

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

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

2006 NOV 30 A 10: 25

UNITED STATES OF AMERICA)

v.)

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

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

MOTION FOR THE COURT TO PRODUCE LAW AND FACTS

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, again move this court under authority of the Constitution for the United States, Amendments V; VI; and the Federal Rules of Criminal Procedure, rule 12(d) to produce the law and facts that Judge Steven McAuliffe used to sua sponte deny the Defendant's Motion for the court to Produce Law and Facts re: Order on motion (#55) in the above captioned case. The court is hereby again noticed of the continuing duty to protect the Defendants' Right to due process 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.

MEMORANDUM AND FACTS

1. The Defendants filed a legitimate rule 12(d) motion (#61) asking for the law and facts the court relied on to deny their motion (#55) in case number **1:06-cr-00071-SM**.
2. The Defendants' motion was received by the clerk on 10/04/06 and filed into the record and docketed as (#61) on 10/10/06.
3. After a 30 day delay, on 11/03/06, Judge McAuliffe sua sponte **GRANTED** the Defendants' Motion for the court to Produce Law and Facts, without any objections or counter arguments filed by the government against either the Defendants' Motion to Dismiss (#55) or Defendants' Motion for Law and Facts (#61).
4. Federal Rule of Criminal Procedure 12(d) makes it mandatory that the court must state its essential findings on the record.

5. Judge McAuliffe informed the Defendants' of their Right review the original (indictment) document and listen to or pay for a transcript of the return proceeding.

6. Judge McAuliffe, however, did not present any Law or Facts as requested in the Defendants' motion (#61) and he presented no opposing statement or facts on the record evidencing that the court had subject matter jurisdiction. The Defendants' motion (#61) as granted by the court also required Judge McAuliffe to stay all further proceedings until such time as Judge McAuliffe complies with the settled law.

7. Judge McAuliffe acted sua sponte to change the actual plaintiff party of record, from the United States of America, to the corporate entity and fictitious plaintiff, the United States, which regularly compensates him to protect and guard its private interests in the instant matter.

8. 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).

CONCLUSION

Wherefore, this court has now ruled that it is absent subject matter jurisdiction ab initio by proceeding without a valid indictment from a lawful grand jury. The Defendants again request that this court comply with rule 12(d) without further delay and enter its

essential findings of law and facts, as proven up by the plaintiff into the court record, that this court relied upon to Deny the DEFENDANTS' MOTION TO DISMISS FOR FAILURE OF GRAND JURY TO RETURN AN INDICTMENT IN OPEN COURT (#55) in case **1:06-cr-00071-SM**. This court has a non-discretionary duty to fully answer this motion and notify the defendants of the time period for the stay granted by the court in motion (#61) for all further proceedings until such time as Judge McAuliffe complies with the settled law.

ORAL ARGUMENT DEMANDED

Date Nov. 27, 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 November 27, 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 0002 7165 6830

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