

U.S. DISTRICT COURT
DISTRICT OF N.H.
12/20/06

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

A 11: 08

UNITED STATES OF AMERICA)

)

)

v.)

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

)

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

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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 cited herein to **DISMISS THE INDICTMENT** filed in the above captioned case on the ground the grand jury indictment fails to clearly express every ingredient of which the statutory offence is composed.

MEMORANDUM AND FACTS

1. Every ingredient of an offence is composed must be accurately and clearly expressed in the indictment or information, or it will be held bad. This was held in *United States v. Mann*, 95 U.S. 580, 584-84 (1877), to wit:

Informations for offences or penalties created and defined by statute, like indictments, must follow the words of the statute; and where there is no substantial departure from that requirement, the information, like the indictment, is in general sufficient, except in cases **where the statute is elliptical, or where by necessary implication other constituents are component parts of the offence.** Offences created by statute as well as offences at common law consist, with are exceptions, of more than one ingredient; and **the rule is universal, that every ingredient of which the offence is composed must be accurately and clearly expressed in the indictment or information, or the pleading will be held bad on demurrer.** *United States v. Cook*, 17 Wall. 168; 1 Bishop, Cr. Pro. (2d ed.), sect. 81; Archb. Cr. Pl. & Ev. (18th ed.) 54.

See also *United States v. Reese*, 92 U.S. 214, 225 (1875).

2. The grand jury indictment in the instant matter does not clearly and accurately express “every ingredient” of the statutory offenses charged against the defendants.

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.

U.S. DISTRICT COURT
DISTRICT OF N.H.
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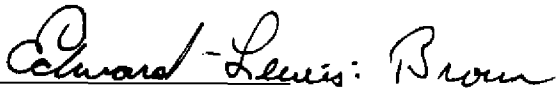
Via Certified Mail
#7006 0810 0002 7165 6854

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