**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

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| JOHN C. DEPP, II,<br><br>Plaintiff and Counterclaim-Defendant,<br><br>v.<br><br>AMBER LAURA HEARD,<br><br>Defendant and Counterclaim-Plaintiff. | Civil Action No.: CL-2019-0002911<br><br>**CONFIDENTIAL – FILED UNDER SEAL** |

**DEFENDANT AND COUNTERCLAIM-PLAINTIFF AMBER LAURA HEARD'S MOTION TO SEAL RECORDS RELATING TO JURORS' IDENTITIES**

****CONFIDENTIAL- FILED UNDER SEAL****

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Defendant and Counterclaim-Plaintiff Amber Laura Heard respectfully moves to seal records relating to the jurors' identities for one year following the conclusion of trial for the reasons set forth below and during any oral argument on this motion.

**Legal Standard**

The First Amendment provides a broad but not unlimited right of access to criminal trials and trial-like proceedings. *In re Bennett*, No. 210489, 2022 WL 1177924, at *2 (Va. Apr. 21, 2022). The Supreme Court of Virginia recently held in *In re Bennett* that the qualified right of access to proceedings that applies in criminal cases "should also be recognized in 'civil trials and to their related proceedings and records.'" *Id.* at *3 (quoting *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012)). The Court articulated the following two-part test for determining whether certain records or proceedings are protected from disclosure:

> First, we will examine whether there has been a history of public access to the records and proceedings. If such a right of access exists, the proceeding or records are presumptively open to the public. Under the second part of the test, proceedings can be closed, or the records sealed, if closing the proceeding or sealing the record is necessary to serve a compelling interest, and is narrowly tailored to serve that interest.

*Id.* (applying this test to determine whether a newspaper could access sealed court records). When assessing the first prong, courts look to whether there is a tradition of openness surrounding the proceeding or records throughout the entire United States. *Id.* at *2, 4. Thus, the questions presented by this motion are (1) whether there is a history of public access to the identity of jurors across the United States and (2) whether maintaining the sealed status of the jurors' identities is necessary to serve a compelling interest, and is narrowly tailored to serve that interest.

## Argument

### I. There Is No Longstanding History of Public Access to Records Relating to the Identity of Jurors

While the public enjoys a "long tradition of openness" in civil and criminal trials, *In re Bennett*, 2022 WL 1177924, at *4, there is no established practice of disclosing jurors' identities in all cases, and whether their identities are disclosed varies across jurisdictions and based on the circumstances of particular cases. *See Morgan v. Dickerson*, 496 P.3d 793, 795, 799 (Ct. App. 2021) (finding "petitioners have failed to establish a national historical practice regarding the disclosure of juror names" and upholding denial of petition that sought, among other relief, release of jurors' names **after** trial concluded). In *Morgan*, the Court of Appeals of Arizona concluded the identity of jurors falls outside the First Amendment's right of access. *Id.* at 797. In reaching this holding, the court observed that Supreme Court precedent on this right "focuse[s] on public access to courtroom proceedings." *Id.* The court found that unlike proceedings:

> Juror biographical information, including juror names, is not evidence to be presented or, if not disclosed in the proceeding, necessarily part of the public proceeding. Rather, it is information held by the government, which ordinarily possesses a broad spectrum of confidential information not made available to those observing court proceedings. And, the Supreme Court "has never intimated a First Amendment guarantee of a right of access to all sources of information within government control."

*Id.* (quoting *Houchins v. KQED, Inc.*, 438 U.S. 1, 9 (1978)). The same reasoning applies here. Information regarding jurors' identities is not the kind of information the public can gain by attending court proceedings and therefore does not warrant protection by the First Amendment.

Furthermore, several federal circuit courts have approved the use of anonymous juries. *See United States v. Gutierrez*, 963 F.3d 320, 329 (4th Cir. 2020) (holding anonymous jury is permitted when, among other things, "there is strong reason to conclude that the jury needs

protection from interference or harm, or that the integrity of the jury's function will be compromised absent anonymity"); *United States v. Ramírez-Rivera,* 800 F.3d 1, 35 (1st Cir. 2015) ("[A] district court may empanel an anonymous jury in any case in which 'the interests of justice so require." (citation omitted)); *United States v. Krout*, 66 F.3d 1420, 1427 (5th Cir. 1995) ("[T]he use of anonymous juries will be upheld where evidence at trial supports the conclusion that anonymity was warranted."); *United States v. Scarfo,* 850 F.2d 1015, 1023 (3d Cir. 1988) (upholding anonymous jury).

In sum, while the disclosure of jurors identities is common, such disclosure is far from ubiquitous. As a result, there is no established, historical practice of allowing access to records of jurors' identities that requires protection under the First Amendment. This Court can therefore maintain the sealed status of the jurors' identities pursuant to its supervisory power after the conclusion of trial. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) ("Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.").

## II. Sealing Records Relating to the Jurors' Identities Serves a Compelling Interest that Is Narrowly Tailored

If the Court concludes that there is a history of public access to records of jurors' identities, then it must next determine whether sealing these records serves a compelling interest that is narrowly tailored. *See In re Bennett*, 2022 WL 1177924, at *2. Here, sealing records relating to the jurors' identities is warranted in light of the serious risk that jurors will be threatened and harassed. Since the beginning of trial, Ms. Heard, her counsel and public relations firm, and witnesses have faced harassment by the public, such as:

- A tweet reported that there is a website offering $1 million to kill Ms. Heard and her counsel.

- During her testimony, Dawn Hughes's WebMD page was inundated with negative reviews (https://www.nbcnews.com/pop-culture/pop-culture-news/webmd-profile-amber-heard-expert-witness-flooded-negative-reviews-tria-rcna27197; https://thegeekbuzz.com/news/johnny-depp-fans-flood-sites-with-fake-reviews-of-amber-heard-witness-dr-dawn-hughes/).
- After Dawn Hughes testified, she received multiple death threats in emails and voicemails. Cybersecurity agents for the Department of Homeland Security are investigating these threats.
- Ms. Heard's counsel's law firm has been flooded with numerous false negative reviews, resulting in the filing of an abuse report with Google. In addition, Ms. Heard's counsel's law firm was so harassed by calls that it had to set up a media relations voicemail box for calls about this case, and has blocked multiple phone numbers from which the firm received repeated calls.
- Ms. Heard's counsel have been repeatedly harassed, including receiving virtually nonstop calls to their personal cell phones both in the middle of the night and during the trial. *See, e.g.*, Exhibit A (call log of counsel's personal cell phone showing twelve calls from 11:54 am to 12:43 pm on May 4, 2020).
- Ms. Heard's publicist, who oversees Ms. Heard's public relations, recently received death threats. Her publicist intends to file a report of the threats to the Los Angeles Police Department.

Mr. Depp has interacted with fans on courthouse grounds, which has been posted on social media.[1] These interactions have fueled the fire of Mr. Depp's online army of supporters,

[1] https://www.tiktok.com/@jessvalortiz/video/7093663951313095982

furthering the harassment. If the public learns the jurors' identities, they are likely to face the same harassment and intimidation. And, as the court in *Morgan* observed, waiting until a juror is actually threatened is too late:

> If potential jurors know that they and their families may be subject to danger, harassment, or unwanted media attention as a result of their service, they will be deterred from serving. Although a court may move to a more secret jury scheme upon discovering that a case has garnered media attention or that a threat has arisen, it may be too late to secure jurors' identities. Once a juror's name is public, with the current availability of information through the internet and other sources, a vast array of information about them is accessible—sometimes in a matter of seconds. The courts should not be bound to create an incentive for others to seek out private information about jurors who have done their civic duty, thereby exposing them to risk of public embarrassment, harassment, or danger.

*Morgan*, 496 P.3d at 799. Thus, the Court should maintain the sealed status of records relating to the jurors' identities after they reach their verdict. Unsealing these records when the jury is released will thwart the purpose of protecting their identities during trial because jurors are most likely to face retaliation immediately after the trial concludes. Additionally, the Court should inform the jurors before they begin deliberation that their identities will be sealed. Waiting until they reach their verdict could prove prejudicial to Ms. Heard. While Ms. Heard does not doubt that the jurors have done everything they can to avoid media coverage of or discussion about this lawsuit, the coverage is everywhere. Even if they have read or heard nothing substantive about the case, the jurors have seen a courtroom filled with Mr. Depp's partisans every day, who snicker at Mr. Depp's courtroom conduct and who fill the public courthouse hallways and grounds the jurors must navigate to do their job every day.

The jurors should be able to deliberate free from the fear of looming harassment or intimidation, regardless of the verdict they reach. Accordingly, the Court should seal records of the jurors' identities for one year following the conclusion of trial. During this time, the media attention this case has garnered will abate, and the public's passions about this case will subside,

thereby greatly reducing the risk of harassment of jurors.

## Conclusion

For the foregoing reasons, and for the reasons stated in any oral argument on this matter, Ms. Heard respectfully requests that the Court seal records relating to jurors' identities for one year following the conclusion of trial.

May 16, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 16th day of May, 2022, by email, by agreement of the parties, addressed as follows:

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