

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

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

NOV 10 P 12: 29

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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)

MOTION FOR THE COURT TO PRODUCE LAW AND FACTS

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, move this court under authority of the Constitution for the United States, Amendments V; VIII; and the Federal Rules of Criminal Procedure, rule 12(d) to produce the law and facts that Judge Steven McAuliffe used to instantly deny the Defendant's Motion to Dismiss the Indictment in the above captioned case because it was not returned in open court. Federal Rules of Criminal Procedure, rule 6(f) provides for such challenges. Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected. In support of this motion the defendants now provide the following.

MEMORANDUM AND FACTS

1. The defendants filed a legitimate rule 6(f) motion seeking to dismiss the indictment returned in camera by the illegitimate grand jury in case number **1:06-cr-00071-SM**.

2. The Defendants' motion was received by the clerk on 09/25/06 and filed into the record and docketed as #55 on 09/26/06.

3. At a scheduled pretrial hearing held that same day 09/26/06 Judge McAuliffe instantly denied the defendants' Motion to Dismiss the Indictment, without discussion or argument by the government.

4. Federal Rule of Criminal Procedure 12(d) makes it mandatory that the court must state its essential findings on the record.

5. The plaintiff's attorney, AUSA William Morse, had not time to prepare an argument nor the opportunity to controvert the Defendants' motion filed that same day and he made no counter motion or request in open court that the Defendants' motion should be denied.

6. Judge McAuliffe acted sua sponte only to protect his employer and plaintiff, the United States, which regularly compensates him to protect and guard its private interests in the instant matter.

7. Judge McAuliffe's denial of the Defendant's rule 6(f) motion obstructed the Defendants' Right to due process and a fair trial. "Adjudication in violation of due process is void." *World Wide Volkswagen v Woodsen*, 444 US 286, 291 (1980); *National Bank v Wiley*, 195 US 257 (1904); *Pennoyer v Neff*, 95 US 714 (1878), and "...the requirements of due process must be met before a court can properly assert in personam jurisdiction." *Wells Fargo v Wells Fargo*, 556 F2d 406, 416 (1977). The legal encyclopedia *Corpus Juris Secundum* informs us in volume 16D, section 1150 on Constitutional Law: "Only by due process of law may courts acquire jurisdiction over parties." 16D CJS Constitutional Law, §1150. Due process protects "the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 US 358, 364 (1970).

8. The Fifth Amendment to the United States Constitution prohibits Judge McAuliffe from the depriving the defendants of due process of law.

9. The Eighth Amendment to the United States Constitution prohibits Judge McAuliffe from inflicting this cruel or unusual punishment.

10. That federal court proceedings must be maintained within constitutional provisions has been forcefully established by the Supreme Court. See *Muskrat v United States*, 219 US 346 (1911); *Smith v US*, 360 US 1 (1958).

11. The Defendants' filed motions must be read and construed liberally. See Haines v. Kerner, 404 US at 520 (1980); Birl v. Estelle, 660 F.2d 592 (1981). Further, this court has a responsibility and legal duty to protect any and all of the Defendants' constitutional and statutory rights. See United States v. Lee, 106 US 196,220 [1882].

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 comply with rule 12(d) without further delay and enter into the record its essential findings of law and evidence that it relied upon to Deny the DEFENDANTS' MOTION TO DISMISS THE INDICTMENT in case 1:06-cr-00071-SM. This court has a non-discretionary duty to grant this motion and stay all further proceedings until such time as Judge McAuliffe complies with the settled law.

ORAL ARGUMENT DEMANDED

Date Oct. 4, 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 October 4, 2006

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.

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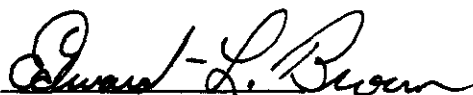
Via Certified Mail
#7006 0810 7165 6632

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