

COPIES

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 10 2008
CLERK, U.S. DISTRICT COURT
By _____
Deputy

UNITED STATES OF AMERICA

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§

5-08CR0037-C
CRIMINAL NO. _____

THOMAS CAMPBELL BUTLER, M.D.

The Grand Jury Charges:

COUNT 1
Illegal Importation of Etiological Agent
(42 C.F.R. § 71.54, 71.2 and 42 U.S.C. § 271)

On or about April 15, 2002, at the Dallas/Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas, utilizing British Airways; and the Lubbock International Airport, in the Lubbock Division of the Northern District of Texas, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, M.D., defendant, did knowingly import into the United States an etiological agent and an infectious substance, that is, a viable microorganism which causes, or may cause, human disease, to wit: *Yersinia pestis* bacteria, the causative agent of human plague, which etiological agent was not accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention.

A violation of 42 C.F.R. § 71.54, the penalty for which is found at 42 C.F.R. § 71.2, as provided in Section 368 of the Public Health Service Act (42 U.S.C. § 271).

COUNT 2
Smuggling Goods Into the United States
(18 U.S.C. § 545, First Paragraph)

Between on or about April 14, 2002, and April 15, 2002, at Dar Es Salaam International Airport, Tanzania; London Heathrow International Airport, London, England; and Dallas/ Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas, utilizing British Airways; and at Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, M.D., defendant, willfully and knowingly and with intent to defraud the United States, did smuggle and clandestinely introduce into the United States, merchandise which should have been invoiced, that is, *Yersinia pestis* bacteria.

A violation of Title 18, United States Code, Section 545.

COUNT 3
Smuggling Goods Into the United States
(18 U.S.C. § 545, Second Paragraph)

Between on or about April 14, 2002, and April 15, 2002, at Dar Es Salaam International Airport, Tanzania; London Heathrow International Airport, London, England; and Dallas/ Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas, utilizing British Airways; and Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, M.D., defendant, knowingly did import and bring into the United States certain merchandise contrary to law, that is, *Yersinia pestis* bacteria, in that the *Yersinia pestis* bacteria, an etiological agent, was not accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention as required by 42 C.F.R. § 71.54; and the required declaration of such merchandise was not made as required by 19 C.F.R. §148.11.

A violation of Title 18, United States Code, Section 545.

COUNT 4
Illegal Transportation of Hazardous Materials
(49 U.S.C. § 5124)

A. Introduction:

1. The Hazardous Materials Transportation Act, as amended, was enacted by Congress to protect the general public from the risks to life and property inherent in the transportation of hazardous materials in commerce. The Act requires the Secretary of the U.S. Department of Transportation to designate as hazardous any materials that pose unreasonable risks to health and safety when transported in commerce and to enact appropriate regulations to ensure the safe transportation of such materials in commerce, including transportation of such materials by air. 49 U.S.C. § 5101 *et seq.*

2. The Department of Transportation has identified materials that are hazardous and are listed by the chemical name or hazardous characteristic category as set forth in the Title 49 of the Code of Federal Regulations. The term "hazardous materials" includes infectious substances, affecting humans, Hazard Class 6.2, and identified by a universally recognized number UN2814. 49 C.F.R. §§ 171.8, 172.101 (Table of Hazardous Materials), and 173.134(a)(1).

3. The regulations promulgated by the Department of Transportation prohibit any person from transporting a hazardous material in interstate, intrastate, and foreign commerce, including by aircraft, unless the hazardous material is transported in accordance with safety requirements set forth in the regulations. Any person who offers a hazardous material for transportation in air commerce must ensure that the hazardous

material is properly classified, documented, described, labeled, marked, packaged, and in condition for transportation. Emergency response information is also required. The proper classification, description, packaging, markings, and labels of hazardous materials identify the type of hazard, degree of danger, its safe handling, and provide the information necessary for responding to an accident or incident involving a hazardous material. 49 C.F.R. §§ 171 *et seq.*, 172.200 (Shipping Paper), 172.300 (Marking), 172.301(a) (Proper Shipping Name and Identification Number), 172.400(a) (Labeling), 173.134(a)(1) (Class 6.2 Definitions, Exceptions, and Packing Group Assignment), 172.600 (Emergency Response Information), 172.602 (Requirements for Emergency Response Information), and 172.604(a)(1) (Emergency Response Telephone Number).

4. Each person who offers a hazardous material for transportation in air commerce must comply with 49 C.F.R. § 172.3;

5. Each person who offers a hazardous material for transportation in air commerce must complete shipping papers in accordance with 49 C.F.R. § 172.200 *et seq.*;

6. Each person who offers a hazardous material for transportation must comply with the packaging requirements and ensure that the hazardous material is shipped in proper containers in accordance with 49 C.F.R. § 173.22 *et seq.* Each package must be marked in accordance with 49 C.F.R. § 172.300(a), and labeled in accordance with 49 C.F.R. § 172.400(a). Additionally, each shipment must contain Emergency Response information in accordance with 49 C.F.R. §§ 172.600(a) and

172.602(a).

B. Violation:

Between on or about April 14, 2002, and continuing until on or about April 15, 2002, at Dar Es Salaam International Airport, Tanzania; London Heathrow International Airport, London, England; and Dallas/Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas, utilizing British Airways; and Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, M.D., defendant, in violation of regulations and requirements related to the transportation of hazardous material prescribed by the Secretary of Transportation, did willfully offer hazardous material for transportation in commerce by air, to wit: *Yersinia pestis* bacteria, in that the said Thomas Campbell Butler, M.D., failed to properly complete shipping papers in accordance with 49 C.F.R. § 172.200(a); failed to properly mark the shipment in accordance with 49 C.F.R. § 172.300(a), including proper shipping name, technical name, and the UN Identification Number for infectious substances affecting humans; failed to properly label the shipment in accordance with 172.400(a) by affixing the Class 6.2 label indicating an International Biohazard; and failed to provide Emergency Response information, specific contents, and Emergency Response telephone number as required by 49 C.F.R. §§ 172.600, 172.602, and 172.604.

A violation of Title 49, United States Code, Section 5124.

COUNT 5
Transportation of Smuggled Goods
(18 U.S.C. § 545, Second Paragraph)

Between on or about June 23, 2002, and June 24, 2002, at Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, and at the Centers for Disease Control and Prevention at Fort Collins, Colorado, in the District of Colorado, and elsewhere, utilizing his private vehicle, **Thomas Campbell Butler, M.D.**, defendant, knowingly did facilitate the transportation of merchandise imported contrary to law, that is, *Yersinia pestis* bacteria, after the importation thereof, the defendant, **Thomas Campbell Butler, M.D.**, then knowing that said merchandise had been imported and brought into the United States contrary to law, in that the *Yersinia pestis* bacteria, an etiological agent, was not accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention as required by 42 C.F.R. § 71.54; and the required declaration of such merchandise was not made as required by 19 C.F.R. § 148.11.

A violation of Title 18, United States Code, Section 545.

COUNT 6
False Statement
(18 U.S.C. § 1001)

On or about September 7 or 8, 2002, in the Lubbock Division of the Northern District of Texas, and elsewhere, in a matter within the jurisdiction of the United States Department of Health and Human Services and the United States Department of Agriculture, Thomas Campbell Butler, M.D., defendant, did willfully cause an act to be done which if directly performed by him or another would be an offense against the United States, that is the said Thomas Campbell Butler, M.D., defendant, did knowingly and willfully make a false, fraudulent and fictitious material statement and representation to Dr. Michael Jones, Texas Tech University Health Sciences Center (TTUHSC) Laboratory Safety Officer and Responsible Facility Official (RFO) that he did not have any *Yersinia pestis* bacteria at that time, but that he had worked with it, when in truth and fact, the defendant Thomas Campbell Butler, M.D., knew that he then possessed *Yersinia pestis* bacteria located in his work areas at the TTUHSC facility, which caused the filing of an untrue Select Agent national notification document, which was mandated by Section 202(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, specifically, a "Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins Form OMB No. 0920-0561 0579-0201," which stated that the TTUHSC facility did not possess any *Yersinia pestis* bacteria.

A violation of Title 18, United States Code, Section 1001 and 2.

COUNT 7
Transportation of Smuggled Goods
(18 U.S.C. § 545, Second Paragraph)

Between on or about September 9, 2002, and September 12, 2002, at Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas; Memphis International Airport, Memphis, Tennessee, in the Western District of Tennessee; and Dar Es Salaam International Airport, Tanzania, utilizing Federal Express; and elsewhere, Thomas Campbell Butler, M.D., defendant, knowingly did facilitate the transportation of merchandise imported contrary to law, that is, *Yersinia pestis* bacteria, after the importation thereof, the defendant, Thomas Campbell Butler, M.D., then knowing that said merchandise had been imported and brought into the United States contrary to law, in that the *Yersinia pestis* bacteria, an etiological agent, was not accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention as required by 42 C.F.R. § 71.54; and the required declaration of such merchandise was not made as required by 19 C.F.R. §148.11.

A violation of Title 18, United States Code, Section 545.

COUNT 8
Unauthorized Export to Tanzania
(50 U.S.C. §§ 1702-1705(b))

A. Introduction:

The defendant, Thomas Campbell Butler, M.D., exported 30 vials of the human pathogen *Yersinia pestis* via Federal Express to Dr. Eligius Lyamuya of the Muhimbili Medical Center in Dar Es Salaam, Tanzania.

B. Licensing Requirements for Exports:

1. The United States Department of Commerce, by virtue of the Export Administration Act ("EAA") (50 U.S.C. §§2401-2420 (2000)), has the authority to regulate the export of commodities, technology, and software (collectively referred to hereinafter as "goods") from the United States to foreign countries. The EAA authorizes the Secretary of Commerce to prohibit or curtail the export of goods to protect national security, foreign policy, nonproliferation and short supply interests of the United States. The Secretary of Commerce implements the authority provided by the EAA through the Export Administration Regulations ("EAR") (15 C.F.R Parts 730-774 (2002)).

2. Through the Bureau of Industry and Security, the Department of Commerce requires export licenses or other authorization to export goods subject to the EAR from the United States to foreign countries.

3. Although the EAA was in lapse from August 21, 1994 through November 12, 2000, the President, through Executive Order 12924, which had been

extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701-1707 (2000)). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 *Fed. Reg.* 44025 (August 22, 2001)), which has been extended by a Presidential Notice of August 14, 2002 (67 *Fed. Reg.* 159 (August 16, 2002)), has continued the EAR in effect under IEEPA. A knowing or wilful violation of IEEPA or the EAR is a criminal act.

4. Persons engaged in the export of certain commodities, including *Yersinia pestis*, are required to obtain authorization from the U.S. Department of Commerce in Washington, D.C.

5. *Yersinia pestis* is a commodity listed on the Commerce Control List ("CCL") under export control classification number 1C351 and requires authorization from the Department of Commerce for export to Tanzania.

C. Violation:

On or about September 9, 2002, in the Lubbock Division of the Northern District of Texas, in a matter within the jurisdiction of the United States Department of Commerce, Thomas Campbell Butler, M.D., defendant, knowingly and willfully exported, and caused to be exported, *Yersinia pestis* bacteria, from the United States to

Tanzania without the written authorization of the United States Government, when in fact, the defendant Thomas Campbell Butler, M.D., knew that the Yersinia Pestis required such written permission.

A violation of the International Emergency Economic Powers Act (IEEPA), Title 50, United States Code, Sections 1702 and 1705(b) and the Export Administration Regulations, 15 C.F.R. §§ 764.2(a) and 764.2(e).

COUNT 9
False Statement
(18 U.S.C. § 1001)

On or about September 9, 2002, in the Lubbock Division of the Northern District of Texas, in a matter within the jurisdiction of the United States Department of Commerce, Thomas Campbell Butler, M.D., did knowingly and willfully make false, fraudulent and fictitious material statements and representations; that is, filing a false export control document, specifically an International Air Waybill, which stated that the goods being exported were "laboratory materials," when in fact, the defendant Thomas Campbell Butler, M.D., knew that the commodity was *Yersinia pestis* bacteria. In furtherance of the false statement, Thomas Campbell Butler, M.D., signed the International Air Waybill which stated that "These commodities, technology, or software were exported from the United States in accordance with Export Administration Regulations. Diversion contrary to U.S. law prohibited," when in fact the defendant Thomas Campbell Butler, M.D., knew a Department of Commerce license was required for export of *Yersinia pestis* bacteria, and that he had not obtained the required license. In furtherance of the false statement, Thomas Campbell Butler, M.D., defendant, failed to provide truthful information on the International Air Waybill which questioned whether a Shipper's Export Declaration was needed, when in fact the defendant Thomas Campbell Butler, M.D., knew that the information was required.

A violation of Title 18, United States Code, Section 1001.

COUNT 10
Illegal Transportation of Hazardous Materials
(49 U.S.C. § 5124)

1. The allegations of the introductory paragraphs 1 through 6 of Count 4 are hereby re-alleged and incorporated herein.

2. Between on or about September 9, 2002, and September 12, 2002, at Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas; and continuing into Memphis International Airport, Memphis, Tennessee, in the Western District of Tennessee; and continuing into Dar Es Salaam International Airport, Tanzania; and elsewhere, utilizing Federal Express, Thomas Campbell Butler, M.D., defendant, in violation of regulations and requirements related to the transportation of hazardous material prescribed by the Secretary of Transportation, did willfully offer hazardous material for transportation in commerce by air, to wit: *Yersinia pestis* bacteria, in that the said Thomas Campbell Butler, M.D., failed to properly complete shipping papers in accordance with 49 C.F.R. § 172.200(a); failed to properly mark the shipment in accordance with 49 C.F.R. § 172.300(a), including proper shipping name, technical name, and the UN Identification Number for infectious substances affecting humans; failed to properly label the shipment in accordance with 49 C.F.R. § 172.400(a) by affixing the Class 6.2 label indicating an International Biohazard; and failed to provide Emergency Response information, specific contents, and Emergency Response telephone number as required by 49 C.F.R. §§ 172.600, 172.602, and 172.604.

A violation of Title 49, United States Code, Section 5124.

COUNT 11
Transportation of Smuggled Goods
(18 U.S.C. § 545, Second Paragraph)

Between on or about October 1, 2002, and October 3, 2002, at Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas; Dallas/Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas; Ronald Reagan Washington National Airport, in the Eastern District of Virginia; utilizing American Airlines; the United States Army Medical Research Institute of Infectious Diseases (USAMRIID), Fort Detrick, Maryland, in the District of Maryland; and elsewhere, Thomas Campbell Butler, M.D., defendant, knowingly did facilitate the transportation of merchandise imported contrary to law, that is, *Yersinia pestis* bacteria, after the importation thereof, the defendant, Thomas Campbell Butler, M.D., then knowing that said merchandise had been imported and brought into the United States contrary to law, in that the *Yersinia pestis* bacteria, an etiological agent, was not accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention as required by 42 C.F.R. § 71.54; and the required declaration of such merchandise was not made as required by 19 C.F.R. §148.11.

A violation of Title 18, United States Code, Section 545.

COUNT 12
Illegal Transportation of Hazardous Materials
(49 U.S.C. § 5124)

1. The allegations of the introductory paragraphs 1 through 6 of Count 4 are hereby re-alleged and incorporated herein.

2. Between on or about October 1, 2002, and continuing until on or about October 3, 2002, at Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas; and continuing into Dallas/Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas; and continuing into Ronald Reagan Washington National Airport, in the Eastern District of Virginia, utilizing American Airlines; and elsewhere, **Thomas Campbell Butler, M.D.**, defendant, in violation of regulations and requirements related to the transportation of hazardous material prescribed by the Secretary of Transportation, did willfully offer hazardous material for transportation in commerce by air, to wit: *Yersinia pestis* bacteria, in that the said **Thomas Campbell Butler, M.D.**, failed to properly complete shipping papers in accordance with 49 C.F.R. § 172.200(a); failed to properly mark the shipment in accordance with 49 C.F.R. § 172.300(a), including proper shipping name, technical name, and the UN Identification Number for infectious substances affecting humans; failed to properly label the shipment in accordance with 172.400(a) by affixing the Class 6.2 label indicating an International Biohazard; and failed to provide Emergency Response information, specific contents, and Emergency Response telephone number as

required by 49 C.F.R. §§ 172.600, 172.602, and 172.604.

A violation of Title 49, United States Code, Section 5124.

COUNT 13
False Statement
(18 U.S.C. § 1001)

On or about January 14, 2003, at Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, **Thomas Campbell Butler, M.D.**, defendant, knowingly and willfully made a false, fictitious, and fraudulent material statement and representation, in that the defendant stated to FBI Special Agents Michael Oradorff and Shannon Fish that 30 vials containing *Yersinia pestis* plague bacteria which were under his control at his Texas Tech University Health Sciences Center (TTUHSC) laboratory were missing as of January 11, 2003, and presumed stolen, when in truth and fact he knew that he had destroyed the vials containing the *Yersinia pestis* plague bacteria before that date.

A violation of Title 18, United States Code, Section 1001.

COUNT 14
False Statement
(18 U.S.C. § 1001)

On or about January 14, 2003, at Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, **Thomas Campbell Butler, M.D.**, defendant, knowingly and willfully made a false, fictitious, and fraudulent material statement and representation, in that the defendant, after being furnished with a copy of 42 C.F.R. § 72.6, relating to Additional Requirements for Facilities Transferring or Receiving Select Agents, stated to FBI Special Agents Michael Orndorff and Shannon Fish that he was unaware of the requirements contained therein when in truth and fact he was aware of the requirements.

A violation of Title 18, United States Code, Section 1001.

COUNT 15
Make and Subscribe to False Tax Return
(26 U.S.C. § 7206(1))

A. Introduction:

1. At all times material hereto, and during the calendar year 2001, **Thomas Campbell Butler, M.D.**, defendant, was employed by **Texas Tech University Health Sciences Center (TTUHSC)**, as well as having contractual arrangements with two pharmaceutical companies.

2. During 2001, payments made directly to **Thomas Campbell Butler, M.D.**, defendant, from the two pharmaceutical companies totaled \$114,000.00, which amount the two pharmaceutical companies reported on Internal Revenue Service Forms 1099 issued to the defendant.

3. **Thomas Campbell Butler, M.D.**, defendant, reported this amount as income on a Schedule C, Profit or Loss From Business, to his tax return, Form 1040, for 2001. Additionally, **Thomas Campbell Butler, M.D.**, defendant, claimed expenses that generated a large Schedule C loss, that partially offset his wages from TTUHSC. **Thomas Campbell Butler, M.D.**, defendant, falsely claimed as a business expense on Line 17 of Schedule C the same \$114,000.00 that was reported as the Schedule C income.

4. The false expense of \$114,000.00, after allowing an additional \$1,200.00 expense, resulted in an understatement of the defendant's 2001 Federal tax liability of \$19,693.

B. Violation:

On or about February 23, 2002, in the Lubbock Division of the Northern District of Texas and elsewhere, Thomas Campbell Butler, M.D., defendant, a resident of Lubbock, Texas, did willfully make and subscribe a United States Individual Income Tax Return, Form 1040, for the calendar year 2001, which was verified by a written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that the said income tax return, on line 17 of the Schedule C, which is titled Legal and Professional Services, reported \$120,200.00 expense, whereas, as he then and there well knew and believed, his correct Legal and Professional Services expense for 2001 to be approximately \$7,400.00.

A violation of Title 26, United States Code, Section 7206(1) and Title 18, United States Code, Section 2.

A TRUE BILL:


FOREMAN

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