UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA

v. : Criminal No.: 06-071-SM

EDWARD LEWIS BROWN, and : ELAINE A. BROWN, :

ELAINE A. BROWN,

_____:

Defendants.

GOVERNMENT'S OPPOSITION TO DEFENDANT'S NOTICE AND MOTION FOR [THE HONORABLE] STEVEN J. MCAULIFFE TO ISSUE A SWORN STATEMENT THAT HE IS NOT THE PLAINTIFF OR COMPENSATED BY THE PLAINTIFF IN THIS CASE (DOC. NO. 90)

The United States, by and through its undersigned attorney, hereby opposes the defendants' Motion for [The Honorable] Steven J. Mcauliffe to Issue a Sworn Statement That He Is Not the Plaintiff or Compensated by the Plaintiff in this Case (Doc. No. 90). In support of its opposition, the government states as follows:

- The defendants seek the issuance of sworn statement from the Court in essence certifying that the presiding judge is not the "plaintiff" in the case or compensated by the "plaintiff" in the case.
- 2. There is no plaintiff in this case because it is a criminal case. It is being prosecuted by the United States Department of Justice and the United States Attorney's Office on behalf of the people of the United States.
- 3. The Court and the prosecuting authority in this case are branches of the same federal government, they are independent branches and their relationship is of no consequence to the relevant issues in this case.

- 4. Finally, the relationship between the judiciary and the executive branch as part of the same government is not sufficient raise any genuine of recusal. <u>See</u> 28 U.S.C. § 455 (requiring recusal only where "impartiality might reasonably be questioned" and other circumstances not relevant here).
- 5. To the extent the defendants' motion seeks dismissal, it is not timely. <u>See</u> Local Criminal Rule 12.1(b) (requiring that dismissal motions be filed no later than 21 days before trial.)

For the above-mentioned reasons, the United States respectfully requests that the defendants' motion be denied.

Dated: January 7, 2006 Respectfully submitted,

THOMAS P. COLANTUONO United States Attorney

By: /s/William E. Morse
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Certificate of Service

I hereby certify that a copy of the foregoing was forwarded this date by overnight delivery (Saturday service) to Elaine Brown and Edward Brown, defendants, 401 Center of Town Road, Plainfield, New Hampshire 03781.

/s/William E. Morse