

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

BERNARD VON NOTHAUS,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA;)

Defendant.)

Case No. 3:07mj0017

ORIGINAL

**MOTION FOR RETURN OF PROPERTY UNDER
FEDERAL RULES OF CRIMINAL PROCEDURE 41(g)**

COMES NOW Bernard von NotHaus (hereinafter, "Plaintiff"), and for his Complaint states as follows:

General Jurisdiction and Standing

1. This Honorable Court has jurisdiction and standing over this matter under Rule 41 of the Federal Rules of Criminal Procedure. Plaintiff respectfully moves this Honorable Court, pursuant to Rule 41(g), Fed. R. Crim. P., to return his property seized from the premises at the business located at 225 N. Stockwell Road, Evansville, Indiana 47715, pursuant to a search warrant issued in the Southern District of Indiana by the Honorable Richard L. Young and dated November 8, 2007. A copy of the search warrant is attached hereto as Exhibit A and is incorporated by reference as though fully set out herein.

2. Relief is sought pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure, and pursuant to the First, Fourth, and Fourteenth Amendments to the United States Constitution, and pursuant to Rule 65, Federal Rules of Civil Procedure, and under certain statutes for equitable and other relief.

3. This Court has jurisdiction over Plaintiff's claims arising under the Constitution and laws of the United States, pursuant to 28 U.S.C. § 1331, for those claiming deprivation of civil rights under 28 U.S.C. § 1343, for return of property under Rule 41(g) of the Federal Rules of Criminal Procedure, and for injunctive relief under Rule 65 of the Federal Rules of Civil Procedure.

Parties

4. Plaintiff is now an individual and resident of the State of Hawaii. At the time the search warrant at issue was signed on November 8, 2007, Plaintiff was a resident of the State of Indiana.

5. Defendant United States includes the Department of Homeland Security, Department of the Treasury, Federal Bureau of Investigations, U.S. Secret Service, and U.S. Mint and their agents who conducted the search and seizure pursuant to the warrant attached hereto as Exhibit A.

Equitable Jurisdiction for the Return of Property

6. The search of the premises was conducted pursuant to a search warrant as described above. During the search, the agents seized numerous items from the premises. A copy of the inventory of the items seized, as prepared by the federal agents whom conducted the search, is attached hereto as Exhibit B. However, Exhibit B is not an exhaustive list of the items seized.

7. Some of the items that were seized from the premises and included on Exhibit B are the subject of a Civil Forfeiture action in the United States District Court for the Western District of North Carolina, Case No. 1:08CV230 (hereinafter, "the Civil Forfeiture action"). A copy of the Complaint for the Civil Forfeiture action is attached

hereto as Exhibit C. Exhibit C describes the items seized from the premises and included on Exhibit B, which are the subject of the Civil Forfeiture action. These items generally include precious metals in the form of medallions;

8. The items included on Exhibit B, that are subject to the Civil Forfeiture action in the Western District of North Carolina, are not the property that is sought to be returned via this Motion under Rule 41(g). Instead, this Motion seeks the return of the other property on Exhibit B that is not the subject of the Civil Forfeiture action. This other property, that is not the subject of the Civil Forfeiture action, generally includes paper documents and computers.

9. Plaintiff has standing to bring this claim on behalf of himself as the rightful owner of property that was seized and that is not the subject of the Civil Forfeiture action.

10. This Court has jurisdiction to order the return of the documents and items seized upon a showing of (1) irreparable injury, and (2) that Plaintiff otherwise lacks a remedy at law. Plaintiff contends and believes that he has been irreparably harmed by the actions of the United States. The irreparable harm includes, but is not limited to, denial of Plaintiff's Fourth Amendment rights to protection from search and seizure based on an invalid warrant, Plaintiff's Fourteenth Amendment rights to due process, interference with private contracts, and interference with business operation. The denial of Plaintiff's constitutional rights is continuing and cannot be remedied unless this Court orders the return of Plaintiff's property. Plaintiff asks this Court to return all of the documents and items seized from him that are not included in the Civil Forfeiture action. In the

alternative, all such documents and items should be returned to the Plaintiff with the

United States preserving a copy or sample for future use, if any.

11. Plaintiff is the individual that is the target of the criminal investigation, in which is referenced in the warrant, Exhibit A.

12. Neither Plaintiff nor the entities that are the targets of the criminal

investigation have been indicted for the crimes alleged in the warrant. "Anomalous

jurisdiction" gives federal district courts power to order suppression or return of

unlawfully seized property even though no indictment has been returned and thus no

criminal prosecution is yet in existence. Jurisdiction to order suppression or return prior

to indictment exists not by virtue of any statute but rather is derived from the inherent

authority of the Court over those who are its officers. U.S.C.A. Const. Amend. 4.

13. The search and seizure in this case was unlawful and illegal because, among other reasons, the items were seized without probable cause, items were not described in the search warrant which was itself overly broad, no search warrant was otherwise obtained as required by law, and the affidavit that was used to support and obtain the warrant was intentionally deceptive and misleading, as described herein.

14. Even if the search and seizure were lawful and legal, the United States no longer has a need to use the property that was seized as evidence, and such property should be returned to Plaintiff, who is its rightful owner. The United States has the ability to photocopy items, retain only a sample of the property, or to condition the return of property on the United States' access to the property at a future time.

Facts and Analysis

15. Liberty Services, a sole proprietorship f/k/a NORFED, Inc., a dissolved

corporation, has a place of business in the State of Indiana.

16. Plaintiff Bernard von NotHaus was also an officer and the sole owner of

Liberty Services and NORFED, Inc.

17. The Liberty Dollar and Hawaii Dala, which are referenced in the warrant,

Exhibit A, are private voluntary barter currencies.

18. On November 14, 2007, federal agents including, but not limited to,

criminal investigation agents of the FBI, Secret Service agents, and agents of the U.S.

Mint executed a federal search warrant on the premises. Plaintiff has been provided with

a copy of the warrant but has not been provided with the affidavit, which supported the

application of the United States for the warrant, Exhibit A, in Indiana.

19. Plaintiffs seek the immediate disclosure of the affidavit for warrant.

Plaintiffs have obtained a copy of the affidavit used in a companion proceeding in the

District of North Carolina, which is attached as Exhibit D. Pursuant to the Fourth

Amendment, Plaintiffs are entitled to receive a copy of the affidavit in support of the

warrants after a search has been conducted and prior to any indictment.

20. In 2006, the U.S. Mint posted a warning regarding the Liberty Dollar

medallions on its website (<http://www.usmint.gov/consumer/index.cfm?action=hotitems>)

under the designation "Consumer Awareness – Hot Items". The warning, states, *inter*

alia, that:

The United States Mint and the United States Department of Justice have received inquiries regarding the legality of these so-called "Liberty Dollar" medallions. The United States Mint urges consumers who are considering the purchase or use of these items to be aware that they are not genuine United States Mint bullion coins and they are not legal tender. These medallions are privately produced products and are not backed by, nor affiliated in any way with, the United States Government. Moreover, prosecutors with the Department of Justice have determined that the use of these gold and silver NORFED "Liberty Dollar" medallions as circulating money is a Federal crime. (Emphasis Supplied)

* * *

Therefore, NORFED's "Liberty Dollar" medallions are specifically intended to be used as current money in order to limit reliance on, and to compete with the circulating coinage of the United States. Consequently, prosecutors with the United States Department of Justice have concluded that the use of NORFED's "Liberty Dollar" medallions violates 18 U.S.C. § 486.

21. On March 20, 2007, Plaintiff filed a Complaint in the United States District Court for the Southern District of Indiana, Evansville Division, Civil Action 3:07-CV-038-RLY-WGH (hereinafter "civil action"). The Complaint seeks a declaratory judgment action against the United States of America for improperly providing notice on the website of the U.S. Mint that the actions and activities of Plaintiff and NORFED constitute a violation of law.

22. At the time of the execution of the search warrant in this case, the civil case was pending before the United States District Court of the Southern District of Indiana.

23. The United States executed the above-described search and seizure despite the fact that there has never been a request informally, by summons or by subpoena for records as part of the civil case or the criminal investigation.

Attorney-Client and Work-Product Doctrines

24. The U.S. Mint warning, posted on its website in 2006, indirectly informed Plaintiff that a criminal investigation is underway. Many of the documents and computer storage devices seized during the raid on the premises constitute privileged materials under the attorney-client and work-product doctrines relating to these two legal events. The seizure of these items and review by the FBI constitutes a violation of the Fifth Amendment of the U.S. Constitution.

Interference with the Exercise of Free Speech

25. NORFED was incorporated as a non-profit educational organization for the purpose of political association.

26. The First Amendment to the US Constitution protects the practices of a political organization to promote its political beliefs.

27. Plaintiff has the political goals of bringing about the peaceful and lawful repeal of the Federal Reserve Act and the Internal Revenue Code.

28. In order to promote his political beliefs, Plaintiff engages in activities that are legally defined as "issue advocacy," which is exempt from government regulation.

29. On November 14, 2007, the government seized a vast amount of political literature, flyers, booklets, memos, etc., which are used by the political organization to promote its political beliefs. Seizure of all of the items constitutes interference with the free exercise of political speech.

Unlawful Seizure

30. The seizure of the property included in Exhibit B, was carried-out pursuant to a criminal search and seizure warrant. However, the government is

prohibited from criminalizing the expression of disagreement with specific laws of our country. The conduct of the government in this case is substantially similar to conduct that has been outlawed by the Privacy Act and deemed unconstitutional by the Supreme Court on numerous occasions.

31. The Supreme Court has decreed that “a pointed expression of anguish about the current domestic and foreign affairs of the government” is protected by the First Amendment and cannot be criminally punished except in the most compelling circumstances. No such circumstances are present in the instant case.

32. On the face of the warrant, Exhibit A, the United States asserts that the warrant is conducted pursuant to alleged violations of 18 U.S.C. §§ 1956, 1957 (“Money Laundering”), 18 U.S.C. § 1341 (“Mail Fraud”), and 18 U.S.C. § 1343 (“Wire Fraud”).

33. In the affidavit, Exhibit D, as attached to the companion warrant from the Western District of North Carolina, the United States announces that it is investigating Plaintiffs for alleged violations of 18 U.S.C. §§ 486, 489 (“Counterfeiting”). However, these alleged violations are not the basis for the search warrant and seizure. Pursuant to 200 Atty. Gen. 210 (1891), the United States has acknowledged that it does not have authority to seize property for alleged violations of 18 U.S.C. §§ 486, 489.

34. The warrant, Exhibit A, on its face, purports to be conducted pursuant to 18 U.S.C. § 982(a)(1) (“Criminal Forfeiture”), which only allows for forfeiture in cases of conviction for violations of 18 U.S.C. §§ 1956, 1957 (“Money Laundering”), 18 U.S.C. § 1341 (“Mail Fraud”), and 18 U.S.C. § 1343 (“Wire Fraud”).

Lack of Probable Cause

35. The allegations in the affidavit, Exhibit D, do not constitute *prima facie*

allegations of probable cause to support a search and seizure for alleged violations of

18 U.S.C. §§ 1956, 1957 (“Money Laundering”), 18 U.S.C. § 1341 (“Mail Fraud”), and

18 U.S.C. § 1343 (“Wire Fraud”).

36. Pursuant to the plain language of the affidavit, Exhibit D, there was no

deception on the part of Plaintiff or NORFED in marketing and distributing either the

Liberty Dollar medallions or the Hawaii Dala medallions. The affidavit acknowledges

that the FBI metallurgy lab has tested the medallions and they contain the weight and

quality of silver as represented by Plaintiff and NORFED to customers. In addition, the

affidavit indirectly acknowledges that Plaintiff and NORFED provided full disclosure to

their customers and agents of how the face value of the medallion is calculated based

upon the spot price of silver, minting costs, and profit margins. Thus, because full

disclosure is made to customers and agents before any sale occurs, the allegation of the

United States that Mail Fraud or Wire Fraud has occurred is without merit.

37. The affidavit, Exhibit D, provides no facts to support its claim that Money Laundering has been committed, which would support the search and seizure.

38. Neither Plaintiff, NORFED, nor any other representative or agent of the Liberty Dollar organization have represented the Liberty Dollar medallions as legal tender, current money, or coin. Liberty Dollar has encouraged persons who utilize the barter currency to offer it to merchants as barter payment for goods and services but not as legal tender, current money, or coin. Thus, the use of the mail system or wire

communications system to market and distribute gold or silver Liberty "medallion" as a

"private voluntary barter currency" cannot constitute Mail Fraud or Wire Fraud.

39. The Hawaii Dala does not contain any markings or symbol, which could

suggest that it is a product of the U.S. Mint or other foreign government. A medallion

representing a depiction from the Hawaii kingdom cannot fall under the counterfeiting

statutes because Hawaii does not constitute a foreign government and such depiction

cannot suggest that it is a product of the U.S. Mint.

40. The affidavit, Exhibit D, does not assert that the "fair market value" of the

minted Liberty Dollar or Hawaii Dala valued in U.S. dollars, is less than the face amount

on each medallion. In the affidavit, Exhibit D, the United States arbitrarily asserts that

the face amount of each medallion is more than the spot market price of the precious

metal contained in each coin. In valuing each medallion, the United States fails to take

into account the premium that the market commands for production, minting, and

overhead costs to market a product for barter with silver and gold medallions. In

addition, in valuing each medallion, the United States fails to take into account the

numismatic collector value that the market commands for the minted Liberty Dollar

medallions or Hawaii Dala medallions.

41. Because the allegations of fact contained in the affidavit, Exhibit D, do not

constitute a violation of 18 U.S.C. §§ 1956, 1957 ("Money Laundering"), 18 U.S.C.

§ 1341 ("Mail Fraud"), and 18 U.S.C. § 1343 ("Wire Fraud"), the United States did not

have probable cause to conduct the search and seizure on November 14, 2007:

42. The affidavit, Exhibit D, alleges that an unsuspecting individual may unwittingly accept the Liberty Dollar medallion or Hawaii Dala medallion as change, believing that they are receiving U.S. currency.

43. As a comparison, the affidavit compares a \$20 Liberty Dollar medallion to the 1946 Roosevelt Dime, 2007 U.S. Mint Platinum Eagle Coin, and the 2007 U.S. Mint Presidential Coin.

44. The 2007 U.S. Mint Platinum Eagle Coin is not an exchanged medium in commerce, and, thus, there is no realistic threat that an unsuspecting individual will accept a Liberty Dollar medallion in the place of a 2007 U.S. Mint Platinum Eagle Coin.

45. In addition, because the \$1 U.S. Sacagawea coin is the largest denomination of coinage, which was an exchanged medium in commerce at the time of the seizure, there is no realistic threat that a \$20 Liberty Dollar will be inadvertently received in place of a \$20 U.S. currency piece.

46. A \$20 Liberty Dollar medallion is sufficiently discernable and different from the 1946 Roosevelt Dime and the 2007 U.S. Mint Presidential Coin in size, color, and content to ensure that it will not be inadvertently received in their place.

47. The affidavit of the United States, Exhibit D, which was submitted to the Western District of North Carolina, Honorable Dennis L. Howell, United States Magistrate Judge, Case No: 1:07-mj-00119-DLH, in order to obtain a warrant is materially and intentionally misleading. Assuming the affidavit in the case at hand is substantially identical to the affidavit used in the companion case, then the affidavit in the case at hand is equally misleading.

48. In an attempt to show that the medallions at issue are “easily confused with U.S. currency,” the United States, in the affidavit, Exhibit D, compares photocopied images of a Liberty Dollar medallion to images of the 1946 Roosevelt Dime and the 2007 U.S. Mint Presidential Coin.

49. The photocopy of the Liberty Dollar medallion is intentionally and deceptively resized to match the size of the photocopies of the 1946 Roosevelt Dime and the 2007 U.S. Mint Presidential Coin in order to mislead the Magistrate Judge into believing that the medallion is similar in size and weight to the U.S. coins.

50. In reality, the Liberty Dollar is much larger in color, size and weight and could not be easily confused with the 1946 Roosevelt Dime or the 2007 U.S. Mint Presidential Coin.

51. A Judge, presented with an accurate description of the color, size and weight of the medallion in comparison to the 1946 Roosevelt Dime and the 2007 U.S. Mint Presidential Coin, would not have agreed with the United States that the medallions are “easily confused with U.S. currency” and the warrant, Exhibit A, would not have been issued.

52. Without the misleading descriptions of the color, size and weight of the medallion in comparison to the 1946 Roosevelt Dime and the 2007 U.S. Mint Presidential Coin, there is no probable cause for the issuance of the warrant, Exhibit A.

53. The misleading depictions in the affidavit, Exhibit D, of the color, size and weight of the medallion in comparison to the 1946 Roosevelt Dime and the 2007 U.S. Mint Presidential Coin violate the Fourth and Fourteenth Amendments to the Constitution.

Warrant is Overly-Broad

54. The warrant is overbroad because it fails the particularity requirement of the Fourth Amendment where it authorizes seizure of "American Liberty Dollar and/or Hawaii Dala currency and or precious metals of gold, silver, copper, platinum, or other substance and/or United States currency holdings". Such items are not contraband or dangerous instrumentality.

55. The search and seizure on November 14, 2007 exceeded the scope of the warrant because the federal agents seized materials included on the United States' inventory, Exhibit B, which are not included on the face of the warrant. Other items seized by the federal agents are not included in the warrant.

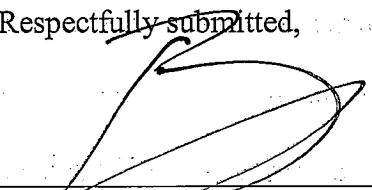
Relief Sought

56. Plaintiff seeks an immediate return of his property seized at the premises and not included in the Civil Forfeiture action.

57. In addition, Plaintiff seeks an Order requiring the United States to provide to Plaintiff a copy of the affidavit that was submitted by the United States to secure the warrant, Exhibit A, in the case at hand.

58. Plaintiff seeks an Order requiring the United States to provide a more detailed inventory of the property seized at the premises.

Respectfully submitted,

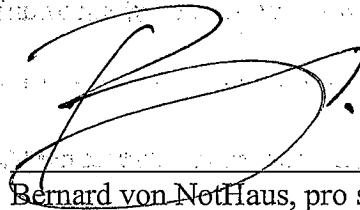

Bernard von NotHaus, pro se
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded to all counsel of record by means of placing a copy in the U.S. Mail, postage pre-paid, on this 30th day of January, 2009, and addressed as follows:

Timothy M. Morrison
United States Attorney's Office
10 W Market St, Suite 2100
Indianapolis, IN 46204

Date: 1-30-09



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