

## Victim Law Position Paper\*

LEGAL PUBLICATIONS PROJECT OF THE NATIONAL CRIME VICTIM LAW INSTITUTE AT LEWIS & CLARK LAW SCHOOL\*\*

### Protecting the Rights of Survivors When They Are Called to Participate in Jury Service

The Supreme Court has observed that “[o]ne of [jury service’s] greatest benefits is in the security it gives the people that they, as jurors actual or possible, being part of the judicial system of the country can prevent its arbitrary use or abuse.”<sup>1</sup> Despite its important role in our society, for some survivors, participation in jury service—and, specifically, the voir dire process<sup>2</sup> of jury selection—may present a risk of re-victimization.<sup>3</sup>

Indeed, as prosecutors and defense counsel alike seek to empanel a jury that is unbiased and impartial, jurors may be questioned on a wide range of topics, ranging from “bumper stickers and movie preferences to sexual orientation, incest, and accusations of child molestation.”<sup>4</sup> For some survivors these questions may solicit information relating to victimization that is inherently private. In fact, some survivors facing questions in voir dire relating to crimes committed against them may have never previously reported or disclosed their victimization.<sup>5</sup> Importantly, privacy “is not simply an absence of information about us in the minds of others; rather[,] it is the *control* we have over information about ourselves.”<sup>6</sup> Consequently, it can be particularly harmful to crime victims if truthfully answering voir dire questions compels<sup>7</sup> them to sacrifice their privacy and disclose private moments to a public courtroom, thereby “turning a private life into a public spectacle.”<sup>8</sup>

It is well-established that protecting the privacy of victims is a compelling state interest and a matter of utmost importance to victims.<sup>9</sup> All individuals, including victims of crime, are guaranteed a right to privacy by the federal constitution.<sup>10</sup> Further, victims of crime are guaranteed constitutional and/or statutory victims’ rights in connection with state and federal criminal investigations and prosecutions.<sup>11</sup> Among these guarantees are often included the rights to privacy and to be treated with fairness, respect, and dignity.<sup>12</sup> Just as the jury is not “required to leave its common sense at the courthouse door,”<sup>13</sup> jurors do not sacrifice their rights when summoned to appear for jury service as part of the venire,<sup>14</sup> nor do victims’ rights evaporate the moment a criminal investigation and prosecution ends.<sup>15</sup>

In the context of juror privacy, the Supreme Court has observed that “[t]he jury selection process may, in some circumstances, give rise to a compelling interest

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of a prospective juror when interrogation touches on deeply personal matters that person has legitimate reasons for keeping out of the public domain.”<sup>16</sup> In such an instance, the “privacy interests of such a prospective juror must be balanced against the historic values we have discussed and the need for openness of the process.”<sup>17</sup> As the Supreme Court stated:

To preserve fairness and at the same time protect legitimate privacy, a trial judge must at all times maintain control of the process of jury selection and should inform the array of prospective jurors, once the general nature of sensitive questions is made known to them, that those individuals believing public questioning will prove damaging because of embarrassment, may properly request an opportunity to present the problem to the judge *in camera* but with counsel present and on the record.<sup>18</sup>

Whereas questioning on topics irrelevant to the criminal proceeding should be prohibited altogether,<sup>19</sup> the “defense [and the state] must be given a full and fair opportunity to expose bias or prejudice on the part of the veniremen.”<sup>20</sup> The procedure outlined by the Supreme Court of informing the juror of their right to request *in camera* discussion of private information is designed to “minimize the risk of unnecessary disclosure” of private matters.<sup>21</sup> In addition to warranting *in camera* review, a juror’s “privacy right may rise to a level that part of the transcript should be sealed, or the name of a juror withheld, to protect the person from embarrassment.”<sup>22</sup> Many jurisdictions have explicitly adopted statutes or rules that protect jurors—including jurors who are victims of crime—from compelled disclosure of private information,<sup>23</sup> and courts have an obligation to ensure that victims’ rights are protected.<sup>24</sup>

Courts have long disapproved of the reality that, all too often, “when the courts have been faced with the problems of intrusion into the . . . privacy of . . . victims to crime, there seems to have developed an attitude resting uncomfortably between studied

indifference and benign neglect.”<sup>25</sup> The criminal justice process must be neither indifferent to nor neglectful of victims’ privacy rights; instead, victims’ privacy must be consistently respected and vigorously enforced by the courts. Victims of crime who are called to participate in jury service are not required to sacrifice control of private information relating to offenses committed against them as a consequence of fulfilling their civic duty. To the contrary, victims are guaranteed the rights to privacy and to be treated with fairness, respect, and dignity. The criminal justice system must protect these rights to the greatest extent possible during voir dire, while still respecting the other important rights that exist at this stage of a criminal proceeding.

### Implementation

- Courts should consider best practices when it comes to notifying potential jurors of their right to request *in camera* discussion of private topics. Possible options may include:
  - Including in the initial notification letter to potential jurors information about questions they may be asked and how private information is handled.
  - Including information online for jurors addressing private information and their ability to request *in camera* discussions of certain topics.
  - Including check-boxes on written juror questionnaires that jurors can use to request *in camera* discussion of certain topics.
  - Pre-screening jurors using written questionnaires that inform them that questions regarding prior victimization they have experienced may be asked and that provide them with an opportunity, in advance, to indicate whether they would prefer *in camera* discussions of certain topics.
  - Posting signs in the jury room and in the areas where jurors congregate to remind jurors of the *in camera* option.
  - Including this information in any videos or in-person introductions and/or orientation materials that are

provided to jurors when they arrive for jury service.

- Drafting standard jury instructions that include this information to be read by the court to every panel of jurors before voir dire begins.
- Creating practice guidelines for sealing juror questionnaires or transcripts of a juror's voir dire responses and/or allowing a juror to be known by pseudonym.
- Adopting practices to ensure the clarity of any findings required to be made by a court prior to conducting *in camera* proceedings related to juror questioning or to otherwise protect jurors' private information.
- Survivors who wish to assert their privacy rights as jurors may require the assistance of an attorney to advocate on their behalf.

<sup>1</sup> *Balzac v. Porto Rico*, 258 U.S. 298, 310 (1922).

<sup>2</sup> "Voir dire" is the pretrial questioning of potential jurors (these jurors are part of the "venire," which is the term that refers to the entire pool of potential jurors), and its purpose is to help determine which individuals will serve on the jury.

<sup>3</sup> Re-victimization, which is often referred to a secondary victimization, can occur when victims incur additional trauma or harm as a result of their involvement with the criminal justice system. See generally Nat'l Crime Victim Law Inst., *Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice System*, NCVLI Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), Mar. 2013, available at <http://law.lclark.edu/live/files/13798-polyvictims-victims-rights-enforcement-as-a-tool>.

<sup>4</sup> Melanie D. Wilson, *Juror Privacy in the Sixth Amendment Balance*, 2012 Utah L. Rev. 2023, 2026 (2012).

<sup>5</sup> See, e.g., Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice, Office of Justice Programs, Nat'l Inst. of Justice, *Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey* 1, 33 (Jan. 2006), available at <http://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (finding "only 19.1 percent of the women and 12.9 percent of the men who were raped since their 18th birthday said their rape was reported to the police" and documenting "an epidemic of rape" in this country); accord *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases: Hearing before the S. Comm. on the Judiciary Subcomm. on Crime and*

*Drugs* 26-27 (Sept. 14, 2010), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg64687/pdf/CHRG-111shrg64687.pdf> (statement of Dean G. Kilpatrick observing that "[m]ost rape cases (over 80%) are still not reported to police, indicating that this remains a chronic problem that we must address"); Lynn Hecht Schafran, *Writing and Reading About Rape: A Primer*, 66 St. John's L. Rev. 979, 1013-17 (1993) (emphasis in original) (noting that "rape is rarely reported to anyone" and analyzing some of the reasons why rape victims do not report).

<sup>6</sup> Charles Fried, *Privacy*, 77 Yale L.J. 475, 482 (1968) (emphasis in original); see also *id.* at 493 ("The concept of privacy requires . . . a sense of control and a justified, acknowledged power to control aspects of one's environment."). Stripping survivors of control over the narrative of their victimization constitutes an act of re-victimization. The importance of victim agency is rooted in the inherently out-of-control nature of a crime; when a person becomes a "victim," he or she often feels robbed of control. See, e.g., Alan N. Young, *The Role of the Victim in the Criminal Process: A Literature Review—1989 to 1999*, at 11, Ottawa, Canada: Department of Justice, Research and Statistics Division, available at [http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/rr00\\_vic20/rr00\\_vic20.pdf](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/rr00_vic20/rr00_vic20.pdf); see generally Nat'l Crime Victim Law Inst., *Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice System*, NCVLI Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), Mar. 2013, available at <http://law.lclark.edu/live/files/13798-polyvictims-victims-rights-enforcement-as-a-tool>; cf. Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. Traumatic Stress 159, 162-63 (2003) (discussing research showing that victims' "overall satisfaction with the criminal justice system was directly related to their sense of inclusion and empowerment" and that victims who were given a chance to participate in the criminal justice process "appeared to have better mental health outcomes"); Dean G. Kilpatrick & Randy K. Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 Wayne L. Rev. 7, 17 (1987) (explaining why giving victims input into the criminal justice system proceedings and providing them with information about the justice process helps to increase victims' perceptions of control, decrease their feelings of helplessness, and reduce psychological distress).

<sup>7</sup> Jurors have faced contempt sanctions when refusing to answer questions for privacy reasons. See, e.g., *Brandborg v. Lucas*, 891 F. Supp. 352 (E.D. Tex. 1995) (recounting that the trial court held a prospective juror in contempt for refusing to answer twelve questions of a private nature during jury selection and setting aside the contempt finding as violating the prospective juror's federal constitutional privacy rights).

<sup>8</sup> Edward J. Bloustein, *Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser*, 39 N.Y.U. L. Rev. 962, 979 (1964).

<sup>9</sup> See, e.g., *Michigan v. Lucas*, 500 U.S. 145, 150 (1991) (recognizing that rape shield laws "represent[] a valid legislative

determination that rape victims deserve heightened protection against surprise, harassment, and unnecessary invasions of privacy”); *People v. Ramirez*, 64 Cal. Rptr. 2d 9, 12-13 (Cal. Ct. App. 1997) (“There can be little dispute that the state’s interest in protecting the privacy of sex offense victims is extremely strong and fully justified.”); see also U.S. Dep’t of Justice, Office of Justice Programs, Office for Victims of Crime, *New Directions From The Field: Victims’ Rights and Services for the 21st Century* 21 (1998), available at [https://www.ncjrs.gov/ovc\\_archives/directions/pdfxt/direct.pdf](https://www.ncjrs.gov/ovc_archives/directions/pdfxt/direct.pdf) (“Privacy remains a critical concern of victims of sexual assault, and a primary factor in non-reporting.”); see also generally Nat’l Crime Victim Law Inst., *Protecting Victims’ Privacy: Moving to Quash Pretrial Subpoenas Duces Tecum for Non-Privileged Information in Criminal Cases*, NCVLI Violence Against Women Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Sept. 2014, available at [law.lclark.edu/live/files/18060-quashing-pretrial-subpoenasbulletinpdf](http://law.lclark.edu/live/files/18060-quashing-pretrial-subpoenasbulletinpdf); Nat’l Crime Victim Law Inst., *Protecting Victims’ Privacy Rights: The Use of Pseudonyms in Criminal Cases*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Oct. 2013, available at [law.lclark.edu/live/files/15549-protecting-victims-privacy-rights---the-use-of](http://law.lclark.edu/live/files/15549-protecting-victims-privacy-rights---the-use-of); Nat’l Crime Victim Law Inst., *Refusing Discovery Requests of Privileged Materials Pretrial in Criminal Cases*, NCVLI Violence Against Women Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), June 2011, available at <https://law.lclark.edu/live/files/11779-refusing-discovery-requests-of-privileged>. It is important to note that privacy is not a concern of victims of invasive crimes alone; victims of all crimes have important privacy interests that must be acknowledged and afforded, and nothing justifies limiting the protection of victims’ privacy to victims of only a specific subset of offenses. Cf. *United States v. Madoff*, 626 F. Supp. 2d 420, 426 (S.D.N.Y. 2009) (acknowledging the privacy interests of victims of a Ponzi scheme and finding that those interests outweigh the public’s right to access the personally identifiable information of those victims who objected to public disclosure of their identities). The effect of participating in the criminal justice system varies from individual to individual and is not solely dependent on the type of offense committed against him or her; whether this participation—including disclosure of private information relating to the offense—may be experienced as traumatic is not dictated only by the objective reality of the event but also by a person’s subjective response to the event. See, e.g., Kristine Buffington, Carly B. Dierkhising & Shawn C. Marsh, *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency* (2010), available at [http://www.ncjfcj.org/sites/default/files/trauma%20bulletin\\_1.pdf](http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf); Substance Abuse and Mental Health Services Administration, *Trauma Definition*, <http://www.samhsa.gov/traumajustice/traumadefinition/definition.aspx> (last visited Sept. 16, 2014).

<sup>10</sup> See, e.g., *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977) (recognizing that the United States Constitution provides a right to personal privacy, which includes an “individual interest in avoiding disclosure of personal matters”); *Roe v. Wade*, 410 U.S. 113, 152 (1973) (“[A] right of personal privacy, or a

guarantee of certain areas or zones of privacy, does exist under the Constitution.”).

<sup>11</sup> See generally Nat’l Crime Victim Law Inst., *Fundamentals of Victims’ Rights: A Brief History of Crime Victims’ Rights in the United States*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2011, at 2, available at [law.lclark.edu/live/files/11822-fundamentals-of-victims-rights-a-brief-history-of](http://law.lclark.edu/live/files/11822-fundamentals-of-victims-rights-a-brief-history-of) (citations omitted) (compiling citations and observing that “more than 30 states have amended their constitutions to afford victims’ rights, and all 50 states along with the District [of] Columbia and the federal government have enacted statutory and rule-based protections for victims”).

<sup>12</sup> Some combination of victims’ rights to privacy and to be treated with fairness, dignity, and respect is found in many jurisdictions nationwide. See, e.g., 18 U.S.C. § 3771(a)(8) (stating that crime victims have the “right to be treated with fairness and with respect for the victim’s dignity and privacy”); Ariz. Const. art. 2, § 2.1(A)(1) (treated with fairness, respect, and dignity); Cal. Const. art. I, § 28(b)(1) (treated with fairness and respect for privacy and dignity); Colo. Rev. Stat. § 24-4.1-302.5(1)(a) (treated with fairness, respect, and dignity); Conn. Const. art. 1, § 8(b)(1) (treated with fairness and respect); Haw. Rev. Stat. § 801D-1 (treated with dignity, respect, courtesy, and sensitivity); Idaho Const. art. 1, § 22(1) (treated with fairness, respect, and dignity); Ill. Const. art. 1, § 8.1(a)(1) (treated with fairness and respect for victim’s dignity and privacy); Ind. Const. art. 1, § 13(b) (treated with fairness, dignity, and respect); Kan. Stat. Ann. § 74-7333(a)(1) (treated with courtesy, compassion, and respect for victim’s dignity and privacy); La. Const. art. I, § 25 (treated with fairness, dignity, and respect); Md. Const. Decl. of Rights art. 47(a) (treated with dignity, respect, and sensitivity); Mich. Const. art. 1, § 24(1) (treated with fairness and respect for victim’s dignity and privacy); Miss. Const. art. 3, § 26A (treated with fairness, dignity, and respect); N.H. Rev. Stat. Ann. § 21-M:8-k(II)(a) (treated with fairness and respect for victim’s dignity and privacy); N.J. Const. art. 1, § 22 (treated with fairness, compassion, and respect); N.M. Const. art. 2, § 24(A) (1) (treated with fairness and respect for victim’s dignity and privacy); Ohio Const. art. I, § 10a (accorded fairness, dignity, and respect); Okla. Const. art. II, § 34 (treated with fairness, respect, and dignity); Or. Const. art. I, § 42(1) (accorded due dignity and respect); Pa. Const. Stat. § 11.102(1) (treated with dignity, respect, courtesy, and sensitivity); R.I. Const. art. 1, § 23 (treated with dignity, respect, and sensitivity); S.C. Const. art. I, § 24(A) (1) (treated with fairness, respect, and dignity); Tenn. Code Ann. § 40-38-102(a)(1) (treated with dignity and compassion); Utah Const. art. I, § 28(1)(a) (treated with fairness, respect, and dignity); Vt. Stat. Ann. tit. 13, § 5303(a) (treated with dignity and respect); Va. Const. art. I, § 8-A (accorded fairness, dignity, and respect); Wash. Const. art. 2, § 35 (accorded due dignity and respect); Wis. Const. art. I, § 9m (treated with fairness, dignity, and respect for privacy). If a victim is to be treated with dignity, fairness and respect, his or her privacy must be honored and protected. Cf. *Schmerber v. California*, 384 U.S. 757, 769-70 (1966) (observing in the context of searches and seizures that the

Fourth Amendment protects the twin “interests in human dignity and privacy”).

<sup>13</sup> *United States v. Anderson*, 747 F.3d 51, 70 (2d Cir. 2014).

<sup>14</sup> Wilson, *supra* note 4, at 2035-36 (citations omitted) (observing that “[o]utside of the voir dire process, jurors’ privacy is protected by various statutes and by the Constitution. But once part of the jury pool, citizens are treated as though their rights evaporate.”); David Weinstein, *Protecting a Juror’s Right to Privacy: Constitutional Constraints and Policy Options*, 70 Temp. L. Rev. 1, 51 (1997) (“Jurors are not merely instruments by which the rights of criminal defendants, civil litigants, and the press can find expression. They are individuals possessing constitutional rights that they should not be forced to surrender upon entering the courthouse door.”); Michael R. Glover, Comment, *The Right to Privacy of Prospective Jurors During Voir Dire*, 70 Cal. L. Rev. 708, 711-12 (1982) (citations omitted) (“People should not, in fact, lose their expectations of privacy by becoming prospective jurors. A person may, of course, lose his expectation of privacy with respect to certain matters by taking an action that opens those matters to public scrutiny. Nothing about becoming a prospective juror, however, should have that effect: prospective jurors do not seek out the public forum; they are summoned, often unwillingly, to fulfill a public duty in the justice system.”); *see also* *Brandborg*, 891 F. Supp. at 357 (“[N]othing about becoming a prospective juror amounts to a willing waiver of an expectation of privacy.”); *but see* Karen Monsen, *Privacy for Prospective Jurors at What Price? Distinguishing Privacy Rights from Privacy Interests; Rethinking Procedures to Protect Privacy in Civil and Criminal Cases*, 21 Rev. Litig. 285 (2002) (rejecting jurors’ constitutional privacy right in favor of a privacy interest and distinguishing between jurors’ privacy interests in criminal vs. civil cases).

<sup>15</sup> For additional information about victims’ rights in the pretrial and post-conviction contexts, please contact NCVLI.

<sup>16</sup> *Press-Enterprise Co. v. Superior Court of California, Riverside County*, 464 U.S. 501, 511 (1984).

<sup>17</sup> *Id.* at 512.

<sup>18</sup> *Id.*

<sup>19</sup> *See, e.g., Schlinsky v. United States*, 379 F.2d 735, 738 (1st Cir. 1967) (observing that “the purpose of voir dire is to ascertain disqualifications, not to afford individual analysis in depth to permit a party to choose a jury that fits into some mold that he believes appropriate for his case”); *United States v. Barnes*, 604 F.2d 121, 143 (2d Cir. 1979) (“If Darrowsque questioning of prospective jurors were allowed, namely ‘religion, politics, social standing, family ties, friends, habits of life and thought’, any semblance of juror privacy would have to be sacrificed. There is neither statutory nor constitutional law that requires disclosure of information about jurors unrelated to any issues as to which prejudices may prevent an impartial verdict.”); *see also* Lauren

A. Rousseau, *Privacy and Jury Selection: Does the Constitution Protect Prospective Jurors from Personally Intrusive Voir Dire Questions?*, 3 Rutgers J. L. & Urb. Pol’y 287, 292 (2006) (citations omitted) (“It is important to note that with respect to jurors, a litigant is entitled only to impartiality. He does not have a right to jurors of any particular predisposition, or who have possess [sic] any particular characteristics, or adhere to any particular value system—unless those predispositions or values rise to such a level that the juror cannot view the evidence or decide the case in an impartial manner.”).

<sup>20</sup> *Barnes*, 604 F.2d at 139 (quoting *United States v. Robinson*, 475 F.2d 376, 380-81 (D.C. Cir. 1973)).

<sup>21</sup> *Press-Enterprise*, 464 U.S. at 512.

<sup>22</sup> *Id.*

<sup>23</sup> *See, e.g.,* Del. Rules of Super. Ct. Juror Use, Standard 20(b), (c) (mandating that “[t]he method of conducting voir dire should be that best suited to protect the privacy of potential jurors given the nature of information sought and the rights involved” and providing that, “[a]fter jury selection is complete, the court should make inaccessible to the public, the parties, and their attorneys any information collected in connection with, or revealed during voir dire about individuals called for jury duty but not selected for the jury”); Indiana Jury R. 10 (“Personal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel. The court shall maintain that confidentiality to an extent consistent with the constitutional and statutory rights of the parties.”); Iowa Code Ann. § 607A.47 (“The court may, on its own motion, or upon the motion of a party to the case or upon the request of a juror, order the sealing or partial sealing of a completed juror questionnaire, if the court finds that it is necessary to protect the safety or privacy of a juror or a family member of a juror.”); Ohio Trial Court Jury Use and Mgmt., Standard 7(A), (D) (providing that voir dire be “limited to matters relevant to determining whether to remove a juror for cause and to determine the juror’s fairness and impartiality” and directing the judge to “ensure that the privacy of prospective jurors is reasonably protected”); Tenn. R. Crim. P. 24(b)(2) (“On motion of a party or its own initiative, the court may direct that any portion of the questioning of a prospective juror be conducted out of the presence of the tentatively selected jurors and other prospective jurors.”); Wash. General R. 30(j) (“Individual juror information, other than name, is presumed to be private.”). *See also* Am. Bar Ass’n Standard 20: Juror Privacy, available at [https://www.courts.wa.gov/committee/?fa=committee.display&item\\_id=268&committee\\_id=101](https://www.courts.wa.gov/committee/?fa=committee.display&item_id=268&committee_id=101) (providing that with respect to inquiry into jurors’ “more personal information, including potentially embarrassing or harmful information, the court should consider alternative methods of voir dire such as in camera voir dire or written questionnaires”); N.M. Uniform Jury Instruction 14-120 (applying to voir dire in criminal proceedings and instructing potential jurors that “If you would prefer not to

answer any question in front of other people, please tell us and we will address your concern privately”); Washington State Jury Commission, Report to the Board for Judicial Administration, Recommendations 18 & 20, at 33-35, 38-39 (July 2000), available at [https://www.courts.wa.gov/committee/pdf/Jury\\_Commission\\_Report.pdf](https://www.courts.wa.gov/committee/pdf/Jury_Commission_Report.pdf) (finding that jurors “have a reasonable expectation of privacy” and recommending that juror information “be treated as presumptively private” and “not disclosed to anyone without good cause shown” and recommending, in sensitive cases, that “the court should consider using written questionnaires and examining jurors outside the presence of other jurors”).

<sup>24</sup> See, e.g., *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (“The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.”). It is of particular importance that courts inform jurors of their ability to request accommodations with respect to information they do not wish to make public, as jurors cannot presume that either party to the proceeding will act to protect their privacy. See, e.g., Weinstein, *supra* note 14, at 18 (citations omitted) (noting that “the parties’ interests do not always coincide with those of the jurors. For example, the parties may jointly agree upon a questionnaire to submit to the venire and thus have no stake in raising objections to the questions contained therein.”); see also *United States v. Padilla-Valenzuela*, 896 F. Supp. 968, 972 (D. Ariz. 1995) (citation omitted) (“Perhaps most distressing, prospective jurors may find that unless the trial judge monitors the scope of inquiry, no one will be concerned about their privacy.”); *Brandborg*, 891 F. Supp. at 356 (“While the parties have attorneys to champion their rights, the courts must protect the privacy rights of the prospective jurors.”).

<sup>25</sup> *People v. Browning*, 166 Cal. Rptr. 293, 296 (Cal. Ct. App. 1980) (making this observation in a case where defendant sought physical intrusion into the victim’s body via surgical procedure).

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