

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

**UNITED STATES OF AMERICA,**

**Plaintiff,**

v.

**MILTON E. MCGREGOR,**

**Defendant.**

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**CR No. 2:10cr186-MHT**

**MILTON MCGREGOR'S MOTION TO AMEND SCHEDULING ORDER**

Defendant Milton McGregor hereby moves the Court to amend the Scheduling Order [Doc. 316] to provide counsel for all parties additional time to review prospective juror questionnaires and, as grounds therefore, states as follows:

**Introduction**

This Court can take judicial notice of the fact that this is a very high-profile case that has generated an extreme amount of pre-trial publicity and attention. *See Rolling v. Crosby*, 438 F.3d 1296, 1298 (11<sup>th</sup> Cir. 2006) (“the trial court took judicial notice of the extensive pretrial publicity”).<sup>1</sup> The process of jury selection is particularly challenging in a high-profile case that has generated the type of pre-trial publicity created by this case. It requires an unusual amount of effort on the part of the Court and the parties to work together towards the selection of a fair and impartial jury. Recent case law from the Supreme Court and Eleventh Circuit underscores the importance of these efforts. Case law deemphasizes change of venue as a method of avoiding the impact of pre-trial publicity and emphasizes jury selection and related processes as methods for trying to achieve that goal. *See Skilling v. United States*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 2896

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<sup>1</sup> If the Court does not treat this as an obvious fact which is appropriate for judicial notice, McGregor requests leave to supplement this motion with evidence establishing this fact.

(2010) (holding that the trial court did not err in refusing change of venue, and that jury selection and related processes, including the use of a juror questionnaire drafted largely by the defendant, were adequate safeguards to overcome publicity); *United States v. Campa*, 459 F.3d 1121 (11<sup>th</sup> Cir. 2006) (en banc) (likewise rejecting change of venue argument, in light of steps taken by trial court in jury selection, which included the use of a questionnaire).

This Court has already taken important steps to facilitate the selection of a fair and impartial jury in this case. On January 5, 2011, the Court invited all parties to submit proposed supplemental juror questionnaires to go along with the standard juror questionnaire used by the Court. [Doc. 318]. In addition, at a hearing on February 15, 2011, the Court announced its intention to summon 300 prospective jurors for jury selection. However, in order for these important steps to have their intended effect, it is necessary for the Court to provide the parties with additional time to review responses to the juror questionnaire.

#### **Additional Time is Needed for Reviewing Responses to the Juror Questionnaire**

The Court's January 4, 2011 Scheduling Order provides that the juror questionnaires will be made available to counsel one week prior to the first day of jury selection. [Doc. 316, ¶6]. The United States Court Juror Questionnaire is nine pages long and contains 88 questions, not counting sub-parts.

In response to the Court's invitation, both sides submitted proposed supplemental juror questionnaires. On January 28, 2011, McGregor submitted his proposed supplemental juror questionnaire. [Doc. 381]. Defendants Coker, Crosby, Geddie, Gilley, Means, Preuit, Ross and Smith joined in McGregor's proposed questionnaire. [Id.]. The supplemental juror questionnaire proposed by McGregor is eighteen pages long and contains 189 questions, not counting sub-parts. [Doc. 381-1].

On January 31, 2011, the Government submitted its proposed supplemental juror questionnaire. [Doc. 391].<sup>2</sup> The supplemental juror questionnaire proposed by the Government is fourteen pages long and contains 80 questions, not counting sub-parts. [Id.].

Under the existing Scheduling Order, all parties will receive the juror questionnaires one week prior to the first day of jury selection. [Doc. 316, ¶6]. If the supplemental juror questionnaires proposed by both the Defendants<sup>3</sup> and the Government are included along with the form questionnaire used in the Middle District, the questionnaire will be approximately 41 pages long and contain over 350 questions, not counting sub-parts. Such a questionnaire, completed by the 300 prospective jurors, would mean that, in addition to other trial preparation, counsel for the parties would have one week to review over 12,000 pages of questionnaires containing answers to 105,000 questions.<sup>4</sup>

While McGregor strongly believes that the standard juror questionnaire, as supplemented by the questionnaires proposed by both sides, will be extremely beneficial to the parties in selecting a fair and impartial jury, the practical usefulness of such questionnaire will be dramatically impaired if the parties are not given sufficient time to adequately review the responses. Therefore, McGregor requests that paragraph six of the Scheduling Order be amended to provide that juror questionnaires be made available to counsel for all parties two weeks prior to the first day of jury selection.

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<sup>2</sup> McGregor has objected to certain questions contained within the Government's supplemental juror questionnaire. [Doc. 623].

<sup>3</sup> Only Defendant Walker failed to join in McGregor's proposed supplemental questionnaire. [Doc. 381].

<sup>4</sup> Even if the Court were to completely reject both supplemental questionnaires, responses to the Court's form questionnaire would still entail 2,700 pages and responses to 26,400 questions.

## Conclusion

For these reasons, McGregor moves the Court to amend paragraph six of its Scheduling Order to provide that juror questionnaires be made available to counsel two weeks prior to the first day of jury selection

s/ J. David Martin

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2011, I filed the foregoing with the Clerk of the Court “under seal” and a copy of same was mailed via regular mail to the following counsel of record:

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