

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

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

2006 DEC 20 A 11:07

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 INDICTMENT

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 included memorandum. 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, Amendments V; VI; and settled case law to DISMISS THE INDICTMENT filed in the above captioned case on the ground that the grand jury indictment is insufficient, and fails to inform the defendants with particularity of enough facts to allow defendants to prepare any defense.

MEMORANDUM AND FACTS

The accused has a right to be informed of the nature and cause of the accusation of the charges in clearness and certainty as to the particulars. The object of the indictment is enable the accused to make his defense, avail himself of further prosecutions for the same offense, inform the court with enough facts to make a determination if they are sufficient to support a conviction are to be facts and not conclusions of law with reasonable particularity. This was held in *United States v. Cruikshank*, 92 U.S. 542, 557-88 (1875), to wit:

In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right '**to be informed of the nature and cause of the accusation.**' Amend. VI. In *United States v. Mills*, 7 Pet. 142, this was construed to mean, that the indictment must set forth the offence '**with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged;**' and in *United States v. Cook*, 17 Wall. 174, that '**every ingredient of which the offence is composed must be accurately and clearly alleged.**' It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, '**includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species,--it must descend to particulars.**' 1 Arch. Cr. Pr. and Pl., 291. The object of the indictment is, **first**, to furnish the accused with such a description of

the charge against him as will enable him to make his defence, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, **second**, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. **For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances.**

CONCLUSION

Wherefore, this court is absent subject matter jurisdiction ab initio by proceeding without a valid indictment 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 organic law.

ORAL ARGUMENT DEMANDED

Date Dec. 17, 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 December 17, 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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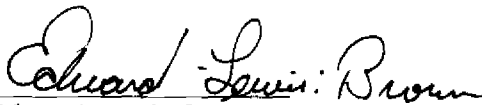
Via Certified Mail
#7006 0810 0002 7165 6908

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