Liberty, Ron Paul 'dollars' seized in raid

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"They took all the gold, all the silver, all the platinum and almost two tons of Ron Paul dollars that were just delivered last Friday." Bernard von NotHaus, founder, Liberty Dollar.

The raid on the Liberty Dollar office in Evansville, Ind., on Nov. 15 "was a direct assault against the U.S. Constitution and your right to own and use gold and silver in any way you chose," said the company's founder, Bernard von NotHaus.

Government agents from the Federal Bureau of Investigation and the Secret Service moved Nov. 15 to protect the U.S. Mint's coin production monopoly. Von NotHaus's company produces the Liberty Dollar, which he terms a barter currency.

"They took all the gold, all the silver, all the platinum and almost two tons of Ron Paul dollars that were just delivered last Friday," von NotHaus wrote in a Nov. 15 e-mail to supporters.

The raid also netted computer files and records of The National Organization for the Repeal of the Federal Reserve Act and the Internal Revenue Code (NORFED).

"We have no money. We have no products," von NotHaus wrote.

Von NotHaus, who previously ran the Hawaiian Mint in the 50th state and designed the Liberty Dollar program, is temporarily shut down from fulfilling orders for his firm's Liberty Dollars or even writing to customers — since computer records were seized too.

The U.S. Mint Web site warns consumers that the use of the "gold and silver NORFED 'Liberty Dollar' medallions as circulating money is a Federal crime."

Despite the raid and saber rattling, a search of the federal Pacer judicial database on Nov. 26 disclosed that the only case involving von NotHaus is a civil one - and he is plaintiff.

In that suit, brought in U.S. District Court for the Southern District of Indiana (Evansville), von NotHaus sued Henry M. Paulson, secretary of the Treasury,

Alberto R. Gonzales, former attorney general of the United States, and Edmond C. Moy, director of the Mint.

The United States attorney's office in Indianapolis, who is defending the case, prepared and briefed its motion seeking relief.

The movement says that "Bernard von NotHaus individually and d/b/a Liberty Dollar ('von NotHaus') has supervised the production and marketing of silver and gold 'Liberty Dollars' through the National Organization for the Repeal of the Federal Reserve Act and the Internal Revenue Code ('NORFED, Inc.') for over eight years.

"In his original Complaint, von NotHaus asked this court to ... find that the use of the Liberty Dollar as currency is not a crime that may be prosecuted under 18 U.S.C. section 486." They note that he asks that the "Department of Justice [be constrained] from bringing" such a criminal action.

Von NotHaus also seeks to "prevent the United States Department of the Treasury and the United States Mint from informing consumers that the Liberty Dollar is not legal tender and that use of the Liberty Dollar as circulating money is a federal crime."

The operative law that is applicable is Title 18 of the United States Code, section 486, which gives to the government a coinage monopoly when it provides that: "[w]hoever, except as authorized by law, makes or utters or passes, or attempts to utter or pass, any coins of gold or silver or other metals, intended for use as current money, whether in resemblance of coins of the United States or of foreign countries, or of original design, shall be fined under this title or imprisoned not more than five years, or both." (The emphasis in italics is added because it is the lynchpin of both side's views.)

The government claims von NotHaus has supervised the production and marketing of the Liberty Dollar through NORFED, Inc., for a number of years. They say that "Liberty Dollars are gold and silver medallions that bear the inscriptions 'Liberty,' Dollars,' 'Trust in God,' 'USA,' and depict images that are similar to those on United States coins." On its Web site, the Mint takes pains to point out that these phrases are similar to those appearing on coins.

A memorandum of law filed by the government alleges that "According to von NotHaus, Liberty Dollars are a 'private voluntary barter currency,' which may be offered to merchants as payment for goods and services. ... He further alleges that he is not using Liberty Dollars as circulating money, and consequently, he is not violating the criminal statute 18 U.S.C. section 486."

In his complaint, it is alleged that "Plaintiff von NotHaus ... [has] not represented the Liberty Dollar as 'coin', 'legal tender' or 'current money'."

The number of cases involving "current money," now codified in Section 486, are remarkably few; five to be precise. One of them offers a useful if inaccurate history of the phrase and its meaning.

In United States v Falvey, 676 F.2d 871 (1st Circuit, 1982), three men were indicted for counterfeiting under two sections of the law, one of which was Section 486. The indictment alleged that they had possessed "with intent to defraud and had uttered" or spent or sold counterfeit South African Krugerrands, which the court described as "are gold coins current in South Africa but not in the United States."

At the close of the government's case, the court granted the defendants' motions for judgments of acquittal on the ground that sections 485 and 486 did not reach counterfeiting conduct with respect to foreign coins not current or in actual use and circulation as money in the United States.

The First Circuit examined the history of the statute, 18 U.S.C. section 486, which was most recently enacted about 60 years ago in the Criminal Code by the Act of June 25, 1948, Public Law No. 772. They then framed the issue of the appeal: "The issue presented is whether the coins covered by Section 486 must be 'intended for use as current money' in the United States, or whether their currency anywhere is sufficient."

Section 486 may be traced back substantially unchanged through a 1909 codification, the Criminal Code, Act of March 4, 1909, Public Law No. 350, section 167, and an 1873 codification, Rev.Stat.U.S. section 5461. In an earlier incantation it was enacted by the Act of June 8, 1864, ch. 114, 13 Stat. 120.

The First Circuit researched it, and concluded, "We have been unable to find any version prior to this, nor is there any indication in the legislative history that the 1864 version was an amendment of a previous statute." They go on to say - incorrectly from my research - that "We therefore assume that this is indeed its earliest appearance."

The 1864 statute reads as follows: "[I]f any person or persons, except as now authorized by law, shall hereafter make, or cause to be made, or shall utter or pass, or attempt to utter or pass, any coins of gold or silver, or other metals or alloys of metals, intended for the use and purpose of current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, every person so offending shall, on conviction thereof, be punished by fine not exceeding three thousand dollars, or by imprisonment for a term not exceeding five years, or both, at the discretion of the court, according to the aggravation of the offense." (Emphasis again added.)

The First Circuit noted that "As in the present version, there is no explicit qualifier of the phrase 'current money.'" They added that "No substantive changes were made with respect to the statute's scope in any subsequent versions. See S.Rep.No.10, 60th Cong., 1st Sess. (1908); H.R.Rep. No.2, 60th Cong., 1st Sess. (1908); H.R.Rep.No.304, 80th Cong., 1st Sess. (1947); S.Rep.No.1620, 80th Cong., 2d Sess. (1948)."

Their argument then is that a court must "look to the intention of Congress in the original 1864 enactment in order to understand the scope of the present Section 486," and they conclude "For several reasons ... that Congress intended the statute only to reach coins intended for use as current money in the United States."

While the legislative history is sparse, the Circuit Court wrote, "what little we have been able to uncover evinces only a concern with coins used in the United States. The bill was referred to in Congress as one 'to punish and prevent the counterfeiting of coin of the United States,' 136 Cong.Globe, 38th Cong., 1st Sess. 2707 (1864)."

They go on to say that "it was captioned as such in Statutes at Large," found in volume 13 at page 120. "The primary concern of Congress seems to have been with the prohibition of private systems of coinage created for use in competition with the official United States coinage. This conclusion is buttressed by the 'except as authorized by law' proviso, which in context seems to refer to the possibility that some entity other than the federal government might be permitted by law to issue and use unofficial coinage."

"It is also supported by the complete absence of an intent to defraud requirement. It is unlikely that Congress would punish the use of unofficial coins of another country here in the United States in the absence of any intent to defraud, unless those coins were being used as a medium of exchange here," they wrote.

"We think it unlikely, for example, that Congress intended to proscribe the making of coins 'of original design' that were not intended for use as money in the United States. Otherwise, we would be placed in the position of protecting the integrity of foreign currency from unofficial coinage that did not even resemble it, and without any direct relationship to our own monetary system."

Congressional Web site research shows a different view, however. The Journal of the Senate of the United States of America for Tuesday, March 4, 1806, seems to have a different take. "The Senate resumed the third reading of the bill for the punishment of counterfeiting the current coin of the United States, and for other purposes. And, on the question to amend this clause of the first Section: 'which by law now are, or hereafter shall be, made current as money within the

United States,' so as to read, 'which by law now are, or hereafter shall be made current, or be in actual use and circulation as money within the United States.'"

NORFED's circular disks are not legal tenders nor do they claim to be. They do not circulate "as money" but as a barter instrument much like a Boggs bill is a drawn
design of imaginary denominations.

The NORFED Web site uses a neither fish nor fowl approach: "Liberty Dollars are backed by silver. You can use the face value on the front like cash or redeem it for silver as specified on the back. Silver is a valuable commodity whose price has been going up! Silver is used in photography, jewelry, electronics, and industrial production. You may not use silver yourself, but there's a worldwide market for it! Simply by choosing a more valuable money, REAL money, you can profit! Best of all, since the Liberty Dollar is a free market currency, you can actually get it at a discount when you become a Liberty Associate and make money when you place it into circulation."

That doesn't sound a lot like current money.

What of the other litigation? Well, in United States V Bogart, 24 F.Cas. 1185, (D.C.N.Y. 1878), the case presents the question, as the court put it, "whether a conviction can be sustained, under Section 5461 of the Revised Statutes of the United States (the predecessor statute), where the defendant passed certain pieces of metal, apparently gold, octagon in form, on one side of which was the device of an Indian, and on the other the inscription '1/4 dollar, Cal.'" In other words, California fractional gold pieces, the kind found the U.S. Coin Digest (2008, pages 226-232) or as "California Small Denomination Gold" in the Red Book.

Many of these are dated into the 1870s, long after the 1864 criminalization, and the court so held. "(1) The pieces of metal passed by the defendant do not purport to be coins, in the legal definition of the word, but are tokens. (2) If it should be held that the Section makes it a crime to make or utter any pieces of metal, with the intent that the pieces shall serve as a substitute for money, an offence is created which is new and foreign to the law of counterfeiting."

That court also analyzed other laws, including a subsequently passed law "which makes it a crime 'to make, issue, or pass any coin, token, or device, in metal or its compounds, which may be intended to be used as money, for any one cent, two cent, three cent, or five cent piece now or hereafter authorized by law, or for coin of equal value.'"

The court's opinion was that that "act [would be] entirely unnecessary if the one in question is to be construed as is now insisted by the counsel for the government. Under the last act a conviction could not be had for uttering a token

intended to be used as money, for a four cent piece or for a coin of equal value. No such coin is known to the coinage of the United States, and, because of this, Congress did not attempt to make it an offence to utter such a token."

It will take a long time for the civil component to be resolved if the case turns criminal - and there is every indication it will except for a portion of the government's Indiana District Court brief that says, "In this case, von NotHaus contends that he has standing to bring this suit in that 'he is directly affected and threatened by the adverse actions of the Defendants' ... because he 'fear[s] imminent criminal prosecution' by the Justice Department if they continue the use of Liberty Dollars," citing the amended complaint.

But, responds the movement to the court, "However, the Department of the Treasury and the United States Mint do not bring criminal charges and prosecute individuals." They don't say so, but that is a Department of Justice decision.

So the government concludes by saying just days before the raid, "It is disingenuous and without factual support for von NotHaus to claim that he fears prosecution by the Department of the Treasury and the United States Mint. As such, von NotHaus cannot show an 'actual controversy' so as to demonstrate standing to bring his action. Further, fear of possible future application of a federal criminal statute does not necessarily confer standing in a declaratory judgment action."

We'll have to wait this one out for a final outcome.