

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	NO. CR 14-0341 CRB
)	
ALEXANDER VASSILIEV, et al,)	
)	San Francisco, California
Defendants.)	Friday
)	April 17, 2015
)	10:00 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR
Official Reporter - US District Court
Computerized Transcription By Eclipse

P R O C E E D I N G S

1
2 **APRIL 18, 2015**

9:59 a.m.

3 (Defendant Vassiliev not present.)

4 (Defendant Siciliano present, out of custody.)

5 **THE CLERK:** Calling Case CR 14-0341, the United
6 States of America versus Alexander Vassiliev and Mauricio
7 Siciliano.

8 Appearances counsel.

9 **MR. LEUNG:** Wilson Leung and Damali Taylor for the
10 Government. Good morning, your Honor.

11 **THE COURT:** Good morning.

12 **MS. BOERSCH:** Good morning, your Honor. Martha
13 Boersch for Alexander Vassiliev, who is not present.

14 **MR. OLMOS:** Good morning, your Honor. Daniel Olmos
15 with Mauricio Siciliano. He is present before the Court.

16 **THE COURT:** Okay. Good morning. What is the status
17 of the -- there are three defendants in the indictment, is that
18 correct?

19 **MR. LEUNG:** That's correct, your Honor.

20 **THE COURT:** And what is their -- what's their status?

21 **MR. LEUNG:** The lead defendant, Mr. Sidorenko is at
22 liberty in his homeland -- well, in his adopted homeland of the
23 United Arab Emirates.

24 And Mr. Siciliano is obviously here.

25 And the second defendant, Mr. Vassiliev, is in custody in

1 Switzerland pursuant to a provisional arrest warrant. He has
2 been ordered extradited to the United States, but my
3 understanding is that he's appealing the order of extradition.

4 **THE COURT:** And the warrant was issued -- who issued
5 the warrant?

6 **MR. LEUNG:** It was issued here in the Northern
7 District of California. I forgot which particular judge. I
8 believe it was Magistrate Judge Vadas after -- actually, no.

9 The extradition package had been issued by Magistrate
10 Judge Vadas. I'm not sure which particular magistrate issued
11 the arrest warrant in connection with the indictment, your
12 Honor.

13 **THE COURT:** Okay. All right.

14 So this matter is on for a motion to dismiss. A number of
15 grounds have been urged. And the defendants are basically
16 charged with an honest services wire fraud and a bribery -- a
17 series of bribery charges. There are, I guess, what, five
18 counts more?

19 **MR. LEUNG:** Correct, your Honor.

20 **THE COURT:** Five counts. And the counts, you know,
21 allege a violation of honest services, alleges a violation of
22 bribery. There are some variations within the counts, but
23 essentially those are the nature of the charges.

24 What I'm going to do is read the facts as I have gleaned
25 them from the indictment and I'd like the Government to -- if

1 the Government believes that I've misstated it, I would like
2 you to make note.

3 The International Civil Aviation Organization has been a
4 United Nations specialized agency since 1944. The United
5 States has been a member of this agency since its formation.
6 One of the agency's responsibilities is standardizing machine
7 readable passports. The standards that this agency established
8 were used to determine which features would be utilized in
9 passports in a variety of countries, including the United
10 States.

11 The time period relevant to the indictment is 2005, 2010.
12 And during this time, the United States made annual monetary
13 contributions to the agencies exceeding \$10,000 per year.
14 Throughout this time period contributions from the United
15 States constituted 25 percent of the agency's annual budget.

16 Mr. Siciliano was an employee of this agency and was
17 specifically assigned to work in the Machine Readable Travel
18 Documents Program. Mr. Siciliano worked and resided in Canada,
19 where the agency that we've just discussed is headquartered.
20 He held a Canadian passport, but is actually a Venezuelan
21 national.

22 Mr. Sidorenko and Mr. Vassiliev were chairmen of a
23 Ukrainian conglomerate of companies that manufactured and
24 supplied security and identity products and their consortium,
25 how they acted, was called EDAPS. It's called the EDAPS

1 Consortium.

2 Mr. Sidorenko is a citizen of Ukraine, Switzerland and
3 St. Kitts and Nevis. Not of the United States. But he
4 primarily resided in Dubai during the relevant time period.

5 Mr. Vassiliev also resided in Dubai, but he is a citizen
6 of Ukraine and St. Kitts and Nevis. He's not an American
7 citizen either.

8 And, of course, the company is not -- I mean, the agency
9 is not an American agency.

10 The indictment alleges that Mr. Sidorenko and
11 Mr. Vassiliev provided money and other things of value to
12 Mr. Siciliano in exchange for Mr. Siciliano using his position
13 at this agency to benefit EDAPS, as well as Sidorenko and
14 Vassiliev personally. That is to say, the allegation is that
15 the -- that Mr. Sidorenko and Vassiliev, Ukrainians, provided
16 things of value to Mr. Siciliano in Canada in exchange for
17 Mr. Siciliano using his position at a place in Canada to
18 benefit an Ukrainian company, as well as these -- Mr. Sidorenko
19 and Mr. Vassiliev personally, these Ukrainians personally.

20 Mr. Siciliano sought to benefit the Ukrainian consortium
21 by introducing and publicizing EDAPS to Government officials
22 and entities, by arranging EDAPS to appear at the agency's
23 conferences, and by endorsing the Ukrainian consortium to other
24 organizations and contacts.

25 The indictment also alleges that Mr. Siciliano assisted

1 Mr. Vassiliev's girlfriend in obtaining a visa to travel to
2 Canada in 2007.

3 Around the same time Mr. Siciliano also considered
4 arranging to obtain a visa for Mr. Sidorenko by hiring
5 Mr. Sidorenko as a consultant for this agency.

6 Additionally, the three defendants arranged to have
7 Mr. Siciliano's son sent to Ukraine to work for Mr. Sidorenko.

8 During there time period, Mr. Siciliano wrote an email
9 message to Mr. Vassiliev seeking payment of dues via wire
10 transfer to a Swiss bank account.

11 A few years later, Mr. Siciliano sent an email advising
12 Mr. Vassiliev and Mr. Sidorenko that they owed him three months
13 payment. A few weeks after this email, Mr. Siciliano sent
14 another email to Mr. Vassiliev referencing future projects,
15 receiving the fruits of their marketing agreement, and
16 inquiring about picking up his dues.

17 All of those activities, everything that I have said,
18 occurred outside the United States of America between these
19 three defendants, who, by the way, aren't United States
20 citizens, who never worked in the United States and whose use
21 of the wires did not reach or pass through the United States.

22 Okay. That's what I get out of the indictment. Anything
23 wrong?

24 **MR. LEUNG:** The only correction I make, your Honor,
25 is that Mr. Siciliano's son actually went to Dubai and not

1 Ukraine for the job.

2 **THE COURT:** Great. Okay. I will take that into
3 account. Dubai.

4 Now, when last I looked, the Ukraine, what's left of it,
5 was not a state of the United States.

6 That's correct, right?

7 **MR. LEUNG:** Correct, your Honor.

8 **THE COURT:** Okay. So my first reaction in reading
9 this indictment is that your office is to be congratulated
10 because, apparently, you have reduced crime in the Northern
11 District of California, and indeed in the United States of
12 America, to such a point that you are using resources of your
13 office to go after criminal activity that occurs in foreign
14 countries and for that -- that's a rather interesting concept
15 that, apparently, you thought this is a good use of assets and
16 resources of the United States Attorney's Office for the
17 Northern District of California.

18 So it occurred to me: Is this statute or statutes, the
19 honest services statute and the bribery statute,
20 extraterritorial? And, fortunately, the Supreme Court has
21 addressed this issue. As recently as 2010, they have said --
22 Justice Scalia writing the opinion for a unanimous court, I
23 might add, said that you just look at the statute. See what
24 Congress said. Did Congress say it should be applied
25 extraterritorial?

1 And you would concede, wouldn't you, Mr. Leung, there is
2 nothing in the statute that talks about extraterritorial
3 application, is there?

4 **MR. LEUNG:** There is nothing in the text of 666 or
5 1343.

6 I would submit that the legislative history of 1343
7 suggests that it was meant to be applied extraterritorially.

8 **THE COURT:** But you know there are those people, like
9 judges, who look first to the statute. There is nothing in the
10 statute.

11 **MR. LEUNG:** That is correct, your Honor.

12 **THE COURT:** Okay. So then if there is nothing in the
13 statute, that doesn't preclude necessarily the application of
14 the statute extraterritorial, but we have to see whether or not
15 that's consistent with the general purpose of the statute.

16 **MR. LEUNG:** Correct, your Honor.

17 **THE COURT:** And it's your view that since the
18 Government contributes some funds to this agency, which is
19 involved in national security -- I guess we can talk about it
20 in open court, can't we?

21 **MR. LEUNG:** Yes, your Honor.

22 **THE COURT:** Okay. I didn't want to clear the Court
23 because of this strong national security interests that
24 apparently are at issue here.

25 But because they give money to this agency which is

1 engaged in activities, some of which may impact national and
2 international security arrangements, that's the nexus for the
3 United States Government to apply the statute in an
4 extraterritorial way, is that correct?

5 **MR. LEUNG:** That's certainly one of the key --

6 **THE COURT:** That's your first point. We'll get to
7 the other points, but let's deal with this first point first.

8 And so it occurred to me by that logic, the United States
9 being a very generous country, gives a lot of money to a lot of
10 foreign countries. They give over a billion dollars to Egypt.
11 They give vast sums of money to Mexico. They give sums of
12 money to many, many countries all over the world.

13 And then I wonder by their giving some money to a foreign
14 country, does that then give them jurisdiction to apply
15 statutes, such as the honest services statute, to individuals
16 who are operating in that country or outside the United States?

17 For example, can you prosecute -- you give some money,
18 let's say, to Mexico and -- for programs involving security in
19 Mexico, the border. Let's make it right down your alley. And
20 it turns out that somebody who is running one aspect of that
21 program in Mexico, a Mexican national, favors his
22 brother-in-law and takes a bribe from his brother-in-law to get
23 his brother-in-law's children a job somewhere.

24 Are you suggesting that the United States of America under
25 an honest services theory could prosecute the individual in

1 Mexico?

2 **MR. LEUNG:** Under honest services, there would have
3 to be the use of a mailing or wire. Under 666 I believe those
4 facts would support a prosecution, if the funding were made
5 pursuant to a federal program.

6 **THE COURT:** So, in other words, if I -- it's your
7 view, your view, that the United States of America can police
8 foreign companies in the exercise of their operation involving
9 foreign citizens on matters unrelated to the program which the
10 United States gave money for -- that is, for the specific
11 purpose of the program -- and that they then have jurisdiction
12 to act in that regard.

13 **MR. LEUNG:** It is, your Honor, if it is pursuant to a
14 federal program.

15 **THE COURT:** And do you have one case that says that?

16 **MR. LEUNG:** We have *Campbell*, your Honor, which was a
17 District of Columbia case in which an Australian national was
18 charged with bribery under 666 for conduct in Afghanistan
19 relating to his work with a private contractor that received
20 aid from the US AID.

21 **THE COURT:** And the program involved was a program
22 for the benefit of the United States, is that correct, in that
23 case?

24 **MR. LEUNG:** It was a program through which the United
25 States policy interests were advanced, your Honor.

1 **THE COURT:** So if there is ever, ever a policy
2 interest of the United States of America in anything a foreign
3 country -- that occurs in a foreign country, the United States
4 Attorney's Office for the Northern District of California will
5 vindicate the way the laws apply -- the honest services law
6 applies. You're going to wipe out bribery and honest services
7 throughout the world. I want to congratulate you for that.

8 And I never in my life, in 50 years of criminal practice,
9 seen a more misguided prosecution as the one that you've
10 brought. I just don't even get it. I don't get it, how you
11 can -- how you can use resources of the United States
12 Attorney's Office to prosecute some foreign nationals involved
13 in a foreign company, engaged in conduct which was foreign, on
14 doing things that weren't directly related to the contribution
15 of the United States to that entity.

16 **MR. LEUNG:** Your Honor --

17 **THE COURT:** Who did you get permission from to bring
18 this prosecution? Anybody in Washington?

19 **MR. LEUNG:** We -- this was a Northern District of
20 California prosecution, your Honor.

21 **THE COURT:** Did you get permission from anyone in the
22 Department of Justice in Washington DC to bring this
23 prosecution?

24 **MR. LEUNG:** It was not required. We coordinated --

25 **THE COURT:** It implicates foreign countries, doesn't

1 it?

2 **MR. LEUNG:** It does, your Honor.

3 **THE COURT:** And you didn't choose fit to ask the
4 Department of Justice whether in their smarter sentencing,
5 smarter criminal law enforcement program this is a good use of
6 your resources?

7 **MR. LEUNG:** We received office approval. We also
8 coordinated with the State Department, your Honor.

9 **THE COURT:** Pardon?

10 **MR. LEUNG:** We also coordinated with the State
11 Department.

12 **THE COURT:** In other words, it was the State
13 Department, and that was whether or not this person had
14 diplomatic immunity. I'm not even going to address that.
15 That's another issue entirely.

16 But you're telling me this was a decision of the United
17 States Attorney to bring this prosecution without the knowledge
18 of the Department of Justice.

19 **MR. LEUNG:** It was a duly authorized decision by this
20 office to do so.

21 **THE COURT:** My suggestion, since I'm dismissing this
22 indictment, is that you bring an appeal, right away. I would
23 be very interested in what the Ninth Circuit has to say about
24 this, whether they think that there is enough of a nexus to
25 apply statutes, such as the bribery statute and the honest

1 services statute, to the conduct that's alleged in this
2 particular case.

3 **MR. LEUNG:** Understood, your Honor.

4 Would the Court like to hear further argument just to
5 complete the record?

6 **THE COURT:** Sure. You can -- anything I've said, you
7 can respond to. I invite you to do that.

8 **MR. LEUNG:** Can we rely on the briefing --

9 **THE COURT:** You can say whatever -- you've now heard
10 my views. If you disagree with them, if you have some
11 explanation, you can certainly give it to me now, if it's not
12 in your papers. You don't have to recite what's in your
13 papers, but now you've heard what my views are of this.

14 **MR. LEUNG:** Understood.

15 **THE COURT:** My view is these statutes aren't intended
16 to apply extraterritorially to the conduct that's alleged in
17 this case. And just -- and the very fact that you get up and
18 say: Well, we could have prosecuted somebody in Mexico if
19 American interests are implicated, or we can prosecute somebody
20 in Canada -- by the way, we could phone the Royal Canadian
21 Mounted Police. They actually have law enforcement in Canada.
22 If you're so concerned about the way some Canadians are
23 operating with a Canadian-based company in dealing with
24 Ukrainians, you can always phone the Mounties and they will
25 investigate it if they think it's appropriate.

1 But if you'd like to respond to anything I said, go right
2 ahead.

3 **MR. LEUNG:** Well, your Honor, we respectfully submit
4 that under *Bowman*, certainly, the 666 statute --

5 **THE COURT:** The 1922 case?

6 **MR. LEUNG:** Correct, your Honor.

7 **THE COURT:** Okay. Got it.

8 **MR. LEUNG:** It has never been overruled. The Ninth
9 Circuit applied in it a non-published opinion granted as
10 recently as November 26, 2014.

11 **THE COURT:** There are really no limits to your
12 argument. There are just no limits. I don't understand where
13 you really draw the line.

14 The United States never gives anything to anybody unless
15 there is some interest in it. And you're saying whenever they
16 give something to somebody, they can prosecute them, even
17 though everything happens in some other place.

18 **MR. LEUNG:** As the Second Circuit in *Bahel*
19 distinguished, it's -- there is a difference between a federal
20 program which advanced a U.S. policy interest versus paying,
21 say, a contractor to buy the services to pay for goods.

22 **THE COURT:** This program, this program -- there is no
23 allegation here that somehow the program failed or was in
24 jeopardy by virtue of -- by virtue of this purportedly
25 allegedly corrupt person giving a contract or favoring somebody

1 in Ukraine. That's not -- that's not what's alleged here.

2 **MR. LEUNG:** That's correct, your Honor, but there is
3 no requirement that the program fail or be jeopardized by the
4 corrupt conduct.

5 Rather, the statutory interest recognized by the Supreme
6 Court is that the United States has an interest to ensure that
7 the money that it distributes pursuant to federal programs are
8 free from corruption.

9 **THE COURT:** That's right. So if you give -- your
10 argument is, you give a dollar to some foreign entity, you can
11 then prosecute people who engage -- who are involved with that
12 foreign entity even though there are -- even though they do it
13 all abroad and do it in connection with something else. They
14 don't take the dollar. Something else. You say: Well, we can
15 prosecute them for honest services.

16 How do you actually -- do you really think this is going
17 to fly anywhere?

18 Anyway, I invite you, I invite you to get the judgment of
19 the Ninth Circuit. Obviously, I'll be bound by it.

20 **MR. LEUNG:** Thank you, your Honor.

21 **THE COURT:** So the next question -- so I'm granting
22 the motion to dismiss.

23 Very powerful advocacy on your parts. I want to
24 congratulate you for your oral argument today.

25 (Laughter.)

1 **THE COURT:** The issue, I think, is what to do about
2 this warrant that's out there.

3 **MS. BOERSCH:** We would ask that it be quashed.

4 **MR. OLMOS:** It's a joint request, your Honor.

5 **THE COURT:** Granted.

6 And I'm going to write something so you have my reasons,
7 and you take it right up to the Ninth Circuit and see what they
8 have to say about it. And I don't even think you have to ask
9 Washington, right?

10 **MR. LEUNG:** I think we do in this case, your Honor.

11 **THE COURT:** Really? I mean, you brought the
12 indictment without asking them. I don't know why you can't
13 appeal it without asking them. But you follow whatever
14 procedure you think is appropriate.

15 And you please put in the comment that I actually think
16 this is a serious waste of scarce resources. If you're not
17 addressing crime in the Northern District of California, you're
18 not doing your job. And I think this -- I think this
19 prosecution is really a -- brings into serious question the
20 manner in which decisions are made by the United States
21 Attorney for the Northern District of California.

22 Okay.

23 **MR. OLMOS:** Your Honor, I have one administrative
24 issue and that is, I would like the Court to order my client's
25 passport and other items that were seized returned today.

1 **THE COURT:** Forthwith. Give it to him forthwith.

2 **MR. OLMOS:** He is also required to wear a GPS monitor
3 on his ankle --

4 **THE COURT:** That requirement is lifted.

5 **MR. OLMOS:** Thank you, your Honor.

6 **MS. BOERSCH:** Your Honor, with respect to
7 Mr. Vassiliev, since he has been sitting in a Swiss jail for
8 eight months, I ask that the order quashing the warrant be
9 issued immediately.

10 **THE COURT:** I think I would like to have a proposed
11 form of order listing all these things. Please show it to the
12 United States Attorney.

13 **MR. LEUNG:** Your Honor, would you consider staying
14 the order while we --

15 **THE COURT:** No.

16 **MR. LEUNG:** Thank you.

17 **MS. BOERSCH:** Thank you, your Honor.

18 **MR. OLMOS:** Thank you, your Honor.

19 **THE COURT:** Go right to the Ninth Circuit. Get a
20 stay, if you think that's an appropriate use of your resources.

21 (Proceedings adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Friday, April 17, 2015