

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

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

2007 JAN -3 P 2:16

UNITED STATES OF AMERICA)

)

v.)

)

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

)

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

)

_____)

NOTICE AND MOTION FOR BRADY - AGURS – GIGLIO

MATERIALS

JUDICIAL AND ADMINISTRATIVE NOTICE

The Respondents in propria persona without representation by an attorney notice this court and all parties involved in the above captioned case, of this notice, their motion herein, 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 FOR BRADY - AGURS – GIGLIO MATERIALS

Elaine A. Brown and Edward L. Brown, husband and wife, Respondents herein, move this court for an Order compelling the government to disclose and divulge to the respondents all potentially favorable evidence, including but not limited to, statements or Grand Jury testimony of witnesses, books, papers, reports, photographs, handwritten notes or a synopsis of statements made by any witnesses, or any other tangible items of evidence in the custody and control of the prosecution or any other governmental agency or agents working under the supervision of the government or with the government, including but not limited to, local and State police agencies. The requests herein are extremely important to the defense and are requested under the authority of Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agurs, 427 U.S. 97 (1976); United States v. Giglio, 405 U.S. 150 (1972).

This demand relates to any and all information in the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government. The disclosure and production should include, but should not be limited to, the following evidence:

(a) Any written or recorded statements, admissions, or confessions made by any witness or co-conspirator, which may be exculpatory, non-incriminatory, or otherwise favorable to the respondents, or any summaries, synopses, notes, memoranda, or resumes thereof, regardless of whether such statements are reduced to writing and regardless of whether the prosecution intends to use such statements at the trial herein.

(b) The name(s) and address(es) of such witness(es), and the name(s) and address(es) of any other witness(es) who might have favorable evidence as to any and all of these respondents(s), which are known, or which by the exercise of due diligence shall become known to the government.

(c) Any and all written statements made by any witnesses who have been interviewed by an agent of the government in connection with the subject matter of this case whom the government presently does not intend to call at trial, regardless of whether such statement has been signed or otherwise adopted or approved by said witness.

(d) Any stenographic, mechanical, electrical, or other recording or a transcript thereof which is an account of an oral statement by such witness to an agent of the prosecution.

(e) Any notes, memoranda, summaries, reports, or statements of any kind prepared in connection with the investigation of this case which are in any way favorable to the defense including notes prepared by the government or any of its agents in connection with either the review of documents or the interview of or other conversation(s) with witness(es) or other individuals contacted in connection with this case.

(f) The substance of any deals, understandings or agreements by the government or any of its agents or agencies with any individuals who may serve as witnesses, consultants or sources of information to any law enforcement agency whereby the said individual may expect immunity or other favorable treatment, including but not limited to, sentencing, parole, probation, or sentence reduction, in return for his or her cooperation or testimony in this or any other prosecution, or parole, probation or sentence proceeding.

(g) Any and all prior criminal records of any witnesses intended to be utilized in any fashion by the prosecution or any other such information demonstrating the commission on their part, or participation therein, of any so-called "bad acts" or other instances of immoral or criminal conduct, or conduct indicating a lack of veracity.

(h) Any and all statements, memoranda or other similar notations or information which would in any way reflect inconsistent statements made by any witness(es) contacted by the government, or any such individual(s) engaged in lying or other conduct calculated to conceal the truth or improperly reflect facts.

(i) Any information tending to indicate that information supplied by a particular document or witness contradicts or is contradicted by a different document or witness.

(j) Any and all results of any scientific tests, experiments, analyses, etc. which tend to indicate that a person other than a named defendants executed or caused to be executed any checks, letters, ledgers, documents, etc. which at all relate to the present Indictment.

(k) Any and all surveillance reports of the respondents or any witness covering the period of time relevant to the offense(es) charged which qualify as Brady/Giglio material. The rules announced by the Supreme Court in Brady, Agurs, and Giglio which the respondents ask this Court to enforce should impose no hardships on the prosecution in that we are only asking for that evidence which is favorable to the defense; if the discovery involves the identity of witnesses, it is expected that the witnesses would be friendly toward the defense. Thus, the exaggerated claim usually made by the prosecution that the witnesses will be threatened is inappropriate here.

In order to equitably implement this rule, it is requested that the prosecution's file be produced in Court and examined by the Court and respondents so that a fair determination can be made of that material which is favorable to the defense. A decision of what materials exist in the prosecution's file which would be favorable to the defense cannot be left to the prosecution, but must be supervised by the Court.

Respondents specifically reserve the right to make any additional requests for the material covered above at the time this motion is argued, or at such other time as the existence of such materials shall become known to the respondents, and it is respectfully requested that the prosecution be admonished that their duty under Brady/Giglio is a continuing one.

MEMORANDUM AND FACTS

(1) The right of the respondents to disclosure of all potentially favorable or exculpatory evidence exists whether such evidence is material to the defendants' guilt or

to the mitigation of their punishment, and regardless of whether such exculpatory evidence would be admissible in the respondents' behalf at trial or in obtaining further evidence. The respondents are entitled to the pretrial discovery of such evidence regardless of whether it is considered to be competent evidence or admissible at trial.

(2) An extremely important category of Brady material is evidence which may serve to impeach the testimony or credibility of a prosecution witness. Such evidence falls within the Brady doctrine since it consists of information favorable to the accused either as direct or impeaching evidence. *United States v. Giglio, supra*.

(3) Where exculpatory or potentially favorable evidence is contained in the statement of a government witness discoverable under the Jencks Act, the relevant portions of such statement must be disclosed prior to trial. (5th Amendment, U.S. Constitution).

(4) In order to effectively exploit any Brady/Giglio material which may exist, it is essential that the defense be given this material three (3) weeks in advance of trial so that other investigatory leads may be pursued in sufficient time to permit a full preparation of the defendants' case. U.S. Constitution; *United States v. Aqaianian*, 852 F.2d 56 (2d Cir. 1988); *Arizona v. Youngblood*, 109 S. Ct. 333 (1988). The U.S. Attorney has withheld this Brady/Giglio material and exculpatory information from the respondents in this case.

(5) If the respondents are forced to wait until the time of trial, it may be too late for them to contact witnesses and interview them. Therefore, it is imperative that the evidence in the prosecution file which is favorable to the defense be disclosed

immediately so that arrangements can be made for those persons to be called during the course of this trial.

(6) The disclosure and production requested here should be made without regard to whether the evidence to be disclosed and produced is deemed to be admissible at the trial of this action. In the case at bar, it is impossible and indeed not required under United States v. Agurs, supra, to make a specific request for all available Brady material, particularly since much of that material may be totally unknown to the defense.

CONCLUSION

Wherefore, the Resondents request that this court issue an **ORDER** for the government to produce and deliver to the defense, all Brady – Agurs - Giglio material and exculpatory information for case **1:06-cr-00071-SM**. Depending upon the Court's decision affecting the relief requested in this motion, the resondents respectfully reserve the right to make further and additional motions which may be required and advisable in light of the Court's rulings on relief sought herein and the response of the government. The specific requests contained in these motions are not meant to limit or preclude future requests by the respondents for further relief from this Court as deemed appropriate. It is further requested that the Court grant such other and further relief as it may deem just and proper under the circumstances of this case. This court has a non-discretionary duty to grant this motion or (1) Order the Dismissal of the fraudulent grand jury indictment and charges 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 Jan. 2, 2007

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 hand delivery, 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 Jan 2, 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.

January 3, 2007

By Hand

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

Received this day, **NOTICE AND MOTION FOR BRADY – AGURS – GIGLIO
MATERIALS**

Signature

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

December 30, 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 Respondents' 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