
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

05-CR-060 (S-9) (NGG)

UNITED STATES OF AMERICA,

Plaintiff,

- versus -

VINCENT BASCIANO,

Defendant.

Before: **Honorable Nicholas G. Garaufis**, U.S.D.J.

**MEMORANDUM IN RESPONSE TO GOVERNMENT'S "VOLUNTARY
DISCLOSURES" AND IN FURTHER SUPPORT OF MOTION FOR
PARTICULARS WITH REGARD TO PENALTY PHASE ELIGIBILITY AND
AGGRAVATING FACTORS**

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Introduction

In response to Defendant's June 23, 2008 letter request for particulars (as supplemented in defendant's papers supporting a motion for a bill of particulars), the government, by letter to counsel dated September 22, 2008, made a "voluntary disclosure regarding the aggravating factors the government would seek to establish during the penalty phase." This disclosure, which included the caveat that it was subject to supplementation and modification, is insufficient. Additional particulars are necessary to insure adequate notice to the defendant so that he may prepare his defense to a potential penalty phase. Additional particulars will also facilitate the Court's adjudication of forthcoming issues relating to the propriety of the aggravators, the relevance and reliability of evidence that the government may seek to introduce at the penalty phase to prove the aggravators, and areas of inquiry for the jury voir dire. See, *United States v. Karake*, 370 F. Supp. 2d 275, 279-80 (D. D.C. 2005) ("it has been uniformly recognized that if the death penalty provides insufficient notice to the defendant, the Court retains inherent authority to require the government to provide more specifics in order to give the defendant the opportunity to prepare for the penalty phase, as well as to provide the court with some frame of reference for ruling on objections to the death penalty notice.")

In our Memorandum in support of the motion for particulars, we cited numerous cases in which Courts, including this one, granted particulars regarding the statutory and non-statutory aggravators: *United States v. Wilson*, 493 F.Supp.2d 364 (E.D.N.Y. 2006); *United States v. Bin Laden*, 126 F.Supp.2d 290 (S.D.N.Y. 2001); *United States v. Moonda*, 2007 U.S. Dist. LEXIS 25900 (N.D. Ohio, Eastern Division 2007); *United States v. Rodriguez*, 380 F. Supp. 2d 1041 (N.D., Northeastern Division 2005); *United States v. Llera Plaza*, 179 F. Supp.2d 464 (E.D. Pa. 2001). The government does not challenge the court's power to do so here.

Rather, the government asserts that the court need not exercise this power because its “voluntary disclosure” renders defendant’s motion for particulars “moot.” See, Govt. Memo In Opposition To Motion For Bill of Particulars, at 1 (“Basciano’s motion is not ripe and/or is moot in light of the government’s imminent voluntary disclosures regarding aggravating factors.”) The government’s “voluntary disclosure” is not a substitute for ordered particulars. The disclosure lacks the kind of factual specificity deemed necessary in the cases we have cited. The defendant is left without adequate notice, and the court without a frame of reference for dealing with legal objections to the death penalty notice and other issues. Accordingly, the government should be ordered to provide particulars not included in its voluntary disclosure.

(For the Court’s convenience, we have attached an addendum to this memorandum in which we set forth the statutory and non-statutory factors as stated in the Notice Of Intent To Seek The Death Penalty (hereinafter “NOI”), along with the defendant’s requests for particulars and the government’s “voluntary disclosures.”)

Statutory Proportionality and Aggravating Factors

In *United States v. Rodriguez*, 380 F. Supp. 2d 1041, 1958 (N.D., Northeastern Division 2005), the government was directed to articulate: **the specific act(s)** it intended to rely upon to prove the threshold finding of 18 U.S.C. § 3591(a)(2)(C); **the specific act(s) of violence** it intended to rely upon to prove the threshold finding of 18 U.S.C. § 3591(a)(2)(D); and **the specific factual basis** it intended to rely upon to prove the substantial planning and premeditation aggravating factor of 18 U.S.C. § 3592(c)(9).

Here, by contrast, the government declined defendant’s request to identify any specific acts upon which it intends to rely in connection with these factors. Instead, it refers defendant generally to “the prior testimony of Dominick Cicale and to the Massino recordings” and asserts

that these items “provide detailed information” about the gateway factors. It also advises, however, that “other witnesses will also testify and other evidence will also be offered in this regard” but does not give a clue as to what these other witnesses or evidence will show.

The government similarly relied on Cicale’s prior testimony and the Massino tapes when it argued that a bill of particulars was not needed to clarify the charges in the indictment. What we said in reply to that argument applies here as well: neither Cicale’s prior testimony nor the Massino tapes adequately inform Basciano as to the specific acts allegedly undertaken by him that underlie the charges in the NOI. The prior testimony and the tapes are filled with inconsistencies and contradictions, and Basciano should not have to guess as to which version of events the government plans to rely upon when it seeks his execution.

Moreover, as we also argued, it is a mistake to automatically assume that extensive amounts of discovery material can serve as an adequate substitute for a straightforward identification of specific information in a bill of particulars. This point was clearly made in *United States v. Davidoff*, 845 F.2d 1151, 1155 (2d Cir. 1988).

We are asking the government to identify the specific acts that, it claims, warrant the imposition of the death penalty. The defendant was in jail when Pizzolo was murdered. He should not have to guess what intentional act or acts he engaged in that allegedly caused Pizzolo’s death, and risk guessing wrong. If the specific acts we are asking to be identified can be readily gleaned from the discovery already provided, then we fail to understand what is to be gained by not having the government clarify those acts, or what would be lost if the government provides the particulars we have requested.

As in *United States v. Rodriguez*, the Court should order the government to identify (a) the specific act or acts upon which it intends to rely to prove that Basciano “intentionally

participated in an act, contemplating that the life of Randolph Pizzolo would be taken” pursuant to 18 U.S.C. § 3591(a)(1)(C) (NOI, ¶A.1.); (b) the specific “act of violence” upon which it intends to rely to prove that Basciano “intentionally and specifically engaged in an act of violence ... and Randolph Pizzolo died as a direct result of the act” pursuant to 18 U.S.C. § 3591(a)(1)(D) (NOI, ¶A.2.); and (c) the factual basis the government intends to rely upon to prove the substantial planning and premeditation aggravating factor of 18 U.S.C. § 3592(c)(9) (NOI, ¶ B.2).

Non-Statutory Aggravating Factors

The government’s “voluntary disclosure” is also inadequate with respect to the non-statutory facts identified in the NOI. Again, the “voluntary disclosure” is not comparable (in terms of the few specifics that have been provided) to the extensive particulars that courts have ordered with respect to aggravators in death penalty cases.

Unadjudicated Prior Misconduct

In its “voluntary disclosure,” the government has indicated that it intends to rely on uncharged criminal acts to prove three of the six non-statutory aggravators: future dangerousness (NOI ¶¶ C.1.(b); C.1.(e)); obstruction of justice (NOI ¶ C.3.); and participation in additional uncharged homicides, attempted homicides or other serious crimes of violence (NOI ¶ C.5.). While the cases allow the government to rely on evidence of unadjudicated prior criminal activity in the penalty phase, courts have been careful to require the government to fully disclose all of the unadjudicated misconduct that it plans to introduce as sentencing phase evidence given the potential problems with the reliability of such evidence and the risk that it may mislead. More is required than a general description of the uncharged crime: the government has been ordered to identify not only the particular acts, the dates and locations of the acts, and the

identities of the victims and other participants, but also, in some cases, the witnesses and exhibits tending to prove the acts upon which the government intends to rely.

See, *United States v. Rodriguez*, 380 F. Supp. 2d at 1958 (government ordered to identify the specific uncharged acts it intends to rely upon to prove non-statutory aggravating factors, and, in this connection, government required to produce a written list identifying the particular acts, the dates of the acts, and the witnesses and exhibits tending to prove the acts which the government intends to rely upon); *United States v. Llera Plaza*, 179 F.Supp.2d 464 (E.D. Pa. 2001) (relying on *United States v. Glover*, 43 F. Supp. 2d 1217, 1227-28 (D. Kan. 1999); *United States v. Kaczynski*, 1997 U.S. Dist. LEXIS 23805, 1997 WL 716487 at *20 (E.D. Cal. Nov. 7, 1997); and *United States v. Davis*, 912 F. Supp. 938, 949 (E.D. La. 1996), court ordered government to produce “an outline of the evidence it intends to introduce to support the non-statutory aggravating factor of ‘future dangerousness.’ This outline will include a description of any unadjudicated act of misconduct that the government intends to prove.”); *United States v. Walker*, 910 F. Supp. 837 (N.D.N.Y. 1995) (government ordered to provide a bill particularizing “the identities of the drug dealers allegedly robbed by Tyrone Walker from 1988 to 1993, and the dates and locations of those robberies”; “the identity of the persons under twenty one years of age as to whom it is alleged that Tyrone Walker and Walter Diaz distributed controlled substances, and the dates and locations of those distributions); *United States v. Hargrove*, 2005 U.S. Dist. LEXIS 18929 (D. Kans. 2005) (government ordered to provide a “written description of the evidence identifying the name of any alleged victims, the date, place and general nature of each act or event”); *United States v. O’Driscoll*, 203 F. Supp.2d 334 (M.D. Pa. 2002) (government ordered to specify “in detail each and every instance of unadjudicated conduct and serious violence which it intends to present during the penalty phase as a non-statutory

aggravating factor”). See also, *United States v. Grande*, 353 F. Supp. 2d 623 (E.D. Va. 2005) (“Regarding the reliability of evidence of unadjudicated criminal conduct, the court adopts the reasoning of *United States v. Beckford*, 964 F. Supp. 993 (E.D. Va. 1997), finding it appropriate to require a specific proffer from the government, including the taking of testimony if that appears necessary, before the evidence is admitted, sufficient for the court to determine reliability before the evidence is presented to the jury. 964 F. Supp. at 1000. See also *United States v. Friend*, 92 F. Supp. 2d 534, 535-37, 543-45 (E.D. Va. 2000); *United States v. Davis*, 912 F. Supp. 938, 941 (E.D. La. 1996).”)

Here, more specificity about uncharged criminal conduct is needed than set forth in the “voluntary disclosure” which provides in part:

- The acts of violence described in the government’s Rule 404(b)- related submissions to the Court in regard to the 2006 and 2007 trial
- The acts of violence described in the prior sworn testimony and in the section 3500 material (previously provided), of Richard Cantarella, Dominick Cicale, Salvatore Vitale and James Tartaglione
- The acts of violence described in the Tartaglione recordings
- The acts of violence described in the Massino recordings
- Solicitation and conspiracy to murder Frank Coppa, Jr., Joseph Lino and the parents of Joseph D’Amico
- Attempted murder of Leonard Colotti
- Attempted murder of Leo Perez
- Solicitation to murder the individuals on the List

This Court has already ruled, with respect to some of the uncharged acts of violence described in the government’s prior Rule 404(b) submissions, that the notice was insufficient; among others these included the solicitation and conspiracy to murder Frank Coppa, Jr., Joseph Lino and the parents of Joseph D’Amico, and the attempted murder of Leonard Colotti. The Court found that, based on the submissions alone, the defendant could not prepare a defense,

and, in the absence of a more specific proffer, the court could not assess the relevance or admissibility of the evidence. See, Memorandum and Order, February 17, 2006, at 15 (“A number of the acts relating to murder that the Government seeks to introduce lack specificity, making it practically impossible for Basciano to defend himself against the allegations.”)

Specifically, the Court ruled that the “solicitation/conspiracy to murder Frank Coppa, Jr., Joseph Lino, and the parents of Joseph D’Amico” was not sufficiently supported; indeed, the government had not provided anything in the 404(b) submission to support the contention that these acts occurred or that the defendants were involved. Also deemed lacking in sufficient notice and specificity were: charges of “other assaults committed by or for Basciano”; the murder of a numbers clerk; the solicitation to murder an Albanian; a murder “in which Alan Handler served as a lookout”; “multiple murders (in excess of ten) with Bonanno soldier Anthony Donato”; and allegations dealing with Nardino Colotti (who we believe is the same person as “Leonard Colotti” whose attempted murder is listed in the “voluntary disclosure”). (With respect to Nardino Colotti, the Court noted, “While the victim is named, the only time information given is the decade of the `1990s.”) (Memorandum and Order, at 10-11, 15)

Given the heightened reliability standard in the penalty phase, *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976), defendant naturally would be expected to argue that allegations failing to meet the threshold relevancy requirements of Rule 404(b) or deemed insufficiently probative or unduly prejudicial under Rule 403 in the prior case should be excluded from the penalty phase in a death penalty case. See, *United States v. Friend*, 92 F. Supp. 2d 534, 541 (E.D. Va. 2000) (deeming it "essential that an aggravating factor be measured in perspective of the fundamental requirement of heightened reliability that is the keystone in making 'the determination that death is the appropriate punishment in a specific case'") (citing

Woodson v. North Carolina). However, any such arguments will be unnecessarily protracted unless further specifics about the uncharged crimes are provided.

Without further particulars, we must comb the record of the '03 case for any mention of any uncharged crime – by witnesses in court and out of court, by the government in its submissions, by government agents who were recording conversations with Basciano, and by the defendant himself in those tape-recorded conversations – and assume that the government plans to proffer evidence of all such crimes in the penalty phase. And so we must litigate the relevance, probative value, prejudice and reliability of each and every incident of misconduct that we find mentioned notwithstanding rulings already made with regard to many of these allegations in the '03 case. By refusing to specifically enumerate and particularize the uncharged acts it intends to rely on to prove the aggravators, the government is forcing unnecessary litigation and a waste of judicial resources. It would be much more sensible for the government to specifically identify and provide particulars with respect to the acts it intends to rely on and, as many courts have required, outline the evidence it intends to rely upon to prove these acts. Hopefully, it would not include allegations already deemed insufficient or unreliable.

The government's failure to identify each of the specific acts it intends to rely on, and its lack of specificity with regard to the acts it does identify, serves no legitimate interest. It only serves to waste time and effort. For example, the "disclosure" that uncharged criminal acts can be found in prior testimony of witnesses at the '03 trial suggests that the government may rely on Cicale's testimony about a plot to kill Michael Mancuso. However, this testimony was roundly discredited, so much so that the Court was careful not to rely upon it in upholding the SAMs. Again, is it really necessary for us to assume that the government plans to rest on this conduct,

and to litigate the admissibility of the evidence of the alleged Mancuso plot in a potential penalty phase if, in fact, the government has no intent to actually rely on it?

There are thus several problems with the general reference to “prior testimony”, to prior “Rule 404(b)-related submissions”, and to the “Tartaglione” and “Massino recordings”: these materials do not necessarily supply an adequate set of specifics, and the defense will be forced to litigate matters when there may be no need to do so. There is an additional problem with the reference to “3500 material”: this “disclosure” is not simply inadequate; it provides no notice at all. As the government well knows, the defendant does not have access to the 3500 material, and so cannot peruse it to find references to uncharged conduct. The purpose of particulars is to allow for the defendant to prepare his defense. At a minimum, if the “voluntary disclosure” is supposed to serve this purpose, defendant should be provided with that 3500 material now.¹

The two remaining items on the government’s list about which more particulars are also needed are “Attempted murder of Leo Perez” and “Solicitation to murder the individuals on the List.” Defendant cannot prepare a defense or raise a legal challenge to these allegations unless he knows the particular acts he is alleged to have committed, the dates of the acts, the location of the acts, and, critically, the identity of the persons with whom he allegedly acted.

¹ On June 29, 2006, after the first trial and after the government’s announcement of its intent to retry the defendant in 03-929, the Court ordered:

All 3500 material turned over to the Defendants during the first trial in this case will be stored under seal by the Clerk of the Court indefinitely. If and when the Defendants have good cause to do so, they may petition the court for access to particular material. Until that time, no party in the case will have access to the 3500 material at issue. At an appropriate time, in consultation with the parties, the court will address the disposal of all the materials.

The 3500 material was turned over to the defendants during the second trial, and, after the completion of the second trial, the material was again returned to the court for storage. Pursuant to this Order, defendant petitions for immediate release of the 3500 material.

The latter piece of information is important with respect to both charges. We want to focus, however, on “Solicitation to murder the individuals on the List” because this charge is poised to play the predominant role in any penalty phase.

The government has identified “Solicitation to murder the individuals on the List” more times than anything else in the “voluntary disclosure”; according to the government, it will be relied upon to prove four separate factors that, the government will argue, justify a sentence of death: ¶ C.1.(b): Continuing Pattern Of Violence; ¶ C.1.(e): Specific Threats of Violence While In Prison; ¶ C. 3: Obstruction of Justice; and ¶ C.5: Participation in Additional Uncharged Homicides, Attempted Homicides or Other Serious Crimes of Violence. And yet defendant is in the dark as to the most basic facts about this alleged incident – who, what, when and where.

The government should be ordered to provide particulars as to the identity of the person supposedly solicited; what was allegedly said to this person; specifically when the alleged solicitation took place; and specifically where the alleged solicitation took place. Without this information, defendant cannot adequately prepare to defend against the allegation.

Victim Impact Evidence

The government’s “voluntary disclosure” is also inadequate with respect to the subject matter and scope of the victim impact evidence. According to the government, it “may rely on the loss, injury, and harm suffered by Randolph Pizzolo and by his family.” This is plainly insufficient.

“An oblique reference to victims’ ‘injury, harm, and loss,’ without more, does nothing to guide Defendants’ vital task of preparing for the penalty phase of trial.” *United States v. Bin Laden*, 126 F. Supp.2d 290, 304 (S.D.N.Y. 2001).

As in *Bin Laden*, and as this Court ordered in *Wilson*, the Court should order the government to provide particulars specifying the particularized categories of “injury, harm, and loss” that will be proffered at sentencing, and identify whether it was suffered by Pizzolo or his family. In *Wilson*, this Court ordered the government to provide the defense with a written statement describing the proposed testimony as to each “victim impact” witness. No less is needed here. See also, *United States v. Duncan*, 2008 U.S. Dist. LEXIS 20198 (Idaho, March 14, 2008) (defense argues that because of the overwhelmingly prejudicial impact of victim impact evidence, greater specificity is required of the government; Court ordered the government to provide the defense with an outline of its proposed victim impact evidence which summarizes the extent and scope of the injuries suffered by each victim, his or her family members, and other relevant individuals); *United States v. Gooch*, 2006 U.S. Dist. LEXIS 91892 (D.C. Dec. 20, 2006) (government ordered to outline the type and scope of the “loss, injury, and harm” suffered by each victim, his or her family members, and other individuals as relevant, and the “personal characteristics” of each victim that it intends to prove); *United States v. Llera Plaza*, 179 F.Supp.2d 464 (E.D. Pa. 2001) (government ordered to submit an outline of its proposed victim impact evidence). See also, *United States v. O’Driscoll*, 203 F. Supp. 2d 334, n. 6 (M.D. Pa. 2002) (“We will give serious consideration to a motion filed by either the government or O’Driscoll requesting that the testimony of the victim impact witnesses be videotaped and presented to the jury in that manner at the time of trial. This procedure would eliminate the possibility of emotional and potentially prejudicial outbursts of witnesses during live testimony before the jury.”)

Additional Requests For Particulars Regarding “Future Dangerousness”

In the course of researching legal issues relating to the aggravating factor “Future Dangerousness of the Defendant” (NOI ¶ C.1.), we have come to realize the need for particulars for three matters set forth in the NOI as evidence of future dangerousness for which we have not previously requested particulars: (a) Membership in an Organized Criminal Enterprise; (c) Low Rehabilitative Potential; and (d) Lack of Remorse.

Specifically, with respect to (a) Membership in an Organized Criminal Enterprise, the NOI states that defendant “has continued his participation in that criminal enterprise despite incarceration.” The government should be ordered to specify the particular acts of “participation” in the Bonanno organized crime family while incarcerated that, it alleges, provide evidence of Basciano’s future dangerousness.

As the court recognized in *United States v. Grande*, 353 F. Supp. 2d 623 (E.D. Va. 2005), when it struck a similarly stated aggravator as vague, not all of the business of a criminal enterprise (or, in *Grande*’s case, a “gang”) is, of necessity, criminal; for example, having a conversation with a fellow enterprise member, just like having a conversation with a fellow gang member, does not necessarily constitute a crime and, therefore, having a conversation with a fellow Bonanno family member is not necessarily probative to whether Basciano poses a “continuing and serious threat to the lives and safety of others” (NOI ¶ C.1.). More specificity is required both to allow the defendant to prepare a defense and to allow the court to intelligently assess the legitimacy of this factor and the admissibility of evidence relating to it.

Similarly, the NOI alleges that the defendant’s “low rehabilitative potential” and “lack of remorse” also evince his future dangerousness. ¶ C.1.(c) alleges that the “low potential for rehabilitation” is evidenced by his “longstanding involving violent criminal activities leading up

to the capital offense” and “his continued participation in criminal activities despite incarceration.” No particular “criminal activities” are specified. Cf., *United States v. Mayhew*, 380 F. Supp. 2d 936 (S.D. Ohio 2005) (death penalty notice alleged that the defendant has demonstrated a low potential for rehabilitation “as evidenced by the following: (i) The defendant has committed a similar crime in the past. The defendant kidnapped Rachelle Mayhew, on or about April 8, 1992; (ii) The defendant committed the instant offense approximately three years after serving eight years in prison for the kidnapping of Rachelle Mayhew”). The government should be ordered to specify the particular “criminal activities” on which it intends to rely, and, to the extent that any of these are previously uncharged and unadjudicated crimes, it should be required to set forth the date and the location, and it should be required to identify any other participants and victims).

Similarly, ¶ C.1.(d) alleges that defendant’s “lack of remorse” is “indicated by the defendant’s statements and actions during the course of and following the arrest.” The particular “statements and actions” are not specified and should be. Cf., *United States v. O’Reilly*, 545 F. Supp. 2d 630 (E.D. Michigan, S.D. 2008) (Government supplemented the NOI and, with respect to the claim of lack of remorse, the government revealed the contents of letters written by defendant while in custody, in which he boasts about his actions in killing Sheriff Samuels, and claims that he would do it again.”)

Conclusion

For all of the above stated reasons, and for reasons set forth in Memoranda In Support of defendant’s Motion For A Bill Of Particulars, particulars should be ordered.

Respectfully Submitted,

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ADDENDUM SETTING FORTH

The Notice Of Intent;

Defendant's Request For Particulars;

Government's Voluntary Disclosure

A. Statutory Proportionality Factors Enumerated under 18 U.S.C. § 3591(a)(2)

¶ A.1: Intentionally Participating in an Act, Contemplating that a Life Would Be Taken

Defendant's Request: identify the "act" in which defendant allegedly participated;

Government's Voluntary Disclosure: government refers you to the prior testimony of Dominick Cicale and to the Massino recordings. Those items of discovery provide detailed information in regard to those Special Finding provisions [¶¶ A.1, A.2 and B.2]. Other witnesses will also testify and other evidence will also be offered in this regard.

¶ A.2: Intentionally Engaging in an Act of Violence that Created a Grave Risk of Death

Defendant's Request: identify the "act of violence" in which defendant allegedly engaged;

Government's Voluntary Disclosure: government refers you to the prior testimony of Dominick Cicale and to the Massino recordings. Those items of discovery provide detailed information in regard to those Special Finding provisions [¶¶ A.1, A.2 and B.2]. Other witnesses will also testify and other evidence will also be offered in this regard.

B. Statutory Aggravating Factors Enumerated under 18 U.S.C. § 3592(c)

¶ B.1: Previous Conviction of Violent Felony Involving Firearm

Defendant's Request: identify the "offense" of which defendant allegedly "previously has been convicted";

Government's Voluntary Disclosure: the government may rely on the defendant's June 19, 1987 and April 8, 2008 convictions.

¶ B.2: Substantial Planning and Premeditation

Defendant's Request: the specific factual basis the government intends to rely upon to prove the substantial planning and premeditation

Government's Voluntary Disclosure: government refers you to the prior testimony of Dominick Cicale and to the Massino recordings. Those items of discovery provide detailed information in regard to those Special Finding provisions [¶¶ A.1, A.2 and B.2]. Other witnesses will also testify and other evidence will also be offered in this regard.

C. Other, Non-Statutory, Aggravating Factors Identified under 18 U.S.C. § 3593(a)(2)

¶ C.1 Future Dangerousness

¶ C.1(b): Continuing Pattern Of Violence

Defendant's Request: identify the "other murders, attempted murders, murder conspiracies, murder solicitations and murder authorizations";

Government's Voluntary Disclosure: in addition to the acts charged in the indictment, the government may also rely on ...

- The acts of violence as to which Basciano was convicted at trial in 2006 and in 2007
- The acts of violence described in the government's Rule 404(b)-related submissions to the Court in regard to the 2006 and 2007 trial
- The acts of violence described in the prior sworn testimony and in the section 3500 material (previously provided), of Richard Cantarella, Dominick Cicale, Salvatore Vitale and James Tartaglione
- The acts of violence described in the Tartaglione recordings
- The acts of violence described in the Massino recordings
- Conspiracy to murder Salvatore Caio
- Solicitation and conspiracy to murder Frank Coppa, Jr., Joseph Lino and the parents of Joseph D'Amico
- Attempted murder of Leonard Colotti
- Attempted murder of Leo Perez
- Murder of Anthony Colangelo
- Solicitation to murder the individuals on the List
-

¶ C.1(e): **Specific Threats of Violence While In Prison**

Defendant's Request: identify the specific conduct

"involving violence and threats of violence, including but not limited to murder conspiracy, murder solicitation and murder authorization" by providing

the name of the victim,

the time and place of the conduct,

the name of the person(s) with whom defendant

conspired and/or solicited or authorized;

Government's Voluntary Disclosure: in addition to the acts charged in the indictment, the government may also rely on...

- Solicitation to murder the individuals on the List

¶ C. 3: Obstruction of Justice

Defendant's Request identify the specific conduct

"involving violence and threats of violence, including but not limited to murder conspiracy and murder solicitation" by providing

the name of the victim,

the time and place of the conduct,

the name of the person(s) with whom defendant conspired and/or solicited;

Government's Voluntary Disclosure: in addition to the acts charged in the indictment, the government may also rely on...

- Solicitation to murder Salvatore Vitale
- Solicitation and conspiracy to murder Frank Coppa, Jr., Joseph Lino and the parents of Joseph D'Amico
- Solicitation to murder the individuals on the List

¶ C.5: Participation in Additional Uncharged Homicides, Attempted Homicides or Other Serious Crimes of Violence

Defendant's Request identify the "uncharged murders, attempted murders, murder conspiracies, murder solicitations and murder authorizations, and other serious crimes of violence" by providing

the name of the victim,

the time and place of the conduct,

the name of the person(s) with whom defendant
conspired and/or solicited or authorized.

Government's Voluntary Disclosure: in addition to the acts charged in the indictment, the government may also rely on ...

- The acts of violence as to which Basciano was convicted at trial in 2006 and in 2007
- The acts of violence described in the government's Rule 404(b)-related submissions to the Court in regard to the 2006 and 2007 trial
- The acts of violence described in the prior sworn testimony and in the section 3500 material (previously provided), of Richard Cantarella, Dominick Cicale, Salvatore Vitale and James Tartaglione
- The acts of violence described in the Tartaglione recordings
- The acts of violence described in the Massino recordings
- Conspiracy to murder Salvatore Caio
- Solicitation and conspiracy to murder Frank Coppa, Jr., Joseph Lino and the parents of Joseph D'Amico
- Attempted murder of Leonard Colotti
- Attempted murder of Leo Perez
- Murder of Anthony Colangelo
- Solicitation to murder the individuals on the List

¶ C. 6: **Victim Impact Evidence**

Defendant's Request: particulars with respect to the
subject matter and scope of the government's victim impact
evidence

Government's Voluntary Disclosure: the government may rely on the loss, injury, and harm suffered by Randolph Pizzolo and by his family.