

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. SACR 09-0077 JVS Date May 18, 2009

Present: The Honorable James V. Selna

Interpreter Mandarin Interpreter: Judy Arase

Karla J. Tunis
Deputy Clerk

Sharon Seffens
Court Reporter.

Douglas McCormick / Hank Bond Walther
Assistant U.S. Attorney

<u>U.S.A. v. Defendant(s):</u>		<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
1.	Stuart Carson	X		X	1. Nicola T. Hanna Eric Raines	X		X
2.	Hong Carson	X		X	2. Kimberly A. Dunne	X		X
3.	Paul Cosgrove	X		X	3. Kenneth Miller	X		X
4.	David Edmonds	X		X	4. David W. Weichert	X		X

Proceedings: Defendants' Joint Motion for Bill of Particulars (fld 4-22-09)

Cause called and counsel make their appearances. The Court's tentative ruling is issued. Counsel make their arguments. The Court DENIES IN PART AND GRANTS IN PART the defendants' joint motion indicated above and rules in accordance with the tentative ruling as follows:

By the present Motion, the Stuart Carson *et al.* ("defendants") seek the particulars concerning 236 unlawful payments ("bribes"), referenced in paragraph 14 of the Indictment, and the particulars concerning lavish entertainment, holiday, gifts, and vacations (collectively "Entertainment"), referenced in paragraphs 19, 20, 22, and 23 of the Indictment. The bribes are core factual allegations in the Government's case for violations of the Foreign Corrupt Practices Act ("FCPA") and the Travel Act.

I. Legal Standard.

Defendants move under Rule 7(f) of the Federal Rules of Criminal Procedure which provides:

The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 10 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars

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subject to such conditions as justice requires.

Fed. R. Crim. Pro. 7(f). At bottom, the Court must ensure that the Indictment has fairly informed a defendant of the charges against him. Unites States v. Long, 706 F.2d 1044, 1054 (9th Cir. 1983). The indictment must do so in a manner that provides “sufficient precision to enable him to prepare for trial, to avoid or minimize the danger of surprise at the time of trial, and to enable him to plead his acquittal or conviction in bar of another prosecution for the same offense.” United States v. Giese, 597 F.2d 1170, 1180 (9th Cir. 1979) (internal quotation marks deleted). At the same time, it is important to keep in mind what a bill of particulars is not. It is not a vehicle to expand the Government’s discovery obligations under Rule 16, nor is it a means to force the Government to offer a preview of its ultimate evidence at trial. Id.; Unites States v. Young & Rubicam, Inc., 741 F. Supp. 334, 349-50 (D. Conn. 1990). However, a fair understanding of the theory of the Government’s case is paramount. Unites States v. Ryland, 806 F.2d 941, 942 (9th Cir. 1986.)

II. Discussion.

Defendants cannot fairly contend that they are unable to divine the theory of the Government’s case. The Indictment runs 36 pages, and details 59 overt acts, including at least 30 specific payments. The allegations are grouped as to specific customers of Control Components, Inc. (“CCI”). Yet that leaves undisclosed, the balance of the payments and the details of the Entertainment and travel.

The Court recently considered a motion for a bill of particulars in a complex securities fraud in United States v. Mikus. (See Reply, Ex. A.) There the Court observed:

While discovery cannot be used to obscure a defendant’s ability to understand the Government’s theory, here the discovery meshes with the Indictment and alleviates the need for a bill of particulars. For example, the Government represents that recordings of all the telephone conferences cited in the Indictment have been produced. (Consolidated Opposition, p. 5.) Each of the communications constituting a statutory violation is identified by date, method of transmission, and recipient. There is no contention that the Government has not produced the raw evidence of each of these communications.

(Id., Ex. A, p. 2; emphasis supplied; footnote deleted.) The instant Indictment does not provide the framework to “mesh” the discovery with the Indictment. Had the Government identified each unlawful payment in the Indictment, the defendants could fill in the details with the discovery. However, as defendants point out in their Reply, the discovery produced to date

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leaves them to guess which transactions and events will form the Government's bribery case. (*Id.*, p. 6.) Similarly, the documents do not enable the defendants to mesh that evidence with specific Entertainment alleged in the Complaint.

The Court agrees that the scope of the defendants' request is overly broad, and reflects the approach of a diligent civil litigator rather than the tailored requirements of Rule 16 of the Federal Rules of Criminal Procedure.¹ Nevertheless, limited additional information is required here.²

Bribes.

The bribes are at the heart of this case. Although not pled as such, each bribe is a separate and independent crime. Thus, the bribes are not mere overt acts to be swept away along with nominally benign conduct in furtherance of the conspiracy. *See Giese*, 597 F.2d at 1180; *United State v. DiCesare*, 765 F.2d 890, 897-98 (9th Cir. 1985). They are the core of the case.

With respect to each of the 236 alleged bribes not described in the Indictment, the Government shall provide within 20 days the following information:

- The date of the payment.

¹For example, the defendants want to know "whether the government intends to present evidence of such payments at trial." (Motion , p. 2, ¶ 1.) This is an unabashed, and impermissible, request for a peek at the Government's trial strategy. *United States v. Ryland*, 806 F.2d 941, 942 (9th Cir. 1986); *United States v. Brodie*, 326 F.Supp.2d 83, 91 (D.D.C 2004).

²To the extent that the defendants argue that the Government has buried them in documents, the Court is decidedly not convinced. The Government's production to date totals approximately 33,000 pages. (Government Memorandum, p. 9.) This equates to about 11 bankers boxes, a volume of production which is quite modest in the world of complex litigation. Moreover, the Government has pointed the defendants to the relevant Bates number series where the evidence of the 236 payments and the Entertainment can be found. (*Id.*, p. 10 & nn. 4,5.) In each category, there are about 4,500 to 4,800 pages. It is not a question of requiring the defendants to review the documents, a clearly manageable task, but whether the review will inform the defendants of the basics of the Government's case.

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- The amount of the payment.
- The name of the recipient and business affiliation of the recipient, or if the recipient is an intermediary, the business affiliation of the individual who was intended to benefit from the payment.

The Government may satisfy this requirement through the identification of one or more documents which provide the data.

The Court believes that the burden on the Government is minimal since it presumably already knows the particulars which support its recitation in the Indictment of precisely 236 bribes.

Entertainment.

_____ With respect to each item of Entertainment, the Court takes a different view. This is information which clearly falls into the category of how the Government will prove its case. United States v. Feola, 651 F. Supp. 1086, 1132 (S.D.N.Y. 1987) (“As a general rule, the defendant does not ‘need’ detailed evidence about the conspiracy in order to prepare for trial properly. It is well settled that defendants need not know the means by which it is claimed they performed acts in furtherance of the conspiracy nor the evidence which the Government intends to adduce to prove their criminal acts.”); see Ryland, 806 F.2d at 942.

The documents which relate to Entertainment are modest in volume and identified by the Government. (Government Memorandum, p. 10 n.5.) This is not a case where the Government has buried the relevant discovery in a mountain of documents. United States v. Bortnovsky, 820 F.2d 572, 574-75 (2d Cir. 1987.) Rather, with regard to Entertainment, the Government has pointed to a universe that can fit in two bankers boxes. While the defendants deride the scope of document discovery—from a \$15 meals to rounds of golf at private country clubs,³ the simple truth is that even the provision of the proverbial but no longer existent 10-cent cup of coffee could be an overt act. The claim that defendants are unable to determine where “government draws the line between legitimate business entertainment and unlawful conduct” is beside the point for the same reason—the intrinsic lawfulness of an overt act is beside the point. (Reply, p. 7.) Moreover, the defendants’ recitation of particulars from the discovery indicates that they can readily identify instances of Entertainment from the discovery. One presumes that the Government is not salting the Entertainment documents with evidence of extraneous expenditures.

³Reply, p. 6.

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At oral argument, defendants contended that some Entertainment may be deemed a bribe by the Government, and that the Court’s reasoning with regard to bribes ought to compel production of the particulars concerning Entertainment. At oral argument, the Government represented that all of the instances of Entertainment which it deems are bribe are set forth in the Indictment. This is sufficient to meet the defendants’ concerns.

Safe Harbor.

Provided that the Government complies in good faith with this order and its discovery obligations under Rule 16, this order shall not preclude the Government from later identifying other alleged bribes.

* * * * *

While the Court denies the Motion in large measure, the Court nevertheless appreciates the complexity of the case and the need to ensure a fair opportunity to defend. The latter factor affects the timing of identification of trial witnesses and exhibits, the production witness statements, 302s, Jenks materials, and other materials. However, those are issues for another day.

III. Conclusion.

The Motion is granted only to the extent set forth above.

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Initials of Deputy Clerk kjt
