

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**UNITED STATES OF AMERICA**

v.

**CRIMINAL NO. 3:08cr107**

**FRANK E. MELTON  
MICHAEL RECIO  
MARCUS WRIGHT**

**GOVERNMENT'S MOTION FOR A JURY QUESTIONNAIRE AND  
INDIVIDUAL VOIR DIRE**

The United States, by its undersigned counsel, respectfully requests that this Court use a jury questionnaire and individual voir dire to conduct jury selection in the trial of this matter. In support of its motion, the United States states:

**I. A JURY QUESTIONNAIRE IS NECESSARY AND APPROPRIATE IN THIS CASE**

The government respectfully requests that the Court issue a thorough juror questionnaire to prospective jurors in this case in advance of trial, with a return date of two weeks before trial, in order to allow the parties sufficient time to adequately assess the responses. As the Court is aware, this is a high-profile case involving a sitting elected official who is one of the most well-known political leaders in the State of Mississippi. This case has already received significant media attention and undoubtedly will receive more before and during trial. In addition, the topics which must be explored in order to insure an impartial jury in this case are very sensitive. A questionnaire would allow the Court to make inquiry in a less confrontational manner, thus encouraging more candid responses to sensitive questions.

There is ample precedent for the use of such questionnaires in civil rights cases. The

Civil Rights Division has been permitted in numerous cases to use jury questionnaires. See, e.g., United States v. Walker & Ramsey (D. Ga.)(involving murder of DeKalb County, Georgia, sheriff-elect Derwin Brown); United States v. Seale (S.D. Miss.)(involving prosecution of cold case Klan murder); United States v. Avants (S.D. Miss.) (involving prosecution of cold case Klan murder); and United States v. LaVallee (D. Colo.). Here, a jury questionnaire is appropriate and necessary to adequately question jurors regarding bias and to encourage candid responses, allowing both sides to exercise their peremptory challenges intelligently.

## **II. INDIVIDUAL VOIR DIRE IS NECESSARY AND APPROPRIATE IN THIS CASE**

The government respectfully requests that after the initial, general voir dire by the Court, the remaining voir dire be conducted individually in the Court's chambers. There are two dangers to conducting voir dire in open court that stem from the sensitive nature of the topics which must be explored in this case: taint and hindered communications.

First, there is the danger that a juror will blurt something out concerning the juror's opinion of bringing a civil rights case against a sitting elected official; his or her opinion of Frank Melton as Mayor of Jackson; or any one of several topics which could potentially taint the entire jury pool. A mistrial and delay could result from the airing of potentially inflammatory opinions. The second danger concerns juror privacy and the need for confidentiality to ensure complete and honest answers to sensitive questions. This case has generated, and will continue to generate, substantial media attention and coverage, as indicated by the attention afforded to the defendants' indictment and arraignment. Allowing a juror to answer questions in the relative privacy of the Court's chambers, out of the presence of other jurors and the public eye, is necessary to encourage complete and honest communication from individual jurors

concerning

sensitive subjects.

A district court has broad discretion in determining how best to conduct voir dire. Rosales-Lopez v. United States, 451 U.S. 182, 189 (1981). The test for determining whether a court has adequately questioned jurors about bias is whether “the means employed to test impartiality have created a reasonable assurance that prejudice would be discovered if present.” United States v. Saimiento-Rozo, 676 F.2d 146, 148 (5<sup>th</sup> Cir. 1982). In United States v. Davis, 583 F.2d 190, 198 (5<sup>th</sup> Cir. 1978), the Court held that when a juror is exposed to potentially prejudicial pretrial publicity, it is necessary for the trial court to make an independent determination as to each juror’s impartiality. The Court, in finding that the district court’s “ cursory questioning” of potential jurors en masse was insufficient, held that the district court should have determined for itself: 1) what in particular each juror had heard or read; 2) how it affected his attitude toward the trial; and 3) and whether any particular juror’s impartiality had been affected. Id. at 196. See also, United States v. Beckner, 69 F.3d 1290, 1291 (5<sup>th</sup> Cir. 1995)(“[b]ecause jurors exposed to pretrial publicity are in a poor position to determine their own impartiality, we held that district courts must make independent determinations of the impartiality of each juror”), citing, Davis, 583 F.2d at 198.

In recognizing the need for a trial court to have flexibility in examining jurors for possible prejudice, the Davis Court stopped short of requiring that jurors be examined separately and out of the presence of other jurors when exposed to potentially prejudicial pretrial publicity. Davis, 583 F.2d at 196-197. However, the Court noted that separate examination of jurors is “is sometimes preferable,” and the Court cited favorably the American Bar Association’s Standards

Relating to Fair Trial and Free Press, which recommended that the trial court examine each juror individually and out of the presence of other jurors. Id. In addition, the Court noted that in United States v. Schrimsher, 493 F.2d 848, 854 (5th Cir. 1974), a case in which the trial court had questioned separately each juror who had read a particular article but did so in the presence of other jurors, the Fifth Circuit emphasized, ““The safer practice in situations involving possible prejudice from newspaper articles or other sources is to interrogate each juror separately and out of the presence of the other jurors.”” Id. at 197, n. 9. See also, U.S. v. Bieganowski, 313 F.3d 264, 273-274 (5th Cir. 2002), cert. denied, 538 U.S. 1014 (2003) (finding that the district court’s failure to conduct individual voir dire after a potential juror repeated in open court inflammatory remarks from a newspaper article was not reversible error, but advising that the district court would have been “better advised” to have conducted, outside the hearing of the jury panel, individual voir dire of those who indicated they had read the inflammatory article).

In the instant case, individual voir dire is appropriate and necessary in order to question jurors adequately regarding bias and to encourage full, complete, and honest answers, allowing both sides to exercise their peremptory challenges intelligently.

### **III. CONCLUSION**

For the foregoing reasons, the government respectfully requests that the Court: 1) use a jury questionnaire; and 2) conduct individual voir dire out of the presence of other jurors in order to protect the jury and the integrity of the proceedings. The government will file a proposed jury questionnaire separately, closer to trial, after consulting with defense counsel.

Respectfully submitted,

GRACE CHUNG BECKER  
Acting Assistant Attorney General

/s/ Mark Blumberg

By: Mark Blumberg  
Deputy Chief  
Criminal Section  
Civil Rights Division

By: /s/ Patricia A. Sumner

Patricia A. Sumner  
Trial Attorney  
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**CERTIFICATE OF SERVICE**

I, the undersigned counsel for the United States, hereby certify that on the 6th day of August, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Merrida Coxwell, Attorney for Frank E. Melton

John M. Colette and Matt Baldrige, Attorneys for Defendant Marcus Wright; and

John Moore, Attorney for Michael Recio.

\s\ Mark Blumberg