



answers and private information confidential, and in avoiding exposure and harassment, outweigh any lingering public interest in the closed criminal case. Further, the Court will **DENY AS MOOT** the request for the foreperson’s jury number since the foreperson’s written questionnaire response has already been released as part of an April 2020 ruling by the Court. *See United States v. Stone*, No. CR 19-0018 (ABJ), 2020 WL 1892360, at \*41–42 (D.D.C. Apr. 16, 2020), appeal dismissed, No. 20-3033, 2020 WL 5358671 (D.C. Cir. Aug. 19, 2020).

### **BACKGROUND AND PROCEDURAL HISTORY**

Roger Stone – a political operative and long-time associate of former-President Donald Trump – was indicted on January 24, 2019 in connection with the investigation of Special Counsel Robert Mueller into possible interference by the Russian government in the 2016 presidential election. *Stone*, Indictment [Dkt. # 1]. The indictment charged one count of obstructing a congressional proceeding, one count of witness tampering with respect to that proceeding, and five counts of making false statements to Congress. *Id.*

#### **I. The Stone Trial**

Both the Special Counsel investigation and the Stone prosecution garnered substantial public interest and reporting by the media – along with the ire of the President himself.<sup>1</sup> Given this intense publicity, the Court solicited the parties’ views on the use of a written questionnaire to aid jury selection, and the parties agreed. *See Stone*, Tr., Status Conf., Mar. 14, 2019 [Dkt. # 66] at 12 (“THE COURT: . . . I take it that you’re going to want to do a jury questionnaire.” [Defense

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<sup>1</sup> *See* @realDonaldTrump, Twitter (Jan. 25, 2019, 12:16 PM) (“Greatest Witch Hunt in the History of our Country! NO COLLUSION! Border Coyotes, Drug Dealers and Human Traffickers are treated better. Who alerted CNN to be there?”) <https://twitter.com/realdonaldtrump/status/1088832908494888961> (no longer available); PBS, Jan. 25, 2019, <https://www.pbs.org/newshour/politics/president-donald-trump-blasts-arrest-of-confidant-roger-stone-on-twitter>.

Counsel]: Yes, ma'am.”); Gov’t Resp. to Minute Order [Dkt. # 192] (stating no objection to using questionnaire); Def.’s Resp. to Minute Order [Dkt. # 193] (same). The parties jointly proposed a written questionnaire to the Court, *Stone*, Notice of Proposed Written Jury Questionnaire [Dkt. # 184], which stated plainly on the first page that the responses to the questionnaires would remain confidential. *Stone*, Proposed Jury Questionnaire [Dkt. # 184-1] at 2 (“To protect your identity, the only page that contains your name is the certification page, which will remain confidential and will be shared only with court personnel and the attorneys. After a jury has been selected, all copies of your response to this questionnaire will be returned to the Clerk of the Court and kept in confidence, under seal, away from public viewing. This questionnaire will NOT be made public.”). The final version of the questionnaire used at trial provided the same: “The parties and the Court have agreed that all information contained in this questionnaire will be kept confidential.” *Stone*, Juror Questionnaire [Dkt. # 247] (“JQ”) at 1.

Several weeks before the start of trial, potential jurors were summoned to the courthouse to complete the questionnaire. The Court explained to the panel that the questionnaire was “designed to help ensure that we have a fair and impartial jury.” *Stone*, Hearing Tr. of Sept. 12, 2019 [Dkt. # 356] at 9. The Court also told the potential jurors that their identities and answers would remain confidential:

In case you are concerned about this, I want to assure you that your names are not going to be made public at this time and it’s our intention that your answers to these questionnaires will not be made public.

To protect your identity, the only part of the questionnaire that includes your name is the certification you will sign on the last page. And if, on the date you return for the completion of the jury selection process, we need to discuss your answers with you, you’re not going to have to talk in front of

all the other jurors. We're going to let you speak to the parties in the case one at a time.

*Id.* The group then proceeded to answer the questions in writing, providing information about themselves and, in some cases, about their spouses, partners, or family members. *See generally* JQ.

Many of the questions sought sensitive, personal, and personally identifying information, including potential jurors' age, gender, marital status, education and employment information, organizational affiliations and activities, and explanations of whether they or any of their close friends or family members had ever run for or held political office, been employed by or had any association or connection with Congress or a congressional committee, or had been the victim of a crime or arrested for, charged with, prosecuted for, or convicted of any crime. *See id.* The questionnaire also asked if jurors knew any of the parties, counsel, or court staff who would be involved in the trial or if they had views or opinions about any of them or the Special Counsel's investigation. *Id.* One hundred and twenty potential jurors completed the questionnaire. The prosecution and defense received the written answers in their entirety and proposed strikes for cause of potential jurors based on those answers. *See Stone*, Minute Orders (Sept. 13, 2019); Gov't "For Cause" Juror Strikes [Dkt. # 208] (Sealed); Def.'s "For Cause" Juror Strikes [Dkt. # 209] (Sealed). On September 18, the Court struck thirty-eight potential jurors, and its ruling was without prejudice to the renewal of any parties' strike that had been denied, based on the jurors' answers at the individual voir dire to follow. Order [Dkt. # 221] (Sealed).

On November 4, 2019, the day before the trial was to begin, the defense sought reconsideration with respect to nine jurors who were not included in the Court's September 18 order. *See* Def.'s Mem. on Jury Selection [Dkt. # 249] (Sealed).

As part of its effort to ensure that the trial was “conducted in a fair and orderly manner,” the Court entered an order establishing protocols to protect the privacy and anonymity of the jurors while also affording the public access to the proceedings.<sup>2</sup> *Stone*, Order [Dkt. # 242] (“Trial Logistics Order”) ¶¶ II(A)(5), (7); IV(A), (B) (reserving seats in the courtroom for the members of the press and the public, providing for a separate Media Room for the press, and an overflow courtroom for the press and the public); *id.* ¶ IX(A) (strictly prohibiting “[a]ny attempt to contact or interact with jurors, to obtain the locations of their residences or job sites, or to otherwise ascertain their identities in any way”); *see also Stone*, Tr. Nov. 4, 2019 [Dkt. # 293] at 4 (explaining at the pretrial conference, which was open to the public, about the availability of the overflow room).

Trial began on November 5, 2019 with two days of jury selection. *See Stone*, Minute Entry (Nov. 5, 2019); Minute Entry (Nov. 6, 2019). Potential jurors who had not already been disqualified were summoned to the courthouse to answer questions in person. *See generally id.* They were identified by the juror numbers assigned by the Jury Office, not by name. *See Stone*, Tr. Nov. 5, 2019 (Morning) at 3–10. But voir dire was open to the public and the press, and the prospective jurors were not hidden from public view. The Court and counsel for both sides asked the prospective jurors questions, which were answered publicly, unless a prospective juror asked to answer a specific question privately in front of only counsel and the Court. At the outset, the Court explained that the jury would not be sequestered, but that procedures would be established

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<sup>2</sup> The Local Rules of this court provide that judges handling “widely publicized or sensational criminal cases” may enter special orders to govern such matters as “the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.” D.D.C. LCrR 57.7(c).

during trial to help ensure their security and privacy, and to provide additional public access to the proceedings with media and overflow rooms. *Stone*, Tr. Nov. 5, 2019 [Dkt. # 294] (Morning) at 13; Tr. Nov. 6, 2019 [Dkt. # 296] (Morning) at 246.<sup>3</sup>

Despite these protections, the prospective jurors faced harassment even before the jury was selected. On the first day of voir dire, Alex Jones of Infowars.com incorrectly asserted that a potential juror was a former aide to President Barack Obama and urged viewers to “look up [the prospective juror’s] husband,” who he called a “member of the deep state intelligence community.” *The Alex Jones Show*, InfoWars, Nov. 5, 2019 (beginning at 2:12:00), <http://tv.infowars.com/index/display/id/10149>. On the second day, Jones threatened to release the name of a potential juror, stating that the prospective juror was “one of their minions, and we’ve got her name, and we’re going to release it.” *The Alex Jones Show*, InfoWars, Nov. 6, 2019 (beginning at 00:13:45), <http://tv.infowars.com/index/display/id/10153>; *see also* Deanna Paul, *Alex Jones threatened to name a Roger Stone juror. Experts say that might be jury tampering.*, *Wash. Post*, Nov. 7, 2019, <https://www.washingtonpost.com/politics/2019/11/07/alex-jones-threatened-name-roger-stone-juror-experts-say-that-might-be-jury-tampering/>.

During individual voir dire conducted in the courtroom, Stone moved to strike two additional prospective jurors for cause based on their oral answers, which the Court denied. *See Stone*, Tr. Nov. 5, 2019 (Morning) at 41–45; Tr. Nov. 5, 2019 (Afternoon) at 171–174. After thirty-two jurors were qualified, the parties exercised their preemptory strikes. Only one of the eleven jurors that had been the subject of a defense objection was seated on the jury.

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<sup>3</sup> The transcript of the entire individual voir dire process was made available to the public. *Stone*, Tr. Nov. 5, 2019 [Dkt. # 294] (Morning), [Dkt. # 295] (Afternoon); Tr. Nov. 6, 2019 [Dkt. # 296] (Morning), [Dkt. # 297] (Afternoon).

Twelve jurors and two alternates were selected to serve on the jury, and after hearing the evidence and deliberating, the jury convicted Stone on all counts on November 15, 2019. *Stone*, Verdict Form [Dkt. # 260].

After the trial, Stone renewed his claim that one juror he moved to strike during individual voir dire was biased and should have been excused for cause. *See* Order [Dkt. # 288] (Redacted). The Court denied the motion and later posted a redacted version of its order, which quoted from the juror questionnaire, on the public docket. *Id.* Stone did not challenge any other juror at that time.

The verdict prompted a deluge of media and public attention, and immediately after trial, some jurors expressed concern to the Court about their safety and anonymity. *See, e.g.*, Jurors' Br. in Opp. to Release of Questionnaires [Dkt. # 19] ("Opp."), Decl. of Juror C ¶ 3.c (stating that after the trial, jurors asked the Court "what would happen to their personal information, since they were concerned for the safety of themselves and their families"); *see also* Decl. of Juror A ¶ 6; Decl. of Juror B ¶ 6; Decl. of Juror I ¶ 4.b; Decl. of Juror J ¶ 3.c.

With trial over, the jurors were relieved of their duty not to speak about the trial, and while many of them chose not to comment publicly, some did. For instance, on November 22, 2019, the *Washington Post* published a piece written by one of the jurors about his experience on the jury, which expressed his regard for the process and for his fellow jurors.<sup>4</sup>

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<sup>4</sup> *The Washington Post* (Nov. 22, 2019, 3:42 PM) [https://www.washingtonpost.com/opinions/i-was-a-juror-in-roger-stones-trial-we-took-his-rights-seriously/2019/11/22/234d7df0-0d46-11ea-97ac-a7ccc8dd1ebc\\_story.html](https://www.washingtonpost.com/opinions/i-was-a-juror-in-roger-stones-trial-we-took-his-rights-seriously/2019/11/22/234d7df0-0d46-11ea-97ac-a7ccc8dd1ebc_story.html).

## II. Post-Trial Proceedings

On February 10, 2020, the government filed a sentencing memorandum requesting a sentence for Stone within the Sentencing Guideline range of seven to nine years. *See* Gov't Sentencing Mem. [Dkt. # 279]. The memorandum was signed by the four Assistant United States Attorneys and Special Assistant United States Attorneys who prosecuted the case, and it was submitted over the name of the newly-appointed U.S. Attorney. *See id.* at 26. The President responded to the prosecutors' request in a series of angry and disparaging public statements issued overnight,<sup>5</sup> and the next day, the U.S. Attorney's Office reversed course and filed a supplemental memorandum, calling the sentence requested in the memorandum that it had filed the day before "excessive and unwarranted." Gov't Suppl. & Am. Sentencing Mem. [Dkt. # 286] at 4. The supplemental memorandum was filed without the signatures of the prosecuting attorneys – who had withdrawn from the case or resigned from the office entirely that day – but by another Assistant United States Attorney. *See id.* at 5.

This turn of events caused the foreperson to express her support for the prosecution team in a February 12, 2020 social media post, attaching a copy of the *Washington Post* opinion piece

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5 *See, e.g.*, The White House (Feb. 11, 2020, 4:13 PM), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-ceremonys-153-supporting-veterans-stemcareers-act/> ("They ought to be ashamed of themselves . . . . I think it's a disgrace."); @realDonaldTrump, Twitter (Feb. 11, 2020, 6:45 PM), <https://twitter.com/realdonaldtrump/status/1227423392078409728?lang=en> ("Who are the four prosecutors (Mueller people?) who cut and ran after being exposed for recommending a ridiculous 9 year prison sentence to a man that got caught up in an investigation that was illegal, the Mueller Scam, and shouldn't ever even started? 13 Angry Democrats?") (no longer available); *id.*, Twitter (Feb. 12, 2020 4:06 AM), <https://twitter.com/realdonaldtrump/status/1227564604177469441> ("Two months in jail for a Swamp Creature, yet 9 years recommended for Roger Stone (who was not even working for the Trump Campaign). Gee, that sounds very fair! Rogue prosecutors maybe? The Swamp!") (no longer available).



written by the other juror. In the post, she identified herself as the foreperson of the jury, which prompted members of the public and Stone's defense team to search the internet for information about her. Two days later, on February 14, 2020, Stone filed a motion for new trial, alleging misconduct by the foreperson based on "newly discovered" information. *See Stone*, Mot. for New Trial [Dkt. # 312] (Sealed); Am. Mot. for New Trial [Dkt. # 313] (Sealed). The motion did not allege misconduct by any other juror. The foreperson and members of the jury faced a firestorm of outrage from supporters of the President and from the President himself.<sup>6</sup>

On February 25, 2020, the Court held an evidentiary hearing on the motion, allowing the defense to question the foreperson about her social media posts and permitting the parties to question two other jurors, one selected by each side, about the jury's deliberations and the foreperson's management of the deliberations. *See generally Stone*, Hrg. Tr. (Feb. 25, 2020) [Dkt. # 347].

This hearing was partially closed to the public.

I think it's without question . . . that this is a highly publicized case and that in a highly polarized political climate in which the President himself has shone a spotlight on the jury through his use of social media, which doesn't just reach those who follow him on Twitter but also gets reported in the news media, the risk of harassment and intimidation of any jurors who may testify in the hearing scheduled for later today or in juror misconduct is extremely high and that individuals who may be angry about Mr. Stone's conviction or other developments in the news may choose to take it out on them personally.

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<sup>6</sup> *See* @realDonaldTrump, Twitter (Feb. 25, 2020, 4:01 PM), <https://twitter.com/realdonaldtrump/status/1232395209125707776> ("There has rarely been a juror so tainted as the forewoman in the Roger Stone case. Look at her background. She never revealed her hatred of 'Trump' and Stone. She was totally biased, as is the judge. Roger wasn't even working on my campaign. Miscarriage of justice. Sad to watch!") (no longer available); *see also* Tucker Carlson, Fox News, Feb. 14, 2020 (beginning at 3:03), <https://www.foxnews.com/opinion/tucker-carlson-why-the-roger-stone-case-should-horrify-you-whether-youre-republican-or-democrat>.

Hr’g. Tr. (Feb. 25, 2020) [Dkt. # 346] at 11. Given this, the Court made a finding that “[m]aking the jurors’ names or physical appearance known to the public this afternoon would put them at substantial risk of harm,” and that “a specific and significant interest in juror safety and freedom from harassment and intimidation” outweighed the “public interest in an entirely open proceeding.” *Id.* at 15–16. While members of the public were not allowed in the courtroom itself, a live audio feed of the hearing was made available for the public in an adjacent courtroom. *Id.* at 19. “In other words, every single aspect of this proceeding w[as] public, with a very limited exception of what any testifying jurors look like and what their names, online account names are, and their juror numbers are.” *Id.* Transcripts of the proceeding were made available to the public two days later. *See Stone*, Docket Entries (Feb. 27, 2020) (making public transcripts available); Hr’g. Trs. (Feb. 25, 2020) [Dkt. # 346] [Dkt. # 347].

On April 16, 2020, the Court denied the motion for new trial in an 81-page ruling. *Stone*, Order [Dkt. # 362]; *Stone*, 2020 WL 1892360. The ruling attached the foreperson’s written questionnaire response in redacted form. 2020 WL 1892360, at \*41.

On April 30, 2020, Stone appealed the final judgment in his case, Notice of Appeal [Dkt. # 376], but he dismissed the appeal after then-President Donald Trump granted him clemency for his convictions, *see Stone*, Notice of Grant of Clemency [Dkt. # 393]; Order of D.C. Circuit [Dkt. # 400], ending the criminal matter.

### III. Cernovich's Motion

On February 24, 2020, ten days after Stone filed his motion for new trial, but before the hearing had been conducted or the motion had been decided, Cernovich filed the instant motion.<sup>7</sup> Cernovich sought to obtain the foreperson's juror identification number and the written questionnaires completed by all of the individuals who deliberated as jurors in the case. Mot. at 1; Mem. in Supp. at 7.<sup>8</sup> Noting that the jury questionnaire asked potential jurors if they had opinions about the Special Counsel's investigation into the 2016 presidential election and if they had written or posted anything about the investigation, he asserted, "based on information and belief," that the foreperson "did not disclose these important points in her answers to the written questionnaire." Mem. in Supp. at 4.

On March 23, 2020, a coalition of reporters filed an amicus brief in support of Cernovich's motion, Br. of the Reporters Committee for Freedom of the Press and 21 Media Organization [Dkt. # 15] ("Amicus Br.").

On March 25, 2020, the government filed its response to the motion, Gov't Resp. to Mot. [Dkt. # 16], and the jurors whose questionnaires were the subject of the motion filed their

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<sup>7</sup> The motion was originally filed in Stone's criminal case. *Stone*, 19-cr-0018, Mot. for Limited Permission to Intervene [Dkt. # 351] at 1. Because the Federal Rules of Criminal Procedure do not provide for intervention by third parties in criminal cases, the Court opened this miscellaneous matter for consideration of Cernovich's request. *Stone*, Minute Order (Mar. 10, 2020) (deeming his Motion for Limited Permission to Intervene to be a petition for access to the foreperson's juror identification number and the completed written juror questionnaires in *United States v. Stone*); see Mot. at 1.

<sup>8</sup> The motion requests "the written jury voir dire questionnaire answers that have been collected in this case," Mot. at 1, which could be understood to seek the 120 completed questionnaires, but the supporting memorandum makes clear that Cernovich seeks the "written voir dire answers of *the jurors*." Mem. in Supp. at 7 (emphasis added).

opposition.<sup>9</sup> Opp. The opposition was supported by declarations by the jurors, identifying them on the public docket solely by alphabetical letter. *See* Opp., Decls. of Jurors A–J.

No reply brief was filed.

### LEGAL STANDARD

It is well-established that the First Amendment affords the public a presumptive right of access to criminal trials. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604–06 (1982). But “the right . . . is not absolute.” *Id.* at 606. Courts may “inhibit the disclosure of sensitive information” in criminal trials, including information about jurors, when certain interests outweigh the public’s right to access. *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984), quoting *Globe Newspaper*, 457 U.S. at 606–07.

Such interests include the rights of jurors to privacy when voir dire “touches on deeply personal matters that [a prospective juror] has legitimate reasons for keeping out of the public domain,” *Press-Enterprise Co.*, 464 U.S. at 511, and juror interest “in remaining free from real or threatened violence.” *United States v. Edmond*, 52 F.3d 1080, 1090 (D.C. Cir. 1995) (internal quotation marks omitted). The D.C. Circuit has recognized that “extensive publicity . . . [can] enhance the possibility that jurors’ names would become public and expose them to intimidation or harassment.” *Id.* at 1091 (upholding the impaneling of an anonymous jury in a case that involved a large-scale cocaine distribution conspiracy and attracted “substantial pretrial publicity”) (internal quotation marks omitted); *see also Sheppard v. Maxwell*, 384 U.S. 333, 353 (1966) (finding that public identification of jurors in a highly publicized case had “exposed them to

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<sup>9</sup> On March 2, 2020, the Court appointed pro bono counsel pursuant to Local Civil Rule 83.11 to represent the jurors. *See* Minute Order (Mar. 2, 2020).

expressions of opinion from both cranks and friends” and that a state trial court’s failure to protect against inherently prejudicial publicity deprived the defendant in a murder case of fair trial).

Congress permits district courts to keep the names of prospective jurors “confidential in any case where the interests of justice so require,” 28 U.S.C. § 1863(b)(7), and the D.C. Circuit has held that voir dire may be closed to the public if a court “make[s] findings that an open *voir dire* proceeding threatens either the defendant’s Sixth Amendment right to a fair trial or a prospective juror’s privacy interests,” that prospective jurors make “affirmative request[s]” for private *voir dire* examination, and that the court consider alternatives to closure that will adequately protect the interests of prospective jurors. *Cable News Network, Inc. v. United States*, 824 F.2d 1046, 1048 (D.C. Cir. 1987) (edits in original) (internal citations omitted), citing *Press-Enterprise*, 464 U.S. at 511–12.

### ANALYSIS

Movant Cernovich asked the Court to release the jurors’ questionnaire responses and the foreperson’s jury number so he and others could assess whether Stone received a fair trial and whether “public trials are being conducted consistently with constitutional requirements.” Mem. in Supp. at 7. The amici support the motion. Amicus Br. at 12 (arguing that release would “allow members of the public to assess for themselves the foreperson’s service on the jury”). Noting that Stone’s then-pending motion for new trial was based on the foreperson’s questionnaire, the government agreed that the foreperson’s juror number should be released and that the questionnaires should be made public in redacted form “to shield the jurors’ identities.” Gov’t. Resp. at 1, 5.

At the time of trial, the Court agreed with the parties that it would be appropriate and efficient to use a written questionnaire to identify jurors who might be subject to challenges for

cause, and the parties were also in agreement that the responses would be kept confidential, given the significant publicity surrounding the trial and the threat of juror harassment. *See Stone*, Tr., Status Conf., Mar. 14, 2019 at 12; Gov't Resp. to Minute Order [Dkt. # 192]; Def.'s Resp. to Minute Order [Dkt. # 193]. The Court further found it appropriate to take steps to ensure the anonymity and security of the jurors once trial began. Trial Logistics Order; *see D.D.C. LCrR 57.7(c)*. And even three months after trial, the Court found that the jurors' "specific and significant interest in juror safety and freedom from harassment and intimidation" continued to outweigh the "public interest in an entirely open proceeding" for the February 25, 2020 hearing. Tr. Feb. 25 at 15–16.

The question the instant motion presents is whether the jurors' interest continues to outweigh the public's interest in the written responses. The Court finds that it does. Since the motion for access was filed, the Court ruled on Stone's motion for new trial alleging misconduct by the foreperson. The Court held an evidentiary hearing on the motion at which the foreperson and two other jurors selected by the parties testified, and the Court ruled that there was no basis to grant a new trial. *See Stone*, 2020 WL 1892360 (explaining why the foreperson's responses to the jury questionnaire were not false, that her social media postings could have been discovered with due diligence, and that no misconduct had been shown). Importantly, for purposes of the instant motion, the ruling *attached the foreperson's written questionnaire response*, redacting only her juror number and personal identifying information about her and others mentioned in her answers. *See Stone*, 2020 WL 1892360, at \*41–\*42. With that ruling, the movant and the public received the very questionnaire they had been seeking "to assess for themselves the foreperson's service on the jury," Amici Br. at 12; Mem. in Supp. at 4, and the central concern driving the pending motion was satisfied. Furthermore, since the motion for access was filed, Stone received

a grant of clemency from the President, and Stone dismissed his appeal of the convictions. All of these developments served to reduce the public's interest in the underlying criminal case generally and the remainder of questionnaire responses specifically.

Balanced against this is the jurors' interest in remaining free of harassment and maintaining their privacy. The jurors are not public figures, and they were summoned to serve – they did not volunteer. They implored the Court to keep their questionnaire responses private, *see* Opp., Decls. of Jurors A–L, and with good reason. Eleven months after the trial ended, they received threats and harassment online, and in the case of one juror, at the juror's home, and this harassment increased when there was media coverage about the case. *See* Opp., Decl. of Juror G ¶¶ 5–6 (stating that after the juror spoke out publicly to defend the foreperson, the juror was harassed online and received a threatening letter mailed to the juror's home); Decl. of Juror L ¶ 6 (stating the juror received many phone calls from unknown numbers and the calls tended to increase when the case appeared in the news even after the trial was over); Decl. of Juror C ¶ 5.b (“Since being selected as a juror, I have received phone calls at inappropriate hours and throughout the day. I will not pick up the calls, but I suspect that it may be people calling about this case. Whenever the topic of this case hits the media, the phone calls increased significantly. I am concerned that the phone calls are just the beginning. If my identity is exposed, I do not know what some people are capable of.”). This harassment is troubling, and the Court is particularly concerned about a juror being contacted at home, which the Supreme Court has recognized to be a serious threat to juror privacy. *See, e.g., Sheppard*, 384 U.S. at 353 (“The fact that anonymous letters had been received by prospective jurors should have made the judge aware that this publicity seriously threatened the jurors' privacy.”).

Although the Stone trial is long over, and public interest in it has diminished, Stone remains a public figure. And given the events of January 6, 2021, it is undeniable that the vitriol and violence inspired by current political differences have only escalated since then.<sup>10</sup> The Court finds, then, that the risk of harassment jurors face for their service in the trial has not abated, and their interest “in remaining free from real or threatened violence,” *Edmond*, 52 F.3d at 1090, is as strong now as it was two years ago. *See United States v. Brown*, 250 F.3d 907, 919–920 (5th Cir. 2001) (observing more than a year and a half after the verdict in the highly publicized prosecution of a governor that “[t]he drumbeat of publicity surrounding the . . . prosecutions continues to this day”). To be clear, the Court does not make this finding based on any action by Stone or any other person, but it is based on the actual harassment the Stone jurors have experienced, as well as the general proliferation of threats and personal attacks being made in this country today against private individuals who find themselves to be publicly identified in matters relating to contentious areas of law or politics.

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<sup>10</sup> *See, e.g., United States v. Roske*, Crim. No. 22-cr-0209-PJM (D. Md.) [Dkt. # 1]; Aff. in Support of Crim. Compl. [Dkt. # 1-1] (attesting that the defendant was outside the home of a current Supreme Court Justice with a weapons and zip ties and stated that he came from California to kill the justice because he was upset about the leak of a recent Supreme Court draft decision about the right to abortion and the recent school shooting in Uvalde, Texas); *United States v. Depape*, Case No. 3:22-mj-71419 MAG (N.D. Cal.); Aff. in Support of Application for Compl. and Arrest Warrant [Dkt. # 1-1] ¶ 15 (attesting that the defendant who allegedly attacked the spouse of the Speaker of the U.S. House of Representatives told police officers that “he viewed Nancy [Pelosi] as the ‘leader of the pack’ of lies told by the Democratic Party” and that he said “he was fighting against tyranny without the option of surrender”); ABC News Now/Special Reports, Aug. 5, 2022, 2022 WLNR 24483098 (playing quote of Rep. Kevin McCarty regarding January 6: “The violence, destruction, and chaos we saw earlier was unacceptable, un-Democratic, and un-American. It was the saddest day I’ve ever had as serving as a member of this institution.”); Editorial Board, Wall Street Journal, Oct. 2, 2022 (“We live in a polarized political age when rabid partisans don’t need provocation to resort to violence.”).



Furthermore, the Court finds that the jurors have an ongoing interest in keeping the “deeply personal matters” divulged in the questionnaires private. *Press-Enterprise Co.*, 464 U.S. at 511. The questionnaire sought sensitive information about them, their spouses or partners, children, other relatives, and friends. Having been informed that their responses would remain confidential, the jurors were forthcoming in their written answers. Opp., Decl. of Juror A ¶¶ 4–5; Decl. of Juror B ¶¶ 4–5; Decl. of Juror C ¶ 4; Decl. of Juror D ¶¶ 4–6; Decl. of Juror F ¶ 5; Decl. of Juror I ¶ 5; Decl. of Juror J ¶¶ 5–6; Decl. of Juror L ¶¶ 3–4. They provided “deeply personal” information, including a description of violent crimes to which a juror was a witness, victim, or friend of the victim, including childhood assaults. *Press-Enterprise Co.*, 464 U.S. at 511. This is precisely the type of sensitive information given in voir dire that the Supreme Court has held may be kept private. *See id.*

Further, the Court finds that an alternative means of making the questionnaires public, such as releasing redacted versions, would not protect the jurors’ privacy and security or serve the public interest. In their candor, the jurors provided the names of family members and colleagues; information about their own or their relatives or friends’ current and past employers, current or past job titles, and dates of employment; organizational affiliations; and other identifying information – all of which, taken together with a few key strokes on an internet search engine, would allow many of them to be identified. Releasing the questionnaires with that information redacted would add little more to what is already available to the public, given the public’s access to oral voir dire, the fact that jurors were allowed to – and some did – speak publicly after the trial ended, and that the foreperson’s questionnaire response was released long ago.

The public had access to considerable information about the jurors who served in this case: the jurors were questioned about their answers on the written questionnaires in open court, and the


trial transcript remains a matter of public record. The defense team had access to the questionnaires in their entirety. There was only one juror who was the subject of a defense motion to strike for cause that was denied, and that juror's questionnaire is quoted in an order of the Court. And the other jurors were all seated without objection. Neither the Cernovich motion nor the amicus submission has articulated any particular interest in the questionnaires completed by jurors who were entirely acceptable to the defendant.

In sum, the Court finds that the jurors' ongoing privacy interest continues to outweigh the public's interest in the requested information and there is no alternative that would allow the information's release that would adequately protect their privacy interest. *Cable News Network*, 824 F.2d at 1048; *Press-Enterprise Co.*, 464 U.S. at 510. The jurors have affirmatively asked to keep the questionnaires confidential, and the Court will grant that request. *See Brown*, 250 F.3d at 918–19, 921 (a court's "power to prevent harassment and protect juror privacy does not cease when the case ends" because "[t]hreats of intimidation and harassment do not necessarily end with the conclusion of trial").

### CONCLUSION

For these reasons, the motion for access to the foreperson's juror number is **DENIED AS MOOT** and the motion for access to the juror questionnaire responses is **DENIED**.

**SO ORDERED.**

  
AMY BERMAN JACKSON  
United States District Judge

DATE: November 23, 2022