

11. Limit Prosecution Witness Conferences

TO THE COURT AND THE PROSECUTION, PLEASE TAKE NOTICE that Defendant moves the Court for an order prohibiting the Prosecution from conferring with testifying witnesses during court breaks.

This motion is made on the grounds that such conferences would tend to decrease the likelihood that the witnesses will confine themselves to truthful statements based on their own recollections.

Date:

Attorney for Defendant

POINTS, AUTHORITIES, AND ARGUMENT

“[W]hen a defendant becomes a witness, he has no constitutional right to consult with his lawyer while he is testifying... The reason for the rule is one that applies to all witnesses-not just defendants. It is a common practice for a judge to instruct a witness not to discuss his or her testimony with third parties until the trial is completed. Such nondiscussion orders are a corollary of the broader rule that witnesses may be sequestered to lessen the danger that their testimony will be influenced by hearing what other witnesses have to say, and to increase the likelihood that they will confine themselves to truthful statements based on their own recollections” (*Perry v. Leeke* (1989) 488 U.S. 272).

Due process and fundamental fairness require that the same rule be applied to the prosecution.