

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

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

2006 SEP 25 P 12:34

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

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

**NOTICE AND MOTION TO DISMISS FOR FAILURE OF GRAND
JURY TO RETURN AN INDICTMENT IN OPEN COURT**

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 to Dismiss the Indictment and the supporting memorandum included herein. 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 DISMISS INDICTMENT

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, move this court under authority of the Constitution for the United States, Amendment V, and Federal Rule Criminal Procedure 6(f), to issue an **ORDER** to DISMISS THE INDICTMENT made in this case **1:06-cr-00071-SM** because the indictment filed into this case was not returned in compliance with the established rules and law.

MEMORANDUM AND FACTS

The relevant portion of Amendment V to the United States Constitution provides: “No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a Grand Jury, ...” Additionally, when the grand jury issues an indictment, the return must be made in open court to a magistrate judge. Rule 6(f), F.R.Crim.P.

(f) Indictment and Return.

A grand jury may indict only if at least 12 jurors concur. The grand jury -- or its foreperson or deputy foreperson -- **must return the indictment to a magistrate judge in open court.** If a complaint or information is pending

against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge.

The underlined section of Rule 6 above specifies foundation necessities:

1. The return **MUST** appear on the case docket, and a transcript of the hearing should be available. A return of an indictment is the same as the petit trial jury return of a verdict.
2. The clerk of courts docket for this case does not indicate that the grand jury indictment was returned in open court as required by rule 6(f) supra.
3. The indictment for this case was in fact not returned in open court as required by Rule 6(f) AUSA Morse stated, “..the magistrate judge reviewed the grand juror concurrence form when the indictment was returned to ensure that the grand jury had voted "true bill." Such in camera inspection sufficiently establishes that the requisite number of grand jurors voted in favor of indictment.” See docket #29 page 9 footnote.
4. No transcript of this secret in camera indictment return proceeding has been made available to the defendants or listed on the docket.
5. The indictment for this case does not exhibit the signatures of 12 concurring grand jurors for each count as required by Rule 6(f) supra. There is no evidence in the record whatsoever that sufficiently establishes that the requisite number of grand jurors voted in favor of indictment.

6. Rule 6(f) also preserves the antecedent affidavit of complaint and probable cause hearing in the second sentence: **The grand jury may proceed only on "complaint" or "information" that has previously been formally processed.** The Federal government may **prosecute felony crimes only on a valid affidavit of complaint** that has been presented in a probable cause hearing (Rules 3 & 4).

7. The clerk of courts docket for this case does not indicate that any lawful sworn complaint was used to trigger the grand jury indictment or that such complaint was presented in an open court probable cause hearing as required by Rules 3 & 4.

8. The above notorious violations of the criminal rules of procedure were intentionally perpetuated by the U.S. Attorney and his assistants to obstruct the defendants from obtaining a fair trial or making a meaningful defense to the alleged crimes.

CONCLUSION

Wherefore, this court is absent subject matter jurisdiction ab initio by proceeding without a valid indictment from a lawful grand jury and thus this matter is of paramount importance to all involved in this case. The Defendants request that this court issue an **ORDER** to DISMISS THE INDICTMENT made in this case **1:06-cr-00071-SM**. 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 harassment of Elaine Brown and Edward Brown; (3) Stay all further proceedings until such time as the United States complies with the rules of court and the organic law.

ORAL ARGUMENT DEMANDED

Date Sept. 22, 2006

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 September 22, 2006

Edward L. Brown
Edward L. Brown

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FILED

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

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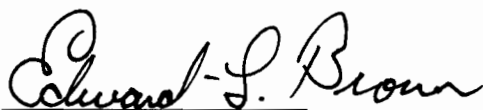
Via Certified Mail
#7006 0810 0002 7165 6618

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