

**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 grounds that the so-called indictment in this matter is defective for want of clearness and certainty.

MEMORANDUM AND FACTS

Exception to Offense Must be Shown in the Indictment

As held in *United States v. Cook*, 84 U.S. 168, 173, 174 (1872), to wit:

Where a statute defining an offence contains an exception, in the enacting clause of the statute, which is so incorporated with the language defining the offence that the ingredients of the offence cannot be accurately and clearly described if the exception is omitted, the rules of good pleading require that an indictment founded upon the statute must allege enough to show that the accused is not within the exception, but if the language of the section defining the offence is so entirely separable from the exception that the ingredients constituting the offence may be accurately and clearly defined without any reference to the exception, the pleader may safely omit any such reference, as the matter contained in the exception is matter of defence and must be shown by the accused. *Steel v. Smith*, 1 Barnewall & Alderson, 99; *Archbold's Criminal Pleading*, 15th ed. 54.

Offences created by statute, as well as offences at common law, must be accurately and clearly described in an indictment, and if they cannot be, in any case, without an allegation that the accused is not within an exception contained in the statute defining the offence, it is clear that no indictment founded upon the statute can be a good one which does not contain such an allegation, as it is universally true that no indictment is sufficient if it does not accurately and clearly allege all the ingredients of which the offence is composed. *Rex v. Mason*, 2 Term, 581.

With rare exceptions, offences consist of more than one ingredient, and in some cases of many, **and the rule is universal that every ingredient of which the offence is composed must be accurately and clearly alleged**

in the indictment, or the indictment will be bad, and may be quashed on motion, or the judgment may be arrested, or be reversed on error.

Cases have also arisen, and others may readily be supposed, where the exception, though in a subsequent clause or section, or even in a subsequent statute, is nevertheless clothed in such language, and is so incorporated as an amendment with the words antecedently employed to define the offence, **that it would be impossible to frame the actual statutory charge in the form of an indictment with accuracy, and the required certainty, without an allegation showing that the accused was not within the exception contained in the subsequent clause, section, or statute. Obviously such an exception must be pleaded, as otherwise the indictment would not present the actual statutory accusation, and would also be defective for the want of clearness and certainty.** State v. Abbey, 29 Vermont, 66; 1 Bishop's Criminal Proceedings, 2d ed., § 639, n. 3.

See also *Maxwell Land-Grant Co. v. Dawson*, 151 U.S. 586, 604-605 (1894); *U.S. v. Prentiss*, 256 F.3d 971, 970 (10th Cir. 2001) “the ingredients of the offence cannot be accurately and clearly described if the exception is omitted.” citing *Cook*, 84 U.S. at 173.; *United States v. Pollastrine*, 8 Alaska 104, 107 (D. Alaska Terr. 1929); *Smythe v. State*, 101 P. 611, 613 (Crim. Ct. App. Ok 1909).

CONCLUSION

Wherefore, this court is absent subject matter jurisdiction ab initio by proceeding without a valid grand jury 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.

U.S. DISTRICT COURT
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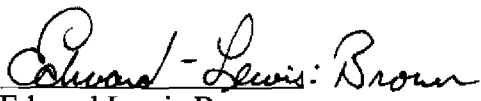
Via Certified Mail
#7006 0810 0002 7165 6885

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