

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA *

v. * **Criminal No. 10-0181-RDB**

THOMAS ANDREWS DRAKE *

**DEFENDANT’S REPLY IN SUPPORT OF HIS
MOTION FOR A BILL OF PARTICULARS**

The defendant, Thomas Drake, through counsel, submits this reply in support of his motion for a bill of particulars in regard to Counts Six and Seven [Docket No. 49].

As an initial matter, the government’s assertion that the motion for a bill of particulars was “nothing more than a series of civil interrogatory questions designed to elicit the government’s theory of the case and proof in advance of trial” is unfair and inaccurate. *See* Government’s Response to Defendant’s Motion for Bill of Particulars (“Response”) at 1 [Docket No. 64]. The government has charged Mr. Drake in a ten-count indictment. The defense moved for a bill of particulars on two of the ten counts, obstruction of justice and one of the false statement counts. The obstruction of justice count is sweeping in its breadth. Unlike many obstruction of justice charges, the charge against Mr. Drake is not based on a discrete set of finite facts that are readily discernable to the defense either on the face of the Indictment or in discovery. Just the opposite is true. The obstruction of justice charge against Mr. Drake spans a 19-month period, charges a multitude of unspecified acts, including the destruction of unidentified classified and unclassified documents, and generally alleges interference with a federal criminal investigation into media leaks. On this count, in light of these allegations, a request for a bill of particulars was appropriate and justified.

The government’s response largely ignores the defendant’s request for a bill of particulars in regard to Count Seven, which charges Mr. Drake with falsely stating to the FBI that he never gave

classified information to Reporter A. *See* Def.’s Motion ¶ 2. Nowhere in the Indictment, or in the vast amount of electronic and paper discovery, has the government identified for the defense all of the classified information that Mr. Drake allegedly gave the reporter. The defense understands that the government alleges that Mr. Drake gave the reporter the allegedly classified “What a Success” and “Regular Meetings” documents, but the defense does not know what, if any, additional allegedly classified information the government will contend at trial that Mr. Drake lied about. Without that information, Mr. Drake cannot adequately defend against the false statement charge in Count Seven.

The government’s argument that the allegations in Paragraph 14 cure the defects in Counts Six and Seven is incorrect. Paragraph 14 broadly alleges that Mr. Drake “shredded certain classified and unclassified documents that he had removed from NSA, and similarly deleted certain classified and unclassified documents on his home computer system [.]” Indictment ¶ 14. It does not identify the documents that Mr. Drake allegedly shredded, concealed, or destroyed. Nor does it specify how his alleged actions impeded or obstructed any federal investigation. It is no response that “the defendant knows best when and what documents he destroyed, mutilated, concealed and/or covered up.” Response at 7. The government has chosen to charge him with those acts, and it must identify his alleged acts so that he can prepare an adequate defense.

The government’s response that the voluminous discovery produced in this case obviates the need for a bill of particulars is also incorrect. *See id.* at 2-4. Although discovery may, and often does, weaken a case for a bill of particulars, the large amount of discovery produced in this case actually strengthens it. This is especially true with respect to Count Seven, the false statement count. Mr. Drake cannot defend against an accusation that he lied to the FBI about giving classified information to a reporter if he is not able to identify in the discovery the entire universe of classified information

that the government contends he provided her.

CONCLUSION

For the foregoing reasons, and for the reasons stated in his opening memorandum, Mr. Drake requests that this Honorable Court order the government to furnish the defense with a Bill of Particulars containing the requested information regarding Counts Six and Seven of the Indictment.

Respectfully submitted,

/S/

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