Secret Justice:

Secret Juries

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The Reporters Committee
For Freedom of the Press

Courts are finding ways to shield jurors' identities from the news media and the public, even in cases where there is no threat of harm. Judges tried to keep the jurors' names secret in the **Martha Stewart** and **Frank Quattrone** cases, and four reporters were held in contempt for contacting jurors in the murder-for-hire trial of Rabbi **Fred Neulander**. Judges often seem slow to recognize that secret juries jeopardize the public's right to know how its courts work.

Secret Justice:
A continuing series

The American judicial system has, historically, been open to the public, and the U.S. Supreme Court has continually affirmed the presumption of openness. However, as technology expands and as the perceived threat of violence grows, individual courts attempt to keep control over proceedings by limiting the flow of information. Courts are reluctant to allow media access to certain cases or to certain proceedings, like jury selection. Courts routinely impose gag orders to limit public discussion about pending cases, presuming that there is no better way to ensure a fair trial. Many judges fear that having cameras in courtrooms will somehow interfere with the decorum and solemnity of judicial proceedings. Such steps, purportedly taken to ensure fairness, may actually harm the integrity of a trial because court secrecy and limits on information are contrary to the fundamental constitutional guarantee of a public trial.

The public should be the beneficiary of the judicial system. Criminal proceedings are instituted in the name of "the people" for the benefit of the public. Civil proceedings are available for members of the public to obtain justice, either individually or on behalf of a "class" of persons similarly situated. The public, therefore, should be informed — *well* informed — about trials of public interest. The media, as the public's representative, needs to be aware of threats to openness in court proceedings, and must be prepared to fight to ensure continued access to trials.

In this series, the Reporters Committee takes a look at key aspects of court secrecy and how they affect the newsgathering process. We will examine trends toward court secrecy, and what can be done to challenge it.

The previous installments of this "Secret Justice" series concerned anonymous juries (Fall 2000), gag orders on trial participants (Spring 2001), access to alternative dispute resolution procedures (Fall 2001), access to terrorism proceedings (Winter 2002), secret dockets (Summer 2003), judicial speech (Spring 2004), grand juries (Fall 2004), and celebrity trials (Spring 2005).

This report was researched and written by Kimberley Keyes, the 2004-2005 McCormick-Tribune Legal Fellow at the Reporters Committee.

Secret Juries

By Kimberley Keyes

As the media continues to scrutinize juries in high-profile cases, federal and state authorities are making it more difficult for the public to identify those who sit in judgment of others.

Experts say the use of anonymous juries — whose individual identities are kept completely secret, even from the parties to a case — is on the rise. Such juries are most often empaneled in cases involving organized crime or terrorism, where the judge has determined there may be a real risk of jury tampering or threat to juror safety.

But even in cases where no such danger appears to exist, courts and legislatures are using other tactics to shield jurors' identities from the press. The measures — from refusing to release jurors' names and addresses and banning jury lists from public case files, to selecting juries behind closed doors or ordering the press not to publish juror names said aloud in open court — occur with alarming frequency as concern about protecting personal privacy swells.

Free-press advocates say secret juries jeopardize the public's right to know.

"I don't think most members of the public understand that personal privacy is one side of a two-sided coin — the other side being the public interest — and every time we turn over that side of the coin to protect privacy, we lose the ability to protect the public interest," said Society of Professional Journalists President Irwin Gratz, a news producer for the Maine Public Broadcasting Network. His state recently passed a law keeping the names and addresses of jurors secret even after their jury service has ended.

Secret juries also can violate the First Amendment rights of the press. In March, a three-judge panel of the U.S. Court of Appeals in New York City (2nd Cir.) invalidated a judge's order forbidding the media from publishing the names of jurors revealed in open court during the trial of former Credit Suisse First Boston executive Frank Quattrone. (*U.S. v. Quattrone*) The same court ruled in 2004 that the judge's decision to ban the press from attending jury selection in Martha Stewart's trial was unconstitutional. (*ABC v. Stewart*)

Media lawyer David Schulz of Levine Sullivan Koch & Schulz in New York said efforts by the courts to keep juror identities confidential are usually a reaction to intense media coverage, particularly in high-profile cases.

"I think judges have natural instincts to want to protect jurors and avoid subjecting their private lives to the glare of national publicity just because they're called upon to serve on a jury," said Schulz, who successfully represented the media during the Stewart trial.

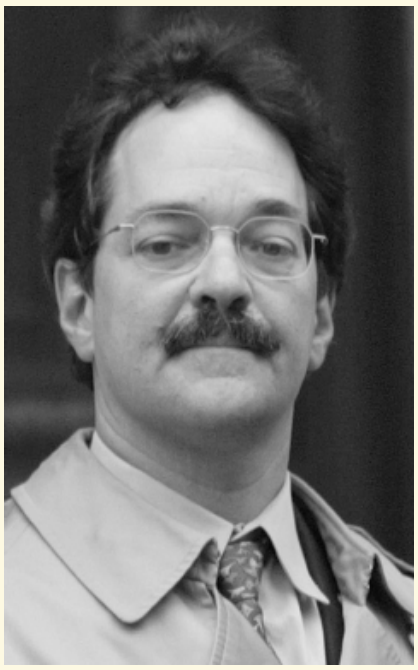
The judge in the *Quattrone* case, for example, said in shielding the jurors' identities he was trying to avoid a Dennis Kozlowski-style mistrial. The six-month-long first trial of the former Tyco executive had ended in a mistrial less than one week earlier, after newspapers published the name of a juror who allegedly made an "OK" gesture to Kozlowski's defense team. The juror reported receiving a phone call and disturbing letter after her identity was revealed.

Despite the risks, uncovering juror identities has both societal and practical benefits.

"Knowledge of juror identities allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness and public confidence in that system," a three-judge panel of the U.S. Court of Appeals in Boston (1st Cir.) said in 1990. The court overturned a federal judge's refusal to give *Boston Globe* reporters the names and addresses of jurors who sat on a high-profile criminal trial. (*In re Globe Newspaper Co.)*

People could suspect that only those with certain social, political or even criminal connections were chosen as jurors on specific cases, the appeals court stated. "It would be more difficult to inquire into such matters, and those suspicions would seem in any event more real to the public, if names and addresses were kept secret," said the court.

Information about jurors enhances public knowledge of the court system, "and can be important to public debate about its strengths, flaws and means to improve it," the court said. Public knowledge of juror identities also could deter potential jurors from intentionally misrepresenting themselves during jury selection.



AP PHOTOS

The Second Circuit invalidated a judge's order forbidding the press from publishing the names of jurors during the trial of Frank Quattrone, left. The same court last year ruled that banning the press from attending jury selection in Martha Stewart's trial was unconstitutional.

While the trial judge assumed the *Globe* just wanted to interview jurors about their deliberations, "other avenues of inquiry are conceivable," the appellate court noted. "Juror bias or confusion might be uncovered, and jurors' understanding and response to judicial proceedings could be investigated."

Inquiring minds

In 2001, *The Philadelphia Inquirer* investigated whether the jury forewoman in the first murder trial of Rabbi Fred J. Neulander actually lived in the New Jersey county where the trial took place, as state law required. Days after the court had declared a mistrial due to a hung jury, the paper published an article naming the jury forewoman and quoting her as saying she had been "staying with a friend" in Philadelphia.

"I just see that kind of story as doing my job, basically," said *Inquirer* reporter Emilie Lounsberry, one of the article's authors.

However, before the trial Superior Court Judge Linda G. Baxter had ordered the press not to contact jurors and not to identify them in any way — and she refused to lift the orders after discharging the jury, due to the impending retrial.

As a result of the Nov. 16, 2001, article, which also included quotes from another juror regarding the panel's deliberations, Lounsberry and fellow reporters George Anastasia, Joseph A. Gambardello and Dwight Ott were found in civil contempt for violating Baxter's orders. The contempt finding came in spite of a ruling by the New Jersey Supreme Court that the prohibition against naming jurors was unconstitutional. (*State v. Neulander*)

The reporters were fined $1,000 each and all except Gambardello were ordered to perform community service. A New Jersey appellate court overturned the contempt judgments against the reporters in May 2004.

Lounsberry, who has covered courts off and on for 20 years, said it was "very unsettling to become a defendant for doing my job."

"I really sympathize with what it's like (for a judge) to manage a difficult trial," she said, noting the proliferation of media coverage of court cases. "I understand judges really are trying to protect juries and trials - but there has to be some way for reporters to be unfettered in doing our job."

Schulz said that historically, the names of jurors were widely known, particularly in smaller communities. He pointed to the case of Dr. Sam Sheppard, a suburban Ohio physician accused of killing his wife. Three Cleveland newspapers printed the names and addresses of the 75 prospective jurors called for the 1954 trial of Sheppard, whose story inspired the television series "The Fugitive." (*Sheppard v. Maxwell*)

Half a century later, things are not much different, said Schulz: Big trials still capture the public's attention.

"What's different today is the number of people whose attention can be focused on a single trial because of modern technology," he said.

He said judges may also hope to discourage jurors and potential jurors from seeking the limelight in a celebrity trial, as was evident during jury selection in the Michael Jackson trial. Two jurors who sat on the case recently announced their intent to write books about their experience.

But the negative impact of using secret juries may outweigh any perceived benefit, according to Schulz.

"If we're going to go to a system that says we're going to have essentially a black box, and if you're at a criminal trial and 12 people are going to walk in and they're going to pass judgment and we're not going to tell you who they are or what issues were important to them after the fact because you not going to be able to talk to them, it's going to fundamentally change our understanding of how the criminal justice system works and the public confidence in the reliability of the outcome," he said.

Access in federal courts

State courts, including Ohio and Michigan, have held that the First Amendment grants a qualified post-trial right of access to juror names and addresses. (*State ex rel. Beacon Journal Pub. Co. v. Bond*; *In re Disclosure of Juror Names and Addresses*) The Ohio Supreme Court also found a qualified right

of access to jury questionnaire forms, which courts use to determine whether potential jurors are suitable for service. In some states, the list of jurors' names is put into the case file, becoming public record after the trial ends.

A new federal court policy, however, mandates that documents containing identifying information about jurors or potential jurors are no longer included in the public case file and are unavailable to the public, either electronically *or* at the courthouse. Citing "security and law enforcement issues unique to criminal case file information," the Judicial Conference — the principal policy-making body of the federal court system — adopted the restriction in March 2004 as part of its guidelines permitting electronic access to criminal case records in federal courts. (See http://www.privacy.uscourts.gov/crimimpl.htm)

The federal district court in Trenton, N.J., cited the new policy in denying access to the names of jurors who sat on the public corruption trial of former Mercer County Chief of Staff Harry Parkin earlier this year, the *Times* of Trenton reported.

Karen Redmond, a public information officer for the Administrative Office of U.S. Courts in Washington, D.C., said despite the new policy, the press should still have access to jurors' identities after a trial is over. Juror names are available in the jury management database maintained by each federal district court, allowing reporters to find out juror information at the trial's end, she said.

"That [policy] was designed so you wouldn't be able to get the names electronically prior to a verdict or off the case file," Redmond said.

But it may not be so simple. In July, a *News Media & The Law* reporter visited the federal district courts in Washington, D.C., and Alexandria, Va., and requested the names of jurors from the jury management database in specific criminal and civil cases. Clerks at both courts denied the requests, saying the public does not have access to the jury management database.

"We never give out jury names" without an order from the judge, said Alohna Jones, jury administrator at the federal district court in Washington.

Phone calls to federal district courts around the nation yielded similar results. Jury administrators in Boston, New York City, Cleveland, Madison, Wis., Wilmington, Del., and Birmingham, Ala., said they would not release juror names without a judge's authorization. Others simply referred press inquiries to other officials.

"Everything in this office is extremely confidential," said Peggy McCarragher, jury administrator for the federal district court in San Diego. She said all media requests had to go through the court clerk's office.

Edward Adams, the public information officer for the Alexandria federal court, said he discloses the names and addresses of jurors who served on a case unless the court empaneled an anonymous jury, which is rare. He said "as a courtesy" he informs the trial judge of the request, but that in his three years at the court, no judge has declined to release the information.

"The short answer is, we have provided the names of jurors to reporters who ask," he said.

In July, U.S. District Judge William Sessions, who presided over the recent murder trial of Donald Fell — the first death-penalty case in Vermont in nearly 50 years — initially refused to give the names and addresses of the jurors to *The Burlington Free Press*, said the newspaper's attorney, Megan J. Shafritz of Gravel & Shea.

On the day the jury began deliberating, the media notified the court clerk's office that it would seek to intervene in the case to challenge the judge's refusal, she said. It turned out to be unnecessary.

"At the end of the day, I learned from the court clerk that the judge had changed his mind and would release the names of the jurors after they had rendered their verdict," said Shafritz, who along with colleague Robert Hemley was prepared to argue that withholding the jurors' identities implicated First Amendment rights of newsgathering and access to criminal trials.

The federal district court in Burlington, Vt., releases jurors' names and the city or town in which they live within seven days of the end of the trial, according to Court Clerk Richard Wasko. Federal case law mandates such disclosure unless it is a "sensitive" case, he said.

Each federal district court has a "jury plan" for selecting potential jurors. Title 28, Section 1863 (b)(7) of the U.S. Code, which governs jury plans, mandates that each court determine when "the names drawn from the qualified jury wheel" will be made public. "If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court . . . to keep these names confidential in any case where the interests of justice so require," the law states.

The Administrative Office of U.S. Court is advising federal trials courts to review their jury plans in light of the March 2004 policy keeping juror names out of the public case files, said Senior Program Specialist David Williams. He noted that some federal circuit courts recognize a qualified right of access to juror information.

Under Vermont's jury plan, the names of potential jurors are not made public, Wasko said. "But once a jury has been selected,

Tracking down jurors

Even if a court can refuse to disclose jury information in an extraordinary case, it probably cannot stop reporters from trying to track down jurors on their own.

U.S. District Judge Edith Brown Clement's orders to the media not to "interfere with" or "circumvent" her decision to empanel an anonymous jury in the September 2000 trial of former Louisiana Gov. Edwin Edwards and his associates was an unconstitutional prior restraint on newsgathering, the U.S. Court of Appeals in New Orleans (5th Cir.) held, somewhat grudgingly, in 2001. (*U.S. v. Brown*)

Clement's orders were not fully enforceable since the trial court could not sanction violations that occurred outside its jurisdiction. Additionally, the ambiguity of the terms "interfere" and "circumvent" rendered the orders overbroad. Finally, the directives could fail to protect jurors because "restraining the press from independent investigation and reporting about the jurors would not necessarily deter defendants" from interfering with the judicial process, the court said.

"With considerable doubt, we conclude that [the orders] were unconstitutional insofar as they interdicted the press from independent investigation and reporting about the jury based on facts obtained from sources other than confidential court records, court personnel or trial participants [who were subject to a gag order]," Judge Edith H. Jones wrote for the court.

Thus, it seems reporters are free to use time-honored techniques for gathering news on jurors, such as attending jury selection and writing down the names called out, or waiting until the trial is over and approaching jurors in the courthouse parking lot. — *KK*

AP PHOTO

In the high-profile trial of two former Tyco International executives, the *New York Post* and *The Wall Street Journal* published the name of juror Ruth Jordan, right, during deliberations after she allegedly made an "OK" hand gesture to defense attorneys in open court. The newspapers argued that Jordan, who had been holding out for acquittal during deliberations, thus made herself part of the story. The judge later declared a mistrial after Jordan said she received an anonymous phone call and an insulting letter at her home. Worries of similar ordeals prompted at least one other judge to restrict access to jurors' names.

there is a right to know and I don't think the judge can hold on to that [information] forever," he said.

Reporters may be able to get the names of jurors in federal cases predating the 2004 policy simply by digging through the case file. For example, the bulging file on *U.S. v. Watson* in the federal district court in Washington, D.C., contains the full names of potential jurors in the 2003 case, in which a North Carolina tobacco farmer was convicted of making bomb threats on the National Mall. Handwritten notes on the sheet indicated which people were chosen as 12 jurors and two alternates in the trial of farmer Dwight Watson, who turned out to be carrying insect repellant. (The file also contained notes from the jurors, signed by the foreman, including one that said, "May we see the Raid can.")

Another way to identify jurors is through jury selection. Because the U.S. Supreme Court held in *Press Enterprise Co. v. Superior Court of California* ("*Press Enterprise I*") that the First Amendment requires the jury-selection process — called voir dire examination — to be open to the public, reporters can learn jurors' names during the proceeding or by obtaining a copy of the transcript. *The Times* of Trenton reported that it tracked down several jurors who sat on the Parkin trial by the phonetic spelling of names said aloud in open court.

Reporters covering the 1993 federal racketeering trial of the founders of Crazy Eddie's electronics store were not so lucky. The judge asked the press to leave the overcrowded New Jersey courtroom during jury selection to accommodate the high number of potential jurors. When the media asked for the jurors' names and addresses at the end of the trial, the judge responded by sealing the transcript of the voir dire proceedings and other records. The U.S. Court of Appeals for the 3d Circuit reversed, holding the judge failed to make findings to justify the sealing. (*U.S. v. Antar*)

Sometimes, potential jurors are referred to by number rather than name during voir dire to protect their privacy. This method left *The New York Times* to speculate on the identities of jurors during the recent fraud trial of former HealthSouth CEO Richard Scrushy in Birmingham, Ala.

"[J]uror No. 467, who expressed doubt over unanimity in her note to the judge last week, may be one of three black women on the jury," the *Times* reported May 31.

As dissent among the Scrushy jurors appeared to threaten a mistrial, the newspaper used information from jury-selection transcripts to compile profiles of the 12 jurors, charting their gender, marital status and hobbies. One man, married with two young children, "[l]ikes to hunt and fish," the *Times* reported; another juror, the mother of a young child, enjoyed "shopping, sewing and architecture." The jury acquitted Scrushy of all charges in June.

Referring to jurors by number rather than name can raise concerns for a fair trial as well as for public access, since it may lead a jury to think it has reason to fear the defendant. The Ohio Supreme Court in 2001 upheld the use of an anonymous jury in the murder trial of a man convicted of gunning down his stepfather. Because the defendant did not object to the trial court's practice of keeping the names and addresses of all jurors secret, the high court refused to consider the propriety of the rule, "even though we recognize that [it] implicates important concerns that would clearly be worthy of review by this court if the issue had been properly presented." (*Ohio v. Hill*)

In the Martha Stewart case, where jurors were selected in the judge's robing room, the press learned the identities of the jurors at the end of the trial. The judge's practice was to poll the jury members by name when they returned a verdict, media lawyer Schulz said.

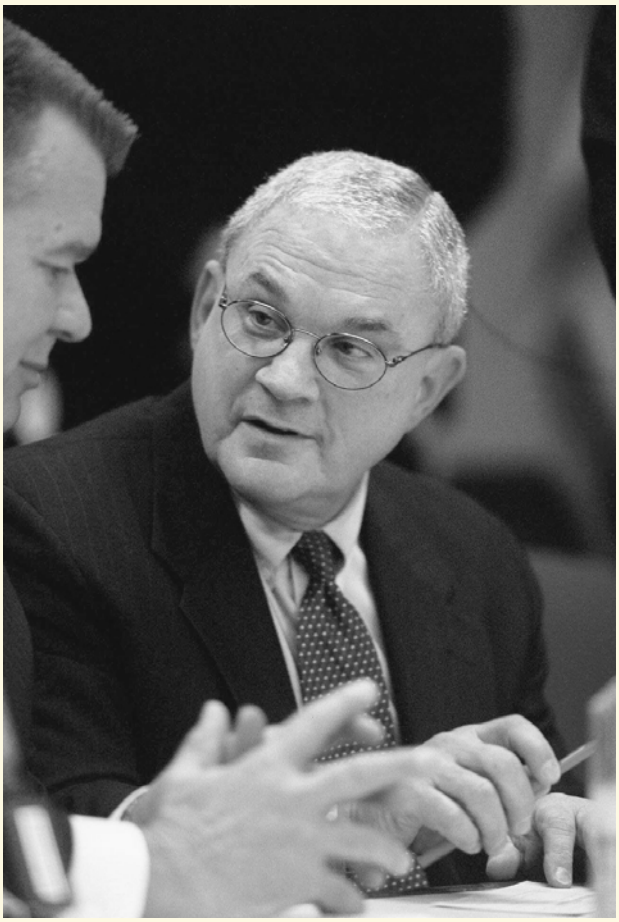
Maine law

State law may restrict how much information the public receives about a jury. In June, Maine legislators passed a law shielding the names of jurors and prospective jurors from the public even after their jury service ends.

Instead of requiring courts to explain why the names should be kept secret, the newly amended Title 14, Section 1254-B of the Maine Revised Statutes requires members of the public to show why jurors' identities should be revealed. Attorneys and litigants who act as their own attorney may have access to juror names and qualification forms for use during jury selection, but may not disclose the information to anyone without the court's permission.

Media lawyer Shafritz said the law allowing parties but not the public to know jurors' identities "seems like a direct burden on the First Amendment to prevent the news media from having the traditional access that it seems to have had to these names."

Two of the state's highest-ranking judges, Supreme Judicial Court Chief Justice Leigh Saufley and Superior Court Chief Justice Thomas Humphrey, publicly supported the bill, which apparently was born out of generalized concern for juror privacy.



AP PHOTO

***The Philadelphia Inquirer* reported on questions concerning whether the jury forewoman in the first murder-for-hire trial of Rabbi Fred J. Neulander, right, actually lived in the New Jersey county where the trial took place, as state law required. Although the article appeared after a mistrial over a hung jury, the judge had refused to lift an order barring contact with jurors. Four *Inquirer* journalists were held in civil contempt.**

Under the old law, juror names were available upon request after a trial was over unless a court found the information should be kept confidential "in the interest of justice." The language mirrors the federal law governing jury selection plans in federal district courts; Title 28, Section 1863 (b)(7) of the U.S. Code permits judges to keep juror names confidential "in any case where the interests of justice so require." Now, however, a state court in Maine may release the names of jurors only if it finds that *disclosure* "is in the interests of justice."

In deciding whether to disclose the names, Maine judges can consider the jurors' interests in safety and privacy, the desire to encourage "candid responses from prospective jurors," and the interest of the press and public in making sure "trials are conducted ethically and without bias," according to the new law.

"Frankly, I think it's a terrible standard because it basically leaves it entirely up to the courts to decide what's going to happen, and it pretty much makes it impossible, I would think, for us to pursue any kind of watchdog efforts on whether or not a jury was fair or representative of the community," said SPJ President Gratz.

He said a court likely would have to find that a trial had been compromised "before they'll even have a rationale to release us the information that would enable us to publicize that fact."

Gratz was unaware of any particular incident that prompted the legislature to reverse the presumption of openness. Indeed, the *Portland Press Herald* reported that the proposed limitations were "preemptive and not a response to specific problems."

"It sort of looked to me like a bill in search of a purpose," said Maine Association of Broadcasters president and CEO Suzanne Goucher, who said she was the only person to testify against the bill at a public hearing. She said the law "cropped up sort of as a surprise," given that there had been no publicized cases of jury tampering or threats to jurors.

Mal Leary, the president of the Maine Freedom of Information Coalition, however, said Chief Justice Saufley requested the bill because a juror had received a threat, although he could not recall the specific case. The *Bangor Daily News* reported that Saufley said harassment of jurors was not an issue in Maine.Mal Leary, the president of the Maine Freedom of Information Coalition,

Saufley declined to comment on the law after it was passed, but referred a reporter to Humphrey, the chief of Maine's trial courts. Humphrey could not be reached.

The Senate bill to amend section 1254-B was introduced in January, one month after an American Bar Association panel recommended that state courts keep jurors' home and business addresses and telephone numbers secret, even after a trial is over, unless there is "good cause" to require disclosure. The ABA House of Delegates, the association's policy-making board, approved the recommendation in February.

"We're trying to balance the litigants' right to select a fair and impartial jury and the press's right to report on what's happening in the courthouses, versus jurors' right to some degrees of privacy," American Jury Project chairwoman Patricia Lee Refo told The Associated Press.

But the Maine law goes even further than the ABA's recommendation. Not only are jurors' identities kept hidden from the public, but so are the contents of juror-qualification questionnaires, which reflect a potential juror's fitness to serve on a jury. Under the previous law, the forms — like the jurors' names — were available to the public upon request after the jury was discharged.

While the new law provides for the possible release of juror names under certain circumstances after jury service is over, it makes no such provision for the previously available juror-qualification forms.

The Maine Press Association took no position on the bill, according to its attorney, Michael Mahoney, but the *Press Herald* decried the proposed restrictions in a Jan. 25 editorial.

"It's not as though every potential juror's data will be automatically revealed. Very few trials reach the level of public scrutiny where anyone would ask for it," the editorial stated.

Access to jury information can provide the press and the public with a truer picture of the trial process, the *Press Herald* pointed out. "While no one should interfere with that process as it operates, once all the verdicts are in, openness is far superior to secrecy," it wrote.

Goucher noted that knowledge of jury composition has been used to uncover information such as racial bias in a jury trial. "The only way you get at that information is to know who sat on that jury - and so it's the only way truly to know that in the end, justice has been served," she said.

Even the bill's sponsor, Republican Sen. Peter Mills, reportedly opposed keeping juror names secret after their jury service has ended. But Saufley strongly favored the law, according to Leary, who called the chief justice "a very persuasive woman."

Gratz said he did not find the attitude of the courts surprising in light of what seems to be a general societal trend toward protecting personal information. "They have really elevated the notion of personal privacy, to levels frankly I think are unproductive," he said.

It is unknown how a legal challenge to the new law would fare, although federal case law provides some persuasive authority.

In the 1990 *Boston Globe* decision, the U.S. District Court of Appeals in Boston (1st Cir.), which includes Maine, reversed a judge's refusal to give the newspaper the names of jurors who sat on a high-profile criminal trial. There the court interpreted the interests-of-justice standard in Section 1863 (b)(7), the federal jury-plan law. A judge must find exceptional circumstances, such as a "credible" risk of jury tampering or a threat to a juror's personal safety, before withholding the names of jurors "in the interests of justice," the court said. (*In re Globe Newspaper Co.)*

"While we understand, and can sympathize with a juror's desire in a publicized criminal case such as this was to remain anonymous, the juror's individual desire for privacy is not sufficient justification by itself to withhold his or her identity. Nor is the judge's general belief that, as a matter of policy, it would be better to keep the names and addresses private," Judge Levin H. Campbell wrote for the majority.

Whether the same analysis would apply to a law that presumes secrecy unless the "interests of justice" require disclosure, however, is unclear. What is certain is that the statute will have an impact on the public's right to know.

"Clearly if I can't get the names of jurors, I can never tell anybody whether or not jury selection is being done properly. Essentially I'm then left to completely trust the courts," Gratz said. "The courts here [in Maine] are generally trustworthy, but that's not the way the system is supposed to work."

Restrictions on interviews

Obtaining the names of jurors may be only half the battle; persuading jurors to be interviewed if they have been advised by the court not to talk may be just as difficult.

Because the media has a First Amendment right to interview jurors after a verdict is issued, courts may not prohibit the press from talking to jurors post-trial without a compelling reason. Judges, however, may order jurors not to discuss what happened during deliberations, or remind them that what takes place in the jury room is confidential.

U.S. District Court Judge Garrett E. Brown Jr. reportedly told jurors who convicted former New Jersey public official Harry Parkin of corruption in March it was "the better and more prudent practice" not to give interviews to the press. He then refused to let anyone, including reporters, to leave the courtroom for 10 minutes while court staff escorted the jurors out of the building, *The Times* of Trenton reported.

When *Times* reporters later tried to approach them in the parking lot or call them at home, all but one juror refused to be interviewed. Reached by telephone, juror Mary Lee Devitis said she followed the judge's instructions and based her decision on the evidence, the *Times* reported. She would not discuss the deliberations, according to the newspaper.

Vermont jurors, who sentenced Donald Fell last month to be executed for the kidnaping and beating death of a 53-year-old woman, were similarly reticent when asked to comment, according to *The Times Argus* of Barre, Vt. Judge Sessions told jury members "that jury deliberations are 'confidential' and that the case they had just decided was 'not O.J. Simpson,'" the paper reported. The *Burlington Free Press* managed to interview one juror, David Noyes, who said the "brutality" and "senselessness" of Fell's crime and the effect it had on the victim's family "far outweighed . . . mitigating factors."

Courts may also restrict when the interviews can take place.

In 2002, the New Jersey Supreme Court upheld a ban on juror interviews in Rabbi Fred Neulander's first murder trial even after the judge declared a mistrial. The majority opinion by Justice Gary Stein reasoned that information revealed by the jurors could give prosecutors an unfair advantage in the retrial of the capital murder case — a possibility deemed "extremely unlikely" by the two dissenting justices. The U.S. Supreme Court in 2003 declined to review the decision.

Two years earlier, a federal appeals court in New Orleans upheld U.S. District Judge Edith Brown Clement's refusal to disclose the names and addresses of jurors who sat on former Louisiana Gov. Edwin Edwards' September 2000 trial on witness-tampering charges (of which he was acquitted). It also upheld the judge's order to jurors not to discuss their deliberations with the media without her permission. (*U.S. v. Brown*) The case is one of several in the Fifth Circuit, which covers Louisiana, Mississippi and Texas, affirming limits on media access to jury information.

"It's really a shame that historians are not going to be able to go back and talk to people — if they are willing to talk — about how they reached their verdict in the case," said *The* (Baton Rouge, La.) *Advocate* Executive Editor Linda Lightfoot, referring to the anonymous jury empaneled by U.S. District Judge Frank J. Polozola in a separate Edwards trial involving gambling-license schemes.

Other courts, however, have invalidated restrictions on contacting jurors. In 1994, a Philadelphia federal appeals court struck down parts of the trial judge's order in *U.S. v. Antar* prohibiting the press from repeatedly trying to interview a juror or continuing to ask questions after a juror has ended an interview.

"[R]estrictions on post-trial interviews must reflect an impending threat of jury harassment rather than a generalized misgiving about the wisdom of such interviews," the court concluded.

Some would argue that jury duty is burden enough, and that those who serve should not have to be subjected to the additional pressures of public scrutiny. Schulz said most people can sympathize with the physical, emotional and financial hardships that jurors may face. "But jury duty is a public duty," he said.

"Our court system operates on a system of open justice, and understanding who the decision makers are and being able to talk to them about decisions that may seem problematic on their face is important,"said Schulz. "So I think we start to skew the very process when we start imposing secrecy.

"The privacy interests are relevant, but they shouldn't be the controlling factors. They need to be considered in the context of how the system works."

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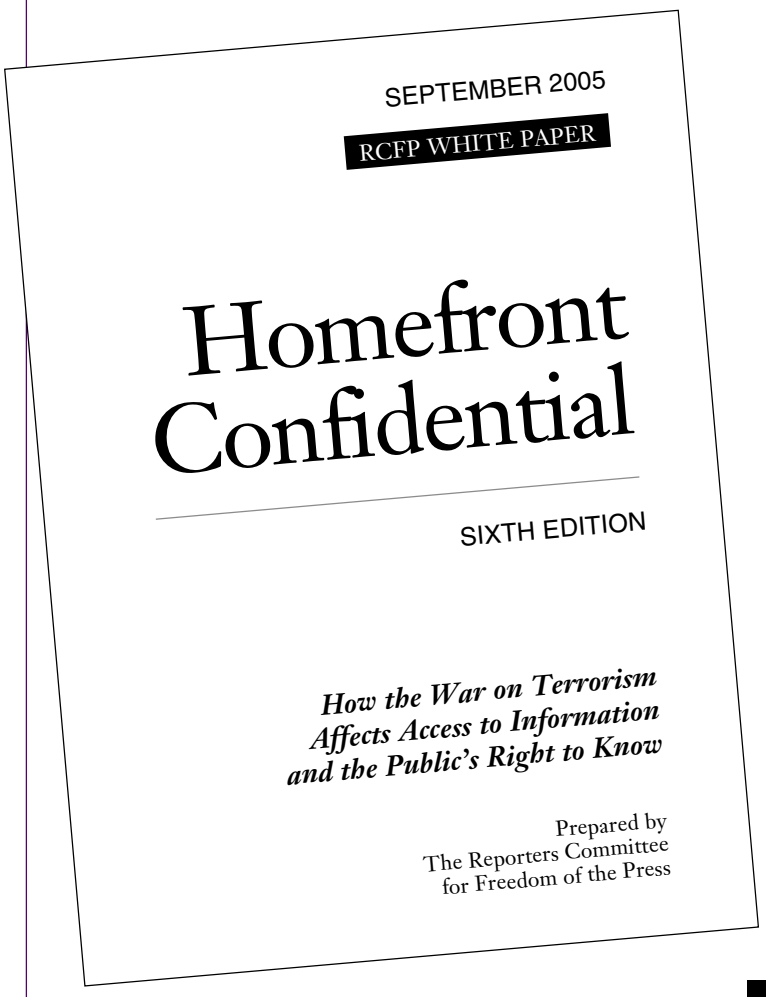
U.S. v. Quattrone, 402 F.3d 304 (2d Cir. 2005)
Sheppard v. Maxwell, 384 U.S. 333 (1966)
U.S. v. Brown, 250 F.3d 907 (5th Cir. 2001)

Don't Accept Ignorance



In the days immediately following the terrorist attacks of Sept. 11, 2001, the U.S. government embarked on an unprecedented path of secrecy. The atmosphere of terror induced public officials to abandon this country's culture of openness and opt for secrecy as a way of ensuring safety and security.

In the four years since Sept. 11, an astonishing amount of information has been taken away from the American people.

And yet, no one has demonstrated that an ignorant society is a safe society. Citizens are better able to protect themselves and take action when they know the dangers they face.

Each year, the Reporters Committee has chronicled and analyzed the actions taken by the Bush administration to restrict information from reaching the public.

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