

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	
)	CR. NO. 2:10cr186-MHT
MILTON E. MCGREGOR,)	
THOMAS E. COKER,)	
ROBERT B. GEDDIE, JR.,)	
LARRY P. MEANS,)	
JAMES E. PREUITT,)	
QUINTON T. ROSS, JR.,)	
HARRI ANNE H. SMITH,)	
JARRELL W. WALKER, JR.,)	
and)	
JOSEPH R. CROSBY,)	
)	
Defendants.)	
_____)	

**UNITED STATES' MOTION TO ADMIT PEDAGOGICAL
SUMMARIES INTO EVIDENCE**

The United States, through undersigned counsel, hereby moves to admit Government Exhibits 1199-1206, which are pedagogical exhibits that summarize complex financial transactions that are central to this case. The Court previously held that while the exhibits did not meet the requirements for admission under Rule 1006 of the Federal Rules of Evidence as summaries of voluminous records, they could be used in the courtroom before the jury as instructional aids. Furthermore, the Court invited the parties to submit briefs in support or opposition to the admission of the exhibits.

In sum, these exhibits fairly summarize complex data that will already have been admitted into evidence and aid the jury to understand abstruse, yet critical, financial transactions. Moreover, the defense will have the opportunity to cross-examine the law-enforcement witness who will testify regarding the exhibits. Thus, because admission of the exhibits will not prejudice the defense, and

will aid the jury as references, they should be admitted.

Pedagogical exhibits, otherwise known as “demonstratives,” are typically illustrative aids that help “organize or aid the jury's examination of testimony or documents which are themselves admitted into evidence.” See 6 Margaret A. Berger, et al., *Federal Evidence*, § 1006.04 [2] (Joseph McLaughlin, ed.2000). Courts have the discretion to admit such material into evidence under Rule 611(a) of the Federal Rules of Evidence, which provides that “[t]he court shall exercise reasonable control over the mode and order of . . . presenting evidence so as to make the . . . presentation effective for the ascertainment of truth.” *Verizon Directories Corp. v. Yellow Book USA, Inc.*, 331 F. Supp. 2d 136, 139-40 (E.D.N.Y. 2004).

Indeed, courts have admitted pedagogical exhibits where the exhibits meet specific criteria. For example, in *United States v. Poschwatta*, 829 F.2d 1477 (9th Cir. 1987), *overruled on other grounds by Cheek v. United States*, 498 U.S. 192 (1991), the Ninth Circuit affirmed the admission of demonstratives where (1) the data presented in the demonstratives was already in evidence; (2) the defense did not challenge the data; (3) the defense had ample opportunity to cross-examine the witness who testified regarding the demonstratives; and (4) the charts at least arguably helped instruct the jury and “were a reasonable method of presenting evidence.” *Id.* at 1481 (“Although the better practice may have been for the court to allow the charts to be used as testimonial aids only, the district court did not abuse its discretion. . . .The figures in the government chart already were admitted into evidence and the defendant did not challenge the figures. Defendant also had a full opportunity to cross-examine the witness. The charts arguably contributed to the clarity of the presentation to the jury and were a reasonable method of presenting evidence.” (citations omitted)). Likewise, the Sixth Circuit has recognized in dicta that demonstratives may be admitted when they

are reliable and assist the fact-finder. *United States v. Bray*, 139 F.3d 1104, 1111-12 (6th Cir. 1998). In *Bray* the Sixth Circuit stressed that “in appropriate circumstances not only may such pedagogical device summaries be used as illustrative aids in the presentation of the evidence, but they may also be admitted into evidence even though not within the specific scope of Rule 1006. Such circumstances might be instances in which such pedagogical device is so accurate and reliable a summary illustration or extrapolation of testimonial or other evidence in the case as to reliably assist the factfinder in understanding the evidence, although not within the specific requirements of Rule 1006.” *Accord Verizon Directories*, 331 F. Supp. 2d at 144 (“All pedagogical devices that the court has seen or heard are admitted as evidence, except where the court has ruled some such evidence unsatisfactory in conception or execution, and it has been stricken. The devices clarified relevant evidence and issues and are accurate and reliable.”)

Government Exhibits 1199-1206 more than satisfy these criteria. As an initial matter, the exhibits reflect voluminous financial data that are already in evidence. Indeed, supporting documents attached to each of the demonstratives make clear on which admitted exhibits each demonstrative relies. Moreover, the demonstratives will prove extremely useful to jurors because the exhibits concisely illustrate and help clarify complex financial facts and transactions that are at the core of the Indictment. Without such teaching aids, the jurors will face great difficulty navigating the challenging financial terrain that underlies the charges. To the extent that the defendants seek to challenge the demonstratives’ factual accuracy, they will have ample opportunity to cross-examine the witness who will testify regarding the exhibits. Government Exhibits 1199-1206 will thereby help expedite the fact-finding process not only by providing jurors with a guide to the financial aspects of this case, but also by providing the defense with the opportunity to bolster

their case, and conversely weaken the government's, by disputing the demonstratives' reliability. Because the demonstratives therefore present critical evidence in a manner that is "effective for the ascertainment of truth," Fed. R. Evid. 611(a), they should be admitted so that the jurors may use them as references when they deliberate.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court admit Government Exhibit 119-1206.

Respectfully submitted,

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Division

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Acting Under Authority of 28 U.S.C. § 515

JACK SMITH, Chief

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By: /s/ Barak Cohen

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2011, I filed the foregoing with the Clerk of the Court, and provided notification to all counsel of record.

/s/ Barak Cohen_____

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