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Of Attorneys for Defendant Steven Dwight Hammond

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

**STEVEN DWIGHT HAMMOND and
DWIGHT LINCOLN HAMMOND, JR.,**

Defendants.

)
) **NO. CR 10-60066-HO**
)
) **MOTION FOR DISCLOSURE**
) **OF THE NUMBER OF**
) **PROSPECTIVE JURORS**
) **BY COUNTY SUMMONED FOR**
) **JURY DUTY IN THE EUGENE**
) **AND PENDLETON DIVISIONS**
) **OF THE COURT**
)

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JURORS BY COUNTY SUMMONED FOR JURY DUTY IN THE EUGENE
AND PENDLETON DIVISIONS OF THE COURT**

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Pursuant to 28 U.S.C. § 1861, *et. seq.*, LR 3-1 through 3-4, and the Fifth and Sixth Amendments to the United States Constitution, defendant Steven Dwight Hammond, by and through his attorneys Lawrence H. Matasar and Lawrence Matasar, P.C., and defendant Dwight Lincoln Hammond, Jr., by and through his attorneys Marc D. Blackman and Ransom Blackman LLP, move the Court to authorize the Clerk to disclose to the parties the number of prospective jurors by county summoned for jury duty in the Eugene and Pendleton Divisions of the Court.

The information sought by this motion is relevant to Defendants' Motion for Trial in Pendleton Division.

In support of this motion, the Court is respectfully referred to the Points and Authorities below.

Defendants request a hearing on this motion.

Dated this 5th day of April, 2011.

Respectfully submitted,

RANSOM BLACKMAN LLP

LAWRENCE MATASAR, P.C.

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POINTS AND AUTHORITIES

A. Procedural Context

On March 21, 2011, defendants filed a Motion for Trial in the Pendleton Division, noting, *inter alia*, that the events at issue in this case occurred in the Pendleton Division, that virtually all fact witnesses reside in Harney or other counties in the Pendleton Division, and that the defendants are life-long Eastern Oregon ranchers to whom the Willamette Valley is an alien environment. In support of this motion, defendants relied on case law that establishes that “trial in an environment alien to the accused over a proper objection must be supported by a demonstration in the record that the judge gave due regard to the factors now incorporated in Rule 18” [*United States v. Burns*, 662 F.2d 1378, 1383 (11th Cir. 1981)] and provided examples of the many ways in which life in Eastern Oregon differs from life in the Valley. Defendants’ point was that, given that trial in Pendleton would not result in delay nor disserve any other legitimate Rule 18 concern, they are Eastern Oregonians whose fate should be determined by fellow Eastern Oregonians.

On March 30, 2011, the government filed a memorandum in opposition to defendants’ motion. In this memorandum, it argues, *inter alia*, that life in certain counties in the Eugene Division is not that different from life in Eastern Oregon and therefore trial need not be held in Pendleton to provide defendants with a jury of their peers.

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In response to this memorandum, on April 1, 2011, counsel for defendant Dwight Hammond contacted the Clerk's Office to request information regarding the home counties of the prospective jurors in the Eugene and Pendleton Divisions. Counsel was advised that the Clerk's Office was not authorized to release such information absent a court order.

This motion is filed in response to the Clerk's response.

LEGAL DISCUSSION

28 U.S.C. § 1861 provides, in relevant part:

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.

This statute "codifies defendant's Fifth and Sixth Amendment rights."

United States v. Orange, 364 F. Supp.2d 1288, 1293 (W.D. Okla. 2005). A claim regarding the jury pool is therefore evaluated under the standards enunciated for the constitutional claims. *United States v. Shinault*, 147 F.3d 1266, 1270 (10th Cir.), *cert. den.*, 525 U.S. 988, 119 S. Ct. 459, 142 L. Ed.2d 411 (1998).

To assure that defendants can determine whether their constitutional and statutory rights to a jury "selected at random from a fair cross section of the community in the...division wherein the court convenes" are being honored, 28 U.S.C. § 1867(f) provides:

The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion.

Under this statute:

Litigants are given access to records regarding the jury-selection process “as may be necessary in the preparation or presentation of a motion under” this section...As the Supreme Court has explained, “a litigant has essentially an unqualified right to inspect jury lists.... Indeed, without inspection, a party almost invariably would be unable to determine whether he has a potentially meritorious jury challenge.” *Test v. United States*, 420 U.S. 28, 30, 95 S. Ct. 749, 42 L. Ed.2d 786 (1975). Access to such records may not be conditioned on defendants showing a probability of success on the merits of the jury-selection challenge. *United States v. Beaty*, 465 F.2d 1376, 1380 (9th Cir.1972). *United States v. Cerna*, 2009 WL 2998930, 2 (N.D.Cal. 2009).

Defendants are entitled to inspect jury lists for the Eugene and Pendleton Divisions to respond to the government’s claim that life in certain counties in the Eugene Division is not that different from life in Eastern Oregon. Even if that claim is true, if juror lists demonstrate that few prospective jurors in the Eugene Division actually reside in such counties, their hypothetical existence would not warrant denial of defendants’ Motion for Trial in the Pendleton Division.

Defendants are therefore entitled to disclosure of the home counties of the prospective jurors who have been summoned for jury duty in the Eugene and Pendleton Divisions.

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CONCLUSION

For each of the reasons set forth above, the Court is respectfully urged to grant Defendants' Motion for Disclosure of the Number of Prospective Jurors by County Summoned for Jury Duty in the Eugene and Pendleton Divisions of the Court and direct the Clerk to release to the parties the jury lists for each Division.

Dated this 5th day of April, 2011.

Respectfully submitted,

RANSOM BLACKMAN LLP

LAWRENCE MATASAR, P.C.

/s/ MARC D. BLACKMAN

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/s/ LAWRENCE H. MATASAR

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Of Attorneys for Defendant

Steven Dwight Hammond

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing MOTION FOR DISCLOSURE OF THE NUMBER OF PROSPECTIVE JURORS BY COUNTY SUMMONED FOR JURY DUTY IN THE EUGENE AND PENDLETON DIVISIONS OF THE COURT on the following attorneys:

Kirk A. Engdall
Frank R. Pagagni, Jr.
Assistant United States Attorneys
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by electronic file notice of a true copy on the 5th day of April, 2011.

RANSOM BLACKMAN LLP

/s/ MARC D. BLACKMAN

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