
In the
UNITED STATES COURT OF APPEALS
for the Seventh Circuit

No. 10-2359

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

**ROD BLAGOJEVICH and
ROBERT BLAGOJEVICH,**

Defendant–Appellees.

**CHICAGO TRIBUNE COMPANY,
NEW YORK TIMES COMPANY,
ILLINOIS PRESS ASSOCIATION, and
ILLINOIS BROADCASTERS’ ASSOCIATION,**

Appellants.

**On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 08 CR 888 — James B. Zagel, Judge.**

BRIEF & APPENDIX OF THE UNITED STATES

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JURISDICTIONAL STATEMENT

The appellant's jurisdictional statement is not complete and correct.

The defendants in this criminal case are charged with violations of 18 U.S.C. §§ 371, 666(a)(1), 1001(a)(2), 1343, 1346, 1951(a), 1962(c), and 1962(d). R. 231.¹ The district court has jurisdiction under 18 U.S.C. § 3231. The trial of two of the charged defendants, Rod Blagojevich and Robert Blagojevich, is ongoing.

On June 1, 2010, Chicago Tribune Company ("Tribune"), the Associated Press ("AP"), the Illinois Press Association ("IPA"), the Illinois Broadcasters' Association ("IBA"), and the New York Times Company ("New York Times"), (collectively, the "appellants"), moved to intervene in the case for the limited purpose of "objecting to an anonymous jury and seeking immediate access to the names of jurors during *voir dire* and trial." R. 407. In a Minute Order entered on the clerk's docket on June 3, 2010, the district court denied the motion to intervene "for the reasons stated in open court." R. 423. On June 4, 2010, the appellants timely filed a notice of appeal. R. 422.

¹ Citations to the record on appeal are to "R.," followed by the relevant document number. Citations to the defendant's brief and appendix on appeal are to "Def. Br." and "Def. App.," respectively, followed by the relevant page number. Citations to the government's appendix are to "Gov. App.," followed by the relevant page number. Citations to the transcripts of proceedings are "Tr.," preceded by the date of the proceedings, and followed by the relevant page number.

The district court's denial of the motion to intervene is a collateral order over which this Court has jurisdiction pursuant to 28 U.S.C. § 1291. *See, generally, Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468-69 (1978) (appeal may be taken where a court's order "conclusively determine[d] the disputed question, resolve[d] an important issue completely separate from the merits of the action, and [would be] effectively unreviewable on appeal from a final judgment"); *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949) (same). Pursuant to this Court's precedent, the Court's jurisdiction is limited to reviewing the district court's order denying intervention, and does not extend to reviewing the merits of the appellants' challenge to the district court's decision to delay public release of the seated jurors' names until the conclusion of trial. *In re Associated Press*, 162 F.3d 503, 508 (7th Cir.1998); *United States v. Jessup*, 227 F.3d 993, 999 (7th Cir. 2000) .

ISSUES PRESENTED FOR REVIEW

1. Whether the district court abused its discretion in denying appellants' motion to intervene on the basis that the motion was untimely.
2. If reviewable, whether the district court abused its discretion in deciding to withhold juror names from the public (but not the parties) until the trial's end.

STATEMENT OF FACTS

The Criminal Case

Defendants Rod Blagojevich and Robert Blagojevich have been charged in a second superseding indictment with various offenses arising out of Rod Blagojevich's alleged use and agreement to use the powers of the Office of the Governor of the State of Illinois, and of certain state boards and commissions subject to influence by the Office of the Governor, to take and cause governmental actions, including: appointments to boards and commissions; the awarding of state business, grants, and investment fund allocations; the enactment of legislation and executive orders; and the appointment of a United States Senator, in order to obtain financial benefits for defendant Rod Blagojevich and others. R. 231.

Defendants were initially charged in a criminal complaint and arrested on December 9, 2008. R.1. The trial against Rod and Robert Blagojevich is ongoing before Judge Zagel and a jury.

Trial, Jury Selection, Seating and Management of the Petit Jury

Approximately one year before trial, on June 1, 2009, the district court held a public status hearing during which the court discussed the scheduling of trial, and related matters. See 6/1/2009 Tr. (attached as Government Appendix 1.) During this hearing, the district court advised the parties, among

other things, that it had received unsolicited letters and emails from members of the public, stating opinions and offering advice regarding rulings in the case:

. . . I am receiving a small number of letters and e-mails from members of the general public who I'm told by members of my staff who read these things, I don't, who are giving me lots of advise [*sic*] as to how I should rule and what I should do

Gov. App. 4. As a result of these contacts, the district court stated that it had “given some consideration to public anonymity of the jurors at [least] until the trial is over,” because it did “not want members of the jury to be subjected to outside communications.” Gov. App. 4. The court also indicated that it planned to use a jury questionnaire prior to voir dire, and directed the parties to begin thinking about questions to be included on the jury questionnaire. Gov. App. 3-4. The court’s comments were reported by the press. *See* Korecki, Natasha, “Blago Trial Could Start in Less than a Year,” 6/2/09 CHISUN 4 2009 WLNR 10535797 (reporting that the district court was considering empaneling an anonymous jury).

Less than one month later, at a status hearing held on June 25, 2009, the district court set the case for trial on June 3, 2010, as to defendants Rod Blagojevich and Robert Blagojevich. R. 132.

As the scheduled trial date approached, the district court advised the parties regarding the status of the court’s efforts to obtain potential jurors who

would be able to serve for 15 to 17 weeks, the estimated length of the trial. At a hearing on May 17, 2010, *see* 5/17/2010 Tr. (attached as Government Appendix 2), the district court judge informed the parties that a large mailing had been sent, that the court had identified potential jurors numbering “somewhere in the 90’s” who were available for the relevant time period, and that a large number of jurors had provided satisfactory reasons establishing that service for this extended period would cause them undue hardship. Gov. App.7-8. The court advised the parties that the court would have in place an expedited process for summoning additional potential jurors should that become necessary. Gov. App. 8. Finally, the court advised that potential jurors would be filling out jury questionnaires one day before voir dire (on June 2, 2010). 5/17/2010 Tr. 9.

Later the same day, the district court judge met with members of the media in an informal gathering to discuss procedures that would be in place during the trial of this case. Def. App. 18 (referring to meeting). During this meeting, the district court judge indicated that he would not be releasing to the public the names of the jurors seated in the case until after verdicts had been reached. *Id.*²

² At Def. Br. 3, the appellants correctly describe the district court’s comments as “off-the-record,” as the comments were made during a meeting with representatives of the press and thus were not made part of the record of the district court case at that time. However, the comments were not made “off-the-record” in the journalistic sense of the term. The comments were widely reported by the press. *See, e.g.*, Jeff Coen and

Appellants' Motion to Intervene

Two weeks after the district court's meeting with the press, on June 1, 2010, appellants filed a "Motion to Intervene and for Immediate Public Access to Names of Jurors," together with a supporting memorandum. R. 407, 408. Appellants noticed the motion for hearing on June 3, 2010, the day after potential jurors were scheduled to arrive at the courthouse to fill out written juror questionnaires. R. 409; .

On June 3, 2010, the district court held a hearing on the appellants' motion. R.423; 6/3/2010 Tr. 1-19 (Def. App. 2-20).³ The court began the hearing by noting that it had read the appellants' motion to intervene and supporting memorandum, and asking whether the government wished to express a view on the motion. Def. App. 4.⁴ The government objected to the motion, on the grounds that there is no qualified First Amendment right to access to juror names before the return of a verdict and that, even if there were, nondisclosure

Bob Sexter, Chicago Tribune, "Jurors' identities to be kept secret until verdict is in," 5/18/10 CHICAGOTR 4 2010 WLNR 10325781.

³ The date of the hearing is erroneously listed on the transcript included in the appellants' required short appendix as June 6, 2010.

⁴ Although the defendants had notice of the hearing, neither was present at the beginning of the hearing, and neither expressed a view regarding the relief sought by appellants. See Def. App. 4, 18-19. At the conclusion of the hearing, counsel for defendant Robert Blagojevich acknowledged for the record that both defendants had notice of the hearing. Def. App. 18-19.

in this particular case would be justified in order to protect the defendant's right to a fair trial. *Id.* at 3-4. The government argued that Judge Amy St. Eve's opinion and reasoning in the *Black* case [*United States v. Black*, 483 F. Supp. 2d 618 (N.D. Ill. 2007)] was correct and, given the similarities of that case to this one, could be adopted in full for the analysis here. *Id.* at 4.

The district court then heard argument from counsel for the appellants. *Id.* at 4. Counsel argued that the First Amendment right of access to criminal proceedings attached to voir dire proceedings. *Id.* Relying heavily on the Third Circuit's opinion in *United States v. Wecht*, 537 F.3d 222 (3d Cir. 2008), counsel argued that the district court's routine practice was to make jurors' names public even in high profile cases, and this practice gave accountability and credibility to the process and that, in light of these facts, the press was entitled under the First Amendment to access to names of the seated jurors prior to verdict, except in "exceptional circumstances in rare cases," *i.e.*, mob and gang cases where juror safety is an issue. *Id.* at 6-8. Counsel argued that access is most important in high-profile cases where public interest is the greatest, and that there are other, less restrictive and more effective means of dealing with "the hypothetical problem of bloggers perhaps contacting jurors inappropriately," such as "instructing jurors not to have any interaction with anyone, by the Internet or otherwise, in preparing jurors for how to deal with any inappropriate

contacts” *Id.* at 8. Citing events that occurred during the prosecution of former governor George Ryan, counsel argued that access during trial was particularly important because it could deter intentional misrepresentations by the jurors during voir dire, and had the potential of “rooting out potential problems when there is time to fix them.” *Id.* at 10. Finally, counsel contended that “this is not an exceptional case” and that both the First Amendment and the common law dictated that the jurors’ names be disclosed prior to verdict. *Id.* at 11.

After hearing argument from the parties, the district court issued an oral ruling, denying the motion for intervention. *Id.* 11-19. The court began by saying that he considered the motion untimely, given that he “announced the anonymity of the jurors quite a long time ago.” *Id.* at 11-12. The court also noted that the jurors already had been advised that they would be identified by number, and stated that he did not “propose under those circumstances to tell jurors, who have made decisions perhaps about the suitability of serving based on their identification by number, should now be told that that’s untrue.” *Id.* at 12. The court noted that, had the motion been brought earlier, the court and parties could have explored other means of protecting the jurors from outside influences, but the same was not true at this point in time:

[t]o start that today now on the eve of jury selection with a group of people who have been told that they're going to be identified by numbers is simply wrong. So I think on the merits you have suggestions that have not been developed or tested that could conceivably work, but now is not the time to enter into this to this extent.

Id. at 12-13, 14-16.

The court then addressed its particular reasons for determining that the seated jurors' names should not be released prior to verdict in order to protect the jury from outside influences. The court first observed that there exists a widespread belief in our society that "anybody can offer their opinion on anything, that polls can be used, that policy is determined by this," and emphasized that this view had no place in the context of a trial where only the evidence is permitted to shape the jury's opinion:

[T]hat's a valuable aspect of the American system, but we do have certain areas where it's not everybody's opinion that counts and trials are one of those areas.

We have the opinion of the selected jury who decides the case and it doesn't matter if 95 percent of the public disagrees with them, their decision is the only thing that we care about. And to protect the validity of that decision-making we restrict, sometimes drastically, precisely what it is that they can hear and precisely what it is they can base their opinion on.

Id. at 13.

As it had done at the June 1, 2009 hearing, the court noted that he personally had received unsolicited e-mails and letters expressing opinions

regarding what ought to be done in this case, and emphasized the need to protect jurors from such outside influences. *Id.* at 13-14. The court pointed out that the communication of unsolicited opinions directly to the decisionmaker is antithetical to our adversary system of justice, which depends on the parties hearing, and having the opportunity to respond to, contrary arguments. *Id.* at 14. The court further noted that, with the prevalent use of e-mails and the internet, the task of enforcing restrictions on what juries may hear is more difficult than it was in the past:

I suppose I could tell a jury some day that they can't open their e-mails, or maybe they can't open their e-mails unless they recognize the name but that could impose burdens on jurors that are unfair.

There is also the possibility that people feel that they could, and sometimes do, stand outside somebody's house waiving signs.

These are all problems that we've dealt with before, and particularly the sign waving part, but the problem with the mode of communication people are using today is that, so many people operate on e-mail, that you can communicate secretly with jurors in a case, and this is something that has to be avoided.

Id. at 14-15.

In light of this difficulty, the court stated that it would have been willing to consider other means of protecting the jury in this case from outside influences, but that the delay in the appellants' effort to intervene made considering other options impractical:

If you tell me that there's a way that we can deal with this, some tested way that we can deal with this, I'd be happy to listen and I would have been happy to listen 30 days ago or 60 days ago, but I don't think it is appropriate for me to listen to what I [*sic*] believe is a way to avoid a danger in the circumstance here where a jury is ready to go, the jury has been told they would be identified by number, and we achieve nothing but delay. This is essentially a last-minute motion that should have been more carefully thought out.

Id. at 15.

The district court went on to discuss the merits of the decisions relied upon by the parties in support of their respective positions, *United States v. Wecht*, 537 F.3d 222 (3d Cir. 2008) and *United States v. Black*, 483 F. Supp. 2d 618 (N.D. Ill. 2007)(St. Eve):

I believe that Judge St. Eve was right, and I believe the Third Circuit opinion is wrong. In fact, having read the [Third Circuit] opinion over the evening, I think it is spectacularly wrong. It is a series of general statements expressed in policy without, in my view, specific analysis to the facts before and circumstances of the case.

The court distinguished the circumstance of this case from those faced by the court in *Wecht*, noting the “enormous public attention” and “enormous expression of views” focused on this case. *Id.* at 14-15. Noting that while it has attempted to limit personal exposure to outside influences, the district court stated that it had been informed of “extraordinary attention paid to this case.” *Id.* at 15-16. The court noted that such attention leads not “not only to the expression of opinions” but also to “people seeing an opportunity to be noticed [in

that] one way to get yourself noticed is to do something in connection with this particular case.” *Id.* at 16.

The court determined that the alternatives suggested by appellants “could conceivably work” but were undeveloped and untested. *Id.* at 16-17. In any event, the court determined that, given the timing of the motion, it was simply too late to conduct an extensive analysis of alternatives. *Id.* at 17.

SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion in denying the appellant’s motion to intervene. Although appellants were on notice that the district court was considering disclosing the names of seated jurors only after verdicts were reached, they waited for a full year – until the eve of trial – to challenge this procedure. After learning that the district court had definitively decided not to disclose juror names until after the verdicts, appellants once again took their time, this time waiting two full weeks before moving to intervene, and noticing their motion for hearing on the very day jury selection was set to begin, and the day after potential jurors were scheduled to fill out jury questionnaires. Because appellants’ delays deprived the district court and the parties of an opportunity for due deliberation, and because appellants’ motion lacked merit in any event, the district court’s decision to deny the motion for intervention was well within its discretion, and should be affirmed.

If this Court were to consider the merits of appellants' challenge to the district court's decision to delay public disclosure of the names of the seated jurors until after verdicts are rendered, affirmance would also be required. Appellants have failed to establish that access to juror names prior to verdict is a right guaranteed to them by the First Amendment or the common law, rather than a matter of discretion traditionally and appropriately vested in the district court. Even if the press and the public did have a qualified right to access to the names of the seated jurors prior to verdict, non-disclosure would be proper in this case in light of all the relevant circumstances. This case has generated an unprecedented amount of local, national, and international public attention. As illustrated by the fact that the district court itself has received unsolicited contacts regarding the case, it is apparent that there exists a substantial risk that, if identified, the seated jurors would become the targets of unsolicited, and presumptively prejudicial, contacts. Appellants offered nothing in the way of reasonable and effective alternatives for protecting the jurors from outside influences and protecting the parties' rights to a fair trial. Thus, even if intervention had been granted, the district court's decision to wait until after verdicts are returned to publicly disclose the jurors' names was a proper exercise of the court's discretion, and should be affirmed.

ARGUMENT

I. The District Court Acted Within Its Discretion in Denying the Appellants' Untimely Motion to Intervene.

A. Standard of Review

This Court reviews the denial of a motion to intervene for abuse of discretion. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 945 (7th Cir. 2000) (in the context of a civil proceeding); *United States v. Aref*, 533 F.3d 72, 81 (2d Cir. 2008) (in a criminal case).

B. Analysis

“[R]epresentatives of the press and general public must be given an opportunity to be heard on the question of their exclusion from the proceedings or access to documents.” *In re Associated Press*, 162 F.3d 503, 508 (7th Cir.1998) (internal quotation and citations omitted). More specifically, the press and the public are entitled to “adequate notice of any limitation of public access to the judicial proceedings or documents and an adequate opportunity, under the circumstances of the case, to challenge that limitation by stating to the court the reasons why the material should remain subject to public scrutiny.” *Id.* at 507.

The district court need not offer representatives of the press *unlimited* opportunities to challenge limitations on access, however. Where a challenge is untimely, intervention is properly denied. *See id.* at 507 n.4 (stating that, “[u]pon

timely objection to the granting of the motion [for closure], it is incumbent on the trial court to afford those present a reasonable opportunity to be heard on the question whether the defendant is likely to be deprived of a fair trial if the press and public are permitted to remain in attendance.”) (emphasis added) (quoting *Gannett Co. v. DePasquale*, 443 U.S. 368, 401 (1979) (Powell, J., concurring)).

In this case, the district court properly exercised its discretion in denying appellants’ motion to intervene on the ground that it was untimely. The district court first announced publicly that it was considering limiting access to the seated jurors’ identities a full year before appellants sought to intervene. Gov. App. 10. Nothing prevented appellants from seeking to intervene at that time, or at any time during the months that followed. In any event, it plainly was not necessary for appellants to wait for the district court to enter an order on the docket stating that jurors names would not be publicly disclosed during voir dire, as appellants seem to suggest, *see* Def. Br. 4.

At a minimum, it was incumbent on appellants to file their motion immediately after May 17, 2010, when the district court announced that the jurors’ names would not be disclosed during voir dire. By waiting two full weeks to file their motion (and by failing to move for hearing on an emergency basis), appellants compelled the court and the parties to re-consider the access issue on the very day jury selection was scheduled to begin – after the significant task of

pre-qualifying potential jurors had been completed, the juror questionnaires had been filled out, and the potential jurors had been informed that they would be identified only by number until verdicts were reached in the case, and during the time that the court and the parties were reviewing the juror questionnaires and preparing to begin voir dire. Under these circumstances, the appellants' delay prevented the court from giving due consideration to the appellants' challenge, and prevented the court from considering or applying alternative methods to protect the jurors from prejudicial contacts.

This Court has made clear that a motion to intervene is the preferred procedural context in which to consider a challenge by the press or public to limitations on access to proceedings or information related to criminal proceedings precisely because it affords the district court with an opportunity for due deliberation. *In re Associated Press*, 162 F.3d at 507 (stating that according full protect to the claimed right "requires that the issue be examined in a procedural context that affords the court an opportunity for due deliberation") (citing *Central Nat'l Bank v. United States Dep't of Treasury*, 912 F.2d 897, 900 (7th Cir. 1990)). Where, as here, delays by the press or public make "due deliberation" impossible, it is well within the court's discretion to deny the motion for intervention. *See also, generally, Reid v. Ill. St. Bd. of Educ.*, 289 F.3d 1009, 1018 (7th Cir. 2002) (considering the issue of timeliness of a motion

for intervention under Fed. R. Civ. P. 24, (1) the length of time the intervenor knew or should have known of her interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; and (4) any other unusual circumstances).

Accordingly, given all of the relevant circumstances, the district court correctly determined that the appellants' motion was untimely, and that their delays in the challenge were prejudicial. Given these findings, as well as the its reasonable determination that none of the alternatives proposed by appellants were sufficient to protect the jurors from prejudicial contacts, particularly given the late date, the court's denial of appellants' motion for intervention was not only well within the district court's discretion; it was correct. This Court should affirm the district court's order.

II. The District Court Correctly Determined that Withholding Public Disclosure of Juror Names Until After the Return of Verdicts Was Required in the Interest of Justice.

As stated above, this Court has held that, where the district court has denied a motion to intervene, the Court's appellate review is limited to the denial of intervention, and does not extend to reviewing the merits of the appellants' challenge to limits on access. *In re Associated Press*, 162 F.3d 503, 508 (7th Cir.1998); *United States v. Jessup*, 227 F.3d 993, 999 (7th Cir. 2000). In the event that this Court chooses to consider the merits of the appellants'

motion, however, the government includes a discussion of those merits here. In sum, the district court acted well within its discretion in determining that withholding public disclosure of the seated jurors' names until after verdicts are returned was appropriate to protect the parties right to a fair trial by an impartial jury untainted by outside influences.

A. Standard of Review

This Court has held that a decision to empanel a fully anonymous jury is reviewed for abuse of discretion. *United States v. Mansoori*, 304 F.3d 635, 650 (7th Cir. 2002) (citing *United States v. DiDomenico*, 78 F.3d 294, 301 (7th Cir 1996)). The same standard should apply to the Court's review of the district court's decision to withhold juror names from the public, but not the parties, until trial's end.

B. Analysis

1. Neither the First Amendment Nor the Common Law Guarantee Public Access to Juror Names During Trial.

Although it is "firmly established" "that the press and general public have a constitutional right of access to criminal trials," *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 603-04 (1982), this right of access does not extend to every aspect of a criminal case. Thus, for example, whereas there exists a rebuttable presumption of access to criminal trials, voir

dire proceedings (which were open to the public in this case), and trial evidence, see *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 10 (1986) (“*Press-Enterprise II*”), *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508-09 (1984) (“*Press-Enterprise I*”), *United States v. Ladd*, 218 F.3d 701, 704-05 (7th Cir. 2000), no such presumption applies to presentence reports and unfiled discovery, see *United States v. Corbitt*, 879 F.2d 224, 228-29 (7th Cir. 1989); *Bond v. Utreras*, 585 F.3d 1061, 1073 (7th Cir. 2009).

In determining whether the First Amendment provides a qualified right of access, the court applies a two-part analysis (the “experience and logic test”), which includes consideration of: (1) whether “the place and process have historically been open to the press and general public,” and (2) whether “public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise II*, 478 U.S. at 8. See also *Corbitt*, 879 F.2d at 228-29 (describing *Press-Enterprise II* as enunciating a two-prong analysis consisting of “experience test” and the “logic test”). The party alleging the existence of the qualified First Amendment right bears the burden of establishing both parts of this threshold test. *Press-Enterprise II*, 478 U.S. at 8.

Although the Supreme Court has determined that the First Amendment guarantees the press and public access to voir dire proceedings, *Press-Enterprise I*, 464 U.S. at 508, neither the Supreme Court, nor this Court, has ever held that

the First Amendment or the common law provide a right to access to the identities of prospective or seated jurors, much less, a right to access before the seated jury returns its verdicts. Application of the *Press-Enterprise II* experience and logic test establish that no such right to access exists.

a. The Experience Test

Contrary to appellants' contention, experience does not establish the existence of a constitutional right of access to juror names during the pendency of trial. Indeed, substantial evidence supports the opposite conclusion. First, the Jury Selection and Service Act, 28 U.S.C. § 1861, *et seq.*, the statute that governs the selection of grand and petit juries in federal court and requires the federal courts to adopt a master plan for random jury selection, strongly indicates that the traditional practice of the federal district courts is to reserve the matter of disclosure of juror names to the presiding court's discretion. That statute gives the courts the *option* of permitting juror names to be made public, and *requires* that, even if the disclosure of juror names is permitted under the court's plan, the plan must allow district court judges to keep the names confidential where "the interests of justice" require it:

[The plan shall] fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these

names confidential in any case where the interests of justice so require.

28 U.S.C. § 1863(b)(7). In *In re Globe Newspaper*, 920 F.2d 92 (1st Cir. 1990), the First Circuit opined, based on the language and legislative history of the statute, that §1863(b)(7) reflected that the practice of the federal courts with respect to disclosure of juror names was not historically uniform:

The second sentence in § 1863(b)(7) is, to be sure, prefaced with the words, “If the plan permits these names to be made public . . . ,” suggesting that a local plan might optionally decline to permit juror names to be made public at all. This option was apparently inserted to allow the present diversity of practice around the nation to continue. Some district courts keep juror names confidential for fear of jury tampering. Other district courts routinely publicize the names.

Globe Newspaper, 920 F.2d at 92 (citing H.R.Rep. No. 1076, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. & Admin. News 1792, 1801) (internal quotations and punctuation omitted). See also *United States v. Calabrese*, 515 F. Supp. 2d 880, 882 (N.D. Ill. 2007) (noting that the press’s “claim of a historical underpinning to a First Amendment right of access is belied by the fact” that §1863(b)(7) “permits courts to adopt a plan that does not reveal juror names at all.”)

The master plan adopted by the Northern District of Illinois pursuant to § 1863(b)(7) and approved by this Court’s Judicial Council expressly allows district courts to maintain the confidentiality of juror names in the interest of

justice:

No person shall make public or disclose to any person, unless so ordered by a judge of this Court, the names drawn from the Qualified Jury Wheel to serve in this Court until the first day of the jurors' term of service. Any judge of this Court may order that the names of jurors involved in a trial presided over by that judge remain confidential if the interests of justice so require.

Northern District of Illinois Plan For Random Selection of Jurors ("Northern District Plan")(attached as Gov. App. 3) at ¶10A; Gov. App. 18. Therefore, the Northern District Plan confirms that the tradition of the district court has been to vest the district courts with discretion concerning the disclosure of juror names.

Moreover, as Judge St. Eve noted in *United States v. Black*, federal case law provides little evidence to support the proposition that disclosure of juror names prior to verdict has been the historical norm in the federal courts. Indeed, various courts have found just the opposite – “that the courts’ prevailing practice” traditionally has been *not* to disclose the names of jurors prior to verdict. *Black*, 483 F. Supp. 2d at 625-26 (citing *United States v. Gurney*, 558 F.2d 1202, 1210 n. 12 (5th Cir.1977) (finding that the court’s refusal to publicly release the “names, addresses, and other personal information about the jurors” “follow[ed] a well-established practice”); *In re Indianapolis Newspapers, Inc.*, 837 F. Supp. 2d 956, 957 (S.D. Ind. 1992) (stating that, “[i]t has been the operating

procedure and long-standing policy of this Court not to disclose to persons, other than the parties to a particular litigation, the names and addresses of a jury panel until after that panel has completed its term of service.”); *United States v. Brown*, 250 F.3d 907, 914-15 (5th Cir.2001) (distinguishing the trial court’s refusal to allow media inspection of jurors’ names and addresses from prior restraints”); and *United States v. Doherty*, 675 F.Supp. 719, 720, 722 n. 4 (D. Mass. 1987) (stating that even post-verdict access to jurors is “contrary to the general norm and historical practice of American courts”).

Similarly, rather than providing support for appellants’ argument, the district court’s refusal to withhold public access to juror names in the prosecution of former governor George Ryan actually supports the position that juror names have not routinely been disclosed to the public in high-profile cases in the Northern District of Illinois. In that case, defendants requested that voir dire proceedings be closed to the public due to the potential chilling effect of substantial media presence in the courtroom. *United States v. Warner*, 396 F. Supp. 2d 924, 928 (N.D. Ill. 2005). The government objected, contending that juror privacy could be adequately protected by concealing the jurors’ identities from in-court disclosure and conducting particularly sensitive questioning in private at the request of individual jurors. *Id.* The district court determined that closing the proceedings was not warranted, and that conducting voir dire in

a smaller, less intimidating courtroom would be adequate to address the defendants' concerns. *Id.* With respect to the disclosure of juror names, the district court determined that concealment of the jurors' identities was also not

warranted, but stated:

The court will, however, instruct the press not to disclose the jurors' identities until the end of trial; in this court's experience, this is in any event the media's standard practice.

396 F. Supp. 2d at 928-29. Thus, if anything, this case supports the proposition that the identities of jurors have not regularly been disseminated to the public during trial in the Northern District.

Indeed, as Judge St. Eve noted, numerous cases “silently reflect a practice of not releasing names and information during the pendency of trial” in the context of requests for the release of juror names *after* the return of verdicts. *Black*, 483 F. Supp.2d at 626 (citing *In re Globe Newspaper*, 920 F.2d 88, 90 (1st Cir. 1990); *Doherty*, 675 F. Supp. at 720; *In re Disclosure of Juror Names and Addresses*, 233 Mich. App. 604, 592 N.W.2d 798, 799 (Mich. Ct. App. 1999)). *See also United States v. Antar*, 38 F.3d 1348 (3d Cir.1994). Once again it is evident that, rather than establishing a right to access to juror names during trial, historical practice supports that reservation of the question of whether juror names should be disclosed during trial to the district court's discretion.

Contrary to the appellants' repeated suggestions, withholding juror names from public disclosure until after verdicts are returned is *not* tantamount to the closing of voir dire proceedings. Access to voir dire proceedings allows the public to scrutinize the process and determine whether the goal of the process –

empaneling an impartial jury – has been achieved. Access to the process, that is, the questions asked of potential jurors and the answers they give, facilitates such scrutiny; the names of individual jurors add little to this equation. In any event, the district court’s ruling ensures that access to juror names will be available to the public as well. The only question presented by this case is whether the press is entitled to know the jurors’ names before the seated jury returns its verdicts. Therefore, neither *Press-Enterprise I*, 464 U.S. 501, nor its progeny control the analysis or outcome of this case.

Nor is withholding public disclosure of juror names until after the trial comparable to empaneling a truly anonymous jury (in which the jurors’ identities are withheld from the parties, and not just from the public). Empaneling a truly anonymous jury is a substantially more drastic step than withholding the public release of the jurors’ names until after verdicts have been rendered, and it involves the balancing of different interests and potential issues. Whereas anonymous juries are often empaneled to limit risks posed to juror safety, and steps must be taken to ensure that the jurors’ deliberations are not tainted by juror fears for their own safety and the safety of their families, withholding public disclosure of juror names temporarily during the pendency of the trial merely protects jurors from the potential of extra-judicial contacts during the trial (but not after). Accordingly, *United States v. Mansoori*, 304 F.3d

635, 650 (7th Cir. 2002) and similar cases provide no authority for the proposition that the press and the public have the right to access to juror names during the trial.

Delaying public disclosure of juror names until the conclusion of trial is not even comparable to withholding public disclosure on a permanent basis. Indeed, as indicated above, numerous cases reflect that delaying public disclosure of juror names during the pendency of trial is not at all an uncommon practice.⁵

Appellants rely heavily on two cases in arguing that experience demonstrates the existence of right to access to juror names during trial. The first, *In re Baltimore Sun Co.*, 841 F.2d 74 (4th Cir. 1988), stated that it “has always been the law” that the district court must disclose the identities of the jurors once they are seated, *id.* at 75 n. 4, and ordered that juror names be made public, on the ground that those names had been made a part the public record. *Id.* at 75-76. The court in *Baltimore Sun* engaged in no detailed analysis and

⁵ Appellants cite a Pepperdine Law Review article in support of the proposition that historical tradition indicates that jurors’ identities and places of residence have been traditionally known to the public. Def. Br. 11, 14, 16, 20 (citing Robert Lloyd Raskopf, *A First Amendment Right of Access to a Juror’s Identity: Toward a Fuller Understanding of the Jury’s Deliberative Process*, 17 Pepp. L. Rev. 357 (1990)). However, appellants fail to note the author’s concession that “the public’s right of access to juror identities has not been uniformly established,” p. 358, or his suggestion that application of the experience and logic test leads to the conclusion that “the first amendment affords a qualified right of access to jurors’ names and addresses *after the conclusion of their services*,” p. 369 (emphasis added).

cited no authority for its conclusion that disclosure “has always been the law.” Moreover, the court in that case expressly declined to reach the question of whether the First Amendment guaranteed a right of access to jurors’ identities, stating, “[w]e see no need to and do not base our decision on the First Amendment.” *Id.* at 75 n.4. Finally, the court included the following qualification: “Although the question is not before us, we do not mean to imply that a district court must necessarily release to the public the names and addresses of those on a venire list prior to the time a jury is seated.” *Id.* at 75, n. 2. For all of these reasons, the Fourth Circuit’s opinion in *Baltimore Sun* adds little value to the experience analysis.

Finally, appellants rely on the Third Circuit’s sharply divided decision in *United States v. Wecht*, 537 F.3d 222 (3d Cir. 2008).⁶ Rather than providing strong support for appellants’ position, this case reveals the weakness of their arguments, particularly with respect to the experience prong of the *Press-*

⁶ Appellants cite a Temple Law Review article in support of its argument that the names of jurors have been available to the public through the history of the common law. Def. Br.14 (citing David Weinstein, *Protecting a Juror’s Right to Privacy: Constitutional Constraints and Policy Options*, 70 Temp. L. Rev. 1 (1997)). Appellants fail to note, however, the author’s acknowledgment that “the diversity of current practice demonstrates that the practice of withholding jurors’ names is not entirely foreign to the American legal tradition,” pp. 30-31, or his contentions that policy arguments advanced in favor of access are based on questionable premises, and that policy rationales proffered in favor of releasing jurors’ names arguably are insufficient to justify the costs of access,” and thus application of the logic test cuts against finding a right to access, p. 32.

Enterprises II test. In that regard, the court in *Wecht* concluded that experience established a right of access to juror names on two bases: (1) the Supreme Court's conclusion in *Press-Enterprises II* that jury selection proceedings historically have been open to the public; and (2) evidence showing that public knowledge of the identity of jurors was common in the early days of our history when most people lived in rural areas with small populations, and restrictions on access to juror names have proliferated since about the 1970's.

With respect to the first argument, the fact that jury selection proceedings have traditionally been open provides no basis for concluding that access to juror names, particularly during trial, has been the norm. The Supreme Court in *Press-Enterprises I* did not address the issue of access to juror names, and the case provides no authority for the proposition that access to juror names – much less access to juror names during trial – has traditionally been the norm.

Similarly, the historical evidence relied on by the court in *Wecht* establishes, if anything, that the tradition of the courts has been to reserve the issue of access to juror names to the sound discretion of the presiding judge. The court in *Wecht* acknowledged that the case law over the past 40 years reflects a wide variety of practices with respect to access to juror names and an increase in the use of restrictions to access. Inexplicably, however, the court determined that only *early* history was relevant to the experience analysis. As a result, the

court missed what the historical evolution of jury practices actually teaches: that federal judges traditionally have been given the flexibility to determine whether and when juror identities would be made public, and that this historical practice has allowed for an evolution in jury practices in the interest of justice as times and circumstances required. At a minimum, the *Wecht* court's analysis establishes that public access to juror names has not been a uniform practice – even in the early years.

Thus, appellants have failed to establish a right of access to juror names – much less a right of access during trial – based on experience.

2. The Logic Test

Appellants likewise fail to satisfy the logic test because they have not come close to establishing that requiring public access of juror names during trial would “play[] a significant positive role in the functioning of the particular process in question.” *See North Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198, 217 (3d Cir. 2002).

To be sure, the Supreme Court has recognized a First Amendment right to access to jury selection proceedings. *Press-Enterprise I*, 464 U.S. 501 (1984). The Court explained the importance of public access to voir dire in this way:

The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend

gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.... Proceedings held in secret would deny this outlet and frustrate the broad public interest; by contrast, public proceedings vindicate the concerns of the victims and the community in knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected.

Press-Enterprise I, 464 U.S. at 508. This reasoning recognizes the material differences between observing a live proceeding and reading a transcript, a difference the courts have long recognized in a host of contexts. *See, e.g., United States v. Huebner*, 356 F.3d 807, 812-13 (7th Cir.2004) (noting that the factfinder "has the best 'opportunity to observe the verbal and nonverbal behavior of the witnesses focusing on the subject's reactions and responses to the interrogatories, their facial expressions, attitudes, tone of voice, eye contact, posture and body movements, as well as confused or nervous speech patterns in contrast with merely looking at the cold pages of an appellate record") (internal quotation marks and citation omitted); *United States v. Antar*, 38 F.3d 1348, 1360 n. 13 (3rd Cir.1994) ([D]ocumentary access is not a substitute for concurrent access, and vice versa....[A] transcript would not fully implement the right of access because some information, concerning demeanor, non-verbal responses, and the like, is necessarily lost in the translation of a live proceeding to a cold transcript"); *ABC, Inc. v. Stewart*, 360 F.3d 90, 99 (2d Cir. 2004) ("[O]ne cannot

transcribe an anguished look or a nervous tic. The ability to see and to hear a proceeding as it unfolds is a vital component of the First Amendment right of access-not, as the government describes, an incremental benefit.”). Thus, in recognizing a right of access to jury selection proceedings (except where necessary to preserve higher interests), the Court took into account the fact that the additional information to be gleaned from observing non-verbal conduct during a live proceedings added to the public’s ability to assess the fairness of the proceedings.

As noted above, it does not follow from the existence of a right to access to jury selection proceedings that the press or the public have a right of access to juror names, or that they have the right to access during trial. *See, generally, Corbitt*, 879 F.2d at 228-29 (stating, when considering whether the press has a right of access to presentence reports, “[t]he “press’ right of access to documents submitted for use in a hearing must be considered separately from the press’ right to attend the hearing itself. Whether or not the public and the press have a first amendment right of access to sentencing hearings, we must determine independently whether there is a right to disclosure of presentence reports submitted at such hearings.”)

In contrast to access to the proceedings, including meaningful information regarding the bases for peremptory and for-cause challenges to potential jurors,

access to juror names adds little or nothing to the public's ability to understand and assess the fairness of proceedings. Appellants argue that the prosecution of former governor Ryan illustrates the advantages of public disclosure of juror names, because in that case an investigation by the press uncovered the fact that two jurors had criminal convictions which were not disclosed on their jury questionnaires. However, given that the district court has developed a policy of routinely conducting the investigations conducted by the press in Ryan in all high-profile trials, *see* Def. App.17, the claimed potential benefits of providing public access to juror names during trial is greatly reduced.⁷

Moreover, whatever benefits that may flow from the public disclosure of jurors' names in the average case are far outweighed by the potential risks in case involving intense media scrutiny. *See North Jersey Media Group*, 308 F.3d at 217 (“[T]o gauge accurately whether a role is positive, the calculus must perforce take account of the flip side—the extent to which openness impairs the public good”).

As Judge St. Eve noted in *Black*, in contrast to the presumptive openness of other aspects of criminal trials, juries “occup[y] a critical, but shrouded role in the criminal process.” 483 F. Supp. 2d at 626 (citing *Doherty*, 675 F. Supp. at

⁷ With respect to the prospective benefits of disclosure, *see, generally*, Kenneth J. Melilli, *Disclosure of Juror Identities to the Press: Who Will Speak for the Jurors?*, 8 *Cardozo Law, Policy & Ethics Journal* (2009).

722 (stating, “It is beyond peradventure that the actual deliberations of a jury are private and confidential and not subject to public access.”) Whereas criminal trials, jury selection, and trial evidence is presumptively available to the public, jury deliberations are conducted in private and protected from public scrutiny. Indeed, the law goes to great lengths to protect the jury deliberations from disclosure. *See, e.g.*, 18 U.S.C. § 1508 (making it illegal to knowingly record, listen to, or observe any grand or petit juries while they deliberate or vote); Fed.R.Evid. 606(b) (prohibiting jurors from testifying “as to any matter or statement occurring during the course of the jury's deliberations”); *In re Globe Newspaper*, 920 F.2d at 94 (“[T]here is no public right to ‘know’ what occurs in the jury room.”) There is a reason for this secrecy: jury deliberations are kept secret in order to “foster[] free, open and candid debate in reaching a decision.” *In re Globe Newspaper*, 920 F.2d at 94.

Just as juries must be free to function in secrecy, they must also function free from outside contacts and influences which are presumptively prejudicial to the parties’ right to a fair trial, *United States v. Harbin*, 250 F.3d 532, 544 (7th Cir. 2001) (communications with jurors during the pendency of trial are presumptively prejudicial) (citing *Remmer v. United States*, 347 U.S. 227, 229 (1954)).

As the Supreme Court has recognized, in a case involving intense media

attention, public disclosure of juror names during trial increases the risk of third-party contact by the press or by non-parties, and threatens the jury's ability to render a verdict solely based upon the evidence and applicable law, without regard to outside influences:

As a consequence [of publishing the names and addresses of the "veniremen"], anonymous letters and telephone calls, as well as calls from friends, regarding the impending prosecution were received by all of the prospective jurors....

* * * * *

[N]umerous pictures of the jurors, with their addresses, which appeared in the newspapers before and during the trial itself exposed them to expressions of opinion from both cranks and friends. The fact that anonymous letters had been received by prospective jurors should have made the judge aware that this publicity seriously threatened the jurors' privacy.

Shepard v. Maxwell, 384 U.S. 333, 342 (1966). As noted by the district court in this case as well as Judge St. Eve in *Black*, "[t]he ease of accessing and distributing information via the internet and the fact that potential juror contact could originate outside the Court's jurisdiction amplify these risks." *Black*, 483 F. Supp. 2d at 630.

Moreover, the routine disclosure of juror names in extremely high-profile cases such as this one would almost certainly interfere with potential jurors' ability or willingness to perform their sworn duties in the future. See *In re Globe Newspaper*, 920 F.2d at 95 ("[J]urors summoned from the community to serve

as participants in our democratic system of justice are entitled to safety, privacy and protection against harassment.”); *Brown*, 250 F.3d at 918 (“Ensuring that jurors are entitled to privacy and protection against harassment, even after their jury duty has ended, qualifies as [a strong governmental] interest in this circuit.”).

Thus, while public scrutiny may serve a positive function when access is granted to other information, appellants have failed to establish a logical connection between public access to juror names during trial and the proper functioning of the jury, *see United States v. Edwards*, 823 F.2d 111, 120 (5th Cir. 1987) (“The usefulness of releasing juror names appears to us highly questionable.”), much less established that any potential benefits of such access outweigh the risks of third party influences presented by disclosure in the context of a case that has generated intense media interest.

3. Delayed Disclosure of Juror Names Was Plainly Warranted in this Case.

Even if access to juror names before verdict were generally guaranteed by the First Amendment or the common law, the district court’s decision to withhold disclosure in this specific case was fully justified. No First Amendment or common law right to access is absolute. Instead, the right to access “may give way in certain cases to other rights or interests, such as the defendant’s right to

a fair trial or the government's interest in inhibiting disclosure of sensitive information." *Waller v. Georgia*, 467 U.S. 39, 45 (1984). The district court was entitled – and, indeed, required – to consider whether the preservation of superior rights, including the defendant's right to a fair trial, justified limiting access under the circumstances of this case. *See Press-Enterprise I*, 464 U.S. at 508 (stating that "[n]o right ranks higher than the right of the accused to a fair trial"); *Neder v. United States*, 527 U.S. 1, 30 (1999) (noting that the constitutional guarantee to a trial by impartial jury is the only one to appear in both the body of the Constitution and the Bill of Rights, and calling it "the spinal column of American democracy.") (Scalia, J., dissenting).

This case, as the district court noted, has generated "extraordinary" media attention, and such attention is likely to lead not only to third-party attempts to contact and influence jurors, but also to people "seeing an opportunity to be noticed" by "do[ing] something in connection with this particular case." Def. App. at 15-16.⁸ Indeed, the district court judge noted that, as far back as June 2009, he had received unsolicited letters and emails expressing opinions and

⁸ Contrary to appellants' suggestion (Def. Br. 24), the potential for interference by attention-seekers noted by the district court is significant. In this day and age, the district court would have been remiss had it failed to recognize the proliferation of persons who seek notoriety by attaching themselves to highly publicized events, and the risk that such persons might pose to the parties' right to a jury untainted by outside influences.

making suggestions regarding how he should handle this case. Gov. App. 4. Thus, as the district court stated at the June 3, 2010 hearing on appellants' motion to intervene, the risks of improper third-party contacts in this case are neither hypothetical nor speculative; they have already come to fruition in the case of the presiding judge.

“Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused.” *Shepard*, 384 U.S. at 362, 86 S.Ct. at 1522; *see also United States v. Koubriti*, 252 F. Supp.2d 418, 422 (E.D.Mich.2003) (noting that the potential for juror harassment increases with a heightened level of media attention). And as Judge St. Eve noted in *Black*, common sense and recent experience reveals that “external influences will not be shouldered by the jurors alone, but will also be borne by their families, friends, co-workers and employers.” Because such contacts create a substantial risk that the jurors’ verdicts will be affected by external influences, compromising the parties’ right to a fair trial, it was incumbent upon the district court to take steps to reduce the risk that such influences will be brought to bear on the jurors. *See Shepard*, 384 U.S. at 363, 86 S.Ct. at 1522 (“[T]he cure lies in those remedial measures

that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences.”); *cf. Whitehead v. Cowan*, 263 F.3d 708, 721 (7th Cir.2001) (although Shepard does not require a finding of presumed prejudice based on the publication of juror names and addresses in every case, it did recognize that publication of juror names and addresses can contribute to the deprivation of a fair trial”). Because the enormous and extraordinary national and international media interest in this cases poses an extraordinary risk of external contacts and influences, including contacts delivered in secret, and emanating from places far beyond the district court’s jurisdiction, the district court was fully justified in determining that prohibiting access to juror names during the pendency of trial was required in the interest of justice, and was not an abuse of discretion, even if a First Amendment right of access to jury names were found to exist.

CONCLUSION

For the reasons discussed above, the government respectfully asks that this Court affirm the district court's denial of appellants motion to intervene.

Respectfully submitted,

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CIRCUIT RULE 31(e) CERTIFICATION

Pursuant to Circuit Rule 31(e), I hereby certify that I have filed electronically versions of our brief and all available appendix items in nonscanned PDF format.

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RULE 32 CERTIFICATION

I hereby certify that:

1. This brief complies with the type volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B) because it contains 9,553 words.

2. This brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5), 32(a)(6), and Circuit Rule 32(b), because it has been prepared using the WordPerfect X3 proportionally-spaced typeface of Century Schoolbook with 13-point font in the text and 12-point font in the footnotes.

Respectfully submitted,

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
) No. 10-2359
v.)
) Appeal from the United
ROD BLAGOJEVICH and) States District Court for the
ROBERT BLAGOJEVICH,) Northern District of Illinois,
) Eastern Division
Defendants-Appellees.)
) 08 CR 888
CHICAGO TRIBUNE COMPANY,)
NEW YORK TIMES COMPANY,)
ILLINOIS PRESS ASSOCIATION, and) Honorable James B. Zagel
ILLINOIS BROADCASTERS' ASSOCIATION,)
)
Appellants.)

CERTIFICATE OF SERVICE

I, DEBRA RIGGS BONAMICI, hereby certify that on June 14, 2010, I caused a copy of the foregoing BRIEF AND APPENDIX OF THE UNITED STATES, to be served upon the following by e-mail and first-class, postage-paid mail:

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

PLAN FOR RANDOM SELECTION OF JURORS
(AS REVISED DECEMBER 2006)

1. PURPOSE

Pursuant to the Jury Selection and Service Act of 1968 (28 USC §1861 *et seq.*), this Plan for the Random Selection and Service of Jurors in the United States District for the Northern District of Illinois (Plan) is adopted by this Court. It is the purpose of the Jury Plan to implement the policies declared in the Jury Act, that all litigants in federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes, that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and that all citizens shall have an obligation to serve as jurors when summoned for that purpose.

It is further the purpose of the Jury Plan to implement the prohibition against discrimination contained in 28 USC §1862, which provides that no citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

If an employer discharges, threatens to discharge, intimidates or coerces any permanent employee by reason of such employee's jury service or the attendance or scheduled attendance in connection with such service in this court, they shall be considered in violation of the provisions of 28 USC 1875.

2. DEFINITIONS

- (a) For the purposes of this Plan, "Clerk" shall mean the Clerk of Court, any authorized deputy clerk, and any other person authorized by the Court to assist the Clerk in the performance of functions under this Plan.

(b) “Jury Administrator” shall mean the Jury Administrator for the Northern District of Illinois or his or her designees.

(c) In the Eastern Division of this District, “political subdivision” refers to the City of Chicago, the remainder of Cook County, the City of Aurora, the balance of Kane County, the balance of DuPage County, and the counties of Grundy, Kendall, Lake, La Salle, and Will. In the Western Division, “political subdivision” refers to the City of Rockford, the remainder of Winnebago County, and the counties of Boone, Carroll, De Kalb, Jo Daviess, Lee, McHenry, Ogle, Stephenson, and Whiteside.

3. APPLICATION AND MANAGEMENT

Pursuant to 28 U.S.C. §1869(e), separate master jury wheels are established for each Division of the Northern District of Illinois, as follows:

Eastern Division: the counties of Cook, Du Page, Will, Lake, Grundy, Kane, Kendall, and La Salle.

Western Division: the counties of McHenry, Boone, Winnebago, De Kalb, Ogle, Lee, Stephenson, Jo Daviess, Whiteside, and Carroll.

The provisions of the Jury Plan apply with equal force and effect to both Divisions of this District.

4. MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

The Clerk of Court, under the direction of the Chief Judge or his or her designee, is responsible for managing the jury selection process. The Jury Administrator is authorized to assist the Clerk in the management of the jury selection process.

5. RANDOM SELECTION FROM LISTS OF REGISTERED VOTERS

(a) The Court finds that voter registration lists submitted annually to the Office of Voters Registration for the State of Illinois in accordance with Illinois Laws represent a fair cross section of the community in this District. The lists of registered voters in the District’s political subdivisions are maintained as identified in Section 2(c) above.

(b) In order to implement the Court's policy, the names of persons to be considered for service as grand or petit jurors in each Division shall be selected at random from the lists of registered voters residing in that Division.

6. SELECTING PROSPECTIVE JURORS FOR THE MASTER JURY WHEEL

(a) The Court finds that electronic data processing methods can be effectively used for selecting names from the voter registration lists. Therefore, a properly programmed electronic data processing system may be used to select names from such lists for the master jury wheel, provided that each county or political subdivision is proportionately represented in the master wheel. The selection process may be carried out using either of the methods described in this section.

(b) The selection of names for the master jury wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system. The random selection of names from the source lists by Court staff or any outside contractor must ensure that each county is substantially proportionally represented in the master wheel in accordance with 28 UCS 1863(b)(3). The selection of names from the source lists must also ensure that the mathematical odds of any single name being picked are substantially equal.

(c) The selection of names for the master jury wheel may be carried out using a process based on a quotient and a randomly selected starting number as described below.

- i. Determining a Quotient. After ascertaining the total number of registered voters for all counties within the Division, that total number is divided by the number of names needed for the jury wheel. The result, the ratio of selected to unselected names, is referred to as the quotient. For example, if it determined 5,000 names will be needed in the Western division master jury wheel to meet the Court's need for jurors over a two-year period, and if there are 100,000 names on all the registered voter lists for the Division, the quotient would be 20 (100,000 total names divided by 5,000 names) and every 20th name should be placed in the Division's master jury wheel.

- ii Determining a Starting Number. After determining the quotient, the clerk shall establish a starting number, which will identify the first name to be selected from the list of registered voters. The randomly drawn starting number will be a number between one and the quotient. Pursuant to 28 U.S.C. §1864(a) and guidelines established by the Judicial Conference of the United States Courts, the random selection of the starting number shall be made in public. As an example of how the quotient and starting number are used, if we assume the quotient to be 20 and the starting number is 8, the first name chosen from each county will be the 8th name on the list, the second name would be the 28th, the third name the 48th, and so on, until the end of the list is reached.

(d) The number of names initially added to the Master Jury Wheel shall be at least 50,000 names for the Eastern Division and 4,000 names for the Western Division. The Clerk shall refill the Master Jury Wheel every two years and within 120 days of receipt of the data from the State of Illinois in conformance with this Plan or at more frequent intervals as deemed necessary by the Clerk under the supervision of the Chief Judge. The Chief Judge, or his or her designee, may order that additional names be placed in the Master Jury Wheel at other times, as needed.

7. DRAWING NAMES FROM THE MASTER JURY WHEEL AND COMPLETION OF JUROR QUALIFICATION FORMS

Based on the Court's anticipated need for jurors, the Clerk shall prepare and mail a juror qualification questionnaire form to every person whose name is drawn from the master jury wheel, where the available address information indicates that the person resides within the District. Public notice of the mailing of qualification questionnaires shall be provided by the posting of information concerning the mailing on the Court's website. The mailing shall instruct the addressee to complete and return the form, duly signed and sworn, by mail to the Clerk within ten days in accordance with 28 U.S.C. §1864(a).

8. QUALIFICATIONS, EXEMPTIONS, AND EXCUSES FROM JURY SERVICE

(a) QUALIFICATIONS

Under the supervision of the Chief Judge, the Clerk shall determine, solely on the basis of information provided on the juror qualification form and other competent evidence, whether a person is qualified for jury service, unqualified or exempt from service, or to be excused from jury service. The determination shall be noted on the juror qualification form or on supporting documentation, and recorded in automated records of the master jury wheel. The method used for this determination may be either mechanical or manual.

Pursuant to 28 U.S.C. §1865(b), any person shall be deemed qualified for jury service unless he or she:

- (1) is not a citizen of the United States;
- (2) is under eighteen years of age;
- (3) has resided within this District for a period of less than one year;
- (4) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;
- (5) is unable to speak the English language;
- (6) is unable, by reason of mental or physical infirmity, to render satisfactory jury service; or
- (7) is facing a pending charge for the commission of, or has been convicted in a state or federal court of, a crime punishable by imprisonment for more than one year, and his or her civil rights have been lost and have not been restored.

(b) EXEMPTIONS

The following persons are exempt from jury service pursuant to 28 U.S.C. §1863(b)(6):

- (1) members in active service in the armed forces of the United States;
- (2) members of the fire or police departments of any state, district, territory, possession or subdivision thereof; and

- (3) public officers in the executive, legislative, or judicial branches of the government of the United States, or any state, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties. Public officer shall mean a person who is either elected to public office or who is directly appointed by the person elected to public office.

(c) EXCUSES

Upon individual request, the Clerk shall excuse the following persons from jury service:

- (1) any person over the age of seventy years;
- (2) any person who has served as a juror in this court within the previous two years; or
- (3) volunteer safety personnel who serve without compensation as firefighters or members of a rescue squad or ambulance crew for a public agency in accordance with 28 U.S.C. §1863(b)(5)(B). Public agency shall mean the United States, the State of Illinois, or any unit of local government.

Under the supervision of the Chief Judge, the Clerk, upon individual request showing undue hardship or extreme inconvenience, may excuse any person from jury service for the period that such extreme hardship or inconvenience exists. Because such circumstances are often temporary in nature, decisions concerning requests to be excused will normally not be made until such time as a prospective juror is summoned for service. “Undue hardship or extreme inconvenience” shall mean the illness of the juror or a member of the juror’s household; the active care and custody of a child under twelve years of age; the active full-time care of an aged or infirm person; business or recreational travel plans established before the receipt of the summons for jury service; or any other factor which the Clerk determines to be an undue hardship or to create an extreme inconvenience to the juror. Whenever possible, arrangements will be made with any juror who is excused from serving on a particular date for his or her service to be deferred to a specific future date.

9. QUALIFIED JURY WHEEL

The results of the screening of the juror qualification forms shall be recorded for the master jury wheels of each Division. Those persons not disqualified, barred, or excused pursuant to this

Plan will be deemed qualified. The qualified juror wheel of each Division shall consist of the names of all qualified prospective jurors.

10. MISCELLANEOUS

(a) No person shall make public or disclose to any person, unless so ordered by a judge of this Court, the names drawn from the Qualified Jury Wheel to serve in this Court until the first day of the jurors' term of service. Any judge of this Court may order that the names of jurors involved in a trial presided over by that judge remain confidential if the interests of justice so require.

(b) The contents of records and documents used in connection with the jury selection process, including the juror qualification questionnaires, shall not be disclosed except as provided in 28 USC 1867 (f) and this Plan. Parties requesting access to these records shall petition the Court in writing setting forth the reasons for requesting access.

(c) The names of any jurors drawn from the Qualified Jury Wheel and selected to sit on a grand jury shall be kept confidential and not made public or disclosed to any person, except as otherwise authorized by an order issued by the Chief Judge.

(d) From time to time the Court may direct the Clerk to draw from the Qualified Jury Wheel for a Division such number of persons as may be required for grand and petit jury arrays or Special Panel arrays as provided for by LR 47.1(b). A "Special Panel" shall mean a list of prospective petit jurors drawn separately from the regular terms of jurors, which will be utilized for one or more specific trials upon order of a trial judge and the Chief Judge. If any special panel of jurors is not used for the trial for which the special panel was established, the jurors may be used for trials taking place during the regular term of service, or for another special panel. In such circumstances, the members of the special panel array may become a part of the regular array until that array is terminated.

(e) All records and documents compiled and used in the jury selection process shall be maintained and filed by the clerk, using intervals of time commencing with the proceedings to fill the master wheels and ending when all persons selected to serve before the wheels were emptied have completed their service. Said records shall be preserved for four years as required by 28USC 1868 and shall then be destroyed unless otherwise ordered by the Court.

(f) Where the Judicial Conference of the United States, the Administrative Office of the United States Courts, or the Federal Judicial Center approve experimental programs affecting the administrative aspects of jury service, the Executive Committee may determine that the Court shall participate in such programs. Where such participation requires a temporary suspension of one or more provisions of this Plan, the Executive Committee may direct that such provisions be suspended for the duration of the Court's participation in the experimental program. Any provisions temporarily suspended pursuant to this Section shall be reinstated upon the conclusion of the experimental program or upon a finding by the Executive Committee that the Court's participation in such experimental program shall end, whichever is sooner.

EFFECTIVE DATE This plan for jury selection shall be placed in operation after approval by the reviewing panel as provided in 28USC 1863 as amended by the Jury Selection and Service Act of 1968. Jury service under this plan shall be required upon special order of the Court at such time as processing of the juror qualification questionnaires has been completed.

This plan shall remain in force and effect until approval of one or more modifications of this plan by said reviewing panel. Modifications of this plan may be initiated by the Court and submitted to the reviewing panel for approval; and this plan shall be modified as and when directed by said reviewing panel.

Approved by the Full Court on December 21, 2006.

Approved by the Judicial Council of the Seventh Circuit on March 19, 2007