

particulars pursuant to Fed. R. Crim. P. 7(f) seeking specification of several items. Lazar first contends that the indictment does not identify the entire universe of false billings, nor does it identify all the patients claimed to be have been subjected to unnecessary testing. Second, Lazar requests that the prosecution identify any other alleged patient-victims for the various schemes charged besides the patient-victims listed in the 115 counts of the indictment. Finally, Lazar asks that the government be ordered to identify all the records claimed to include false entries and any allegedly fraudulent bills to insurers for the entire six year period of the alleged schemes set forth in the indictment.

Courts are authorized by Rule 7(f) to direct the filing of a bill of particulars. FED. R. CIV. P 7(f). The purposes of a bill of particulars are "to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, to avoid or minimize the danger of surprise at the time of trial, and to enable him to plead [double jeopardy] when the indictment itself is too vague and indefinite for such a purpose." *United States v. Birmley*, 529 F.2d 103, 108 (6th Cir. 1976); accord *United States v. Kendall*, 665 F.2d 126, 134 (7th Cir. 1981). The decision to order a bill of particulars is within the sound discretion of the trial court. *United States v. Salisbury*, 983 F.2d 1369, 1375 (6th Cir. 1993).

Unquestionably, a bill of particulars is not meant as "a tool for the defense to obtain detailed disclosure of all evidence held by the government before trial." *United States v. Salisbury*, 983 F.2d 1369 at 1375 (citations omitted). Additionally, "[t]he defendant is not entitled to know all the evidence the government intends to produce at trial, but only the theory of the government's case." *Kendall*, 665 F.2d at 135. Nonetheless, while this limitation is valid, it is not an absolute bar to particulars where justifications for disclosure exist; thus, much of the regulation of the disclosure of factual detail to an accused before trial is a matter of degree. See 1 Charles Alan Wright, *Federal Practice and Procedure: Criminal* § 129 (3d ed. 1999). In other words, the paramount inquiry in any given case is whether adequate notice of the charge has been given to defendant. *Id.* A defendant's need for the information, however, must be clear: "[It] should be established by a demonstration that the need is real; a bare statement that the need exists is not enough." *United States v. Dolan*, 113 F. Supp. 757, 760 (D. Conn. 1953). Furthermore, a defendant is not entitled to a bill of particulars with respect to information which is available through other sources. *United States v. Paulino*, 935 F.2d 739 (6th Cir. 1991).

In the present case, Lazar relies on *United States v. Vasquez-Ruiz*, 136 F.Supp.2d 941 (N.D. Ill. 2001) to support his motion for

a bill of particulars. In *Vasquez-Ruiz*, the defendant was a practicing physician charged with seven counts of mail fraud and eighteen counts of health care fraud. *Vaquez-Ruiz*, 136 F.Supp.2d at 942. The defendant moved for a bill of particulars and it was granted in part and denied in part. *Id.* The court found that the indictment identified a wide variety of types of allegedly unnecessary tests and described them in generic terms. *Id.* at 943. The indictment also identified certain bills claimed to be false, but did not purport to identify the entire universe of false billings, nor did it identify the patients claimed to have been subjected to unnecessary tests. *Id.* The court held that in view of the amount of pretrial discovery that had been provided beyond the requirements of Fed. R. Crim. P. 16, the defendant's request went beyond what was necessary. *Id.* The court determined however that the defendant was entitled to know certain basic matters prior to trial. *Id.* In reaching this conclusion, the court held that "[t]here is no good reason to require the defendant to engage in guesswork to determine who the victims of the offense were, what bills the government will claim were false, and what tests it will claim were unnecessary." *Id.* at 944.

Lazar claims that the present situation is analogous to *Vasquez-Ruiz* and the court should therefore grant his motion, but the government insists that the cases are distinguishable, thus the

motion should be denied. The court agrees with the government. Unlike the indictment in this case, the indictment in *Vasquez-Ruiz* did not name the patient-victims or the medical procedures used. Furthermore, the exact information that the court in *Vasquez-Ruiz* ordered the government to disclose to the defendant has already been provided to Lazar in the indictment in this case. In counts 1-63, the indictment sets forth the name of each patient, the pertinent dates, the health care benefit program involved, the total amount billed, the amount billed for sinus surgery, the age of the patient-victim, the date of the procedure, and the exact procedure that was billed. Counts 64-99 include the name of each patient, the health care benefit program involved, the date of the office visit and the CPT code charged for the office visit. Counts 100-105 include the same information as well as the physician-fellow's name who actually provided the services. Counts 106-115 include the same information plus the name of the physician whose provider number was used. Moreover, the government avows that it has provided Lazar with all the patient-victims charts with the attendant documentation for each count.

It is apparent from the indictment that Lazar has been given enough information about the offenses in which he is charged to adequately prepare for trial. The indictment is very detailed and sufficiently informs Lazar of the charges against him so that there

is no danger of surprise at trial. The amount of specificity in the indictment, coupled with the discovery in this case, is such that the defendant can adequately prepare for trial. Accordingly, Lazar's motion for a bill of particulars is denied.

IT IS SO ORDERED this 8th day of November, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE