

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

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED
2007 JAN -9 A 8:28

UNITED STATES OF AMERICA)
)
)
v.)
)
ELAINE A. BROWN, and)
EDWARD LEWIS BROWN,)
Defendants)
_____)

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

**NOTICE AND MOTION TO COURT
THAT DEFENDANTS HAVE BEEN OBSTRUCTED
FROM OBTAINING WITNESS SUBPOENAS**

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 TO COURT THAT DEFENDANTS
HAVE BEEN OBSTRUCTED FROM WITNESS SUBPOENAS

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, move this court under authority of United States Constitution, Amendment VI, the Federal Rules of Criminal Procedure and settled case law to **ORDER** James R. Starr, Clerk of Court, to provide the defendants with signed and sealed subpoenas to compel the attendance of trial witnesses for the defense. The Defendants have the absolute and unqualified right to demand that Judge Steven J. McAuliffe stop obstructing their defense and comply with United States Constitution Article VI, rules of court, and settled case law to order the Clerk of Court to provide the defendants with signed subpoenas with the court's seal for obtaining trial witnesses in their favor.

MEMORANDUM AND FACTS

1. The United States Constitution is the "Supreme Law of the land.
2. Amendment VI protects the people's right "... to have compulsory process for obtaining witnesses in his favor,..." to ensure a fair trial that has not been deliberately "manipulated" by officers of the court or other government employees to give unfair advantage to their employer, the United States. Amendment VI unequivocally provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

3. Defendants applied for trial witness subpoenas on January 5, 2007 but the clerk refused to issue them because the clerk claimed that the defendants were “pro se” and Judge McAuliffe refused to issue their subpoenas.

4. Litigants who are denied their Sixth Amendment right to obtain witnesses in their favor cannot be lawfully convicted by the court.

5. The relevant parts of Criminal Rule 17 mandates the issuing of subpoenas:

(a) For Attendance of Witnesses; Form; Issuance. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. A subpoena shall be issued by a United States magistrate judge in a proceeding before that magistrate judge, but it need not be under the seal of the court.

(b) ...

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service. A subpoena may be served by the marshal, by a deputy marshal or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to that person the fee for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof.

6. The plaintiff through the assistant US attorney is given an unfair advantage in that it may freely issue subpoenas at will without pre-approval by Judge McAuliffe. On January 3, 2007 William Morse AUSA issued trial subpoenas which were served on January 4, 2007.

CONCLUSION

Wherefore, this District Court is absent subject matter jurisdiction if it proceeds without ordering the clerk of court, to provide the defendants with signed and sealed subpoenas for their use in obtaining witnesses testifying for the defense. Thus this matter is of paramount importance to all involved in this case. The Defendants demand that Judge McAuliffe issue an **ORDER** to the Clerk of Court to issue the defendants with signed and sealed subpoenas to be used in their case so that they can obtain defense witnesses for trial. Judge McAuliffe has a non-discretionary duty to grant this motion and (1) Order the issuance of defense trial witness subpoenas in this matter; (2) Enjoin the United States employees from any further unlawful harassment of Elaine Brown and Edward Brown; (3) Stay all further trial proceedings until such time as the plaintiff, United States of America, and the clerk comply with the organic and settled case law regarding the compulsory process for obtaining witnesses in their favor.

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, 2007

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