UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	**Criminal No. 1:06-cr-00071-JD**
	)	
ELAINE A. BROWN, and	)	
EDWARD LEWIS BROWN,	)	
Defendants	)	
	)	

NOTICE TO THE COURT AND MOTION TO QUASH THE INDICTMENT, DISMISS THE COMPLAINT, AND FOR INJUNCTIVE RELIEF

Elaine A. Brown and **Edward L. Brown**, husband and wife, Defendants herein, move this court under authority of Federal Rules of Criminal Procedure, rule 12(b)(2) to quash the indictment, dismiss the complaint, and for injunctive relief compelling THOMAS P. COLANTUONO and/or all other agents of the United States of America to leave Elaine Brown and Edward Brown alone now and forever.

JUDICIAL AND ADMINISTRATIVE NOTICE

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.

NOTICE TO JAMES R. MUIRHEAD

Party attacking the court's jurisdiction is invoking the ministerial capacity of the court depriving the court of judicial power. When jurisdiction is challenged, it is incumbent on the party asserting that the court has jurisdiction to prove, on the record that the court has jurisdiction. The court, on notice of any jurisdictional failings appearing on the face of the record has a non-discretionary duty to dismiss the complaint. The function of the United States Attorney's Office is not merely to prosecute crimes, but also to make certain that the truth is honored to the fullest extent possible during the course of the criminal prosecution and trial. The criminal trial should be viewed not as an adversarial sporting contest, but as a quest of truth. See Brennan, The Criminal Prosecution: Sporting Event or Quest for Truth? 1963 Wash. U.L.Q. 279.

First cause to quash the indictment,
Dismiss the complaint and provide injunctive relief

1. The indictment fails to set forth any statute, if any such statute exists, which makes the Defendants subject to or liable for any tax whatsoever.

2. The indictment fails to set forth any statute, if any such statute exists, which requires the Defendants to pay any tax whatsoever.

3. The indictment fails to set forth any statute, if any such statute exists, which requires the Defendants to make a tax return of any kind whatsoever.

4. The indictment fails to set forth any statute, if any such statute exists, which imposes a tax on either people, or property, or activities, events, incidents or occasions.

5. The indictment merely indicates the penalty statutes under Title 26 U.S.C. Sections 7201 & 7203, which merely state the penalties for violations of unspecified portions of Title 26.

6. The defects in this indictment cannot be cured by a bill of particulars.

7. The Defendants were coerced into entering a plea without full comprehension of the alleged charges due to the nonspecific, vague and indefinite indictment presented to them. The indictment is replete with conclusions, none of which apprise the Defendants of the nature and cause of the accusation. Furthermore, the indictment fails to state any statute, if any such exists, imposing any obligation whatsoever on the Defendants.

Second cause to quash the indictment,
Dismiss the complaint and provide injunctive relief

No complaint was made based upon oath and affirmation by a committing magistrate. THOMAS P. COLANTUONO, United States Attorney for the District of NEW HAMPSHIRE has no knowledge of any evidence that Elaine Brown or Edward Brown committed a crime as articulated under 26 USC 7201. There was no original examination of Elaine Brown or Edward Brown by a federal grand jury nor a grand jury indictment of any other person empowering the grand jury to enlarge its authority to investigate Elaine Brown or Edward Brown. The Defendants were deprived of substantive rights including the right to challenge the array of grand jurors. It is undeniable from the record made in **1:06-cr-00071-JD** that the "indictment" was an unconstitutional secret indictment.

Affidavit of Elaine A. Brown

I, **Elaine Alice Brown**, of age and competent to testify, state as follows based on my own personal knowledge:

1. I am not in receipt of any document which verifies a complaint made under oath or affirmation, that specifies elements of crime which I allegedly committed stating the time, date, place, and what law was violated.

2. I am not in receipt of a warrant issued by a committing magistrate based on a complaint which states the time, date, place, and law that was violated.

3. I am not in receipt of any written document which verifies that THOMAS P. COLANTUONO was personally involved in an investigation which I was the target of.

4. I am not in receipt of any document which verifies that there was a probable cause determination by a committing magistrate with the finding of probable cause being predicated on an antecedent complaint.

5. I was not provided with notice and opportunity to challenge the array of the grand jurors which allegedly indicted me.

6. I am not in receipt of any document which verifies that my alleged indictment was upon the concurrence of 12 or more jurors.

7. I am not in receipt of any document which identifies a federal statute making any activity that I am engaged in a revenue taxable activity subject to the imposition of a tax.

8. I am not in receipt of any document which identifies a federal statute which requires that I file an information return of any type regarding any activity that I am engaged in.

I swear that all of the above facts and statements in this affidavit are true and correct from my own personal knowledge. I affirm that I am of lawful age and am competent to make this affidavit. I hereby affix my own signature to all of the affirmations in this entire affidavit knowing full well the penalty of perjury.

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

Notary stamp and seal:

My commission expires:
3/22/2011

The State of New Hampshire

To Karen M Bixby Esquire, Greeting:

Know you, *That we, reposing special trust and confidence in your Fidelity and Ability, have constituted and appointed you*

A Notary Public for the State of New Hampshire

Hereby giving and granting unto you the said Karen M Bixby all the power and authority given and granted by the Constitution and Laws of our State to a Notary Public.

To have and to hold the said Office, *With all the powers, privileges and immunities to the same belonging for and during the term of five years ending March 22, 2011, provided you are of good behavior during said term.*

Governor

In Testimony Whereof, *We have caused our seal to be hereunto affixed.*

Witness, John H. Lynch, *Governor of our State at Concord, this twenty-second day of March in the year of Our Lord two thousand and six and of the Independence of the United States of America the two hundred and thirtieth.*

By his Excellency the Governor, with the advice of the Council.

Deputy Secretary of State

The State of New Hampshire

..... *s.s.* 04-10-06 2006

Then the said Karen M Bixby *took and subscribed the oath of office as a Notary Public prescribed by law.*

Before us, d.luce 4.10.06 *Justice of the Peace*

Laura Pawlenozio *Notary Public*

DONNA M. LUCE, Commissioner of Deeds
My Commission Expires October 5, 2010

LAURA S. PAWLENOZIO
NOTARY PUBLIC
STATE OF NEW HAMPSHIRE
MY COMMISSION EXPIRES MARCH 22, 2011

Affidavit of Edward L. Brown

I, Edward Lewis Brown, of age and competent to testify, state as follows based on my own personal knowledge:

1. I am not in receipt of any document which verifies a complaint made under oath or affirmation, that specifies elements of crime which I allegedly committed stating the time, date, place, and what law was violated.

2. I am not in receipt of a warrant issued by a committing magistrate based on a complaint which states the time, date, place, and law that was violated.

3. I am not in receipt of any written document which verifies that THOMAS P. COLANTUONO was personally involved in an investigation which I was the target of.

4. I am not in receipt of any document which verifies that there was a probable cause determination by a committing magistrate with the finding of probable cause being predicated on an antecedent complaint.

5. I was not provided with notice and opportunity to challenge the array of the grand jurors which allegedly indicted me.

6. I am not in receipt of any document which verifies that my alleged indictment was upon the concurrence of 12 or more jurors.

7. I am not in receipt of any document which identifies a federal statute making any activity that I am engaged in a revenue taxable activity subject to the imposition of a tax.

8. I am not in receipt of any document which identifies a federal statute which requires that I file an information return of any type regarding any activity that I am engaged in.

I swear that all of the above facts and statements in this affidavit are true and correct from my own personal knowledge. I affirm that I am of lawful age and am competent to make this affidavit. I hereby affix my own signature to all of the affirmations in this entire affidavit knowing full well the penalty of perjury.

Edward Lewis Brown

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

Notary stamp and seal:

My commission expires:

Edward Lewis Brown

Third cause to quash the indictment,
Dismiss the complaint, and provide injunctive relief

THOMAS P. COLANTUONO and or his agents had to result to trickery, fraud, and subterfuge to obtain a grand jury criminal indictment on April 5th 2006 against Elaine Brown and Edward Brown.

Fourth cause to quash the indictment,
Dismiss the complaint, and provide injunctive relief

THOMAS P. COLANTUONO and his agents have unclean hands; COLANTUONO has committed felony extortion id. at 26 USC § 7214 (a). COLANTUONO has broken the law, a criminal act, by falsely alleging that Elaine Brown and Edward Brown are not domiciled in New Hampshire and are engaged in a revenue taxable activity.

MEMORANDUM OF LAW IN SUPPORT OF
ELAINE AND EDWARD BROWN'S MOTION
TO QUASH THE INDICTMENT, DISMISS THE COMPLAINT AND PROVIDE INJUNCTIVE RELIEF

The Sixth Amendment to the United States Constitution requires that in all criminal proceedings, the Defendants shall have the right to be informed of the nature and cause of the accusation. The object of the indictment is, first, to furnish the Defendants with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for the protection against a further prosecution for

the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place and circumstances. See United States v. Cruikshank. 92 U.S. 542, at 588 (1876). The United States Supreme Court continues to rely on the fundamental principles stated in United States v. Cruikshank. See Russell v. United States, 369 U.S. 749, at 765 (1962). Title 26 U.S.C. Section 7201 is quoted in its entirety as follows: "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution." Title 26 U.S.C. Section 7203 is quoted in its entirety as follows: "Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep and records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the cost of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this failure if there is no addition to tax under section 6654 or 6655 with respect to such failure." The United States Supreme Court has

ruled that cause cannot be perfected under application of a mere penalty statute absent validation of commission of a predicate act. See Scheidler et al v. National Organization for Women Inc. et al, Case No. 01-1118, February 26th 2003. Sections 7201 and 7203 of Title 26 U.S.C. are clearly, and more importantly, only penalty statutes. While the so-called indictment states a violation of Section 7201 and 7203, penalty statutes cannot be violated. The penalty statutes merely state the penalties for violations of unspecified portions of Title 26. An indictment relying on Sections 7201 and 7203 without specifying which, if any, of the portions of Title 26 has supposedly been violated is legally insufficient - See Scheidler. The Ninth Circuit has also addressed the issue in Steiner v. United States, 229 F.2d 745, (9th Cir. 1956). The defendants in Steiner- contented that certain counts of the indictment failed to state an offense against the United States. In Steiner the defendants were charged in several counts under 18 U.S.C. § 545, with knowing an fraudulent importation and transportation of certain birds, "contrary to law." Like 26 U.S.C. § 7201 and 7203, 18 U.S.C. § 545 provides criminal penalties for the importation of "any merchandise contrary to law." The court held that: "each of counts 8, 9, 10 and 11 attempted to charge a violation of 18 U.S.C. § 545 and did not charge or attempt to charge any other offense. However, each of counts 8, 9, 10 and 11 failed to state what law (other than 18 U.S C. 545) the importation mentioned therein was contrary to such law. Thus each of counts 8, 9, 10 and 11 failed to charge a violation of 18 U.S.C. § 545 and failed to charge an offense against the United States. See Steiner v. United States. 229 F.2d 745, (9th Cir. 1956). The Steiner Court further stated that, "The defects in counts 8, 9, 10 and 11 could not have been cured by a bill of particulars. It is therefore immaterial that appellants did not move for such a bill." See Steiner at 748. The

significance of a sufficiently specific notice of criminal accusations is discussed in Russell v. United States, 369 U.S. 749 (1962). In that case defendants were charged with refusal to answer questions which were "pertinent to the matter under inquiry," yet the indictment only stated this element of the offense in conclusory terms, and did not specifically inform the defendants what the specific "matter under inquiry" was. The Supreme Court held that, "The vice of these indictments . . . is that they failed to satisfy the first essential criterion by which the sufficiency of an indictment is to be tested, i.e., that they failed to sufficiently apprise the defendant of what he must be prepared to meet." See Russell at 764. The court further held that where the definition of a crime includes generic terms, it is not sufficient for the indictment to charge the offense in the same generic terms. Instead, it must state those particulars which are necessary to apprise the defendant with reasonable certainty, of thee nature of the accusations against him. See Russell at 765. The court in Russell pointed out that the government's theory of "what the pertinent matter under inquiry" was changed from the trial stage to the appellate stage of that case. This, the court pointed out, is precisely one of the reasons that sufficiently specific pleading is required. See Russell at 767-768. The Russell Court additionally explains why a bill of particulars cannot save an invalid indictment. "But it is a settled rule that a bill of particulars cannot save an invalid indictment. When Congress provided that no one could be prosecuted except upon an indictment, Congress made the basic decision that only a grand jury could determine whether a person should be held to answer in a criminal trial for refusing to give testimony pertinent to a question under congressional committee inquiry. A grand jury, in order to make that ultimate determination, must necessarily determine what the question under inquiry was. To allow

the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him. See Orfield, Criminal Procedure from Arrest to Appeal, 243. The underlying principle is reflected by the settled rule in the federal courts that an indictment may not he amended except by resubmission to the grand jury, unless the change is merely a matter of form. If it lies within the province of a court to change part of an indictment to suit its own notions of what it ought to have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the Constitution says no person shall be held to answer, may be frittered away until its value is almost destroyed ... Any other doctrine would place the rights of the citizen, which were intended to be protected by the Constitutional provision, at the mercy of control of the court or prosecuting attorney; for, if it be once held that changes can be made by the consent or the order of the court in the body of the indictment as presented by the grand jury, and the prisoner can be called upon to answer the indictment as thus changed, the restriction which the Constitution places upon the power of the court, in regard to the prerequisite of an indictment, in reality no longer exists. We reaffirmed this rule only recently, pointing out that "The very purpose of the requirement that a man he indicted by a grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting

independently of either PROSECUTING ATTORNEY or JUDGE." Russell v. United States, 369 U.S. 749, 770-771 (1962).

An indictment written in conclusory terms, such as "Count 1, failing to make a return, and Count 11 required by law, failing to pay, or willfully fail," are fatally deficient to inform the defendant of the nature of the cause of action against him. In delivering the opinion in Brushaber v. Union R.R. Co., 240 U.S. 1 (1916), Chief Justice Edward Douglas White stated that: "Moreover in addition the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such." See Brushaber v. Union R.R. Co., 240 U.S. I, 16-17 (1916). Later, explaining what was settled in the Brushaber Case, the same Chief Justice Edward Douglas White stated: "by the previous ruling in [the Brushaber Case] it was settled that the Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning [of our national government under the Constitution] form being taken out of the category of indirect taxation to which it inherently belonged." See Stanton v. Baltic Mining Co., 240 U.S. 103, 112 (1916). In 1930, the United States Supreme Court explained that an indirect tax is not a property tax, but rather a tax laid upon the happening of an event. "A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax." See Tyler v. United States, 281 U.S. 497, 502 (1930).

In 1937, 24 years after the implementation of the Sixteenth Amendment, the United States Supreme Court recognized that capitation taxes and property taxes must still be apportioned among the States according to census or enumeration. THERE IS PRESENTLY NO FEDERAL TAX THAT IS APPORTIONED AMONG THE STATES. The United States Supreme Court further recognized that duties, imposts and excises are in the category of indirect taxes. While ruling on a tax collection from corporations under the Social Security Act of 1935, the United States Supreme Court stated: "The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states, though the method of apportionment may at times be different. The Congress shall have power to lay and collect taxes, duties, imposts and excises. Article I, Section 8. If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Whether the tax is to be classified as an "excise" is in truth not of critical importance. If not that, it is an "impost" or a "duty." A capitation or other direct tax it certainly is not." See Stewart Machine Co., v. Davis, 301 U.S. 548, 581-582 (1937).

In 1960, a federal appellate court explained that capitation taxes and property taxes must be apportioned in compliance with Article 1, Section 2, cl.3 and Article 1, Section 9, cl. 4 of the United States Constitution, and that an income tax (so-called) is not a direct tax, hut rather an indirect tax. This is an income tax case where the Tax Court has sustained

the Commissioner [of Internal Revenue] as against the taxpayer, 1959, 32 T.C. 653. Indeed, the requirement for apportionment is pretty strictly limited to taxes on real and personal property and capitation taxes. See Penn Mutual Indemnity Co., v C.I.R., 277 F.2d 16, at 17, 19-20 (3rd Cir. 1960).

In the Brushaber Case, (which slated that an income tax was in its nature an excise) the United States Supreme Court relied in part on an earlier ruling in Flint v. Stone Tracy Co., 220 U.S. 107, (1911). The Flint Case instructs us on the subjects of excise taxes. "Excises are taxes laid upon the manufacture, sale or consumption of commodities within a country, upon licenses to pursue certain occupations, and upon corporate privileges. Cooley, Const. Lim. 7th ed., 680. See also Flint v. Stone Tracy Co., 220 U.S. 107, at 151 (1911).

An indictment which fails to state any activity, event, incident, or occasion upon which the purported tax in question is imposed, and fails to state any statute, if any, that imposes a tax on that particular subject, and further, fails to state any statute that makes the Defendant subject to and liable for such a tax, where the Defendant is left to guess at which statutes that he must be prepared to meet, is facially void. Even if the purported tax in question were to be viewed as a property tax, the indictment fails to state precisely upon which property the purported tax is imposed, and fails to state which statute, if any, imposes a tax on that particular property, and further fails to state any statute, if any such statute exists, that makes the Defendants subject to and liable for such a tax. The courts have ruled that "subject to" means "liable for." "We see no distinction between the

phrases "liable for such tax" and "subject to a tax." See Houston Street Co., v. C.I.R. 84 f.2D 821, AT 822 (5th Cir. 1936).

Federal Rules of Criminal Procedure, rule 6(b)1 - Challenges. Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

Federal Rules of Criminal Procedure, rule 6(f) - Indictment and Return. A grand jury may indict only if at least 12 jurors concur. The grand jury - or its foreperson or deputy foreperson - must return the indictment to a magistrate judge in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge.

Federal Rules of Criminal Procedure, rule 3. The Complaint. The Complaint is a written statement of the essential facts constituting the offense charge. It shall be made upon oath before a magistrate judge.

If a defendant doesn't know a grand jury is investigating him, he doesn't have the opportunity to challenge the grand jury array, or individual grand jurors. Consequently, he has been deprived of substantive due process, which is expressly prohibited by 28 USC § 2072(b).

The federal government may prosecute felony crimes only on a valid affidavit of complaint that has been presented in a probable cause hearing (Rules 3 & 4). Only corporations can be prosecuted via "information." Rule 6(f) preserves the antecedent affidavit of complaint and probable cause hearing in the second sentence: The grand jury may proceed only on "complaint" or "information" that has previously been formally processed.

26 Sec. 7214. Offenses by officers and employees of the United States

-STATUTE-

(a) Unlawful acts of revenue officers or agents

Any officer or employee of the United States acting in connection with any revenue law of the United States -

(1) who is guilty of any extortion or willful oppression under color of law; or (2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; (7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or (8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary; shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof; for the use of the

informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

CONCLUSION

This court is absent subject matter jurisdiction for a myriad of reasons including at least two dozen other breaches of rules and laws by THOMAS P. COLANTUONO and or his agents, already of record in this court. This court has a non-discretionary duty to: (1). Quash the indictment, (2). Enjoin the United States from any further harassment of Elaine Brown and Edward Brown, (3). Remand THOMAS P. COLANTUONO and his agents to other authority for considered indictment for jury tampering, and (4). Remand THOMAS P. COLANTUONO and his agents to other authority for indictment for confessed and of record violations of 26 USC 7214(a)(1)(2)(7) &(8).

ORAL ARGUMENT DEMANDED

Date June 16, 2006

Prepared and submitted by:

Elaine A. Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire

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 first class mail a true and correct copy of the above and foregoing NOTICE TO THE COURT AND MOTION TO QUASH THE INDICTMENT, DISMISS THE COMPLAINT, AND FOR INJUNCTIVE RELIEF to the office of the Clerk of Court U.S. District Court, District of New Hampshire and to the office of THOMAS P. COLANTUONO, the United States Attorney for the district of NEW HAMPSHIRE.

Date June 16, 2006

Edward L. Brown