

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA	
V.	CAUSE NO. 4:08-cr-00026
TROY R. SOLOMON DELMON JOHNSON	

**DEFENDANT TROY SOLOMON'S REPLY TO THE GOVERNMENT'S REQUEST TO
DISQUALIFY MR. BANNWART**

TO THE HONORABLE SARAH HAYS, UNITED STATES MAGISTRATE COURT JUDGE
FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION:

COMES NOW the Defendant, Troy Solomon, and offers the following in response to the
Government's Request to Disqualify Mr. Bannwart:

The Government's concerns about an error in process are unwarranted.

Mr. Lewis and Mrs. Ruden will handle all questioning on behalf of Mr. Solomon. Mr. Bannwart will handle all questioning on behalf of Mr. Johnson. The delivery of opening and closing statements will also be handled in this fashion. To address the Government's concern in its own colloquialism, "There will be but one rider per horse." Certainly, the questions that attorneys for Mr. Solomon and Mr. Bannwart pose may be similar in certain areas, that does not mean that any given attorney is addressing questions on behalf of more than one client. Indeed, a joint defense agreement pre-supposes a joint defense and that agreement will be evident in the common threads and themes that counsel will develop throughout trial. The Government's concern regarding procedural error is moot. As was demonstrated at the hearing of this very

matter, counsel for Mr. Solomon and Mr. Johnson are quite able to distinguish on whose behalf they question any given witness.

The Government's suggestion that Mr. Lewis and Mrs. Ruden withdraw is preposterous and without any legal support. The Government has failed to show how either of these two attorneys have any conflict. The Government's suggestion is a thinly veiled attempt to vitiate Mr. Solomon's Sixth Amendment right to counsel. By the Government's own admission, there is not a single authoritative case that they can cite in support of this suggestion. Surely this is not because no attorney has ever represented more than one defendant at a defense table. If the Court were to feel an added level of comfort by having Mr. Bannwart designate himself as only Mr. Johnson's attorney and have Mr. Lewis and Mrs. Ruden remain as Mr. Solomon's attorney, then the parties are prepared to accommodate. The fact that said designations would have no impact on the strategies and positions of the parties further illustrates the preposterousness of the Government's concern.

The plea offer extended to Mr. Johnson on the eve of trial creates no conflict.

The timing of the Government's plea offer to Mr. Solomon begs the question: Why after this indictment has been pending since February 5, 2008, is the Government tendering a plea agreement to Mr. Bannwart in court on the very day that we are there to address their supposed conflict? The Government's position could not be more disingenuous – Mr. Bannwart can be counsel for Mr. Johnson for a plea, but should be disqualified for a trial.

The facts that underlie the Government's Motion to Disqualify have been known to the Government for many months. The Government's duplicitous effort on the eve of trial illustrates

their true motive. They hope to create a rift between Messrs. Johnson and Solomon which will lead to the extortion of a plea. If anything, they seek to create a conflict but cannot.

The plea agreement itself is a boilerplate filing that contains nothing that would have not been properly offered months ago. In fact, paper aside, the Government had not expressed any interest in entering into plea negotiations with Mr. Johnson orally or informally until it did so in its request for determinations regarding counsel. The Government's attempt to create a conflict between any two given co-defendants is not evidence that one exists.

Mr. Bannwart is no more a fact witness than Mr. Bohling or Mr. Rhodes.

The notion that Mr. Bannwart may be a fact witness, because he attended a meeting at one point regarding Ascensia Nutritional Pharmacy, is ludicrous. If the Government requires any testimony about that meeting, it can turn to the Johnson family, both Ada and Plachette have been given full immunity. Mr. Bohling and Mr. Rhodes have no doubt also held conversations with parties of interest in this investigation and prosecution. It would be equally preposterous to suggest that they too are fact witnesses. It is yet another attempt to create a problem where none exists in order to cause such consternation among the remaining parties as to attempt to extort a plea from two gentlemen happy with their representation and resolved to maintain their innocence.

Additionally, it is quite common for an entity's business attorney to be an integral part of the ultimate trial team. Mr. Lewis has tried numerous complex, multi-defendant, federal trials with an entity's business attorney on the trial team. Without fail, the business attorney has been an invaluable asset in the client's trial.

Familiarity with a client's business cannot disqualify an attorney. As the Court observed during the hearing, the Government offered no proof that Mr. Bannwart was inextricably intertwined with any of the events presented in the indictment. The Government is trying to make matters irrelevant to this indictment part of their proof solely for purposes of disqualification. Case in point, the evidence concerning "the judge" in this case was clearly and irrefutably resolved by Cynthia Martin's testimony. Their only other witness to this baseless allegation was Lillian Zapata and the Court was able, in its own wisdom, to flesh out that there was confusion over the terminology judge versus lawyer. While Mr. Bannwart has been Mr. Solomon's lawyer for some time, he has never held himself out to be a judge. His reputation is beyond reproach among his peers and to accuse him of a form of witness intimidation when that is not even borne out by their own witnesses in an attempt to disqualify him is irresponsible at best.

CONCLUSION

The Government has wholly failed to offer any support to supplant the Defendants' sacrosanct right to counsel of their choosing. Mr. Lewis was hired to try this case for Mr. Solomon. The Court can rest assured that Mr. Solomon's rights will be properly protected by Mr. Lewis.

WHEREFORE, PREMISES CONSIDERED, Mr. Solomon respectfully prays that this Honorable Court allow him to persist with the counsel of his choice.

Respectfully submitted,

/s/ Chip Lewis

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ATTORNEY FOR TROY SOLOMON

CERTIFICATE OF SERVICE

I Certify That A True And Exact Copy Of The Defendant TROY SOLOMON'S REPLY TO THE GOVERNMENT'S REQUEST TO DISQUALIFY MR. BANNWART Was Delivered To Rudolph Rhodes, Assistant United States Attorney On The 30th Day of April Via The Electronic Filing System.

Respectfully submitted,

/s/ Chip Lewis