

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CR. NO. 2:10cr186-MHT
	)	
MILTON E. McGREGOR,	)	
	)	
Defendant.	)	

**MEMORANDUM REGARDING INADMISSIBILITY OF PEDAGOGICAL SUMMARIES THAT DO NOT MEET THE STANDARD OF FED. R. EVID. 1006**

In contrast to admissible Rule 1006 summaries, charts or summaries or similar items that are “pedagogical” or “demonstrative” should not be admitted into evidence, and should not go to the jury. *See, e.g., United States v. Janati*, 374 F.3d 263, 273 (4<sup>th</sup> Cir. 2004):

Rule 1006 summary charts are distinguishable from other charts and summaries that may be presented under Federal Rule of Evidence 611(a) to facilitate the presentation and comprehension of evidence already in the record. *See* Fed. R. Evid. 611(a); *see also* 4 Weinstein's Federal Evidence § 611.02[2][a][vii] (Joseph M. McLaughlin ed., 2d ed. 2003). These "pedagogical" devices are not evidence themselves, but are used merely to aid the jury in its understanding of the evidence that has already been admitted. *See* 6 Weinstein's Federal Evidence, *supra*, § 1006.04[2]. Thus, pedagogical charts or summaries may include witnesses' conclusions or opinions, or they may reveal inferences drawn in a way that would assist the jury. 6 *id.* § 1006.04[2], at 1006-10 to 1006-11. But displaying such charts is always under the supervision of the district court under Rule 611(a), and in the end they are not admitted as evidence.

*See also United States v. Taylor*, 210 F.3d 311, 315 (5<sup>th</sup> Cir. 2000):

[T]he use of charts as " 'pedagogical' devices intended to present the

government's version of the case" is within the bounds of the trial court's discretion to control the presentation of evidence under Rule 611(a). Such demonstrative aids typically are permissible to assist the jury in evaluating the evidence, provided the jury is forewarned that the charts are not independent evidence. Additionally, such charts are not admitted into evidence and should not go to the jury room absent consent of the parties. In contrast, Rule 1006 applies to summary charts based on evidence previously admitted but which is so voluminous that in-court review by the jury would be inconvenient.

(footnotes omitted); *United States v. Buck*, 324 F.3d 786, 791 (5<sup>th</sup> Cir. 2003) (following *Taylor*); *United States v. Harms*, 442 F.3d 367, 375 (5<sup>th</sup> Cir. 2006) (following *Buck* and *Taylor*).

The Court has held that the financial summary charts identified by the Government, Exhibits 1199-1206, did not meet the requirements of Rule 1006, but could be used merely as pedagogical devices. Therefore, under the authority cited above, these pedagogical summary charts may not be admitted into evidence and do not go back to the jury room.

The Court asked counsel for McGregor whether there was any objection to Exhibits 1199-1206 as pedagogical devices. McGregor does object to the inclusion of photographs of Mr. McGregor and the other defendants which are reflected on these summaries. The photographs are unfairly prejudicial and entirely unnecessary, as the jury is well aware of what the Defendants look like after spending the last three weeks in court with them.<sup>1</sup>

Defendant McGregor also requests to be heard on the Government's revised call

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<sup>1</sup> The Court previously prohibited the Government from using photographs of the defendants during its opening statement.

chart summaries which were identified on June 28<sup>th</sup>. [Exhibits 1223 – 1231].

s/ J. David Martin

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**CERTIFICATE OF SERVICE**

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