



## Overview

In 2007, Del. Morgan Griffin introduced a bill that would have shielded juror information in all criminal cases. That bill, which VCOG opposed, was not reported out of committee, but was instead referred to the Virginia State Crime Commission for further study. VCOG did not oppose a subsequent bill brought by Del. Bob Marshall in 2008. Marshall's bill passed and was codified into §19.2-263.3 of the Virginia Code.

Concerned that juror safety might be threatened in high-profile gang and drug trials in his district, §19.20263.3 gives trial judges the discretion, upon a showing of good cause, to issue an order regulating the disclosure of jurors' personal information. "Good cause" is defined as including (but not limited to) the likelihood of bribery, tampering, or physical injury or harassment. The law also directs the Virginia Supreme Court to draw up rules "that provide for the protection of the personal information of a juror in a criminal trial."

The Committee's Proposal, submitted in April 2009, states in Section A that *in all criminal cases*, jurors are to be assigned numbers and should be referred to by number only during the proceedings. Section B prohibits the lawyers in a case from sharing juror information with the public "except by leave of court for good cause shown." This section further prohibits the parties from copying records on jury panel information, and requires the parties to return records to the court after the jury is impaneled. These records would then be placed under seal unless good cause is shown to justify their release. Finally, Section C says that where good cause is shown, including the likelihood of bribery, tampering, or physical injury or harassment, a judge can issue an order "further regulating the disclosure of the personal information of jurors . . . to any person," which could include a defendant.

The Committee opened the Proposal up to public comment. VCOG submits these comments in response to that invitation.

## Objections

In its current form — a rule shielding juror information in all criminal cases — goes beyond the scope of the current law; is potentially unconstitutional; may not accomplish its goal; interferes with the ability to monitor the judicial system; is overly broad; may compromise justice; and differs from state rules relied on by the Committee;

- **The Proposal goes beyond intent of current law.** The current law, §19.2-263.3, starts from the presumption that juror information is open but can be closed in a case-by-case determination upon a showing of good cause. The Proposal starts from a presumption that all juror information should be closed from public view and can be opened only upon a showing of good cause. The Proposal goes even further by regulating a lawyer's ability to copy, share or retain juror information, thus hampering the attorney's ability to meaningfully monitor jurors during the trial.
- **The Proposal raises serious constitutional concerns.** After the U.S. Supreme Court ruled in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), that the public had a presumptive First Amendment right to attend criminal trials (a ruling further endorsed by Virginia's Supreme Court in 1981), the nation's highest court then ruled in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984), that the jury-selection process was also presumptively open to the public. Most federal circuit cases that have considered attempts to restrict juror information have cited these two cases in reaching the conclusion that juror information should be open to the public unless good cause is



shown, and unless the judge makes findings in the record stating why the interest in confidentiality outweighs the presumption of openness.

- **The Proposal may fail to serve its declared goal of protecting jurors.** In smaller jurisdictions, there is a strong likelihood that some (or all) of the jury members are known or recognized by the defendant, court personnel, the public or the press. In larger jurisdictions, jurors can be observed in court and then subsequently approached on the street or followed home. Using numbers instead of names, and sealing juror information, will not change this.
- **The Proposal interferes with the public's ability to monitor the criminal justice system.** If all juror information is kept confidential in all cases, the public loses an important mechanism to ensure that jurors are being fairly selected and truly represent a cross-section of the community.
- **The Proposal is needlessly broad in coverage.** Not all juror information is created equal. Based on the circumstances of the individual cases, there may be more or less need to keep confidential juror names and addresses, versus a juror's demographic information, versus the individual's family, work, political and cultural life, versus a person's personal opinions about various issues, and so on. In addition to narrowing the scope of the type of restricted information, the Proposal could also be written to state that some or all of the information could be released at the trial's conclusion rather than sealing the information indefinitely, as Section C of the Proposal states. This would help the public understand the verdict and monitor the court system.
- **The Proposal could compromise the integrity of the jury's verdict.** Anonymous juries can dispense anonymous justice. In today's electronic-communication culture, hateful, vindictive and illogical rhetoric is often spewed anonymously. Hiding behind pseudonyms and inscrutable screen names, individuals are free to make wild accusations and draw erroneous conclusions without fear of being found out. Given a perpetual cloak of anonymity, jurors, too, would be freed of the confines of procedure, evidence or common sense, allowing them to render verdicts based on biases without any accountability.
- **The proposal may be inconsistent/incompatible with standards in other states.** Many state court systems have rules similar to §19.2-263.3, but few (if any) have a rule that completely closes the door on public access to juror information. Colorado and Minnesota courts, referred to by the Advisory Committee in its statement accompanying the Proposal, both employ a case-by-case determination to be supported by findings on the record.

## Conclusion

Juror safety is an important component of the judicial process. Jurors should not feel like they are putting their lives on the line when they step up to perform their civic duty. Unquestionably, judges should be mindful of juror safety and be provided the tools to protect jurors in special cases, such as during the prosecution of organized crime figures or gang leaders. But, a system of all-anonymous juries, as laid out by the Proposal in its current form, would lead to a system of all-anonymous justice.