

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 13-10200-GAO
)	
DZHOKHAR TSARNAEV)	

REPLY TO GOVERNMENT’S OPPOSITION TO MOTION FOR LEAVE TO REFERENCE AND/OR QUOTE CERTAIN MATERIALS IN PUBLIC FILINGS

Defendant, Dzhokhar Tsarnaev, by and through counsel, respectfully submits this Reply to the government’s Opposition (“Opp.”) [DE 1036] to his Motion for Leave to Reference and/or Quote Certain Materials in Public Filings [DE 1032].

Most of the government’s Opposition attacks a straw man: the prospect of unsealing and publicly disclosing complete juror questionnaires and voir dire transcripts. *See, e.g.*, Opp. at 3 (arguing that “providing access to full unredacted transcripts of the voir dire of individual jurors might well reveal other information” such as health issues and criminal records; and arguing that unfettered public access to the “great wealth of personal information that is provided in the questionnaires” might allow observers to “piece together” identities.) But that is not what that the defendant has requested. Rather, defense counsel simply seek leave, in court filings and arguments, to

1. refer to or quote relevant information from the questionnaires that does not include any identifying information, most of which has already been described and/or quoted in public voir dire, and

2. to refer to or quote from transcripts of voir dire proceedings which were conducted in public and already have been extensively described and quoted in news coverage.

The vast bulk of the information is thus already public, and to the extent a discrete relevant piece of analogous questionnaire information did not happen to be mentioned in public voir dire, there is no logical reason to preclude it from becoming public. Such information, which is integral to the parties' court pleadings, is not only presumptively subject to a right of public access but is critical to public understanding in this case of the parties' arguments and the decisions of both this Court and the Court of Appeals about whether a change of venue is required to assure a fair trial by an impartial jury.

The practice of public quotation and reference to documents that, themselves, remain under seal is not unusual. For example, in the Court of Appeals, Pre-Sentence Reports ("PSRs") in criminal cases are filed under seal, precisely because they contain a wealth of sensitive personal information. However, parties commonly refer to and quote, in their publicly filed briefs, portions of PSRs that are relevant to the legal issues being litigated, and the Court of Appeals commonly refers to and quotes PSRs in published decisions. The defendant essentially proposes to treat the juror questionnaires and voir dire transcripts in similar fashion here.

With regard to the arguments and rulings on motions to excuse for cause, the government's concerns about possible influence on other jurors are speculative and remote in light of the Court's emphatic and repeated orders to the prospective jurors to avoid news coverage.

With regard to the number of jurors qualified on a given day, the defendant seeks this relief principally so that he may seek unsealing in the Court of Appeals of his Second Petition for Mandamus, which noted the number of jurors qualified as of the date of filing. To the extent the Court revealed the total as of February 13, it is difficult to conceive any harm that might result from the unsealing of other court papers that mention the total as of the date of filing.

Respectfully submitted,

DZHOKHAR TSARNAEV
by his attorneys

/s/ William W. Fick

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/s/ William W. Fick