

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.)
)
MILTON E. McGREGOR,)
)
 Defendant.)

CR. NO. 2:10cr186-MHT

**SUPPLEMENTAL FILING OF MILTON McGREGOR REGARDING
MOTIONS TO DISMISS, IN RESPONSE TO INQUIRY OF THE COURT**

Milton McGregor respectfully submits this short memorandum in response to the Court’s inquiry during oral argument on May 5. The inquiry, as undersigned counsel understand it, concerns the problem of whether the grand jury was correctly instructed on the law of *quid pro quo* (including *explicit quid pro quo*), such that the grand jury could have any way of making a finding of probable cause on the elements of the offense charged. It also concerns what the Court can and should do about the problem, including whether the Court may inquire behind the face of the indictment.

Mr. McGregor respectfully submits that it is clear on the face of the indictment (through its absence of any “explicit *quid pro quo*” finding), and also quite importantly it is clear from the Government’s stated (incorrect) position on what it has believed the law to be, that the grand jury surely was not instructed on this point.

Mr. McGregor further submits that the Court does have the authority to inquire behind the face of the indictment, and submits that the Court should exercise that authority, and submits that if the grand jury was not given a legally correct explanation of the law then the Court should dismiss the indictment. These contentions are supported by *United States v. Stevens*, 2011 U.S. Dist. LEXIS 30107, *17-31 (D. Md. 2011), attached hereto as Exhibit A.

If the Government does not have a transcript of legal instructions given to the grand jury, then the Court should certainly infer that if the grand jury got any instructions on the law, it was only incorrect instructions that failed to convey the necessity of *quid pro quo*, including “explicit *quid pro quo*” as discussed at the May 5 argument.

Respectfully submitted,

s/ Benjamin J. Espy
Benjamin J. Espy (ASB-0699-A64E)
One of the Attorneys for Milton E. McGregor

OF COUNSEL:

Joe Espy, III (ASB-6591-S82J)
William M. Espy (ASB-0707-A41E)
MELTON, ESPY & WILLIAMS, P.C.
P.O. Drawer 5130
Montgomery, AL 36103
Telephone: 334-263-6621
Facsimile: 334-263-7252
jespy@mewlegal.com
bespy@mewlegal.com
wespy@mewlegal.com

Fred D. Gray (ASB-1727-R63F)
Walter E. McGowan (ASB-8611-N27W)
GRAY, LANGFORD, SAPP, McGOWAN, GRAY, GRAY & NATHANSON, P.C.
P.O. Box 830239
Tuskegee, AL 36083-0239
Telephone: 334-727-4830
Fax: 334-727-5877
fgray@glsmgn.com
wem@glsmgn.com

Robert D. Segall (ASB-7354-E68R)
David Martin (ASB-7387-A54J)
Shannon Holliday (ASB-5440-Y77S)
Clayton R. Tartt
Ashley N. Penhale
COPELAND, FRANCO, SCREWS & GILL, P.A.
P.O. Box 347
Montgomery, Alabama 36101-0347
Telephone: 334-834-1180
Fax: 334-834-3172
segall@copelandfranco.com
martin@copelandfranco.com
holliday@copelandfranco.com
tartt@copelandfranco.com
penhale@copelandfranco.com

Sam Heldman (ASB 3794 N60S)
THE GARDNER FIRM, P.C.
2805 31st Street NW
Washington, DC 20008
Telephone: (202) 965-8884
Fax: (202) 318-2445
sam@heldman.net

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2011, I filed the foregoing with the Clerk of the Court using the CM/ECF filing system, and that a copy of same will be served on the below listed counsel of record via such system:

Justin V. Shur
Peter J. Ainsworth
Eric Olshan
Barak Cohen
Brenda K. Morris
Emily Rae Woods
John L. Smith
Edward T. Kang
US Department of Justice
1400 New York Avenue
Washington, DC 20005

Louis V. Franklin, Sr.
Stephen P. Feaga
US Attorney's Office
Post Office Box 197
Montgomery, AL 36101-0197

David McKnight
William J. Baxley
Joel E. Dillard
Stewart D. McKnight, III
Baxley, Dillard, Dauphin, McKnight & Barclift
2008 Third Avenue South
Birmingham, AL 35233

Jackson R. Sharman, III
Jeffrey P. Doss
Samuel H. Franklin
Lightfoot, Franklin & White
400 20th Street North
Birmingham, AL 35203

James P. Judkins
Larry D. Simpson
Judkins, Simpson, High & Schulte
1102 North Gadsden Street
Tallahassee, Florida 32303

William N. Clark
William H. Mills
Stephen W. Shaw
Glory R. McLaughlin
Redden Mills & Clark
505 North 20th Street, Suite 940
Birmingham, AL 35203

Ron W. Wise
Attorney at Law
200 Interstate Park Drive, Suite 105
Montgomery, AL 36109

H. Lewis Gillis
Tyrone C. Means
Thomas Means Gillis & Seay
P.O. Drawer 5058
Montgomery, AL 36103

Mark Englehart
Englehart Law Offices
9457 Alysbury Place
Montgomery, AL 36103

J. W. Parkman, III
Richard M. Adams
Joshua L. McKeown
William C. White, II
Parkman, Adams & White
505 20th Street North, Suite 825
Birmingham, AL 35203

Susan G. James
Denise A. Simmons
Attorney at Law
600 South McDonough Street
Montgomery, AL 36104

Thomas M. Goggans
Attorney at Law
2030 East Second Street
Montgomery, AL 36106

Jeffrey C. Duffey
Law Office of Jeffrey C. Duffey
600 South McDonough Street
Montgomery, AL 36104

s/ Benjamin J. Espy
Of Counsel