

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 00-40101-GPM
	)	
RANDALL MOSS, WILLIAM MOSS,	)	
CHARLES A. WITHERSPOON,	)	
BRAD TAYLOR, and TYREE NEAL	)	
	)	
Defendant.	)	

**DEFENDANTS' JOINT MOTION FOR BILL OF PARTICULARS**

Come now Defendants William Moss, Randall Moss, Charles Witherspoon, Brad Taylor and Tryree Neal jointly through their attorneys and for their Joint Motion for Bill of Particulars state:

1. Federal Rule of Criminal Procedure 7 (f) states:

“The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.”

2. Defendants agree *generally* with the Government’s expected “boilerplate” response which will claim that its “open file” policy makes a bill of particulars unnecessary.

3. Seventh Circuit caselaw certainly promotes the theory that when the Government *truly* follows an “open file” policy that bills of particulars are not well taken.

4. But, because the Government has decided to provide Defendants with severely redacted discovery a bill of particulars is required.

5. In U.S.A. v. Canino, 949 F.2d 928 (1991), the Seventh Circuit properly denied Defendants' request for a bill of particulars, because:

***“The government maintained an "open-file" discovery policy which provided the defendants with complete and open discovery of all evidence assembled and revealed in the government's investigation.*** The "open-file" policy, by court order, permitted defense counsel, with proper notice, to make inspection of all files and testimony in the government's possession. The nature and operations of the "open-file" policy is an adequate "satisfactory form" of information retrieval, making the bill of particulars unnecessary. *Cf. United States v. Stephenson*, 924 F.2d 753, 761-62 (8th Cir. 1991); *United States v. Kramer*, 711 F.2d 789, 796 (7th Cir. 1983); *United States v. Schembari*, 484 F.2d 931, 935 (4th Cir. 1973); *United States v. Kilroy*, 523 F. Supp. 206, 211 (E.D. Wis. 1981).” (Emphasis added)

6. Here, unlike in Canino, the Government is ***not*** providing Defendants with ***complete and open discovery*** of all evidence assembled and revealed in the government's investigation, and instead has unilaterally redacted vast portions of discovery provided to Defendants.

7. Because of the severely redacted discovery, Defendants are forced to prepare for trial with the pieces of non-redacted discovery provided and the bare bones indictments filed herein.

8. Because the indictment charges the Defendants with knowingly and intentionally conspiring with each other, and with others known and unknown to the Grand Jury, it is Defendants position that this Honorable Court should exercise its discretion in favor of the Defendants' and at the very least require the Government to identify those “known and unknown” individuals who allegedly participated in the conspiracy with Defendants.

9. In short, the Government should not be allowed to have its cake and eat it too, because if it is going to ***truly*** follow an “open file” policy to avoid filing a bill of

particulars, then it should not provide severely redacted discovery. Either it do what Assistant U.S. Attorney Carr did in Canino or it file a bill of particulars.

WHEREFORE, Defendants request that their Joint Motion For Bill of Particulars be granted and the Government be required to file a bill of particulars immediately.

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WILLIAM MOSS

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 14<sup>th</sup> day of February, 2001, a copy of the attached *Defendants' Joint Motion for Bill of Particulars* was served on the following persons by depositing a copy of same in an envelope with postage prepaid in the United States Mails in the Post Office in Clayton, Missouri addressed as set out, namely:

Mr. George Norwood  
Assistant U.S. Attorney  
402 West Main, Suite 2A  
Benton, Illinois 62812

MOLINE, SHOSTAK & MEHAN

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