

MINUTE ORDER

CASE NUMBER: MISC. NO. 24-00653 SASP-WRP

[Related Case: CR. NO. 22-00048 TMB-NC]

CASE NAME: In Re: Public First Law Center

JUDGE: Shanlyn A.S. Park

DATE: 04/01/2025

COURT ACTION: EO: COURT ORDER GRANTING PUBLIC FIRST LAW CENTER'S MOTION TO UNSEAL JUROR QUESTIONNAIRE RESPONSES [FILED 4/1/25 (ECF NO. 7)]

Before the Court is Public First Law Center's ("Public First") Motion to Unseal Juror Questionnaire Responses ("Motion"), filed on November 15, 2024. [ECF No. 1.] For the reasons set forth herein, Public First's Motion is GRANTED subject to redaction of personal information of jurors.

Defendants Keith Mitsuyoshi Kaneshiro, Dennis Kuniyuki Mitsunaga, Terri Ann Otani, Aaron Shunichi Fujii, Chad Michael McDonald, and Sheri Jean Tanaka were charged via Indictment in *United States v. Keith Mitsuyoshi Kaneshiro et al.*, Cr. No. 22-00048 TMB-NC ("*Kaneshiro* matter"), with conspiracy to commit offenses against the United States, namely (1) honest services wire fraud in violation of 18 U.S.C. §§ 1343 and 1346, and (2) two forms of federal bribery in violation of 18 U.S.C. § 666(a)(1)(B) and (a)(2). Given the media attention surrounding the case, prior to jury service, jurors were provided questionnaires. Relevant to the Motion are the second and third questionnaires that sought routine demographic and background information about each juror, as well as juror exposure to media accounts. Jury selection for the case commenced on March 12, 2024, and continued for six days, with the jury being empaneled on March 19, 2024. The trial concluded on May 17, 2024, and resulted in not guilty verdicts for all defendants on all counts.

The instant Motion seeks to unseal and provide public access to the second and third questionnaires completed by the empaneled jurors in the *Kaneshiro* matter

and argues that the public has a presumed First Amendment right of access to voir dire proceedings, including written questionnaires. Public First argues a common law right of access to court records, emphasizing that the burden is on the party seeking closure to demonstrate compelling reasons for sealing. Public First adds that there is no justification for sealing the entirety of the empaneled jurors' responses to the second and third questionnaires. The Motion concludes by requesting that the Court unseal and provide public access to the specified juror questionnaire responses.

On November 26, 2024, this Court issued an order allowing any interested parties twenty-one (21) days from the date of the order to file a response to Public First's request. The applicable time passed without the Court receiving any responsive briefings. On January 24, 2025, this Court held a status conference with Public First and interested parties from the *Kaneshiro* matter. The parties in attendance were provided a blank copy of the second and third questionnaires, and the Court indicated its intention to grant the Motion subject to the redaction of personal information of jurors. Public First acknowledged during the conference that some of the questions asked in the second questionnaire may have elicited information that a juror would want to remain confidential. Hence, Public First indicated that it did not object to the Court's review of each questionnaire and redaction of such information. The interested parties from the *Kaneshiro* matter all took no position on the Motion.

On February 4, 2025, this Court informed the empaneled jurors of its intention to release the requested questionnaires. Six (6) out of the sixteen (16) empaneled jurors responded to the Court's posture. Of those who responded, all requested their names be redacted, as they wished to remain anonymous; one requested personal information be redacted; one requested that his employment information be redacted; and one expressed fear for her safety.

After careful consideration of the Motion, concerns raised by the empaneled jurors, and relevant legal authority, and taking judicial notice of the records and files in this case and the *Kaneshiro* matter, this Court GRANTS Public First's Motion, subject to redaction of personal information of jurors.

The public has a presumptive First Amendment right of access to voir dire proceedings, including written juror questionnaires. This principle is supported by the United States Supreme Court ("Supreme Court") decision in *Press-Enterprise Company v. Superior Court of California, Riverside County*, 464 U.S. 501 (1984)

(“*Press Enterprise I*”), which held that the First Amendment right of access applies to jury voir dire. The public has the right to observe and understand the process—from start to finish—by which jurors in criminal cases are determined to be fair, impartial, and fit to serve. *Id.* at 508. Consonantly, the Ninth Circuit Court of Appeals (“Ninth Circuit”) emphasized the importance of the First Amendment’s presumption of openness in judicial proceedings, which enhances both the fairness of the proceedings and public confidence in the judicial system. *Civ. Beat L. Ctr. for Pub. Int., Inc. v. Maile*, 117 F.4th 1200, 1208 (9th Cir. 2024). Indeed, the First Amendment grants the public a presumptive right to access nearly every stage of post-indictment criminal proceedings, including pretrial proceedings, preliminary hearings, voir dire, trials, and post-conviction proceedings, along with records filed in those criminal proceedings. *Id.* (citing *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 603–04 (1982)).

Except for certain records traditionally kept secret for policy reasons, such as grand jury proceedings and warrant materials during pre-indictment investigation, there is a strong presumption in favor of access to judicial records. *See United States v. Bus. of Custer Battlefield Museum & Store Located at Interstate 90, Exit 514, S. of Billings, Mont.*, 658 F.3d 1188, 1192 (9th Cir. 2011). However, this presumption may be overcome by demonstrating that (i) closure serves a compelling interest, (ii) there is a substantial probability of harm to this interest without closure, and (iii) no alternatives to closure exist. This burden is outlined in *Phoenix Newspapers Inc. v. United States District Court for District of Arizona*, 156 F.3d 940, 949 (9th Cir. 1998), and requires specific factual findings rather than conclusory assertions. Even if a compelling interest justifies sealing, the scope of sealing must be narrowly tailored. *Id.* (citing *Press-Enter. Co. v. Superior Ct. of Cal. for Riverside Cnty.*, 478 U.S. 1, 9 (1986)). The court must consider alternatives to sealing, such as redactions or limited access, and articulate specific reasons why these alternatives are insufficient. *Press-Enter. I*, 464 U.S. at 511; *Phoenix Newspapers*, 156 F.3d at 950–51.

Given the Ninth Circuit’s precedent, this Court concludes that the First Amendment grants the public the presumptive right to access the second and third written questionnaires of the empaneled jury in the *Kaneshiro* matter. However, this Court believes that given some of the responses, jurors have a right to privacy guaranteed by Hawaii’s constitution and laws, and they have an interest in protecting their personal information from being revealed.

The Supreme Court has recognized that an individual right to privacy may justify closure where such a right is asserted by the affected individual and the court makes pre-closure findings as to the significance of the interest and necessity of closure. In *Press-Enterprise I*, 464 U.S. at 510, the trial court ordered six weeks of voir dire in a criminal trial closed to the public to protect asserted interests, including “the right to privacy of the prospective jurors, for any whose ‘special experiences in sensitive areas ... do not appear to be appropriate for public discussion.’” The Supreme Court agreed that jury selection “may, in some circumstances, give rise to a compelling interest of a prospective juror when interrogation touches on deeply personal matters that person has legitimate reasons for keeping out of the public domain.” *Id.* at 511. But a prospective juror’s right to privacy could not justify the preemptive, blanket closure of voir dire. *Id.* at 511–13. Because “[t]he privacy interests of such a prospective juror must be balanced against the historic values” supporting public access, the Supreme Court explained that trial judges must “requir[e] the prospective juror to make an affirmative request” to discuss sensitive questions “*in camera* but with counsel present and on the record,” such that “the trial judge can ensure that there is in fact a valid basis for a belief that disclosure infringes a significant interest in privacy.” *Id.* at 512.

At the status conference in this case, Public First acknowledged a juror’s right to privacy; it agreed that some questions could elicit personal information that should be kept out of the public domain, and it did not object to the redaction of such information. After reviewing the questionnaires, the Court finds that some details shared within them implicate personal or private information. Hence, the Court will redact individual questionnaires accordingly.

The next question for consideration is to what extent the public right of access to the jury selection process extends to the names or other identifiers of the empaneled jurors. Neither the Supreme Court nor the Ninth Circuit has examined whether, and to what extent, the presumption of public access applies to the names of jurors. This Court assumes the presumption of openness applies, just as it applies to other aspects of the jury selection process.

The Jury Selection and Service Act of 1968, 28 U.S.C. § 1863(b)(7), provides for the disclosure of juror names once the jurors have been summoned and either appeared or failed to appear, unless secrecy is in the “interest of justice.” The Seventh Circuit Court of Appeals (“Seventh Circuit”) explained, “The right question is not *whether* names may be kept secret, or disclosure deferred, but *what*

justifies such a decision.” *United States v. Bonds*, No. C 07-00732 SI, 2011 WL 902207, at *4 (N.D. Cal. Mar. 14, 2011) (citing *United States v. Blagojevich*, 612 F.3d 558, 561 (7th Cir. 2010)).¹ “[A] judge must find some *unusual* risk to justify keeping jurors’ names confidential; it is not enough to point to possibilities that are present in every criminal prosecution.” *Blagojevich*, 612 F.3d at 565. Most federal appellate courts have based the decision for an anonymous jury on some combination of the following five factors: (1) the defendant’s involvement in organized crime; (2) the defendant’s participation in a group with the capacity to harm jurors; (3) the defendant’s past attempts to interfere with the judicial process; (4) the potential that the defendant will get a long jail sentence or substantial fines if convicted; and (5) extensive publicity that could expose jurors to intimidation or harassment. *See, e.g., United States v. Sanchez*, 74 F.3d 562, 564 (5th Cir. 1996) (citations omitted). This approach is in accord with the limited use of anonymous juries, *id.*, and the general presumption of openness discussed in *Press-Enterprise I*, 464 U.S. 501.

Here, notwithstanding the high-profile nature of the *Kaneshiro* matter, none of the listed factors justify withholding the empaneled jurors’ names. The defendants included the prosecuting attorney for the City and County of Honolulu, as well as prominent members of the local business and legal community, not members of organized crime or a group that would harm the jurors. Nor has there been any judicial finding that the defendants attempted to interfere with the judicial process. While extensive publicity surrounded the *Kaneshiro* matter throughout the pendency of the litigation, since the conclusion of the case ten months ago that resulted in an acquittal for all defendants, there has been little to no media attention. The Court understands that some jurors may wish to remain anonymous and that releasing the empaneled jurors’ names may subject them to questioning by the media about the case and their experience; however, there is no evidence suggesting that this exposure would subject them to harassment or would jeopardize their safety. Accordingly, the Court cannot justify withholding the empaneled jurors’ names. The Court further notes that, while the media may attempt to contact the jurors with respect to their jury service, the empaneled jurors are under no obligation to speak to any person about the case and may refuse all requests for interviews or comments.

¹ Although not binding on this Court, the Seventh Circuit decisions are cited to for their persuasive authority.

For the reasons stated herein, Public First's Motion to Unseal Juror Questionnaire Responses [ECF No. 1] is hereby **GRANTED** subject to redaction of personal information of jurors. The redacted questionnaires are available for public view at the Clerk's Office, United States District Court for the District of Hawaii.

IT IS SO ORDERED.