

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Action No.
v.)	10-00162-06-CR-W-FJG
)	
NARICCO T. SCOTT,)	
)	
Defendant.)	

ORDER

Before the court is defendant's motion to inspect jury records and to quash jury panel. In support, defendant challenges "the legality of the impaneled grand jury which indicted him. . . . Defendant continues his assertion that the grand jury which indicted him was impaneled by biased and racially selective means impinging on illegality." Defendant requests production of the following:

- Jury wheel from which jurors were pooled
- Demographics of areas from which jurors were selected
- Race, nationality and sex of each juror
- Standards for juror eligibility
- Numbers of jurors selected from Jackson County, Missouri within the past 20 years
- Voter registration list of all jurors
- Numbers of jurors in the jury pool
- Name of impaneling judge
- Name of U.S. Attorney present during grand jury selection

The Government responded, disclosing a copy of the Western District of Missouri's "Amended Plan for the Random Selection and Service of Grand and Petit Jurors" and citing 28 U.S.C. § 1865 as the standards for juror eligibility (Doc. No. 381).

Title 28, United States Code, Section 1867(f) provides:

The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than \$1,000 or imprisoned not more than one year, or both.

(emphasis added). The United States Supreme Court has stated that “[t]his provision makes clear that a litigant has essentially an unqualified right to inspect jury lists.” Test v. United States, 420 U.S. 28, 30 (1975)(emphasis in original). “To avail himself . . . of [the] right of access to otherwise unpublic jury selection records, a litigant needs only to allege that he . . . is preparing a motion challenging the jury selection procedures.” United States v. Alden, 776 F.2d 771, 773 (8th Cir. 1985)(quoting United States v. Layton, 519 F. Supp. 946, 958 (D.C. Cal. 1981)). A defendant’s motion to inspect may not be denied “because the defendant fails to allege facts which show a ‘probability of merit in the proposed jury challenge.’” United States v. Alden, 776 F.2d at 774 (quoting United States v. Beaty, 465 F.2d 1376, 1380 (9th Cir. 1972)). In United States v. Harvey, the Eighth Circuit affirmed the trial court’s order “that appellants be permitted to inspect data relating to the constituency and method of the grand jury selection, omitting only the names and addresses of the persons on the master grand jury list.” 756 F.2d 636, 643 (8th Cir. 1985)(noting “appellants abandoned their objection to the district court’s decision not to disclose the names and addresses of the persons on the grand jury list”). See also United States v. Stanko, 528 F.3d 581, 587-88 (8th Cir. 2008). The Eastern District of Missouri has similarly permitted such an inspection. United States v. Bentonsports, PLC, No. 4:06CR337CEJ(MLM), 2006 WL 2583285 at *1 (E.D. Mo. Sept. 7,

2006) (ordering redaction of names and street addresses of jurors - but not city or municipality - of specific grand jury that indicted defendant). Other jurisdictions also uniformly allow a defendant to inspect grand jury records. See, e.g., United States v. McLernon, 746 F.2d 1098, 1123 (6th Cir. 1984); United States v. Rice, 489 F. Supp. 2d 1312, 1317-18 (S.D. Ala. 2007); United States v. Wickline, No. 2:07-CR-121, 2008 WL 2121222 (S.D. Ohio May 20, 2008); United States v. Brown, No. 2:06-cr-82, 2007 WL 186532 (D. Vt. Jan. 18, 2007); United States v. Causey, No. H-04-025, 2004 WL 1243912 at *12-*13 (S.D. Tex. May 25, 2004); United States v. Swan, No. CRIM 03-36-01-B, 2003 WL 21799915 (D. N.H. July 22, 2003). Notably, however, a defendant may only inspect grand jury materials related to the pool from which the grand jury that indicted him or her was drawn -- not information related to jury pools in other actions. United States v. Rice, 489 F. Supp. 2d at 1322,1323; United States v. Cerna, No. CR 08-0730 WHA, 2009 WL 2998930 at *4 (N.D. Cal. Sept. 16, 2009).

Here, defendant has alleged he is requesting grand jury materials to support a “motion to dismiss on improperly employed and discriminatory methods used in impaneling the grand jury.” He has requested nine categories of information. Defendant’s categories do not make clear the exact information he is requesting. However, I have spoken to the Court’s Jury Administrator in an attempt to best determine the form in which the nine categories of requested information may exist. Each category will be addressed below.

1. Jury Wheel From Which Jurors Were Pooled

A “qualified jury wheel” contains the names of all persons contained in the master jury wheel who have been determined qualified to serve as a juror. In this case, the qualified jury list includes the following information: (1) participant number; (2) name; (3) address; (4) phone number; and (5) date served. I find that defendant is entitled to inspect the qualified jury wheel from which the grand jury who indicted him was pooled.

2. Demographics of Areas From Which Jurors Were Selected

Using the qualified jury wheel, summonses were sent to 100 individuals in connection with impaneling the grand jury. The Jury Administrator has informed me that a report can be generated showing the counties in which these 100 individuals reside. I find that Defendant is entitled to inspect this report.

3. Race, Nationalities, and Gender of Each Juror

Again, summonses were sent to 100 qualified individuals in connection with impaneling the grand jury. The Jury Administrator has informed me that a report can be generated showing the race, nationality and gender of these individuals.

4. Standards for Juror Eligibility

Juror eligibility is governed by 28 U.S.C. § 1865.

5. Number of Jurors Selected from Jackson County, Missouri Within the Past 20 Years

As stated above, defendant is entitled only to the grand jury materials related to the pool from which the grand jury that indicted him was drawn.

6. Voter Registration List of All Jurors

Prospective jurors are selected at random from voter registration lists and drivers license records. Defendant is entitled to inspect the voter registration list from which the individuals in the qualified jury wheel were selected.

7. Numbers of Jurors in the Jury Pool

As stated above, summonses were sent to 100 qualified individuals in connection with impaneling the September 22, 2009, grand jury.

8. Name of Impaneling Judge

The September 22, 2009 grand jury was impaneled by United States District Judge Fernando J. Gaitan, Jr.

9. **Name of U.S. Attorney present during Grand Jury Selection**

Assistant United States Attorney Bruce Rhoades was present when the September 22, 2009 grand jury was impaneled.

In accordance with the authority cited above, it is

ORDERED that in the event defense counsel decides to review the grand jury material to which he is entitled, he shall notify my chambers and I will direct the Clerk of Court to compile the information.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
January 11, 2012