

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	Criminal No. 21-cr-00374-APM-1
v.)	
)	
LOGAN GROVER.)	
)	

MOTION FOR EXPANDED VOIR DIRE AND A JURY QUESTIONNAIRE

Logan Grover, by and through counsel Megan M. Downing of Recht Kornfeld P.C., respectfully moves the Court to allow the use of a jury questionnaire to aid in the selection of a jury in this matter. He further moves the Court to allow counsel for Mr. Grover and for the United States additional time in which to conduct *voir dire*. As grounds, he states:

BACKGROUND

The United States has charged Mr. Grover by Complaint in this matter with four offenses related to the events which occurred at the United States Capitol on January 6, 2021. (See ECF, Document 1). In sum, the statement of facts accompanying the criminal complaint alleges Mr. Grover’s presence inside the Capitol building on January 6, 2021. *Id.* The Information subsequently filed contains only a recitation of the statutory elements. (See, ECF, Document 7).

By separate Motion, the Defense moves the Court for an order transferring venue for the proceedings out of the District of Columbia, citing specific concerns related to the inability to seat a fair and impartial jury. (*See generally, Motion to Transfer Venue for Trial.*) As grounds for the request, the Defense cites to a jury study commissioned by the Federal Public Defender’s Office

which provides ample data demonstrating the particular hostility of prospective jurors polled toward the accused charged in connection with the January 6, 2021 events at the United States Capitol. (*See Ex. 1*). The data in the study compiled by Select Litigation documents underlying prejudice towards these defendants generally and a deeply held sense of outrage and anger on the part of the residents of Washington, D.C. (*See generally, Id.*)

Independent of the Court's determination of venue, the data signals that jury selection will be of particular importance in this case. Given the publicity the Jan. 6 cases have received and the politically charged nature of the allegations, the data supports the contention that jurors should be anticipated to harbor strong opinions about the case that must be explored during jury selection. Counsel anticipates jury selection to require inquiry related to numerous and sensitive topics including pre-trial publicity, whether jurors know anyone personally harmed at the Capitol January 6, feelings about the election, opposing political views, and Mr. Grover's presumed guilt. Counsel expects these topics to require discussion with potentially every juror. For these reasons, lawyer-conducted *voir dire* is particularly critical in this case to assist the Court. Also, sufficient time to conduct *voir dire* and ample time to do so with the use of a jury questionnaire will aid in developing appropriate caused-based and peremptory challenges seating an impartial jury.

ARGUMENT

The U.S. Constitution guarantees the right to trial by an impartial jury. Const. Amends. V, VI. As the Court is aware, jury selection falls "particularly within the province of the trial judge." *Skilling v. United States*, 561 U.S. 358, 386 (2010) (quoting *Ristaino v. Ross*, 424 U.S. 589, 595, (1976)). A trial court's broad discretion in this area includes deciding what questions to ask prospective jurors. (*See Mu'Min v. Virginia*, 500 U.S. 415 (1991)). *Voir dire* examination serves the

dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges. *Id* at 431.

“Because the obligation to impanel an impartial jury lies in the first instance with the trial judge,... federal judges have been accorded ample discretion in determining how best to conduct the *voir dire*.” *United States v. West*, 373 U.S. App. D.C. 18 (D.C. Cir. 2006) (citing *Rosales-Lopez v. United States*, 451 U.S. (1981)). The discretion extends to the “mode and manner of proceeding,” as well as “to the range of questions put to the prospective jurors.” *Id*, (citing *United States v. Robinson*, 154 U.S. App. D.C. (D.C. Cir. 1973)).

Federal Rule of Criminal Procedure 24(a) provides:

- (1) The court may examine prospective jurors or may permit the attorneys for the parties to do so.
- (2) If the Court examines the jurors, it must permit the attorneys for the parties to:
 - (A) ask further questions that the court considers proper; or
 - (B) Submit further questions that the court may ask if it considers them proper. Fed. R. Crim. P. 24(a).

Defense counsel “always ‘must be given a full and fair opportunity to expose bias or prejudice on the part of the veniremen.’” *United States v. West* at 6 (citing *United States v. Orenuga*, 368 U.S. App D.C. 385 (D.C. Cir. 2005) quoting *Robinson*, 475 F.2d at 380). “...without an adequate *voir dire* the trial judge’s responsibility to remove prospective jurors who will not be able to impartially follow the court’s instructions and evaluate the evidence cannot be fulfilled.” *Rosales-Lopez*, 451 U.S. at 188. Given the unprecedented and high publicity nature of this case, counsel anticipates jury selection will require careful and methodical discussion with individual jurors, all of whom are likely to have opinions about the case before hearing any evidence. To streamline the

jury selection process and effect meaningful inquiry, counsel moves the Court to allow the parties to craft a proposed jury questionnaire for the Court's use in jury selection. This would provide counsel and the Court with relevant information to better focus discussion with prospective jurors and will provide prospective jurors the ability to express their sentiments about sensitive topics prior to public discussion in the courtroom.

Anticipating customary time limitations, Counsel further respectfully asks the Court for adequate additional time to conduct meaningful *voir dire* in this case. Given the nature of the case, again which includes polarizing political topics as well as the wide media attention it has received, counsel makes this motion in order to conduct meaningful inquiry with the entire panel about these necessary topics to ensure the seating of an impartial jury. The request for additional time anticipates the need for discussion with each member of the venire, all of whom counsel anticipates have knowledge of and have formed opinions about the case.

Counsel incorporates by reference the arguments raised in the Defense *Motion to Transfer Venue for Trial* as grounds for expanded *voir dire*. Based upon jury analysis conducted in support of the motion to transfer venue, counsel anticipates prospective jurors to state strong opinions about having prejudged Mr. Grover's guilt. Counsel further anticipates the need to explore sensitive topics such as political divisiveness and preconceptions that prospective jurors may have formed as the result of media consumption.

In an effort to be mindful of both the Court's and potential jurors' time, the defense will confer with the Government about the appropriate time allotment to specifically request from the Court in the event the Court is inclined to grant the motion.

The Defense respectfully requests that the Court grant this motion and approve both a written questionnaire and additional time to be determined for attorney conducted *voir dire* for both parties.

Respectfully submitted this 6th day of April, 2022.

s/ Megan M. Downing

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 2022, I electronically filed the foregoing **Motion for Expanded *Voir Dire* and a Jury Questionnaire** with the Clerk of Court using the CM/ECF system which will send notification of such filing to all listed parties.

s/ Erin Holweger