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IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
-v.-	:
	:
JUAN MANUEL CONTRERAS SEPULVEDA,	:
et al.,	:
	:
Defendants.	:
	:
-----x	

No. 78-367

MOTION FOR BILL OF
PARTICULARS

The defendants, Guillermo Novo, Alvin Ross and Ignacio Novo, hereby move this court for an order pursuant to Rule 7 of the Federal Rules of Criminal Procedure, requiring the United States to furnish the defendants with the particulars requested in Defendants' Motion For A Bill of Particulars filed herein:

AS TO COUNT I

1. Please state the date, time and place at which the defendant Guillermo Novo joined the conspiracy which is charged in Count I of the Indictment.

2. Please state the date, time and place at which the defendant Alvin Ross joined the conspiracy which is charged in Count I of the Indictment.

3. Please state the date, time and place at which the defendant Ignacio Novo joined the conspiracy which is charged in Count I of the Indictment.

4. State every act performed statement or utterance made or written, and every message or instruction received or meeting attended by Guillermo Novo, Alvin Ross or Ignacio Novo as part of or in furtherance of the alleged conspiracy or any overt act thereof.

6. Identify each alleged co-conspirator, whether indicted or unindicted, with whom Guillermo Novo, Alvin Ross or Ignacio Novo allegedly met, spoke or communicated indirectly as part of or in furtherance of the alleged conspiracy and list the date, time and place of each such meeting or communication, the names of all persons participating and the things that occurred, were said or transpired.

7. As to paragraph 4, of Count I, the exact date, time and place that any member of DINA and the Cuban Nationalist Movement discussed the assassination of Orlando Letelier.

8. Describe any previous contact between the two organizations and between which members.

9. Describe what role Leliana Walker Martinez played in the conspiracy and to what organization, if any, she belonged.

10. As to Overt Act number 20, describe how this meeting was initiated.

11. As to Overt Act number 20, detail whether Michael Vernon Townley had ever met Virgilio Paz or Guillermo Novo before September 9, 1976, and if so, describe under what circumstances.

12. As to Overt Act number 21, describe the exact time and place of the meeting in New Jersey.

13. Please indicate each and every person who was present at the above-mentioned meeting.

14. Indicate what response, if any, Guillermo Novo, or Jose Dionisio Suarez made to Townley's request for assistance.

15. As to Overt Act number 22, indicate the time of the meeting, the location within the hotel at which it took place, and exactly which members of the Cuban Nationalist Movement participated.

16. Describe exactly what, if anything, the Cuban Nationalist Movement asked in return for their cooperation.

17. Indicate the exact time and place of the meeting described in Overt Act number 23 and describe exactly what was given to Michael Townley.

18. As to Overt Act number 27, describe the "parts" obtained, and the place from where they were so obtained.

19. As to Overt Act number 33, describe the exact time and place of the meeting and the substance of the conversation.

20. As to Overt Act number 35, detail the location from which Townley made the call and the substance of the conversation.

21. As to Overt Act number 37, describe how the bomb was detonated, who actually detonated the bomb, and from what location.

22. As to Overt Act number 38, describe the substance of the conversation.

Each of the foregoing particulars are proper under Rule 7(f). Defendant requires a response in order to adequately prepare for trial, to avoid surprise and to be fully apprised of the charges against him.

Respectfully submitted,

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Furthermore, it is fair to say that the indictment, although setting forth some matters with specificity, has about it a Delphic aura, hinting at matters which may fall within its ambit and suggesting others which may not. Even in its articulation of some "overt acts" under Count I, the indictment bares few details of the acts themselves and their relationship to the conspiracy alleged, or these defendants' part therein. And even as to the Overt Acts specifically laid to these defendants, the nexus to the conspiracy alleged appears attenuated.

Count II of the indictment does little more than track the statutory language setting forth the crime alleged. Although this practice technically may effectuate the "apprising" requirement of the Sixth Amendment and the double jeopardy protection of the Fifth Amendment, it does not obviate the need for a bill of particulars. As was stated by Judge Whittaker (later Justice) in the oft-cited case of United States v. Smith, 16 F.R.D. 372 (W.D.Mo. 1954), in referring to a bill of particulars:

Certainly the fact that an indictment or information conforms to the simple form suggested in the rules is no answer or defense to a motion for a bill of particulars under Rule 7(f). Rule 7(f) necessarily presupposes an indictment or information good against a motion to quash or a demurrer. Its proper office 'is to furnish to the defendant further information respecting the charge stated in the indictment when necessary to the preparation of his defense, and to avoid prejudicial surprise at the trial', and when necessary for those purposes, is to be granted even though it requires 'the furnishing of information which in other circumstances would not be required because evidentiary in nature;, and an accused is entitled to this 'as of right'. U.S. v. U.S. Gypsum, D.C., 37 F.Supp. 398, 402. To the same effect are Singer v. U.S., 3 Cir., 58 F.2d 74, U.S. Allied Chemical & Dye Corp., D.C. 42 F.Supp. 425, 428; Fontana v. U.S., 8 Cir., 262 F. 283. It seems quite clear that 'where charges of an indictment are so general that they do not sufficiently advise defendant of the specific acts with which he is charged, a bill of particulars should be ordered.' Cases cited and U.S. v. Grossman, D.C. 44 F.2d 408; Chew v. U.S., 8 Cir., 9 F.2d 348, 353.

Id., at 374-75.

These defendants are entitled to know the specific nature of the charges made against them and the particulars of the conduct upon which those charges rest, not only to apprise them of the scope of their jeopardy herein, United States v. Baker, 262 F.Supp. 657 (D.C.D.C. 1966), but also to provide a basis for his defense at trial. Roviaro v. United States, 353 U.S. 53 (1957). The indictment, standing alone, does not meet these crucial needs.

The importance of this case also suggests that a liberal view should be taken with respect to particularization. The outcome of this trial will have a substantial impact upon the government of Chile and should not be dictated by "surprise". The trial of this important case requires not only fairness, but the appearance of fairness and the upholding of impartial and dignified administration of justice. Under these circumstances, the Court should undertake every effort to assure that the pre-trial and trial proceedings do not proceed on a "sporting theory" of criminal justice, 8 Moore's Federal Practice, Para. 7.06/I7, p. 7-32, n.4, but should view the request for particulars with the liberal attitude reflected in the 1966 amendment of Rule 7, F.R.Crim.P. That amendment eliminated the requirement of showing cause in order "to encourage a more liberal attitude by the courts towards bills of particulars without taking away the discretion which the courts must have in individual cases." See, 1966 Advisory Committee Note to Rule 7(f).

Nor is it sufficient for the Government to say in response to a motion for a bill of particulars that the defendants know what they did and therefore have all the information necessary. As Judge Whittaker also observe in the Smith case:

This argument could be valid only if the defendant be presumed to be guilty. For only if he is presumed guilty could he know the facts and details of the crime.

Instead of being presumed guilty, he is presumed to be innocent. Being presumed to be innocent, it must be assumed 'that he is ignorant of the facts on which the pleader founds his charges.' Fontana v. U.S., 8 Cir., 262 F. 283, 286; U.S. v. Allied Chemical & Dye Corp., D.C., 42 F.Supp. 425. This conclusion seems to me to be elementary, fundamental and inescapable.

United States v. Smith, 16 F.R.D. 372, 375 (W.D.Mo. 1954). (original emphasis).

Although it is often said that on a motion for a bill of particulars the Government will not ordinarily be required to produce evidentiary material, the mere fact that certain of the information sought may involve revelations of evidence is not fatal to the demand if justice requires it. United States v. Bentvena, 193 F.Supp. 485, 502 (S.D.N.Y. 1960); United States v. Smith, 16 F.R.D. 372, 375 (W.D.Mo. 1954). Defendants concede that some of the demands made may require the disclosure of evidentiary material. We do not seek to discover the Government's "evidence" through this Bill of Particulars. In fact, we cannot even be certain in advance of trial what materials will constitute evidence in this far-flung case. Because of the complexity of the case and the nature of the charges made, however, we believe the demands presented are the minimum essential to the preparation of their defense and to the avoidance of surprise at trial. In this context, justice requires the particularization sought.

Finally, where there is any doubt as to the need for disclosure of particular items, disclosure should be made since the determination of what may be useful to the defense can properly and effectively be made only by defense counsel. Dennis v. United States, 384 U.S. 855, 875 (1966).

POINTS AND AUTHORITIES IN SUPPORT
OF SPECIFIC DEMANDS

The information sought is amply supported by case law and may be categorized as follows:

A. Names of co-conspirators: Defendants are entitled to know the names, addresses and occupations of all co-conspirators, whether or not named in the indictment, who were known to the Grand Jury at the time of the indictment or who may have become known to the Government since the indictment was returned. United States v. Baker, 262 F.Supp. 657, 675 (D.C.D.C. 1966); United States v. Covelli, 210 F.Supp. 589 (N.D.Ill. 1962); United States v. Pignone, 189 F.Supp. 532 (D.Conn. 1960).

B. Names of all persons and dates of all transactions involved in conspiracy: In United States v. Baker, supra, Judge Gasch required the Government to state the names of all persons and the dates of all transactions it would rely upon as "involved in" the conspiracy. 262 F.Supp. 657, 213-14. This requirement is not limited to persons named in the indictment or to "overt acts" set forth therein. Thus, the Government must particularize additional overt acts upon which it intends to rely, whether such acts were known at the time of the indictment or have subsequently become known and should specify the act, the time and place thereof, and the persons present. United States v. Corrado, 307 F.Supp. 513 (S.D.N.Y. 1969).

In United States v. Baker, supra, the Court required the Government to particularize in this fashion and relied upon United States v. Covelli, 210 F.Supp. 589 (N.D.Ill. 1962), wherein Judge Will stated:

The same principle applies to overt acts which could have been included in the indictment but were not and which the Government intends to present testimony about at the trial. If the requested particulars of these acts are not now disclosed, the Court will inevitably be met at the trial with a motion to strike or exclude on the ground of surprise. The Government cannot

put the defendant in the position of disclosing certain overt acts through the indictment and withholding others subsequently discovered, all of which it intends to prove at the trial. This is the type of surprise a bill of particulars is designed to avoid.

Id., at 590.

See also, United States v. Crisona, 271 F.Supp. 150, 156 (S.D.N.Y. 1967).

C. Manner in which statutes violated: The Government must specify how and through what conduct each defendant is claimed to have violated the law. United States v. Baker, supra, 262 F.Supp. 657, 673. This demand is particularly important in this case where many of the defendants' acts upon which the Government apparently intends to rely are either innocent on their face or bear no manifest relationship to the conspiracy alleged.

D. Whether "conversation" part of overt act: The Government is required to state whether "conversation" is part of any overt acts upon which it will rely and, if so, must give the particulars thereof. United States v. Rosenstein, 303 F.Supp. 210, 213 (S.D.N.Y. 1969).

E. Further particulars of Count I: As we have already noted the lack of definition and vagueness with respect to Count I of the indictment present a serious problem to these defendants. To the extent the charges therein are uncertain and ambiguous, the Government may seek to introduce a broad range of evidence at trial which cannot reasonably be anticipated by the defense and which would be objectionable on the ground of surprise. The defendants should be able to prepare their defense upon the certain knowledge of the acts and conduct which allegedly constitute the commission of a crime. At the same time, and for the same reasons, the indictment offers little assistance to these defendants should the need ever arise to assert a defense of double jeopardy under the

Fifth Amendment. Although a bill of particulars cannot save an invlaid indictment, Russell v. United States, 369 U.S. 749, 769 (1962); United States v. Lattimore, 94 U.S.App. D.C. 268, 215 F.2d 847 (1947) the bill does provide a remedy to solve evidentiary problems and should be utilized to do so. United States v. Harding, 65 App.D.C. 161, 165-66, 81 F.2d 563, 567-68 (1936); United States v. Baker, 262 F.Supp. 657, 673 (D.C.D.C. 1966).

Defendants' requests should be granted in their entirety.

Respectfully submitted,

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ORDER

This matter having come before the Court on defendants' Motion For A Bill of Particulars, whereupon the Court having considered the motion, the memoranda filed in support thereof and in opposition thereto and having further considered the argument of counsel it is by the Court this ____ day of _____, 1978,

ORDERED, that defense Motion For A Bill of Particulars be, and the same hereby is, granted.

J U D G E