

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

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

2006 DEC 20 AM 11:09

UNITED STATES OF AMERICA)

)

v.)

)

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

)

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

)

)

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

1. 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 that the indictment is ambiguous, lacking precision and certainty that is required to afford the defendants their rights and due process of law.

MEMORANDUM AND FACTS

1. The essential elements of a crime must be charged with precision and certainty in the indictment without ambiguity even in misdemeanors. And this was held in *Evans v. United States*, 153 U.S. 584, 587 (1894), to wit:

'fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.' **The crime must be charged with precision and certainty, and every ingredient of which it is composed must be accurately and clearly alleged.** *U. S. v. Cook*, 17 Wall. 174; *U. S. v. Cruikshank*, 92 U. S. 542, 558. 'The fact that the statute in question, read in the light of the common law, and of other statutes on the like matter, enables the court to infer the intent of the legislature, does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent.' *U. S. v. Carll*, 105 U. S. 611.

Even in the cases of misdemeanors, the indictment must be free from all ambiguity, and leave no doubt in the minds of the accused and the court of the exact offense intended to be charged, not only that the former may know what he is called upon to meet, but that, upon a plea of former acquittal or conviction, the record may show with accuracy the exact offense to which the plea relates. *U. S. v. Simmons*, 96 U. S. 360; *U. S. v. Hess*, 124 U. S. 483, 8 Sup. Ct. 571; *Pettibone v. U. S.*, 148 U. S. 197, 13 Sup. Ct. 542; *In re Greene*, 52 Fed. 104. **[Emphasis added]**

2. The fraudulent document denominated to be the "indictment" in the instant case fails to clearly allege all the facts required to remove doubt in the minds of Edward and Elaine Brown caused by the vague, imprecise and conclusory allegations it recites.

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.

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DISTRICT OF N.H.
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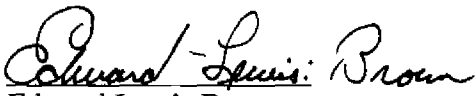
Via Certified Mail
#7006 0810 0002 7165 6861

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