

Appendix Z

The Nature and Cause: Case Law

Reader's Notes:

MEMO

TO: Federal Zone Readers

FROM: Paul Andrew Mitchell

DATE: March 1, 1992

SUBJECT: More on the 6th and 16th Amendments

I have recently found an unusually clear and concise quote on the effect of a ratified 16th Amendment among some Appellate decisions I have been reviewing. This quote will be incorporated into chapter 5 of the second edition of The Federal Zone. After reading either edition, you will know the logic: if a ratified 16th Amendment had effect X, then a failed ratification proves that X did not happen. What is X? Answer:

**The constitutional limitation upon direct taxation was modified by the Sixteenth Amendment insofar as taxation of income was concerned, but the amendment was restricted to income, leaving in effect the limitation upon direct taxation of principal.**

[Richardson v. United States, 294 F.2d 593 (1961)]

This ultra-clear ruling dovetails perfectly with the work of author Jeffrey A. Dickstein but, unfortunately, this case is not discussed in his book Judicial Tyranny (see the Bibliography).

My 6th Amendment research has also merged perfectly with a parallel thesis of the book, namely, that the IRC should be declared null and void for vagueness. It turns out that there is a ton of legal precedent on the "nature and cause of the accusation". Our fundamental right to ignore vague and arbitrary laws is deeply rooted in our fundamental right to due process. Here's the tentative new paragraph for chapter 5:

The "void for vagueness" doctrine is deeply rooted in our right to due process (under the Fifth Amendment) and our right to know the nature and cause of an accusation (under the Sixth Amendment). The latter right goes far beyond the contents of any criminal indictment. The right to know the nature and cause of an accusation starts with the statute which any defendant is accused of violating. A statute must be sufficiently specific and unambiguous in all its terms, in order to define and give adequate notice of the kind of conduct which it forbids. If it fails to indicate with reasonable certainty just what conduct the legislature prohibits, a statute is necessarily void for uncertainty, or "void for vagueness" as it is usually phrased. Any prosecution which is based upon a vague statute must fail together with the statute itself. A vague criminal statute is unconstitutional for violating the 6th Amendment.

With this mountain of court precedent, we can now attack U.S. v. Hicks as well as U.S. v. Bentson (see Appendix H). The 9th Circuit kept referring to the importance of "explicit statutory requirements".

Well, are those statutory requirements explicit if they utilize the key word "income" but don't even define it (because they can't without violating the Eisner prohibition)?

Are they explicit if they define "State" in such a way as to create confusion about the precise limits of sovereign jurisdiction?

Are they explicit if they qualify definitions by stating "where not otherwise manifestly incompatible with the intent thereof", but never define the intent thereof?

Can we ever know the real intent of Congress, when Title 26 was never enacted into positive law?

How can we know which of the 3 official definitions of "United States" to apply to the terms "United States citizen" and "United States resident" when the IRC doesn't tell us, precisely and unambiguously, which definition it is using?

How can we ever expect to quiet the debate about "includes" and "including", when the Treasury Department's own decision, published in 1927, frankly admits that these terms have a long history of semantic confusion?

"This word has received considerable discussion in opinions of the courts. **It has been productive of much controversy.**"

Their own published Treasury Decision proves that Title 26 contains terms that have a documented history of controversy and confusion.

[following quotes from Modern Constitutional Law, by Antineau]:

5:116. Historical Considerations

The United States Supreme Court has often recognized the **relevance of the lessons of history** in determining the particular demands of due process of law. Due process of law, says the Court, is "a historical product."

Justice Frankfurter has aptly pointed out that the Sixth and Seventh Amendment guarantees of criminal and civil jury trials are almost entirely defined by historical materials. "The gloss may be the deposit of history," he observes, "whereby a term gains technical content. **Thus the requirements of the Sixth and Seventh Amendments for trial by jury in the federal courts have a rigid meaning.**"

[Modern Constitutional Law, by Chester J. Antineau]

[The Lawyers Co-operative Publishing Company]

[Rochester, New York, 1969, emphasis added]

Footnotes cite the following cases:

Rochin v. California, 342 U.S. 165 (1952)

Jackman v. Rosenbaum Co., 260 U.S. 22 (1922)

5:118. The moral basis of the norm

Due process of law is defined in procedural cases by the Supreme Court with full consideration to what society considers wrong and unfair.

Justice Frankfurter, who contributed greatly to the definition and expansion of procedural due process, stated in 1950: "**the Due Process Clause embodies a system of rights based on moral principles so deeply embedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history.**" On many another occasion, the Court has stressed the role of "conscience" in defining due process of law.

[Modern Constitutional Law, by Chester J. Antineau]  
[The Lawyers Co-operative Publishing Company]  
[Rochester, New York, 1969, emphasis added]

Footnotes cite the following cases:

Solesbee v. Balkcom, 339 U.S. 9 (1950)  
Leland v. Oregon, 343 U.S. 790 (1952)  
Snyder v. Massachusetts, 291 U.S. 97 (1934)

[following quotes are from Rochin v. People of California]:

Words being symbols do not speak without a gloss. On the one hand the gloss may be the deposit of history, whereby a term gains technical content. **Thus the requirements of the Sixth and Seventh Amendments for trial by jury in the federal courts have a rigid meaning. No changes or chances can alter the content of the verbal symbol of "jury" -- a body of twelve men who must reach a unanimous conclusion if the verdict is to go against the defendant.**<sup>3</sup> On the other hand, **the gloss of some of the verbal symbols of the Constitution does not give them a fixed technical content.** It exacts a continuing process of application.

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3. This is the federal jury requirement constitutionally although England and at least half of the States have in some civil cases juries which are composed of less than 12 or whose verdict may be less than unanimous. ...

[Rochin v. People of California, 342 U.S. 165, 169]  
[emphasis added]

[Comment: Accordingly, does not the "nature and cause of the accusation" also have a **rigid meaning**, founded on the **lessons of history**, so **deeply embedded** in the traditions and feelings of our people as to be deemed **fundamental** to a civilized society?]

[following quotes from Modern Constitutional Law, by Antineau]:

5:5. Notice of the Accusation

The Sixth Amendment to the United States Constitution requires that every person accused shall "be informed of the nature and cause of the accusation," and the same rule is binding upon persons brought to trial in the state courts under the Fourteenth Amendment. Additionally, state constitutional clauses customarily provide that "In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him."

A person charged with a crime has the constitutional right to receive from the government **a written statement indicating with particularity the offense to which he must plead and prepare a defense.** The necessity of such a statement has been recognized by the Oklahoma appellate court which observes:

"Every person accused of an offense, under the Constitution and statutes of this State, has a right to be informed of the nature and cause of the accusation against him. ... It is difficult to see how this can be safely and orderly accomplished without a definite written accusation or complaint."

[Cole v. Arkansas, 333 U.S. 196 (1948)]

Charging a person in the language of an unconstitutionally vague statute or ordinance is violative of his constitutional rights.

An information, **indictment**, complaint or summons used to commence a criminal prosecution **must contain sufficient facts and specific details to reasonably apprise the defendant of the exact charge placed against him.** The time, place and manner of the alleged offense must customarily be set out.

The Supreme Court has ruled that it violates due process for a state high court to affirm convictions under a criminal statute for the violation of which the defendants had not been charged. The Court stated:

No principle of procedural due process is more clearly established than that **notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal.** ... It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made.

[Cole v. Arkansas, 333 U.S. 196 (1948)]

[Modern Constitutional Law, by Chester J. Antineau]  
[The Lawyers Co-operative Publishing Company]  
[Rochester, New York, 1969]  
[emphasis added]

Footnotes cite the following cases:

Cole v. Arkansas, 333 U.S. 196 (1948)  
Ex parte Bochman, 201 P 537, 541 (1921)  
Shreveport v. Brewer, 72 So 2d 308 (1954)  
Telheard v. Bay St. Louis, 40 So 326 (1905)  
Scott v. Denver, 241 P2d 857 (1952)  
Bellville v. Kiernan, 121 A2d 411 (1956)

[Comment: A core issue raised by the charge of violating 7203 is the definition of "any person required." To assume that DEFENDANT was in the class of persons required, is to make a conclusion of law, not to state a fact. What section of the IRC defines which persons are required? Are Canadian persons required? Are Australian Aborigines required? The presiding judge merely instructed the jury that "THE LAW REQUIRES EVERY CITIZEN OF THIS COUNTRY TO FILE AN INCOME TAX RETURN." That is not what the statute says; that is not what the regulations say. The presiding judge misquoted the law in his instructions to the trial jury.]

[following quotes from Cole v. Arkansas]:

2. Constitutional law

Notice of specific charge and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding. U.S.C.A. Const. Amend. 14

3. Constitutional law

It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made. U.S.C.A. Const. Amend. 14

[2, 3] **No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal.** In re Oliver, 333 U.S. 257, 68 S.Ct. 499, and cases there cited. If, as the State Supreme Court held, petitioners were charged with a violation of Section 1, it is doubtful both that the information fairly informed them of that charge and that they sought to defend themselves against such a charge; it is certain that they were not tried for or found guilty of it. **It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made.** De Jonge v. State of Oregon, 299 U.S. 353, 362, 57 S.Ct. 255, 259, 81 L.Ed. 278.

We are constrained to hold that the petitioners have been denied safeguards guaranteed by due process of law -- **safeguards essential to liberty in a government dedicated to justice under law.**

[Cole v. Arkansas, 333 U.S. 196, 201 (1948)]  
[emphasis added]

[following quotes from In re Oliver]:

11. Constitutional law

A person's right to reasonable notice of a charge against him and an opportunity to be heard in his defense are basic, and such rights include, as a minimum, a right to examine witnesses against him, to offer testimony, and to be represented by counsel.

16. Constitutional law

No man's life, liberty or property may be forfeited as punishment until there has been a charge fairly made and fairly tried in a public tribunal. U.S.C.A. Const. Amend. 14

[10, 11] We further hold that failure to afford the petitioner a reasonable opportunity to defend himself against the charge of false and evasive swearing was a denial of due process of law. **A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense -- a right to his day in court -- are basic in our system of jurisprudence;** and these rights include, as a minimum, a right to examine witnesses against him, to offer testimony, and to be represented by counsel.

[13, 14] Except for a narrowly limited category of contempts, **due process of law** as explained in the Cooke case **requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation,** have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation.

[16] It is "the law of the land" that no man's life, liberty or property be forfeited as a punishment until there has been a charge fairly made and fairly tried in a public tribunal. See Chambers v. Florida, 309 U.S. 227, 236, 237, 60 S.Ct. 472, 477, 84 L.Ed. 716. The petitioner was convicted without that kind of trial.

Michigan's one-man grand jury, as exemplified by this record, combines in a single official the historically separate powers of grand jury, committing magistrate, prosecutor, trial judge and petit jury. This aggregated authority denies to the accused not only the right to a public trial, but also **those other basic protections secured by the Sixth Amendment, namely, the rights "to be informed of the nature and cause of the accusation;**<sup>1</sup> to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

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1. The requirement, of course, contemplates that **the accused be so informed sufficiently in advance of trial or sentence to enable him to determine the nature of the plea to be entered and to prepare his defense** if one is to be made.



[Comment: Since the indictment contained a *conclusion of law* that DEFENDANT was a "person required," he was therefore not informed sufficiently in advance of trial to determine the nature of his plea and to prepare his defense.]

I do not conceive that the Bill of Rights, apart from the due process clause of the Fifth Amendment, incorporates all such ideas. **But as far as its provisions go, I know of no better substitutes. A few may be inconvenient. But restrictions upon authority for securing personal liberty, as well as fairness in trial to deprive one of it, are always inconvenient -- to the authority so restricted.** And in times like these I do not think substitutions imported from other systems, including continental ones, offer promise on the whole of more improvement than harm, either for the cause of perfecting the administration of justice or for that of securing and perpetuating individual freedom, which is the main end of our society as it is of our Constitution. ... [I]t is both wiser and safer to put up with whatever inconveniences that charter creates than to run the risk of losing its hard-won guaranties by dubious, if also more convenient substitutions imported from alien traditions.<sup>9</sup>

9. ... Whatever inconveniences these or any of them may be thought to involve are far outweighed by the aggregate of security to the individual afforded by the Bill of Rights. That aggregate cannot be secured, indeed it may be largely defeated, so long as the states are left free to make broadly selective application of its protections.

[In re Oliver, 333 U.S. 257, emphasis added]

[following quotes from United States v. Cruikshank]:

In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right "to be informed of the nature and cause of the accusation." Amend. VI. In *U.S. v. Mills*, 7 Pet., 142, this was construed to mean that the indictment must set forth the offense "with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged;" and in *U.S. v. Cook*, 17 Wall., 174 [84 U.S., XXI., 539], that "**Every ingredient of which the offense is composed must be accurately and clearly alleged.**" It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, "includes generic terms, **it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species; it must descend to particulars.**" 1 Arch. Cr. Pr. and Pl., 291. **The object of the indictment is, first, to furnish the accused 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 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. [Comment: The indictment contained a **conclusion of law** that DEFENDANT was a

"person required"; it did not establish that he was a "person required" as a *matter of fact*. The indictment also failed to specify **every ingredient of the offense**, because it failed to specify which IRC section made DEFENDANT a "person required."]

The accused has, therefore, the right to have a specification of the charge against him in this respect, in order that he may decide whether he should present his defense by motion to quash, demurrer or plea; and the court, that it may determine whether the facts will sustain the indictment. ... Therefore, **the indictment should state the particulars**, to inform the court as well as the accused. It must be made to appear -- that is to say, appear from the indictment, without going further -- that the acts charged will, if proved, support a conviction for the offense alleged.

[Comment: If the indictment did not cite the statute which made DEFENDANT a "person required," then the act charged, *i.e.*, failing to file, did not support a conviction for the alleged offense, even if DEFENDANT *admitted*, under oath, that he did not file.]

**Vague and indefinite allegations** of the kind are not sufficient to inform the accused in a criminal prosecution of the nature and cause of the **accusation** against him, within the meaning of the Sixth Amendment of the Constitution.

Judge Story says **the indictment must charge** the time and place and **nature and circumstances of the offense with clearness and certainty**, so that the party may have **full notice of the charge**, and be able to make his defense with all reasonable knowledge and ability. 2 Story, Const., sec. 1785.

[Comment: An indictment with conclusions of law is necessarily **vague, indefinite, and insufficient to inform the accused of the nature and cause of the accusation**. An indictment with conclusions of law does not exhibit **clearness and certainty**, so that DEFENDANT did not have **full notice of the charge**, nor was he able to make his defense with all reasonable knowledge and ability.]

Reasonable certainty, all will agree, is required in criminal pleading .... Accused persons, as matter of common justice, ought to have the charge against them set forth **in such terms that they may readily understand the nature and character of the accusation**, in order that they, when arraigned, may know **what answer to make to it**, and that they may **not be embarrassed in conducting their defense**; and the charge ought also to be laid in such terms that, if the party accused is put to trial, the verdict and judgment may be pleaded in bar of a second accusation for the same offense.

[Comment: If the indictment did not state the statute which made DEFENDANT a "person required," then it failed to provide DEFENDANT with **reasonable certainty** that he was in the class of persons who were required to file in the years in question. He did not know **what answer to make to the indictment** and, in fact, refused to enter a plea. The mention of 6012 by an IRS witness **embarrassed** DEFENDANT.]

Descriptive allegations in criminal pleading are required to be reasonably definite and certain, as **a necessary safeguard to the accused**

against surprise, misconception and error in conducting his defense, and in order that the judgment in the case may be a bar to a second accusation for the same charge. Considerations of the kind are entitled to respect; but it is obvious, that, if such a description of the ingredient of an offense created and defined by an Act of Congress is held to be sufficient, the indictment must become a snare to the accused; as it is scarcely possible that an allegation can be framed which would be less certain, or more at variance with **the universal rule that every ingredient of the offense must be clearly and accurately described so as to bring the defendant within the true intent and meaning of the provision defining the offense.** Such a vague and indefinite description of a material ingredient of the defense [sic] is not a compliance with the rules of pleading in framing an indictment. On the contrary, such an indictment is insufficient, and must be held bad on demurrer or in arrest of judgment.

[United States v. Cruikshank, 92 U.S. 542, 557]

[Comment: Similarly, the mention of 6012 by an IRS witness came as a surprise to DEFENDANT (and to a gallery witness also, who almost jumped out of his seat when the IRS witness first mentioned it). The Court itself never mentioned 6012, nor did the Court read this IRC section into the record. The indictment must state every *ingredient* or *element* of the offense charged. The first element of "failing to file" is that the defendant was a "person required." But, required by what? The indictment failed to state which IRC section established the filing requirement.]

[Notes from Words and Phrases, Permanent Edition, West Publishing Company, St. Paul, Minnesota, Volume 28]:

Under Const. art. 1, section 13, entitling defendant to demand "nature and cause of accusation" against him and to have copy thereof, **defendant is entitled to have gist of offense charged in direct and unmistakable terms.** Large v. State, 164 N.E. 263, 264, 200 Ind. 430.

The words "nature and cause of the accusation" in Const. Bill of Rights, art. 1, section 13, providing that an accused shall have the right to demand the nature and cause of the accusation against him, mean that **the gist of an offense shall be charged in direct and unmistakable terms.** Hinshaw v. State, 122 N.E. 418, 420, 188 Ind. 147.

[Comment: The terms of a *penalty* statute are indirect and mistakable terms. They are **indirect** because they necessarily involve another statute which specifies "persons required." They are **mistakable** because it is quite *possible* for grand juries to make mistakes in their conclusions of law. If the statute is vague, then it is *probable* that grand juries will make mistakes.]

A constitutional requirement that a person accused of crime shall enjoy **the right to be "informed of the nature and cause of the accusation" against him means, by a long line of precedents, resting on principle, that in a prosecution for the commission of a statutory offense the words of the statute, or others of fully equivalent import, should be employed.** State v. Judge of Criminal Dist. Ct. for Parish of Orleans, 21 So. 690, 691, 49 La. Ann. 231.

[Comment: The **words of the statute** which made DEFENDANT a "person required" were not expressed either by the indictment, nor by the Court when challenged to express them.]

Constitutional provision requiring indictment to inform accused of "nature and cause of accusation" means that **indictment to be valid must at least fully and plainly identify the offense, so that defendant may defend properly and later plead a conviction or acquittal in bar of a subsequent charge for the same offense**, and so that court may pronounce sentence on conviction according to the right of the case. Const. art. 1, section 10, State v. Domanski, R.I., 190 A. 854, 857.

[Comment: Indictment did not **fully identify the offense**. DEFENDANT could **not defend properly**. DEFENDANT was unable to enter a plea; the presiding judge entered it for him and later instructed the jury that the DEFENDANT had entered a plea of "not guilty."]

[following quotations from Large v. State]:

1. **Indictment and Information: 71 -- Defendant is entitled to have offense charged in direct and unmistakable terms; "nature and cause of accusation" (Const. art. 1, section 13).**

Under Const. art. 1, section 13, entitling defendant to demand "nature and cause of accusation," against him and to have copy thereof, defendant is entitled to have **gist of offense charged in direct and unmistakable terms**.

It is the constitutional right of the defendant to demand the nature and cause of the accusation against him and to have a copy thereof. Article 1, section 13, Constitution of Indiana, McLaughlin v. State, 45 Ind. 388.

[1] In Hinshaw v. State, 188 Ind. 147, 122 N.E. 418, it is said **the words "nature and cause of the accusation"** have a well-defined meaning and had such a meaning at the time of the adoption of the Constitution. That meaning is that the gist of an offense shall be charged in direct and unmistakable terms. In passing upon the same provision of the Federal Constitution in United States v. Cruikshank (1875) 92 U.S. 542, 557 (23 L.Ed. 588), the court said: **"In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accusation.'** Amend. VI. In United States v. Mills, 7 Pet. 142 [8 L.Ed. 636], this was construed to mean that **the indictment must set forth the offense 'with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged.'** And in United States v. Cook, 17 Wall 174 [21 L.Ed. 538], that **'every ingredient of which the offense is composed must be accurately and clearly alleged.'** It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by Statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species; **it must descend to the particulars.'**"

In Mayhew v. State, 189 Ind. 545, 128 N.E. 599, it is said: "The particular crime with which the accused is charged must be preferred [sic]

with such **reasonable certainty** by the essential averments in the pleading **as will enable the court and jury to distinctly understand what is to be tried and determined**, and fully inform the defendant of the particular charge he is to meet. The averments must be so clear and distinct that there may be no difficulty in determining what evidence is admissible thereunder." [numerous citations follow]

Section 2225, Burns' 1926 (section 2063, Burns' 1914) clause 10, provides that **no indictment or affidavit shall be deemed invalid**, nor shall the same be set aside or quashed, nor shall the crime charged or other proceedings be stayed or arrested or in any manner affected for any of the following:

"\* \* \* For any \* \* \* defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits."

[Large v. State, 164 N.E. 263, 264]

[Comment: DEFENDANT's indictment tended to prejudice his substantial 6th Amendment right to know the "nature and cause of the accusation." It did not descend to the particulars; the presiding judge denied his motion for a Bill of Particulars.]

[following quotations from Hinshaw v. State]:

7. Indictment and Information: 56 -- Constitutional Law -- Pleading

Acts 1915, c. 62, relating to the sufficiency of criminal or civil pleading, is void so far as it applies to indictments, because Const. Bill of Rights, art. 1, section 13, provides that an accused shall have the right to demand the nature and cause of the accusation against him.

8. Indictment and Information: 70 -- "Nature and Cause of Accusation."

The words "nature and cause of the accusation" in Const. Bill of Rights, art. 1, section 13, providing that an accused shall have the right to demand the nature and cause of the accusation against him, mean that **the gist of an offense shall be charged in direct and unmistakable terms**.

This act (chapter 62 of the Acts of 1915, p. 123) is void, so far as it applies to indictments, because section 13 of article 1 of the Bill of Rights of the state Constitution provides that "the accused shall have the right to demand the nature and cause of the accusation against him and to have a copy thereof." The words "nature and cause of the accusation" have a well-defined meaning, and had such meaning at the time of the adoption of the Constitution. That meaning is, that **the gist of an offense shall be charged in direct and unmistakable terms**. In passing upon the same provision of the federal Constitution in United States v. Cruikshank, 92 U.S. 542, 557 (23 L.Ed. 588), the court says: "In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accusation.' Amend. VI. In United States v. Mills, 7 Pet. 142 [8 L.Ed. 636], this was construed to mean that **the indictment must set forth the offense 'with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged'**;

and in United States v. Cook, 17 Wall. 174 [21 L.Ed. 538], that **'every ingredient of which the offense is composed must be accurately and clearly alleged.'** It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, 'includes generic terms, **it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species -- it must descend to the particulars.'**"

[Hinshaw v. State, 122 N.E. 418, 420, emphasis added]

[following quotations from State v. Judge of Criminal Dist. Ct. for Parish of Orleans]:

1. Every party charged with crime has the constitutional right to have subjected to judicial investigation and testing the fact whether or not any particular charge made against him has come up to **the standard of legal requirement** or not ....

That to the best of his knowledge and belief the criminal district court is absolutely without jurisdiction to try said cause by reason of there being **no legal information** pending against him in said court. That he verily believes (1) that, if the judge of said court be not prohibited from proceeding further in this cause, he will force relator to trial, and impose a sentence upon him (if convicted) in a case wherein there is no appeal, and **will forever deprive relator of his constitutional right to be informed of the nature and cause of the accusation against him before trial, and will thereby cause relator irreparable injury.** ...

[Comment: Going to jail when you're innocent, as proven by a conviction that is overturned for violating the 6th Amendment, is an irreparable injury.]

We should have to be convinced that the objections to the information were such as in point of fact would **leave an accused in ignorance of the nature and cause of the accusation** against him. The objections should not be such as the party making them could only hope to succeed upon by the application of the **most stringent technical rules as to form and as to pleading** -- such defects as, in our opinion, would really work no injury.

[State v. Judge of Criminal Dist. Ct. for Parish of Orleans]  
[21 So. 690, 691, 49 La. Ann. 231]

[Comment: The IRC section which made DEFENDANT a "person required" is **not a stringent technical rule as to form and as to pleading.** DEFENDANT remained **in ignorance** of this IRC section throughout the trial and throughout all pre-trial hearings.]