

DEC 29 2006

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

FILED

UNITED STATES OF AMERICA)

)

v.)

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

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

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**NOTICE AND MOTION FOR THE COURT TO ISSUE AN ORDER
TO THE GOVERNMENT TO CERTIFY AS TRUE THE ACTUAL
VENUE FOR EACH COUNT LISTED IN THE 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 for the court to order the government to certify the actual venue for each count listed in the indictment. 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 FOR THE COURT TO ISSUE AN ORDER TO THE
GOVERNMENT TO CERTIFY AS TRUE AND PRODUCE THE
ACTUAL VENUE FOR EACH COUNT LISTED IN THE
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, the Federal Rules of Criminal Procedure and settled case law to Order the Government and the U.S. Attorney to certify under oath that the charged federal crimes occurred on federal land and disclose the address and physical location venue for each count listed in the indictment as alleged by the plaintiff UNITED STATES OF AMERICA. Defendants have the absolute right to know the actual venue for each charge so that they may determine the true damages they caused, if any, and prepare their meaningful defense.

MEMORANDUM AND FACTS

1. This case was commenced on 04/05/2006 with the sham Grand Jury returning an alleged indictment styled as 'UNITED STATES OF AMERICA v. ELAINE A. BROWN and EDWARD LEWIS BROWN, Defendants'.

2. Judge Steven J. McAuliffe has continually obstructed the defendants from learning the location and the true venue for each count listed in the indictment to deliberately prevent them from preparing an on point defense. Venue in a criminal case is not an arcane technicality. It involves "matters that touch closely the fair administration of criminal justice and public confidence in it." *United States v. Johnson*, 323 U.S. 273, 276 (1944).

3. Judge Steven J. McAuliffe has obstructed the defendants from learning the location and the true venue for each count listed in the indictment by refusing the defendants request for a Bill of Particulars made on 06/26/2006. See docket # 26 and endorsed order on 07/24/2006. This matters because courts must look at the essential conduct elements of the offense in order to ascertain the adequacy of venue. See *Rodriguez-Moreno*, 526 U.S. at 279; *Scott*, 270 F.3d at 35. Over time, one of the primary concerns motivating the limitation of venue has been the danger of allowing the government to choose its forum free from any external constraints. See, e.g., *Travis*, 364 U.S. at 634 ("[V]enue provisions in Acts of Congress should not be so freely construed as to give the Government the choice of a tribunal favorable to it.")

4. Judge Steven J. McAuliffe continually obstructed the defendants from learning the location and the true venue for each count listed in the indictment to deliberately prevent them from preparing an on point defense. During the pretrial hearing held on September 26, 2006 judge McAuliffe stated at page 7, lines 8 – 18, "THE COURT: They're saying step one, you owe taxes. Step two, you didn't pay them. It's not much more complicated than that. That's about it. All this other stuff about, you know, the

Court hasn't proved to you that it has jurisdiction, if that makes you happy and gives you solace, okay, but understand the Court doesn't have to prove to you. That's not the way a government works. You have to demonstrate that the Court doesn't have jurisdiction. Not that the Court has to demonstrate to you that it does, and it does have jurisdiction. It's a federal crime." Judge McAuliffe's prevarication is in direct opposition to the U.S. Constitution and to holdings by other federal courts: "The government has the burden of proving venue as to each count charged against the defendant." *United States v. Maldonado Rivera*, 922 F.2d 934, 968 (2d Cir. 1990), cert. denied, 111 S. Ct. 2811 (1991) Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo v. US*, 505 F2d 1026. "There is no discretion to ignore that lack of jurisdiction." *Joyce v. US*, 474 F2d 215. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F2d 416. "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." *Lantana v. Hopper*, 102 F2d 188; *Chicago v. New York*, 37 F Supp 150. "A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property." *Norwood v. Renfield*, 34 C 329; *Ex parte Giambonini*, 49 P. 732. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." *In Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 118 P2d 846. "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *Dillon v. Dillon*, 187 P 27. "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power

to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409. "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v. Wuest*, 127 P2d 934, 937. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v. Hunter*, C.A. Kansas 170 F2d 739.

5. The defendants have continually challenged the jurisdiction and venue in their numerous filings of record. They have challenged both the jurisdiction of this court operating outside of federal land in the sovereign State of New Hampshire and they have challenged the selection of grand jurors not residing in the federal district as mandated by the VI Amendment to the U.S. Constitution.

6. The defendants have made a diligent effort to locate the federal land inside the boundaries of New Hampshire lawfully ceded to the United States of America and can find only a few post offices that are on federal lands and thus under federal jurisdiction.

7. The United States Constitution in Article I, Section 8, Clause 17 grants to Congress the power: "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United

States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;" Additional and important background information concerning statutory procedural requirements necessary for the exercise of this power may be found in the United States Code, see 40 U.S.C. § 255, 40 U.S.C.S. 3111, 40 U.S.C. §3112 (note the second paragraph of Interpretive Note 3 which states, "In view of former 40 USC §255, no jurisdiction existed in United States to enforce federal criminal laws, unless and until consent to accept jurisdiction over lands acquired by United States had been filed in behalf of United States as provided in said section, and fact that state had authorized government to take jurisdiction was immaterial."), 18 U.S.C. §4001(a) ("No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."), and 18 U.S.C. Rule 54 definition of an Act of Congress (" "Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory, or in an insular possession.").

8. The Supreme Court has formulated a set of guidelines for determining criminal venue. If the statute under which the defendant is charged contains a specific venue provision, that provision must be honored (assuming, of course, that it satisfies the constitutional minima). See *Travis v. United States*, 364 U.S. 631, 635 (1961); *Armour Packing Co. v. United States*, 209 U.S. 56, 73-75 (1908). Otherwise, the "locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Anderson*, 328 U.S. 699, 703 (1946). In performing

this tamisage, a court must begin by "identify[ing] the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts." *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 (1999).

9. The Sixth Amendment to the Constitution provides that the accused in a criminal prosecution has the right to be tried in the "district wherein the crime shall have been committed." See also Fed. R. Crim. P. 18. The burden is on the government to prove that the crime was committed in the district in which the prosecution is brought, see, e.g., *United States v. Potamitis*, 739 F.2d 784, 791 (2d Cir.), cert. denied, 469 U.S. 918, 105 S. Ct. 297, 83 L. Ed. 2d 232 (1984); *United States v. Panebianco*, 543 F.2d 447, 455 (2d Cir. 1976), cert. denied, 429 U.S. 1103, 97 S. Ct. 1129, 51 L. Ed. 2d 553 (1977), and when a defendant is charged in more than one count, venue must be proper with respect to each count, see, e.g., *United States v. Bozza*, 365 F.2d 206, 220-22 (2d Cir. 1966); *United States v. Davis*, 666 F.2d 195, 198 (5th Cir. Unit B 1982).

10. The defendants are entitled to the evidence that there is no federal jurisdiction on the land where their home and where their office are located, as that is exculpatory evidence and disclosure is made **mandatory** under Brady. The venue information sought to aid in the defense falls clearly within the principles set out in *Brady v. Maryland*, 373 U.S. 83 (1963). Under Brady, prosecutors have a constitutional obligation to disclose all exculpatory evidence. "The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The

Supreme Court has retooled the "materiality" component of the Brady doctrine. See Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555 (1995). The Court emphasized that a showing of materiality does not mean that disclosure of suppressed evidence would have resulted in a defendant's acquittal. Kyles, 115 S. Ct. at 1565- 66. Rather, the touchstone of Brady is whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." In assessing Brady claims, suppressed evidence must be considered collectively, and not on an item-by-item basis.

CONCLUSION

Wherefore, this court is absent subject matter jurisdiction ab initio by proceeding without jurisdiction and venue as established by law, thus this matter is of paramount importance to all involved in this case. The Defendants request that this court issue an **ORDER** to the U.S. Attorney to produce the actual federal venue for the counts in the indictment, if such federal jurisdiction exists over the sovereign land of New Hampshire, and provide the correct location and mailing address for each alleged federal crime. If there is no federal venue or jurisdiction, then this court must 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 of America complies with the organic and settled case law.

ORAL ARGUMENT DEMANDED

Date Dec. 29, 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 by hand 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 by First Class U.S. Mail 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, 29, 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.
FILED

2006 DEC 29 P 3: 27

December 29, 2006

Bt Hand

Re: 01:06-cr-00071-SM UNITED STATES OF AMERICA v. Elaine Brown; Ed Brown

**Received on the date, NOTICE AND MOTION FOR THE COURT TO ISSUE AN
ORDER TO THE GOVERNMENT TO CERTIFY AS TRUE THE ACTUAL VENUE
FOR EACH COUNT LISTED IN THE INDICTMENT.**

Signature

James R. Starr, Clerk
Clerk's Office
Warren B. Rudman U.S. Courthouse
55 Pleasant Street, Room 110
Concord, NH 03301-3941.

December 29, 2006


By Hand

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