

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Cr. No. H-03-0093
	§	
KEVIN HOWARD,	§	
	§	
Defendant	§	

**UNITED STATES’ OPPOSITION TO  
DEFENDANT’S MOTION FOR A NEW TRIAL**

Defendant Kevin Howard has moved for a new trial, relying primarily on affidavits obtained from jurors and alternate jurors who served during his trial. In almost every respect, the juror affidavits are an improper effort to inquire into the jury’s deliberations and therefore were obtained in direct violation of Federal Rule of Evidence 606(b). For that reason, they are inadmissible to impeach the jury’s verdict. Howard also contends that his right to be present at all stages of the trial was violated when the Court spoke to the jury outside the presence of the defendants. Even assuming that Howard has established a violation of his right to be present at all stages of the trial, he has not shown any prejudice from the Court’s alleged comments to the jury. Accordingly, the motion should be denied.

Under Federal Rule of Criminal Procedure 33, a court may grant a new trial “if the interest of justice so requires.” Although Rule 33 gives a district court discretion to order a new trial, that authority should be exercised infrequently and only in “exceptional”

circumstances. See *United States v. Tarango*, 396 F.3d 666, 672 (5th Cir. 2005); *United States v. Scroggins*, 379 F.3d 233, 239 (2004), *vacated on other grounds*, 543 U.S. 1112 (2005), *modified on other grounds*, 411 F.3d 572 (5th Cir. 2005). “A new trial is granted ‘only upon demonstration of adverse effects on substantial rights of a defendant.’” *United States v. Rasco*, 123 F.3d 222, 228 (5th Cir. 1997) (quoting *United States v. Cooks*, 52 F.3d 101, 103 (5th Cir. 1995)). Howard’s motion fails to meet this demanding standard.

**II. Defendant is not entitled to a new trial based on the juror affidavits recounting discussions during deliberations.**

Federal Rule of Evidence 606(b) limits a defendant’s ability to impeach a verdict using the testimony or affidavits of members of the jury that convicted him. Rule 606(b) provides as follows:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processes in connection therewith, except that a juror may testify on the question whether extraneous information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror’s affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

As the Fifth Circuit has explained, Rule 606(b)

bars juror testimony regarding at least four topics: (1) the methods or arguments of the jury’s deliberations, (2) the effect of any particular thing upon an outcome in the jury’s deliberations, (3) the mindset or emotions of

any juror during deliberation, and (4) the testifying juror's own mental process during deliberation.

*United States v. Ortiz*, 942 F.2d 903, 913 (5th Cir. 1991). Under Rule 606(b), "a juror may only testify to extraneous forces which influence jury deliberations." *United States v. Jones*, 132 F.3d 232, 245 (5th Cir. 1998). Even evidence of the jurors' discussion of "extraneous information" is not admissible to impeach a verdict if the jurors simply share information that they knew prior to their jury service or there is no evidence that the information was brought to the jury's attention by an "outside source." *United States v. Brito*, 136 F.3d 397, 414 (5th Cir. 1998); *United States v. Straach*, 987 F.2d 232, 242 (5th Cir. 1993).

Applying Rule 606(b), the Fifth Circuit has held that a verdict may not be attacked based on juror affidavits stating that the jurors reached a compromise verdict. Nor can jury affidavits be used to assert that a verdict was not unanimous "if the jurors agreed to the verdict when polled unless some competent evidence is presented which does not involve delving into the jurors' actual deliberations." See *United States v. Straach*, 987 F.2d at 241-42. Similarly, Rule 606(b) bars affidavits asserting that jurors were confused about the court's instructions. *United States v. Jones*, 132 F.3d at 245; see also *Tanner v. United States*, 483 U.S. 107, 118 (1987) ("allegations of a juror's inability to hear or comprehend at trial" inadmissible to impeach verdict).

The Fifth Circuit has applied Rule 606(b) to foreclose reliance on juror testimony or affidavits identical or substantially similar to those presented by defendant Howard.

For example, in *Ortiz*, three jurors submitted affidavits stating that they had never voted to find a defendant guilty even though the jury had returned guilty verdicts, that the jury had disregarded the court's instructions to consider the evidence on each count, and that some jurors had changed the not guilty votes of other jurors to guilty or filled in the verdict form without allowing the jurors to vote. In addition, two jurors submitted affidavits stating that the jurors had violated the court's instructions not to discuss the case before jury deliberations. Based on these affidavits, the defendants moved for a new trial. The court of appeals flatly held that Rule 606(b) "proscribes the post-trial testimony on which the defendants' motions rest." 942 F.2d at 913. As the court explained, the jurors' affidavits constituted "statements concerning the testifying jurors' own states of mind, or the states of mind of other jurors, or the process of their deliberations." *Ibid*.

In *Straach*, the court rejected juror affidavits stating that they had agreed to "trade off" a guilty verdict on one count for a not guilty verdict on another. 987 F.2d at 236, 241. And in *United States v. Brito*, a juror "alleged that her verdict was coerced through threats and insults that she received from other jurors." The Fifth Circuit held that "pressure from other jurors, such as the 'coercion' at issue in this case, is not considered an 'outside influence' and an affidavit concerning such pressure is inadmissible." 136 F.3d at 414.

Howard alleges eight "matters" that, he contends, "were outside the record and thus improper subjects for discussion during deliberations." Howard's arguments rely directly upon juror affidavits describing the content of the jury's deliberations. Rule

606(b) and applicable Fifth Circuit case law render those affidavits inadmissible and bar Howard from attacking the verdict on those grounds. Accordingly, his claims should be rejected.

A. Previous Trial: Relying on the affidavit of juror Annemarie Campbell, Howard argues that “during deliberations in this trial, the jury discussed the fact that if this jury were deadlocked, it would be a failure like the first jury.” Motion at 3. Rule 606(b) plainly places the jury’s discussions during deliberations off limits, and Ms. Campbell’s affidavit is inadmissible to the extent that it discusses anything that occurred during deliberations unless Howard can show that the jury considered extraneous information. Here, the jury learned that the prior trial ended in a hung jury during voir dire, 5/2/06 Tr. 45-46 (prospective juror announced, “It’s the second go-round. The first trial was not successful. Some of the charges have been dropped.”), and information learned during the trial is not extraneous information. Moreover, Ms. Campbell states only that another juror said the prior trial had deadlocked; she does not ascribe that information to an extraneous source. *See Brito*, 136 F.3d at 414 (failure to show that extraneous information brought to jury’s attention by an outside source requires rejection of motion for a new trial); *Straach*, 987 F.2d at 242 (Rule 606(b) bars affidavit stating that jurors discussed sentences defendant may receive when there is no evidence that they learned about potential penalties from an outside source).

In any event, Howard is poorly positioned to complain about the jury’s knowledge of the prior trial. As he concedes (Motion at 3) he asked that the jury be informed that the

prior trial had ended when the jury failed to reach a verdict. Having asked that the jury be told the very information that he says they improperly considered, he can hardly claim prejudice. Finally, it is worth noting that Howard's prior trial ended in a hung jury, not a conviction. Accordingly, the jury would not have assumed that Howard was guilty because he had been the defendant in a prior trial.

B. The Lay-Skilling Verdict: Again relying on Ms. Campbell's affidavit, Howard argues that the guilty verdicts against Kenneth Lay and Jeffrey Skilling influenced the verdict against his client. He claims that the jury heard the Skilling/Lay jury "cheering,"<sup>1</sup> and that his jury learned of the Skilling/Lay verdicts on the day they came down.<sup>2</sup> Ms. Campbell does not assert, however, that the jurors discussed the Lay/Skilling verdicts during deliberations on Howard's case or that it affected their verdict. To the contrary, an affidavit from another juror, Cheryl Oswalt, states that although the jurors learned of the Lay/Skilling verdict, Ms. Oswalt did "not think it changed anyone's mind at that point in time. Our decisions were pretty much set."

Howard also does not explain how the jury's knowledge of the Lay/Skilling verdict could have prejudiced him. Lay's and Skilling's trial started long before

---

<sup>1</sup> Howard claims that the jury in his case heard the Lay/Skilling jury cheering when it reached its verdict, but there is no evidence that the cheering coincided with the jury's decisions on Lay's and Skilling's guilt.

<sup>2</sup> The jury in the Lay/Skilling trial returned its verdict at 11:00 a.m. on Thursday, May 25. The jury in defendant Howard's case did not deliberate on Friday, May 26 or Monday, May 29 (Memorial Day). The jury returned its verdict during the morning of Wednesday, May 31.

Howard's and Krautz's trial began. Thus, Howard's jurors could be expected to know of the Lay/Skilling trial before they were selected to serve in Howard's trial. Presumably, they also knew it was possible that the Lay/Skilling jury would return a verdict while they were sitting as jurors in Howard's case. But there is no reason to assume that Howard's jury concluded that the issues in the Lay/Skilling had any bearing on Howard's case or that Lay's and Skilling's guilt required them to find Howard guilty.

More importantly, the jury's acquittal of Howard's codefendant, Krautz belies any conclusion that the Lay/Skilling verdict affected the jury's conclusion in Howard's case. If the jury had believed that the convictions of Lay and Skilling had any bearing on the guilt of Howard, it would not have acquitted Krautz.

C. Loss of Enron 401(k) Accounts: Juror Campbell's affidavit states that "[o]ne subject which was briefly discussed in deliberations that there was no evidence on at the trial, but which was very important to the jurors, was the fact that Enron employees lost their 401(k) retirement money." Because Ms. Campbell's allegation concerns the content of the jurors' deliberations, it is inadmissible under Rule 606(b) unless Howard can show that the jurors learned information concerning Enron employees' loss of their 401(k) savings from an impermissible outside source. Howard fails to show, however, that the jurors did not know that Enron employees had lost their 401(k) savings before they were selected as jurors, and it is unlikely that the jurors learned this information from an improper source for the first time during trial. Virtually every resident of the Houston area had been exposed to information concerning the collapse of Enron, and it is common

knowledge in Houston that Enron's employees had suffered financial hardship from the collapse. In any event, Howard has failed to make the requisite showing that the jurors learned this information from an outside source. *See Brito*, 136 F.3d at 414; *Straach*, 987 F.2d at 242.

D. Improper preconceived inclinations to convict Howard: Howard alleges that the jurors "considered the fact that as the Chief Financial Officer, Mr. Howard was an Enron executive and thus, should be found guilty." Motion at 5. The jurors learned of Howard's position at Enron through admissible evidence at trial, however, not from improper extraneous influences. Accordingly, evidence concerning the jurors' consideration of Howard's status is evidence concerning a "matter or statement occurring during the course of the jury's deliberations" within the meaning of Rule 606(b).

E. Finding Howard guilty if Krautz acquitted: Again relying on the affidavits of Ms. Campbell and Ms. Oswalt, Howard argues that [t]here was discussion during deliberations to the effect that if the jury was going to find Mr. Krautz not guilty, they should find Mr. Howard guilty. Under *United States v. Straach*, evidence that the jury compromised in reaching a verdict is inadmissible under Rule 606(b).

F. Jurors personal deadlines: Howard argues that two of the jurors had trips planned that pressured them into reaching a verdict. That contention is meritless for several reasons. First, Howard relies in part on the affidavit of an *alternate* juror who was not present for jury deliberations and therefore cannot say whether the time pressures affected deliberations. Second, to the extent that Howard contends that the jurors felt

pressure to finish their deliberations, he is seeking to impeach the verdict with a matter that occurred during deliberations, and that evidence is barred by Rule 606(b). Finally, and perhaps most importantly, acceptance of Howard's contention would cast countless verdicts in doubt. On every jury in every criminal case, there are jurors who are under pressure to return to work or school, begin a vacation, attend to child care, or take care of some other matter that the juror considers pressing. If a juror's desire to finish jury service were a sufficient ground to impeach a verdict, no verdict would be safe.

G. Improper physical intimidation: Howard contends that during deliberations, a juror tried to influence another juror by "trying to grab her shoulders after having slammed his fist repeatedly on the table earlier in deliberations." As the Fifth Circuit held in *Brito*, however, "pressure from other jurors, such as the 'coercion' at issue in this case, is not considered an 'outside influence' and an affidavit concerning such pressure is inadmissible." 136 F.3d at 414; *see also United States v. Lamp*, 779 F.2d 1088, 1097-98 (5th Cir. 1986) (evidence of coercion during jury deliberations barred by Rule 606(b)). Accordingly, Ms. Campbell's affidavit is not admissible to show that one juror tried to coerce or threaten another.<sup>3</sup>

---

<sup>3</sup> Even if it were, Howard did not produce any evidence from "Judy, Juror Number 7," who was the alleged victim of the attempted threats or coercion or from "Tom, Juror Number 5," who allegedly banged his fist on the table and tried to grab Judy. Without evidence from those two jurors, the records is insufficient to show that "Judy" was threatened or coerced.

H. Juror's knowledge of facts outside the record: Relying on the affidavits of a juror and two alternates, Howard argues that a juror improperly shared information that he obtained from "a book or case studies of the Enron scandal." Motion at 7. The alternates cannot, however, provide any information about what occurred during deliberations, and Ms. Oswalt, who did deliberate, does not allege that the juror who had read the book discussed it during deliberations. In any event, Howard has not shown that the juror read the book or case studies during trial. Because it is equally plausible that the juror read the book before trial, Howard's claim boils down to a contention that a juror failed to follow the court's instructions by considering evidence outside the record during deliberations. Unless he can show that the extra-record evidence came from an extraneous source during trial, that claim is barred by Rule 606(b).

**III. Howard is not entitled to a new trial based on the Court's alleged contact with the jury.**

Howard contends that the Court erred in speaking to the jury twice outside the presence of the defendants and their counsel. According to Howard, the Court violated his right to be present at all stages of the trial when the Court allegedly spoke to the jury concerning pre-deliberation discussions about the case and in response to a question from a juror about the consequences of a jury deadlock. Although the evidence submitted by Howard falls short of establishing what actually occurred between the Court and the jury, even taking the submitted evidence as true, any error is harmless.

Federal Rule of Criminal Procedure 43 gives a defendant the right to be present at “every trial stage.” As the Fifth Circuit has explained, “[t]hat right requires that ‘[w]hen a communication is received from the jury, counsel should be informed of its substance and afforded an opportunity to be heard before a supplemental charge is given.’” *United States v. Bieganowski*, 313 F.3d 264, 293 (5th Cir. 2002) (quoting *United States v. McDuffie*, 542 F.2d 236, 241 (5th Cir.1976)). Violations of Rule 43 are subject to harmless-error analysis. *Rogers v. United States*, 422 U.S. 35, 39 (1975); *United States v. Bieganowski*, 313 F.3d at 293-94. A court’s failure to notify a defendant before answering a jury question is harmless “when ‘the supplemental charge was distinctly responsive to the question and correctly stated the law.’” *United States v. Sylvester*, 143 F.3d 923, 928 (quoting *McDuffie*, 542 F.2d at 241).

Howard complains of two alleged contacts between the Court and the jury. First, he argues that the Court should have notified the parties before telling the jury not to discuss the evidence prior to deliberations. That instruction was consistent with 5th Circuit Pattern Instruction 1.01, which the Court gave at the outset of the case. 5/2/06 Tr. 303. More to the point, Howard concedes that he would not have objected to the Court’s admonition to the jury had he known about it. Motion at 12. Because Howard agrees that the Court properly told the jury that it should not discuss the evidence before it began its deliberations, any error was harmless.

Howard also alleges that during deliberations the Court gave the “verbal equivalent to an *Allen* charge.” As noted above, the jury in the Lay/Skilling trial returned

its verdicts while Howard's jury was deliberating. The defendants asked the Court to admonish the jury not to observe any media reports concerning the Lay/Skilling verdict. Attachment F to Howard's Motion at 3234. The Court agreed to this request. Howard's counsel did not ask the Court to use any particular language in instructing the jury or ask to be present when the Court admonished the jury. Instead, Howard's counsel simply asked the Court whether the Court would like counsel to be present when the jury was instructed. When the Court replied, "No. I will just tell them in the back. I'll just go back there and knock on the door and admonish them," Howard's counsel replied, "Thank you very much." Attachment F at 3236.

Howard contends that when the Court went back to admonish the jury to avoid exposure to press reports on the Lay/Skilling verdict, one or more of the jurors asked the Court what the jury should do if it were deadlocked. According to juror Campbell's affidavit, the Court "instructed [the jury] to keep working." According to juror Oswald, the Court "implied that [the jury] would stay there until we made a decision."

Under either juror Campbell's or juror Oswald's version, Howard has not shown that he was prejudiced by the Court's alleged comments. Neither affidavit suggests that the jury told the Court that it was deadlocked. Accordingly, the Court's alleged answer – to keep working – was simply an instruction for the jury to keep working toward a verdict at that moment, not that it must keep working until it reached a verdict. More importantly, nothing in either juror's declaration suggests that the jury concluded that it had to keep working until it reached a guilty verdict, and Krautz's acquittal shows that the

jury reached its verdicts based on its interpretation of the evidence, not on its alleged perception that the Court wanted it to reach a verdict. In addition, Howard contends that the jury knew that the jury in his prior trial had been unable to reach a verdict; if that is true, it follows that the jury in this case knew that one of its options was to fail to reach a verdict.

The Supreme Court's decision in *Jenkins v. United States*, 380 U.S. 445, 446 (1965), and the Fifth Circuit's decision in *United States v. Benavides*, 549 F.2d 392 (5th Cir. 1977), do not support Howard's contention. In *Jenkins*, the jury informed the district court that it could not reach a verdict "because of insufficient evidence." The court told the jury, "You have got to reach a decision in this case." The Court found that the statement had "the coercive effect attributed to it," and reversed the defendant's conviction. Although the Court did not explain its reasoning, the jury's note suggested that it had concluded that it had insufficient evidence to make a determination of defendant's guilt. Pressuring the jury to reach a verdict may have led to the jury believe that it should find the defendant guilty despite its conclusion that the government had not presented sufficient evidence.<sup>4</sup> Here, according to Howard, the Court simply told the jury to keep deliberating. It did not tell the jury that it had to reach a verdict or suggest that the evidence was sufficient for the jury to reach a verdict, much less a guilty verdict.

---

<sup>4</sup> In addition, the Court in *Jenkins* relied on its supervisory power over the federal courts. Since *Jenkins* was decided, the Federal Rules of Criminal Procedure have been promulgated, and any error must meet the harmless-error requirements of Rule 52.

In *Benavides*, the jury informed the court by note that it was deadlocked 10 to 2 for conviction. Without notifying counsel or the defendant, the court told the jury, “Take a recess and consider the offense further.” The Fifth Circuit found that the district court’s language “carried the implication that the court thought the defendant guilty of the charge.” 549 F.2d at 393. Here, Howard makes no claim that the Court said, suggested, or implied that it believed either defendant guilty of the offenses charged, and the jury’s acquittal of Krautz shows that it did not interpret the Court’s words that way.

In sum, Howard has shown only that while the jury was deliberating, the Court casually told the jury to keep deliberating. He makes no showing that the Court suggested that the jury should find either Krautz or him guilty or that the Court’s casual comment was sufficient to overcome the Court’s prior instructions that each juror should not give up his or her honest opinion as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. 5th Cir. Pattern Jury Instruction 1.24.

**IV. The Court did not err in declining to voir dire the jury about the Lay and Skilling verdict.**

Howard argues that the Court should have interviewed the jurors to determine if any of them had been exposed to publicity concerning the verdicts in the Lay and Skilling trials. That contention rests on the assumption that exposure to the news that Lay and Skilling had been convicted would have somehow been prejudicial to Howard. That assumption is false. As far as the jury knew, the two trials had nothing in common, other

than the fact that Lay, Skilling, Howard, and Krautz all worked at Enron. Nothing in the record suggests that Howard's jury believed that the conviction of Lay and Skilling had any bearing on the issues before them, and the Court instructed the jury to determine defendants' guilt based only on the evidence presented to them.

In addition, Howard has pointed to no evidence that the verdict in the Lay/Skilling trial affected the verdicts in his case. Indeed, the evidence is directly to the contrary. Juror Oswalt specifically stated that all the jurors had made up their minds before they learned of the Lay and Skilling verdicts, and the jury acquitted Howard's codefendant Krautz. A jury that was inflamed by the verdicts against the top executives at Enron would not have acquitted Krautz.

Howard's reliance on *United States v. Martinez-Moncivais*, 14 F.3d 1030 (5th Cir. 1994), does not support a contrary result. In that case, the jury improperly learned that a defendant in the case on which they were sitting had absconded. That information may have led the jury to conclude that the remaining defendant was guilty. Here, as far as the record shows, the jury was not aware of any link between the two trials except that all the defendants had worked at Enron.

**V. The verdict cannot be attacked based on the jury's alleged failure to follow the Court's instructions.**

Howard claims that during deliberations, the jury failed to follow the Court's instructions in three respects. The jurors' affidavits supporting these claims are inadmissible under Rule 606(b). As set forth above, Rule 606(b) bars evidence of any

matter considered by the jury during deliberations, unless the jury considered extraneous information or influences. As the Fifth Circuit has held, Rule 606(b) applies to evidence that the jury was confused about a court's instructions. *See United States v. Jones*, 132 F.3d at 245 (“Allegations of jury confusion caused by jury instructions would not be an outside influence about which a juror could competently testify.”); *see also Tanner v. United States*, 483 U.S. at 118 (noting that courts have “wisely . . . treated allegations of a jury’s inability to hear or comprehend at trial” as a matter that cannot be impeached with juror affidavits). It follows that Rule 606(b) bars evidence that the jury did not follow the court’s instructions during deliberations. *See United States v. Ortiz*, 942 F.2d at 913 (rejecting under Rule 606(b) juror affidavit stating that jury disregarded instructions).

The legislative history of Rule 606(b) confirms that a defendant may not attack a verdict based on a juror’s failure to follow the court’s instructions. In approving Rule 606(b) as drafted by the Supreme Court, the Senate specifically noted that if a less strict version of the rule were enacted it would “have the effect of opening verdicts up to challenge on the basis of what happened during the jury’s internal deliberations, for example, where a juror alleged that the jury refused to follow the trial judge’s instructions.” S. Rep. No. 93-1277 at 13-14, *reprinted in* 1974 U.S.C.C.A.N. 7051, 7060. The Supreme Court cited this report with approval in *Tanner v. United States*, 483 U.S. at 124.

Against this background, Howard’s challenge to the jury’s failure to follow instructions must fail. Howard alleges (Motion at 20-21) that the jury improperly relied

on its notes and considered the Howard's prior trial. Those matters directly relate to the content of the jury's deliberations. Accordingly, the evidence establishing the jury's alleged failure to follow the Court's instructions is inadmissible, and these claims must be rejected.

Howard also contends that the jury failed to follow the Court's instructions not to discuss the evidence before the end of the case. This claim is also barred by Rule 606(b). In *United States v. Ortiz*, a defendant submitted an affidavit from a juror stating that "the jury was given clear and specific instructions not to discuss the case in any way whatsoever at any time at all, prior to jury deliberation. However, I would like to point out that these instructions were disregarded by a juror on the first day of the trial on our way to lunch." As noted above, the Fifth Circuit held that Rule 606(b) "proscribes the post-trial testimony on which the defendants' motion rests." 942 F.2d at 913. At most, moreover, Howard could contend that the jury's pre-deliberation discussion of the evidence affected their deliberations at the close of the case. But he could establish that fact only by submitting evidence concerning the jury's actual deliberations, and any such evidence would be barred by Rule 606(b). Accordingly, even if Howard had submitted

evidence that the jury's alleged premature discussion of the evidence affected its deliberations, he would not be entitled to relief.

Dated: July 10, 2006  
Houston, Texas

Respectfully submitted,

SEAN M. BERKOWITZ  
Director, Enron Task Force

s/ Van S. Vincent  
Van S. Vincent  
Jonathan Lopez  
Enron Task Force

CERTIFICATE OF SERVICE

I hereby certify that a true correct copy of the foregoing was sent, if registered, via the Court's electronic filing system, or if not registered, deposited in the United States Mail, postage prepaid to

Per Ramfjord, Esq.  
900 S.W. 5<sup>th</sup> Street  
Suite 2500  
Portland, OR 97204  
Fax No. (503) 220-2480  
***Counsel for Joseph Hirko***

Jim E. Lavine, Esq.  
770 S. Post Oak Lane  
Suite 620  
Houston, TX 77056  
Fax No. (713) 552-0746  
***Counsel for Kevin Howard***

J.A. "Tony" Canales  
Canales and Simonson P.C.  
2601 Morgan Avenue  
PO Box 5624  
Corpus Christi, TX 78465-5624  
Fax (361) 884-7023  
***Counsel for Scott Yeager***

Samuel J. Buffone  
Ropes & Gray LLP  
1301 K Street, NW, Suite 800 East  
Washington, D.C. 20005-7008  
Fax (202) 626-3961  
***Counsel for Scott Yeager***

Barry Pollack, Esq.  
Collier Shannon Scott, PLLC  
3050 K Street, N.W. Suite 400  
Washington, D.C. 20007  
Fax No. (202) 342-8451  
***Counsel for Mike Krautz***

Edwin J. Tomko, Esq.  
600 N. Pearl Street  
Suite 1600  
Plaza of the Americas, LB 175  
Dallas, TX 75201-2890  
Fax No. (214) 953-0695  
***Counsel for Rex Shelby***

William D. Dolan, III  
Venable Baetjer et al  
8010 Towers Crescent Dr  
Ste 300  
Vienna, Va 22181  
***Counsel for Kenneth Rice***

David L. Schwarz  
Kellogg Huber et al  
1615 M Street NW  
Ste 400  
Washington, D.C. 20036  
Fax (202) 326-7999  
***Counsel for Kevin Hannon***

s/Van S. Vincent  
Van S. Vincent