



Virginia State Crime Commission

Confidentiality of Criminal Juror Information

November 13, 2007

Overview



- House Bill 2423 proposed to make all “personal information” about jurors in criminal cases confidential:
 - “personal information concerning a member of a jury in a criminal trial shall be sealed by the court at the conclusion of the trial ...”
- Personal information would include even the juror’s name.
- It also includes “age, occupation, home and work addresses, telephone numbers...any other identifying information that would assist another in locating or contacting the person.”

Overview



- Under the bill, the sealing of the information would be automatic.
- Information would only be released “upon motion for good cause shown.”

Analysis



- **Public policy typically favors transparency in the criminal justice process.**
- **The ability to interview jurors after a criminal trial may be an important part of:**
 - a criminal investigation;
 - an investigation done on behalf of habeas counsel;
 - academic research by criminologists/sociologists;
 - a general review of the case by newspaper reporters or historians.

Analysis



- The United States Supreme Court has recognized in a variety of cases that the public and the press have a right to court documents and judicial records.
- There is a common law right to “inspect and copy. . .judicial records and documents.” Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978).
- There is also a First Amendment guarantee of access to particular judicial records and documents. Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 15 (1986).

Analysis



- “Regardless of whether the right of access arises from the First Amendment or the common law, it may be abrogated only in unusual circumstances.” Stone v. University of Md. Med. Sys. Corp., 855 F.2d 178, 182 (4th Cir. 1988).

Analysis



- For instance, in Press-Enterprise Co. v. Superior Court, the U. S. Supreme Court held that the press had a right to receive transcripts of closed voir dire hearings, even though the lawyers' questions explored some jurors':
 - "personal problems. . .which could be somewhat sensitive as far as publication of those particular individuals' situations are concerned."

Analysis



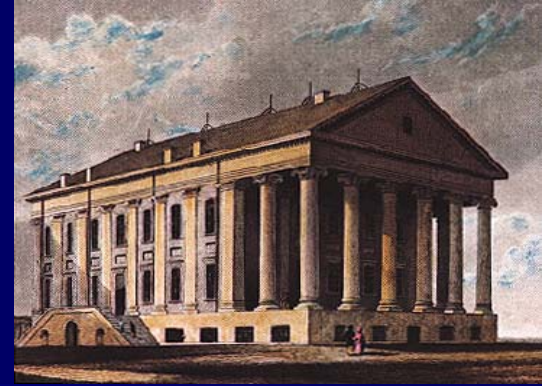
- Even though multiple cases have affirmed the basic proposition that the criminal justice process must be open to the public, one state has enacted a statute similar to what is proposed by House Bill 2423.
- California Civil Code § 237 provides that upon the rendering of a verdict, the names of the jurors are automatically sealed.
- They remain sealed unless a person with a valid interest petitions the court to release the information.

Analysis



- There has never been a facial challenged to this California statute, so it has not been declared unconstitutional.
- It appears that most petitioners are successful in obtaining juror information under this statute if their interests are legitimate.

Conclusion



- If Virginia were to pass a law similar to California's, the identity of the jurors in a criminal case would have to be unsealed for legitimate reasons, to any person, including the defendant.
- A cursory review of several circuit courts around the state found that while the names of the jurors are kept in the court file at the end of a case, no other contact information is ever released, not even to habeas counsel for the defendant.



Discussion