

Can Juror Questionnaires Be Confidential?

The District of Columbia Court of Appeals Found Such Promises “Inappropriate [and] Constitutionally Unsound”



Supplemental jury questionnaires that are more expansive than a court's standard juror questionnaire can be useful tools for streamlining the *voir dire* process. Further, the apparent privacy of a written questionnaire can result in more candid and detailed responses from prospective jurors. To that end, supplemental questionnaires often include an introductory statement or instruction promising that the responses will be viewed only by the court and counsel. However, in a case related to the trial of Ingmar Guandique for the murder of Chandra Levy, the District of Columbia Court of Appeals held that “[p]romises of confidentiality in this context are not merely inappropriate; they are constitutionally unsound” *In re Access to Jury Questionnaires*; *The Washington Post*, 37 A.3d 879, 889 (D.C. Ct. App. 2012).

The disappearance of former federal intern Chandra Levy in May 2001 and the discovery of her skeletal remains a year later in a park in Washington, D.C. were highly publicized across the country. Nearly ten years later, Ingmar Guandique, an illegal immigrant and gang member from El Salvador, stood trial for her murder.

Even a decade later, the volume of publicity about Chandra Levy's disappearance and the approaching trial of Guandique created serious challenges for jury selection. So, a case-specific, 55-question jury questionnaire was drafted. The questionnaire identified prospective jurors only by their juror numbers. No personally identifiable information such as names, addresses, or social security numbers was sought. Furthermore, a cover letter accompanying each questionnaire stated that the questionnaire would be “returned to the Clerk of the Court and kept in confidence, under seal, not accessible to the public or media.” *Id.* at 883.

Soon after Guandique's trial began, *The Washington Post* sought access to the questionnaires completed by the 16 empaneled jurors. After its requests were denied, *The Post* and three other media organizations filed a motion for leave to intervene to access the juror questionnaires. Nine days later, in the midst of the defense's case, the court notified the intervenors that it would only release information on juror age, gender, education level, and occupation. Two days after the jury returned a guilty

verdict against Guandique, the trial court held a hearing during which it justified its closure decision on the basis of the trial court's promise of confidentiality and the belief that the guarantee of privacy is more likely to elicit full candor from the jurors.

The Washington Post appealed. The District of Columbia Court of Appeals held that “*The Post*, as a surrogate for the public, has a presumptive right of access to the jury questionnaires . . . and the trial court erred in not recognizing that right” *Id.* at 882. Furthermore, the court noted that jury questionnaires are “part of the *voir dire* process and thus subject to the presumption to public access.” *Id.* at 886. The court specifically rejected the “candor” arguments, holding “that a generalized concern about juror candor is not enough to overcome the presumption of open access.” *Id.* at 888. However, the court left the door open to future candor arguments in other cases, stating: “This is not to say that concerns about juror candor may never justify closure.” *Id.*

Overall, supplemental jury questionnaires are still recommended as a tool for streamlining *voir dire* and for increasing the accuracy of juror responses, especially in cases involving publicized, sensitive, or complex issues. However, care must be taken to ensure that any promises of confidentiality made to the potential jurors can be enforced under the particular circumstances.