

STATE OF NEW YORK
COUNTY COURT

COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DECISION AND ORDER
Indictment Number 9-1397

Joseph O'Hara,
Defendant.

APPEARANCES:

OF COUNSEL:

For the People:

HON. P. DAVID SOARES
Albany County District Attorney
Albany County Judicial Center
6 Lodge Street
Albany, New York 12207-1019

Christopher P. Baynes
Assistant District Attorney

For the Defendant:

Dreyer Boyajian
75 Columbia Street
Albany, New York 12210

Brian W. Devane

THOMAS A. BRESLIN, J.

Defendant, by Omnibus

Motion, moves for the following relief:

1. **Dismissal of Indictment for Alleged Defects in the Grand Jury Proceedings**

The People presented a "bare bones" case to the Grand Jury and the instructions were so brief as to fail to provide appropriate legal instruction. The terms "deprive" and "appropriate" were not defined but were essential to an

understanding of the need to connote an intent to permanently deprive (see, People v Jennings, 69 NY2d 103). The prosecutor instructed that larceny can be committed in various ways but did not indicate which method was alleged in this case nor define the terms such as "trespassory taking" or "embezzlement". The instructions were inadequate to comply with the requirements of article 190 of the Criminal Procedure Law.

For purposes of prosecution in the future, it is noted that the prosecutor posed numerous leading questions throughout the presentation. While the rules of evidence may be somewhat more relaxed than at trial, nonetheless they are still applicable in a grand jury proceeding (see, CPL 60.15[1]).

Defendant's motion is granted and the indictment is dismissed.

The People's motion for leave to re-present is granted.


2. Sealing of Affidavit and Exhibits

Defendant's request to seal his affidavit and exhibits is granted and is applicable only to the affidavit by defendant and the exhibits appended thereto.

3. Remaining Issues

In light of this determination to dismiss the indictment, the remaining issues raised are not being addressed.

Dated: Albany, New York
June 19, 2007


Thomas A. Breslin
County Court Judge