

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 11 1979

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#11

UNITED STATES OF AMERICA :
V. : JAMES F. DAVEY, Clerk
MARY SUE HUBBARD, ET AL. : Criminal No. 78-401

RESPONSE TO INFORMAL BILL OF PARTICULARS

The United States of America respectfully submits the instant Response to Informal Bill of Particulars submitted by the defendants on October 30, 1978 (Exhibit A) and on January 9, 1978 (Exhibit B).

The so-called "informal request for bill of particulars" submitted by the defendants appear to confuse the nature, extent and purpose of a bill of particulars which may be required pursuant to Fed.R.Crim.P. 7(f) and the discovery requests allowable under Fed.R.Crim.P. 16.^{1/} It is difficult to be certain of the defendants' intentions in seeking a bill of particulars since the theoretical underpinnings are not explained by reference to legal authority of any sort. However, an analysis of their request indicates that they are primarily seeking discovery and not a refinement of the charges against them. Indeed, the defendants recognize this at page sixty-six (66) of their "informal" bill of particulars request of October 30 when they acknowledge that "at first blush [it] appear[s] somewhat detailed."^{2/} We submit that even after thorough review their request is patently unreasonable, absurd, and totally lacking in merit. The absurdity of the defendants' request is highlighted by request 8(d) which asks that the government name:

^{1/} Especially in view of the facts that the defendants, through extensive correspondence, have received complete discovery from the United States. Indeed, many of their renewed requests are identical to those contained in the first request and completely responded to by the United States letter of October 15, 1978 to Philip Hirschkop, Esquire, previously filed with this Court.

^{2/} Contrary to the defendants' assertion at page 66 of their letter the indictment in this case is not "the longest returned in recent history by any Grand Jury sitting in the District of Columbia" either in terms of length or number of counts.

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the identities and addresses of the "other unindicted co-conspirators . . . unknown to the grand jury." (Emphasis added.)

How the government can name people whose name it and the grand jury did not know is beyond human comprehension. See similarly request number 85(d) at page thirty-nine.

The principles underlying a bill of particulars are well settled. "It is not the function of a bill of particulars to provide detailed disclosure of the government's evidence in advance of trial" Overton v. United States, 403 F.2d 444,446 (5th Cir. 1968); see also United States v. Frumento, 405 F.Supp. 23 (D.Pa. 1975). "Acquisition of evidentiary detail is not the function of the bill of particulars." Hemphill v. United States, 392 F.2d 45,49 (8th Cir.), cert. denied, 393 U.S. 877 (1968). Thus, the government has no duty to divulge the precise manner in which the crimes alleged in the indictment were committed, United States v. Leonelli, 428 F.Supp. 880 (S.D.N.Y. 1977); the theory of its case, United States v. Pappia, 399 F.Supp. 1381 (D.Wis. 1975); or the "when, where and how" of matters not charged in the indictment, United States v. Armocida, 515 F.2d 49 (3d Cir.) cert. denied, 423 U.S. 858 (1975). Similarly, the defendants are not entitled to a bill of particulars as to the meaning of terms, legal or otherwise. United States v. Luross, 243 F.Supp. 160 (N.D.Iowa), cert. denied, 382 U.S. 956 (1965). A considerable percentage of the defendants' submission is devoted to a request for definition of words the meaning of which can be ascertained by reference to a simple dictionary. The defendants are also not entitled to receive, by way of a bill of particulars, information as to whether they had knowledge of co-conspirators' acts committed in furtherance of the conspiracy. United States v. Kahaner, 203 F.Supp. 78(S.D.N.Y. 1962).

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In the instant case, the sheer number of pages and the "total items [161] requested by all defendants go far beyond that to which they are entitled. To require the government to furnish the minutiae sought would be tantamount to a preview of its case in advance of trial and compel disclosure of its evidence, including the names of witnesses." Id. at 84. Indeed, the defendants in this case are asking the United States to submit to them a complete script of the trial.

"The purpose of a bill of particulars is to inform the defendant of the nature of the charges against him to adequately prepare his defense, to avoid surprise during the trial and to protect him against a second prosecution for an inadequately described offense . . . when the indictment itself is too vague and indefinite for such purpose." United States v. Addonizio, 451 F.2d 49, 63-64 (3d Cir.), cert. denied, 405 U.S. 936 (1972). In the instant case, the indictment is extremely detailed and by no stretch of the imagination could it be described as "vague and indefinite" for the purpose of informing the defendants of the nature of the charges against them. Indeed, one is puzzled at the defendants' claim of vagueness where in the same request and repeatedly in court they have attacked the government for returning such a detailed indictment.

The indictment in this case represents the culmination of an extensive investigation by the Grand Jury which uncovered the crimes alleged therein. The indictment is based upon documents seized from the organization of which the defendants were high officials and which were written by the defendants themselves. The defendants have been informed which of these documents the United States intended to use in its case-in-chief and have been invited to review and take notes from, the other seized documents which the government does not anticipate using at the trial.

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Although that invitation was extended October 15, 1978, only one attorney -- Leonard Koenick, Esquire -- took advantage of that offer on January 5, 1979, and for approximately one and one-half hours, during which time he personally did not review a single document. Instead, he sat by while an official of the Church of Scientology who is listed herein as an unindicted co-conspirator reviewed a very small percentage of the documents.

Suffice it to say, that the charges in the indictment are introduced by ten self-explanatory introductory paragraphs including a reasonably thorough description of the defendants, the positions they held, and the dates during which they held these positions. This is followed by the first conspiracy count which specifies the dates when it began and concluded, the statutes which it violated; the particulars, purpose, object, and means of the conspiracy; and is followed by specific, detailed overt acts which state the date of each act, the defendants who were involved, and the act which they committed. In the few instances where unindicted co-conspirators are indicated as being involved but not named, their names are given herein. The second conspiracy and the remaining charges follow the same detailed pattern. As it stands, it is hard to imagine a more particularized indictment than the one returned in the instant case. The reasons the indictment was drafted so specifically was to avoid having to respond to an unreasonable motion for a bill of particulars such as the one filed by the defendants herein. The very length of the requested bill of particulars, and the sweeping nature of some of these requests (see e.g., passim, 20(e), 42(d), 44(d), 62(d), 64(h), 77(m)(iii), 77(n), 78(d), 86(g), 87(d), 142(c)) are indicative of its unreasonable nature and indicate that it is clearly contrary to the underlying functions of a bill of particulars. E.g., United States v. Bearden, 423 F.2d 805,809 (9th Cir. 1970); Overton v. United States, supra; Hemphill v. United States, supra.

The Court of Appeals for this Circuit recently declared in United States v. Pollack, 534 F.2d 964, 970(1976):

"In these circumstances, appellants' demands for further particularization of overt acts, the circumstances surrounding the alleged acts, and attribution of the alleged misrepresentations may be construed as attempts to procure evidentiary material rejected within the discretion of the district judge." United States v. Pollack, supra. 534 F.2d at 970.

As is well recognized, a bill of particulars is not something a defendant is entitled to as a matter of right. The granting of a bill of particulars rests in the sound discretion of the trial court. Wong Tai v. United States, 273 U.S. 77, 82 (1927). Here, the defendant's demands for particulars are so broad that to grant the bill of particulars would provide the defense with every evidentiary detail of the government's case -- a result which is totally contrary to the purpose of the bill of particulars. The Supreme Court has specifically held that a motion for a bill of particulars seeking the details of all overt acts alleged in a conspiracy count -- "which in effect sought a complete discovery of the Government's case in reference to the overt acts" -- is properly denied. Wong Tai v. United States, supra at 82. Such demands are customarily denied. E.g., United States v. Ford Motor Co., 24 F.R.D. 65, 70 (D.C.C. 1959) (Tamm, J.); Hickman v. United States, 406 F.2d 414, 415 (5th Cir.), cert. denied, 394 U.S. 960 (1969); Cook v. United States, 354 F.2d 529, 531 (9th Cir. 1965). However, despite the fact that there is no justification for a bill of particulars in this case, the government is to the extent possible detailing below for the defense many of the particulars requested. We should point out that there are a number of times, dates and places which we do not know in detail and therefore cannot so specify. However, those that we know, we will specify.

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Finally, we wish to point out that the procedure we are following here was not only accepted by Judge Gasch and the Court of Appeals in the Pollack case, discussed above, but has been fairly routinely followed by federal judges in the Southern District of New York. For example, in United States v. Leighton, 265 F.Supp. 27, 35 (S.D.N.Y. 1967), after the government consented to supply the defense with the time and place where the alleged offense took place, the trial judge ruled as follows:

"Where the indictment as written contains all the particulars necessary to enable the defendant to understand the charges against him and to protect himself from double jeopardy, the Court will not order the Government to set forth any further particulars. The indictment in the instant case most particularly sets forth the nature of the charges by specifying the approximate date of the offense, the amount of the bribe, the duty performed by the revenue agent and the name and year of the income tax return involved. Any particulars sought herein by the defendants which have not been consented to by the Government either seek a preview of the evidence or go to matters not within the indictment. As indicated supra, these matters are not properly within the scope of a demand for a bill of particulars and, accordingly, both defendants' motions are granted only insofar as has been consented to by the Government."

The United States accordingly hereby responds to the defendants' informal request for bill of particulars submitted by letter dated October 30, 1978. (Reference is made to the numbers of the paragraphs of defendants' letter):

1-7, 8(e) (f), 13(d), 14(d), 35(c), 41(b), 43(c), 45(c), 54(a), 56(c), 58(c), 59(c), 61(c), 63(c), 64(f), 66(i), 68(1), 71(h), 72(h), 74(c), 77(b) (c), 110(b), 113(b), 115(e), 119(c), 127(b), 130(c), 132(e), 135(b), 141(b) - Denied. Definition of terms, legal or otherwise, is not the subject of a bill of particulars. The words used are self-explanatory and should be read in the context of the charges detailed in the indictment and the documents and other evidence made available to the defense. See supra for law.

8(b) - The term "elsewhere" as used throughout the indictment refers to places other than the District of Columbia, including Los Angeles, California, and East Grinstead, Sussex, England, as well as locations unknown to the United States. See documents and evidence made available for details.

8(c) - The "other unindicted co-conspirators . . . known . . . to the Grand Jury" include inter alia: Brian Andrus, Mary Rezonico, Kendrick Moxon, Arthur Maren, Jimmy Mulligan, Joe Lisa, Don Alverzo, Bruce Ullman, Carla Moxon, Martin Greenberg, Mary Heldt, Peggy Tyson, Herbert Parkhouse, David Gaiman, Paul Klopper, Lynn McNeil, Bruce Raymond, George Pilat, Michael Taylor, Michael Baum, Herman Brendel, Charles Parselle.

8(g) - Denied, see law, supra.

8(h) - Neither the government nor the Grand Jury is required to state whether it considered indicting other individuals and why they decided not to do so. Indeed, such a request could violate Grand Jury secrecy.

8(i) - Denied.

8(j) - Denied, see United States v. Figueroa, 204 F.Supp. 641 (S.D.N.Y. 1962), aff'd., 323 F.2d 729 (2d Cir.), cert. denied, 376 U.S. 955 (1964) and other cases listed supra.

8(k)-(o) - Denied, see law supra. As to 8(o) the defendants have already been informed through discovery that no "informers" were used in the instant case.

9-17 - Denied. All of these questions are fully responded to by the well-detailed overt acts as well as all the documents and evidence already made available to the defense. See also case law supra.

18-76 - The defendants are requesting mere evidence, testimony, names of witnesses, characterization of testimony, and a script of the government's case. With the exception of the following

items, all other requests are denied.^{3/} (E.g., answers to item 23, 26, item may be obtained from a review of the evidence made available to the defense.)^{4/}:

- 24(a) - Don Alverzo, address unknown.
- 24(b) - Device placed in an outlet.
- 25(a) - Don Alverzo and Bruce Ullman.
- 25(b) - Chief Counsel's conference room at IRS headquarters; installed by Mitchell Hermann, a/k/a Mike Cooper.
- 25(d) - Yes.
- 50(b) - Don Alverzo, address unknown.
- 52(d) - Mary Rezonico, Martin Greenberg, Mary Heldt, all officials of the Guardian's Office of the Church of Scientology.
- 59(a) - The evening hours.
- 59(d) - By using the mechanical equipment located within that room which is normally used to make credentials.
- 59(e) - John M. Foster, Thomas J. Blake.
- 69 - On or about 5:00 p.m.
- 70(a) - During working hours.
- 70(b) - Unknown.
- 70(c) - At or about the office of Assistant United States Attorney Nathan Dodell.
- 71(c), 72(c) - Stated with the incredible specificity which a schoolboy could understand in overt act 54.
- 71(k), 72(k) - Oral.
- 73(a) - Illegally, through the use of false IRS identification during evening hours.

^{3/} Each overt act outlines the time, place (to the extent known), and names of participating defendants. The evidence made available to the defense sufficiently supplements that information.

^{4/} Throughout many of the requests, the defendants seek to circumvent having to view the evidence themselves by requiring the United States to dictate to them the content of documents. See e.g., 23(b), (c), 26(d), 29(d), 38(d), 40(b), 44(d), 46(b), 50(f), 51(c), 55(d), 57(d), 60(d), 62(d), 66(e), 68(e), 71(d), 72(d), 75(a), 75(c), 76(a)-(d), 106(c), 115(d), 117(b), 123(b)-(d), 124(b), 133(b), 135(c)-(e), 136(b)-(c), 138(a)-(c).

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73(b) - After working hours.

73(c) - Bill of particulars cannot be used to discover witnesses' names. See law supra.

77(c) (g) - See 25(b) supra.

77(h) - November 1, 1974.

77(i) - Pending Scientology litigation.

78(a) - During evening hours.

78(b) - Illegally through the forcing of doors, the use of various ruses and misrepresentations, etc. . .

78(g) - See overt acts to count one and documents made available to you.

78(h) - As previously indicated no "informers" have been used by the government in this case.

79 - As anyone can clearly see, these counts charge the same events as the ones in counts 3-8 which are the subject of request number 78, supra, except that they allege a different offense.

79(e) (f) - See documents already made available to you.

79(g) - Machines were located on property belonging to the United States of America. Individuals making photocopies included: Gerald Bennett Wolfe, Michael Meisner (counts 12,13), Gerald Bennett Wolfe (count 9,10,11).

80(a) - During evening hours.

80(b) - Illegally, by forcing office door open.

81(a) - For counts 17 and 18 see 80(a) (b) supra. For count 16, during evening hours.

81(e) (f) - See documents already made available to the defense.

81(g) - Read overt acts alleging this offense.

82-83 - See responses to requests numbers 71-72.

84(a) - May 21,28, June 11, 1976, during evening hours.

84(b) - On each occasion Meisner used a false IRS identification; on the second and third occasions Wolfe used false IRS identification.

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84(c) - Read indictment, it is stated at least three times. This type of request evidences the patent absurdity of this instant bill of particulars and the abuse of Fed.R.Crim.P. 7 to obtain discovery.

84(d) - For Meisner, see supra, already dealt with. For Wolfe, as to June 11, Thomas J. Blake; as to May 28, first name unclear Hoake. See count 25, paragraph 3, which sets all this out in simple, clearly understandable terms.

85(a) - Christine Hansen, address unknown; Special Agent Dan Hodges.

85(b) - This request asks for more evidence and testimony not available by way of bills of particulars.

86(a)(b) - Many locations outlined in the overt acts listed in this count as well as in the many documents made available to the defense, including the offices of the Founding Church of Scientology in the District of Columbia, and the defendants' and unindicted co-conspirators' offices.

86(c) - The "other unindicted co-conspirators . . . known to the Grand Jury," whose addresses are not known, include inter alia, Mary Rezonico, Arthur Maren, Brian Andrus, Jimmy Mulligan, Charles Parselle, Kendrick Moxon, Richard Kimmel, Janet Finn, Michael Taylor, Bruce Raymond, Paul Flueger, Paul Klopper, John Lake, Peter Alvet, David Moore, Jim Douglass, Jim Fiducia, Randy Ingerham, Paul McCreen, Charles Reese.

86(f) - See response to request 8(h).

86(j)-(1) - Request is tantamount to discovery of the whole government's case.

86(m) - See 78(h) supra.

87-94 - This request is fully answered by a complete reading of count 23.

95 - The overt acts and documents made available to the defense respond fully to the question asked.

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- 96(a) - During the evening hours, from a restaurant in Georgetown.
- 96(b) - Oral.
- 96(c) - During the evening hours on the date listed in the overt act, in Los Angeles, California.
- 96(d) - Same as 96(a).
- 96(e) - Same as 96(b).
- 96(f) - Mere evidence requested, see law supra.
- 97 - Reference should be made to the documents made available to the defense.
- 98 - Time unknown, date stated in overt act, place: Los Angeles, report in writing, copy made available.
- 99(b) - Oral.
- 100(a) - Los Angeles offices of Guardian's office.
- 101(a) - See 100(a) supra.
- 102(a) - See 100(a) supra.
- 102(b) - By accepting it and ordering its implementation.
- 103(a) - The defendants Henning Heldt, Duke Snider, Richard Weigand, Mitchell Hermann, a/k/a Mike Cooper.
- 103(c) - Both.
- 103(d) - See document specifying it.
- 104(a) - Los Angeles office of defendant Weigand.
- 104(b) - The defendants listed in the overt act.
- 105(a) - Henning Heldt, Duke Snider, Richard Weigand, Gregory Willardson, Mitchell Hermann, a/k/a Mike Cooper, Janet Finn, and others whose names were unknown to the Grand Jury.
- 105(b) - Both.
- 105(d) - Same as 105(a).
- 105(e) (f) - What "directive."
- 106(a) - Place: Los Angeles; time: stated.
- 107(a) - July 1, 1976 - Mary Sue Hubbard to Richard Weigand; July 2, 1976 - Weigand to Hubbard; July 2, 1976 - Weigand to Mo Budlong; July 13, 1976 - Weigand to Jimmy Mulligan.
- 107(b) - Correspondence is usually written, not oral.

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107(c) - See 107(a) supra.

108(a) - Kendrick Moxon.

108(b) - Mary Rezonico.

108(c) - See document referred to in the overt act.

108(d) - Date stated in overt act, place: headquarters of Church of Scientology in D.C.

108(e) - Kendrick Moxon.

109(b) - Both.

115(b) - Written.

115(c) - Gerald Bennett Wolfe, Sharon Thomas, Nancy Douglass, Michael Meisner.

120(b) - Same as those listed at 86(c) supra.

122 - From Los Angeles to Sussex, England; date stated; time of day unknown.

123(a) - Los Angeles.

124(a) - Los Angeles.

125 - Los Angeles.

128(a) - Los Angeles.

128(b) - Brian Andrus.

130(b) - Mary Rozonico.

131 - Los Angeles.

132(a) - See 130(b) supra.

132(b) - See 128(b) supra.

132(c) (d) - April 28, 1977 - Rezonico, Fiducia, Meisner; April 29, 1977 - Brian Andrus, Fiducia, Rezonico and Meisner; April 29-30, 1977 - Gregory Willardson, Richard Weigand, Randy Ingerham, Paul McCreen, Brian Andrus; May 1, 1977 -- Brian Andrus. All this information has been available through the documents the defense has refused to come and inspect.

133(a) - In writing.

133(b) - Seeks discovery - see footnote 4 supra for the numerous other similar instances where this alleged request for bill of particulars merely seeks discovery.

134(b) - Brian Andrus, Randy Ingerham, Paul McCreen, Chuck Reese, Peeter Alvet.

134(d) - A location on Descanso Street near Western and Sunset in Los Angeles, California.

135(a) - See inter alia, transcript of Gerald Wolfe's testimony before Grand Jury turned over to counsel on August 15, 1978; see also counts 25-28 of this indictment which specifically cites the false testimony charged in this indictment.

136(a) - Los Angeles, on the date stated in overt act 43.

136(c) - Written, see footnote 4 supra.

137(a)-(c) - June 20, 1977 - From Gregory Willardson to Henning Heldt; June 20, 1977 - Mary Rezonico to Mary Sue Hubbard; June 20, 1977 - Gregory Willardson to Brian Andrus and Cindy Raymond; June 21, 1977 - Gregory Willardson to Mo Budlong; June 21, 1977 - Mary Sue Hubbard to Gregory Willardson; June 22, 1977 - Cindy Raymond to Mo Budlong; June 22, 1977 - Gregory Willardson to Mary Sue Hubbard; June 22, 1977 - Brian Andrus to Gregory Willardson. All written.

138(a)-(c) - See footnote 4 supra.

138(d) - Discovery sought by this request - see law supra.

139(a) - Repeatedly stated throughout indictment -- May 21, 28 and June 11, 1976.

139(b) - Assistant United States Attorney Nathan Dodell.

139(c) - See responses given supra. The repetitive nature of the request precisely indicate what the instant request for a bill of particulars amounts to - abuse of the judicial process by the filing of patently absurd and repetitive papers and pleadings, without legal foundation.

140(a) - June 11, 1976 in the evening hours.

140(b) - See response to another request supra.

140(c) - Seeks mere discovery.

142(h)-(m) - Seeks to discover what took place within the Grand Jury, matters not obtainable by bill of particulars - United States v. Frumento, 405 F.Supp. 23 (D.Pa. 1975); United States v. Stromberg, 22 F.R.D. 513 (S.D.N.Y. 1957).

143 - Information already turned over to defense. Not obtainable through bill of particulars.

144 - See 142 supra.

145-161 - See counts 25-28 which specifically respond to this request.

143-161 - All these requests seek discovery. All of them are fully responded to by the indictment itself especially counts 23,25-28.

154(b), 157(b), 160(b) - None.

On January 9, 1979, the defendants served the United States with a "Supplemental Informal Request for Discovery and Bill of Particulars." (Exhibit B) The United States hereby responds to that portion of the document labeled "bill of particulars" by the defense.

1,4 - Identical to request made in the October 30, 1978 bill of particulars request. [See e.g. for item 3, item 91 of October 30 request.]

2 - Seeks information about the Grand Jury which is not obtainable by way of a bill of particulars. See response to request 135(a) supra. To the extent that this request applies to the count charging conspiracy to obstruct justice (count 23) or the obstruction of justice (count 24) the Grand Jury heard evidence on December 15, 1976.

2(c) - Stated elaborately in the indictment.


9 - Definitions of words not a subject of bills of particulars. See supra.


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As to all other requests, the information is denied for reasons stated supra inasmuch as the bills of particulars requests seek mere discovery and even at that go beyond the scope of the discovery rule.

The instant pleading also responds to the so-called "informal . . . request for a bill of particulars" contained in the letter of Leonard J. Koenick, Esquire, of October 30, 1978, appended hereto as Exhibit C.

Respectfully submitted,


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January 11, 1979

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Informal Bill of Particulars has been mailed to the following attorneys on this 11th day of January, 1979:

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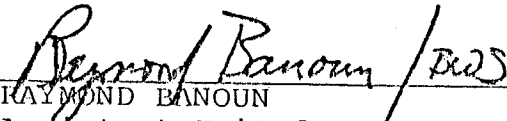
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