Privacy and the Courts

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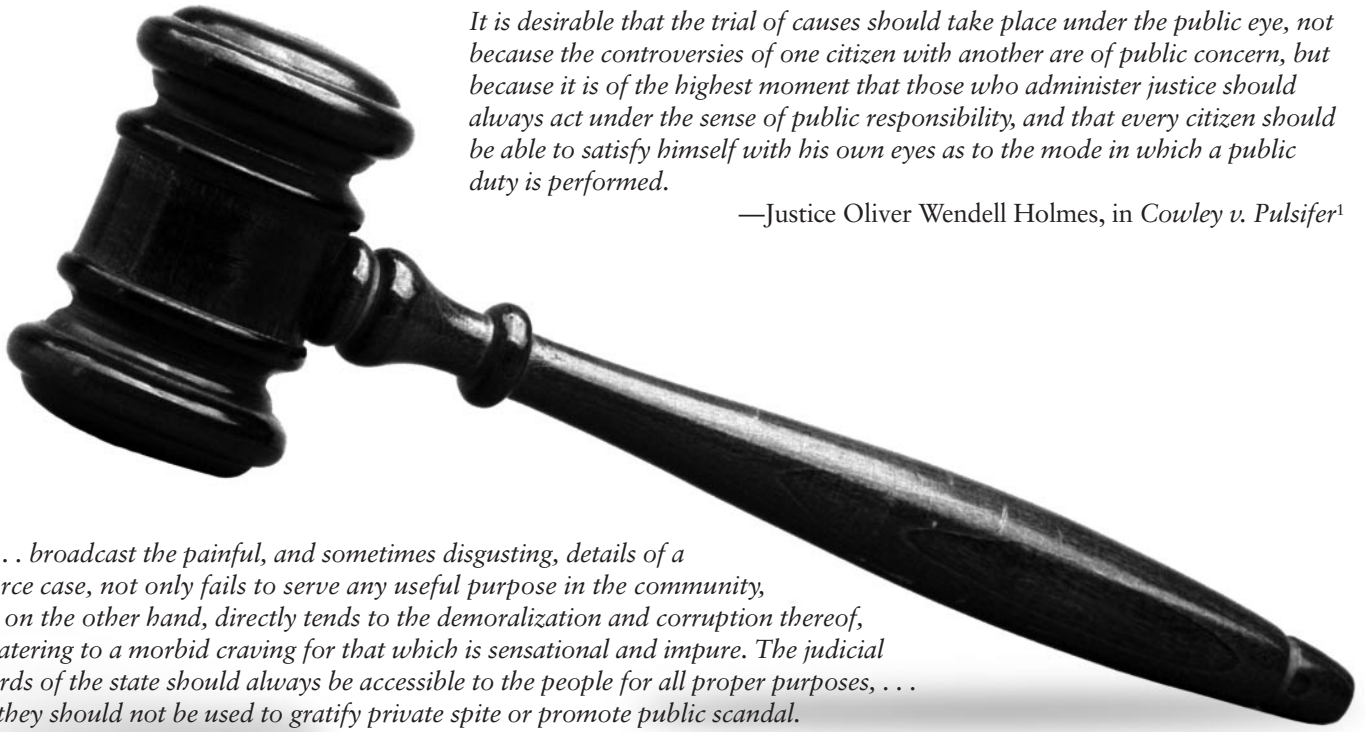

It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.

—Justice Oliver Wendell Holmes, in *Cowley v. Pulsifer*[1]

To . . . broadcast the painful, and sometimes disgusting, details of a divorce case, not only fails to serve any useful purpose in the community, but, on the other hand, directly tends to the demoralization and corruption thereof, by catering to a morbid craving for that which is sensational and impure. The judicial records of the state should always be accessible to the people for all proper purposes, . . . but they should not be used to gratify private spite or promote public scandal.

—*In re Caswell's Request*[2]

As these quotations demonstrate, courts have long been grappling with the tension between the privacy interests of people who use the courts and the public's interest in knowing what is going on in the courts. The tension persists today, although it sometimes takes twists and turns, as is evident in the debate over the use of potentially closed military courts in the aftermath of the terrorist attacks of September 11, 2001. The specifics of the issues that state courts face are different from those faced by the federal government in setting up military courts, but the fundamental tension between closing courts to protect a specific party's interest and opening them to serve the public's interest is similar. This article describes the ways in which North Carolina resolves those tensions in its courts.

In most instances the answer to the openness-or-privacy issue is that openness prevails. That is a cost of having a public court system. The following quote from the U.S. Supreme Court is fairly typical of courts' statements on the subject:

> *The right of access to criminal trials plays a particularly significant role in the functioning of the judicial process and the government as a whole. Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole. Moreover, public access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process. And in the broadest terms, public access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government. In sum, the institutional value of the open criminal trial is recognized in both logic and experience.*[3]

Most courts and legislatures, when faced with the issue, find that justice, and society's pursuit of it, are too important to be performed away from the public's scrutiny. The real debate arises mostly when the information that

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is considered involves private, personal details of people's lives. Those details can include, among other things, the following:

- *Financial records.* For example, contests of wills may involve detailed discussions of a family's assets and liabilities, or a person's income often is introduced in evidence.
- *Testimony about intimate sexual matters or failed relationships with children or other family members.* For example, family law disputes often involve allegations of sexual dysfunction or marital infidelity, and sexual orientation or difficulties that children are having in school or in social settings frequently are at issue in custody cases.
- *Medical information.* For example, guardianship proceedings almost always involve detailed testimony and reports about the physical and mental condition of the person who is alleged to be incompetent. Also, nearly all claims for personal injury require evidence of the injury. Further, jurors often have to reveal publicly that they cannot hear or cannot sit for prolonged periods.
- *Sensitive business information.* For example, in a marital property dispute, the proceedings may reveal that a party's business is in financial trouble or reveal other information that a business owner would prefer remain confidential.

Such information is highly relevant, and the case cannot be disposed of fairly without it. That does not make its being disclosed any less embarrassing, and the disclosure is all the more unpleasant because it usually is compelled rather than volunteered.

One unfortunate consequence is that, when they can, people may avoid the courts to protect their privacy. But in many instances, avoidance is not an option. For example, a couple may not divorce except through the public courts, or people who are injured may find that litigation is their only recourse, even though they have to submit to personal questions about their private lives. In such instances, people may ask the courts or their legislators for help in preserving their privacy. The concern may be that of a litigant, a witness, a victim, or a juror.

This tension most often arises in relation to two rights of the public: the right to observe the proceedings and the right to look at the records later. The development of computer networks and large automated databases has generated the additional question of whether computer records are different from paper records. This article addresses each issue and then discusses the extent to which the privacy interests of a special category of court participants—jurors—are protected.

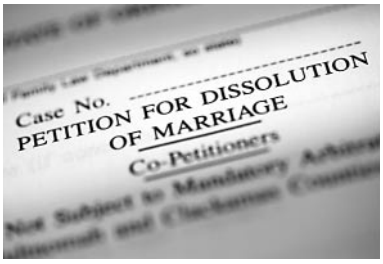
The Right to Attend Court Proceedings

The general rule is that court proceedings are open to the public. There are two kinds of exceptions to that rule: First, the presumption that the court will be open can be overridden in specific cases.[4] Second, in some instances the General Assembly has provided by statute that certain types of proceedings are either always closed to the public or may be closed by the judge.

General Rule of Openness

The general presumption comes from Article I, Section 18, of the North Carolina Constitution, which provides that "[c]ourts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial or delay." This provision was probably inserted to make it clear that courts were available to all people who needed to use them to resolve disputes, regardless of status.[5] However, the North Carolina courts have interpreted it also to mean that court proceedings are generally open to the public and the press. In the words of the North Carolina Supreme Court, "[T]he open courts provision of [the N.C. Constitution] guarantees a qualified right on the part of the public to attend civil court proceedings."[6]

A similar right applies in criminal cases.[7] The U.S. Supreme Court has held that the First Amendment rights to freedom of speech and freedom of the press contain an implicit, qualified right of the public to attend criminal trials.[8] However, both the North Carolina Supreme Court and the U.S. Supreme Court have ruled that the right is not absolute. In criminal cases the U.S. Supreme Court has indicated that the right to attend is significant. To limit that right in order to prevent the disclosure of sensitive information, the government must demonstrate that a closing of the court is necessary to serve a compelling governmental interest; that the closing is narrowly tailored to serve that interest; and that there is no reasonable alternative to the closing.[9]



A couple may not divorce except through the public courts, or people who are injured may find that litigation is their only recourse, even though they have to submit to personal questions about their private lives.

North Carolina's courts apply a similar standard in determining if civil proceedings may be closed.[10] If a court determines that they should be closed, it must make specific findings to support its decision. That is a difficult standard for anyone seeking closure to meet, and as a result, closing of civil proceedings is not common in North Carolina.[11]

In the situations in which courts have been closed to the public, privacy is not always the interest asserted. For example, the North Carolina Supreme Court has ruled that court reviews of medical peer reviews of doctors to determine their fitness to practice in a hospital may be conducted in closed court hearings, to preserve the public's interest in "effective, frank, and uninhibited exchange among medical peer review members."[12] That kind of exchange is necessary to preserve the quality of health care delivered by

Court cases involving contests of wills may delve deeply into private financial information.

doctors. Therefore, opening the hearing would compromise the ability of peer review agencies to gather full and complete information. Although closing the court protects the privacy of the doctor under review, protection of his or her privacy is not the justification for the closing.

Similarly, when criminal proceedings are closed to the public, a common reason cited is that extensive press coverage threatens the defendant's ability to get a fair trial. That concern is greatest at early stages of the proceeding, such as in a preliminary hearing or in jury selection.[13] Thus, although a disclosure of information may be embarrassing or otherwise involve a loss of privacy by the party affected, it is not often the basis for a court to close proceedings in North Carolina. No appellate cases or legislative actions in this state allow embarrassment alone to support the closing of a court proceeding.

Statutory Exceptions

In the following instances, the General Assembly has enacted statutes providing that court proceedings not be open to the public. In most of these cases, the privacy interest being protected is that of either a person testifying or a person who is a party to the action.

- *Juvenile cases.* G.S. 7B-2402 provides that cases involving the juvenile code[14] are open to the public "unless the court closes the hearing or part of the hearing for good cause." If the hearing is closed, the court may allow any person directly involved in the proceeding to attend. A juvenile may ask that the hearing be open, and the court must honor that request. Juvenile matters have historically been closed to the public, but the trend is toward open hearings.
- *Involuntary commitments.* G.S. 122C-267(f) provides that hearings to determine if a person should be or remain involuntarily committed to a state mental health facility are closed to the public unless the person requests that the hearing be open. This statute was enacted in 1985; commitment hearings had not been closed before that.
- *Adoptions.* G.S. 48-2-203 provides that any judicial hearing in an adoption be conducted in closed court.
- *Judicial consent for a minor's abortion.* North Carolina requires that if a pregnant girl under age eighteen is seeking an abortion, she must obtain the consent of a parent. If she does not want to seek a parent's consent, G.S. 90-21.8 allows her to apply to a district judge for a waiver of parental consent. That proceeding is confidential and is to be conducted in such a manner that the girl's identity is kept confidential throughout the process, including any appeals.[15]
- *Testimony of a victim of a sexual offense.* G.S. 15-166 allows trial judges to "exclude from the courtroom all persons except the officers of the court, the defendant, and those engaged in the trial of the case" when a victim in a rape or sexual offense case is testifying.

The extent to which the proceedings are closed under these exceptions is a function of the privacy interest to be protected. When the party to be protected is not on trial—for example, a rape victim—the protection is narrowly drafted to shield only the victim's testimony. When the party to be protected is on trial in some fashion, the entire proceeding is shielded from public view.

Perhaps the most striking feature of the list of exceptions is how short it is. The range of embarrassing matters that

can be covered in court is remarkably broad, but the legislature has provided only five exceptions.

Access by Media

To emphasize the importance of public access to the courts, the General Assembly also has enacted a statute making it clear that the news media may publish any report they see fit on any matter that occurs in open court, and that any attempt by a court to prohibit anyone from publishing a report about anything that occurs in open court is "null and void, and of no effect."[16] That statute is consistent with U.S. Supreme Court decisions holding that the truthful publication of facts obtained from courts may not be punished.[17] North Carolina law also provides that no person may be held in contempt of court for the content of any broadcast or publication unless the dissemination presents "a clear and present danger of imminent and serious threat to the administration of criminal justice."[18]

In addition, the news media may assert their right to attend court proceedings (or to review the records of a case) by filing a motion in the case.[19] The statute granting this privilege was enacted in the 2001 session of the North Carolina General Assembly. It effectively reversed a North Carolina Supreme Court decision that news organizations had to file a separate lawsuit seeking access.[20] News organizations complained that doing so would take time and that the trial in which the issue of access arose would be over before the issue could be raised.

Although the public has a right to attend court proceedings, relatively few members of the public actually do attend them. Most people learn what they know about courts from the news media. Courts treat newspaper and other reporters in the same way that they treat other members of the public. Different rules apply to television and photographic coverage, however.

Television coverage and photographic coverage have the potential to reach many more people than can attend a proceeding in person, and they can do so visually, revealing a person's identity more effectively. Courts have historically been reluctant to allow televising or photographing of court proceedings because they have feared that a camera's presence would turn the trial into a search for publicity instead of for justice.

The U.S. Supreme Court has not found that the right of the public to attend court proceedings includes the right to televise or photograph them.[21] As a result, the issue is left to the states to decide. Many states have either denied access or restricted it. North Carolina law on this matter was established in a rule adopted by the North Carolina Supreme Court.[22] It presumes that television coverage and still photography of most court proceedings should be allowed but gives the presiding judge the discretion to prohibit them. The court established some exceptions for circumstances in which it felt that no such coverage should be allowed:

- Adoptions, juvenile cases, and custody, divorce, and alimony actions
- Cases involving evidence of trade secrets
- Testimony of minors and victims of sex crimes
- Jurors generally

Courtesy of Chapel Hill Herald

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Court Records

General Rule of Openness

Review of court records affects privacy differently than open court proceedings do. Written records are permanent. They may contain only summary information about a criminal or civil trial or proceeding, but that record, if it is public, may be reviewed long after the event has taken place. If a person is convicted of a drug offense at age eighteen, he or she is not likely to feel the same degree of embarrassment at the time of conviction that he or she will feel at age thirty or sixty. Permanent public records make it possible to find out about such convictions long after they have faded from the memories of most people.

As is true with court closings, the general rule about court records is that they are open to public inspection. In addition to the general public records statute, there is a specific statute making the court records maintained by the clerk of court (the official records) open for inspection.[23] Also, North Carolina appellate courts have made it clear that the records held by the courts are public.[24]

Civil Cases

There are statutory exceptions. Records of closed court proceedings are usually closed.[25] In some civil cases, to protect a party or a witness from unreasonable annoyance, embarrassment, oppression, or undue burden or expense, the court may provide that depositions (the testimony of a witness taken in advance of a trial to discover evidence in the case) may be sealed and opened only with the approval of the court.[26]

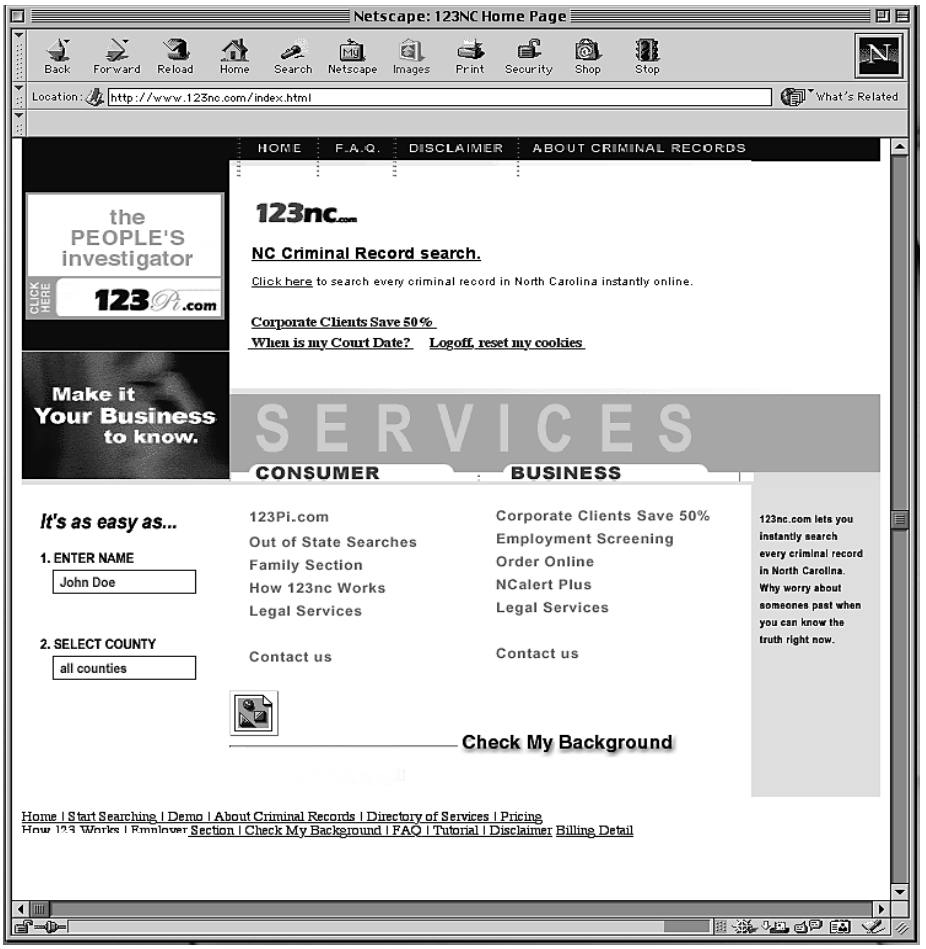
Criminal Cases

There also are instances in criminal courts in which records are not made available to the public. When a criminal defendant's competency to stand trial is questioned, the reports of the medical personnel conducting the examination are sealed, and they become public records only if the reports are introduced into evidence.[27] Also, presentence reports are not public records; only court officials with a need to see them may do so.[28] Similarly, material prepared by sentencing-services programs may be withheld from public inspection.[29]

Exceptional Cases

Judges often are asked to seal court records in a specific case. In *Virmani v. Presbyterian Health Services Corpora-*

A private company that has contracted with North Carolina's Administrative Office of the Courts makes the state's criminal records available on-line for a fee.



tion, the North Carolina Supreme Court approved the sealing of various hospital records used as part of a court review of a physician's fitness to serve at a hospital, in part on the basis of the legislature's indication that such records should be confidential. The court held that, notwithstanding public records or related statutes, trial courts have the

> *necessary inherent power granted them by Article IV, Section I of the North Carolina Constitution to control their proceedings and records in order to ensure that each side has a fair and impartial trial. . . . A trial court may, in the proper circumstances, shield portions of court proceedings and records from the public; the power to do so is a power rightly pertaining to the judiciary as a separate branch of the Government, and the General Assembly has "no power" to diminish it in any manner.*[30]

That language also could apply to records not classified by the legislature as confidential. The North Carolina Supreme Court instructed lower courts to use the power sparingly and only when necessary for the fair administration of justice, or "where for reasons of public policy, the openness ordinarily required of our government will be more harmful than beneficial."[31] A court exercising the power must first consider any alternatives to closure and then specify in writing the facts that support its decision. As is the case with motions to close court proceedings, the burden on the party seeking closure is high, and court records are rarely sealed.

Settlements

In practice, one important exception to the general rule of openness is in civil cases settled before trial. In settlement negotiations it is not unusual for one party to ask that the terms of the settlement be sealed and that such a provision be in the final settlement.

The General Assembly has provided that settlement documents in lawsuits against governmental agencies, except for malpractice actions against hospitals, may not be sealed unless the court determines that the presumption of openness is overcome by an overriding interest in maintaining the confidentiality of the proceeding and that the interest may not be served by any measure other than sealing the documents.[32] The statute states a preference that such records be open, however.

In nongovernmental civil cases, there is no such requirement, and the general authority described in *Virmani* applies. Unless the court exercises that authority, the public records law applies to the records of the case. Defendants involved in multiple lawsuits often seek closure to keep the terms of one settlement from affecting other cases. Sealing of settlements is controversial, as this excerpt from a legal manual prepared for news media personnel notes:

> *This trend [to seal settlements] is opposed by . . . news organizations because the sealing of court documents allows the public courts to be turned into private dispute resolution forums. The effect is to keep from the public information that could help citizens, such as settlements for injuries stemming from the use of defective or dangerous products.*[33]

Computer Records

The official record of any court proceeding is the paper record in the file of the case, maintained in the office of the clerk of court. That has implications for the ease of use of the record. For example, if a researcher wanted to do a systematic review of results in impaired driving cases, using the case files would require looking at hundreds of thousands of case files in 100 counties. It is not surprising that projects like that are seldom done using the original, or "source" documents, even though the results would be of great interest to the public. Similarly, looking at a person's criminal history or the number of civil judgments rendered against him or her would be an insurmountably difficult

task if the research had to be conducted in 100 courthouses. Even if the search is for a single record—a person's record of being sued in one county, or his or her history of impaired driving in a county—the search must be conducted in the courthouse, during regular business hours. This often is not the most convenient place or time for the search to occur.

Computers can change that—and they have. Much of the important information that is found in source documents for North Carolina's courts also is maintained in a database on the state court system's mainframe computer. This database often is referred to as "compiled records." Although access to the database is easier in some ways—it can potentially be gained anytime, anywhere—it may be more difficult in other ways because navigating a computer-based record system often requires specialized knowledge about that system.

The emergence of compiled records raises the important question of whether they should be treated in the same way as source records. In other contexts, governments have recognized that they are different. The best example is state criminal histories. In each state a central, automated repository of such information is available to all law enforcement personnel. All the information in the repository has been obtained from public records, but it is not available to the public.[34] In weighing the risk of harm from widespread dissemination of criminal records against the benefits to the public, Congress opted in favor of restricting access.

As state court systems develop more powerful, centralized databases, they face the same issues. The report of a study by the Conference of State Court Administrators (composed of the chief executive officers of the fifty state court systems) suggests that compiled records be treated in the same way as source records, and be equally available. The report recognizes, however, that there may be instances in which the content of the record should not be made public in either the source document or any compiled documents.[35]

North Carolina's statutes follow that policy.[36] There is no statutory prohibition on dissemination of the court system's compiled records. Thus the compiled records, like the source records from which they come, are public.[37] Records that are shielded from public inspection in their original form are not available in electronic formats. A person requesting a copy of public records "may elect to obtain them in any media in which the public agency is capable of providing them."[38]

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Another way in which compiled electronic records differ from source records is that they also may be obtained from private businesses. The Administrative Office of the Courts has contracts with some private agencies giving them access to the state database and allowing them to resell the records. The records can be purchased by anyone and are available on the Internet.[39] The Administrative Office of the Courts retains the funds generated by these contracts to support its technology programs.[40]

Juror Privacy Issues

Jurors are a vital part of the court system. Although relatively few cases are disposed of by jury trials, the fact that a jury is available is very important. All participants in civil settlement or criminal plea negotiations consider what a jury would do in making judgments about the reasonableness of an offer from the other side. In a real sense, juries determine what justice means in a community.

Jurors are not paid well, are forced to miss work, and in many instances do not have particularly good physical surroundings in which to do their job.[41] Nevertheless, every year, tens of thousands of citizens report to courthouses for jury service, most of them cheerfully. As they begin their service, tension between their desire for privacy and the need for open information about the courts once again arises. As is true in other contexts, the privacy interest rarely prevails.

The issue can come up in a variety of contexts. In rare, high-profile cases, a juror's lifestyle may be investigated before he or she reports for jury service. When the juror reports for duty and is questioned about his or her fitness to serve, the questioning (called *voir dire*) often delves into personal matters as attorneys determine if potential jurors have fixed opinions on issues important to the case. If a juror completes a questionnaire with personal information, he or she may be concerned about the retention of that document. If a trial is highly publicized, a juror may be the subject of publicity. Also, to protect either their privacy or their safety, jurors may have concerns about the parties to the case knowing their address.

Data are available on how North Carolina jurors feel about some of those issues. In a recent survey, 43 percent of North Carolina jurors responding felt that *voir dire* questions were unnecessary, 27 percent said the questions made them uncomfortable, and 27 percent considered the questions invasions of their privacy. One of the most frequently raised concerns was the embarrassment of having to discuss prior criminal convictions publicly. Further, 25 percent of those surveyed felt that unnecessary questions were asked about their families, their employment, their church affiliation, and like matters.

Jurors' main concern was that such questions often had the effect of stereotyping them based on where they lived, worked, or worshipped. Of those asked about their religion, 20 percent thought the questions were irrelevant and intrusive.

In general, the survey found that

jurors' interests in privacy had several components. Jurors wanted to limit public disclosure of sensitive or embarrassing information. They did not want the questions to cause them to have concerns about their personal safety. Also, they wanted the questioning to minimize the possibility of their being stereotyped.[42]

If protecting jurors' privacy was the dominant value in the judicial system, the practices just mentioned would not be permitted. The system exists, however, to provide parties with a fair trial, in which they are judged by their peers and not by an agent of the government. That system has costs, and one of them is some loss of a juror's interest in his or her privacy.

Within that framework, though, jurors have limited protections. The American Bar Association's standard, a benchmark against which courts measure their systems, provides that "the Judge should ensure that the privacy of prospective jurors is reasonably protected and that questioning is consistent with the purpose of the voir dire process."[43]

In North Carolina, some statutes and policies help serve that interest. First, the master jury list for each county is available for public inspection, but it does not list jurors in the order in which they will be summoned.[44] This makes it less likely that potential jurors will be the subject of an investigation before being called to serve.[45]

Second, in instances in which material is appropriate for voir dire questioning but is nonetheless embarrassing or highly sensitive, the U.S. Supreme Court has approved the closing of the courtroom to the public during jury selection. The Court allowed the closing when the process involved questions that "touch on deeply personal matters that the person has legitimate reasons for keeping out of the public domain." To close the court in those instances, the Court directed trial judges to

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maintain control of . . . jury selection and [to] inform the array of prospective jurors, once the general nature of sensitive questions is made known to them, that those individuals believing that public questioning will prove damaging because of embarrassment, may properly request an opportunity to present the problem to the judge in camera [in private], but with the counsel present and on the record.[46]

Finally, judges may limit the scope of questions allowed in *voir dire* to prevent questioning on inappropriate matters. In the case establishing that authority most clearly, the trial judge prohibited the defense attorney in a death-penalty case from inquiring into a juror's religious denomination or participation in church activities: "Even though the state and the defendant are entitled to inquire into a prospective juror's beliefs and attitudes, neither has the right to delve without restraint into all matters concerning potential jurors' private lives."[47]

Conclusion

The job of courts is to balance interests to determine just results in specific cases. They also must strike the right balance when privacy interests conflict with other important interests, such as the public's right of access to its courts or a party's right to a fair trial. In most cases the privacy interest, although important, does not prevail because, in a democratic society, having a justice system in which citizens have confidence is so important that citizens are willing to give up some of their privacy. The balance has changed over the years and will continue to do so, but the goal is likely to remain the same: to keep the courts as a public institution that has the confidence of the public and does not unduly invade the privacy of those who use it.

Notes

1. Cowley v. Pulsifer, 137 Mass. 392, 395 (1884).

2. *In re* Caswell's Request, 18 R.I. 835, 835, 29 A. 259, 259 (1893).

3. Globe Newspaper Co. v. Superior Ct. for Norfolk County, 457 U.S. 596, 606 (1982).

4. In this article, when I refer to closing the courts, I mean restricting the access of the press and the public to the proceedings. Court personnel, witnesses, parties, attorneys, and others with a specific reason to be present may be in the courtroom. Other situations in which courtrooms are not fully open to all parties, such as "sequestration" (seclusion) of witnesses [N.C. GEN. STAT. § 15A-1225 (hereinafter G.S.)], extraordinary security measures that impose restrictions on courtroom access [G.S. 15A-1034], and special arrangements to allow child victims to testify by closed-circuit television [*see In re* Stradford, 119 N.C. App. 654, 460 S.E.2d 173 (1995), are beyond the scope of this article. Moreover, they do not directly affect the privacy interests of the people testifying, since members of the public may attend the testimony.

5. JOHN V. ORTH, THE NORTH CAROLINA STATE CONSTITUTION, WITH HISTORY AND COMMENTARY 53–55 (Chapel Hill, N.C.: Univ. of N.C. Press, 1993). Orth notes that the language was derived from the Magna Carta. *See also* Louis F. Hubener, *Rights of Privacy in Open Courts—Do They Exist?*, 2 EMERGING ISSUES IN STATE CONSTITUTIONAL LAW 189 (1989).

6. Virmani v. Presbyterian Health Services Corp., 350 N.C. 449, 476, 515 S.E.2d 675, 695 (1999).

7. *See* State v. Burney, 302 N.C. 529, 537–38, 276 S.E.2d 693, 698 (1981); *In re* Nowell, 293 N.C. 235, 249, 237 S.E.2d 246, 255 (1977); *In re* Edens, 290 N.C. 299, 306, 226 S.E.2d 5, 9–10 (1976).

8. *Globe Newspaper*, 457 U.S. at 603–07. The Court has since ruled that the right extends to jury selection proceedings, Press Enter. Co. v. Superior Ct. of Cal., Riverside County, 464 U.S. 501 (1984), and to preliminary hearings conducted by a magistrate, El Vocero de Puerto Rico v. Puerto Rico, 508 U.S. 147 (1993).

9. *Globe Newspaper*, 457 U.S. at 606.

10. *Virmani*, 350 N.C. at 476–78, 515 S.E.2d at 693–95.

11. As one commentator notes, the burden is so high that the right of access is "close to absolute in practice." Karen Rhodes, *Open Court Proceedings and Privacy Law: Re-Examining the Bases for the Privilege*, 74 TEXAS LAW REVIEW 881, 908 (1996). *See also* Hall v. Post, 323 N.C. 259, 372 S.E.2d 711 (1988), in which the North Carolina Supreme Court held that there is no tort liability for invasions of privacy by the publication of true but private facts.

12. *Virmani*, 350 N.C. at 478, 515 S.E.2d at 694.

13. If there is concern about a jury's ability to handle publicity during a trial, the trial judge may "sequester" (seclude) the jury. G.S. 9-17, 15A-1236. Sequestration is rarely used in North Carolina; judges instead give jurors specific instructions to avoid any publicity about the trial. *See* NORTH CAROLINA PATTERN JURY INSTRUCTIONS FOR CRIMINAL CASES § 100.31 (N.C. Super. Ct. Judges Conference, Committee on Pattern Jury Instructions, June 1978).

14. The types of cases include allegations of child abuse, neglect, or dependency, or of juvenile delinquency.

15. This is the only instance in which the statutes authorize litigants to file an action without using their name. In some other states and in federal courts, judges may allow litigants to proceed anonymously (as John Doe or Jane Roe). *See* 1 GRAY WILSON, NORTH CAROLINA CIVIL PROCEDURE 173 (2d ed., Charlottesville, Va.: Michie, 1995). Whether the practice would be approved by North Carolina's appellate courts is unclear, but in courts where the practice is authorized, the court must weigh the privacy interest of the party against the interest of the public in having access to court information. Typically the cases in which the party is allowed to proceed anonymously involve issues like birth control, abortion, sexual orientation, child custody, or challenges to religious observances. Doe v. Diocese Corp., 43 Conn. Supp. 152, 647 A.2d 1067 (1994).

16. G.S. 7A-276.1.

17. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).

18. G.S. 5A-11(b).

19. G.S. 1-72.1.

20. Virmani v. Presbyterian Health Services Corp., 350 N.C. 449, 515 S.E.2d 675 (1999).

21. For a discussion of the history of the courts' handling of this issue, *see* CATHY PACKER & HUGH STEVENS, NORTH CAROLINA MEDIA LAW HANDBOOK, 7–10 (Chapel Hill, N.C.: N.C. Press Found., 1996).

22. GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS Rule 15, Electronic Media and Still Photography Coverage of Public Judicial Proceedings (Charlottesville, Va.: LEXIS Publ'g Co., 2001).

23. For a discussion of the general public records statute in relation to privacy interests, see the article on page 20. The specific statute pertaining to the court records maintained by the clerk of court is G.S. 7A-109(a), which provides, "Except as prohibited by law, [clerk of court] records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained."

24. *Virmani*, 350 N.C. 449, 515 S.E.2d 675. *See* Times-News Publ'g Co. v. State of N.C., 124 N.C. App. 175, 476 S.E.2d 450 (1996); News and Observer Publ'g Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

25. Juvenile records and involuntary commitment records are confidential unless ordered to be opened by the court. G.S. 7B-2900, -3000; G.S. 122C-207. All records of minors seeking waivers of parental consent for abortion are confidential. G.S. 90-21.8. All adoption records of the court that could lead to the identity of the birth parents are to be sealed, unless ordered to be opened by a court. G.S. 48-9-102.

26. G.S. 1A-1, Rule 26(c). The court also may limit the matters into which the discovery proceeding may inquire, or prohibit the discovery altogether.

27. G.S. 15A-1002(d).

28. G.S. 15A-1333.

29. *Id.;* G.S. 7A-773.1, -774. Sentencing-services programs provide information to the court and to attorneys in criminal cases about possible sentences for offenders that do not involve commitment to prison. The information is similar to the kind of information that is contained in presentence reports but often is more comprehensive and detailed, especially with respect to the defendant's social and medical history.

30. Virmani v. Presbyterian Health Services Corp., 350 N.C. 449, 476, 463, 515 S.E.2d 675, 695, 685 (1999).

31. *Id.*, 350 N.C. at 463, 515 S.E.2d at 685.

32. G.S. 132-1.3.

33. PACKER & STEVENS, NORTH CAROLINA MEDIA LAW HANDBOOK, at 17.

34. Pub. L. No. 92-544, 86 Stat. 1115. *See also* 28 U.S.C. § 534. For a discussion of the information contained in this database, *see* James C. Drennan, *Obtaining Record Checks to Reduce Risk,* POPULAR GOVERNMENT, Winter 1999, at 30.

35. CONFERENCE OF STATE COURT ADMINISTRATORS, CONCEPT PAPER ON ACCESS TO COURT RECORDS (Aug. 2000). A Model Policy on Public Access to Court Records is being drafted by the National Center for State Courts (Williamsburg, Va.). It is being prepared on behalf of the Conference of State Court Administrators and the Conference of Chief Justices. The initial draft is available at www.courtaccess.org/modelpolicy (last modified Mar. 11, 2002).

36. Courts in some other jurisdictions protect more records from public inspection than North Carolina courts do. Federal bankruptcy courts prevent access to Social Security numbers contained in electronic filings in those courts. Arizona and New York state courts make all electronically stored information about domestic case files confidential except the final orders of divorce, custody, property distribution, or child support. Privacy and Public Access to Court Records, Memorandum from Pamela Best, Associate Counsel, N.C. Admin. Office of the Courts, to Judge Robert Hobgood, Director, N.C. Admin. Office of the Courts (Nov. 27, 2001) (on file with Best and with author).

37. G.S. 132-1: "Public records . . . shall mean all . . . electronic data processing records, . . . made or received pursuant to law or ordinance in connection with the transaction of public business. . . ."

38. G.S. 132-6.2.

39. G.S. 7A-109(d) provides authority for the Administrative Office of the Courts to charge for such access, and that office currently has contracts with several private agencies.

40. G.S. 7A-343.2.

41. G.S. 7A-312 establishes a fee of $12 per day to be paid to jurors for the first five days of jury service, $20 per day for additional days. For a summary of the results of a survey conducted by the Administrative Office of the Courts, *see* Miriam S. Saxon, *The Verdict Is In: Citizens' Views on Jury Service*, POPULAR GOVERNMENT, Spring 1999, at 29.

42. Mary Rose, *No Right to Remain Silent: Privacy and Jurors' Views of the* Voir Dire *Process* (forthcoming in JUDICATURE), Paper presented at Jury Summit 2001, Feb. 2, 2001, New York (New York State Unified Court System and National Center for State Courts). The survey involved jurors who participated in thirteen criminal trials; 67 percent completed the survey. Surveys from other states are consistent.

43. STANDARDS RELATING TO JURY USE AND MANAGEMENT Standard 7(c) (1993).

44. The master list is the list of all jurors who may be summoned in each two-year cycle for which the list is prepared.

45. G.S. 9-4, -2.1. For a discussion of the juror's right to privacy in this situation, *see* David Weinstein, *Protecting a Juror's Right to Privacy: Constitutional Constraints and Policy Options*, 70 TEMPLE LAW REVIEW 1 (1997).

46. Press Enter. Co. v. Superior Ct. of Cal., Riverside County, 464 U.S. 501, 511, 511 (1984).

47. State v. Lloyd, 321 N.C. 301, 307, 366 S.E.2d 316, 321 (1988).