

**Jury Practices and Procedures Committee
Supplemental Report
Concerning Juror Anonymity
(March 2003)**



Hon. Sheri Newman, Clerk of Court in La Paz County, Chair

Supplemental Report of the Jury Practices and Procedures Committee Concerning Juror Anonymity (March 2003)

At the Council's meeting in October 2002, the Council asked the Jury Practices and Procedures Committee ("the Committee") to revisit its recommendation that jurors' names not be used by the court or clerk in polling the jury at verdict. The Committee is returning the recommendation to the Council as originally recommended, after reviewing the law, common practices and trends in other states.

Under current Arizona practice, judges have the discretion to offer jurors anonymity when warranted. Court rules governing civil and criminal trial procedures require that the parties be provided with a list of names and other information relating to prospective jurors "on the day when jury selection is commenced" (Ariz. R. Civ. Pro. 47(a)(4); Ariz. R. Crim. Pro. 18.3).

It is at polling, when jurors are asked individually whether they agree with the verdict, that jurors have reported feeling most uncomfortable with the use of their names. The Committee's recommendation accommodates jurors' interest in privacy to some degree while maintaining the current practice that favors openness. While the lack of anonymity is not believed to explain the low response rate to juror summonses, the Committee's focus has been on finding ways to make jury service more convenient, comfortable and attractive to citizens, and the anonymity proposal is yet one more means of achieving that goal. Although the Committee stopped short of recommending a more complete anonymity, as some other states have begun to do, the consensus is that anonymity at polling is a good start.

On January 31, 2003 the Committee met with members of the media, defense bar, prosecutors, a licensed private investigator and a professional jury consultant to discuss the issue of whether to create a blanket policy requiring a specified level of juror anonymity. Prior to this meeting, the Committee reviewed news articles from around the country which laid out the current trend. Although the first reported use of an anonymous jury is relatively recent, a 1977 drug kingpin case out of New York, more courts are now using the practice more routinely. Missouri recently enacted a statewide policy of sealing juror lists and questionnaires in criminal cases. Parties and their attorneys are barred from disclosing the information absent a showing of good cause. California has reportedly adopted similar language and at least seven other states are considering the issue including Colorado, Florida, Maryland, New York, Ohio, Texas and Wisconsin.

The Committee heard the following arguments in favor of keeping juror names out of the public record:

- Jurors are now concerned about repercussions not only from the losing party, who may be a police officer or police agency, but also from fellow jurors, victims and their family members and associates.
- The public may have a right to know the qualifications of jurors, but names and contact information does not generally implicate one's ability to serve as a fair and impartial juror.

- Trial simulations and mock trials indicate that anonymous jurors tend to be more candid with each other in deliberations, speak their minds more openly, and are less intimidated by differences in educational background or socio-economic status.
- The courts can easily protect people from harm and spare them the embarrassment that sometimes accompanies jury service.
- If we only protect jurors' identities in notorious criminal cases, what do we tell the jurors in non-notorious cases about why we are not protecting them?
- Following their trial experience, jurors have a right to decline interviews with news media and investigators. Anonymity simply ensures that only the willing are placed in the public spotlight.
- Offering anonymity is a small gesture that may make the jury experience more comfortable for many who would otherwise ignore or resent being called to serve.

Arguments against juror anonymity included:

- The issue has not previously arisen in the legal community, indicating an absence of a problem needing to be "fixed."
- Especially in death penalty cases, it's better to stand up and be counted by name and not anonymously. Anecdotal evidence indicates that anonymous jurors may be more prone to misconduct because they are operating anonymously.
- Anonymity may raise concerns about personal safety in the minds of jurors who would not otherwise consider themselves to be threatened.
- The public has a presumptive First Amendment right to examine the voir dire process, with exception only for good cause and balanced only on a case-by-case basis. Public policies favoring openness are many, they include concerns about the legitimacy of a verdict, and that the public be allowed to determine for itself if justice is being done in a particular case.
- If the jury who acquitted the police officers in the first Rodney King trial had not been anonymous, there might have been less questioning of the legitimacy of that verdict.
- In a recent Ohio Supreme Court case, the court ruled that juror questionnaires, names and addresses are subject to a presumptive right of public access. Among the reasons given for public access are the need for fairness, where suspicions may arise that jurors were being selected improperly from a narrow social group, juror bias and confusion might be uncovered, and jurors' understanding of judicial proceedings could be investigated. Public knowledge of juror identities also tends to deter intentional misrepresentation during voir dire by jurors. Information gained from post-verdict interviews of jurors enhances the functioning of the judicial process, may uncover juror misconduct and system-wide problems amenable to reform.
- From a practical standpoint, the names of jurors are needed to reveal conflicts of interest.
- In the vast majority of jury trials, openness works and should be the rule. A blanket rule of confidentiality is using the worst case scenario to make policy (bad cases make for bad laws).
- Jurors' decisions in cases affect much more than the individual case. What juries do is too central to our system of openness to permit a blanket rule of anonymity.
- There should be a way to protect jurors from abuse while allowing legitimate use of the information by those who use it responsibly. Identify the abuse, fashion a process that is

- narrowly tailored to deal with it, but leave the system as open as possible. An overly broad remedy will threaten the fairness and integrity of the judicial system.
- Especially in capital cases, where jurors now decide whether to impose the death sentence, the need to uncover all relevant background information, attitudes and predispositions held by members of the jury pool is very great. Potential jurors who are permitted to remain anonymous may hide other information about themselves which will undermine the fairness of the process.

On the sole issue of juror anonymity, the Committee has considered current case law, reviewed recommendations from the Maricopa County jury committee, shared experiences and information received from their local jurors and heard from members of the media, defense bar, prosecutors, a licensed private investigator and a professional jury consultant.

The Committee recommends that when **polling a jury at verdict**, the jurors shall not be identified by name. Further, the Committee believes the issue of total juror anonymity deserves thorough examination and recommends that the Council assign the task either to the existing Committee or to a newly established committee devoted to this single issue.