

SUPREME COURT ADVISORY COMMITTEE, OFFICE OF  
RULES OF CRIMINAL PROCEDURE APPELLATE COURTS

426 MINNESOTA JUDICIAL CENTER  
25 CONSTITUTION AVENUE  
SAINT PAUL, MN 55155

SEP 29 2003

FILED

*Hon. Robert Lynn, Minneapolis, Chair*  
*Philip Marron, Minneapolis, Reporter*  
*C. Paul Jones, Minneapolis, Counselor*  
*Kelly Mitchell, Saint Paul, Staff Attorney*  
*Caroline Bell Beckman, Saint Paul*  
*Leonardo Castro, Minneapolis*  
*James D. Fleming, Mankato*  
*Theodora Gaitas, Minneapolis*  
*William Hennessy, Grand Marais*  
*Candice Hojan, Saint Paul*

*Kathryn M. Keena, Hastings*  
*Thomas M. Kelly, Minneapolis*  
*William F. Klumpp, Jr., Saint Paul*  
*Wayne A. Logan, Saint Paul*  
*John W. Lundquist, Minneapolis*  
*Arthur Martinez, Minneapolis*  
*Paul Scoggin, Minneapolis*  
*Hon. Jon Stafsholt, Glenwood*  
*Robert Stanich, Saint Paul*  
*Hon. Heather L. Sweetland, Duluth*

September 29, 2003

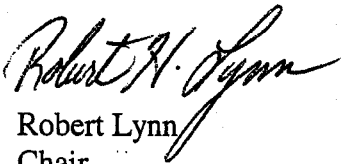
Chief Justice Kathleen Blatz  
Minnesota Supreme Court  
25 Constitution Avenue  
St. Paul, MN 55155-6102

Justice Russell Anderson  
Minnesota Supreme Court  
25 Constitution Avenue  
St. Paul, MN 55155-6102

Dear Chief Justice Blatz and Justice Anderson:

By Order of the Supreme Court dated January 28, 2003, the Advisory Committee on Rules of Criminal Procedure was directed to report to the Court by September 30, 2003, concerning certain recommendations made by the Supreme Court Jury Task Force in its Final Report of December 20, 2001. The Advisory Committee has completed its review of those recommendations. Submitted herewith please find the original and fourteen copies of our Report and Proposed Amendments to the Rules of Criminal Procedure Concerning the Supreme Court Jury Task Force's Recommendations.

Respectfully yours,



Robert Lynn  
Chair

RL/jld

Enc.

C1-84-2137  
STATE OF MINNESOTA  
IN SUPREME COURT

In Re:

Supreme Court Advisory Committee  
On Rules of Criminal Procedure

REPORT AND PROPOSED AMENDMENTS  
TO THE RULES OF CRIMINAL PROCEDURE  
CONCERNING THE SUPREME COURT  
JURY TASK FORCE'S RECOMMENDATIONS

September 29, 2003

**Hon. Robert Lynn, Chair**

Caroline Bell Beckman, St. Paul  
Leonardo Castro, Minneapolis  
James D. Fleming, Mankato  
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Robert Stanich, St. Paul  
Hon. Heather L. Sweetland, Duluth

Hon. Russell Anderson  
Supreme Court Liaison

C. Paul Jones, Minneapolis  
Counselor

Philip Marron, Minneapolis  
Reporter

Kelly Mitchell, St. Paul  
Staff Attorney

**REPORT TO THE MINNESOTA SUPREME COURT  
FROM THE SUPREME COURT ADVISORY COMMITTEE  
ON RULES OF CRIMINAL PROCEDURE**

By Order of the Supreme Court dated January 28, 2003, the Advisory Committee on Rules of Criminal Procedure was directed to report to the Court by September 30, 2003, concerning certain recommendations made by the Supreme Court Jury Task Force in its Final Report of December 20, 2001. The Advisory Committee has met regularly to review those recommendations and now recommends that the Supreme Court adopt the proposed amendments to the Rules of Criminal Procedure that are submitted herewith. Additionally, the Advisory Committee offers the following comments concerning the various issues addressed to us by the Court.

**JUROR PRIVACY**

Recommendation #20 of the Jury Task Force Final Report proposes that the Rules of Criminal Procedure be amended to allow prospective jurors to answer questions on highly sensitive or personal matters at the bench, in chambers, or in a courtroom closed to observers. The Advisory Committee agrees with the Task Force that, to the extent possible, judges should accommodate jurors' legitimate privacy concerns during voir dire. However, in doing that, it is constitutionally necessary to balance those concerns against defendants' rights to a fair and public trial and the public's First Amendment right to have access to court proceedings. Before any part of voir dire can be closed or access to information restricted, a court must comply with the constitutionally required procedures and standards as set out by the United States Supreme Court in Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984). The Advisory Committee is proposing a new rule to govern this situation, Rule 26.02, subd. 4(4). This new rule will permit closing parts of voir dire, but only when the trial court orders such closure after

finding that it is necessary to do so to protect an overriding legitimate privacy interest of the prospective juror in not disclosing deeply personal matters to the public. Such an order may be issued only pursuant to the procedures set forth in the rule. That includes requirements that the request be made by the prospective juror, that an in camera hearing be held, that supporting findings of fact be made in writing or orally on the record, and that any closure be no broader than is necessary to protect the overriding privacy interests involved. The Advisory Committee believes that these procedures and standards contained in proposed Rule 26.02, subd. 4(4) are necessary before an order closing voir dire or any part of it can withstand constitutional scrutiny.

### **CONFIDENTIAL VOIR DIRE QUESTIONNAIRES**

Recommendation #21 of the Jury Task Force Final Report proposes that Rule 26.02, subd. 2(2) of the Rules of Criminal Procedure be amended to provide that juror questionnaires not be maintained in the public record and that they be destroyed after they are no longer needed for trial or appeal. The reason for this is to protect the legitimate privacy interests of jurors and because prospective jurors are more likely to be forthcoming with candid answers if they are assured that their questionnaire answers will be confidential. The Advisory Committee agrees that these are important concerns, but as the Task Force recognized in its comments in the Final Report, any provisions made to safeguard jury privacy with regard to questionnaires must conform to the Supreme Court's dictates in Press-Enterprise v. Superior Court, 464 U.S. 501 (1984) as discussed above. Several courts have also recognized and held that the Press-Enterprise dictates apply to voir dire questionnaires as well as oral questioning. See Leshner Communications, Inc. v. Superior Court, 224 Cal. App. 3d 774, 274 Cal. Rptr. 154 (1990); Newsday, Inc. v. Goodman, 159 A.D. 2d 667, 552 N.Y.S. 2d 965 (1990). The

Task Force proposal to seal all questionnaires of selected jurors and destroy them upon completion of the proceedings, including any appeal, constitutes a blanket closure of the written voir dire that does not satisfy the case-specific constitutional requirements of Press-Enterprise. Most, if not all of the information obtained on a standard jury questionnaire is mundane and not the type of sensitive, highly personal information that would be necessary to constitutionally justify restricting access to it. Consequently, any general promise to prospective jurors that their jury questionnaire answers will be confidential is inappropriate. See Bellas v. Superior Court of Alameda County, 85 Cal. App. 4<sup>th</sup> 636, 102 Cal. Rptr. 2d 380 (2000) in which the court stated that “[n]o comprehensive offer of protection from public disclosure of information communicated on juror questionnaires is legally effectual where public access is mandated by the First Amendment.” Additionally, the premature destruction of the questionnaires could present appellate problems if a defendant raises issues concerning the jury in a later post-conviction proceeding. If sensitive information is collected by jury questionnaires it would be necessary to employ a procedure similar to that proposed in Rule 26.02, subd. 4(4) concerning oral voir dire, before access to that sensitive information could be restricted by the court. Rather than do that, however, the Advisory Committee decided it would be more efficient and less troublesome to simply handle any such issues under the oral voir dire closure provisions of proposed Rule 26.02, subd. 4(4).

The amendment of Rule 26.02, subd. 2(3), concerning jury questionnaires, proposed by the Advisory Committee, will permit questions that may elicit sensitive information to be added to the Jury Questionnaire set forth in Form 50. If that is done, the preamble to the questionnaire must advise the potential jurors that if they object to answering any particular question because the answer will be sensitive or embarrassing to

them, then they may request an opportunity to address the court to ask that the answers be given orally and not disclosed to the public. If a potential juror makes such a request, the court will then handle the matter orally under Rule 26.02, subd. 4(4) and that rule will govern the issue and assure that any closure satisfies the constitutional requirements. By this method, there should not be any information in the written questionnaire answers that is so sensitive and deeply personal that it would qualify for sealing or restricting access to it. Likewise, there should be no adequate reason for destruction of those written records earlier than would ordinarily occur.

### **ANONYMOUS JURORS**

Recommendation #22 of the Jury Task Force Final Report proposes that “anonymous” juries be used sparingly when justified by concerns for jury tampering or safety. Rule 26.02, subd. 2 already provides a procedure for maintaining the anonymity of prospective jurors in accordance with the standards and procedures required by the court in State v. Bowles, 530 N.W.2d 521 (Minn. 1995).

However, that rule does not expressly address anonymity after jury selection or the recommendation of the Task Force that numbers may be used in certain circumstances to identify jurors. Therefore, the Advisory Committee is proposing that the anonymous juror provisions of Rule 26.02, subd. 2 be amended to permit juror anonymity to extend through trial and even later for so long as such protection is necessary. Additionally, the proposed rule amendment expressly recognizes that the court may identify jurors and prospective jurors by number or by other method that protects their identity. The comment concerning the proposed rule amendment also states that the court may prohibit pictures or sketches in the courtroom to protect juror anonymity.

## JURY SEQUESTRATION

Recommendation #32 of the Jury Task Force Final Report proposes that Rule 26.03, subd. 5 be amended so that jury sequestration during deliberations be left solely to the sound discretion of the trial judge. Originally, this rule required the defendant to consent to any separation of the jury during deliberations. After previously reviewing this rule, the Advisory Committee in its Report to the Supreme Court dated August 9, 2002, proposed that the rule be amended to treat both parties equally and require the prosecution, as well as the defendant, to consent to any separation of the jury during deliberations. This proposed amendment was adopted by the Supreme Court effective February 1, 2003. Pursuant to the Supreme Court's order of January 28, 2003, and in light of the Task Force's recommendation, the Advisory Committee again thoroughly considered the sequestration provisions in Rule 26.03, subd. 5. It appeared to the committee that, in current practice, jury sequestration during deliberations is rarely ordered. Although defendants, and now the prosecution, may require jury sequestration during deliberation, that power is not being abused and the current procedure is working well. Therefore, the Advisory Committee still supports its previous proposed amendment of Rule 26.03, subd. 5 which was adopted by the Supreme Court and recommends that no further change be made in the rule.

## QUESTIONS BY JURORS

Recommendation #31 of the Jury Task Force Final Report proposes that the rules be amended to permit jurors to submit questions to witnesses in the discretion of the court. In State v. Costello, 646 N.W.2d 204 (Minn. 2002), the Supreme Court prohibited that practice in criminal cases and subsequently the Supreme Court denied recommendation #31. Consequently, no revision of the Rules of Criminal Procedure is

necessary in light of the Court's actions on this issue. Nevertheless, the Advisory Committee is proposing that Rule 26.03, subd. 15 and the comment on that rule be amended to expressly include the prohibition against such questions and to reference the Costello decision.

#### MINNESOTA GENERAL RULE OF PRACTICE 814

Recommendation #8 of the Jury Task Force Final Report proposes that Rule 814 of the General Rules of Practice for District Courts be amended to require the destruction of all juror records and lists, including juror qualification questionnaires, promptly after they are no longer needed for trial or appeal, unless otherwise ordered by the court. The Supreme Court order of January 28, 2003, directed this committee to report back to the court concerning this recommendation. The Advisory Committee has reviewed the Task Force recommendation concerning Rule 814 and we are concerned that the proposed changes to the rule, as well as the existing language of the rule, do not meet constitutional requirements for destruction or suppression of this otherwise public information. The Advisory Committee is concerned that the destruction of all juror questionnaires and related information is actually an after-the-fact blanket closure of voir dire that is not permissible under Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984). Additionally, the destruction of these materials when no longer needed for trial or appeal fails to recognize that a defendant may petition for postconviction relief at any time or habeas corpus relief for as long as he or she is incarcerated. In light of these concerns, the Advisory Committee therefore proposes the following amendment of Rule 814 for further consideration:

#### RULE 814. RECORDS

- (a). the names of qualified prospective jurors drawn and the contents of juror qualification questionnaires completed by those prospective jurors must be



made available to the public upon specific request to the court, supported by affidavit setting forth the reasons for the request, unless the court determines in any instance that access to any such information in a criminal case should be restricted pursuant to Minn. R. Crim. P. 26.02, subd. 2(2) in the interest of justice ~~this information should be kept confidential or its use limited in whole or in part.~~

(b). the contents of juror qualification questionnaires must be made available to lawyers upon request in advance of voir dire. The court in a criminal case may restrict access to names, telephone numbers, addresses and other identifying information of the prospective jurors as permitted by Minn. R. Crim. P. 26.02, subd. 2(2).

(c). The jury commissioner shall make sure that all records and lists, including any juror qualification questionnaires, are preserved for the length of time ordered by the court except that in criminal cases such records and lists shall be preserved for at least ten years after judgment is entered. ~~The contents of any records or lists not made public shall not be disclosed until one year has elapsed since preparation of the list and all persons selected to serve have been discharged, unless a motion is brought under Rule 813.~~

At this time, the Advisory Committee is not proposing that the Supreme Court adopt these amendments to Rule 814. Rather, the Advisory Committee recommends that this proposal and recommendation #8 from the Jury Task Force Final Report be referred to the Minnesota Supreme Court Advisory Committee on General Rules of Practice. We feel this is appropriate because the proposed revisions relate to the General Rules of Practice and also because they affect civil proceedings and not just criminal proceedings.

Dated: 9/29/03

Respectfully submitted,

Robert D. Lynn  
Judge Robert Lynn, Chair  
Supreme Court Advisory Committee  
on Rules of Criminal Procedure

## PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

The Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the following amendments be made in the Minnesota Rules of Criminal Procedure. In the proposed amendments, except as otherwise indicated, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

1. Rule 26.02, subd. 2. Juror Information.

Amend Rule 26.02, subd. 2 as follows:

Subd. 2. Juror Information.

(1). List of Prospective Jurors. Upon request the ~~clerk of court~~ court administrator shall furnish the parties with a list of the names and addresses of the persons on the jury panel and such other information as the ~~clerk of court~~ court administrator has obtained from the prospective jurors, unless otherwise ordered by the trial court after a hearing in accordance with this rule.

(2) Anonymous Jurors. Upon the motion of a party that there is a special need to restrict the parties' access to names, ~~and addresses, telephone numbers,~~ and other identifying information of prospective and selected jurors, the court shall hold a hearing on the motion. The court may order that the parties' and the public's access to this information about the prospective and selected jurors be restricted only if it determines that, in the individual case there is a strong reason to believe that the jury needs protection from external threats to its members' safety or impartiality. The court order may restrict access to such information during jury selection, trial and later for so long as such protection is necessary. Jurors and prospective jurors may be identified by number or by other method that protects their identity. If the court restricts access to this information, the court must also take reasonable precautions to minimize any possible prejudicial effect the restriction on access to this information might have on the defendant or on the state.

The court shall make clear and detailed findings of fact in writing or on the record in open court supporting its determination that the restriction on access to information about the prospective and selected jurors is necessary for their ~~the~~ jurors' safety or impartiality.

(2)-(3) Jury Questionnaire. As a supplement to oral voir dire, a sworn jury questionnaire designed for use in criminal cases may be used to obtain

information helpful to the parties and the court in jury selection before the jurors are called into court for examination. The court may on its own initiative or on request of counsel include in the questionnaire additional questions that may elicit sensitive information. If sensitive questions are included, the prospective jurors shall be advised that instead of answering any particular sensitive questions in writing they may request an opportunity to address the court, in camera with counsel and defendant present, concerning their desire that their answers to any particular sensitive questions not be public. When such a request is made by a prospective juror, the court shall proceed under Rule 26.02, subd. 4(4) and decide whether the particular sensitive questions may be answered during oral voir dire with the public excluded. Court personnel may hand out the questionnaire to the prospective jurors and collect them when completed. The court shall make the completed questionnaires available to counsel.

2. Rule 26.02, subd. 4(1) Purpose—By Whom Made.

Amend part (1) of rule 26.02, subd. 4 concerning voir dire examination as follows:

(1) Purpose—By Whom Made. A voir dire examination shall be conducted for the purpose of discovering bases for challenge for cause and for the purpose of gaining knowledge to enable an informed exercise of peremptory challenges, and shall be open to the public except upon order of the court as provided by Rule 26.02, subd. 4(4). The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge shall then put to the prospective juror or jurors any questions which the judge thinks necessary touching their qualifications to serve as jurors in the case on trial and may give such preliminary instructions as are set forth in Rule 26.03, subd. 4. Before exercising challenges, either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case. A verbatim record of the voir dire examination shall be made at the request of either party.

3. Rule 26.02, subd. 4. Voir Dire Examination.

Amend Rule 26.02, subd. 4 by adding a new part (4) at the end as follows:

(4) Exclusion of the Public from Voir Dire. In those rare cases where it is necessary, the following rules shall govern the issuance of any court orders excluding the public from any part of the voir dire or restricting access to such orders or to transcripts of any parts of the voir dire closed to the public.

(a). Advisory. When it appears that prospective jurors during voir dire may be asked sensitive questions that could be embarrassing to them, the court may on its own initiative or on request of the defense or the prosecution, advise the prospective jurors that they may request an opportunity to address the court in

camera, with counsel and defendant present, concerning their desire to exclude the public from voir dire when the sensitive questions are asked.

(b). In Camera Hearing. If a prospective juror requests an opportunity to address the court in camera concerning exclusion of the public from voir dire during sensitive questioning, the court shall conduct an in camera hearing on that issue on the record with counsel and the defendant also present. The court shall consider at the hearing whether there are any reasonable alternatives to closing voir dire.

(c). Standards. In considering the request to exclude the public during voir dire, the court shall balance the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. The court may order closure of voir dire only if it finds that there is a substantial likelihood that conducting the voir dire in open court would interfere with an overriding interest including the defendant's interest in a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. Any closure of voir dire shall be no broader than is necessary to protect the overriding interests involved.

(d). Refusal to Close Voir Dire. If the court determines that there is no overriding interest to justify excluding the public from voir dire, the voir dire shall continue in open court on the record and upon request the in camera proceeding shall be transcribed and filed with the court administrator within a reasonable time.

(e). Closure of Voir Dire. If the court determines that overriding interests justify closure of any part of the voir dire, that part of the voir dire shall be conducted in camera on the record with counsel and the defendant present.

(f). Findings of Fact. No order excluding the public from any part of the voir dire shall issue without the court setting forth the reasons therefor either in writing or orally on the record. The findings shall indicate why the defendant's right to a fair trial and the jurors' interests in privacy would be threatened by an open voir dire and shall also include a review of alternatives to closure and a statement of why the court believes such alternatives are inadequate.

(g). Record. Whenever under this rule in camera proceedings are held on a juror's request for closure or the public is excluded from any part of the voir dire, a complete record of the proceedings shall be made. Upon request, the record shall be transcribed within

a reasonable time and shall be filed with the court administrator. The transcript shall be available to the public, but only if such disclosure can be accomplished while safeguarding the overriding interests involved. The court may order that the transcript or any part of it be sealed, that the name of a juror be withheld, or parts of the transcript be excised if the court finds that it is necessary to do so to protect the overriding interests involved.

4. Rule 26.03, subd. 15. Evidence.

Amend Rule 26.03 subd. 15 as follows:

Subd. 15. Evidence. In all trials the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules. Jurors shall not be permitted to submit questions to any witness, directly or through the court or counsel. If either party offers into evidence a videotape or audiotape exhibit, that party may also provide to the court a transcript of the proposed exhibit which will be made a part of the record.

5. Comments on Rule 26.02, subd. 2(2).

Amend the twentieth paragraph of the comments on Rule 26 as follows:

In the rare case, where there is a belief that dissemination of this information poses a threat to juror safety or impartiality, ~~the rule~~ Rule 26.02, subd. 2(2) (Anonymous Jurors) provides for a hearing upon a party's motion that the jurors' names, ~~and~~ addresses, telephone numbers, and other identifying information not be distributed. At the hearing, the moving party will have an opportunity to present evidence and argument that there is reason to believe that the jury needs protection from external threats to its members' safety and impartiality. Upon a finding that there is strong reason to believe that this condition exists, the court may enter an order that information regarding identity, including names, telephone numbers, and addresses of prospective jurors be withheld from the public, parties and counsel. See *State v. Bowles*, 530 N.W.2d 521, 530-1 (Minn. 1995); *State v. McKenzie*, 532 N.W.2d 210, 219 (Minn. 1995). The restrictions ordered by the court may extend through trial and beyond as necessary to protect the safety and impartiality interests involved. To protect the identity of jurors and prospective jurors the court may order that they be identified by number or other method and may prohibit pictures or sketches in the courtroom. These procedures and protections are in accord with recommendation 22 of the Minnesota Supreme Court Jury Task Force Final Report of December 20, 2001. The trial court's decision will be reviewed under an abuse of discretion standard.

6. Comments on Rule 26.02, subd. 2(3).

Amend the twenty-third through twenty-eighth paragraphs of the comments

on Rule 26 as follows:

Rule 26.02, subd. 2(2) (3) (Jury Questionnaire).

The use of a written jury questionnaire has proved to be an extremely useful tool in obtaining information from prospective jurors in criminal cases. While its use has been primarily reserved for serious felony cases, experience has established that expanded use of this tool will increase the amount of important information provided by prospective jurors and also make for a more efficient jury selection process. This rule approves of the use of a written questionnaire on a wider scale and provides the procedure for its use. The written questionnaire provided in the Criminal Forms following these rules, includes generally non-sensitive questions relevant to jury selection in any criminal case. See Form 50 for the Jury Questionnaire. Additionally the court on its own initiative or on request of counsel may submit to the prospective jurors as part of the questionnaire other written questions that may elicit sensitive information that might be helpful based on the particular case to be tried.

Once the panel of prospective jurors for a particular case has been determined, the judge or court personnel will instruct the panel on the use of the questionnaire. The preamble at the beginning of the Jury Questionnaire (Form 50) provides the basic information to the prospective jurors including their right to ask the court to permit them to answer any sensitive questions orally and privately. Upon completion of the questionnaire, the court shall make the questionnaire available to counsel for use in the jury selection process. The questionnaire may be sworn to either when signed or when the prospective juror appears in court at the time of the voir dire examination. Because of the information contained in the questionnaire, counsel will not need to expend court time on this information, but can move directly to follow-up questions on particular information already available in the questionnaire. However, the written questionnaire is intended only to supplement and not to substitute for the oral voir dire examination provided for by Rule 26.02, subd. 4.

The use and retention of jury questionnaires have been subject to a variety of practices. This rule provides that the questionnaire is a part of the jury selection process and part of the record for appeal and reflects current law. As such, the questionnaires should be preserved as part of the court record in the case. See Rule 814 of the General Rules of Practice for the District Courts as to the length of time such records must be retained. Additionally, see Rule 26.02, subd. 2(2) as to restricting public access to the names, addresses, telephone numbers, and other identifying information concerning jurors and prospective jurors when the court determines that an anonymous jury is necessary.

It is recognized that the idea of the privacy of the questionnaire adds to the candor and honesty of the responses of the prospective jurors. However, in light of other applicable laws and the fact that the questionnaire is part of the record in the case, prospective jurors cannot be told that the questionnaire is confidential or will be destroyed at the conclusion of the case. Rather, the jurors can be told, as

reflected in the preamble to the Jury Questionnaire (Form 50), that they can ask the court to permit them to answer sensitive questions orally and privately under Rule 26.02, subd. 4(4). This procedure should minimize the sensitive or embarrassing information in the written questionnaires and consequently the need for sealing or destroying them.

In addition to being part of the record in the case, jury selection is a part of the criminal trial which is presumed to be open to the public. *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984) (*Press-Enterprise I*). The use of a jury questionnaire as part of jury selection is also a part of the open proceeding and therefore the public and the ~~press~~ media have a right of access to that information in the usual case. See e.g., *Leshar Communications, Inc. v. Superior Court of Contra Costa County*, 224 Cal. App. 3d 774 (1990).

7. Comments on Rule 26.02, subd. 4(4).

Amend the comments on Rule 26 by adding the following new paragraph after the existing twenty-eighth paragraph of the comments:

Rule 26.02, subd. 4(4) (Exclusion of the Public from Voir Dire) provides the procedure and standards for excluding the public from voir dire or restricting access to related orders or transcripts when prospective jurors are questioned on sensitive or embarrassing matters. The Minnesota Supreme Court Jury Task Force in its Final Report of December 20, 2001 in recommendation 20 proposed that the Rules of Criminal Procedure be amended to safeguard the privacy interests of prospective jurors during voir dire when the interrogation focuses on highly sensitive or personal matters. Rule 26.02, subd. 4(4) does that, but subject to the dictates of *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984) which requires balancing a prospective juror's privacy interest against the defendant's right to a fair and public trial and the First Amendment right of the public to have access to court proceedings. Under that case only a compelling interest would justify closing voir dire to the public and any restrictions on access must be narrowly tailored to serve that interest. Closure of voir dire must be rare and should be ordered only when the interrogation touches on deeply personal matters that the prospective juror has legitimate reasons for keeping out of the public domain. Under the rule and in accord with *Press-Enterprise*, the request to close voir dire must be initiated by the prospective juror. However, the court must advise the prospective jurors of the right to make that request when it appears that sensitive questions may be asked during voir dire. Any determination by the court to close any part of the voir dire must be supported by findings either in writing or orally on the record. The court may withhold names, restrict access to orders or transcripts, and excise transcripts as may be necessary to safeguard the overriding privacy interests involved.

8. Comments on Rule 26.03, subd. 15.

Amend the sixth-fourth paragraph of the comments on Rule 26 concerning Rule 26.03, subd. 15 as follows:

Rule 26.03, subd. 15 (Evidence) leaves to the Minnesota Rules of Evidence the issues of the admissibility of evidence and the competency of witnesses except as otherwise provided in these rules. As to the use of a deposition at a criminal trial, Rule 21.06 controls rather than the Minnesota Rules of Evidence if there is any conflict between them. See Rule 802 and the comments to Rule 804 in the Minnesota Rules of Evidence. The prohibition in Rule 26.03, subd. 15 against jurors submitting questions to witnesses is taken from *State v. Costello*, 646 N.W.2d 204 (Minn. 2002).

9. Form 50. Jury Questionnaire.

Amend the preamble to Form 50 as follows:

The use of this Questionnaire is to assist lawyers and the court in the selection of a fair, impartial and neutral jury.

Your answers to the questions contained in the Questionnaire, like your answers to questions in open court during jury selection proceedings, are part of the public record in this case.

**DO NOT DISCUSS YOUR ANSWERS WITH ANY OF THE OTHER PROSPECTIVE JURORS.**

(If additional questions are asked that may elicit sensitive information, the following language should be included: If you object to answering any particular questions in writing because the answers will be sensitive or embarrassing to you, you may request an opportunity to address the court to ask that such answers be given orally and not disclosed to the public.)