

reasonable to believe the trial will take more than 8 court days. The case against Mr. Graham is now more complicated than it was before: Two new charges have been added, and each has new proof elements. This will result in more testimony from the government, and more witnesses from the defense, including the possibility of expert testimony. It was going to be difficult to get the single count indictment tried in 8 days; it will be much more difficult to get a three count indictment tried in that time frame.

Moreover, if both defendants are tried together, it appears inconceivable that the case could get tried without running into the problems associated with having jurors deliberate over a holiday.

2. Approximately six weeks ago, a grand jury was convened specifically for the purposes of indicting Mr. Marshall. It is counsel's understanding that the grand jury heard statements allegedly made by Mr. Marshall to third parties that inculpated himself and Mr. Graham. Defendant Graham has not had access to any discovery related to that grand jury proceeding. And, Defendant Graham has not had access to any evidence presented to the grand jury that was convened last week that led to the new charges presently pending against him. Without knowing when the government intends to provide this information to Mr. Graham, and without knowing how

voluminous the new grand jury materials are, it is difficult for Mr. Graham to determine how much additional time he will need to review and investigate the new materials compiled by the government. If any new, substantive factual matters are raised in the discovery, Defendant Graham will need adequate time to investigate the matters. This may make trial by December 9, 2008, difficult to accomplish.

3. Once Mr. Graham receives this discovery, he will be in a better position to assess whether substantive confrontation clause issues are implicated by a joint trial. If Mr. Marshall made statements that incriminated himself and Mr. Graham, and if the government plans to introduce this evidence at trial, this would raise Bruton and severance issues. These would need to be addressed by way of pretrial motion, memorandum, response and reply, and perhaps even a hearing on redactions. This may substantially delay the case, especially if the government does not immediately produce discovery. Mr. Graham will need adequate time to read all the discovery, identify Bruton issues, brief the issues, and then wait for the government's response and the court's determination of the issue. This may mean substantive decisions about joint or single trials are not made until close to the December 9, 2008, proposed trial date.

4. There are a number of significant pretrial issues that need to be resolved prior to trial. From counsel's initial review of the new indictment, it appears that some of the same issues that led to dismissal in Mr. Graham's prior case still exist in this case. As with the Bruton issue, these matters will also need to be briefed and addressed prior to trial. This may make getting the case to trial by December 9, 2008, difficult.
5. Because the government filed the superceding indictment in a new file, all of the motions filed previously will now need to be re-filed under the new case number, and new jury instructions will need to be prepared to encompass the new charges. This will add some delay to the case, especially if any matters need to be referred back to the magistrate for consideration.

Dated October 9, 2008.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated by electronic delivery:

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Dated October 9, 2008.

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