

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States

v.

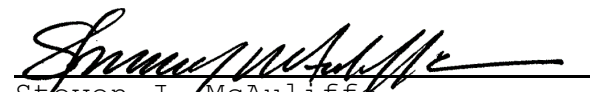
06-cr-71-01-02-SM

Elaine Brown and
Edward Brown

ORDER

Re: Document No. 60, Motion for the Court to Produce Law and Facts re: Order on [54] Motion to Dismiss

Ruling: Denied. The referenced motion to dismiss was facially without merit and failed to meet even the minimal legal standard. In criminal cases a defendant may move to dismiss an indictment on grounds of "substantial failure" to comply with the Jury Selection Act's requirements for selecting the grand jury (28 U.S.C. §§ 1867(a)). The procedures described in Section 1867 are the "exclusive means" by which a person accused of a Federal crime may challenge any jury on grounds that it was not selected in conformity with the Jury Selection Act. 28 U.S.C. §§ 1867(e). The motion filed by defendants did not comply with the procedures described - no assertion or description of a "substantial failure" was made, and, no "sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of [the Act]" was filed in support of the motion. 28 U.S.C. §§ 1867(d). Moreover, no factual issue was presented or resolved. Fed. R. Cr. P. 12(d) provides, in pertinent part, "When factual issues are involved in deciding a motion, the court must state its essential findings on the record." Defendants did not raise a factual issue regarding grand jury selection evincing a "substantial failure" to comply with the statutory selection requirements. Finally, the docket discloses that the Magistrate Judge recently ruled on grand jury related discovery requests that provide defendants with pertinent information they seek. They are, of course, free to file a challenge to the grand jury selection procedures based on that information, but must comply with 28 U.S.C. §§ 1867 (i.e. describe the alleged "substantial failure" and file supporting sworn statements of facts which, if true, would constitute a substantial failure to comply).


Steven J. McAuliffe
Chief District Judge

Date: November 3, 2006

cc: Elaine A. Brown, pro se
Edward L. Brown, pro se
William E. Morse, AUSA