# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	No. 08-231 (EGS)
THEODORE F. STEVENS,	)	
	)	
Defendant.	)	
	)	

## GOVERNMENT'S OPPOSITION TO DEFENDANT'S FOURTH MOTION TO STRIKE

The United States of America, by and through its undersigned attorneys, respectfully submits this opposition to the fourth motion to strike filed in just the past four days by defendant Theodore F. Stevens. This time, the defense asks the Court to strike evidence demonstrating that he received and failed to disclose a \$2,700 chair received from Bob Persons; a \$29,000 hand-sculpted, bronze statue that is affixed on his front deck and adorned with lights; and a \$3,200 hand-designed, hand-constructed, stained glass window received from Bob Penney and his wife that – to this day – sits prominently in the front window of defendant's house.

Despite receiving ample notice and discovery concerning the gifts – both before his indictment and after – defendant protests that the indictment does not fairly identify them.

Defendant's argument lacks merit, and his accusation that the government has engaged in "strategic gamesmanship" (see Def. Motion at 5), is as ironic as it is wrong. Indeed, the only game playing here is defendant's piecemeal filing of four separate motions that easily could have been consolidated into a single motion. The evidence on these gifts is properly before the jury; defendant received more than adequate notice; and defendant's motion should be denied.

Defendant does not dispute that, during pre-trial discovery, he received "documents referencing each of these three items." Def. Motion at 2. Defendant's next statement, however – that "the defense did not know until the trial began whether the government would seek to convict [defendant] on the basis of these three items" (id.) is disingenuous at best, for the reasons set forth below.

#### The \$2,700 Brookstone Massage Chair That Still Sits In Defendant's House In Α. Washington, D.C.

On September 8, 2008, the government filed a proposed statement of the case. Dkt. 58. The statement specifically refers to certain gifts, including the Brookstone massage chair and the stained glass window. 1 Id. at 2.

Long before this filing, however, defendant was placed on notice that the government's investigation was focusing in part on the chair he received from Bob Persons and the gifts he received from Bob Penney and the Kenai River Sportfishing Association. Prior to his indictment, the defense participated in numerous discussions with the government and Senate Counsel concerning the voluntary production of documents relating to the government's investigation. On October 2, 2007, for instance, the government sent a letter to the defense seeking specific electronic mail, including: (1) "[a]nything of value provided by Bob Persons to Senator Stevens, including any and all electronic mail relating to a chair provided by Persons in or around 2001"; and (2) "[a]nything of value received by [defendant] in connection with the

Although the fish statue was not specifically mentioned in this filing, defendant (as discussed below) knew it was a gift which, in the government's position, should have been disclosed on his annual financial disclosure forms.

Kenai River Classic, the Kenai River Sportfishing Association, and/or Bob Penney." Exhibit 1 at 2.

In response to this request, defense counsel produced a number of e-mails concerning the Brookstone chair, including documents that have been used as trial exhibits in this case. See GX 451; 445; 447. The government likewise produced the documents it received from Brookstone. as well as a certification of business records. Moreover, as indicated during the trial testimony of Bob Persons, defendant met with Persons just three days prior to Persons' appearance before a grand jury in Washington, D.C. During that meeting, Persons and defendant discussed the fact that defendant received the chair from Persons. Defendant received Persons' grand jury testimony in advance of trial, which covers the massage chair in substantial detail. In early August 2008, defendant also received copies of the search warrant affidavit relating to the search of defendant's residence. The circumstances surrounding the massage chair is set forth in the affidavit. See 7/27/07 Search Warrant Affidavit ¶ 143.<sup>2</sup>

Prior to trial, the parties exchanged exhibit lists. The government's exhibit list contained a number of documents relating to the Brookstone chair, including DX 234 (invoice and internal shipment records from Brookstone). The defense not only knew of this exhibit, they initially refused to stipulate to its authenticity and admissibility in its original form. The parties thereafter

The government further notes that, in response to defendant's motion to strike concerning the generator (see Dkt. 182; 187; 189), the generator is discussed in exceptional detail in the sealed search warrant affidavit previously provided to the Court, including the repairs that were made to the generator by Jack Billings in 2005. See 7/27/07 Search Warrant Affidavit ¶¶ 49-51, 107, 136, 156 & Items to be Seized List (identifying generator). Defendant cannot claim surprise that this thing of value is also included in the indictment as one of the items received by Bill Allen and VECO that defendant failed to disclose. The generator was further discussed in the government's proposed statement of the case. See Dkt. 53 at 2.

negotiated this pre-trial objection and eventually reached a compromise concerning the Brookstone documents. See Exhibit 2 (series of letters and e-mails concerning the Brookstone documents).

The indictment, which defendant alleges is vague, identifies Person A as the owner of a retail business located in the State of Alaska and a close personal friend of defendant. Indictment ¶ 5. The indictment then alleges that Person A assisted defendant and Bill Allen and VECO with respect to the Girdwood renovations. Id. ¶ 39, 40. Count 2 of the indictment specifically alleges that defendant received reportable things of value from Person A that should have been disclosed on his 2001 Financial Disclosure Form. Id. ¶ 52. As the Court has previously found, this more than suffices in terms of notice – having previously rejected defendant's motion for a bill of particulars and defendant's motion to dismiss the indictment on constitutional vagueness grounds. See 9/10/08 Minute Order.

#### The \$3,200 Stain Glass Artwork That Is Displayed Prominently In The Front В. Window Of Defendant's Girdwood Residence

Like the Brookstone massage chair, defendant feigns surprise that the stained glass window is one of the benefits specifically charged in the indictment. The stained glass was specifically disclosed in our proposed statement of the case, however, which was filed several weeks before the start of trial.

Furthermore, in response to the government's October 2, 2007, request for documents (see Exhibit 1), defendant disclosed e-mails reflecting the fact that the Stevenses had received the stained glass window from the Penneys, and that the window was made by a local artist named Jim Kaiser. Again, these documents were used during trial as exhibits. GX 452; GX 454.

During pre-trial discovery, defendant also received from the government numerous documents concerning the stained glass, including several grand jury exhibits, documents provided by Bob Penney and his company, PENCO, and documents from the artist, Jim Kaiser. Specifically, the government provided detailed invoices from PENCO concerning the purchase of the window, a copy of a check from PENCO reflecting partial payment for the window, a paper template of the window that Kaiser used to create the design, and a picture of the window taken by the artist. Defendant also received photographs of the stained glass that were taken during the execution of the search warrant. Certain of these documents produced by the government were admitted at trial. E.g., GX 207; GX 209.

The indictment identifies Person B as the owner of a real estate business located in the State of Alaska and a close personal friend of defendant. Indictment ¶ 6. Count 2 of the indictment specifically alleges that defendant received reportable things of value from Person B that should have been disclosed on his 2001 Financial Disclosure Form. Id. ¶ 52.

#### C. The \$29,000 Hand-Crafted, Bronze Statute That Is Affixed **To Defendant's Front Porch**

Defendant also argues that he had no idea that the fish statue was a gift he received that, in the government's view, should have been disclosed on his financial disclosure forms.<sup>3</sup> Again, the government, in the search warrant affidavit, specifically disclosed the existence of the fish statue, where it was located, and how it was purchased. See 7/27/07 Search Warrant Aff. ¶ 62 &

Defendant specifically argues that he had no notice of the fish statue until the testimony of Jerie Best. That assertion is simply incorrect. Defendant argued that the statue was purchased by businessmen for the Ted Stevens library during a pre-trial hearing on September 18, 2008. Defendant, moreover, did not move to strike Ms. Best's testimony when she addressed the sculpture.

n.11; see also id. at ¶80 (discussing rope lighting on the fish sculpture). Through pre-trial discovery the parties also exchanged numerous photographs and documents relating to the fish statue, including numerous documents that were on the parties' respective exhibit lists. Many of these documents have been entered into the record at trial. E.g., GX 239, GX 1021. Defendant, for instance, produced a number of documents relating to a potential library and material provided to him from the Kenai River Sportfishing Association ("KRSA"). The government likewise produced numerous documents concerning the fish statue from KRSA, VECO, and other sources. Collectively, these documents reflect when the statue was sculpted, the individual who did the sculpture, when it was auctioned off, the individuals who purchased the statute, and checks used to pay for the statue. The indictment itself – as defendant correctly notes – refers to gifts received by defendant in 2002 from Bill Allen, VECO, Person B, and others. Indictment ¶ 58. The "others" identified in the indictment refers to the consortium of other individuals who, along with Allen and Person B, acquired the statue that was then given to defendant.

Moreover, during a pre-trial hearing, the parties argued about whether the fish statue was a gift that should have been reported by defendant on his financial disclosure forms or whether it was just another "loan," this time for the yet-to-be-built library. 9/18/2008 Hearing Tr. at 53. The Court concluded that it would need to hear testimony on the issue. Id.

By placing exhibits on his list that addressed the existence of the alleged library, defendant was fully aware of this issue based on prior discovery and communications with the government. Contrary to defendant's suggestion (see Def. Motion at 5), the fish sculpture was no "mystery" to defendant. If he truly thought so, then he would not have known to include the exhibits on his pre-trial disclosures.

### **ARGUMENT**

Defendant's motion re-asserts several of the same threadbare arguments previously raised and rejected in his motion to dismiss on vagueness grounds and in his motion for a bill of particulars. On the face of the indictment alone, it is readily apparent that the government's allegations are sufficient in all respects and not at all vague or ambiguous. With its detailed particularity, the indictment easily meets the governing standard for determining whether an indictment charging a violation of § 1001 is legally sufficient:

> The Fifth Amendment guarantees that prosecutions for serious crime may be instituted only by indictment. In implementing this constitutional guarantee the Supreme Court has recognized that the indictment as a charging instrument has two central purposes to apprise the accused of the charges against him so that he may adequately prepare his defense, . . . and to describe the crime with which he is charged with sufficient specificity to enable him to protect against future jeopardy for the same offense. It has also been recognized that in order to satisfy the first purpose of giving the defendant notice of the charge against him the indictment must allege the essential elements of the offense.

United States v. Haldeman, 559 F.2d 31, 123 (D.C. Cir. 1976) (footnote and internal citations omitted). See also Hamling v. United States, 418 U.S. 87, 117 (1974) ("[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.").

The government does not revisit the points previously addressed in our prior opposition briefs, but incorporates by reference those arguments here. See Govt. Opp. to Def. Motion to Dismiss the Indictment as Unconstitutionally Vague at 5-12 (Dkt. 30); Govt. Response to Def. Motion for Bill of Particulars (Dkt. 31). It suffices to say that, given the level of specificity in the indictment, the substantial discovery provided in this matter, and all of the specific times when these gifts were discussed, defendant cannot seriously claim he is confused about the things of value for which he failed to disclose on his mandatory financial disclosure forms.

## **CONCLUSION**

For the foregoing reasons, defendant's motion to strike should be denied.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of October, 2008, I caused a copy of the foregoing "GOVERNMENT'S OPPOSITION TO DEFENDANT'S FOURTH MOTION TO STRIKE " to be delivered electronically to the following:

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> /s/ Edward P. Sullivan