



POLICE DEPARTMENT

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BY EMAIL

November 30, 2018

The Honorable Gregory H. Woods
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: **United States v. James Grant and Jeremy Reichberg,**
16 Cr. 468 (GHW)

Dear Judge Woods:

Pursuant to this Court's November 6, 2018 Order, I write on behalf of the New York City Police Department ("NYPD") in reply to counsel for Defendant James Grant's November 28, 2018 letter listing twenty current and former NYPD employees for which defendant Grant seeks testimony in the above matter. This is a reduction from the initial list of forty-four subpoenas, which the NYPD moved to quash in its October 26, 2018 letter to this Court.

Defense counsel was ordered by this Court to provide a "proffer regarding the testimony the defense intends to elicit from each witness, as well as the defense's view of the relevance of that potential testimony." (Order, November 6, 2018 at 1). Whereas the defense did curtail its initial list and provided a brief rationale for each of the presently sought members of the service, the defense has again failed to adequately demonstrate how the testimony of many of these individuals is relevant to the case-in-chief presented by the Government, to offer a legitimate, admissible basis for the testimony and to establish that it is not cumulative.

Defense counsel appears to argue that certain individuals' testimony is necessary to bolster its improper theory that the acts of others within the Department, be those acts inappropriate or not, have relevance to whether defendant Grant committed a federal crime. *See, e.g., United States v. Carton*, 2018 U.S. Dist. LEXIS 181863, at *20 (S.D.N.Y. Oct. 19, 2018) ("evidence of noncriminal conduct to negate the inference of criminal conduct is generally irrelevant." quoting *United States v. Boykoff*, 67 Fed. App'x 15, 20-21 (2d Cir. 2003)). The relevant question, however, is whether Defendant Grant's actions while

employed by the NYPD violated federal criminal law. Whether other members of the Department attended the same or similar functions or engaged in similar or different conduct as Grant, is simply not relevant to the central question of this trial. Possible violations of the NYPD's Patrol Guide or other policies and procedures of the NYPD by members of the Department are similarly not relevant here.

Furthermore, the testimony sought in many instances regarding the general policy and procedures of the Department seems to seek the personal opinion of members of the Department regarding certain policies and procedures and their applicability in given situations. Such testimony is not relevant to the underlying issues in this criminal trial. Finally, the defense's continual attempts to elicit testimony from current and high-ranking members of the Department with no direct knowledge of the specific events underlying the Government's case is simply a continued attempt to confuse the issues that are the proper focus of this criminal trial in violation of Fed. R. Evid. 403.

On October 26, 2018, the NYPD filed a letter with the Court moving to quash subpoenas that had been served on the Department with respect to forty-four members of the Department. For purposes of this submission, the NYPD incorporates its October 26, 2018 letter and specifically those portions that refer to the legal principles required for the proper issuance and use of a subpoena.

I personally attempted to confer with Mr. Meringolo via phone at approximately 6:45 pm on Thursday, November 29, 2018 and left a voicemail with my direct contact number. I did not receive a return call or response. I indicated that we would be available that evening as well as during the day on Friday, November 30, 2018. Mr. Meringolo's colleague Anjelica Cappellino contacted a different NYPD Legal attorney this afternoon via email. That NYPD attorney informed me of this communication, and I asked him to convey that I and the Legal Bureau team working on this motion would like to set-up a time to speak with her or Mr. Meringolo as soon as was practical. This message was conveyed to Ms. Cappellino via phone and email. I am not aware that the Department received any further communications from Ms. Cappellino or Mr. Meringolo.

We have therefore been unable to come to any mutual agreement regarding the witnesses now sought and are therefore filing our response at this time. Nevertheless, in an effort to unilaterally narrow the issues before the Court, the Department withdraws its motion to quash as it applies to Deputy Chief James McCarthy, Inspector Brian McGinn, Sergeant Christopher Hewitson, Sergeant Joseph Marsella, and Sergeant Kenneth King. Furthermore, the Department has no objection to Deputy Inspector Roy Richter testifying in his capacity as the President of the NYPD Captain Endowment Association. The NYPD maintains its motion to quash the remaining subpoenas as discussed below.

We address the insufficiency of defense's rationale for each of the remaining subpoenaed NYPD witnesses below:

1. Police Commissioner James P. O'Neill:

James P. O'Neill has been the Commissioner of the NYPD since September 2016. Prior to his appointment as Police Commissioner, he served as the Chief of Department, the highest uniformed position in the NYPD. As part of his official duties in that role, Commissioner O'Neill regularly attended events sponsored by community organizations as well as City-wide events at which the NYPD provides security and other police services.

To be clear, Commissioner O'Neill has no recollection of ever meeting with, or speaking to, Defendant Reichberg or Jonah Rechnitz. At no time did either individual receive any specialized or individualized attention from, nor access to, then Chief O'Neill. Reichberg's statements claiming otherwise were simply obvious attempts by Reichberg to enhance his own stature and importance with Defendant Grant or others, by claiming to have influence with, or access to, then Chief O'Neill where none actually existed. These claims were purely fictional self-serving statements on Reichberg's part. In reality, to the extent that Reichberg attended meetings or other NYPD events at Police Headquarters or other locations, or attended events that were open to the public such as the New Year's Eve ball drop, and may have interacted with then Chief O'Neill, any such interactions occurred strictly within the context of such official Department functions, meetings and events, and while both Reichberg and then Chief O'Neill were in the presence of other community members and NYPD officials.

In the instant motion, Defendant Grant's purported justification for Commissioner O'Neill's testimony in this matter is notably sparse and highly questionable. Defendant Grant claims that he wishes to introduce testimony from the Police Commissioner "about the Chief of Department pens during events" such as the annual New Year's Eve festivities in Times Square, presumably at the end of 2015 (although the offer of proof fails to provide any details as to the time frame or specificity as to the so-called "events.") As a threshold factual matter, there is no such thing as "the Chief of Department pens" at any such event. While there are designated viewing pens that are established for selected individuals, including community representatives, they are not labeled as belonging to or provided for by any specific NYPD official. Even assuming that evidence about the establishment of such viewing pens were relevant to the case, there is clearly no need to require that the Police Commissioner explain the manner in which they are set up and populated. Indeed, members of the Department from one of the NYPD units that are responsible for establishing and maintaining such areas during an event are the competent and appropriate witnesses for such evidence. They possess the detailed knowledge regarding this issue that, as the agency head, the Police Commissioner understandably leaves to their discretion in preparing for such an event.

More importantly, however, testimony about viewing pens at special events is plainly irrelevant in this case. The Government has clearly stated on the record to the defense and Court that they are not proceeding on a theory that the granting of access to public events and/or such viewing pens is an official act for purposes of the charges in this case. For this

reason, they have not introduced any evidence in their case-in-chief to support such a theory and will not argue this theory to the jury at the case's conclusion. Any such evidence by the defense would not, therefore, serve to rebut the charges and will no doubt distract the jury from the pertinent issues in the case.

The defense also claims that the Police Commissioner's testimony is necessary to identify unspecified "members of the Jewish community" that are depicted in a photograph that the defense has not provided to the Department as part of its offer of proof nor have they explained in their submission how the photograph is relevant. With respect to this purported evidence, the defense has simply failed to make any meaningful offer of proof and has not complied with the Court's directive. This cannot, therefore, serve as a basis to deny quashing of the subpoena. For the reasons stated above, this evidence is similarly irrelevant.

Finally, Defendant Grant claims that Commissioner O'Neill's testimony is necessary to explain "general professional courtesies that are extended to community members and that dinners and other events with members of the community are proper." Again, such a vague and conclusory statement does not amount to a proffer as required by the Court's Order of November 6, 2018. Of course, the Government has introduced NYPD Patrol Guide procedures pertaining to appropriate interactions with community members and acceptance of gifts, gratuities, rewards, or other compensation for services performed in conjunction with their official duties. Testimony from the Police Commissioner regarding these matters is therefore cumulative and unnecessary.

Moreover, to the extent that Defendant seeks testimony by any witness, including that of the Police Commissioner, regarding his or her opinion about the propriety or legality of Defendant Grant's conduct in this case, it is plainly inappropriate and irrelevant. That determination is clearly the core issue for the jury to decide within the context of the applicable federal criminal statutes and the principles of law as instructed by this Court. To the extent the defense seeks to introduce evidence about purported general practices of others in extending "courtesies" to unspecified community members in order to argue that Grant's conduct either somehow complied with Department rules and procedure, or that of the City's conflicts of interest rules, or to compare and contrast it with the conduct of other uncharged individuals, this is also irrelevant and improper. *See, e.g., Carton*, 2018 U.S. LEXIS 181863, at 20. Put another way, such evidence, introduced from any source, is simply not a defense to the crimes with which the Defendant has been charged.

Given the paucity of the proffer with respect the Police Commissioner and for the reasons stated above, the Department respectfully requests that the Court quash the subpoena for Commissioner O'Neill's appearance. To the extent any evidence is arguably relevant, under Federal Rule of Evidence 403 even relevant evidence may be excluded if its probative value is substantially outweighed by the danger that it will be unduly prejudicial, confusing, or misleading to the jury. Fed. R. Evid. 403. A court may also exclude or limit relevant evidence if its probative value is outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *Id.* Finally, to the extent that any of these topics are found to be relevant by the Court, the Department will provide an appropriate and competent subject matter expert from the NYPD to testify.

2. Former Police Commissioner William Bratton:

William Bratton was the Commissioner of the City of New York from 1994 to 1996 and from 2014 to 2016. Counsel for Defendant Grant asserts in his letter that Commissioner Bratton had a personal relationship with Defendant Reichberg. However, Commissioner Bratton has no recollection of ever meeting Defendant Reichberg, much less having any type of relationship with him. Furthermore, at the time that Defendant Reichberg asserts that Commissioner Bratton had a personal conversation with him, on or around January 16, 2015, Commissioner Bratton had been fully briefed that Mr. Reichberg was the target of a criminal investigation. Under these circumstances, then Commissioner Bratton would not have personally met with Reichberg and certainly not have met him alone.

As is the case with Commissioner O'Neill, any such interactions between then Commissioner Bratton and Defendant Reichberg as a member of the Jewish community would have only occurred within the context of such official Department functions, meetings and events, and while both then Commissioner Bratton and Reichberg were in the presence of other community members and NYPD officials. In particular, the meeting referred to in the January 16, 2015 recording was one in which a number of other members of the Jewish community attended and was for the purpose of briefing the community representatives on a recent terrorist attack in Paris. Such meetings were a matter of routine. The meeting neither included nor ended with a private meeting or collaboration with Defendant Reichberg.

Defendant Grant also asserts that former Commissioner Bratton can testify regarding NYPD polices during an unspecified timeframe for attending dinners. For the reasons stated above with respect to Commissioner O'Neill's proposed testimony, this evidence is in certain respects cumulative and in other respects, irrelevant and inappropriate.

Defendant Grant also asserts that former Commissioner Bratton promoted him based on merit and was familiar with Mr. Grant's policing. First and foremost, all promotions approved by former Commissioner Bratton were based on merit. However, then Commissioner Bratton based his approval for a promotion at Defendant Grant's level (from Captain to Deputy Inspector) on recommendations from other members of his executive staff and not based upon his individual assessment of Grant.

Defense counsel also states that Commissioner Bratton can testify to travelling by private jet in 1996, as an indication that private jet travel does not warrant termination as a form of agency discipline. The Commissioner's actions nineteen years prior to the events of this case are simply not relevant in any regard. Furthermore, then Police Commissioner Bratton compensated such individuals who owned the jets the equivalent of a first class flight tickets for himself and his wife in order to avoid any appearance of impropriety. Defense counsel's attempt to argue that this event has any relevance to Defendant Grant's actions in 2014 through 2015 is absurd. In addition, for the reasons stated above, whether Defendant Grant's conduct complied or failed to comply with Department rules and which administrative penalties would be imposed, particularly in 1994-1996, is not a defense to the criminal charges pending against Grant and is plainly meant to confuse and distract the jury. Finally, to the extent that Department rules are in any way relevant, the Government has introduced the applicable Patrol Guide provisions and testimony from then Commissioner

Bratton is cumulative and not necessary. Should the Court determine that any such testimony regarding the applicability of Department rules to a given situation is appropriate, a competent and knowledgeable subject matter expert from the Department will be made available.

3. Captain Ludwig Romero:

Captain Ludwig Romero is currently the Commanding Officer of the 63rd Precinct in Brooklyn. Defense counsel asserts that he can "explain how assignments are received from the overhead command to provide escorts or transportation to parades and other events." As discussed above, this testimony is not relevant to this case because the Government has no intention to introduce it in their case-in-chief and it is not in the Superseding Indictment. Furthermore, Captain Romero is not a designated expert of police policy on this topic, he is not a policymaker, and his personal knowledge is limited to that of his own commands.

4. Chief of Housing James Secreto:

Chief James Secreto is currently the Chief of the Housing Bureau. Again, Defendant Grant's offer of proof with respect to Chief Secreto is notably brief and lacking in detail. For this reason, it does not comply with the Court's order. Based on the little information that is presented, counsel for Defendant Grant asserts that because Chief Secreto attended unspecified dinners with unnamed individuals who were "doing business with New York City," his testimony in this case is somehow relevant. Although not at all clear from the offer of proof, counsel may be referring to several dinners that occurred sometime in 2016 during which Chief Secreto in his official capacity met with then President of the Queens Public Library. At that time, Chief Secreto was under the mistaken yet understandable impression that the Library was part of a City agency. He willingly resolved this matter with the City's Conflicts of Interest Board and paid a fine of \$1500. The introduction of evidence of this incident is plainly irrelevant in the instant trial.

Moreover, that Chief Secreto knew defendants Reichberg and Grant is no surprise. The Chief has been a member of the NYPD for thirty-nine years and in approximately 2004 through 2006 was assigned as the Executive Officer of the Brooklyn South Patrol Borough. As Chief of the Housing Bureau, his duties and responsibilities extend citywide. During his tenure as an executive in the NYPD, Chief Secreto met and socialized with Defendant Reichberg and Jonah Rechnitz in their roles as representatives of the Brooklyn South Jewish community. He also not surprisingly attended NYPD community events at which they were present.

Because of the insufficient offer of proof with respect to Chief Secreto, it is difficult to determine or respond to counsel's suggestion that his testimony regarding unspecified dinners or events is somehow probative in this case. Again, to the extent the defense seeks to introduce evidence about the conduct of others in order to argue that Grant's conduct either somehow complied with Department rules and procedure, or that of City's conflicts of interest rules, or to compare it and contrast it with the conduct of others, is irrelevant and improper. Such evidence, introduced from any source, is simply not a defense to the crimes

with which the Defendant has been charged.

Finally, it bears noting that evidence has been introduced in this case through the testimony of Jonah Rechnitz indicating that Chief Secreto was immune to his and Reichberg's attempts to confer gifts and other benefits to gain influence. In substance, Rechnitz described defendant Grant and Michael Harrington as "team players" in this regard, but specifically described James Secreto as someone who was not a "team player," as he never agreed to have lunch with Rechnitz or accepted any gifts from him.

5. Deputy Chief Ruel Stephenson:

Chief Stephenson is currently assigned to the NYPD Housing Bureau. To his knowledge, he has never met Defendant Reichberg and has no knowledge of any "business relationships" that Defendant Reichberg claims to have had with the Department. In 2015, Chief Stephenson was assigned to the 47 Precinct in the Bronx, and has not had a professional relationship with the Hasidic community while in the NYPD. As such, Chief Stephenson can provide no relevant testimony in this matter.

6. Deputy Chief Charles Scholl

Deputy Chief Charles Scholl is the Executive Officer of Patrol Borough Brooklyn South. He is not, as stated in defendant Grant's letter, "Chief of Brooklyn South's Community Affairs" and no such position exists in the NYPD. Defendant Grant indicates that Deputy Chief Scholl can testify to "the Hasidic community's relationships with the NYPD as well as certain programs, polices, and initiatives, that were put in place to met [sic] the community's individual safety and security needs." Again, the Department's policies and procedures on this topic are not a relevant line of questioning and should not be permitted. Furthermore, testimony regarding Department policies and procedures elicited from one individual, who is not a policymaker or an expert, would be limited to his personal opinion based on his experience, and not actual Departmental policy.

7. Deputy Chief Thomas Taffe:

Deputy Chief Thomas Taffe is currently assigned to the Police Commissioner's Office. He previously worked in the Office of Management Analysis & Planning ("OMAP"). Counsel for Defendant Grant indicates that Deputy Chief Taffe can testify to "how transfers and promotions are conducted." To be clear, simply by virtue of his current assignment or former assignment to OMAP, Chief Taffe does not have in-depth personal knowledge regarding "how transfers are conducted" and is clearly not a subject matter expert in this area. To the extent that such information is relevant in the Court's view, the Department will designate a competent and appropriate individual to testify about these topics.

It is the Department's understanding that the Deputy Chief Taffe will be testifying for the Government regarding the PMI project and thus the Department and, with respect to this topic, counsel for Defendant Grant will have an opportunity to cross-examine him at that time.

8. Inspector James Coan:

Inspector James Coan is the Commanding Officer of the NYPD Aviation Unit. It is our understanding that the Government does not intend to introduce evidence regarding the topic proffered by counsel for Defendant Grant, i.e., an alleged helicopter fly-over for Mr. Reichberg. Therefore, testimony from Inspector Coan, or any NYPD employee, on this subject would be irrelevant.

9. Deputy Inspector Anthony Mainolfi:

Deputy Inspector Anthony Mainolfi has been assigned to the Internal Affairs Bureau ("IAB") since 2006, and he is currently the Commanding Officer of IAB Group 9. Counsel for Defendant Grant justifies subpoenaing Deputy Inspector Mainolfi by claiming that he can testify regarding "how the NYPD's Gun Licensing Division processed gun license applications on behalf of officers and family and friends of the Internal Affairs Bureau." First, Deputy Inspector Mainolfi has no personal knowledge of how the Gun Licensing Division processes gun license applications generally or specifically as to members of IAB and their friends and family. Second, testimony regarding the applications for gun licenses for family and friends of IAB members is not relevant to the alleged crimes with which Defendant Grant has been charged.

The NYPD does not dispute that testimony regarding the practices of the NYPD's Gun Licensing Division may be relevant in this case. The Government has introduced evidence from three NYPD officers who are or were assigned to the License Division, Inspector Michael Berreto, David Villeneuve, Richard Ochetal, and the defense had ample opportunity to cross-examine each of them. Additional evidence regarding the general policies and procedures of the Gun Licensing Division would, therefore, be cumulative, and evidence focused specifically on the processing of gun license applications on behalf of officers and family and friends of IAB, notwithstanding the fact that all officers in IAB carry guns pursuant to their role as uniformed members of the NYPD rather than through a license, is simply irrelevant to the question of whether defendants attempted to expedite gun licenses on behalf of themselves or their associates.

10. Deputy Inspector Kenneth Quick:

Deputy Inspector Kenneth Quick is currently the Commanding Officer in the Office of the Deputy Commissioner of Administration. He was the Commanding Officer of the 66 precinct from March 2015 to January 2016. Counsel for Defendant Grant asserts that Deputy Inspector Quick met Defendant Reichberg and can testify to the "working relationship the NYPD has with the Hasidic community and the efforts put in place to maintain open dialogue. Deputy Inspector Quick regularly met with Defendant Reichberg while he was the Commanding Officer of the 66 precinct and in Quick's official capacity but had no personal relationship with him. Furthermore, Deputy Inspector Quick has no personal knowledge of any of the events at issue in this trial and any testimony from him regarding the NYPD's relationship with the Hasidic community would be purely his opinion based on his personal experiences from March 2015 to January 2016. Based on the extremely brief and unspecific offer of proof consisting of two sentences, it is unclear how such evidence is

relevant, admissible and non-cumulative.

11. Deputy Inspector Michael Deddo:

Deputy Inspector Michael Deddo is currently the Executive Officer of the Vice Enforcement Division. Previously, Deputy Inspector Deddo was assigned to the Internal Affairs Bureau from March 2015 to May 2016. He was the Commanding Officer of the 66 Precinct in Brooklyn during the timeframe of the investigation and immediately prior to Deputy Inspector Quick. The defense asserts that he can testify to “how NYPD personnel is deployed within the Hasidic community during holidays, special events, and religious services.” Similar to any testimony elicited from Deputy Inspector Quick, Deputy Inspector Deddo can only speak to his own personal opinions regarding the relationship between the NYPD and the Hasidic community in the 66 precinct. Based on the brief and unspecific offer of proof consisting of a single sentence, it is unclear how such evidence is relevant, admissible and non-cumulative.

12. Lieutenant Timothy Slattery:

Lieutenant Timothy Slattery is a Lieutenant in the 71 precinct in central Brooklyn. The defense has stated that he “can testify to the precinct transfer process and the proper channels through which an officer needs to go through in order to place such a request.” Lieutenant Slattery is not an expert in police policies regarding the precinct transfer process, he is not a policymaker, and his personal knowledge is limited to his own personal requests for a transfer. Testimony from Lieutenant Slattery on this process is improper.

13. Sergeant Arthur Smarsch:

Sergeant Arthur Smarsch is a Sergeant in Patrol Borough Manhattan South. Defendant Grant asserts that Sergeant Smarsch is the “point person for public events within the city,” and that Sergeant Smarsch can testify as to the apportioning of certain sections at public events for Department friends and family.

Again, the Government is not putting possible access to public events at issue in this case. Furthermore, to the extent that public events are determined to be an appropriate avenue of testimony, Sergeant Smarsch is a sergeant in one of eight patrol boroughs in the City of New York. Whereas Manhattan South is the location of many public events in the City of New York, Sergeant Smarsch can simply not be the “point person” for all public events in the City. To the extent the defense is seeking a witness on the Department’s policy regarding the policing of public events and community relations at those events, Sergeant Smarsch is not an expert on that issue and can only testify to his personal experience at events in Manhattan South. Should the Court deem such evidence admissible and relevant, the Department will provide a suitable and knowledgeable witness for this purpose.

14. Sergeant Marc Klausner:

Sergeant Marc Klausner is a Sergeant within the Internal Affairs Bureau. He was present at the interview of Defendant Grant on February 25, 2016 to which FBI Agent James Masey has testified. Any additional testimony on this issue is cumulative or an improper

attempt by Defendant Grant to put his own statement of the February 25, 2016 meeting into evidence without testifying himself. This is inadmissible hearsay.

In conclusion, counsel for Defendant Grant failed to provide a particularized offer of proof for each of the twenty NYPD employees for which he continues to seek testimony. Based on the information that was provided the Department, the majority of witnesses are sought for irrelevant information regarding Department policies and procedures or to confuse the jury with matters that are not issues in this case. Therefore, we respectfully request this Court to move to quash the subpoenas enumerated above.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'AP' with a long horizontal stroke extending to the right.

Ann Prunty

Acting Deputy Commissioner for Legal Matters
New York City Police Department

Cc: Counsel of Record