

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

**UNITED STATES OF AMERICA )**

)

)

**v. )**

**Criminal No. 1:06-cr-00071-SM**

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**ELAINE A. BROWN, and )  
EDWARD LEWIS BROWN, )  
Defendants )**

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)

)

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**NOTICE AND MOTION FOR SUPPRESSION OF EVIDENCE  
ILLEGALLY OBTAINED**

**JUDICIAL AND ADMINISTRATIVE NOTICE**

The Defendants in propria persona without representation by an attorney notice this court and all parties involved in the above captioned case, of their motion for the court to order the suppression of evidence. Officers of the court are hereby noticed of their continuing duty under authority of the supremacy; equal protection and full faith and credit clauses of the United States Constitution and the common law authorities of Haines v Kerner, 404 U.S. 519-421, Platsky v. C.I.A. 953 F.2d. 25, and Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000). In Haines: pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In Platsky: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and instructions to repair pleadings. In Anastasoff: litigants' constitutional Rights are violated when courts depart from precedent where parties are similarly situated.

**MOTION FOR THE COURT TO ISSUE AN ORDER FOR  
SUPPRESSION OF THE USE OF DEFENDANTS' SEIZED  
PROPERTY AS EVIDENCE**

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, move this court under authority of United States Constitution, Amendments IV, V, VI, the Federal Rules of Criminal Procedure and settled case law to Order the suppression of the use of the defendants' property unlawfully seized from the Half Hollow Dental Center and their home as evidence. Defendants have the absolute right to demand that Judge Steven J. McAuliffe comply with United States Constitution Article VI to stop the continuing criminal acts of the plaintiff.

**MEMORANDUM AND FACTS**

1. United States Constitution is the "Supreme Law of the land."
  
2. Amendment IV protects the peoples right to privacy in their homes, effects and papers from unreasonable search and seizure by government officials, Defendants in this case enjoyed the right to reasonable expectation of privacy in the areas searched up until the time of the government agents' infringement, and as people whose right to privacy has been infringed they have the right to challenge the searches and seizures of their property. Nowhere is this better stated than in JUSTICE WHITE'S opinion for the Court in *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967): "The basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." See also *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978) (same); *Schmerber v.*

California, 384 U.S. 757, 767 (1966) ("The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State"); Wolf v. Colorado, 338 U.S. 25, 27 (1949) ("The security of one's privacy against arbitrary intrusion by the police . . . is at the core of the Fourth Amendment . . ."), overruled on other grounds, Mapp v. Ohio, 367 U.S. 643 (1961); Boyd v. United States, 116 U.S. 616, 630 (1886) ("It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his infeasible right of personal security . . .").

3. Magistrate James R. Muirhead had no discretion or authority in ordering agents to act against the defendants and their privately owned New Hampshire property located outside the "territorial jurisdiction" as prescribed in 28 USC 636, in relevant part below;

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate judge serving under this chapter shall have **within the territorial jurisdiction** prescribed by his appointment— [bold emphasis added]

In determining the scope of the statutory phrase we find help in the "commonsense notion that Congress generally legislates with domestic concerns in mind." Smith v. United States, 507 U. S. 197, 204, n. 5 (1993). This notion has led the Court to adopt the legal presumption that Congress ordinarily intends its statutes to have domestic, not extraterritorial, application. See Foley Bros., Inc. v. Filardo, 336 U. S. 281, 285 (1949); United States jurisdiction is further clarified in the New Hampshire Statutes:

TITLE IX  
ACQUISITION OF LANDS BY UNITED STATES; FEDERAL  
AID  
CHAPTER 123  
JURISDICTION OVER LANDS ACQUIRED; TAX EXEMPTION

123:1 Ceded to United States. – **Jurisdiction is ceded to the United States of America over all lands within this state now or hereafter exclusively owned by the United States, and used as sites for post offices, custom-houses, military air bases, military installations or other public buildings: **provided, that an accurate description and plan of the lands so owned and occupied, verified by the oath of some officer of the United States having knowledge of the facts, shall be filed with the secretary of this state**; and, provided, further, that this cession is upon the express condition that the state of New Hampshire shall retain concurrent jurisdiction with the United States in and over all such lands, so far that all civil and criminal process issuing under the authority of this state may be executed on the said lands and in any building now or hereafter erected thereon, in the same way and with the same effect as if this statute had not been enacted; **and that exclusive jurisdiction shall revert to and revest in this state whenever the lands shall cease to be the property of the United States.** [emphasis added]**

"It is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *EEOC v. Arabian American Oil Co.*, 499 U. S. 244, 248 (1991) (internal quotation marks omitted).

4. No excuse or authority exists to allow any federal officer, including Magistrate James R. Muirhead to ignore the duties of his office prescribed in Article VI of the UNITED STATES CONSTITUTION, Article VI, cl. 3, provides that all state and federal officers shall be bound by an oath "to support this Constitution." The oath taken by attorneys as a condition of admission to the Bar of this Court identically provides in part "that I will support the Constitution of the United States"; it also requires the attorney to state that he will "conduct [himself] uprightly, and according to law." [405 U.S. 676, 682]

5. No authority exists to allow Magistrate James R. Muirhead or any federal officer

to ignore the Federal Rules of Criminal Procedure 3, 4, and 5 to illegally assist the plaintiff, his corporate employer, UNITED STATES violate the defendants rights expressly protected at Amendment IV of said constitution as has occurred in this case.

6. Both defendants and all their property were in New Hampshire, not “within the territorial jurisdiction” prescribed by United States; they had a reasonable expectation of privacy in the areas searched illegally and the exclusionary rule prevents the use of illegally obtained evidence in a criminal trial. *Weeks v. United States*, 232 U.S. 383 (1914).

7. During the two extraterritorial searches of their New Hampshire properties defendants were deprived any opportunity to examine and verify the content, scope and validity of the warrant, its application and affidavit because the application to obtain a search warrant was sealed until December 23, 2004, and its so-called affidavit was sealed until June 26, 2006.

8. The so-called affidavit by special agent James P. John is not subscribed to as true or correct nor was it sworn under penalty of perjury as required by 28 USC 1746, it is merely his rambling recitation of his beliefs and conclusions based upon beliefs of others; as such no basis was established or provided for determining the existence of probable cause by a detached and neutral magistrate in violation of the probable-cause standard and the United States Constitution Amendment IV requirements for a valid warrant .

9. The failure of special agent James P. John, the government, to provide a sworn affidavit under penalty of perjury as required by 28 USC 1746 deprived the Magistrate of

evidence sufficient to create the appearance that the existence of probable cause had been considered by a detached and neutral magistrate.

10. Evidence of Magistrate James R. Muirhead abandoning his detached and neutral role exists by the fact the record is devoid of any complaint or sworn affidavit, both of which are required to invoke a magistrate to authorize a search warrant, yet a fraudulent search warrant issued for the seizure of defendants effects from their private business location; furthermore said magistrate later directed/ordered a warrantless entry into the defendants home allowing government agents to unlawfully seize property.

11. The Supreme Court has made clear that no statute can purport to authorize the issuance of any warrant based upon less than that required by the Fourth Amendment. *Nathanson v. United States*, 290 U.S. 41, 47 (1933) (“The amendment applies to warrants under any statute; revenue, tariff, and all others. No warrant inhibited by it can be made effective by an act of Congress or otherwise.”). *Nathanson* specifically dealt with search warrants, it interpreted the Warrant Clause to apply to *all* warrants. *See id.*; *see also Giordenello*, 357 U.S. at 485-86 (explaining that the Warrant Clause “applies to arrest as well as search warrants”).

12. The United States Supreme Court has adopted a "good faith" exception to the exclusionary rule. This exception allows the introduction of evidence seized by police officers who are acting in reasonable reliance upon a search warrant that was issued by a detached and neutral magistrate, but that is ultimately found to be invalid. *United States v. Leon*, 468 U.S. 897 (1984); *Massachusetts v. Sheppard*, 468 U.S. 981 (1984), however the search in this case of defendants' properties were not conducted in “good faith” nor

within the limits and for the reasons stated in the search warrant when federal government agents seized certain other valuable property that was not described in the warrant, at a remote location miles away, specifically warrantless invasion of defendants home adversely affects defendants legitimate interests protected by the First, Second and Fourth Amendments and is unreasonable and reckless conduct by federal government agents.

13. There is simply no justification for departing from the Fourth Amendment warrant requirement under the circumstances of this case; no exigency precluded reasonable efforts to obtain a warrant prior to the search of the defendants home. Here Federal government agents searched extraterritorial private property without a warrant or a recognized exception to the warrant requirement; as such their search and seizure was reckless, with disregard for law and violated defendants' constitutionally protected rights, "warrantless searches are presumptively unconstitutional." See *Dow Chemical Co. v. United States*, 476 U. S. 227, 234-235, 239 (1986); see *Kyllo v. United States*, 533 U.S. 27 (06/11/2001).

14. The Warrant Clause is exceptionally clear and provides that "*no Warrants shall issue*, but upon probable cause, supported by Oath or affirmation." U.S. Const. amend. IV (emphasis added). In *Groh v. Ramirez*, 124 S. Ct. 1284 (2004), the Supreme Court recently affirmed that every warrant must meet the requirements of the Warrant Clause, and be based upon probable cause, supported by oath or affirmation. *Id.* at 1289-90; Thus, where a warrant is issued unsupported by oath or affirmation, it is invalid under the Fourth Amendment. See *United States v. Rabe*, 848 F.2d 994, 997 (9th Cir. 1988)

(explaining that Warrant Clause “requires the government to establish by sworn evidence presented to a magistrate that probable cause exists to believe that an offense has been committed”). Given the Fourth Amendment’s requirement that “no Warrants shall issue, but upon probable cause . . . and particularly describing the . . . things to be seized,” this warrant should never have been issued by Magistrate James R. Muirhead. Thus while certain searches may be permissible when there is less than probable cause, under the Fourth Amendment, no warrant is valid unless there is probable cause supported by sworn facts, because the warrant here was not based on sworn facts. The District Court Magistrate James R. Muirhead lacked jurisdiction to issue it and the government agents who entered defendants business and home in this case were without constitutional authority to do so.

15. The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” “At the very core” of the Fourth Amendment “stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” *Silverman v. United States*, 365 U. S. 505, 511 (1961). With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no. See *Illinois v. Rodriguez*, 497 U. S. 177, 181 (1990); *Payton v. New York*, 445 U. S. 573, 586 (1980).

16. In cases where the search and seizure were without a warrant and a motion to suppress is made, the prosecution has the burden of proving by a preponderance of the evidence that circumstances existed that justified the officers’ action. *Illinois v.*



McArthur, 531 U.S. 326, 338 (2001) (Souter, J., concurring) (quoting 5 W. La Fave, Search and Seizure §11.2(b), p. 38 (3d ed. 1996)).

17. Stripped of the authority of a warrant, the conduct of these officers, including that of Magistrate James R. Muirhead was plainly unconstitutional - it amounted to nothing less than a naked invasion of the privacy of the defendants home without the requisite justification demanded by the Fourth Amendment, any suggestion that defendants consented to the sweeping searches comes too late, their presumed authority of the search warrant and conduct complying with official requests cannot, on this record, be considered free and voluntary. Any "consent" given in the face of "colorably lawful coercion" cannot validate the illegal acts shown here. *Bumper v. North Carolina*, 391 U.S. 543, 549-550 (1968).

18. In order to restore all the parties to the positions each would have occupied had this unconstitutional search not occurred, therefore, it is necessary that the evidence be suppressed and the property returned the defendants.

### **CONCLUSION**

**Wherefore**, this extraterritorial court is absent subject matter jurisdiction ab initio proceeding without a sworn affidavit and sworn complaint, thus this matter is of paramount importance to all involved in this case. The Defendants request that this court issue an **ORDER** to suppress all evidence unlawfully seized in this case from their business Half Hollow Dental Center, and from their home. This court has a non-discretionary duty to grant this motion and (1) Order the Dismissal of the fraudulent

grand jury indictment filed in this matter; (2) Enjoin the United States from any further extraterritorial harassment of Elaine Brown and Edward Brown; (3) Stay all further proceedings until such time as the United States of America complies with the organic and settled case law.

**ORAL ARGUMENT DEMANDED**

Date Jan. 8, 2007

Prepared and submitted by:

Elaine A. Brown  
Elaine A. Brown  
c/o 401 Center of Town Road  
Plainfield, New Hampshire

Edward L. Brown  
Edward L. Brown  
c/o 401 Center of Town Road  
Plainfield, New Hampshire

**CERTIFICATE OF SERVICE**

I, **Edward L. Brown**, certify that I delivered via postage paid First Class U.S. Mail Return Receipt, a true and correct copy of the above and foregoing **NOTICE AND MOTION** to the office of the Clerk of Court U.S. District Court, District of New Hampshire, at 55 Pleasant St., Concord, NH 03301-0001 for entry into the record and to William E. Morse in the office of THOMAS P. COLANTUONO, the United States Attorney for the District of (NH) located at 53 Pleasant St. Concord, NH 03301-0001.

Date January 8, 2007

Edward L. Brown  
Edward L. Brown

James R. Starr, Clerk  
Clerk's Office  
Warren B. Rudman U.S. Courthouse  
55 Pleasant Street, Room 110  
Concord, NH 03301-3941.

January 8, 2006

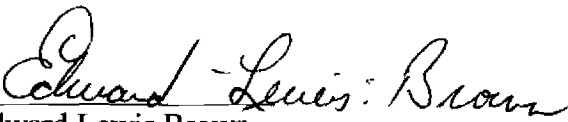
By Hand

Re: 01:06-cr-00071-SM UNITED STATES OF AMERICA v. Elaine Brown; Ed Brown

Dear Mr. Starr:

Please timely file the enclosed Defendants' motion into the above captioned case file and make a suitable docket entry. I have already mailed a true copy of the enclosed motion to the United States Attorneys office.

With all due respect,

  
Edward Lewis Brown  
c/o 401 Center of Town Road  
Plainfield, New Hampshire