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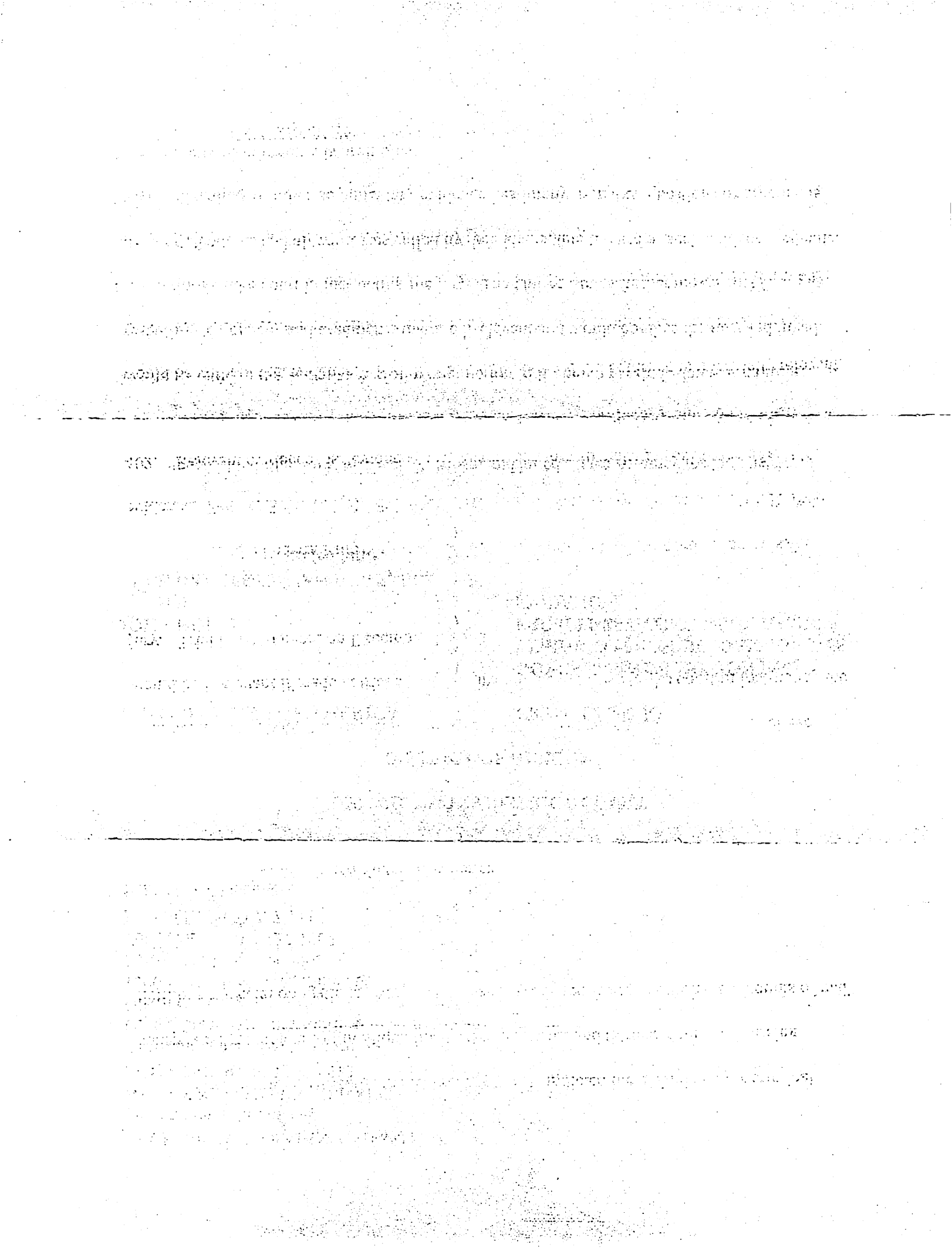
UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA, v. JOHN NOLAN and LYLE HARTFORD VAN DYKE, JR., Defendants.	)))))))))	CR No. 02-390-JO **GOVERNMENT'S MOTION IN LIMINE TO PROHIBIT DEFENDANTS FROM PRESENTING INADMISSIBLE EVIDENCE**

The United States, by Michael W. Mosman, United States Attorney for the District of Oregon, through Allan M. Garten and Scott Kerin, Assistant United States Attorneys (AUSA) for the District of Oregon, submits the following motion in limine to preclude defendants from presenting "evidence" and arguments that are irrelevant and would confuse the jury and invade the province of the court in instructing the jury. The United States further moves this Court to instruct defendants and all witnesses called by defendants, that the use of such evidence, whether through pleadings or other documentary evidence, testimony, remarks, questions or arguments, either directly or indirectly, is prohibited.



Background

On September 19, 2002, the federal grand jury indicted the defendants for criminal conspiracy, manufacturing fictitious financial obligations, and thirteen counts of passing fictitious financial obligations. Mr. Nolan was also indicted for an additional six counts of mail fraud. The charges have arisen out of the defendants creation and passing of "Public Wealth Rebate Notes" allegedly drawn against the United States Treasury, Drafts allegedly drawn against Jackson National Life Insurance Company, and Notes allegedly drawn against Jackson National Life Insurance Company and it's parent corporation Prudential. The defendants have each been arraigned and are proceeding pro se. At their arraignments, and through the course of this criminal investigation, the defendants have made statements which the government believes would be irrelevant if made at trial and would invade the province of the court in instructing the jury. Trial is set to begin on December 3, 2002.

Motion in Limine

Under the Federal Rules of Evidence, the jury should not be exposed to inadmissible evidence. Fed. R. Evid. 103(c). Evidence that is not relevant is not admissible. Fed. R. Evid. 402. "Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Even if the evidence is minimally relevant, the court should exclude evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Fed. R. Evid. 403; United States v. Johnson, 820 F.2d 1065, 1069 (9th Cir. 1987).

A. **The court, not the defendants, are the source of the law the jury is to follow**

The defendants' may seek to proclaim their view of what the law is or should be. This is be improper. The District Court is to serve as the sole source of law for the jury and the law should not be introduced as evidence in the case. United States v. Poschwatta, 829 F.2d 1477, 1483 (9th Cir. 1987),. Cooley v. United States, 501 F.2d 1249, 1253054 (9th Cir. 1974). Should the defendants attempt to tell the jury what they believe the law is or should be, the Government would request that the Court instruct the jury at that time, that the defendants' views are only their personal opinion and that the jury must follow the law that the court will instruct them on at the end of the trial.

B. **Evidence challenging the validity of Federal Reserve Notes as legal tender or the monetary system of the United States is inadmissible**

The defendants' may claim that Federal Reserve Notes are not valid currency, do not constitute legal tender, or are of less value than their Notes and Drafts. Such theories have repeatedly been rejected as frivolous and without merit. United States v. Condo, 741 F.2d 238, 239 (9th Cir. 1984); United States v. Wangrud, 533 F.2d 495 (9th Cir. 1976); United States v. Gardiner, 531 F.2d 953, 954 (9th Cir. 1976). Thus, evidence in conflict with the law on this issue should be excluded.

C. **Arguments seeking jury nullification are not permissible**

Any attempt by the defendants to seek jury nullification, or conscience verdicts, by appealing to the jury to follow its own sense of justice and fairness and refuse to follow the law the court instructs them on, is improper. While the appeals courts have recognized that jury nullification does in fact occur, it is legally improper for any party to seek that result. United

States v. Powell, 955 F.2d 1206, 1213 (9th Cir. 1992); Zal v. Steppe, 968 F.2d 924, 930 (9th Cir. 1992)(Judge Trott concur); United States v. Simpson, 460 F.2d 515, 519-20 (9th Cir. 1972). According, such comments, arguments, or testimony should be excluded.

D. Pro Se Defendants Must Comply with Substantive and Procedural Law

In Faretta v. California, 422 U.S. 806, 817 (1975), the Supreme Court held that the Sixth Amendment's guarantee of a right to assistance of counsel includes the right of the accused personally to manage or conduct his own defense in a criminal case. Id. The Supreme Court also made it clear, however, that the right of self-representation is not a license to disregard compliance with relevant rules of substantive and procedural law. Id. At 834-35, n.46.

Additionally, the Ninth Circuit has stated that a "pro se defendant is subject to the same rules, procedure and evidence as defendants who are represented by counsel." United States v. Merrill, 746 F.2d 458, 465 (9th Cir.), cert. denied, 469 U.S. 1165 (1985). Finally, a pro se defendant has no right to testify from counsel table in court so as to spare himself from cross-examination. See United States v. Tucker, 773 F.2d 136, 141 (7th Cir. 1985), cert. denied, 106 S.Ct. 3338 (1986). Accordingly, the defendants should not be allowed to make comments in their opening statements that are not based upon admissible evidence they intend to introduce at trial nor should they should not be allowed to use direct examination or cross examination as an opportunity to narrate their beliefs about the illegitimacy of the monetary system or such.

E. Court May Take Precautionary Measures to Ensure that Pro Se Defendants Comply with Substantive and Procedural Rules

The government submits that in the trial where the defendants want to represent themselves, this Court should warn the defendants of the following: (1) that they will be held to

the rules of law and evidence; (2) that they shall refrain from speaking in the first person with regard to their comments on the evidence; (3) that the Court will instruct the jury, prior to closing arguments, during summation and in final instructions, that nothing the lawyers have said is evidence in this case; (4) that the Court will instruct the jury at the outset of the trial that anything that the defendants say in their lawyer role is not evidence; and (5) that they must refrain from commenting on matters not in evidence or solely within their personal knowledge or belief. See United States v. Veteto, 701 F.2d 136, 138-39 (11th Cir.), cert. denied, 463 U.S. 1212 (1983).

Although these suggested precautionary measures are not mandatory, they would ensure that the defendants and the jury both understand that pro se defendants are required to comply with substantive and procedural rules and that pro se defendants cannot use their role as counsel to attempt to introduce evidence that would not be admissible or make comments that would not be proper if they were represented by counsel.

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Conclusion

The United States respectfully requests that this Court prohibit the defendants from introducing evidence or making arguments about what they believe the law is or should be, that Federal Reserve Notes or the United States monetary system is illegal or invalid, and that the jury should ignore the law. Furthermore, the Government requests that the defendants be instructed on their need to follow both substantive and procedural law through the course of the trial.

Dated this 18th day of November 2002.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing GOVERNMENT'S MOTION IN LIMINE was placed in an postage prepaid envelope and deposited in the United States Mail at Portland, Oregon, on November 18, 2002, addressed to:

JOHN NOLAN - pro se
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MARSHA WHITESIDE
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