

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CRIMINAL NO. 06CR00538 JH
)	
MARY HELEN QUAINANCE, et al.,)	
)	
Defendants.)	
)	
)	

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION TO SEVER
FILED APRIL 17, 2006.

THE UNITED STATES OF AMERICA, by and through David C. Iglesias, United States Attorney for the District of New Mexico, and Luis Martinez, Assistant United States Attorney for said district, files this Response to Defendant's Motion to Sever filed April 17, 2006.

The United States concurs with the statement of relevant facts as set forth in defendant's motion.

While the United States does not agree with the assertion that Ms. Quaintance is prejudiced by the current joinder of defendants, it does agree that she may be prejudiced by the inculpatory statements of her codefendants that specifically mention her involvement in this transaction. Therefore, the United States does not object to redacting any inculpatory statements to exclude any mention of Ms. Quaintance. Any threat of a "spill over" effect can be remedied by the redaction of any confessions of nontestifying codefendants that may be admitted at trial. Should Mr. Kripner not testify, it will be necessary to also consider redacting those portions of his inculpatory statements that mention Ms. Quaintance.

Support for Redaction of Co-defendant's Statements in Lieu of Severance

Although not specifically targeted by Ms. Quaintance in her motion, it appears that severance is sought because of considerations as set out in the *Bruton* case.

Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), “involved two defendants accused of participating in the same crime and tried jointly before the same jury. One of the defendants had confessed. His confession named and incriminated the other defendant. The trial judge issued a limiting instruction, telling the jury that it should consider the confession as evidence only against the codefendant who had confessed and not against the defendant named in the confession. *Bruton* held that, despite the limiting instruction, the Constitution forbids the use of such a confession in the joint trial.” *Gray v. Maryland*, 523 U.S. 185, 188, 118 S.Ct. 1151, 1153 (1998).

Richardson v. Marsh, 480 U.S. 200, 203, 107 S.Ct. 1702, 1705, (1987), modified the ruling of *Bruton* by allowing the redacted confession of one codefendant, “to omit all reference to respondent- indeed, to omit all indication that *anyone* other than (the codefendants) participated in the crime.” The court ultimately held that the redacted confession fell outside the scope of *Bruton*, and was admissible at the joint trial as long as appropriate limiting instructions were given. Additionally, redaction of any statements should be done in such a way that it would not be possible to determine if a codefendant has implicated another specific individual other than himself. *Richardson*, Id.

Additionally, the American Bar Association standards for Criminal Justice also provides guidance in situations, such as this one, where a joint trial with codefendant confessions is a possibility. ABA Standards for Criminal Justice 13-3.2, “Severance of defendants” provides, in pertinent part:

- (a) When a defendant moves for severance because of an out-of-court statement of a codefendant makes reference to, but is not admissible against, the moving defendant, the court should determine whether the prosecution intends to offer the statement in evidence as part of its case in chief. If so, the court should require the prosecuting attorney to elect one of the following courses: . . .
- (ii) a joint trial at which the statement is admitted into evidence only after all references to the moving defendant have been deleted, provided that, as deleted, the statement will not prejudice the moving defendant.

With the above authority having been set forth, the United States requests that the court find it appropriate to permit the redaction of any statements made by codefendant's which implicate Ms. Quaintance in lieu of the less judicially economic option of severing these defendants for the purpose of trial.

Respectfully submitted,
DAVID C. IGLESIAS
United States Attorney
Electronically filed 5/1/06
LUIS MARTINEZ
Assistant U.S. Attorney
555 S. Telshor Blvd., Ste. 300
Las Cruces, NM 88011
(505) 522-2304

I HEREBY CERTIFY that a
copy of the foregoing pleading was
mailed to Mario A. Esparza,
Attorney for the Defendant,
on this 2nd day of May 2006.
/s/ Luis A. Martinez
LUIS MARTINEZ
Assistant U.S. Attorney