

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

v.

FRANKLIN SUTHERLAND,

Defendant.

)
) Case No. 1:00CR00052
) Case No. 1:00CR00093
) Case No. 1:01CR00009
)
) **OPINION AND ORDER**
)
) By: James P. Jones
) United States District Judge
)

S. Randall Ramseyer, Assistant United States Attorney, Abingdon, Virginia, for United States; W. Thomas Dillard, Ritchie, Fels & Dillard, Knoxville, Tennessee, for Defendant.

In this criminal case against a physician accused of the unlawful distribution and dispensing of controlled substances, I grant in part and deny in part the defendant's motion for disclosure of nonprivileged grand jury information.

I

The defendant has moved for the disclosure of the following: (1) the dates of service of the grand juries within this judicial district that heard testimony relating to the investigation of the defendant, (2) the names of persons who were authorized under

Federal Rule of Criminal Procedure 6(e) to receive information generated during the course of grand jury proceedings.¹ For reasons stated below, I will grant the defendant's motion as to the dates of service of the grand juries, but deny the defendant's motion as to all of the other requested information.

Federal Rule of Criminal Procedure 6(e) governs the secrecy of "matters occurring before the grand jury." Fed. R. Crim. P. 6(e)(2). Disclosure may be made to the government attorney and "such government personnel . . . as are deemed necessary by an attorney for the government in the performance of such attorney's duty to enforce federal criminal law." Fed. R. Crim. P. 6(e)(3)(A). The rule warns, however, that the disclosed information shall not be used for any purpose other than to assist the government's prosecution of the case. Fed. R. Crim. P. 6(e)(3)(B). To ensure proper disclosure, the government must provide the district court with the names of persons to whom disclosure has been made and certify that such persons have been advised of their obligations. *See id.*

¹ The defendant first moved for disclosure of nonprivileged grand jury information on January 11, 2001. By Order dated April 5, 2001, the magistrate judge denied the motion. The defendant raised the issue at oral argument before me on April 30, 2001, and submitted a Supplemental Memorandum in Support of Motion for Disclosure of Nonprivileged Grand Jury Information on May 3, 2001. I will treat the defendant's renewed arguments as an appeal from a magistrate judge's order under 28 U.S.C.A. § 636(b)(1)(A) (West 1993). As such, I will only consider the grounds specifically mentioned in the defendant's supplemental memorandum.

Disclosure of grand jury matters to a defendant may be made when directed by a court “where the ends of justice require it.” *United States v. McGowan*, 423 F.2d 413, 418 (4th Cir. 1970) (quoting *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 234 (1940)); *see* Fed. R. Crim. P. 6(e)(3)(C)(i). In such cases, the defendant must demonstrate a “particularized need” for disclosure. *McGowan*, 423 F.2d at 418. Otherwise, a court may permit disclosure upon the request of a defendant “upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.” Fed. R. Crim. P. 6(e)(3)(C)(ii).

As to the dates the grand juries were impaneled, I do not find this information to be “matters occurring before the grand jury” subject to secrecy under Rule 6(e). It has been said that

disclosure of the commencement and termination dates of the grand jury does not disclose the essence of what took place in the grand jury room. Additionally, disclosure of such information does not violate the freedom and integrity of the deliberative process of the grand jurors.

In re Grand Jury Investigation, 903 F.2d 180, 182 (3rd Cir. 1990). Therefore, I will grant the defendant’s motion as to his request for the dates of service of the grand juries in the Western District of Virginia that heard testimony relating to the investigation of the defendant.

I find that the rest of the requested information does constitute secret grand jury matters subject to the protection of Rule 6(e). The defendant has not made a sufficient showing of a particularized need to warrant disclosure under Rule 6(e)(3)(C). Instead, the defendant merely asserts that he has a “particularized need” to “determine whether grand jury material was appropriately disclosed” to government agents and witnesses. (Def.’s Supp. Mem. Supp. Mot. for Disclosure of Nonprivileged Grand Jury Information at 4.) It is the province of the court, not the defendant, to assess whether the government properly carried out the grand jury secrecy rules. *See* Fed. R. Crim. P. 6(e)(3)(B) (stating that government attorney must certify to *court* that agents have been advised of secrecy obligation). Furthermore, the defendant has made no showing whatsoever that “grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.” Fed. R. Crim. P. 6(e)(3)(C)(ii).

In *United States v. DeGroot*, 122 F.R.D. 131, 133 (W.D.N.Y. 1998), the court denied a similar request by a defendant to “discover a list, if any, of the names of personnel who had access to any grand jury information underlying [the] prosecution.” Stating that the defendant had made no factual allegations sufficient to establish particularized need nor serious misconduct by the government giving rise to a motion to dismiss, the court refused to allow disclosure. *Id.* at 136. I find Sutherland’s request to be similarly deficient.

II

For the foregoing reasons, it is **ORDERED** that the Defendant's Motion for Disclosure of Nonprivileged Grand Jury Information is granted in part in that the government must disclose the dates of service of the grand juries within this judicial district that heard testimony relating to the investigation of the defendant, but denied in part with respect to all other requested information.

ENTER: May 10, 2001

United States District Judge