

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	Criminal No. 06-26
)	
Plaintiff,)	
)	Honorable Arthur J. Schwab
v.)	
)	
CYRIL H. WECHT,)	
)	ELECTRONICALLY FILED
Defendant.)	

**DEFENDANT’S BRIEF IN SUPPORT OF OBJECTION AND EMERGENCY
MOTION TO VACATE ORDER DISMISSING JUROR NO. 1**

The hasty manner in which the Court discharged Juror No. 1 and the record made in support of doing so do not comport with Fed.R.Crim.P. 23(b). Removal of a juror and proceeding with eleven jurors over defense objections is an “unusual step” requiring compelling equities to do so. United States v. Araujo, 62 F.3d 930 (7th Cir. 1995). The defense was given no advance notice the Court was even considering removing the juror, fundamentally no time to conduct legal research on the issue, and only five minutes even to discuss the situation after receiving the Court’s hearsay rendition of events and statements attributed to Juror No. 1 this morning.

The Court made no attempt to learn the precise circumstances of the likely duration of the juror’s absence and did not wait for the conclusion of medical testing taking place this morning. Likewise, there was no information from the physician regarding the condition of Juror No. 1 or the impact of Juror No. 1’s condition on his ability to continue in deliberations. This was error, as the Court must attempt to learn the precise circumstances or likely duration of the twelfth juror’s absence. See United States v. Patterson, 26 F.3d 1127 (D.C. Cir. 1994); United States v. Araujo, 62 F.3d 930 (7th Cir. 1995).

The hasty removal of Juror No. 1 was, under the circumstances here, completely unwarranted on the existing record and extremely prejudicial to the defense. Based on the Court's comments, it appears that the alleged statement attributed to Juror No. 1 about the stress of deliberations and the impact on his medical condition (which is not known) was the principal reason for the discharge of Juror No. 1. That stress, to the extent it exists, is in one sense felt by all jurors on a divided jury and may well be caused by several factors, including inadequacy of the jury instructions; the lack of knowledge on the jury's part as to what they are to do if in fact a hung jury, or any number of factors, some of which may be eliminated in the near future. Moreover, all reports are that the jury is getting along well despite the stress of deliberations, including countless reports of laughter coming from the jury room, both before the situation yesterday with Juror No. 1, after being attended to medically, and even today after his removal. The jury has been deliberating several days; the specter of a hung jury on some or all of the counts is a distinct possibility; and the removal of Juror No. 1 may well serve to remove from the jury a juror who was not voting to convict Dr. Wecht on any charges. Indeed, the Government could hardly wait to have him removed, in sharp distinction to the way a prior juror illness was handled by the Court, where the juror was given a full day to return.

Accordingly, the defense respectfully requests the Court immediately vacate the order dismissing Juror No. 1; cease jury deliberations; and take steps to obtain verifiable information on Juror No. 1's precise medical condition and likely duration of his absence.

Respectfully submitted,

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Dated: April 2, 2008

Attorneys for Cyril H. Wecht

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2008, a true and correct copy of
**DEFENDANT'S BRIEF IN SUPPORT OF OBJECTION AND EMERGENCY MOTION
TO VACATE ORDER DISMISSING JUROR NO. 1** was served by electronic filing upon:

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