

the above-referenced statements the government will actually seek to introduce against Mr. Middleton and Ms. Middleton at trial. However, it appears very likely that the government will seek to introduce against both Mr. Middleton and Ms. Middleton at least some statements purportedly made by one of them that implicate both of them.

3. Under Bruton v. United States, 391 U.S. 123 (1968), where the government introduces an out-of-court statement made by a non-testifying defendant that incriminates both that defendant and also a codefendant, the codefendant's inability to cross-examine the maker of that statement raises Sixth Amendment confrontation issues that require severance of the defendants for trial. Also, under Fed. R. Crim. P. 14(a), where the joinder of defendants for trial prejudices a defendant, the court "may... sever the defendants' trials[] or provide any other relief that justice requires."

4. At present, it is possible that both Mr. and Ms. Middleton will testify at trial. Obviously if this happens, then neither Mr. Middleton's nor Ms. Middleton's confrontation rights will be implicated if statements made by one of them implicating the both of them are introduced at trial. However, this will not be the case, if one or both of them decide not to testify at trial.

5. Given the above, Mr. and Ms. Middleton move to be severed as defendants for trial.

WHEREFORE, the defendants, Mark and Jalise Middleton, move this Honorable Court to sever them as defendants for trial.

Respectfully submitted,

/s/

Jerry Ray Smith, Jr.
D.C. Bar No. 448699
Counsel for Mark Middleton
717 D Street, N.W.
Suite 310
Washington, DC 20004
jerryraysmith@verizon.net
(202) 347-6101

/s/

Robert Jenkins
U.S. District Court Bar No. CO0003
Counsel for Jalise Middleton
Bynum & Jenkins Law
1010 Cameron Street
Alexandria, Virginia 22314
RJenkins@BynumAndJenkinsLaw.com
(703) 309-0899