UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v.-	:	
	:	05 Cr. 518 (SAS)
VIKTOR KOZENY et uno,	:	
Defendants.	:	

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO FREDERIC BOURKE'S REQUESTS FOR CERTAIN JURY CHARGES RELATED TO HIS POSSIBLE AFFIRMATIVE DEFENSES

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The Government respectfully submits this memorandum of law in opposition to the request by the defendant Frederic Bourke for jury charges relating to possible affirmative defenses asserting that (i) the bribes charged in the indictment were extorted and (ii) he reported to the Azeri president that bribes may have been paid, rendering him not guilty of violating or conspiring to violate the Foreign Corrupt Practices Act (the "FCPA"). Based on the evidence of Azeri law adduced at the Rule 26.1 hearing, and the declarations submitted by the expert witnesses,[1] Bourke's requested jury charges misstate Azeri law. More importantly, the factual scenarios that Bourke's motion contemplates, and the purported relief from criminal responsibility that might result under Azeri law, do not support a defense under the FCPA. As will be shown below, Bourke's failure to account for language that Congress used in the FCPA is a fundamental flaw in his application: the question before the Court is not whether the defendant can be prosecuted for bribery in Azerbaijan, but whether he violated the FCPA.

Bribery: The FCPA prohibits, inter alia, giving something of value for the purpose of "(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit any act in violation of the lawful duty of such official, or (iii) securing any improper advantage . . . in order to obtain[] or retain[] business for or with, or directing business to, any person." 15 U.S.C. § 78dd-2(a)(1)(A). Similar provisions apply to

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[1] The April 7, 2008 Declaration of Professor Paul B. Stephan, the defense expert, is cited herein as "Stephan Decl." The September 8, 2008 Stephan Declaration is cited as "Stephan Reply." The August 21, 2008 Declaration of Professor William E. Butler, the Government's expert, is cited as "Butler Decl." The September 11, 2008 hearing transcript is cited as "Tr."

payments to a foreign political party or candidate. Id. The FCPA's prohibition of these acts does not depend on a foreign country's prohibition of the same or similar acts. Indeed, a given foreign country may not criminalize bribery at all, but a payment that falls within the FCPA's reach would still constitute a crime in the United States. Thus, it is the FCPA's definition of what constitutes prohibited bribery that controls, not that of the Azerbaijan criminal code.[2]

The FCPA provides an affirmative defense which the defendant indicates he may assert, that the payment was "lawful under the written laws and regulations of the foreign official's . . . country." 15 U.S.C. § 78dd-2(c). According to the legislative history, "[t]he Conferees wish to make clear that the absence of written laws in a foreign official's country would not by itself be sufficient to satisfy this defense." H.R.Conf. Rep. 100-576 (1988), reprinted in 1998 U.S.C.C.A.N. 1547, 1955. There must be something affirmative in the written local law that makes the payment lawful, e.g. payments to an official who is expressly allowed to moonlight working for the foreign company in question, or regulated contributions to a political party, notwithstanding the appearance that the fees or contributions were given with a corrupt purpose. Critical to the instant dispute, Congress did not focus on the legal standing of the bribe payer, and it did not select or include the terms "immune from prosecution," "excused," "justified," or "free from criminal responsibility" to describe the conduct encompassed by the affirmative defense. Under the written laws and regulations, the payments must be "lawful."

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[2] This is most plainly relevant to the defendant's requested charge concerning offers to give a bribe. Stephan proposes the instruction that "[a] mere offer to give a bribe on the part of the bribe giver, without the bribe giver performing any specific actions directed towards transferring the subject of the bribe to the government official, is not a crime under Azeri law." (Stephan Reply Ex. 20). Even if that is true, it is entirely irrelevant under the FCPA, which criminalizes, among other things, "an offer [or] promise to pay." 15 U.S.C. § 78dd-2(a).

Relief from Criminal Responsibility: There is no written law or regulation in Azerbaijan that makes lawful the kind of payments at issue in this case. A bribe paid with the requisite intent and other elements of the offense is always an unlawful act. (Butler Decl. ¶¶ 45-49; Tr. 66, 215). A defendant may be "relieved from criminal responsibility if extortion of the bribe occurred with respect to him" or if he reports the offense. (Butler Decl. ¶ 10 (quoting Azeri Criminal Code, Art. 171)). Just as reporting the bribe does not make the bribe "lawful," as the Court noted (Tr. 39-40), neither does the fact that extortion occurred. (Butler Decl. ¶¶ 42, 45-49; Tr. 40-41). Undoubtedly, because these categories of relief from criminal responsibility are described together in one sentence of the Azeri criminal code (id.), Azeri law makes no distinction between them as to the outcome they produce.

As Professor Butler explained, this "relief" provision is not a defense to or an exculpation from the crime of bribery; rather, the provision was intended to "deter bribery and encourage those who engaged in bribery to inform upon those officials who were accepting bribes or encouraging bribery." (Butler Decl. ¶ 42). This interpretation makes the most sense, especially given Professor Stephan's own emphasis on his view that "'a voluntary declaration of having committed the crime absolves from criminal responsibility not only the bribe giver but his accomplices.'" (Stephan Decl. ¶ 9 (quoting 1990 USSR Supreme Ct. resolution) (emphasis added)). While it is logical that, to encourage reporting of bribes, Azeri law provides a safe harbor even for the reporter's non-reporting accomplices, it would be absurd to conclude that this meant that even the accomplices's conduct was "lawful" and no crime had occurred.

Stephan's proposed interpretation -- "It's my understanding that the term relief from criminal responsibility means that the criminal code no longer applies to this person; that . . . the

conditions of criminality do not exist." (Tr. 37) -- is overly colloquial and, not surprisingly, without written authority. Rather, as Butler pointed out, an individual who is freed from criminal responsibility is nevertheless not entitled to restitution and is not treated as a victim. (Butler Decl. ¶ 46; Tr. 234-35). As the Court observed, the outcome of either extortion or reporting in connection with a bribe is akin to a statute of limitations defense: the crime occurred, but it will not be punished. (Tr. 236-37). [3] Moreover, the very source on which Stephan relies so heavily, the 2000 USSR Supreme Court resolution (Stephan Decl. Ex. D), interpreting the bribery statute, uses as shorthand terminology for "relief from criminal responsibility" the term (by Stephan's translation) "grant of immunity." (Id., Point 24). Immunizing those whose conduct is excused because they reported the bribe or were subject to extortion does not make the bribes "lawful under the written laws and regulations" of Azerbaijan. 15 U.S.C. § 78dd-2(c).

This threshold conclusion should end the inquiry posed by Bourke's motion. That is not to say that true extortion directed to a bribe payer would be irrelevant. If someone were threatened so significantly that his paying of the bribe had no corrupt purpose, he is not guilty of an FCPA violation by the terms of the FCPA itself, or, alternatively, the extortion might, under American law, constitute an affirmative defense of duress. But if the bribe is merely "demanded" with an "implicit threat" to deny him of a "well-founded and disinterested decision" that could result in "damage" to his "interests" and "expectancies" -- to use several terms

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[3] It turns out that the analogy suggested by this Court was entirely apt: "The [Russian Criminal] Code further provides for periods of limitation, upon the expiry of which the person who committed the crime is relieved form criminal responsibility." William E. Butler, Russian Law (2d ed. 2003), at 590 (attached). The Code also has a provision relieving first-time offenders from criminal responsibility in certain circumstances. See id.

employed in turn by Stephan -- then the FCPA punishes this conduct, because Congress intended American investors to walk away when bribes were demanded, barring real extortion.[4]

Even if an individual could make out a case for relief from criminal responsibility, there is simply nothing in written Azeri law or regulation that makes a bribe paid in extortionate circumstances "lawful." Similarly, the after-the-fact reporting of a bribe does not make the bribe "lawful," and does not therefore provide an affirmative defense under the FCPA. In fact, American law provides an FCPA defendant a better defense than Azeri law in these circumstances. Accordingly, instructions on the requisite intent under the FCPA and a standard duress instruction should be given, not the instructions Bourke proposes on Azeri law.

Extortion: If the Court disagrees with the above and decides to instruct the jury as to Azeri law on extortion, the Government submits that the definition actually provided in Article 146 of the Azeri code should be given, without the expansive glosses provided by Stephan.

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[4] The drafters of the FCPA in fact anticipated that certain payments to foreign officials would lack the requisite corrupt purpose if the payments were truly the product of extortion, but the drafters intended that bribes that were merely in the form of a demand would still be punishable. The 1977 Senate Report which accompanied the original bill reads as follows:

> Sections 103 [enacted and codified at 15 U.S.C. § 78(a)] and 104 [enacted and codified at 15 U.S.C. § 78dd-2] cover payments and gifts intended to influence the recipient, regardless of who first suggested the payment or gift. The defense that the payment was demanded on the part of a government official as a price for gaining entry into a market or to obtain a contract would not suffice since at some point the U.S. company would make a conscious decision whether or not to pay a bribe. That the payment may have been first proposed by the recipient rather than the U.S. company does not alter the corrupt purpose on the part of the person paying the bribe. On the other hand true extortion situations would not be covered by this provision since a payment to an official to keep an oil rig from being dynamited should not be held to be made with the requisite corrupt purpose.

S. Rep. 95-114, at 10-11 (1977), reprinted in 1977 U.S.C.C.A.N. 4098, 4108 (emphases added).

Paraphrased in relevant portion, Article 146 would read: "Extortion is a demand for money or property under threat of force either to the person of the victim or his loved ones, or under threat of destruction of his property." (Stephan Decl. Ex. C).

Stephan proposes a far more expansive instruction stating that extortion only requires "the threat of carrying out actions that could do damage to the legal interests of the bribe giver, or willfully placing the bribe giver under conditions where he is compelled to give a bribe to prevent harmful consequences to his legally protected interests." (Stephan Reply Ex. 19). Stephan's primary authority for this language is the 1990 resolution of the short-lived USSR Supreme Court (Stephan Decl. Ex. C), but Stephan conceded that this resolution was not a written law or regulation of Azerbaijan (Tr. 160-62), and that the court's interpretation concerned the codes of fifteen different Soviet republics (Tr. 159-60). Importantly, Stephan also conceded that the code of the "dominant force" within the Soviet Union, Russia (Tr. 160), had materially different language than the Azeri code: the Russian code extended extortion beyond "destruction" of property to include "damaging or destruction" of property. (Butler Dec. ¶ 38; Tr. 163). This distinction is critical because, as Stephan conceded, "[d]amaging suggests . . . an impairment while destruction suggests a stronger harm than mere impairment." (Tr. 163). As Butler testified, the Azeri definition of extortion is therefore narrower than the Russian; moreover, the Azeri code uses a different Russian word, one that is stronger than that used in the Russian code, "the most extreme form of destruction, "amount[ing] to annihilation or eradication," whereas the "softer" word used in the Russian code "overlaps substantially with impairment or just physical damage to something." (Tr. 201). Thus, notwithstanding the resolution of the USSR Supreme Court, Butler concluded that the Azeri code excludes mere

"prejudice to interests" as the kind of threat that can be the basis of the offense of extortion. (Tr. 202-03).

Stephan further expanded the definition of extortion to include "implicit as well as express threats" based on his translation of the Russian word in question. (Stephan Decl. ¶ 16). He offered no legal authority for this view (id.), and indeed Butler confirmed that there is none for the proposition that implicit threats can be extortion (Tr. 209). Butler also disagreed with Stephan's translation of the Russian word for "threat" to include "menace": "I would not envelope the concept of menace into this. It's correctly translated as threat in my view, and that's it." (Tr. 208-09).[5] In contrast, Stephan's expansive view of extortion means that any statement perceived as menacing could imply a threat to diminish economic interests or to act impartially, and thus could be prosecuted as extortion. Of course, given the Azeri code's structure, there can not be one definition of extortion for extortion defendants and another for bribery defendants. The Azeri definition of extortion does not suggest the kind of slippery slope Stephan describes.

The Right to a Disinterested Decision: The only support Stephan offers for the view that the threat not to make a decision impartially is extortion comes from a monograph written by a Russian law professor, B.V. Volzhenikin. (Stephan Decl. Ex. G).[6] As an initial matter, Stephan concedes that the monograph concerns Russian law "rather than Azeri law directly,"

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[5] To the extent that resolution of the dispute turns on who is better qualified as a translator, the Government points out that Butler is, among the other things, the author of the first Russian-English legal dictionary; Stephan, by contrast, testified that he relies "heavily" on a general Russian-English dictionary for his translations. (Tr. 173).

[6] While Stephan attempts to dress up this authority by calling it "authoritative scholarly commentary," which he then collapses into the term "commentary," (Stephan Decl. ¶ 24), it is not "commentary" as the term is used in Russia, a source of law interpreting the code, but is simply the interpretation of a single law professor and has no precedential value. (Tr. 209-10).

(Stephan Decl. ¶ 24), and Stephan is incorrect that the monograph is "fully applicable" to the Azeri code (id.), given that the relevant code uses different language from the Russian code, as discussed supra at 6. Not only was Volzhenikin describing a Russian case rather than an Azeri one, but, more importantly, on its face, the monograph does not support Stephan's views: it concerns a bribe extorted to influence the detention of an arrestee, and thus clearly constitutes a "threat of force . . . to the person of the victim" as defined in the Azeri code, not a threat to property. Thus, Butler testified that he found nothing in it that supported Stephan's view (Tr. 210), which Butler described as "exaggerate[d]." (Butler Decl. ¶ 58). As Butler stated: "I am unaware of any provision of Azerbaijan legislation that recognizes a 'person's right to a well-founded and disinterested decision by a government official.'" (Id.).

Property/Legal Interests: The questions of what is a legal interest and what is property are bound up with the language in the Azeri code which requires threats of "destruction" to make out an extortionate demand. When Stephan was asked whether it is possible to destroy property one does not yet own, Stephan's unpersuasive response was that "you can destroy one's expectancy." (Tr. 196). But the defendants in this case clearly had no legally-protected expectancy in the privatization of SOCAR, which was not slated to be privatized and never was. As Butler points out, the fact that foreign investors "may" purchase vouchers (Stephan Decl. Ex. F, ¶ 4.2) does not "constitute an 'interest' or a 'legally-protected interest' in the meaning of bribery accompanied by extortion." (Butler Decl. ¶ 57). The fallacy of Stephan's position was highlighted when he claimed that this "legally-protected interest" extended only to those "who have already taken steps, for example, accumulating vouchers that might be used to procure a stake in a company, if that company were to be privatized." (Tr. 179). This results-oriented

conclusion establishes a legal interest for those who amass vouchers, but not for average citizens who received vouchers in the regular course of privatization, according to Stephan. (Tr. 178).

Stephan also opined that "[a] threat to deprive a person of his property without sufficient legal justification also would constitute extortion," and he then concluded that "[a] threat directed against any legally protected property interest, including privatization vouchers, would qualify" as extortion. (Stephan Decl. ¶ 21). When asked about this in the hearing, however, Stephan apparently abandoned this thought and replied, "I'm focusing [in] this sentence on the object part of 146, not the threat part. And the object part is the acquisition of property. You extort someone by threatening something to acquire property." (Tr. 180-81). The threat the defendant appears to allege, however, was to deprive him of his expected value of his vouchers -- however speculative -- and thereby obtain money. Stephan appeared not to understand his own declaration, stating that "one of the ways to deprive somebody of their property is to threaten to destroy some property." (Tr. 183). In confusing the discussion entirely, Stephan at minimum failed to defend his position that extortion extends beyond a threat to destroy property.

Reporting: The 1990 USSR Supreme Court resolution suggests that self-reporting of bribery can be made to the police, the procuracy, a court or other state "agencies of power." (Butler Decl. ¶ 43; see also Stephan Decl. Ex. C ¶ 19). As Butler testified: " [T]he presidency is not an agency of executive power as such, whereas the government is, the prime minister is. . . . [The president is] a single official. He's not an agency." (Tr. 137). Butler further explained that, although some agencies and officials answer to the president, "[t]he great majority are accountable to the prime minister." (Tr. 139). Stephan's only response to this was to point out only that the president had the power to decide whether to privatize SOCAR. (Tr. 140). He

failed to explain why the definition of "agency" would include the president in a parliamentary system of government where the president is the head of state but the prime minister is the head of government. Presumably, under Stephan's view, the self-reporting could occur to any member of parliament, ambassador, or other similar official. Butler's view is the more credible one.[7]

CONCLUSION

In conclusion, it should be observed that Stephan's views would conveniently eviscerate the FCPA as applied to Azerbaijan. An American investor who paid bribes to gain favorable treatment in an investment scheme would always be able to point out that Azeri law permitted him to invest, but implicit menaces from Azeri officials made him feel that he would not be treated impartially, diminishing his investment expectancy, so, having been so extorted, he paid a bribe. Of course, this is exactly what the FCPA is intended to deter. An American investor who is told he must pay a bribe to participate in an investment must abandon that investment, not plunge in whole-heartedly, comfortable that he has been "extorted." Perhaps the Government would be stuck with this legal result if Azeri law somehow made bribery "lawful" in certain circumstances, but, for the reasons set forth above, it does not.

Accordingly, Bourke's proposed jury instructions should be rejected entirely.

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[7] Regardless of how the Court resolves this dispute, it should be even clearer now that this is not a defense that Bourke will actually offer at trial. Since Bourke's position (unless he intends to plead guilty to the false statements count) is that he did not know that bribes were being paid, he could not have reported them -- nor need he have if he did not participate in the conspiracy. At the hearing, counsel essentially abandoned this defense when he stated "the fact is my client did report to the president of Azerbaijan facts and information which we believe put them on notice that bribery may be taking place. At that point, my client didn't know what was actually going on. [M]y client knew that . . . fraudulent conduct had taken place that involved Azeri officials as well as Mr. Kozeny himself." (Tr. 129). This is not self-reporting of bribery by any stretch.

Dated: New York, New York
September 26, 2008

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

VIKTOR KOZENY and FREDERIC BOURKE, JR.,

Defendants.

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MEMORANDUM OPINION AND ORDER

05 Cr. 518 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

I. INTRODUCTION

On October 21, 2008, this Court held that it would not instruct the jury on the reporting and extortion exceptions to criminal liability in Article 171 of the Azerbaijan Criminal Code ("ACC").[1] The Court further ruled that if Bourke provided an "evidentiary foundation for 'true extortion'" – as defined under the Foreign Corrupt Practices Act ("FCPA") – the Court would instruct the jury regarding the requisite "corrupt" intent required for a violation of the FCPA.[2] Bourke now seeks reconsideration of this decision, arguing that the Court failed to

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[1] *See United States v. Kozeny*, — F. Supp. 2d —, 2008 WL 4658807 (S.D.N.Y. Oct. 21, 2008).

[2] *Id.* at *4.

opine with regards to two other issues of Azeri law: 1) "that a mere offer to give a bribe, without any specific acts directed toward transferring the subject of the bribe to its recipient, is not a crime;" and 2) that "the offense of bribery requires 'direct intent.'"[3]

II. LEGAL STANDARD

A motion for reconsideration is governed by Local Rule 6.3 and is appropriate where "'the moving party can point to controlling decisions or data that the court overlooked – matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.'"[4] "A motion for reconsideration may also be granted to 'correct a clear error or prevent manifest injustice.'"[5]

The purpose of Local Rule 6.3 is to "'ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then

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[3] *See* Memorandum of Law in Support of Defendant's Motion for Reconsideration of the Court's Ruling on Azeri Law Issues ("Def. Mem."), at 1.

[4] *In re BDC 56 LLC*, 330 F.3d 111, 123 (2d Cir. 2003) (quotation omitted).

[5] *In re Terrorist Attacks on September 11, 2001*, No. 03 MDL 1570, 2006 WL 708149, at *1 (S.D.N.Y. Mar. 20, 2006) (quoting *Doe v. New York City Dep't of Soc. Servs.*, 709 F.2d 782, 789 (2d Cir. 1983)).

plugging the gaps of a lost motion with additional matters.'"[6] Local Rule 6.3 must be "narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the Court."[7] Courts have repeatedly been forced to warn counsel that such motions should not be made reflexively, to reargue "'those issues already considered when a party does not like the way the original motion was resolved.'"[8]

III. DISCUSSION

A. A Mere Offer to Give a Bribe

Bourke argues that the Court failed to consider his proposed instruction that "[a] mere offer to give a bribe on the part of the bribe giver,

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[6] *Naiman v. New York Univ. Hosps. Ctr.*, No. 95 Civ. 6469, 2005 WL 926904, at *1 (S.D.N.Y. Apr. 1, 2005) (quoting *Carolco Pictures, Inc. v. Sirota*, 700 F. Supp. 169, 170 (S.D.N.Y. 1988)). *Accord Commerce Funding Corp. v. Comprehensive Habilitation Servs., Inc.*, 233 F.R.D. 355, 361 (S.D.N.Y. 2005) ("[A] movant may not raise on a motion for reconsideration any matter that it did not raise previously to the court on the underlying motion sought to be reconsidered.").

[7] *DGM Invs., Inc. v. New York Futures Exch., Inc.*, 288 F. Supp. 2d 519, 523 (S.D.N.Y. 2003) (quotation omitted). *Accord Shrader v. CSX Transp. Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (holding that a court will deny the motion when the movant "seeks solely to relitigate an issue already decided.").

[8] *Joseph v. Manhattan & Bronx Surface Transit Operating Auth.*, No. 96 Civ. 9015, 2006 WL 721862, at *2 (S.D.N.Y. Mar. 22, 2006) (quoting *In re Houbigant, Inc.*, 914 F. Supp. 997, 1001 (S.D.N.Y. 1996)).

without the bribe giver performing any specific actions directed toward transferring the subject of the bribe to the government official, is not a crime under Azeri law."[9] However, this proposed instruction was not raised in Bourke's briefing on the motion.[10] Instead, the focus of Bourke's motion was an instruction with regards to Article 171 of the ACC.[11] This Court will not permit Bourke to reargue his lost motion by raising a new issue that was not briefed.

This Court also declines to rule on this instruction because Bourke has not been charged with making a "mere offer." The "two-thirds share capital increase" is alleged to have been transferred to Azeri officials.[12] Bourke has also been charged with having transferred cash and other gifts to various state officials.[13] Given these allegations, it is unclear how such an instruction could be given. Nevertheless, if Bourke produces evidence at trial from which the jury can

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[9] Def. Mem. at 2.

[10] Although the proposed instruction was appended to the declaration of Bourke's expert, it was not discussed in Bourke's briefing.

[11] *See* Memorandum of Law in Support of Defendant Frederic A. Bourke, Jr.'s Motion to Dismiss the Charges Against Him and for Other Relief at 1; Supplemental Memorandum of Law in Support of Defendant Frederic A. Bourke's Motion Regarding Azeri Law Issues at 1.

[12] *See* Indictment ¶¶ 66, 67, 69.

[13] *See id.*

find that a "mere offer" was made, the Court will then decide how to instruct the jury.

B. Requirement of "Direct Intent"

Bourke also argues that the Court failed to opine as to whether Azeri law requires that the payer possess "direct intent" in order to be criminally liable for bribery.[14] Bourke contends that under the FCPA, bribes are committed when a payer has a "'conscious disregard' of the possibility of bribery," which is broader than the "direct intent" that is required under Azeri law.[15]

This Court has already discussed the intent necessary for Bourke to be found liable under the FCPA.[16] The Court held that if a special instruction on the intent element should be given to the jury, that instruction would define what would constitute a situation in which a payer's will is so overcome that he cannot be said to have acted with intent.[17] Because the Court has already fully considered

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[14] Def. Mem. at 3.

[15] *See id.* at 5-6.

[16] *See Kozeny*, 2008 WL 4658807, at *3.

[17] *See id.* A jury could find that a person who pays an official for a business opportunity possesses both a conscious disregard for the possibility of bribery and direct intent to make the payment. Thus, it is not clear whether this alleged theoretical distinction between the intent elements for bribery under the FCPA or Azeri law would make a practical significance to the outcome of Bourke's trial. The Court also notes that this distinction between "conscious

how the jury will be instructed with regards to the intent element, it cannot and will not reconsider its decision.

V. CONCLUSION

For the reasons stated above, the Court denies Bourke's motion for reconsideration. The Clerk of the Court is directed to close this motion (document no. 139).

SO ORDERED:

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
December 12, 2008

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disregard" under the FCPA and "direct intent" under Azeri law was not briefed by Bourke.