2001) (distinguishing between mandating anonymity and permitting anonymity).


174 Id.; Weinstein, supra note 3, at 14, 19.

175 See notes 100-105, supra, and accompanying text.

176 See note 100, supra, and accompanying text.

177 King, supra note 1, at 154.


179 King, supra note 1, at 127.


182 See note 101, supra, and accompanying text.

183 King, supra note 1, at 158.
Weinstein, supra note 3, at 32.

United States v. Brown, 250 F.3d 907, 920 (5th Cir. 2001); United States v. Harrelson, 713 F.2d 1114, 1118 (5th Cir. 1983).


See note 102, supra, and accompanying text.

See note 103, supra, and accompanying text.

King, supra note 1, at 144.

In any event, if this concern were perceived as realistic, my proposal could easily be amended to allow a court a certain flexibility in an appropriate case. In other words, in the event that there is some reason to believe that there has been unlawful discrimination in the selection of the jury, and in the very unlikely event that this condition has been discovered by the press while the parties and their counsel have remained in a state of oblivion, and in the even more unlikely event that the names and addresses of jurors are necessary for the press to confirm or dispel its suspicion, then disclosure of the jurors’ names and addresses ought to be allowed under those circumstances. What ought not to be allowed is the routine disclosure of the names and addresses of unwilling jurors just to guard against this remote possibility.

See note 104, supra, and accompanying text.

See notes 141-146, supra, and accompanying text.

FED. R. EVID. 606(b). This means that, in most cases, mistakes or improprieties by jurors during deliberations will not be a basis for disturbing the verdict.

See note 105, supra, and accompanying text.

Especially in high profile cases, counsel for the parties often conduct a very thorough investigation of prospective jurors. Gannett Co., Inc., v. State, 571 A.2d 735, 749-50 (Del. 1989); Weinstein, supra note 3, at 33-34.

If the juror does consent to have his name and address revealed to the press, then, even under my proposal, the juror’s name is no less likely to be published than when the name and address of jurors is revealed in all cases.

Weinstein, supra note 3, at 11; King, supra note 1, at 136, 148.

Weinstein, supra note 3, at 31-32; King, supra note 1, at 137.

Nunn, supra note 4, at 431.

King, supra note 1, at 129.


*E.g.*, ARK. CODE ANN. § 16-32-111(b); CAL. CODE § 237(a)(1); DEL. CODE ANN. § 4513(a); IDAHO CRIM. RULE 23.1; KY. AP. II § 10(a); MD. RULE 16-1004(b)(2)(C); MISS. CODE ANN. § 13-5-32; NEB. REV. STAT. § 25-1635; N.D. CENT. CODE § 27-09.1-09(3).

Weinstein, *supra* note 3, at 44.