

**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)

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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, 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 (#54) 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 (#60) asking for the law and facts the court relied on to deny their motion (#54) 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 (#60) on 10/10/06.
3. After a 30 day delay, on 11/03/06, Judge McAuliffe sua sponte denied 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 (#54) or Defendants' Motion for Law and Facts (#60).
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 has a 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.

6. The plaintiff's attorney, AUSA William Morse, did not present any arguments nor controvert the Defendants' motions and he presented no counter motion or facts on the record showing that the Defendants' motions should be denied. The Defendants' motions (#54) (#60) remain unanswered and unopposed by the plaintiff and the court can only rule to grant those unopposed motions.

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. Judge McAuliffe's denial of the Defendant's rule 6(b) Motion (#54) has again obstructed the Defendants' Right to due process and a fair trial.

9. Judge McAuliffe's continues to only cite in his orders mere federal statutes (28 USC 1867), which are not binding upon the Defendants who are not officers of the court and appear only under duress. Judge McAuliffe notoriously violates Amendment V to the

United States Constitution, which prohibits all federal judges from “openly” depriving the Defendants of due process of law.

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. ALL of 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].

12. Judge McAuliffe’s contemptuous comment that, “The referenced motion (#54) to dismiss was facially without merit and failed to meet even minimal legal standard.” demonstrates his contempt for the Defendants, settled case law, and the United States Constitution, all of which were previously and succinctly cited in the motions (#54)(#60) and all of which oppose his untenable order to deny the Defendants’ Motion to Dismiss (#54).

13. Judge McAuliffe has not received from the plaintiff any facts or law and is thus unable to provide any law superior to the U.S. Constitution to support his Order to deny the Defendants’ Motion (#54) and Rights as protected by the relevant portion of Amendment V to the United States Constitution which 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, ...” The relevant portion of Amendment VI to the United States Constitution 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....” Both Amendment V and Amendment VI are binding mandates on this court.

14. It is positively breath taking to have Judge McAuliffe sign a statement that, “Defendants did not raise a factual issue regarding grand jury selection...” when the record of this case clearly evidences the continuous obstruction made by the court to the Defendants’ numerous motions, to preclude them from obtaining the precise information and facts which would positively identify that the jurors on the sham grand jury were not actually domiciled and resident inside the delineated federal district and that the jurors are not impartial while under contract as citizens and co-plaintiffs of the United States. The United States Supreme Court in **TEST v. UNITED STATES**, 420 U.S. 28 (1975) ruled: “An unqualified Right of a litigant to inspect jury lists held required not only by the plain text of the provisions of the Jury Selection and Service Act of 1968, 28 U.S.C. 1867 (f), allowing the parties in a case “to inspect” such lists at all reasonable times during the “preparation” of a motion challenging compliance with jury selection procedures, but also by the Act’s overall purpose of insuring “grand and petit juries selected at random from a fair cross section of the community,” 28 U.S.C. 1861.

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 again request that this court comply with rule 12(d) without further delay and enter its essential findings of law and facts, proven up by the plaintiff into the court record, that this court relied upon to Deny the DEFENDANTS' MOTION TO DISMISS THE INDICTMENT (#54) 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 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
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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