

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

UNITED STATES OF AMERICA)

v.)

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

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

NOTICE AND MOTION FOR DISCLOSURE OF WITNESSES'

JENCKS ACT STATEMENTS IN ADVANCE OF TRIAL

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 DISCLOSURE OF WITNESSES' JENCKS ACT

STATEMENTS IN ADVANCE OF TRIAL 18 U.S.C. § 3500

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, production of Jencks Act statements in advance of trial. Under 18 U.S.C. § 3500, the respondent is entitled to Jencks Act statements after the witness has completed testimony on direct examination. Courts have on a case-by-case basis invoked their discretion to require production of Jencks Act statements in advance of trial so that unnecessary delays will not take place during the course of trial. See *United States v. Mocerri*, 359 F. Supp. 431 (N.D. Ohio 1973). *United States v. Catano*, 65 F.3d 219, 227 (1st Cir. 1995) teaches the application of an abuse of discretion standard, "the test is whether defendant was prevented by the delay of disclosure from using the material effectively in preparing and presenting the respondent's case." Congress has prescribed the respondent's ability to conduct effective cross-examination as the Jencks Act standard. In that connection the respondents request the Court to enter an order requiring the government to deliver to the

respondents immediately, but in no event later than three weeks prior to the date of trial the following:

a. Any written statement(s) made by said witness(es) and signed or otherwise adopted or approved by them;

b. Any stenographic, mechanical, electrical, or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement;

c. Any statement, however taken or recorded, or a transcription thereof, if any, made by said witness(es) to a Grand Jury;

d. Any and all rough notes of witness interview(s) taken or obtained in any investigation of the respondents including Federal, State, Local, and other investigations whether or not the contents thereof have been incorporated in official records.

e. Any notes and memoranda made by government counsel during the interviewing of any witness(es) intended to be called by the government in their direct case. *Goldberg v. United States*, 425 U.S. 94 (1976).

In addition to the foregoing the respondents request the opportunity to interview each and every witness intended to be called by the government, including but not limited to, any

witnesses in the Federal Witness Protection Program, immediately but no later than three (3) weeks prior to the commencement of the trial of this action.

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 respondents' 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 Jencks and 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) 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.

(5) Sufficient pretrial delivery of Jencks material in addition to avoiding delays also insures that the respondents' fundamental right to a fair trial and due process rights are safeguarded, and it is also essential that this material be delivered as requested in order for the respondents to develop any meaningful alibi testimony.

(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 Jencks and Brady material, particularly since much of that material may be totally unknown to the defense.

(7) The rules announced by the Supreme Court in Jencks, 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 witness file be produced in Court and examined by the Court and defendants 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 witness file which would be favorable to the response 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 Jencks/Brady/Giglio is a continuing one.

(8) The Jencks Act requires the government to provide, upon request, certain prior statements made by trial witnesses, and turns on the statutory requirement that the statement "relates to the subject matter as to which the witness has testified," 18 U.S.C. § 3500(b). A district court's determination that information is neither exculpatory under Brady nor discoverable under the Jencks Act is subject to abuse-of-discretion review, *United States v. Rosario-Peralta*, 175 F.3d 48, 55 (1st Cir. 1999). A demonstration of prejudice is ground for reversal. *United States v. Nelson-Rodriguez*, 319 F.3d 12, 35 (1st Cir. 2003). The criteria for finding a Brady violation are: (1) a willful or inadvertent suppression of evidence by the government, (2) the evidence being favorable to the respondent, (3) resulting in prejudice to the respondent so serious that there is "a reasonable probability that the suppressed evidence would have produced a different verdict." *Strickler v. Greene*, 527 U.S. 263, 281-282 (1999); see *United States v. Josleyn*, 206 F.3d 144, 153 (1st Cir. 2000). This does not mean that a verdict would have been "more likely than not" different, but that, without the evidence, defendant did not receive a trial "resulting in a verdict worthy of confidence." *Strickler*, 527 U.S. at 289-90 (quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)).

CONCLUSION

Wherefore, the Respondents request that this court issue an **ORDER** for the government to produce and deliver to the defense, all Jencks - Brady - Agurs - Giglio material and exculpatory information for case **1:06-cr-00071-SM**. Consequently, we ask this Court to invoke the sensible and liberal construction of 18 U.S.C. § 3500 and to grant the relief requested above in order to insure that the respondents receive a fair trial and further to insure judicial economy. Depending upon the Court's decision affecting the relief requested in this motion, the respondents 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

Edward L. Brown
Edward L. Brown

c/o 401 Center of Town Road
Plainfield, New Hampshire

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 by 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 January 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.

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

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 DISCLOSURE OF WITNESSES'
JENCKS' ACT STATEMENTS IN ADVANCE OF TRIAL**

Signature