

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
 v.) 1:11-cr-00185-JAW
)
JAMES STILE)

**ORDER ON DEFENDANT’S MOTION FOR DISCOVERY
OF GRAND JURY AND PETIT JURY DATA**

James Stile is contemplating a challenge to this District’s compliance with the jury selection process and has filed a motion pursuant to 28 U.S.C. § 1867 to obtain information about the grand jury that indicted him and the petit jury that will try him. In response to his motion for discovery, the Court orders the Clerk’s Office to produce the applicable version of the District’s Jury Plan, the AO Form 12, the names of the grand jurors from the Master Wheel and the Qualifying Wheel, and a redacted version of the documentation relating to a Grand Jury member who was excused for good cause. Before additional information about the grand jury may be released, the Court concludes that the Defendant must make a particularized showing of his need for such information and the Court grants the Defendant four weeks to file a further motion, if he wishes to proceed.

The Court concludes that no further order is necessary regarding petit jurors because the charges against him await resolution of his jury challenge before trial can be scheduled and, once scheduled, Mr. Stile will have access to the juror questionnaires to prepare for voir dire. Except for general information about the

selection process for determining who is on the petit jury pool, Mr. Stile's motion for more information about petit jurors, who have not yet been called, is premature.

I. BACKGROUND

On February 20, 2014, James Stile moved for an order "requiring the Clerk of the United States District Court for the District of Maine to produce to the defense[] all relevant and pertinent information regarding the process and procedures used to select Grand and Petite Jurors." *Def.'s Mot. for Disc. of Grand Jury and Petit Jury Data and Notice of Intent to Challenge the Jury Selection Process* at 1 (ECF No. 367) (*Def.'s Mot.*).¹ Mr. Stile states that he needed to review such information "so as to adequately prepare a Motion challenging the method for selecting Grand and Petit jurors in this Court."² *Id.* at 2.

On February 28, 2014, the Government responded. *Gov't's Resp. to Def.'s Mot. for Disc. of Grand Jury and Petit Jury Data and Notice of Intent to Challenge the Jury Selection Process* (ECF No. 371) (*Gov't's Resp.*). The Government

¹ On February 14, 2014, counsel for Mr. Stile confirmed that he was adopting an earlier pro se motion to dismiss the indictment and that he anticipated filing a motion for discovery in support of that motion. *Notice Regarding Def.'s Mot. to Dismiss Indictment* (ECF No. 364). Neither the notice nor the instant motion states that it is adopting Mr. Stile's earlier pro se motion for discovery, *Mot. in Limine for Documentary Evidence* (ECF No. 220) (Sept. 27, 2013), relating to the earlier motion to dismiss. The Court interprets the instant motion for discovery as replacing the earlier motion, and dismisses without prejudice Mr. Stile's Motion in Limine for Documentary Evidence (ECF No. 220).

² Mr. Stile's acknowledgment that he needs to review the information to "adequately prepare" his motion to dismiss suggests that his earlier pro se motion to dismiss the indictment, *Mot. in Limine to Dismiss Indictment* (ECF No. 219) (Sept. 27, 2013), was premature. In his earlier motion, he alleged, in part, that the District of Maine "does not have and maintain a written plan for random selection of grand and petit jurors that is designed to achieve the objectives of [28 U.S.C. §§ 1861-62] . . ." *Id.* Attach 1 *Supporting Aff. for Mot. to Provide Documentary Evid.* at 1 (ECF No. 219). As discussed below, *see infra* Section II.A, the District of Maine has such a plan. Although counsel for Mr. Stile has adopted Mr. Stile's earlier pro se motion to dismiss, *see supra* note 1, the Court finds that the earlier motion—filed contemporaneously with his earlier motion for discovery—was premature and dismisses without prejudice Mr. Stile's Motion in Limine to Dismiss Indictment (ECF No. 219).

acknowledges that Mr. Stile has an “unqualified right” to inspection under the relevant federal statute, 28 U.S.C. § 1867, and therefore “does not object to disclosure of certain jury selection records to Defendant.” *Id.* at 1. The Government does, however, request that Mr. Stile’s access to the jury selection records be “appropriately limited,” specifies the information to which it is not objecting, and asks the Court to institute “an appropriate protective order” for this information. *Id.* at 1-10.

II. DISCUSSION

A. The Law

Once a litigant has indicated that he intends to file a motion challenging the make-up of a grand jury or petit jury, section 1867(f) of United States Code title 28 provides:

The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion.

Under this statute, a defendant must demonstrate that the records and papers of the jury selection process are “necessary” to prepare a motion to challenge the process itself. *United States v. Snow*, No. 03-36-01-B, 2003 U.S. Dist. LEXIS 13573, *2 (D.N.H. Jul. 22, 2003). At the same time, the United States Supreme Court has stated that § 1867(f) grants a litigant “essentially an unqualified right to inspect

jury lists.” *Test v. United States*, 420 U.S. 28, 30 (1975). To qualify for the right of access to jury selection records, a litigant need only “allege that he is preparing a motion to challenge the jury selection process.” *United States v. Royal*, 100 F.3d 1019, 1025 (1st Cir. 1996). Based on this authority, the Court agrees that Mr. Stile has the right to access to the jury selection records for the grand jury that indicted him and to the selection process for the petit jury before which the pending charges will be tried.

The “unqualified right to access” does not mean, however, that a litigant has an unrestricted right to any information about the grand jurors who indicted him. Courts have been chary about handing over information about the names, addresses and personal identifying information about grand jurors and, if available, the individual votes of specific grand jurors. “Courts faced with such requests generally limited the litigant’s ‘unqualified right’ to grand jury lists and deny access to records that either reveal personal information of grand jurors or pierce the secrecy of the proceedings.” *Swan*, 2003 U.S. Dist. LEXIS 13573, *3-4. One circuit court expressed concern about the release of specific grand juror information because “there would exist the possibility of substantial abuse of the information . . . which could have serious consequences for individual jurors and the system.” *United States v. Davenport*, 824 F.2d 1511, 1515 (7th Cir. 1987). To obtain individualized information about grand jurors, courts have required the movant to demonstrate a “particularized showing as to why the information is necessary to a potential

challenge to the jury selection process.” *Swan*, 2003 U.S. Dist. LEXIS 13573, *6; *United States v. Hansel*, 70 F.3d 6, 8 (2d Cir. 1995); *Davenport*, 824 F.2d at 1515.

By contrast, litigants typically are given access to some personal information about potential petit jurors for purposes of voir dire. Regarding petit jurors, the District of Maine’s Plan for the Random Selection of Grand and Petit Jurors for Service in the District of Maine provides:

Prior to impanelment of a petit jury, the parties, their lawyers, and any person employed by or working with those lawyers, shall ordinarily have access to the list of those jurors summoned to appear and to any supplemental juror questionnaires issued by the Court for that purpose. The information made available to these individuals shall not be shared except as necessary for jury selection. If the interests of justice so require, the Court may order that the names of jurors remain confidential. Upon request, the list of all jurors who have been excused for the impanelment shall also be made available to these individuals.

DISTRICT OF MAINE, PLAN FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS FOR SERVICE IN THE DISTRICT OF MAINE § XV(2) (Dec. 19, 2012).

B. James Stile’s Discovery Request

Mr. Stile’s discovery request may be broken down into categories: (1) grand jury; (2) petit jury; (3) publicly available information; and (4) non-publicly available information. The difference between his request for grand jury and petit jury information is apparent. The grand jury that indicted Mr. Stile has been formed and constituted; the petit jury that will hear the Government’s case against him has not. Thus, Mr. Stile’s requests for information about the grand jury involve specific individuals who have served and his requests for information about the petit jury involve individuals who have not yet served. Furthermore, as noted, Mr. Stile will

have access to the list of the pool of petit jurors and to their supplemental juror questionnaires before jury selection takes place. Thus, for petit jurors, Mr. Stile will be allowed to obtain the specific personal information he now requests.

As regards publicly available information, Mr. Stile has an unrestricted right to that information. However, to make certain that the Court and the parties are operating from the same pages, the Court is attaching the relevant version of the District's Jury Plan to this Order.

The next category of requested information addresses the jury selection process in general and does not require any personal information, such as demographic information about the composition of the grand jury. Some of this information is reported to the Administrative Office of the Courts in AO Form 12. The Court orders that the relevant AO Form 12s be forwarded to both Government and defense counsel; however, these documents will be provided under seal.

The final category of requested information concerns personal information about grand jurors, including their completed questionnaires and a list of individuals excused or exempted from jury service. The Government has no objection to Mr. Stile's request for the names of the individuals who appear on the Master Wheel and the Qualifying Wheels; however, the Government objects to any further information, including addresses, jury questionnaires, and a list of all individuals excused or exempted from grand jury service. *Gov't's Resp.* at 2-9. The Court agrees to release the names of the people on the Master Wheel and the Qualifying Wheels but will impose protective conditions on this information. The

Court also agrees to release the documentation, redacted to remove personal identifying information, relating to the one instance in which a member of the Grand Jury panel that indicted Mr. Stile was excused, pursuant to Federal Rule of Criminal Procedure 6(h). After inspecting that information, if Mr. Stile concludes that he needs additional discovery to proceed with his motion—and that he would be entitled to such information under the law—he may petition this Court to demonstrate his particularized need for such additional information on or before April 10, 2014.

III. ORDER³

The Court provides Mr. Stile with the information that the Government has consented to being disclosed, and does so by breaking that information down into two categories. First is the information that is appropriate to include as part of the publicly available court docket. The Court attaches that information to this Order as Exhibit A as described below. Second is the information not appropriate to include as part of the publicly available court docket.

The Court ORDERS the Clerk of Court to provide Mr. Stile's attorney, Peter Rodway, Esq., with this non-public information as described below. It further ORDERS that the non-public information provided to Mr. Rodway must be maintained in the possession of Mr. Rodway and used only for the purpose of developing Mr. Stile's motion challenging the jury selection process. Mr. Stile may

³ An employee from the Clerk's Office who deals extensively with grand jury matters is currently unavailable. The Court plans on reviewing the information being provided to counsel under this Order with that employee as soon as possible. If the Court discovers further information that it deems appropriate to release to counsel, it will do so by supplemental order.

view this information in the presence of Mr. Rodway. Upon the resolution of the motion challenging the grand jury process, Mr. Rodway must return the information to the Clerk of Court along with a signed affidavit affirming that the information was used only according to the conditions set forth in this Order.

The following information is attached to this Order as Exhibit A:

- 1) DISTRICT OF MAINE, PLAN FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS FOR SERVICE IN THE DISTRICT OF MAINE (Dec. 16, 2008).

This is the Jury Plan for the District of Maine that was in effect at the time Mr. Stile was indicted.⁴

The following information will be docketed but placed under seal and must be used only according to the conditions described above:

- 2) REPORT ON OPERATION OF THE JURY SELECTION PLAN – FORM AO 12 (DEC. 22, 2010).

The Government notes that this form “contain[s], among other things, demographic information regarding the composition of the individuals selected for the Master Wheel and Qualifying Wheels.” *Gov’t’s Resp.* at 7.

- 3) Master Jury Wheel and Qualified Persons Wheel: lists of names

⁴ The Jury Plan in effect during the time surrounding Mr. Stile’s indictment in 2011 has been superseded. See DISTRICT OF MAINE, PLAN FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS FOR SERVICE IN THE DISTRICT OF MAINE (Dec. 19, 2012). The Court will not separately provide the December 19, 2012 version of the Plan to counsel as it is publicly available on the District’s website. *Juror Information*, UNITED STATES DISTRICT COURT, DISTRICT OF MAINE, <http://www.med.uscourts.gov/nodeblock/juror-information>.

This is the list of names “of each member of the grand jury venires who appeared for service and who were eligible to serve on, or were included on the master wheel for service on, the Grand Jury that indicted Mr. Stile.” *Id.* at 4.

4) Information Supporting Discharge of Grand Juror for Good Cause

This is the information supporting the only known instance in which a member of the Grand Jury panel that indicted Mr. Stile was excused, for good cause pursuant to Federal Rule of Criminal Procedure 6(h).

In summary, the Court GRANTS in part and DISMISSES without prejudice in part James Stile’s Motion for Discovery of Grand Jury and Petit Jury Data and Notice of Intent to Challenge the Jury Selection Process (ECF No. 367). To summarize what relief is being effected:

- 1) The Court attaches to this Order, as Exhibit A, the information that the Government has consented to being disclosed and is appropriate to include as part of the publicly available court docket.
- 2) The Court ORDERS the Clerk of Court to docket under seal the information that is not appropriate to include as part of the publicly available court docket.
- 3) The Court ORDERS that the non-public information provided to Mr. Rodway by the Clerk of Court must be maintained in the

possession of Mr. Rodway and used only for the purpose of developing Mr. Stile's motion challenging the jury selection process. Mr. Stile may review this information in the presence of Mr. Rodway.

- 4) The Court ORDERS Mr. Rodway to, upon resolution of the motion challenging the grand jury process, return the non-public information to the Clerk of Court along with a signed affidavit affirming that the information was used only according to the conditions set forth in this Order.
- 5) The Court DISMISSES without prejudice the residual requests in Mr. Stile's Motion for Discovery of Grand Jury and Petit Jury Data and Notice of Intent to Challenge the Jury Selection Process (ECF No. 367).
- 6) The Court ORDERS that Mr. Stile must file any petition for further relief relating to the production of jury selection records with this Court no later than April 10, 2014.
- 7) Finally, the Court DISMISSES without prejudice Mr. Stile's Motion in Limine to Dismiss Indictment (ECF No. 219), and his Motion in Limine for Documentary Evidence (ECF No. 220).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 14th day of March, 2014