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The Honorable Sarah S. Vance
U.S. District Court, Eastern District of Louisiana
500 Poydras Street, Room C-151
New Orleans, LA 70130

Dear Chief Judge Vance:

The Reporters Committee for Freedom of the Press, the Louisiana Press Association, and Gannett Co., Inc. and its six Louisiana outlets write in opposition to proposed changes to U.S. Court of Appeals for the Eastern District of Louisiana Local Rule 47.5 (Interviewing Jurors). Specifically, we oppose the proposal, in clause 47.5(C), to ban any juror from ever disclosing the following information outside of an inquiry conducted under court supervision: "(1) Any statement made or incident that occurs during the jurors' deliberations; (2) The effect of anything on that juror's or another juror's vote; (3) Any juror's mental processes concerning the verdict; or (4) The specific vote of any juror other than the juror being interviewed."

While there are in some situations legitimate privacy interests at stake when a single juror discusses deliberations, sweeping restrictions like these that apply to all cases are completely inconsistent with the First Amendment rights of not only the jurors, but also of the news media that covers the courts and the public that needs to know how justice is administered. The proposals are overreaching on their face, and by intimidating jurors into silence for fear of violation of the court's rules, they have an enormous chilling effect on a class of speech that is critically important to the public.

The four restrictions in the proposed rule essentially encompass anything that the public would want to know about jury deliberations. They therefore operate as essentially a complete ban on interviewing jury members. The proposal runs counter to Fifth Circuit precedent and to the U.S. Supreme Court's repeated pronouncements that court proceedings are presumptively to ensure the public that the system is functioning fairly. *See, e.g., Richmond Newspapers v. Virginia*, 448 U.S. 555, 564, 570-73 (1980). The jury is a key component of any trial. A rule that prevents jurors from being asked even basic questions about why they voted as they did dangerously restricts public understanding of the judicial process.

A. The proposed rule runs counter to Fifth Circuit precedent.

In *In re Express-News Corporation*, the U.S. Court of Appeals for the Fifth Circuit struck down a local rule in a Texas federal court that had banned any person from interviewing any juror regarding the deliberations or verdict of

the jury, except by leave of the court. 695 F.2d 807, 808 (5th Cir 1982). The case held that a "court rule cannot … restrict the journalistic right to gather news unless it is narrowly tailored to prevent a substantial threat to the administration of justice." *Id.* at 810. The ban on interviewing jurors in *In re Express-News Corporation* was not narrowly tailored because it was "unlimited in time and in scope," applied even to jurors willing to speak, and "foreclos[ed] questions about a juror's general reactions as well as specific questions about other jurors' votes that might, under at least some circumstances, be appropriate." *Id.* The proposed rule here is similarly broad and therefore equally invalid. Not only is the ban here unlimited in time, but also it is not narrowly tailored. The four prongs of 47.5(C) – which prevent a juror from discussing anything that occurred during deliberations, "the effect of anything" on his vote, how he came to the verdict and the specific vote of other jurors – leave little, if any, room for the public to obtain information about a jury's decision-making process.

The proposed rule ignores that the public and the press rely on interviews of discharged jurors to explain the outcome of a particular trial, the experience of serving on a jury, and the operation of the judicial system. People cannot receive information regarding the unique perspective of a juror from other sources. Interviews with jurors often lead to stories that expose misconduct and abuse, or that prevent misinformation from flourishing. For instance, a juror can help explain that a highly controversial decision was based on evidence and not on external or otherwise improper factors.

Fifth Circuit decisions interpreting *In re Express-News Corporation* recognize the importance of providing the public with access to jurors. *See U.S. v. Cleveland*, 128 F.3d 267 (5th Cir. 1997); *U.S. v. Brown*, 250 F.3d 907 (5th Cir. 2001). The bans in *Cleveland* and *Brown* only applied to the individual proceedings at hand, so the fact that the Court upheld some restrictions does not justify the sweeping local rule at issue here. *Cleveland*, 128 F.3d at 269; *Brown*, 250 F.3d at 912. Moreover, the Court gave reasons for why secrecy was necessary in those cases. *See Cleveland*, 128 F.3d at 268-69 (explaining that trial, involving two former state senators, already received "great amount" of news coverage); *Brown*, 250 F.3d at 910-11, 922 (finding intense publicity in case involving former governor and other political figures could lead to juror harassment; noting allegations that defendants tried to interfere through judicial process through bribes and other illegalities; and explaining that the media coverage was so pervasive that the "public knew what was going on."). The bans also left room for jurors to discuss the verdict and their general reactions to the proceedings, and allowed jurors to speak on their own initiative. *Cleveland*, 128 F.3d at 269-70; *Brown*, 250 F.3d at 907, 921. However, proposed Local Rule 47.5(C) prohibits jurors from speaking on a sweeping range of topics. As representatives of their communities, jurors have a right to interact freely with the press and public to inform them of their thoughts regarding the public service they just performed. *See Near v. Minn.*, 283 U.S. 697, 713-14 (1931) ("Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press…") (internal citation omitted).

B. Gag orders on parties and attorneys do not justify this proposal.

This Court should not look to gag orders on parties and attorneys, which judges on rare occasions put in place when controversial trials are ongoing, to justify the proposed rule. In the Fifth Circuit, gags on trial participants (not including jurors) are only allowed if there is a "substantial likelihood" that their comments will undermine a defendant's fair trial rights. *U.S. v. Brown*, 218 F.3d 415, 428 (5th Cir. 2000). Unlike the proposed blanket ban here, courts analyze these gags on a case-by-case basis. For instance, *Brown* upheld a gag on parties and attorneys because the parties had tried to "manipulate media coverage" to "gain an upper hand" and because the ban left some room for the participants to speak about the case. *Id.* at 429-30. Moreover, gags on trial participants typically end when the trial concludes and when the defendant's Sixth Amendment rights are no longer at risk. However, 47.5(C)'s proposed ban is not time-bound: it would prohibit anyone – even historical researchers – from learning about a juror's experience even long after the case was decided.

C. The ban is not narrowly tailored, and it disregards the U.S. Supreme Court's justifications for court openness.

The ban here does not directly address another purported harm – threat to jurors' privacy – that could be associated with making jury information available. While some courts have used privacy rationales to disallow jurors from speaking about other jurors' experiences, this rule goes much farther. It would prevent jurors from speaking about even their own experience, where the supposed privacy concerns of fellow jurors are irrelevant.

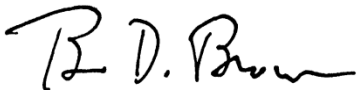
While it is undoubtedly true that a great deal of secrecy is inherent in the process of jury deliberations, it is nonetheless important to allow the public to understand how that process works when jurors are willing to come forward after trial and discuss their roles in the administration of justice. Though deliberations are closed to the public, they are still a part of a judicial system that recognizes that open judicial proceedings are fundamental to the legal system. *See, e.g., Richmond Newspapers*, 448 U.S. 555, 564, 570-73 (1980) ("[T]hroughout its evolution, the trial has been open to all who care to observe."). As Justice Brennan explained in concurrence in *Richmond Newspapers*, chief among the justifications court openness is that "uninhibited, robust, and wide-open debate" about public issues strengthens democracy by giving voters better understanding about government programs. *Richmond Newspapers*, 448 U.S. at 587 (Brennan, J., concurring) (citation omitted). *See also Neb. Press Ass'n.*, 427 U.S. at 586-87 ("A responsible press has always been regarded as the handmaiden of effective judicial administration…Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.").

The Supreme Court has recognized other reasons for America's tradition of court openness. Transparency helps assure people that "proceedings were conducted fairly" and that decisions are not "based on secret bias or partiality." *Richmond Newspapers,*

448 U.S. at 569. It is impossible for the public to have that assurance if it cannot hear from the very people who decide on guilt or innocence. Additionally, the Supreme Court has explained that open trials provide a "therapeutic value" by providing a way to diffuse the tensions that often rise after a crime has occurred. *Id.* at 570-71. The proposed rule ignores that interest as well.

The Reporters Committee for Freedom of the Press, and the Louisiana media coalition, respectfully request that this Court reject the proposed language of 47.5(C).

Sincerely,



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