

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

| | | |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CR. NO. 2:10cr186-MHT |
| |) | |
| MILTON E. McGREGOR, |) | |
| |) | |
| Defendant. |) | |

**MOTION OF MILTON McGREGOR FOR ORDER
ALLOWING ADDITIONAL PEREMPTORY STRIKES**

Defendant Milton McGregor respectfully moves for an order allowing the defense eight additional peremptory strikes, beyond the number that are normally allowed under Fed. R. Crim. P. 24. *See* Rule 24(b) (“The court may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly.”).

This Court can take judicial notice that this is a very high-profile case that has received a truly enormous amount of publicity and public attention. If the Court does not treat this as an obvious fact that is the proper subject of judicial notice, Mr. McGregor would submit evidence of it.

The process of jury selection is a particular challenge in a high-profile case that has received a great deal of publicity. It requires an unusual amount of effort on the part of the Court and the parties, to work towards the selection of an unbiased jury. Recent caselaw from the Supreme Court and from the Eleventh Circuit underscores the

importance of these efforts. This caselaw de-emphasizes change of venue as a method of avoiding the impact of prejudicial 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, 2912-25 (2010) (holding that the trial court did not err in refusing change of venue, and that jury-selection and related processes were adequate to overcome publicity); *id.* at 2923 n. 31 (noting the importance of peremptory challenges in the process of seating an impartial jury); *United States v. Campa*, 459 F.3d 1211 (11th Cir. 2006) (en banc) (likewise rejecting change-of-venue argument, in light of steps taken by trial court in jury selection and related processes).

Notably, in both *Campa* and *Skilling*, the trial courts had issued orders of the sort that Mr. McGregor is seeking herein. *See Campa*, 459 F.3d at 1135 (“The court twice granted the defendants’ requests for additional peremptory challenges, giving the defendants a total of 18 and the government 11, and 2 each for alternates.”); *id.* at 1148 (relying on this fact); *Skilling*, 130 S.Ct. at 2910 (noting that District Court granted defendants additional peremptory challenges); *id.* at 2918 n.21 (relying on this fact). This Court similarly increased the number of peremptory challenges in *United States v. Siegelman*, No. 2:05-cr-119-MEF, Doc. 191.

In this case, given the enormous amount of publicity that this case has received, the Court should not allow merely a small number of additional challenges. The Court should allow the defense at least the number of challenges allowed in *Campa, supra*.

Respectfully submitted,

/s/ Joe Espy, III

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Joe Espy, III
Of Counsel