

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

Case No. 8:03-cr-77-T-30TBM

GHASSAN ZAYED BALLUT

ORDER

This matter is before the Court on the Report and Recommendation of the Magistrate (Dkt. #503) on Defendant Ghassan Ballut's Ex Parte Motion for Allocation of Funds under the Criminal Justice Act to Compensate Arabic and Hebrew Interpreters of Discovery (Dkt. #463) and Defendant Ghassan Ballut's Ex Parte Motion to Amend Order Allocating C.J.A. Funds to Compensate Arabic and Hebrew Interpreters of Discovery (Dkt. #501). On April 9, 2004, the Magistrate rendered his report and recommendation that the Motions be granted. No party has objected to the Magistrate's recommendations, findings, or conclusions.

Upon consideration, the Magistrate's recommendations, findings, and conclusions are adopted, approved, and incorporated into this Order, which is attached as Addendum "A" to this Order. The Motions (Dkts. #463, 501) are **GRANTED** subject to the terms and conditions in the Magistrate's Report and Recommendation and the following terms and conditions.

Ballut may hire the proposed three interpreters (two Arabic and one Hebrew interpreter). The interpreters hired shall bill their services at the rate of up to \$329.00 per day and no more than \$1,645.00 per week (working five days a week). Unless good cause is

shown, the work product created by these interpreters may be shared with all Defendants. The total cost through the projected start of the trial shall not exceed \$177,660.00 without prior approval of this Court.¹

Because of the expected length of the discovery period in this case, and the anticipated hardship on persons providing services pursuant to subsection (e) of the Criminal Justice Act for such a period without compensation, in accordance with paragraph 3.06 A of the Guidelines for the Administration of the Criminal Justice Act, the following procedures for interim payments shall apply during the course of the paralegal's employment in this case:

1. Submission of Vouchers

Persons providing services under subsection (e) shall submit to the court clerk, once each month, an interim CJA Form 21, "Authorization and Voucher for Expert and Other Services." Compensation earned and reimbursable expenses incurred during a month shall be claimed on an interim voucher submitted no later than the fifth day of the following month, or the first business day thereafter. The first interim voucher submitted shall reflect all compensation claimed and reimbursable expenses incurred from the date on which your services were first retained to April 30, 2004, and shall be submitted no later than May 5, 2004; thereafter, the vouchers shall be submitted each month. Claimants shall complete Item 17 of each interim voucher submitted. Each voucher shall be assigned a number when processed for payment. Interim vouchers shall be submitted in accordance with this schedule

¹This Court agrees that the decision on whether these interpreters' services are needed after the start of this trial should be deferred until a time closer to the start of trial.

even though little or no compensation or expenses are claimed for the respective period. All interim vouchers shall be supported by detailed and itemized time and expense statements. Chapter III of the Guidelines for the Administration of the Criminal Justice Act outlines the procedures and rules for claims by persons providing services pursuant to subsection (e) and should be followed regarding each voucher.

The Court will review the interim vouchers when submitted, particularly with regard to the amount of time claimed, and will authorize compensation to be paid for two-thirds of the approved number of hours. This compensation will be determined by multiplying two-thirds of the approved number of hours by the applicable rate. The Court will also authorize for payment all reimbursable expenses reasonably incurred.

Every three (3) months, counting from the submission date for the first interim voucher, until the conclusion of the services, claimant shall submit a cumulative interim voucher seeking payment of the outstanding one third balance withheld from all earlier interim compensation paid out during the preceding three-month interval, as well as payment for services rendered during the last interim period of the interval. The cumulative interim voucher shall be labeled as such and shall set forth in detail the time and expenses claimed for the entire interval, including all appropriate documentation. A statement shall be attached to the cumulative interim voucher, which reflects all compensation and reimbursement previously received, as well as the net amount remaining to be paid at the end of the interval. After reviewing the cumulative interim voucher, I will submit it to the chief judge of the

circuit, or his or her delegate, for review and approval. At the conclusion of the period during which you provide services in this case, you shall submit a final cumulative voucher seeking payment of the one-third balance withheld from the interim vouchers processed during the final interval, as well as payment for services rendered during the last interim period of the interval.

2. Reimbursable Expenses

Person providing services pursuant to subsection (e) may be reimbursed for out-of-pocket expenses reasonably incurred incident to the representation. The following guidelines may be helpful:

a. Case related travel by privately owned automobile should be claimed at the rate of [\$.36] cents per mile, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than privately owned automobile should be claimed on an actual expense basis. Air travel in "first class" is prohibited. Counsel and persons providing service under the CJA are encouraged to contact the clerk for air travel authorization at government rates.

b. Actual expenses incurred for meals and lodging while traveling outside of the city of the interpreter's residence in the course of this representation must conform to the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations. For specific details concerning high cost areas, counsel should consult the clerk.

c. Telephone toll calls, telegrams, photocopying, and photographs can all be reimbursable expenses if reasonably incurred. However, general office overhead, such as rent, secretarial help, and telephone service, is not a reimbursable expense, nor are items of a personal nature.

3. Further Questions or Guidance

Answers to questions concerning appointment under the Criminal Justice Act can generally be found in (1) 18 U.S.C. § 3006A; (2) the Plan of the United States District Court for the Middle District of Florida, available through the clerk, and (3) Guidelines for the Administration of the Criminal Justice Act, published by the Administrative Office of the U.S. Courts, also available through the clerk. Should these references fail to provide the desired clarification or direction, counsel should address their inquiry directly to me or my staff.

With respect to counsel's request to exceed the fee cap, this case will be extended and complex and may require greater compensation than normal to provide fair compensation. Accordingly, the Court recommends that the Chief Judge of the Eleventh Circuit waive the compensation maximum provided by the Criminal Justice Act.²

It is **ORDERED AND ADJUDGED** that:

1. The Report and Recommendation of the Magistrate is **ADOPTED, APPROVED, and INCORPORATED by reference** into this Order.

²This approval does not override the review of vouchers for reasonableness as required by the Criminal Justice Act.

2. Defendant Ghassan Ballut's Ex Parte Motion for Allocation of Funds under the Criminal Justice Act to Compensate Arabic and Hebrew Interpreters of Discovery (Dkt. #463) and Defendant Ghassan Ballut's Ex Parte Motion to Amend Order Allocating C.J.A. Funds to Compensate Arabic and Hebrew Interpreters of Discovery (Dkt. #501) are **GRANTED** as detailed in this Order.

3. This Court requests initial approval from the Chief Judge of the Eleventh Circuit or his designee in amount that shall not exceed \$177,660.00 for three interpreters.

DONE and ORDERED in Tampa, Florida, on April 16, 2004.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

APPROVED:

DATE: _____
**Chief Judge of the United
States Court of Appeals for
the Eleventh Circuit**

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

APR -9 PM 2:03
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 8:03-cr-77-T-30TBM

GHASSAN ZAYED BALLUT,

Defendant.

_____ /

REPORT AND RECOMMENDATION

THIS MATTER is before the court on **Defendant Ghassan Ballut's Ex Parte Motion for Allocation of Funds under the Criminal Justice Act to Compensate Arabic and Hebrew Interpreters of Discovery (Doc. 463) and Defendant Ghassan Ballut's Ex Parte Motion to Amend Order Allocating C.J.A. Funds to Compensate Arabic and Hebrew Interpreters of Discovery (Doc. 501).**

The court has previously determined that Defendant Ghassan Ballut is financially unable to obtain adequate representation in this prosecution and is entitled to court-appointed counsel and other assistance pursuant to the C.J.A. 18 U.S.C. § 3006A.¹ Defendant's counsel,

¹Previously, I have described the case and the discovery as follows. The 121-page Indictment accuses the Defendants and others in a total of 50 counts. The allegations include conspiracy to commit racketeering in violation of 18 U.S.C. § 1962; conspiracy to murder, maim or injure persons outside the United States, contrary to 18 U.S.C. § 1956; conspiracy to provide material support to designated terrorists organizations, contrary to 18 U.S.C. § 2399B; conspiracy to make and receive contributions of funds to or for the benefit of specially designated terrorist organizations, contrary to 50 U.S.C. § 1701 *et seq.*, 18 U.S.C. § 371; and travel in interstate or foreign commerce or use of the mail or other facility of interstate or foreign commerce with intent to commit crimes of violence or to promote and carry on

Bruce Howie, has filed two motions regarding the authorization of funds under the C.J.A. for payment of Arabic and Hebrew interpreters and transcribers, which is alleged to be necessary for his preparation and an adequate defense. In principle, such assistance is available to indigent defendants under the C.J.A. See 18 U.S.C. § 3006A(e). By his initial motion (Doc. 463), Mr. Howie essentially repackages a proposal for such interpreter services originally fashioned by the Federal Defender, who represents a co-defendant in this prosecution. At its bottom-line, counsel is seeking \$539,000 in C.J.A. funds for some fourteen interpreters and transcribers.² As envisioned by Mr. Howie, there are three areas of discovery in which these interpreters are needed. The first area includes the 800 hours of intercepted communications that the prosecution has deemed pertinent.³ The second area is the remaining thousands of hours of intercepted communications that counsel urges need to be “surveyed.” The third area includes all the tangible documents and evidence that is in Arabic or Hebrew.

specified unlawful activity, in violation of 18 U.S.C. § 1952. The racketeering conspiracy alleged in Count One of the Indictment alleges criminal activity beginning in about 1984 and continuing to the date of the Indictment in February 2003. The volume of Rule 16 discovery is exceptional, containing as it does, thousands of hours of intercepted communications and thousands of pages of documents and other tangible exhibits. Discovery is complicated by the fact that most of the intercepted conversations and much of the tangible discovery is in Arabic or Hebrew and must be interpreted before counsel may use it effectively in these proceedings.

²The FPD’s proposed budget, at least in this regard, was substantially rejected by the Federal Defender’s program budget committee. It appears that the FPD has retained the services of one Arabic interpreter for this case.

³The Government actually contends that only about two hundred hours of intercepted communications are pertinent to its prosecution. However, in my view, a larger body of intercepted communications appear pertinent to the Defendants’ inquiry. As a result, I have required the Government to turn over English language summaries of these communications made by FISA interpreters. In response, the Government has turned over twenty-nine thousand pages of such material.

A hearing on this and several discovery motions was conducted on March 10, 2004. From the hearing, it appeared that all defense counsel are cooperating on discovery, all Defendants are fluent in Arabic and have access to the material, the FPD has an interpreter and an Arabic speaking attorney working on the discovery, and Defendants Al-Arian and Hammoudeh, who are in custody, are being provided access to the intercepted communications and other discovery. In consideration of the matters presented at the hearing, the court advised Mr. Howie that he should narrow the scope of his request and suggested that Mr. Ballut should locate up to two Arabic interpreters and one Hebrew interpreter to assist in his defense.⁴ Counsel was directed to propose a budget for the hiring of such assistance. As a result, Mr. Howie has filed the second motion (Doc. 501).

By this motion, counsel has contacted certain professional interpreter agencies who advise that their services can be obtained at an hourly rate ranging from \$40.00 to \$47.50 per hour. Additionally, it is suggested that certain preparatory work is necessary to organize the material for the interpreters' review and that such work would be billed at a rate of \$35.00 per hour. The estimate is that one hour of recorded material will take up to fifteen hours of an interpreter's time. Thus, counsel seeks authorization to retain the services of interpreters at an hourly rate up to \$47.50 for the period of time necessary to complete the stated tasks.

The contract rate paid by this court for certified and professionally qualified interpreter services is \$329.00 for a full day and \$178.00 for a half day. The rate for less

⁴These two Arabic interpreters, along with the FPD's interpreter, could cover each of the three areas described by counsel as necessary for review. The Hebrew interpreter would provide assistance in discovery review for all the Defendants.

qualified "language skilled interpreters" is \$156.00 for a full day and \$86.00 for a half day. A half day consists of four hours or less. By comparison, the rates requested by the Defendant are fairly in line with the customary rates paid by the court.

Upon consideration, I conclude that Mr. Ballut is entitled to the assistance requested. Although counsel does not provide specific information about the interpreters he wishes to hire or firm cost estimates, in order to avoid further delay, I make the following recommendations to this court as well as the Eleventh Circuit representative. Given the way counsel proposes to divide up the work, and given that all the Defendants have been and continue to work together on this discovery, I conclude that the court should approve funds for two Arabic language interpreters and one Hebrew language interpreter for the Defendant's use and assistance during the remaining discovery period. The interpreters shall be paid for eight-hour workdays, five days a week, at a rate not in excess of the rate customarily paid by this court for such services.⁵ The interpreters should be required to document their progress along with every monthly billing.⁶ Unless good cause is demonstrated, the work product created by these interpreters may be shared with all Defendants. Counsel's request for transcribers

⁵At the top daily rate of \$329.00 per day, each interpreter would cost \$1,645.00 per week. It is probable that the Arabic interpreters would be needed at least until the start of trial. The volume of Hebrew language material available is far less and the employ of this interpreter would be for a more limited duration.

⁶It appears to me that the estimate of fifteen hours work for one hour of tape will likely apply to only a limited number of intercepted communications in this case if the activities of the interpreters are properly coordinated.

should be deferred to a later date,⁷ as should the determination of whether the Defendant should have the assistance of the interpreters during the trial of this cause.

Respectfully submitted on this
9th day of April 2004.


THOMAS B. McCOUN III
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Failure to file written objections to the proposed findings and recommendations contained in this report within ten days from the date of its service shall bar an aggrieved party from attacking the factual findings on appeal and a *de novo* determination by a district judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; M.D. Fla. R. 6.02; see also Fed. R. Civ. P. 6; M.D. Fla. R. 4.20.

Copies to:
United States District Judge
Counsel of Record

⁷The court has previously authorized the Defendant's hiring of a paralegal who is available to assist the interpreters in organizing and cataloguing their work and identifying pertinent matters requiring transcription or further review by counsel.

F I L E C O P Y

Date Printed: 04/12/2004

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F I L E C O P Y

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