

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED
2006 OCT 16 A 11:59

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

UNITED STATES OF AMERICA)

v.)

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

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

**NOTICE AND MOTION TO DISMISS
FOR ABSENCE OF LAWFUL ARRAIGNMENT**

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 this their motion, to Dismiss the Case for Absence of Lawful Arraignment, and the 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 CASE

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; VI; Federal Rules of Criminal Procedure, rule 5(d) and 28 U.S.C. 1867 (f), to **DISMISS THIS CASE** on the ground that the Defendants have not been lawfully arraigned as required by law. In support of this motion the Defendants state as follows:

MEMORANDUM AND FACTS

1. The Defendants were arrested by armed U.S. Marshalls operating unlawfully outside of U.S. Territory and brought into this court under guard in chains on May 24, 2006.
2. Both Defendants were accused of numerous felony charges, yet neither Defendant was lawfully arraigned in front of a *federal judge* as required by Federal Rule 5(d) Criminal Procedure in a Felony Case.

Rule 5(d) :

(1) Advice. If the defendant is charged with a felony, the **judge must** inform the defendant of the following:

- (A) the complaint against the defendant, and any affidavit filed with it;

(B) the defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

(C) the circumstances, if any, under which the defendant may secure pretrial release;

(D) any right to a preliminary hearing; and

(E) the defendant's right not to make a statement, and that any statement made may be used against the defendant.

(2) Consulting with Counsel. The judge must allow the defendant reasonable opportunity to consult with counsel.

(3) Detention or Release. The judge must detain or release the defendant as provided by statute or these rules.

(4) Plea. A defendant may be asked to plead only under Rule 10.

3. Rule 5(d) for felonies specifically requires the guiding hand of a de jure Article III federal judge and specifically not a magistrate as permitted by the prior misdemeanor sections (a) (b) and (c) of Rule 5.

4. If the Supreme Court had wanted to permit only a magistrate to conduct felony arraignments they would have also continued the magistrate's authority into felonies at section (d) of Criminal Rule 5.

5. The transcripts for both sham arraignments evidence numerous violations of the Rights of the Defendants by Magistrate Muirhead, to include but not be limited to, Not providing the complaint and affidavit, Not reading the indictment to the defendants, Not allowing reasonable time to confer with qualified defense counsel, Not permitting the Defendants the Right to voice their own plea, and knowingly ordering the unlawful search and seizure of the Defendants home and private property.

6. Magistrate Muirhead deliberately held sham "star chamber" hearings to obscure the fact that the Defendants were unlawfully arrested outside of federal territorial jurisdiction based solely on the indictment of an unlawful grand jury confused by the prevarications and misrepresentations of the U.S. Attorney and fully controlled by him.

CONCLUSION

Wherefore, this court is absent subject matter jurisdiction ab initio by proceeding without a valid arraignments and pleas from the Defendants before a lawful Article III federal Judge and thus this matter must now be dismissed because the defendants have not been granted due process. The Defendants request that this court issue an **ORDER** to **DISMISS** this sham 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 arraignment and 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 Attorney learns and complies with the organic law.

ORAL ARGUMENT DEMANDED

Date Oct. 11, 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 11, 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.

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

2006 OCT 16 A 11: 59

October 11, 2006

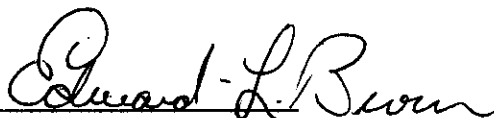
Via Certified Mail
7006 0810 0002 7165 6663

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