

Federal Rules of Criminal Procedure provides that a district court may grant a severance if joinder “appears to prejudice a defendant or the government.” The Government has not presented any basis whatsoever to demonstrate that joinder caused any prejudice to the Government. The cases cited by the Government do not justify any finding that a joint trial prevented the jury in this case from making a “reliable judgment about guilt or innocence.” *Zafiro v. United States*, 506 U.S. 534, 539 (1993). The Government’s statement that the risk of juror confusion in this case “is not merely speculative - it is real”, is obviously pure speculation. The only information provided by the jury has been the one juror who spoke publically to the newspaper. She did not voice any indication of any confusion, but instead a lack of evidence, and the jury according to her, stood 8 to 4 for acquittal on all counts in which they could not reach a verdict except the one obstruction of justice count against Defendant Preuit, where they stood 11 to 1 for acquittal. The Government has simply provided no justification for a severance; its motion is due to be denied.

3. Insofar as the Government’s Motion to Continue to November, Defendant has filed a Motion adopting the Motion to Continue filed by Defendant McGregor which fully states Defendant Means’ position regarding the Government’s desire to try the case in November, and the Court’s current setting of the case in October. Further, the Government’s timetable regarding how long it would take to try the case is unrealistic. Given the fact that the first trial received a tremendous amount of publicity, trying the case in either October or November would make it very difficult to find a jury who is not familiar with the case. The

result would be that almost every juror would likely have to be questioned outside the presence of other jurors. The selection of the jury would likely last even long than it did originally. The Government's Motion to Continue the case until November should be denied, and the Defendants' Motions to Continue until after the first of the year should be granted.

4. The Government's desire to interview jurors in some controlled environment is unreasonable and would likely be intimidating to jurors. The Court has an established local rule with regard to the interview of jurors. The Government and the Defendants may seek to interview jurors who are willing to be interviewed. Defendant submits that the Government is seeking to have the procedure it desires followed in hopes that it would somehow cause jurors to believe that there is a desire by the Court that they agree to be interviewed. If the Government wants to interview jurors, it should be required to follow the Court's local rule. The privacy of the jurors should be respected unless they elect to be interviewed following authorization by the Court that they may be contacted.

WHEREFORE, Premises Considered, Defendant asks the Court to deny the Government's Consolidated Motion, with the exception that Defendant Means agrees that the case be continued, but rather than to November, to until after the first of the year.

DATED this 22nd day of August, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following and **all counsel** of record electronically on this the 22nd day of August, 2011.

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