UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 1-21-cr-28-7 (APM)
	:	
LAURA STEELE	:	
	:	
	:	

MOTION FOR BENCH TRIAL

Laura Steele, through counsel, respectfully moves this Honorable Court to convert her upcoming trial in the above captioned proceeding to a bench trial pursuant to the Fifth and Sixth Amendments and Rule 23 of the Federal Rules of Criminal Procedure. In support of this motion, Ms Steele states as follows:

1. Ms Steele is before the Court charged with six counts in the Superseding Indictments in this matter. Trial is currently set for 1st February, 2023.
2. Ms Steele requests this Honorable Court convert her upcoming trial in the above-captioned matter to a bench trial, conforming to the concerns of Federal Rule of Criminal Procedure Rule 23. Ms Steele states that a jury trial proceeding in this district creates the very real potential that her right to a fair and impartial trial is in jeopardy, and this Court should allow a bench trial for the following reasons.

MEMORANDUM IN SUPPORT OF MOTION FOR BENCH TRIAL

Ms Steele's request for a bench trial in this matter is closely aligned to the arguments this Court has heard with respect to the question of impartiality of the jury pool. It has been a long-standing

principle of American jurisprudence that fairness and objectivity are the very lifeblood of our criminal justice system without which our cherished motto of "a nation of laws" becomes a myth. "The theory in our system of law is that conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence[.]" *Patterson v. Colorado*, 205 U.S. 454, 462 (1907). As far back as 1955, Justice Hugo Black observed that the American justice system "has always endeavored to prevent even the probability of unfairness." *In re Murchison*, 349 U.S. 133, 136 (1955).

Factors to be considered in whether a defendant may enjoy an impartial jury include prejudicial pretrial publicity, the size and characteristics of the community, the nature and extent of pretrial publicity, the proximity between the publicity and the trial, and evidence of juror partiality. *United States v. Skilling*, 561 U.S. 358, 378-381 (2010). In some cases, a potential jury pool can be determined to be irredeemably biased when the alleged crime results in "effects . . . on [a] community [that] are so profound and pervasive that no detailed discussion of the [pretrial publicity and juror partiality] evidence is necessary." *United States v. McVeigh*, 918 F. Supp. 1467, 1470 (W.D. Okla. 1996) (summarily finding that a trial of Oklahoma City bombing suspects in federal court in Oklahoma City (Western District of Oklahoma) would be constitutionally unfair).

Likewise, Ms Steele's case is tied to an event that was so impactful on the psyche of District residents that it is *per se* impossible for local jurors to reach a fair and impartial verdict. District residents have been, and continue to be, bombarded with wall-to-wall coverage of events of 6th January, related arrests, criminal charges, congressional hearings, and sensational journalism. As has been previously documented in these matters, sections of the District were shut down for a period of weeks as roughly 25,000 National Guard troops occupied the Capitol in armoured vehicles or on foot while wearing M-16s. The Mayor of D.C. declared a state of emergency and

implemented a 6 p.m. curfew for weeks. Speaker Pelosi shut down all access to the Capitol extending into June of 2021. Bridges and roads into the District were closed off for a period of time. The Department of Homeland Security declared that government offices were potential targets of "Domestic Violent Extremists." The Court cannot ignore the impact, both in the practical sense, and the emotional effects, the events of 6th January had, and continue to have, on this community.

In contrast though to other discussions that have taken place on this issue, Ms Steele wishes to be absolutely clear that we are not suggesting the citizens of the District of Columbia are inherently biased: far from it. We are submitting to the Court the idea that the very nature and circumstances of the events of that day had an effect on this community that is "so profound and pervasive" that it would be nearly impossible to seat a fair and impartial jury. See, e.g., *United States v. McVeigh*, 918 F. Supp. 1467, 1470 (W.D. Okla. 1996); *United States v. Awadallah*, 457 F. Supp. 2d 246 (S.D.N.Y. 2006) (suggesting that had the defendant, who was charged with perjury, actually participated in the 9-11 attacks on New York, "the effects that a massive, disastrous event has wrought on the jury pool" would require a change of venue).[1]

As we discussed above, the area directly affected by the events of 6th January was not limited to the immediate vicinity of Capitol Hill, but rather to the city at-large. These matters before the courts in this courthouse then present an unusual situation only seen rarely in other cases in this nation. In more everyday cases heard by these courts, a standard generic *voir dire* enquiry asks, in

[1] In McVeigh, the district judge made two rulings on venue changes. His first decision was to grant a change a venue from the Western District of Oklahoma, where Oklahoma City is located. McVeigh, 918 F. Supp. at 1470. That the decision was based on the obvious impact that the Oklahoma City bombing had on the community. The second, and more difficult issue, for the district judge, was whether to transfer the trial to the Eastern District of Oklahoma, or to move the case out of state. In deciding to transfer the trial to Colorado, the district judge ruled that the "emotional burden of the explosion and its consequences" and the community prejudice against the defendants necessitated a transfer out of state. Id. at 1473.

one form or another, "(D)oes the (prospective juror) have any knowledge of the matters related to this trial?" Or, going one step further: "(I)s the (prospective juror) familiar with the neighborhood underlying the allegations in this trial?" Normally these enquiries are directed more at a specific neighborhood, but as we have seen, it is not the single neighborhood of Capitol Hill that was affected: Rather the massive affect the events of that day had on the city as a whole, including the ripple effects still being felt. Thus, it is not merely the residents of Capitol Hill that raise continuing impartiality concerns, but the residents of the whole city.

But it is not just a singular event occuring in the past that presents the concerns here. The District lives with the echoes of 6th January in the present. Even at the time of this writing, The January 6th Commission is still in our headlines on an almost daily basis. The fallout and arguments from those who deny the election results of 2020 are never far away from any political discourse: And this in a city which thrives on that political discourse. We would submit to the Court that the concerns we bring before the Court do not merely echo those of the *MacVeigh* and *Awadallah* courts, but actually go much further in that the passage of time allowed citizens of those communities to put some distance between themselves and the underlying events permitting the wounds to mend somewhat, whereas the citizens of this city are under constant media assault on a daily basis and are not afforded the luxury of healing.

In making these arguments, we again stress to point out to the Court the argument we are *not* pursuing. Undersigned counsel has been trying cases in this jurisdiction for over twenty years. In that time, it has become apparent and a constant topic of discussion within this defense bar regarding the remarkable ability of DC residents serving as jurors sincerely endeavoring to put

aside personal concerns and follow the instructions provided by any particular court[2]. The concern here, and the argument being made, is that the scale of the impact and the consistent reminder of the assault on this city placed on all District residents and prospective jurors is unparalleled, and the inquiry should focus on whether it is *humanly possible* to eradicate the subconscious and adjudicate any of these matters with the requisite objectivity which our system of justice requires. We submit to the Court that merely enquiring of these prospective jurors whether they can be fair and impartial misses the point. The question for the Court is not whether the jury pool believes itself to be free of partiality, but given the circumstances presented, whether the Court can justifiably rely on the premise that the experiences of the District's citizenry have not irretrievably affected the outlook of the potential pool. This is exactly the fear of the *McVeigh* and *Awadallah* courts. But the riot of 6th January created a situation that goes far beyond Oklahoma City and 9/11.

Ms Steele understands and respects the Court's previous rulings on the jury impartiality in light of venue arguments, but asserts the position that she firmly believes a jury trial is incapable of being fair and impartial given the gravity of the events of January 6, 2021. Accordingly, she respectfully requests this Court permit her a bench trial.

Rule 23 of the Federal Rules of Criminal Procedure states that when a defendant is entitled to a jury trial, the trial must be by jury unless the defendant waives a jury trial in writing, the government consents, and the court approves. Fed. R. Crim. P. 23(a)(1)-(3). The validity of the rule was upheld by the Supreme Court in *United States v. Singer*, 380 U.S. 24 (1965), where the court held that the reason the statute remains as requiring the government's consent is because "the

[2] It should be noted that despite the assumption of impartiality on the part of prospective jurors, courts still routinely as ask the two "familiarity" questions and will consider striking a juror where these issues raise a concern.

government attorney in a criminal prosecution is not an ordinary party to a controversy, but a 'servant of the law' with a 'twofold aim . . . that guilt shall not escape or innocence suffer.' It was in light of this concept of the role of prosecutor that Rule 23(a) was framed, and we are confident that it is in this light that it will continue to be invoked by government attorneys." *Id.* at 37 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). The Court further held that, "[b]ecause of this confidence in the integrity of the federal prosecutor, Rule 23(a) does not require that the Government articulate its reasons for demanding a jury trial at the time it refuses to consent to a defendant's proffered waiver. Nor should we assume that federal prosecutors would demand a jury trial for an ignoble purpose." *Id*. Thus, the court declined to consider in what cases a prosecutor might demand a jury trial for an "ignoble purpose," and what that "ignoble purpose" may be. Ms Steele submits that this case presents precisely the scenario contemplated by the Court in *Berger.* Specifically, the government has advised that it opposes a bench trial in this matter unless all co-defendants *it chose to try together* agree to a bench trial, but has not, and cannot, articulate what *noble purpose* is served by forcing a single defendant into a litigatory environment which is fraught with the spectre of a tainted factfinder.

Although the Supreme Court has not recognized a right to a bench trial pursuant to the Sixth or Seventh Amendments the way that a right to a trial by jury has been recognized, cases in the D.C. Circuit where bench trials were denied often came down to the traditional value placed upon juries as the factfinders and decision-makers in criminal trials. *See generally Dixon v. United States*, 292 F.2d 768, 769-770 (D.C. Cir. 1961). Notably, no court in this district has addressed this scenario identified by the Supreme Court – that the government might insist on a jury trial for an "ignoble purpose." This district has, however, acknowledged that the government may not veto a defendant's request for a bench trial that violates his constitutional rights, as held in *Singer*. *See*

United States v. Dockery, 955 F.2d 50, 55 (D.C. Cir. 1992). Here, the significant potential for bias within the jury pool and the inability of Ms Steele to be tried by a fair and impartial jury violate her Constitutional rights. There is no prejudice to the government on having the Court be the ultimate factfinder in Ms Steele's matter, and any insistence by the government that she be tried by a jury that cannot be fair and impartial constitutes a breach of the government's duty to be a "servant of the law," to act with integrity and to demand jury trials only for noble purpose.

CONCLUSION

For the foregoing reasons, Ms Steele respectfully requests this Court find that a bench trial is warranted as to Ms Steele, following a colloquy confirming Ms Steele's knowing and informed waiver of her right to a trial by jury in this matter.

Respectfully Submitted,

/s/ *Peter A. Cooper*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Bench Trial is being filed via the Electronic Court Filing System (ECF), causing a copy to be served upon government counsel of record and co-defendants, this 31st day of January, 2023.

/s/ *Peter A. Cooper*

Peter A. Cooper