

1 THOMAS P. O'BRIEN
United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
BRUCE H. SEARBY (SBN 183267)
4 Assistant United States Attorney
JONATHAN E. LOPEZ (SBN 210513)
5 Senior Trial Attorney, Fraud Section
United States Department of Justice
6 1100 United States Courthouse
312 North Spring Street
7 Los Angeles, California 90012
Telephone: (213) 894-5423
8 Facsimile: (213) 894-6269
bruce.searby@usdoj.gov
9

10 Attorney for Plaintiff
United States of America
11

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA.

14 UNITED STATES OF AMERICA,) CR No. 08-59(B)-GW
15)
16 Plaintiff,) GOVERNMENT'S TRIAL MEMORANDUM;
17 v.) EXHIBIT
18) Trial Date: 8/4/09
19) Trial Time: 9:00 a.m.
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22 The United States, by and through its counsel of record,
23 the United States Attorney for the Central District of
24 California, and the Fraud Section, United States Department of
25 Justice, Criminal Division, hereby submits its trial memorandum
26 in the above-captioned case.

27 ///

1 I. STATUS OF THE CASE

2 A. Trial is scheduled to commence on August 4, 2009, at
3 9:00 a.m., before the Honorable George Wu, United States
4 District Judge.

5 B. The government estimates that its case-in-chief will
6 take approximately 13 days.

7 C. The government expects to call 25-30 witnesses in its
8 case-in-chief, contingent on stipulations to admissibility and
9 authenticity.

10 D. Trial by jury has not been waived.

11 E. The services of an interpreter will not be necessary;
12 however, the government is arranging for translators to be
13 available to translate documents from German and Thai to English
14 in the event the parties do not stipulate to the necessary
15 translations.

16 F. Defendants Patricia and Gerald Green are out on bond
17 awaiting trial.

18 G. The Second Superseding Indictment ("SSI"), which was
19 returned on March 11, 2009, charges 18 U.S.C. § 371: Conspiracy;
20 15 U.S.C. § 78dd-2(a)(1), (g)(2)(A): Foreign Corrupt Practices
21 Act; 18 U.S.C. § 1956(a)(2)(A): Transportation Promotion Money
22 Laundering; 18 U.S.C. § 1957(a): Transaction Money Laundering;
23 18 U.S.C. § 1519: Obstruction of Justice; 26 U.S.C. § 7206(1)
24 False Subscription of a Tax Return; 18 U.S.C. § 2: Aiding and
25 Abetting and Causing Acts To Be Done; 18 U.S.C. § 981(a)(1)(C),
26 21 U.S.C. § 853, and 28 U.S.C. § 2461(c): Criminal Forfeiture.
27 An unconformed copy of the SSI is attached to this memorandum as
28 Exhibit 1.

1 **II. STATEMENT OF THE CHARGES**

2 Defendants, who are U.S. citizens and residents, and who
3 owned and operated several entertainment and advertising-related
4 businesses in Beverly Hills, California, engaged in a conspiracy
5 to offer and make corrupt payments to a foreign official and to
6 money launder, in connection with approximately \$1.8 million in
7 payments between 2002 and 2006 to secure several lucrative Thai
8 government contracts. The payments usually took place between
9 defendants' businesses' Los Angeles-area bank accounts and
10 overseas accounts in the name of the corrupt foreign official's
11 daughter or friend.

12 After making bribe payments to the foreign official, which
13 totaled a large proportion of their businesses' gross revenue,
14 defendant Patricia Green falsely subscribed tax returns for
15 those businesses that falsely described the payments as
16 "commissions." Defendant Patricia Green also falsely stated on
17 a tax return that a person other than defendants owned the
18 company.

19 Following the search in this case of defendants' businesses
20 pursuant to a federal warrant, defendant Gerald Green understood
21 that the investigation regarded the payments for the foreign
22 official, and soon engaged in an obstruction of justice to
23 explain or substantiate the corrupt payments by reference to
24 other projects he had pursued in Thailand. As part of this
25 plan, defendant Gerald Green instructed subordinates to
26 manufacture documents.

1 III. SUMMARY OF THE EVIDENCE

2 The government expects to prove the facts set forth below,
3 among others, at trial.

4 A. Conspiracy, Bribery, and International Transfers of
5 Funds To Promote Bribery

6 Defendants Gerald and Patricia Green routinely agreed to,
7 and arranged, payments from a group of Beverly Hills businesses,
8 which they owned and controlled,¹ for the benefit of Juthamas
9 Siriwan ("Juthamas"), the Governor of the Tourism Authority of
10 Thailand ("TAT"). The payments, which totaled approximately
11 \$1.8 million over more than four years were in connection with
12 Juthamas' award of, and support for, TAT and TAT-related
13 contracts for promotion of tourism that resulted in
14 approximately \$14 million in revenue to defendants' businesses.

15 The corrupt payments took place by transfers into the
16 overseas bank accounts of Juthamas' daughter, Jittisopa Siriwan
17 ("Jittisopa"), aka "Jib," Juthamas' friend, Kitti
18 Chambundabongse ("Kitti"), and occasionally by cash delivery to
19 Juthamas in person. Defendants owed Juthamas these corrupt
20 payments as a variable percentage of revenue on TAT-related
21 contracts and subcontracts including, but not limited to, the
22 Bangkok International Film Festival ("BKKIFF"), the Thai

23
24 ¹ Defendants' businesses included: Film Festival
25 Management, Inc. ("FFM"); SASO Entertainment ("SASO"); Artist
26 Design Corp. ("Artist Design"); International Fashion Consultant,
27 Inc. ("IFC"); Flying Pen, Inc. ("Flying Pen"); and entities doing
28 business as "Creative Ignition," "Ignition," and "International
Festival Consultants." The "Green Businesses" also included
Festival of Festivals ("FOF"), a business entity belonging to an
associate of defendants, but in the name of which defendants did
business and received and transferred funds.

1 Privilege Card, calendars, a book, a website, public relations
2 consulting, a video, and a logo.

3 Defendant Gerald Green held the relationship with Juthamas
4 and negotiated with her the budgets and other details of the
5 various TAT contracts, including contracts where defendants'
6 businesses took the role of "subcontractor" to other companies
7 that formally held the contract with TAT. Defendants inflated
8 the budgets of these budgets to allow for the payments to
9 Juthamas, the official approving and promoting these same
10 contracts.

11 Defendant Patricia Green, the wife and co-owner, was in
12 charge of day-to-day operations of defendants' businesses and
13 implemented defendant Gerald Green's plans to make the corrupt
14 payments.

15 In planning and making the bribe payments for the benefit
16 of Juthamas, defendants referred to them in discussions as
17 "commission" payments. When defendant Gerald Green instructed
18 that it was time to make a "commission" payment, defendant
19 Patricia Green and another employee, Susan Shore ("Shore"),
20 would look to see which of the businesses had the money
21 available for any given payment. Defendant Patricia Green made
22 all the 40 or more wire transfers and cashiers check
23 transactions at the bank herself, and she planned and tracked
24 these payments. These payments for Juthamas often followed
25 promptly upon the receipt into the Green Businesses of TAT or
26 TAT-related revenues.

27 Defendants' planning and budgeting for the corrupt payments
28 for Juthamas was documented extensively in their handwritten

1 notes and memoranda, budget drafts, and internal documents
2 prepared by defendants, Shore, and other employees and close
3 associates. The actual payments for Juthamas themselves were
4 reflected in the Green Businesses' bank records and other
5 accounting records, as well as in handwritten notes and
6 schedules tracking amounts paid and still owing.

7 Both defendants, as well as their co-conspirators Juthamas
8 and Jittisopa, engaged in various patterns of deception to hide
9 the bribery from others, including the Thai government and later
10 the United States government. The conspirators hid the amount
11 of business Juthamas was corruptly directing to defendants, and
12 evaded Thai government fiscal controls meant to check Juthamas'
13 authority to approve TAT payments by splitting up the
14 performance of large contracts for the BKKIFF among different
15 Green Businesses. Defendants gave the misleading appearance of
16 there being separate and distinct businesses, among other
17 things, by use of dummy addresses, telephone numbers, and
18 nominee "directors" and "presidents" for use in communications
19 with other TAT officials. In reality, all companies operated
20 out of the same business offices with the same personnel.

21 To hide the extent of business Juthamas was corruptly
22 directing to defendants, the conspirators also recruited
23 different prime contractors of their choosing, and then arranged
24 referral fees from the prime contractors to the Green Businesses
25 -- part of which was to be paid over to Juthamas. The
26 conspirators then attempted to keep secret from other Thai
27 authorities defendants' subcontracting arrangement on the
28 project. In still other cases, defendants and Juthamas arranged

1 for a third-party company to act as a mere pass-through billing
2 conduit for funds intended for defendants' businesses.

3 Juthamas secretly controlled several overseas nominee bank
4 accounts into which defendants transferred the bribes, located
5 in the United Kingdom, the Isle of Jersey, and Singapore. From
6 some of these accounts, defendants' money then flowed to
7 accounts in Switzerland also held in Jittisopa's name but
8 controlled by Juthamas.

9 Neither Jittisopa nor Kitti had done any work as employees
10 or contractors of defendants' businesses on the TAT contracts
11 that would explain why accounts in their names had received \$1.8
12 million in defendants' funds, which they concealed on their
13 income taxes.

14 Once Juthamas stepped down as Governor of the TAT in late
15 2006, defendants stopped getting new TAT contracts and had
16 difficulty collecting amounts they claimed to be owed for the
17 2007 BKKIFF. Juthamas, acting as an "advisor" to the TAT,
18 assisted in a plan to have TAT officials pay off defendants'
19 claim through a phony third-party transaction with a Thai
20 company that acted as a pass-through for funds going to
21 defendants.

22 Defendants understood that their bribery of Juthamas was
23 unlawful in a variety of ways. Defendants knew that, by
24 agreeing to pay bribes amounting to a large percentage of the
25 revenue from the contracts Juthamas negotiated and approved for
26 the expenditure of public funds, defendants were assisting
27 Juthamas in secretly taking state funds for her own purposes.
28 As set forth above, defendants attempted to cover the bribery up

1 at the time of these contracts with secretive and fraudulent
2 behavior. Defendants in some instances prepared sham invoices
3 to explain the flow of money to them, part of which was flowing
4 back to Juthamas. Defendants, through their review of
5 contractual language relating to the FCPA and other documents,
6 also had specific notice that payments to a Thai official in
7 connection with a contract would be corrupt and unlawful.
8 Defendant Patricia Green lied about the nature of these payments
9 during an IRS audit of one of the tax returns they filed
10 deducting the payments as "commissions." Finally, defendants
11 immediately sought to cover up the payments after the
12 government's investigation in this case became known to them, as
13 discussed further below.

14 **B. Transfer of \$19,800 In Criminally-Derived Property**

15 Defendants' course of criminal conduct included reinvesting
16 some of the proceeds from their illegally-obtained contracts
17 into a Bangkok-based business venture called "Consultasia, Ltd."
18 in which defendant Gerald Green was a partner. The funds for
19 the 2004 wire transfer of \$19,800 charged in this case came from
20 defendants' subcontract with a United States-based public
21 relations firm, for whom defendants had corruptly obtained --
22 through Juthamas -- a prime contract with TAT.

23 **C. False Subscription of Tax Returns**

24 Defendant Patricia Green participated in the preparation of
25 corporate tax returns that took unlawful tax deductions for the
26 bribes by calling them "commissions." In this manner,
27 defendants reduced corporate tax liabilities, used tax-free
28 income to pay the bribes to the Governor, obtained tax refunds,

1 and thus increased their profits from their businesses.

2 Two of the businesses owned and operated by defendants that
3 made such payments were Film Festival Management, Inc. ("FFM")
4 and SASO Entertainment ("SASO"). Defendant Patricia Green
5 falsely subscribed SASO's federal income tax return for the tax
6 year 2004 claiming that \$303,074 in "commissions" were
7 deductible from SASO's gross income. In addition, defendant
8 Patricia Green signed FFM's federal income tax return for the
9 tax year 2004, which deducted \$140,503 in false "commission"
10 claims. Defendant Patricia Green subscribed that return not by
11 using her own name but forging the name "Eli Boyer." The return
12 also falsely claimed that Eli Boyer was the sole owner of FFM.

13 From her familiarity with the inner workings of the Green
14 Businesses, defendant Patricia Green understood that the
15 payments for Juthamas were not for real "commissions," such as
16 monies that are paid to third parties for obtaining business on
17 behalf of their companies, but were instead amounts paid to the
18 very same official awarding the contract. Despite this
19 knowledge, defendant Patricia Green lied about the nature of the
20 payments for Juthamas during a 2007 IRS audit of the income tax
21 return SASO had filed for 2004, characterizing them as expenses
22 in Thailand that SASO incurred for providing the services
23 contracted for by the TAT.

24 D. Obstruction of Justice

25 As set forth more fully in the government's application to
26 the Court to make a crime/fraud exception determination, also
27 filed today, defendant Gerald Green attempted to coordinate a
28 false exculpatory story to explain the corrupt payments for

1 Juthamas. Grasping that the bribe payments for Juthamas were
2 the reason for the FBI search of his business offices, defendant
3 Gerald Green attempted to substantiate the payments by
4 attributing them to work Jittisopa and Kittti had done on other,
5 non-TAT projects that defendant Gerald Green had pursued in
6 Thailand. Defendant Patricia Green assisted her husband in
7 launching this plan. This obstructive plan soon resulted, among
8 other things, in defendant Gerald Green's alteration of film
9 budgets by requesting that they be re-dated to 2005 and 2006,
10 which corresponded with the dates of payments for Juthamas.

11 **IV. PERTINENT LAW**

12 **A. 18 U.S.C. § 371: Conspiracy**

13 **1. Essential Elements**

14 To prove a violation of 18 U.S.C. § 371, the following
15 elements must be proved beyond a reasonable doubt:

16 First, beginning in or around 2002, and ending in or
17 around 2007, there was an agreement between two or more
18 persons to commit at least one crime as charged in the
19 second superseding indictment; and

20 Second, the defendants became a member of the
21 conspiracy knowing of at least one of its objects and
22 intending to help accomplish it; and

23 Third, one of the members of the conspiracy performed
24 at least one overt act for the purpose of carrying out the
25 conspiracy, with all [jurors] agreeing on a particular
26 overt act that you find was committed.

27 See Ninth Circuit Criminal Jury Instruction No. 8.16 (2003).

28 **2. Proof of Agreement**

The essence of the crime of conspiracy is the agreement.
United States v. Falcone, 311 U.S. 205, 210 (1940). The
government need not prove direct contact between co-conspirators
or the existence of a formal agreement. United States v. Boone,

1 951 F.2d 1526, 1543 (9th Cir. 1992). Instead, an agreement
2 constituting a conspiracy may be inferred from the acts of the
3 parties and other circumstantial evidence indicating concert of
4 action for accomplishment of a common purpose. United States v.
5 Becker, 720 F.2d 1033, 1035 (9th Cir. 1983); United States v.
6 Penagos, 823 F.2d 346, 348 (9th Cir. 1987); United States v.
7 Abushi, 682 F.2d 1289, 1293 (9th Cir. 1982).

8 There must be at least two persons involved in the
9 conspiracy. Becker, 720 F.2d at 1035; United States v.
10 Sangmeister, 685 F.2d 1124, 1126 (9th Cir. 1982). It makes no
11 difference whether the other person is another defendant or even
12 named in the indictment. Rogers v. United States, 340 U.S. 367,
13 375 (1951) ("identity of the other members of the conspiracy is
14 not needed, inasmuch as one person can be convicted of
15 conspiring with persons whose names are unknown").

16 3. Knowledge

17 In order to establish a defendant's membership in a
18 conspiracy, the government must prove that the defendant knew of
19 the conspiracy and that he intended to join it and to accomplish
20 the object of the conspiracy. See United States v. Esparza, 876
21 F.2d 1390, 1392 (9th Cir. 1989). A defendant may become a
22 member of a conspiracy without knowing all of the details of the
23 unlawful scheme and without knowing all of the members.
24 Blumenthal v. United States, 332 U.S. 539, 557 (1947). The
25 government must show that the defendant knew of his connection
26 to the charged conspiracy. United States v. Federico, 658 F.2d
27 1337, 1344 (9th Cir. 1981), overruled on other grounds, United
28 States v. De Bright, 730 F.2d 1255, 1259 (9th Cir. 1984) (en

1 banc); United States v. Smith, 609 F.2d 1294, 1299 (9th Cir.
2 1979).

3 A defendant's knowledge of a conspiracy need not be proved
4 by direct evidence; circumstantial evidence is sufficient.
5 United States v. Hayes, 190 F.3d 939, 946 (9th Cir. 1999), aff'd
6 en banc, 231 F.3d 663, 667 n.1 (9th Cir. 2000), cert. denied,
7 121 S.Ct. 1388 (2001). Generally, this knowledge can be
8 inferred from the defendant's own acts and statements. United
9 States v. Martin, 920 F.2d 345, 348 (6th Cir. 1990).

10 4. Participation in the Conspiracy

11 The government has the burden of proving beyond a
12 reasonable doubt that a conspiracy did exist and that each
13 defendant was a member of the conspiracy charged. United States
14 v. Friedman, 593 F.2d 109, 115 (9th Cir. 1979); United States v.
15 Peterson, 549 F.2d 654, 657 (9th Cir. 1977). The government
16 need not prove that all the persons alleged to have been members
17 of the conspiracy actually participated in the conspiracy.
18 United States v. Reese, 775 F.2d 1066, 1071 (9th Cir. 1985).
19 The general test is whether there was one overall agreement to
20 perform various functions to achieve the objectives of the
21 conspiracy. See United States v. Arbelaez, 719 F.2d 1453, 1457
22 (9th Cir. 1983).

23 Once the existence of a conspiracy is shown, evidence
24 establishing beyond a reasonable doubt a defendant's connection
25 with the conspiracy -- even if the connection is slight -- is
26 sufficient to convict him of knowing participation in the
27 conspiracy. United States v. Boone, 951 F.2d 1526, 1543 (9th
28 Cir. 1991); United States v. Stauffer, 922 F.2d 508, 514-15 (9th

1 Cir. 1990); United States v. Ramirez, 710 F.2d 535, 548 (9th
2 Cir. 1983).

3 The government need not prove that each coconspirator knew
4 the identities or roles of all other participants. The
5 government must show that each defendant knew, or had reason to
6 know, the scope of the criminal enterprise and that each
7 defendant knew, or had reason to know, that the benefits to be
8 derived from the operation were probably dependent upon the
9 success of the entire venture. Abushi, 682 F.2d at 1293; United
10 States v. Perry, 550 F.2d 524, 528-29 (9th 1977).

11 B. 15 U.S.C. § 78dd2(a): Bribery of a Foreign Official

12 1. Statutory Language

13 Section 78dd-2(a) of Title 15 of the United States Code
14 (Foreign Corrupt Practices Act or "FCPA"), prohibits making use
15 of the mails or any means or instrumentality of interstate
16 commerce willfully and corruptly in furtherance of a payment -
17 or offer, promise or authorization of payment - or offer, gift,
18 promise to give, authorization of the giving of anything of
19 value - to any foreign official for the purpose of:

20 (A) (i) influencing any act or decision of
21 such foreign official in her official
22 capacity, or (ii) inducing such foreign
23 official to do or omit to do any act in
24 violation of the lawful duty of such
25 official, or (B) inducing such foreign
26 official to use her influence with a foreign
27 government or instrumentality thereof to
28 affect or influence any act or decision of
such government or instrumentality, in order
to assist [the person or company making the
payment] in obtaining or retaining business
for or with, or directing business to, any
person.

1 2. Corruptly and Willfully

2 A person acts "corruptly" as required for a criminal
3 violation of the FCPA if he or she acts voluntarily and
4 intentionally, with an improper motive of accomplishing either
5 an unlawful result, or a lawful result by some unlawful method
6 or means. The term "corruptly" is intended to connote that the
7 offer, payment, and promise was intended to influence an
8 official to misuse her official position. A person acts
9 "willfully" as required for a criminal violation of the FCPA if
10 he or she acts deliberately and with the intent to do something
11 that the law forbids, that is, with a bad purpose to disobey or
12 disregard the law. A defendant need not be aware of the
13 specific law and rule that his or her conduct may be violating.
14 But he or she must act with the intent to do something that the
15 law forbids. Overall, it is only necessary that a defendant
16 intends those wrongful actions, and that the actions are not the
17 product of accident or mistake. United States v. Bryan, 524 U.S.
18 at 184, 191-92 (1998); United States v. Tarallo, 380 F.3d 1174,
19 1188 (9th Cir. 2004); United States v. Kay, 513 F.3d 432 (5th
20 Cir. 2007) see 15 U.S.C. § 78dd-2(a)(1), 78ff(a).

21 C. 18 U.S.C. § 1956(a)(2)(A): International
22 Transportation Promotion Money Laundering

23 To prove a violation of 18 U.S.C. § 1956(a)(2)(A), the
24 following elements must be proved beyond a reasonable doubt:

25 First, the defendants transported money from a
26 place in the United States, namely, Los Angeles
27 County, to places outside the United States; and
28

1 Second, the defendants acted with the intent to
2 promote the carrying on of unlawful activity, that is,
3 bribery of a foreign official in violation of the
4 FCPA.

5 See Ninth Circuit Model Jury Instructions No. 8.122 (2003)
6 [Transporting Funds to Promote Unlawful Activity].

7 D. 18 U.S.C. § 1957(a): Transactions In Criminally-
8 Derived Property

9 Title 18, United States Code, Section 1957(a) provides in
10 pertinent part:

11 (a) Whoever, in any of the circumstances set forth in
12 subsection (d), knowingly engages or attempts to
13 engage in a monetary transaction in criminally
14 derived property of a value greater than \$10,000
15 and is derived from specified unlawful activity,

16 [is guilty of an offense against the laws of the United States].

17 (d) The circumstances referred to in subsection (a) are-
18 (1) that the offense under this section takes place in
19 the United States or in the special maritime and
20 territorial jurisdiction of the United States; or

21 (2) that the offense under this section takes place
22 outside the United States and such special
23 jurisdiction, but the defendant is a United States
24 person (as defined in section 3077 of this title:
25 United States national, permanent resident, any person
26 within the United States, a sole proprietorship
27 composed of nationals or permanent resident aliens, a
28 corporation organized under the laws of the United
29 States).

30 E. 26 U.S.C. 7206(1): False Subscription of a Tax Return

31 To prove a violation of 26 U.S.C. 7206(1), the following
32 elements must be proved beyond a reasonable doubt:

33 First, the defendant made and signed a tax return
34 for the year 2004 that she knew contained false
35 information as to a material matter;

36 Second, the return contained a written
37 declaration that it was being signed subject to the
38 penalties of perjury; and

1 Third, in filing the false tax return, the
2 defendant acted willfully.

3 See Ninth Circuit Model Jury Instructions No. 9.37 (2003)

4 [Filing False Tax Return].

5 F. 18 U.S.C. § 1519: Creating False Entry In a Document
6 In a Federal Investigation

7 Title 18, United States Code, Section 1519 provides in
8 part:

9 Whoever knowingly alters, destroys, mutilates,
10 conceals, covers up, falsifies, or makes a false
11 entry in any record, document, or tangible object
12 with the intent to impede, obstruct, or influence
13 the investigation or proper administration of any
14 matter within the jurisdiction of any department
15 or agency of the United States or any case filed
16 under title 11, or in relation to or
17 contemplation of any such matter or case, shall
18 be fined under this title, imprisoned not more
19 than 20 years, or both.

20 V. EVIDENTIARY ISSUES

21 A. Summary Charts

22 The government will elicit summary testimony from
23 witnesses, including but not limited to Susan Shore, IRS-CI
24 Special Agent Steven Berryman, and FBI Special Agent Elizabeth
25 Rivas, who have reviewed accounting records, bank records, hotel
26 records, and other evidence in this case.

27 Federal Rule of Evidence 1006 provides that:

28 The contents of voluminous writings, recordings, or
photographs which cannot conveniently be examined in
court may be presented in the form of a chart, summary,
or calculation. The originals, or duplicates, shall be
made available for examination or copying, or both, by
the parties at reasonable time and place. The court
may order that they be produced in court.

1 A chart or summary may be admitted as evidence where the
2 proponent establishes that the underlying documents are
3 voluminous, admissible, and available for inspection. See
4 United States v. Meyers, 847 F.2d 1408, 1411-12 (9th Cir. 1988);
5 United States v. Johnson, 594 F.2d 1253, 1255-57 (9th Cir.
6 1979). While the underlying documents must be admissible, they
7 need not be admitted. See Meyers, 847 F.2d at 1412; Johnson,
8 594 F.2d at 1257 n.6. Summary charts need not contain the
9 defendant's version of the evidence and may be given to the jury
10 while a government witness testifies concerning them. See
11 United States v. Radseck, 718 F.2d 233, 239 (7th Cir. 1983);
12 Barsky v. United States, 339 F.2d 180, 181 (9th Cir. 1964).

13 Charts may be referred to during opening statement. The
14 purpose of an opening statement is to acquaint the jury with the
15 substance and theory of the case and to outline the forthcoming
16 proof so that the jurors may more intelligently follow the
17 testimony. See, e.g., United States v. Zielie, 734 F.2d 1447,
18 1455 (11th Cir. 1984) (relying on United States v. Dinitz, 424
19 U.S. 600, 612 (1976)). A summary witness may rely on the
20 analysis of others where she has sufficient experience to judge
21 another person's work and incorporate it as her own. The use of
22 other persons in the preparation of summary evidence goes to the
23 its weight, not its admissibility. United States v. Soulard,
24 730 F.2d 1292, 1299 (9th Cir. 1984); see Diamond Shamrock Corp.
25 v. Lumbermens Mutual Casualty Co., 466 F.2d 722, 727 (7th Cir.
26 1972) ("It is not necessary . . . that every person who assisted
27 in the preparation of the original records or the summaries be
28 brought to the witness stand").

1 The government will produce to the defense draft summary
2 charts that are anticipated to be the basis of some of its
3 witnesses' testimony. The government will also seek the
4 admission into evidence of some of those summary charts.
5 Additionally, the government has produced to the defense the
6 underlying bank, accounting, hotel, and other records used to
7 prepare the summary charts, tables and spreadsheets.

8 The introduction of summary witness testimony and summary
9 schedules has been approved by the Ninth Circuit in tax cases,
10 United States v. Marchini, 797 F.2d 759, 756-766 (9th Cir.
11 1986); United States v. Greene, 698 F.2d 1364, 1367 (9th Cir.
12 1983); Barsky v. United States, 339 F.2d 180 (9th Cir. 1964). A
13 summary witness may be used to help the jury organize and
14 evaluate evidence which is factually complex and fragmentally
15 revealed in the testimony of a multitude of witnesses. See
16 United States v. Baker, 10 F.3d 1374, 1411 (9th Cir. 1983).

17 **B. Evidence of the Routine Practices**

18 Evidence of the habit or routine practice, whether
19 corroborated or not, and regardless of the presence of
20 eyewitnesses, is relevant to prove that the conduct on a
21 particular occasion was in conformity with that habit or routine
22 practice. Fed. R. Evid. 406. In this case, the existence of
23 bribery-related activities on a routine basis is probative of
24 the conspiracy.

25 **C. Chain of Custody**

26 The test of admissibility of physical objects connected with
27 the commission of a crime requires a showing that the object is
28 in substantially the same condition as when the crime was

1 committed (or the object seized). Factors to be considered are
2 the nature of the article, the circumstances surrounding its
3 preservation and custody and the likelihood of intermeddlers
4 tampering with it. There is, however, a presumption of
5 regularity in the handling of exhibits by public officials.
6 United States v. Kaiser, 660 F.2d 724, 733 (9th Cir. 1981),
7 cert. denied, 455 U.S. 956 (1982), overruled on other grounds,
8 United States v. De Bright, 730 F.2d 1255, 1259 (9th Cir. 1984)
9 (en banc).

10 If the trial judge finds that there is a reasonable
11 possibility that the piece of evidence has not changed in a
12 material way, he has discretion to admit the evidence. Kaiser,
13 660 F.2d at 733.

14 The government is not required, in establishing chain of
15 custody, to call all persons who may have come into contact with
16 the piece of evidence. Gallego v. United States, 276 F.2d 914,
17 917 (9th Cir. 1960).

18 **D. Authentication and Identification**

19 "The requirement of authentication or identification as a
20 condition precedent to admissibility is satisfied by evidence
21 sufficient to support a finding that the matter in question is
22 what its proponent claims." Fed. R. Evid. 901(a).

23 Rule 901(a) only requires the government to make a prima
24 facie showing of authenticity or identification "so that a
25 reasonable juror could find in favor of authenticity or
26 identification." United States v. Chu Kong Yin, 935 F.2d 990,
27 996 (9th Cir. 1991), cert. denied, 511 U.S. 1035 (1994); See
28 also United States v. Blackwood, 878 F.2d 1200, 1202 (9th Cir.

1 1989); United States v. Black, 767 F.2d 1334, 1342 (9th Cir.),
2 cert. denied, 474 U.S. 1022 (1985).

3 Once the government meets this burden, "[t]he credibility or
4 probative force of the evidence offered is, ultimately, an issue
5 for the jury." Black, 767 F.2d at 1342.

6 **E. Certified Public Records**

7 At trial, the government intends to introduce certified
8 public records into evidence, including immigration records.

9 These records are self-authenticating. F.R.E. 902(4).

10 Moreover, such public records are not hearsay. F.R.E. 803(8).

11 **F. Co-conspirator Statements**

12 A statement is not hearsay if it is "a statement by a
13 co-conspirator of a party during the course and in furtherance
14 of the conspiracy." Fed. R. Evid. 801(d)(2)(E).

15 For Rule 801(d)(2)(E) to apply, it is not necessary that the
16 declarant be charged with the crime of conspiracy; any "concert
17 of action creates a conspiracy for purposes of the evidence
18 rule." United States v. Portac. Inc., 869 F.2d 1288, 1294 (9th
19 Cir. 1989), cert. denied, 498 U.S. 845 (1990).

20 A statement can be a co-conspirator declaration even if it
21 is subject to alternative interpretations. Garlington v.
22 O'Leary, 879 F.2d 277, 284 (7th Cir. 1989).

23 For a statement to be admissible under Rule 801(d)(2)(E),
24 the offering party must establish that: (a) the statement was in
25 furtherance of the conspiracy; (b) it was made during the life
26 of the conspiracy; and (c) the defendant and declarant were
27 members of the conspiracy. Bourjaily v. United States, 483 U.S.
28 171, 175 (1987); United States v. Smith, 893 F.2d at 1578.

1 The offering party has the burden of proving these
2 foundational facts by a preponderance of the evidence.
3 Bourjaily, 483 U.S. at 176; United States v. Schmit, 881 F.2d
4 608, 610 (9th Cir. 1989); United States v. Gordon, 844 F.2d
5 1397, 1402 (9th Cir. 1988).

6 Whether the offering party has met its burden is to be
7 determined by the trial judge, and not the jury. United States
8 v. Zavala-Serra, 853 F.2d 1512, 1514 (9th Cir. 1988).

9 The term "in furtherance of the conspiracy" is construed
10 broadly to include statements made to "induce enlistment or
11 further participation in the group's activities," to "prompt
12 further action on the part of conspirators," to "reassure
13 members of a conspiracy's continued existence," to "allay a
14 coconspirator's fears," and to "keep coconspirators abreast of
15 an ongoing conspiracy's activities." United States v.
16 Yarbrough, 852 F.2d 1522, 1535-1536 (9th Cir.) (citing cases),
17 cert. denied, 488 U.S. 866 (1988).

18 A co-conspirator declaration need not have been made
19 exclusively, or even primarily, to further the conspiracy.
20 Garlington v. O'Leary, 879 F.2d 277, 284 (7th Cir. 1989).

21 Statements made with the intent of furthering the conspiracy
22 are admissible whether or not they actually result in any
23 benefit to the conspiracy. United States v. Williams, 989 F.2d
24 1061, 1068 (9th Cir. 1993); United States v. Schmit, 881 F.2d at
25 612; United States v. Zavala-Serra, 853 F.2d 1512, 1516 (9th
26 Cir. 1988).

27 It is not necessary that the defendant was present at the
28 time the statement was made. Sendejas v. United States, 428

1 F.2d 1040, 1045 (9th Cir.), cert. denied, 400 U.S. 879 (1970).

2 Co-conspirator declarations need not be made to a member of
3 the conspiracy to be admissible under Rule 810(d)(2)(E). United
4 States v. Zavala-Serra, 853 F.2d at 1516.

5 Co-conspirator declarations can be made to government
6 informants and undercover agents. Id. (statements to informants
7 and undercover agents); United States v. Tille, 729 F.2d 615,
8 620 (9th Cir.) (statements to informants), cert. denied, 469
9 U.S. 845 (1984); United States v. Echeverry, 759 F.2d 1451, 1457
10 (9th Cir. 1985) (statements to undercover agent).

11 Once the existence of the conspiracy is established, only
12 "slight evidence" is needed to connect the defendant and
13 declarant to it. United States v. Crespo De Llano, 838 F.2d
14 1006, 1017 (9th Cir. 1987); United States v. Dixon, 562 F.2d
15 1138, 1141 (9th Cir. 1977), cert. denied, 435 U.S. 927 (1978).

16 The declaration itself, together with independent evidence,
17 may constitute sufficient proof of the existence of the
18 conspiracy and the involvement of the defendant and declarant in
19 it. Bourjaily, 483 U.S. at 181; Zavala-Serra, 853 F.2d at 1515.

20 The foundation for the admission of a co-conspirator
21 statement may be established before or after the admission of
22 the statement. If a proper foundation has not yet been laid,
23 the court may nevertheless admit the statement, but with an
24 admonition that the testimony will be stricken should the
25 conspiracy not be proved. United States v. Arbelaez, 719 F.2d
26 1453, 1469 (9th Cir.), cert. denied, 467 U.S. 1255 (1984);
27 United States v. Kenny, 645 F.2d 1323, 1333-1334 (9th Cir.),
28 cert. denied, 452 U.S. 920 (1981); United States v. Spawr

1 Optical Research Inc., 685 F.2d 1076, 1083 (9th Cir. 1982),
2 cert. denied, 461 U.S. 905 (1983).

3 The trial court has discretion to determine whether the
4 government may introduce co-conspirator declarations before
5 establishing the conspiracy and the defendant's connection to
6 it. United States v. Loya, 807 F.2d 1483, 1490 (9th Cir. 1987).

7 Co-conspirator statements fall within a "firmly rooted
8 hearsay exception." Therefore, if a statement is properly
9 admissible under Rule 801(d)(2)(E), no additional showing of
10 reliability is necessary to satisfy the requirements of the
11 Confrontation Clause. Bourjaily, 483 U.S. at 183-184;
12 Yarbrough, 852 F.2d at 1536; United States v. Knigge, 832 F.2d
13 1100, 1107 (9th Cir. 1987), amended, 846 F.2d 591 (9th Cir.
14 1988). In determining if these foundational facts have been
15 established, the court may consider hearsay and other evidence
16 not admissible at trial. See Fed. R. Evid. 104(a) and
17 1101(d)(1); Bourjaily, U.S. at 178-179. Moreover, co-
18 conspirators statements are not testimonial and do not violate
19 the confrontation clause. United States v. Allen, 425 F.3d
20 1231, 1235 (9th Cir. 2005).

21 **G. Tape Recordings**

22 When audio tapes and transcripts to be presented at trial
23 are in English, the recordings themselves are the evidence of
24 the conversation. See, e.g., United States v. Franco, 136 F.3d
25 622, 625 (9th Cir. 1998). The government plans to provide the
26 members of the jury with transcripts of the conversations in
27 question as an aide to the jury. However, the transcripts will
28 not be introduced into evidence. The government may establish

1 the identification of a voice through either direct or
2 circumstantial evidence. See United States v. Turner, 528 F.2d
3 143, 162 (9th Cir. 1975).

4 **H. Immunity Agreements**

5 One witness in the case, Susan Shore, has
6 an immunity and cooperation agreement with the government. It
7 is appropriate for the government to introduce the "truthful
8 testimony" provisions in such an agreement after a defendant has
9 attacked the credibility of a witness. See, e.g., United States
10 v. Necochea, 986 F.2d 1273, 1278-79 (9th Cir. 1993) (reference
11 to "truthful testimony" aspect of plea agreement permissible in
12 direct examination of witness whose credibility was challenged
13 in defendant's opening statement).

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