

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

U.S. DISTRICT COURT
DISTRICT OF N.H.
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400 J.W. ...

CMRR#7003 1010 0005 2733 2448

UNITED STATES OF AMERICA)

)

)

v.)

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

)

ELAINE A. BROWN, and)

EDWARD LEWIS BROWN,)

Defendants)

)

_____)

**NOTICE AND MOTION FOR ORDER DIRECTING
THE GOVERNMENT
TO RESPOND TO BILL OF PARTICULARS**

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, move this court under authority of Federal Rules of Criminal Procedure, rule 7(f) for an order compelling **THOMAS P. COLANTUONO** and/or all other paid agents of the United States of America to respond to the Defendants' Bill of Particulars served on the U.S. Attorney on June 16, 2006 and filed into the record of this case at Docket number 26.

JUDICIAL AND ADMINISTRATIVE NOTICE

Defendants hereby welcome Chief Judge Steven J. McAuliffe to this case and wish to inform him that all 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.

1. The government by and through its alleged attorney has communicated the fact that it does not intend to respond to the bill of particulars, but rather intends only to provide certain selected documents of its choosing. See Docket #27.
2. Defendants move Chief Judge McAuliffe to order his employer, the Plaintiff, to respond forthrightly with answers to each particular as requested by the Defendants.
3. The U.S. Attorney has already refused to provide to the defendants a copy of the sworn affidavit(s) and complaint(s) used to commence this case.
4. The U.S. Attorney has obstructed the legal mandate, as set out in the memorandum herein, to provide a bill of particulars and confused it with the rules for common discovery. AUSA Morse has stated that defendants should only request discovery documents though the limited and restricted production available from the U.S. Attorney's "open file" procedures. See Docket #27 foot note 1.

**MEMORANDUM OF LAW IN SUPPORT OF
ELAINE AND EDWARD BROWN'S MOTION
FOR ORDER DIRECTING THE GOVERNMENT
TO RESPOND TO BILL OF PARTICULARS**

Bills of particulars set the parameters of the government's case; access to them serves the same societal interests as served by open access to the charging documents. The government in this case is refusing to provide access to the charging documents and is refusing to provide answers to the bill of particulars. Criminal proceedings cannot be said to be brought or instituted until a formal charge is openly made against the accused, by a valid indictment filed in court. Because a bill of particulars is designed to clearly define an indictment and because it serves as a defacto explanation of the grand jury's automatic rubber stamped approval of the indictment, the government attorneys must take special care when answering the bill of particulars to make only those representations which are actually supported by the evidence presented to the jury. The defendants' interest in a narrowly drawn indictment and bill of particulars is founded on the constitutional guarantee that the accused are to be provided with the nature and cause with adequate notice of the precise charges brought against them to allow the preparation of a defense and prevent unfair surprise at trial. The bill of particular's accurate description of the details for the offenses as charged in the indictment serves as a prophylactic against a rogue prosecutor roaming unfettered through the criminal sections of the U.S. Code and then bringing a subsequent indictment and a second trial for the same alleged acts. A bill of particulars, [Fed.R.Cr.Pr. Rule 7(f)], unlike discovery, is not intended to provide the defendants with fruits of the government's investigation, but it is intended to give the defendants the information necessary to permit the defendants to conduct their own

meaningful defense. As with the indictment, there can be no variance between notice given in bill of particulars and evidence at trial whether Right of access is grounded on the First Amendment Right of access to judicial proceedings, or on common-law Right of access to judicial documents. First Amendment Right of access and common-law Right of access extend to bills of particular, which are more properly regarded as supplements to indictment than as the equivalent of civil discovery. *U.S. v. Smith*, 776 F.2d 1104 (CA Cir 10 1985). ...First amendment Right to open criminal trials. A bill of particulars, like the indictment, is designed to define and limit the government's case. As with the indictment, there can be no variance between the notice given in a bill of particulars and the evidence at trial.-- *U.S. v. Neff*, 212 F.2d 297, 309 (3d Cir.1954).

In *Bryan v. United States*, 524 U.S. 184, 200 (1998) the Court cited to *Cheek v. United States*, 498 U.S. 192, 201 (1991), and said, "In certain cases involving willful violations of the tax laws, we have concluded that the jury must find that the defendant was aware of the specific provision of the tax code that he was charged with violating." The 6th Amendment also makes this "Right" to know the nature and cause mandatory. Why are the government's attorneys so bent on concealing and prohibiting this mandatory disclosure of required information to the defendants? The U.S. Supreme Court has held: The constitutional Right to be informed of the nature and cause of the accusation entitles the defendant to insist that the indictment apprise him of the crime charged with such reasonable certainty that he can make his defense and protect himself after judgment against another prosecution on the same charge. *United States v. Cruikshank*, 92 U.S. 542, 544, 558 (1876); *United States v. Simmons*, 96 U.S. 360 (1878); *Bartell v. United*

States, 227 U.S. 427 (1913); *Burton v. United States*, 202 U.S. 344 (1906). No indictment is sufficient if it does not allege all of the ingredients that constitute the crime. Where the language of a statute is, according to the natural import of the words, fully descriptive of the offense, it is sufficient if the indictment follows the statutory phraseology, but where the elements of the crime have to be ascertained by reference to the common law or to other statutes, it is not sufficient to set forth the offense in the words of the statute. The facts necessary to bring the case within the statutory definition must also be alleged. *Potter v. United States*, 155 U.S. 438, 444 (1894). *United States v. Carll*, 105 U.S. 611 (1882). The Right to notice of accusation is so fundamental a part of procedural due process that the government is required to observe it. *In re Oliver*, 333 U.S. 257, 273 (1948); *Cole v. Arkansas*, 333 U.S. 196,201 (1948); *Rabe v. Washington*, 405 U.S. 313 (1972).

CONCLUSION

WHEREFORE, Defendants request that the Court order the government to forthrightly provide the particulars requested; and for all such other and further relief as may be appropriate whether or not specifically prayed.

ORAL ARGUMENT DEMANDED

Date July 21, 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 via postage paid First Class U.S. Mail 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 for entry into the record and to **LEAD ATTORNEYS TO BE NOTICED**, Jean B. Weld and William E. Morse in the office of **THOMAS P. COLANTUONO**, the United States Attorney for the District of (NH) located at 55 Pleasant St. 4th Flr, Concord, NH 03301-0001.

Date July 21, 2006

Edward L. Brown

Edward L. Brown