



The Court granted CITGO's request to depose Ms. Canales and presided over the deposition on or about January 16, 2008 in Corpus Christi, Texas. The Court heard the sworn testimony of Ms. Canales as presented by the attorney for CITGO.

The unrefuted sworn testimony of Ms. Canales is that she did not have any contact whatsoever with any juror during the jury's deliberations of the case and did not enter the jury deliberation room. Ms. Canales explained that the entries on her web site were based on information received from a juror almost a month after the jury was dismissed by the court. Ms. Canales further testified that she used the vehicle of "a fly on the wall" to write her blog about the information received from the juror about the deliberations. She testified that she used the "fly on the wall" so that she would not have to keep referring to the fact that she had received the information she was publishing from an anonymous source.

In fact, the very first blog entry about jury deliberations says the information was received from "an anonymous source."<sup>1</sup> Ms. Canales testified that she promised the juror to keep his/her identity secret. During the deposition, CITGO was unable to offer one iota of evidence to refute the testimony of Ms. Canales or call into question her truthfulness.

The record, on the question of jury tampering, before the district court also includes the affidavit of Ed Offutt. Mr. Offutt was the CSO assigned to guard and protect the deliberations of the CITGO jury. His affidavit, too, is unrefuted by CITGO. CSO Offutt states in his affidavit that he was assigned to guard the jury's deliberations and that he knows Ms. Canales by sight.

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<sup>1</sup> The first blog entry about the jury deliberations appeared on or about July 25, 2007. That blog entry refers to the fact that Ms. Canales received information from "*an anonymous source*." See Motion of the United States to Supplement the Record in Opposition to CITGO's Motion for Leave to Depose Suzie Canales (Docket # 500 ). The first reference to the "fly on the wall" did not appear in the blog until August 11, 2007.

See Docket # 522 ¶¶ 3-5. CSO Offutt further states in his affidavit that no person, including Ms. Canales, entered or attempted to enter the jury room during the jury's deliberations. See Docket # 522 ¶¶ 6-8. On this record there is no basis in fact to believe that there was any unlawful contact between any juror and Ms. Canales (or any other person) during the jury deliberations or that Ms. Canales entered or attempted to enter the jury deliberation room.

CITGO's allegations of jury tampering are so groundless that counsel for CITGO was quickly reduced to attempting to have Ms. Canales testify the entries in her blog were false. This aspect of the deposition was somewhat disturbing. A review of the questions posed by CITGO counsel during the deposition suggests that CITGO's primary purpose during the deposition was to discredit the blog, and not to establish that there had been an inappropriate contact between Ms. Canales and a juror. CITGO failed miserably on both counts.

The United States believes that the government, and this community, are entitled to a ruling by the district court, based on the evidence in the record before it, that the allegations of jury tampering alleged by CITGO are unfounded. The United States believes that such a ruling is necessary to refute CITGO's allegations of jury tampering by Ms. Canales and establish, as a fact, that no juror violated their oath and that no CSOs assigned to guard and keep safe the jury deliberations violated their duty.<sup>2</sup> Such a ruling will insure that the community trust and the judicial integrity of the secrecy of the federal jury deliberations in this case, once questioned, has been fully restored.

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<sup>2</sup> A ruling on this issue by the district court, as a final order, will preserve CITGO's right to pursue the matter in the Court of Appeals.

WHEREFORE, and for the reasons stated above, the United States requests that the Court enter an order finding that there is no evidence of jury tampering by Suzie Canales as alleged by CITGO and that the evidence further establishes that no juror violated their oath or that any Court Security Officer assigned to guard and keep safe the jury deliberations violated their duty

Respectfully submitted,

/s/ Howard P. Stewart

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HOWARD P. STEWART  
Senior Litigation Counsel  
Environmental Crimes Section  
U.S. Department of Justice  
Washington, DC  
(202) 305-0334  
WILLIAM R. MILLER  
Special Assistant United States Attorney  
Southern District of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion of the United States for a Court Ruling on CITGO's Allegations of Jury Tampering was served on counsel for the defendants as identified below via the ECF System.

Dick DeGuerin, Esquire  
1018 Preston Ave., 7<sup>th</sup> Floor  
Houston, Texas 77002  
PH: (713) 223-5959  
FX: (713) 223-9231

Matt Hennessy, Esquire  
1018 Preston Ave., 7<sup>th</sup> Floor  
Houston, Texas 77002  
PH: (713) 223-5959  
FX: (713) 223-9231

James B. Blackburn, Jr., Esquire  
Blackburn Carter, P.C.  
4709 Austin  
Houston, Texas 77004  
PH: (713) 524-1012  
FX: (713) 524-5165

Nathan P. Eimer, Esquire  
Eimer Stahl Klevorn & Solberg LLP  
224 South Michigan Ave., Suite 1100  
Chicago, Illinois 60604  
PH: (312) 660-7601  
FX: (312) 692-1718

Catherine Baen, Esquire  
1018 Preston, 8<sup>th</sup> Floor  
Houston, Texas 77002  
PH: (713) 223-5959  
FX: (713) 223-9231

Jimmy Parks, Jr.  
214 Dwyer, Suite 210  
San Antonio, Texas 78204  
PH: (210) 229-1322  
FX: (210) 229-9405  
Attorney for Philip Vrazel

DATED: January 24, 2008

/s/ Howard P. Stewart

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HOWARD P. STEWART