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PAUL ANTHONY CIANCIA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL ANTHONY CIANCIA,

Defendant.

Case No. CR 13-00902-PSG

**MOTION FOR DISCOVERY OF
INFORMATION CONCERNING THE
CONFECTION OF THE GRAND AND
PETIT JURY VENIRE**

Hearing Date: September 28, 2015
Hearing Time: 10:00 a.m.

TO PLAINTIFF UNITED STATES OF AMERICA, AND ITS COUNSEL OF
RECORD, ASSISTANT UNITED STATES ATTORNEY JOANNA CURTIS,
PATRICK FITZGERALD, MELISSA MILLS, AND MICHAEL WARBEL PLEASE
TAKE NOTICE that on September 28, 2015 or soon thereafter as the matter may be

1 heard, Defendant Paul Anthony Ciania, by and through his attorneys of record,
2 Richard Novak, Federal Public Defender Hilary Potashner and Deputy Federal Public
3 Defenders John Littrell, Emily Groendyke and Gary Rowe, will and hereby move this
4 Court for an Order re discovery of information concerning the confection of the grand
5 and petit jury venire.

1 Paul Ciania, by and through undersigned counsel, files this Motion for
2 Discovery pursuant to 28 U.S.C. § 1867(f), for access to jury selection records and
3 materials. Specifically, counsel states:

4 1. The defendant in this case is charged with capital murder. The
5 Government is seeking the death penalty and has provided notice under 18 U.S.C.
6 § 3593(a).

7 2. The indictment indicates that all of the acts that the Government alleges in
8 this case occurred at Los Angeles International Airport. (Dkt. # 16.)

9 3. Counsel is separately challenging the government's effort to expand the
10 venire beyond the county of offense. Here, counsel seeks discovery concerning the
11 confection of the venire from which the grand and petit jury is selected.

12 4. "The penalty of death is qualitatively different from a sentence of
13 imprisonment, however long. Death, in its finality, differs more from life
14 imprisonment than a 100 year prison term differs from one of only a year or two.
15 Because of that qualitative difference, there is a corresponding difference in the need
16 for reliability in the determination that death is the appropriate punishment in a specific
17 case." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

18 5. The confection and creation of the venire, and the selection of the jury, is
19 an essential component of the fairness required in a death-penalty case. As Justice
20 Stevens explained, concurring in *Baze v. Rees*:

21 Of special concern to me are rules that deprive the defendant
22 of a trial by jurors representing a fair cross section of the
23 community. Litigation involving both challenges for cause
24 and peremptory challenges has persuaded me that the process
25 of obtaining a "death qualified jury" is really a procedure that
26 has the purpose and effect of obtaining a jury that is biased in
27 favor of conviction. The prosecutorial concern that death
28 verdicts would rarely be returned by 12 randomly selected
jurors should be viewed as objective evidence supporting the
conclusion that the penalty is excessive.

Baze v. Rees, 553 U.S. 35, 84 (2008) (Stevens, J., concurring).

1 6. Even in a non-capital case, a defendant may move to dismiss an indictment
2 and to stay any further against him, if there has been a “substantial failure to comply”
3 with the provisions of the Jury Selection and Service Act of 1968 (the “Act”), 28
4 U.S.C. § 1861 et. seq., in selecting the grand jury that indicted him or the petit jury to
5 try his case, until such time as the failures have been corrected. *See* 28 U.S.C. § 1867
6 (a) and (d).

7 7. The Government and the United States Supreme Court have long
8 recognized that a defendant has an unqualified right to review materials reflecting the
9 confection of the grand and petit jury venire.

10 8. In *Test v. United States*, the Supreme Court observed:

11 In its brief and oral argument before this Court, the United
12 States has agreed that petitioner was erroneously denied
13 access to the lists and urges us to remand the case. We also
14 agree with petitioner . . . [A] litigant has essentially an
15 unqualified right to inspect jury lists. [The Statute] grants
16 access in order to aid parties in the “preparation” of motions
17 challenging jury selection procedures. Indeed, without
18 inspection, a party almost invariably would be unable to
19 determine whether he has a potentially meritorious jury
20 challenge. Thus, an unqualified right to inspection is required
21 not only by the plain text of the statute, but also by the
22 statute’s overall purpose of insuring “grand and petit juries
23 selected at random from a fair cross section of the
24 community.”

25 *Test v. United States*, 420 U.S. 28, 29 30 (1975) (citing 28 U.S.C. § 1861).

26 9. In *Test*, the defendant raised a question of whether “the master lists from
27 which his grand jury had been, and petit jury would be, selected systematically
28 excluded disproportionate numbers of people with Spanish surnames, students, and
blacks.” *Id.* at 28.

 10. Here, counsel is concerned that the confection of the venire has
significantly underrepresented African-Americans, Hispanics and individuals ages
eighteen to twenty-two.

 11. Because this is a capital case, it is necessary to assess this potential
underrepresentation through careful and exhaustive discovery.

12. Section 1867 (f) of the Jury Selection and Service Act of 1968, 28 U.S.C. § 1861 et seq. in relevant part, 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 . . . as may be necessary in the preparation or presentation of a motion [challenging compliance with selection procedures] under . . . this section . . . *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 . . .*”

Id. (Emphasis added).

13. Counsel is in the process of investigating and preparing to file a Motion to Quash the Grand and Petit Jury Venire, and to challenge both the application of, and compliance with, the Act.

14. In *United States v. Royal*, 100 F.3d 1019, 1025 (1st Cir. 1996), the First Circuit held that “a litigant need only allege that he is preparing a motion to challenge the jury selection process” in order to gain a right of access to jury-selection records.

15. Counsel seeks information related to the Master Jury Wheel that was used to select the grand jurors who returned the indictment against the defendant, believed to be the Master Jury Wheel in effect for the calendar year 2013. Counsel also seeks information related to the Master Jury Wheel for the two previous calendar years, 2011 and 2012, as well as the subsequent calendar year, 2014. Counsel further seeks information for years 2015 and 2016, as this data becomes available. For each Master Jury Wheel, counsel seeks the following information:

a. The Source Data as described in Section 4 of the Jury Plan from which the jury pool is created. The Source Data is considered a Jury Selection Record as described in Section 12 of the Jury Plan. The Source Data can be redacted as to personally identifiable information such as name and street address but should retain information such as county, zip code and demographic information. The data should be in electronic and accessible form, including a layout with descriptions of all data fields and codes.

1 b. The Merged Source List as described in Section 5. The Merged
2 Source List is considered a Jury Selection Record. The Source Data can be redacted as
3 to personally identifiable information such as name and street address but should retain
4 information such as participant number (to correspond to the Master Jury Wheel, if
5 available), county, zip code, date of birth (or year only), race, gender and ethnicity.
6 The data should be in electronic and accessible form, including a layout with
7 descriptions of all data fields and codes.

8 c. The computer specifications or instructions describing the merging
9 process that creates the Merged Source List.

10 d. The Master Jury Wheel for each Division as described in Section 5.
11 The Master Jury Wheel is considered a Jury Selection Record. The Master Jury Wheel
12 can be redacted as to personally identifiable information such as as name and street
13 address but should retain information such as participant number (to correspond to the
14 Master Jury Wheel, if available), county, zip code, date of birth (or year only), race,
15 gender and ethnicity. The data should be in electronic and accessible form, including a
16 layout with descriptions of all data fields and codes.

17 e. The calculation described in Section 5 for proportional
18 representation in the Master Jury Wheel including the number of registered voters used
19 in the calculation.

20 f. The qualification information as described in Section 5. This
21 information is considered a Jury Selection Record. The qualification information can
22 be redacted as to personally identifiable information such as name and street address
23 but should retain information such as participant number (to correspond to the
24 participant number in the Master Jury Wheel), whether the Summons was returned as
25 undeliverable, was submitted or returned, was completed, was returned for further
26 information, was postponed, was disqualified, was exempted, was excused, was
27 directed to report, and if reported as directed. The date of the Summons and whether
28 the summons is for a Petit or Grand Jury should be included. The data should be in

1 electronic and accessible form, including a layout with descriptions of all data fields
2 and codes.

3 g. The date of summoning and the Participant Number for grand jurors
4 who returned the indictment in this case.

5 h. Any AO-12 Forms or JS-12 Forms completed as described in
6 Section 12. These forms are considered a Jury Selection Record.

7 i. Any other statistical report prepared with regards to the jury list
8 creation, jury selection or jury management. Any other statistical reports to ensure the
9 jury process meets the requirements of non-discrimination as described in Section 2.

10 j. Access to actual completed juror summons and documents
11 concerning disqualification, exemption, excusal or postponement. The personally
12 identifiable information could be redacted or access could be limited to the office of the
13 Clerk.

14 16. This information has been provided in other instances. *See, e.g., United*
15 *States v. Diaz*, 236 F.R.D. 470, 478, 481 (N.D. Cal. 2006) (reversed on other grounds).

16 17. Documents such as those requested are routinely provided to litigants in
17 federal court investigating whether a particular juror selection system is constitutionally
18 adequate. *See, e.g., United States v. McLernon*, 746 F.2d 1098, 1122 1123 (6th Cir.
19 1984); *United States v. Aguero*, 248 F. Supp. 2d 1150, 1152 n. 7 (S.D. Fla. 2003);
20 *United States v. Duran De Amesquita*, 582 F. Supp. 1326, 1330 (S.D. Fla. 1984);
21 *United States v. Facchiano*, 500 F. Supp. 896, 898 n. 2 (S.D. Fla. 1980).

22 18. Moreover, denial of this right to access is error, which at a minimum will
23 require a remand if convictions occur in this case. *See, e.g., United States v. Lawson*,
24 670 F.2d 923, 926 (10th Cir. 1982).

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1 Wherefore, counsel respectfully asks this Court to set the matter down for a
2 hearing, or to order the Clerk of the Court to provide the discovery requested herein.
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5 Respectfully submitted,

6 HILARY POTASHNER
7 Federal Public Defender

8 DATED: July 13, 2015

By /s/ Gary Rowe

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