

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA)	
)	
v.)	
)	Crim. No. 06-00071-SM
EDWARD LEWIS BROWN and)	
ELAINE A. BROWN,)	
)	
Defendants.)	

GOVERNMENT'S OBJECTION TO DEFENDANTS'
"NOTICE AND MOTION FOR COURT TO ORDER,
PRODUCTION OF THE GRAND JURY NAMES AND ADDRESSES"

INTRODUCTION

The government hereby partially opposes, and partially assents to, the joint motion of defendants Edward Lewis Brown and Elaine A. Brown to inspect and copy information pertaining to the individuals who sat on the grand jury that returned the indictment against them. The government opposes the defendants' motion to the extent it seeks: (i) documents reflecting the names, addresses, social security numbers or tax status of those who sat on the grand jury that returned the indictment; (ii) Grand Juror Qualification Forms; and (iii) the social security numbers and addresses of the individuals in the Clerk's office who selected the individuals serving as grand jurors. The government does not oppose the defendants' request for access to the following: (i) the master grand juror list; (ii) documents relating to any investigation regarding the citizenship or qualifications of the seated grand jurors; (iii) the identities

of any persons "eliminated" from service on the grand jury; (iv) the precise geographical location from which the grand jury master list was pulled; or (v) any documents showing whether the grand jurors received any consideration by the government or were licensed or "controlled" by the government.

ARGUMENT

The defendants seek access to a broad array of documents and information concerning the jurors who sat on grand jury that returned the indictment. The defendants assert that they need such information for "preparation of a motion challenging compliance with jury selection procedures" under the Jury Selection and Service Act of 1968. Defendants' Motion, pp. 2-4.

Although profoundly skeptical of the merits of any possible challenge to the jury selection procedures, the government assents to much of the defendants' request. In Test v. U.S., 420 U.S. 28, 42 (1975), the Supreme Court recognized the unqualified right of defendants to inspect jury lists in connection with the preparation and presentation of motions challenging jury selection procedures. The Court reasoned that such access was required not only by the plain text of the Jury Selection and Service Act of 1968, but also by the Act's overall purpose of insuring "grand ... juries [are] selected at random from a fair cross section of the community." Id.; see also United States v. Royal, 100 F.3d 1019 (1st Cir. 1996) (district court may not deny motion to inspect jury selection records on likelihood of

successful challenge to selection process; right of access to records is precursor to defendant's burden of establishing *prima facie* case of a flawed process and is intended to provide the defendant with evidence to mount a proper showing).

Accordingly, the government does not object to the release of much of the information the defendants seek in their motion. Specifically, the government submits that the defendants are entitled to the following: (i) the master grand juror list; (ii) documents relating to any investigation regarding the citizenship or qualifications of the seated grand jurors; (iii) the identities of any persons "eliminated" from service on the grand jury; (iv) the precise geographical location from which the grand jury master list was pulled; or (v) any documents showing whether the grand jurors received any consideration by the government or were licensed or "controlled" by the government. ¹

The government does, however, object to the motion to the extent it seeks disclosure of any documents identifying by name or containing other personal information about the individuals who were assigned to the grand jury that indicted the defendants. The information the defendants seek that falls into that category

¹ The government's assent is conditioned upon the assumption that the documents do not contain home addresses or other personal information that is subject to misuse or that such any such information be redacted before production. In addition, the government has not yet determined to what extent the requested information actually exists. Indeed, the government expects that at least some of the requested information does not exist.

consists of documents reflecting the names, addresses, social security numbers and tax status of the individuals who sat on the grand jury that returned the indictment. Such information is subject to misuse and thus should not be disclosed unless necessary. Moreover, the defendants do not need such information because the actual composition of the grand jury that indicted them is not relevant to any possible procedural challenge. The issue under the Jury Selection and Service Act of 1968 is whether the grand jury was "selected at random from a fair cross section of the community," Test, at 42, and not whether the grand jury that was actually seated represents a fair cross-section of the community. In other words, any challenge must be focused on the process, not the result and therefore the composition of the selected jurors is simply not relevant.

Likewise, the defendants' request for Grand Juror Questionnaire Forms, see 28 U.S.C. § 1864(a) (instructing the clerk or jury commission to mail a juror questionnaire to every person whose name is drawn from the juror master wheel and requiring those persons to complete and return the questionnaires), should be denied. Such questionnaires contain personal information, are subject to possible substantial misuse and should not be provided to the defendants. See United States v. Davenport, 824 F.2d 1511 (7th Cir. 1987) (refusal to allow tax protestor access to completed juror questionnaires - as opposed to master lists - is especially appropriate where the

questionnaires contain home addresses and other personal information about prospective jurors).

Finally, the government objects to the defendants' request for disclosure of the names and home addresses of the individuals in the Clerk's office responsible for selecting the individuals who sat on the grand jury that returned the indictment in this case. The information the defendants seek about the employees of the Clerk's office is irrelevant.

CONCLUSION

For the reasons set forth above, the government respectfully requests that the defendants' motion be denied to the extent it seeks the following:

- a. Grand Juror Questionnaire Forms;
- b. documents reflecting the names, addresses, social security numbers or tax status of the individuals who sat on the grand jury that returned the indictment against the defendants;

- c. any other information that includes, or documents that reflect, home addresses or other personal information that is subject to misuse; and
- d. information concerning the identities of employees of the Clerk's office.

Respectfully submitted,

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Dated: September 25, 2006

Certificate of Service

I, William E. Morse, hereby certify that a copy of the foregoing was served this date by sending a copy by regular U.S. mail to Elaine A. Brown and Edward Brown, each at 401 Center of Town Road, Plainfield, New Hampshire 03781.

Dated: September 25, 2006

/s/William E. Morse