IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 2:10-cr-186-MHT**
	)	
THOMAS E. COKER,	)	
	)	
Defendant.	)	

COKER'S RESPONSE TO UNITED STATES' CONSOLIDATED MOTION TO (1) SEVER THE REMAINING DEFENDANTS, (2) CONTINUE THE FIRST SEVERED TRIAL, AND (3) PERMIT THE PARTIES TO MEET WITH JURORS

COMES NOW the Defendant, Thomas E. Coker, by counsel, and submits this response to the Government's three part motion (Doc. 1697). On August 11th, the jury returned a not guilty verdict on 11 of the 14 counts Coker was charged with. Only 3 counts remain against Coker and these are the subject of the Government's motion as it relates to Coker.

1. **Severance**

Coker has no objection to the severance proposal as submitted by the Government.

2. **Continuance**

Coker has no objection the Government's requested continuance however, he does object to any trial which includes him, being held before 2012. Coker has joined in the

motion of McGregor and the other defendants with regard to this matter.

3. **Juror Interviews**

Coker objects to the Government's request to meet with the jurors. The jurors were able to agree on the overwhelming majority of the counts Coker faced and there have been no allegations of impropriety which would permit such an inquiry to be anything other that a training session or fishing expedition for the Government. The Eleventh Circuit has recognized that: "it is well settled that district courts have the power to make rules and issue orders prohibiting attorneys and parties from contacting jurors, whether directly or indirectly, absent prior court approval." *United States v. Venske*, 296 F.3d 1284, 1291 (11th Cir. 2002). That Court went on to note that "[i]ndeed, this circuit's pattern instruction dealing with the jury's duty to deliberate specifically instructs the jury that '[y]our deliberations will be secret; you will never have to explain your verdict to anyone.' *Eleventh Circuit Pattern Jury Instructions*, Criminal Cases, Basic Instruction No. 11 (West 1997). Equally important is the court's interest in preserving the finality of the jury's verdict. See Tanner v. United States, 483 U.S. 107, 120, 107 S.Ct. 2739, 2747, 97 L.Ed.2d 90 (1987) (recognizing that post-verdict investigation seriously disrupt[s] finality of process)." *Id.* at 1292.

Other court's have similarly "long recognized that the proper functioning of the jury system requires that the courts protect jurors from being harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish

misconduct sufficient to set aside a verdict." *United States v. Schwarz*, 283 F.3d 76, 97 (2d Cir. 2002). Furthermore, to allow these interviews to occur would simply increase the likely of publicity in the face of upcoming trials and be prejudicial to the defense. The Second Circuit, when formulating its rules concerning juror interviews, announced the wisdom of a prohibition against such contact when there is a retrial pending. It noted that "[i]n some cases, a complete bar may be appropriate. An example given in Professor Moore's Treatise is a publicized case which ends in a hung jury and is likely to be retried. In such a case, the trial judge should instruct jurors not to disclose the deliberation, lest it jeopardize the fairness of the second trial. 8A *Moore's Federal Practice Criminal Rules* P 31.08(1) (b), at 31-58 n.13 (2d ed. 1977)." *United States v. Moten*, 582 F.2d 654, 666 (2d Cir. 1978)

Finally, the Government's resources far exceed those of Coker and as a result, allowing these interviews to proceed would be prejudicial to Coker. In *United States v. Kepreos*, 759 F.2d 961 (1st Cir.), cert. denied, 474 U.S. 901, 106 S.Ct. 227, 88 L.Ed.2d 227 (1985) it was noted that it is possible for the Government to obtain an unfair advantage which jeopardizes the integrity of the retrial and the judicial system. *Kepreos* involved an Assistant U.S. Attorney's post-verdict contact of a juror after a mistrial and before the retrial. Upon disclosure of this contact to the Court during the second trial, defendant Kepreos moved for a mistrial, which the District Court denied. However, the Court noted:

> Permitting the unbridled interviewing of jurors could easily lead to their harassment, to the exploitation of their thought processes, and to diminished confidence in jury verdicts, as well as to unbalanced trial results depending unduly on the relative resources of the parties. Such outcomes, or even the appearance of the same, we are not willing to tolerate. Thus, future incidents like the one described above will not be countenanced.

Bushkin Associates, Inc. v. Raytheon Co., 121 F.R.D. 5, 7 (D. Mass. 1988). For each of these foregoing reasons, the Government's request to interview the jurors should be denied.

WHEREFORE, Coker agrees with the first (severance) and second (continuance) requests of the Government but objects to the third (juror interviews).

Respectfully submitted this 22nd day of August, 2011.

s/ David McKnight
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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ David McKnight
Of Counsel