

Attorney client privileged

February 27, 2011

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February 27, 2011

by email
Aaron Michel, Esq..
Attorney at Law

Re: Opinion about Bernard von NotHaus and
Claimed violations of Title 18

Dear Mr. Michel:

You have asked me for my opinion about purported violations by Bernard von NotHaus of several provisions of title 18 of the United States Code. I have summarized my views below which are based on a more extensive analysis, and make this report to you:

Executive Summary

Bernard von NotHaus stands accused of two serious crimes: (Superceding indictment ¶51) making, passing or uttering “a coin of silver *for use as current money*” (emphasis added) which the indictment charges is “in resemblance of genuine coins of the United States or of original design” (claimed violation of 18 U.S.C. §486), and (Superceding indictment ¶49) making, forging and counterfeiting “any coin, to wit the Liberty dollar” which the indictment charges is “in resemblance or similitude of coins of a denomination higher than five cents, coined or stamped at any mint or ass[a]y office of the United States or in actual use and circulation as money within the United States”, and further charges that he “did pass, utter, publish, sell and possess any false, forged or counterfeit coin...” knowing the same to be false, forged or counterfeit, *with intent to defraud...*” a person or other. (Emphasis added) (Claimed violation of 18 USC §485).

The claim is not that he did one or the other of what is claimed, but, since the conjunctive (“and”) is used, each of them, i.e., “making, forging and counterfeiting” (emphasis added) and that he did “pass, utter, publish, sell and possess” (emphasis added), with some additional requirements: knowledge of the falsity, forgery or counterfeit nature; and with intent to defraud.

The language is not materially different than the Act of April 21, 1806, 1 Stat. 404.

Von NotHaus did none of these things because that which he manufactured is not a coin but rather a token or a medallion; it was not uttered or passed (or any other statutory word) for use as current money; it was not (and is not) in resemblance of genuine coins of the United States, nor is it a coin of original design.

Further, even if von NotHaus did pass, utter, sell or possess the trinket, there was no intent to defraud – he was quite open about the fact that the use and acceptance of these trinkets or tokens was entirely voluntary.

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My thoughts are summarized as follows:

1. Case law more than a century old sustains the position set forth above,
2. Action by the Federal Trade Commission in two civil proceedings, and Congressional reports on the Hobby Protection Act, sustain the view that von NotHaus's trinkets are neither counterfeits nor in resemblance or similitude of a U.S. coin.
3. Treatment of Liberty Dollars by U.S. Customs makes clear that other government agencies believe the trinkets to be a token or medal, and not a counterfeit (which it would seize)
4. Pattern coins issued by the Mint after 1864 make clear that the government's own inconsistencies make this a minefield.
5. An actual comparison by me of von NotHaus's trinkets vs genuine U.S. coinage, proves the point.

Please let me know if I can be of further assistance.

Cordially,



David L. Ganz

DLG:kag

Cc: File
Mr. Bernard von Nothaus

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I. Case law more than a century old sustains this view.

In *U.S. v Bogart*, 9 Ben. 314, 24 F.Cas. 1185, 24 Int.Rev.Rec. 46, No. 14,617 (N.D.N.Y. 1878), the Court explained, “One of the Rules applicable to the offence of counterfeiting is, that the resemblance of the spurious to the genuine coin must be such as that it might deceive a person using ordinary caution, and a conviction cannot be had for uttering pieces of metal which are not in the likeness or similitude of genuine coins.” (California gold).¹

(The von Nothaus trinkets deceive no one).

Another case, *U.S. v Hopkins*, 26 Fed. 443 (D.C. 1885), supplemented this by saying “counterfeit coin is one made in imitation of some genuine coin. It is not necessary that the resemblance should be exact in all respects. The resemblance is sufficient if the coins are so far alike that the counterfeit coin is calculated to *deceive* a person exercising ordinary caution and observation in the usual transactions of business, though the counterfeit would not deceive a person who was expert or has particular experience in such matters. This rule has been more fully applied in cases of written or printed instruments which are used in ordinary business transactions, as prudent men are presumed to exercise reasonable caution in accepting instruments which are evidences of contracts and obligations.” *Id.*, at 443-444. (Emphasis added).

(They don’t look like an American coin; don’t have the feel of an American coin and don’t act as a coin does either on first use, or subsequent use).

And in yet another case, *U.S. v Hargrave*, 26 F.Cas. 164 (D.C. N.D. Ohio 1872), the indictment contained seven counts, four of which were framed under the act of March 3, 1825 (4 Stat. 121), and three under the act of June 8, 1864 (13 Stat. 120). The main question was whether the spurious coin in question came under either act. “It was claimed by the prosecution that it came under both, that is: First, that it was in the similitude of the genuine coin; second, that if considered of ‘original design,’ it was within the later act above cited; and, third, that the question was, not whether it would deceive a person of ordinary skill and caution, but whether it

¹The origin of the prohibition against coin “of original design” is explained in the Annual Report of the Director of the Mint for 1871, reprinted in the Annual Report of the Secretary of the Treasury for 1871, Report on Finances #9 (p205-214). It provides (in brief) for the punishment of any who make or pass counterfeit coins in any metal or alloy, in the resemblance of those of the United States or of foreign countries; or who make or pass coins of “original design” for the purpose of money. ... [G]reat quantities of *original design* were issued more than thirty years ago... small pieces designated as “half dollars” and “quarter dollars,” with some claim to be considered gold coins, as they really contain as much of that metal as is to be found in common jewelry. The pieces which began to be issued in San Francisco, in 1859, and perhaps have been coined more recently, may not have been ... pushed into circulation, but may rather have served as playpieces or curiosities. However, they were sold at their pretended value, while in fact the half dollar, weighing six grains on an average, and about 423-thousandths fine, was worth eleven cents; the quarter dollar nearly in the same proportion, some pieces being actually worth six cents. No doubt they have been imposed upon ignorant persons as real money. Their shapes were various, some octagonal, some circular.

was capable of, and designed to be used for deceiving the incautious and unskillful". Von NotHaus's trinkets (a) deceived no one; (b) would not deceive the incautious or unskillful, and (c) would not deceive a person of ordinary skill and caution.

II. Much more current are two civil proceeding by the Federal Trade Commission, one against William Bogart, *Matter of Gold Bullion*, 90 FTC 411 (1977); *Matter of Gold Bullion Int'l*, 92 FTC 196 (1978) modified by 92 FTC 667 (1978), and the other against a costume jewelry manufacturer, *Matter of Hattie Carnegie Jewelry Ent. Ltd.*, 85 FTC 86 (1975) .

Hattie Carnegie was using for jewelry and decoration replicas of 1854 \$20, 1855 \$50 gold pieces. Bogart and Gold Bullion International were charged with manufacturing and importing in commerce privately minted copies of German 5, 10 and 20 Reichmark gold coins, Mexican 50 Peso gold coins, Austrian 100 Corona gold coins, and other gold coins." In ¶46 of its earlier 1978 decision, the FTC found that "Since the dates imprinted on [the coins referred to]... are different than the dates on the original coins, the two Gold Bullion 10 Mark gold coins are not copies of 10 Mark gold coins actually issued by the German government and used in exchange. Furthermore, there is no reliable evidence in the record that suggests that consumers would confuse the Gold Bullion 10 Mark coins with the originals."

Both the Senate and House reports on what became the Hobby Protection Act (15 USC § 2100 *et seq.*) are emphatic that "The Federal counterfeit laws (18 U.S.C. Chapter 25) are sufficient to prevent the manufacture or importation of imitations of existing currency. However, there are no comparable provisions of Federal law which provide protection from imitation numismatic items or political items. The legislation reported by the Committee on Commerce is designed to fill this void."²

A visual examination of the trinkets, tokens or medallions produced by Von NotHaus simply do not bespeak of a "coin", despite the superceding indictment's claim of similarity. See part V, below.

III. I inquired of von NotHaus whether Liberty Dollars were imported into the United States, and if so, whether duty was paid. Bernard wrote on December 28, 2010:

I just checked with Sarah Bledsoe, the former LD office manager and now my co-Defendant, regarding importing and exporting duties on the Liberty Dollar and she confirmed that LD paid import duties on copper LD from China and foreign receivers of LD also paid a duty on their shipment of LD.

With respect to Liberty Dollars imported into the U.S., please note the following: 19 C.F.R. § 12.48

Code of Federal Regulations Currentness
Title 19. Customs Duties

² S. Rep. No. 98-354, p. 3; H.R. Rep. No. 93-159, p. 4 (emphasis added). See also 92 FTC at 196 [7].

Chapter I. U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury (Refs & Annos)
Part 12. Special Classes of Merchandise (Refs & Annos)
Counterfeit Coins, Obligations, and Other Securities; Illustrations or Reproductions of Coins or Stamps
Importation prohibited; exceptions to prohibition of importation; procedure.

§ 12.48 Importation prohibited; exceptions to prohibition of importation; procedure.

(a) In accordance with Chapter 25, Title 18, United States Code, any token, disk, or device in the likeness or similitude of any coin of the United States or of a foreign country; counterfeits of coins in circulation in the United States; counterfeited, forged, or altered obligations or other securities of the United States or of any foreign government; or plates, dies, or other apparatus which may be used in making any of the foregoing, when brought into the United States, shall be seized, and delivered to the nearest representative of the United States Secret Service, together with a report of the facts, for appropriate disposition.

Customs didn't do that because to them, visually, the trinkets or tokens or medallions imported by von NotHaus didn't look like counterfeit coins that should be seized, they looked like tokens or medals that were dutiable.

Thus, if Customs allows such items into the country knowingly, it must be because they have concluded that the Liberty Dollar lacks the "likeness and similitude" to be seized.

Similarly, while the tariff now may be free for medals, at one time (and probably the time in question) it was a posted and collected rate

IV. Pattern coinages, experimental issues, and trial strikes represent American monetary history -- a twilight heritage reflected in the coinage and minting laws since the Mint was organized in 1792. As Patterson DuBois noted in an early article, pattern issues are "half-forgotten witnesses . . . [to] the impractical schemes of visionaries and hobbyists - a tale of national deliverance from minted evil the tale of what 'might have been.'"³ * * *

In 1866, the first Rules were adopted by the Mint to deal comprehensively with pattern issues. With particularity, the Rules provided that no coins nor patterns were to be struck after the year of their date that all were to be issued in their "proper metal" and that patterns or experimental pieces were to be obtainable "within the year of [their] date but not after" with standing orders for the same acceptable at a price of three dollars in currency for all but precious metal patterns.

The Coinage Act of 1873 engineered by John Knox and Dr. Henry R. Linderman, was designed to codify existing law, as well as to pave new paths in the field. Dr. Linderman served as first Director of the Bureau of the Mint. During his five year tenure, the coinage act he helped create was first tested and tried. In May, 1874 Linderman promulgated regulations governing the striking and sale of certain specimen pieces. In pertinent part they provided that the Superintendent of the Philadelphia Mint "shall have general supervision of the manufacture of

³David L. Ganz, "Toward a Revision of the Minting and Coinage Laws of the United States", 26 Cleveland State Law Rev. 175, 217-219 (1977). (Other quotes from the article omit footnotes). The article was reprinted in *The Numismatist* in 1978.

medals and the striking of proof and pattern pieces ."

In amplification of the Rules of 1866, also promulgated by Linderman the 1874 regulations required that the hubs of pattern dies be destroyed at the end of each year. The 1874 regulations expressly permitted the sale of proof and pattern coins at prices established by the Superintendent of the Mint with the approval of the Director. With particularity, the regulations provided further that "[n]o coins or patterns shall be struck after the year of their date, or in any other metal or alloy than that in which the coin is issued or intended to be issued, " and that "[w]hen a pattern piece is adopted and used in the regular coinage in the same year, it win then be issued as a proof at a price near its current value ." These provisions were further amplified by an 1881 regulation which provided that pattern pieces could be struck and sold subject to the earlier regulations when authorized by the Director of the Mint, at a price fixed by the Superintendent and approved by the Director as long as the coins or pattern pieces were struck within the year of their date in the appropriate metal or alloy, and as long as the dies for production were defaced at the end of the calendar year. By the regulations of January 17, 1887 the Director made a substantive change by requiring that no pattern pieces could be coined nor dies executed in denominations other than those used for general circulation during the year.

Here's the point with patterns. They have all of the characteristics that the government accuses the von NotHaus trinkets of having. Some are even made of gold. Yet there is no authority for this to be made by the Mint (the coinage laws all recite that): Section 3516 of the Revised Statutes recites (in effect circa 1874) that "No coins either of gold, silver or minor coinage, shall hereafter be issued from the Mint other than those of the denominations, standards and weights set forth in this title.

Also see Rev. Statutes § 3517 (the design elements are set forth) , and by Act of Sept 26 1890 (that was fixed for 25 years.) And there is no basis for the Mint to have sold pattern coins to the public, yet its what they did.

Looking at Judd, United States Pattern Coins (10th rev. ed., Bowers, ed., 2009), after 1874 there are many different pattern coins that were produced by the Mint (Judd numbers 1383 through 2069 cover the period ending in 1942). The Martha Washington patters of 1965 (Judd 2100 to 2142) and the aluminum cent patterns of 1974 (Judd 2151-2152) are other examples of mint production that, if the government's theory was correct, would have been totally impermissible. (The 1974 aluminum cent patterns, produced in 1973, contain all of the statutory verbiage and were struck from dies that could have been used to produce genuine circulating coinage – even if it was struck a year earlier). See Ganz, "Toward a Revision of the Minting & Coinage Laws of the United States", supra, at 221.

The "Stella" or \$4 gold piece of 1879 and 1880 – never authorized by Congress – is a completely imaginary denomination; and there are many other pattern coins that were actually sold by the Mint pursuant to regulations issued in 1874. See Ganz, "Toward a Revision of the Minting & Coinage Laws of the United States", supra, at n.358 (citing regulations).

V. The superceding indictment makes a number of claims and allegations with which I find myself in disagreement, but about which I do not comment at this time. I do comment on the following:

¶18 of the superceding indictment charges "There are five primary *coins* issued, exchanged, presented, uttered and circulated by NORFED: one dollar, five dollar, ten dollar,

twenty dollar, and fifty dollar”.

It then goes on to say:

Liberty Dollar *coins* resemble coins of the United States. Liberty Dollar coins of five, ten, twenty, and fifty dollars are engraved with the \$(dollar sign) which signifies and is universally known as the symbol for the United States dollar. In addition, the word "dollar" is printed on the coins.

- ¶35 The five "dollar" denomination of the Liberty Dollar is the same size as the Kennedy half-dollar coin of the United States.
- ¶36 The ten "dollar" denomination of the Liberty Dollar is the same size as the Eisenhower dollar coin of the United States.⁴
- ¶37 United States coins in the denominations of dollar, half-dollar, quarter, dime and nickel are engraved with the phrase "In God We Trust". Liberty Dollar coins of five, ten, twenty and fifty "dollars" are engraved with the phrase "Trust in God".
- ¶38 United States coins in the denominations of dollar, half-dollar, quarter, dime and nickel are engraved with the word "Liberty". Liberty Dollar coins of five, ten, twenty and fifty "dollars" are engraved with the word "Liberty".
- ¶39 The dime of the United States is engraved with a burning torch. The one dollar coin of the United States is engraved with the Statue of Liberty holding a burning torch. 'Liberty Dollar coins of five, ten, twenty, and fifty "dollars" are engraved with a burning torch. The one-dollar James Monroe coin of the United States is engraved with the Statue of
- ¶40 Liberty. Liberty Dollar coins of five, ten, twenty and fifty "dollars" are engraved with a crowned head remarkably similar, if not exactly the same, as the crowned head on the Statue of Liberty.
- ¶41 United States coins in the denominations of half-dollar, quarter, dime and nickel are silver in color. Liberty Dollar coins in the denominations of five, ten, twenty, and fifty "dollars" are silver in color.
- ¶42 Liberty Dollar coins in the denominations of five, ten, twenty, and fifty "dollars" are engraved with "USA".

The superceding indictment then charges von NotHaus with violation of 18 USC §§485-486, for making “in resemblance and similitude” of a denomination higher than 5 cents, “coined or stamped at any mint or assy [sic] office of the United States” or “in actual use and circulation as money within the United States” (the §485 violation).

Von Nothaus also stands accused of passing, uttering, selling a “false, forged or

⁴(Actually the Eisenhower dollar is 1.5 inches in diameter where the \$10 Liberty is 1.536 inches).

counterfeit coin” and in doing so with “a coin of silver intended for use as current money” in resemblance of genuine coins of the United States, or of original design”, the §486 violation.

The actual text of the sections are as follows:

Whoever falsely makes, forges, or counterfeits any coin or bar *in resemblance or similitude of any coin of a denomination higher than 5 cents* **or** any gold or silver bar coined or stamped at any mint or assay office of the United States, or in resemblance or similitude of any foreign gold or silver coin *current in the United States or in actual use and circulation as money* within the United States; or [emphasis added]

Whoever passes, utters, publishes, sells, possesses, or brings into the United States any false, forged, or counterfeit coin or bar, knowing the same to be false, forged, or counterfeit, *with intent to defraud* any body politic or corporate, or any person, or attempts the commission of any offense described in this paragraph— [emphasis added] [penalty] (§485)

The other reads:

Whoever, except as authorized by law, makes or utters or passes, or attempts to utter or pass, any coins of gold or silver or other metal, or alloys of metals, *intended for use as current money*, whether in the 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. (Emphasis added). (§486)

There are at least three elements to both sections of the law. First, that which is made must be a coin or a bar; second, it must be in resemblance or similitude of a *coin* that is (third) either “current in the United States” or (fourth) in actual use *and* (fifth) in *circulation as money* in the United States. If the second paragraph of §485 is involved, it must be with (first) knowledge of the falsity and (second) with intent to defraud.

The §486 violation also requires that there be (first) a coin [or bar] and (second) that it be intended for use as current money (whether in resemblance of a U.S. or foreign *coin* or of original design. (Emphasis added).

Resemblance and similitude, it seems to me, begins with the premise in the indictment that the von NotHaus objects are *coins* when they are not. They may be round; they may have designs; they may have inscriptions; they may be of a particular size and may have a political message, but that’s where the similarity ends. They are not coins.

The government’s own analysis suggests as much. For example, in Revenue Ruling 82-96, Int. Rev. Bull. 1982-20, 8, the Internal Revenue Service found that “because the value of gold content in each Canadian Maple Leaf gold coin greatly exceeds its face value, it is not a circulating medium exchange”, the essence of what “current money” is.

"International law, in its widest and most comprehensive sense -- includes not only questions of right between nations... but also questions arising under what is usually called private international law, or the conflicts of laws, concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public, done within the dominions of another nation - is part of our law." *Hilton v. Guyot*, 159 US 113, 163 (1895).

The “power to ‘coin money’ ...is a prerogative of sovereignty”, *Ling Su Fan v. US*, 218 U.S. 302, 310 (1910) and the currency of a nation is therefore evidence of its sovereignty. Congress certainly recognized this when it authorized the creation of a Mint by J. Res. No.3, 1st Cong., 3d sess., 1 Stat. 225 (Mar. 3, 1791) and in the debate which accompanied reauthorization of a mint each succeeding two years through 1828. *See, also*, H.R. Rep. No. 194, 89th Cong. 2nd sess. 30 (1965), Ganz, *Toward a Revision of the Minting & Coinage Laws of the U.S.*, 26 *Cleve. State L. Rev.* 175, 232 n. 405 & accomp. text (1977).

The principle was further enunciated by the Treasury Department itself in Treasury Sales of U.S. Gold and the Gold Medallion Act of 1978, Hearing on S. 2843 before the Committee on Banking, Housing and Urban Affairs, 95th Congress, 2nd Sess. at 38 (1978), when C. Fred Bergsten, Assistant Secretary of the Treasury for International Affairs testified in response to an inquiry made by Chairman Proxmire about reclassifying the Krugerrand on the tariff classification from coin to medal.

The purpose of Proxmire query was that “if it were classified as a medallion it would cost duty and would discourage sales”.

Bergsten's reply while it does not utilize the work comity, is founded on it, together with an underlying principle that coinage is a function of sovereignty and it is up to the sovereign - and not another - to determine what its money is. He replied, in toto:

The reason is, it is defined by the issuing government as a coin. We have respected that in our tariff classification as does practically every other country in the world in their tariff classification. We have looked at that and seen what other countries do and they follow that same practice. It is a simple matter of accepting at face value what the producer says his product is.

That is true for a nation, but not for Bernard von Nothaus – who if he imported his trinkets from outside the United States to inside the United States would be liable for customs duties on his products – because they are not coins. (See section on importing the trinkets and duties required to be paid (that were paid).

So going to the first premise (¶18 of the superceding indictment charges “There are five primary *coins* issued, exchanged, presented, uttered and circulated by NORFED: one dollar, five dollar, ten dollar, twenty dollar, and fifty dollar),” I reject it out of hand. Because they are not coins..

Let's look at why the government characterizes them as “coins” and why they are incorrect.

They claim that Liberty Dollar [trinkets] resemble coins of the United States.

One reason they claim this is true is that the [trinkets]

are engraved with the \$(dollar sign) which signifies and is universally known as the symbol for the United States dollar. In addition, the word "dollar" is printed on the coins.

The “\$” symbol, surprisingly enough, is not the universal symbol for the U.S. dollar. Having traveled to all seven continents and more than 70 countries, I know this to be true. Here’s the back-up, showing more than 30 countries who use the \$ symbol or a derivative:⁵

Argentina, Pesos ARS \$	Canada, Dollars CAD \$	Hong Kong, Dollars HKD	
Australia, Dollars AUD \$	Cayman Islands, Dollars	Jamaica, Dollars JMD J\$	Suriname, Dollars SRD \$
Bahamas, Dollars BSD \$	KYD \$	Liberia, Dollars LRD \$	Trinidad and Tobago,
Barbados, Dollars BBD \$	Chile, Pesos CLP \$	Mexico, Pesos MXN \$	Dollars TTD \$
Belize, Dollars BZD BZ\$	Colombia, Pesos COP \$	Namibia, Dollars NAD \$	Tuvalu, Dollars TVD \$
Bermuda, Dollars BMD \$	East Caribbean, Dollars	New Zealand, Dollars NZD	Uruguay, Pesos UYU \$U
Bolivia, Bolivianos BOB	XCD \$	Nicaragua, Cordobas NIO C\$	Zimbabwe, Zimbabwe
\$b	El Salvador, Colones SVC	Singapore, Dollars SGD \$	Dollars ZWD
Brazil, Reais BRL R\$	\$	Solomon Islands, Dollars	
Brunei Darussalam,	Fiji, Dollars FJD \$	SBD	
Dollars BND	Guyana, Dollars GYD \$		

In some of these countries (Chile, Hong Kong, Bolivia, Argentina, Mexico) “Standard dollar sign is generally used to signify peso amounts or whatever the local currency is denominated.”⁶

Of course, it also appears on so-called dollars such as the West Virginia centennial trade dollar (usable in stores that accept it) (1963).⁷

Likewise, California fractional gold coinage QUARTER DOLLAR, 25 CENT, HALF DOLLAR, and one dollar is well-known. Made round as well as octagonal, over 500 different types have been catalogued.⁸ Many in the so-called second period (1858-1882) came after the 1864 legislation⁹ that most believe was intended to preclude it.

⁵<http://www.xe.com/symbols.php> accessed Dec. 28, 2010.

⁶<http://www.xe.com/symbols.php>

⁷See, e.g., 50 W. Va. Op. Atty. Gen. 693, 1964 WL 72545 (W.Va.A.G.) (Office of the Attorney General State of West Virginia, 1 April 8, 1964) “Permissible to sell plastic centennial medallions or trade dollars in State and New York at the World’s Fair usable for purchase of items sold therein.” See, also, 29 Numismatic Scrapbook 2509 (196): word “Dollar” appears on obverse \$1.00 on reverse (photo).

⁸David & Susan Dowering, California Fractional Gold (1st ed. 1980) (509 catalogue numbers); Walter Breen & Ronald J. Gillio, California Pioneer Fractional Gold (2d ed. 2003) (over 1300 catalogue numbers).

⁹Act of June 8, 1864, 13 Stat. 120, see Ganz, ed., Coinage Laws of the United States 1792-1894 (1990). Section 486 may be traced back substantially unchanged through a 1909 codification, Criminal Code, Act of March 4, 1909, Pub.L.No. 350, ch. 321, § 167, 35 Stat. 1120, and an 1873 codification, Rev.Stat.U.S. § 5461, to its enactment in 1864, Act of June 8, 1864, ch. 114, 13 Stat. 120. The 1864 statute reads as follows: “(I)f any person or persons, except as

In *U.S. v Bogart* (9 Ben. 314, 24 F.Cas. 1185, 24 Int.Rev.Rec. 46, No. 14,617, AND NY 1878), the case presented the question, whether a conviction can be sustained, under section 5461 of the Revised Statutes of the United States [now 18 USC §§485, 486], “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.’”

That court concluded “(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”, *id.*, and went on to say that “A coin is a piece of metal stamped and made legally current as money. A counterfeit coin is one in imitation of the genuine. The coins known to the law are those authorized to be issued from the mints of the United States, and those of foreign countries current here.”

Like the von NotHaus pieces, the Bogart court found that “The pieces in question are not in imitation of our own coin or of any foreign coin. They are calculated to impose upon the ignorant or unwary, and, if this purpose is effected, the utterer may be guilty of false pretences.” *Id.*

Continuing: “If they were passed upon the sole representation that they were issued by the state of California, it is doubtful if a conviction for false pretences could be had, because every person is bound to know that the state of California cannot issue coins. If, instead of the pieces in question, the Defendant had passed pieces purporting to bear the stamp of Plato's Republic, he would have been equally as guilty of a criminal offence as he now is.” *Id.*

A similar 20th century case, *US v Falvey* (1st Cir. 1982)¹⁰ traces the history of both statutes and demolishes the government’s theory that these trinkets of von NotHaus are in any way covered.

As to the other claims:

¶35 The five "dollar" denomination of the Liberty Dollar is the same size as the Kennedy half-dollar coin of the United States.

This appears to be incorrect. The half dollar is 1.205 inches in diameter (Coinage Act of 1965, section 101 (a)(1)) and the trinket in question appears to be 1.25 inches.

The ten "dollar" denomination of the Liberty Dollar is the same size as the
 ¶36 Eisenhower dollar coin of the United States.

The Eisenhower dollar coin has not been minted since 1978 and is not a current coin. At 1.5 inches in diameter, the size is a popular one (38.1mm is nearly

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.” *US v Falvey*, 676 F.2d 871 (1st Cir. 1982). See, also, H.R. 284 (38th Cong., June 7, 1864) (copy of any coin now or to become current); and H. R. 455, An act to punish and prevent the counterfeiting of coin of the United States(38th Cong., June 4, 1864).

¹⁰See n. 5, *supra*, for full cite

crown sized [39mm]). The Liberty trinket is 1.536 inches in diameter.
United States coins in the denominations of dollar, half-dollar, quarter, dime and nickel

¶37

are engraved with the phrase "In God We Trust". Liberty Dollar coins of five, ten, twenty and fifty "dollars" are engraved with the phrase "Trust in God".

I am unacquainted with any unique relationship that United States coins have with the deity or any prohibition for a trinket or token to say "trust in god". The book title "In God we Trust all others pay cash" is an example of this. "God Preserve Carolina" (Rulau 66), "God preserve London" (Rulau 71) and "God Preserve New England" are well known colonial tokens that pre-date "In God we Trust" by more than a hundred years. The US Mint web site (which calls them "medallions") says "These medallions might look like real money because they— Bear the inscriptions, "Liberty," "Dollars," "Trust in God" (similar to "In God We Trust"), and "USA" (similar to "United States of America"), and an inscription purporting to denote the year of production; ..."11 is a flawed analysis because saying that USA is similar to United States of America ignores the fact that various phrases are required to appear on currency and coin as Congress has mandated for many years, e.g., Rev. Stat. 3517.

United States coins in the denominations of dollar, half-dollar, quarter, dime and nickel

¶38

are engraved with the word "Liberty". Liberty Dollar coins of five, ten, twenty and fifty "dollars" are engraved with the word "Liberty".

There's no trademark on Liberty. See Rulau 115 (Liberty—Not one cent).
The dime of the United States is engraved with a burning torch. The one dollar coin of

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the United States is engraved with the Statue of Liberty holding a burning torch. 'Liberty Dollar coins of five, ten, twenty, and fifty "dollars" are engraved with a burning torch.
The one-dollar James Monroe coin of the United States is engraved with the Statue of

¶40

Liberty. Liberty Dollar coins of five, ten, twenty and fifty "dollars" are engraved with a crowned head remarkably similar, if not exactly the same, as the crowned head on the Statue of Liberty.

See MTB (Manfra, Tordella & Brookes) trade rounds with portrait of Statue of Liberty (face).

On the use of the crowned head of Liberty, see following trademark applications:

- 7 73639679 1465365 LIBERTY MAXI-GRAM
- 8 73639674 1454161 LIBERTY TRADE GOLD
- 9 73696860 1497642 LIBERTY TRADE PALLADIUM
- 10 73639774 1454162 LIBERTY TRADE PLATINUM
- 11 73639677 LIBERTY IN ANY LANGUAGE
- 12 73636572 1494161 LIBERTY TRADE BRONZE
- 13 73602709 1484207 MANFRA, TORDELLA & BROOKES
- 14 73602708 1484206 MTB

¹¹<http://www.usmint.gov/consumer/?action=archives#NORFED>

15 73595917 1447383 LIBERTY TRADE SILVER

United States coins in the denominations of half-dollar, quarter, dime and nickel are silver ¶41 in color. Liberty Dollar coins in the denominations of five, ten, twenty, and fifty "dollars" are silver in color.

Here is the disassociation. U.S. has no circulating coins above \$1. (It made a \$50 coin only in 1915. It last made a \$10 gold coin for circulation in 1933 (but has produced commemorative coins, non-circulating. Since on more than one occasion). \$20 gold pieces were last made for circulation in 1932.

Liberty Dollar coins in the denominations of five, ten, twenty, and fifty "dollars" are ¶42 engraved with "USA".

In sum, having reviewed the case law criteria (see accompanying material), I do not see that these trinkets are in resemblance and similitude of any coin, no less those of the U.S.Mint.

Attached is my resume including selected publications. Over the last 40 years, I have written thousands of articles (Far too many to list all here, or to summarize them) which appear highly relevant to my views and analysis.

David L. Ganz

DAVID L. GANZ, 59, is a three-term member in his 9th year on the Board of Chosen Freeholders of Bergen County. A Freeholder since 2003, he also served as the 29th Mayor of the Borough of Fair Lawn, New Jersey, the 4th largest municipality in Bergen County for seven years, from 1999-2005. He was vice chairman of the Freeholder Board in 2005-6, chairman *pro tempore* in 2010, and has been chairman of the Budget Committee for eight consecutive years on the Board, 2003-2010. As Freeholder, Ganz helps oversee Bergen County's annual budget of some \$600-million.

Committed to public service throughout his adult life, Ganz served on the Fair Lawn Zoning Board for 10 years before seeking election to the Borough Council in November, 1997. He was re-elected in 2001 and left office as Mayor in January, 2006.

Selected as Mayor on January 1, 1999 for a one year term, and re-elected to six succeeding one year terms for a total of seven years, he became the first Mayor of Fair Lawn in quarter century to be elected to more than four 1-year terms.

A lawyer by profession, and the managing partner and principal litigator in the law firm of Ganz, Hollinger & Towe in New York City, and Ganz & Sivin, L.L.P., of Fair Lawn, N.J., Ganz has substantial service as a Committee Member of the State Legislation Committee of the Association of the Bar of the City of New York, as a member of the Civil Practice Law & Rules Committee of the New York State Bar Association (where he chaired the subcommittee on evidence and discovery), and the Civil Court Committee of the Queens County Bar Association.

He has served as a volunteer Small Claims Court arbitrator for more than 10 years in Queens County Civil Court, a contract mediator in the Bergen County Superior Court, and an arbitrator for the U.S. District Courts of the Eastern District of New York and the District of New Jersey. Ganz also is one

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of only 71 statewide mediators certified by the U.S. District Court for entire State of New Jersey.

He also previously held positions as Rent Leveling Board Attorney in Hoboken and as Zoning Board Attorney in Paramus and is recognized in "Who's Who" in American Law and "Who's Who" in the United States. He also served as Special Conflicts Counsel in Hoboken in 2005.

Ganz has been an award-winning writer in the numismatic field for more than 45 years. His knowledge about coins and the law is widely sought after, both as a consultant, a writer, and a lawyer. He has served as a columnist for *Coin World* from 1976-1996 ("Backgrounder" and "Law and Collectibles") and for *Numismatic News Weekly* from 1969-present, "Under the Glass"). He has written "Coin Market Insider's Report" each month for *COINage Magazine* since 1974. His column "Law and Coins"™ began on NumisMedia.com in March, 1999.

A prolific author in a variety of different fields, he has written more than 20 books, including a Random House mass-market paperback, *The Official Guide to America's State Quarters* (November, 2000), with more than 30,000 copies in print. A second edition in 2008 was given the Numismatic Literary Guild's special commendation. Recently published: *The Smithsonian Guide to Coin Collecting* (Harper-Collins, April, 2008), another NLG award winner which was republished in a prestige leather edition by Easton Press in 2010. *Profitable Coin Collecting* (Krause 2008) and *Rare Coin Investing* (Krause, 2010) are recent books.

Other books include *A Critical Guide to Anthologies of African Literature* (African Studies Ass'n, 1973, 2nd revised edition 2010), *14 Bits: A Legal & Legislative History of 31 USC §§324d-i* (1976), *The World of Coins & Coin Collecting* (Scribner's 1980, 2d edition 1985; 1998 Bonus Books 3d edition), *Planning Your Rare Coin Retirement* (Bonus Books, 1998), *Guide to Commemorative Coin Values* (1999, Bonus Books); *The 90 Second Lawyer* (Wiley, 1996), *How to get an Instant Mortgage* (Wiley, 1997), and a number of law review articles.

These include: "The U.N. & the Law of the Sea", *26 International & Comparative Law Quarterly* 1-53 (1977), "Toward a Revision of the Minting & Coinage Law of the United States", *26 Cleveland State Law Review* 177-257 (1977), "Probative Value of Currency Dating for Income in Respect of a Decedent," *51 N.Y.S. Bar Journal* 487-491 (1978).

More recently, his publications include "Valuation of Coin Collection," *5 American Jurisprudence Proof of Facts 3rd* 577-655 (1989), and a 300 page revision published in 2007 (*95 Am Jur Proof of Facts 3d* 155-465). Also: "Wrongful Death in Claims Against Emergency Service Workers," *101 Am. Jur. Proof of Facts 3d* 1-283 (2008); "Rent Control: Proof of Tenant's Entitlement to Benefits and Landlord's Right to Terminate," *110 Am. Jur. Proof of Facts 3d* 113-214 (2009), and "'Proof of Liability for Police Actions resulting in claims of serious personal injury or wrongful death", *113 Am Jur Proof of Facts 3d* 305-636 (2010).

A seminal work on §1983, "Government liability for Alleged Civil Rights Violations resulting in injury by Government Employees (including police, emergency medical technicians, firemen, prison guards, school board members, and others)", is to be published in the Am Jur Trials series this month, *119 Am. Jur. Trials* 439-564 (2011).

Other legal publications include "Legal Ethics: When A Lawyer's Obligation Begins (and Ends)," *125 N.J. Law J.* 1742 (June 28, 1990), reprinted in *Lawyer's Liability Rev. Q.J.* 3-6 (April, 1991), "Rent Control", in R. Irwin, ed., *Handbook of Property Management* (N.Y.: McGraw Hill, 1986) pp. 333-350, and an interesting newspaper article, "Drop dollar bills; we need \$1 coins," *USA Today*, May 23, 1990, p. 10A (Guest Columnist, "Face-Off").

He previously edited a book on *America's Coinage Laws (1792-1894)* (Bowers & Merena, 1991). Recipient of the Numismatic Literary Guild's highest honor, the Clement F. Bailey Award (1996), he is a past recipient of its best writer award for *COINage Magazine*, *Coins Magazine*, *Coin World*, and *Numismatic News* over a period of more than 25 years. Another Westlaw book on "Small Claims" defense in the *Am. Jur. Trials* series is due out in mid-2011.

A graduate of the School of Foreign Service at Georgetown University (Class of 1973) where he followed President Bill Clinton by five years, he took a law degree at St. John's University Law School and did post-graduate legal studies in the masters of law program at New York University. He also studied international law at Temple University (Philadelphia) Law School in Rome, Italy, while working

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for the coins and medals office of the Food & Agriculture Organization of the United Nations. He consulted with FAO in Rome for more than 20 years, attached to both their legal office and their money and medals office.

In 1994, he was awarded the Order of St. Agatha (Commander) by the Republic of San Marino.

Ganz has been asked to testify before the Subcommittee on Consumer Affairs and other subcommittees of the House Banking committee on more than a dozen occasions since 1974, more recently in July, 1995 on what became the state quarter design program, and has an active legal practice. He participated in the Senate Banking Committee's discussion on coin designs in September, 2001, the House hearing on "Coin & Currency Issues facing Congress: Can we still afford Money" (2006). He also submitted testimony before the Senate Banking Committee's field hearing on Foreclosure in 2009.

Widely respected by his peers, he is listed in the Martindale-Hubbell legal directory with an a-v rating (highest rating), and his accomplishments are listed in Who's Who of American Law, and other Who's Who publications, including the Millennium edition of Who's Who in America. He is AvVo rated 10.0/10.0 (superb).

In his spare time, he is a coin collector. A life fellow (one of 200 voting members) of the American Numismatic Society, he was appointed by President Nixon to the 1974 Annual Assay Commission, the oldest continually functioning committee in the federal government (dating to the founding of the Mint in 1792). He served from 1985-1995 as an elected member of the Board of Governors of the American Numismatic Association, the largest, educational non-profit organization of collectors in the world. He became the organization's 48th president in July, 1993, serving until August, 1995.

In December, 1993, Treasury Secretary Lloyd Bentsen appointed him a charter member of the Citizens Commemorative Coin Advisory Committee. He was reappointed in 1995 for a second one year term, leaving office in February, 1996. His lasting accomplishment which he advocated starting with Congressional testimony in July, 1991, and onward, is circulating commemorative coinage, which became reality following his July, 1995 Congressional Testimony in the form of the 50 State Commemorative Coin Program. That began with Delaware in early 1999, and includes New Jersey starting in May.

U.S. Mint Director Philip Diehl commented, "From my vantage point, the lions share of the credit for making the 50 states program a reality goes to David Ganz for his persistence as an advocate..." The U.S. government has made a profit on these coins, returning over \$5-billion to the American taxpayer.

Ganz also chaired the World Mint Council in 1994 and 1995 at its meetings held in conjunction with the American Numismatic Association annual convention. In 1995, more than 24 nations ministers attended Council meetings in Anaheim. He spoke at its plenary session, addressing delegates in Spanish, French, German, Russian and English. He is fluent in Spanish.

He has served as a consultant to the Canadian Olympic Coin Program (1973-76), the Moscow Olympic Coin Program (1976-80), for Occidental Petroleum and Lazard Freres in their 1981-2 Olympic Coin program effort, the 1985-6 Statute of Liberty Centennial Celebration, and many others. His legislative expertise has been tapped by Olin Brass, Memorial Mission Hospital (Asheville, N.C.)(for the Billy & Ruth Graham Congressional Gold Medal), The Platinum Guild, the Dutch Mint, the Portuguese State Mint, and others, on coin and related matters over the course of the past 20 years.

The World of Coins and Coin Collecting, first published in 1980, of which The Midwest Book Review said the book "continues to be the complete guide for contemporary numismatics that knowledgeable collectors and professional investors refers to", is a bibliographic entry for the Encarta CD-ROM encyclopedia, Grollier's, and many others. He also maintains the web site www.AmericasStateQuarters.com to promote his book and the coin hobby.

As a lawyer, he has served as general counsel to the Professional Numismatists Guild, Inc. (1981-1993) and special counsel to the American Numismatic Association and the Industry Council for Tangible Assets, as well as for various municipalities part of the South Bergen Joint Insurance Fund.

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DAVID L. GANZ

Jurisdictions and Courts Admitted to Practice

New York

Admitted March 2, 1977 (2nd Judicial Department)

New York U.S. District Courts:

1. Eastern District, June 3, 1977
2. Southern District, April 20, 1983
3. Northern District, July 12, 1983
4. Western District, May 31, 1983

U.S. Court of Appeals for Second Circuit, April 28, 1983

Federal Courts

Supreme Court of the United States, May 12, 1980
U.S. Tax Court, March 31, 1977
U.S. Court of Claims, June 25, 1980
U.S. Court of Military Appeals, Aug. 4, 1983 [#24234]
U.S. Court of International Trade, August 24, 1983

United States Circuit Courts of Appeal

Second Circuit, April 28, 1983
Third Circuit, October 16, 1985
Sixth Circuit, August 2, 1983
Ninth Circuit, September 6, 1983
Tenth Circuit, October 24, 1983
Eleventh Circuit, August 25, 1983
District of Columbia Circuit, September 29, 1983
Federal Circuit, July 27, 1983
Temporary Emergency Court of Appeals, July 17, 1983

District of Columbia

Court of Appeals, April 17, 1980

New Jersey

Supreme Court, June 1985

David L. Ganz
Selected Congressional Testimony

“Commemorative Medals and Bicentennial Coinage,” Hearing before the Subcommittee on Historic Preservation & Coinage of the Committee on Banking, Currency & Housing, 94th Cong., 1st sess., Sept. 23, 1975. (Pp. 85-97, statement of David L. Ganz)

“Treasury Sales of U.S. Gold and the Gold Medallion Act of 1978,” Hearing before the Committee on Banking, Housing and Urban Affairs, U.S. Senate, 95th Cong., 2d sess. (August 25, 1978) (Grover C. Criswell, Jr., president of the American Numismatic Association, accompanied by David L Ganz, legislative counsel) (pp.67-77)

“U.S. Mint’s Commemorative Coin Program”, Hearing before the Subcommittee on Domestic and International Monetary Policy of the Committee on Banking & Financial Services, 104th Cong., 1st sess. (July 12, 1995) (Witness: David L Ganz, President of the American Numismatic Association and member Citizens

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Commemorative Coin Advisory Committee) (prepared statement at 85-107; testimony begins at p. 17).

“Additional Mint facilities at DENVER,” Hearing before the Committee on Banking, Housing & Urban Affairs, U.S. Senate, 94th Cong., 2d session (Feb. 27, 1976), (Statement, pages 171-173).

“Bicentennial era National Medals Resolution,” Hearing before the Subcommittee on Historic Preservation & Coinage of the Comm. On Banking, Finance & Urban Affairs, House of Representatives, 95th Cong., 1st sess. (1977)(prepared statement submitted by “David L. Ganz, attorney and authority on coinage and national medals”, pp. 31-35).

“Oversight Hearing on National Medals”, Hearing before the Subcommittee on Historic Preservation and COinage of the Committee on Banking, Finance & Urban Affairs, m House of Representatives, 95th Cong., 1st sess. April 26, 1977), (“Statement of David L. Ganz “attorney, Institute for Business Planning, new York, N.Y.”), pp. 10-25; testimony thereafter.

“Savings and Retirement Proposals,” Hearing before the Subcommittee on Savings, Pensions and Investment policy of the Senate Committee on Finance, 97th Cong., 1st sess. (December 4, 1981) (Prepared statement of Burton S. Blumert, executive director of the National Association of Coin & Precious Metals Dealers, accompanied by David L. Ganz, general counsel”, pp. 299-331).

“To Amend the One Bank Holding Company Act of 1970 (Carson City Silver Dollars”, Hearing before the Subcommittee on Historic Preservation & Coinage of the Comm. On Banking, Finance & Urban Affairs, House of Representatives, 95th Cong., 2nd sess. (April 3, 1978) (Grover C. Criswell, Jr., president of the American Numismatic Association, accompanied by David L Ganz, legislative counsel) **pp. 33-56.**

“To authorize a change in the composition of the one-cent coin”, Hearing before the subcommittee on consumer affairs of the Committee on Banking & Currency, House of Representatives, 93d Congress, 2d sess. (March 27, 1974). (Statement of David L. Ganz, Rockville Centre, N.Y., p. 134-5).

“Commemorative Coin Hearing,” Hearing before the Subcommittee on Consumer Affairs and Coinage of the House Committee on Banking, Finance & Urban affairs, 102d Cong., 1st sess. (July 17, 1991) (Statement of David L. Ganz, legislative counsel to the American Numismatic Association, pp. 47-48; prepared statement pp. 142-169).

"Coin & Currency Issues facing Congress: Can we still afford Money" Hearing before the House Committee on Banking, Finance & Urban affairs, (2006).

Senate Banking Committee's field hearing on Foreclosure in 2009.

“Proposed smaller one-dollar coin,” Hearings before the Subcommittee on Historic Preservation and Coinage of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, 95TH Congress, 2D SESS. on H.R. 12444, May 17 and 31, 1978 (Grover C. Criswell, Jr., president of the American Numismatic Association, accompanied by David L Ganz, legislative counsel)

“Coin design”, Symposium held by the Committee on Banking, Housing, and Urban Affairs, United States Senate, 106TH Congress, 2ND session, on the current design of American circulating coins and how to improve the designs to make them worthy of this great nation, September 13, 2000 (STATEMENT)

“Gold and silver coinage proposals,” Hearing before the Committee on Banking, Housing, and Urban Affairs, United States Senate, 98TH Congress, 1ST session, on S. 42 ... and S. 269, April 15, 1983 (David L. Ganz, Esq., accompanying Luis Vigor, National Association of Coin & Precious Metal Dealers).

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“Convention on cultural property implementation act,” Hearing before the Subcommittee on International Trade of the Committee on Finance, United States Senate, 95th Congress, second session, on H.R. 5643 ... S. 2261, (February 8, 1978) (statement)

“Nomination of David J. Ryder”, Hearing before the Committee on Banking, Housing, and Urban Affairs, United States Senate, 102nd Congress, 1st session, on the nomination of David J. Ryder, of Virginia, to be director of the Mint for a term of 5 years, vice Donna Pope, term expired, November 22, 1991 (Statement of David L Ganz, general counsel, Professional Numismatists Guild”.

“South African restrictions”, Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the Committee on Banking, Finance, and Urban Affairs, House of Representatives, 98th Congress, 1st session on H.R. 1693 ... (June 8, 1983) (David L. Ganz accompanying Burton S. Blumert, National Association of Coin & Precious Metals Dealers).

“Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 2000”, Testimony of members of Congress and other interested individuals and organizations (2000) (Statement of Mayor David L Ganz).

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