IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CRIMINAL NO. 06-538 JCH
	)	
MARY HELEN QUAINTANCE,	)	
	)	
Defendant.	)	

GOVERNMENT'S RESPONSE TO
DEFENDANT MARY HELEN QUAINTANCE'S MOTION TO STRIKE
PRO SE PLEADINGS [DOCS. 45, 46] AND STATEMENTS MADE
THEREIN AND AT MAY 17, 2007 HEARINGS

The United States of America files this Response to defendant Mary Helen Quaintance's Motion to Strike *Pro Se* Pleadings [Docs. 45, 46] and Any Statements made by Ms. Qauintance in Said Pleadings and at May 17, 2007 Hearing, and to Issue Order Excluding Use of Said Motions and Statements from Trial, filed on July 31, 2008. (Doc. 349).

1. BACKGROUND

Defendant correctly sets out Procedural Background in her pleading filed July 31, 2008 [Doc. 349] involving the issue now before the court.

2. DISCUSSION

A. Defendant Mary Helen Quaintance's Statements Do Not Violate Her Constitutional Rights.

Mary Helen Quaintance's *pro se* filings go well beyond what would have been necessary to request change of counsel. The true purpose of her statements was to make

a statement. Her statements can easily be distinguished from that of a defendant testifying in a suppression hearing. *Simmons v. United States*, 390 U.S. 377 (1968), is an apples-to-oranges comparison and, therefore, inapplicable. A simple letter to this Honorable Court would have satisfied Ms. Quaintance's purpose, if it were, indeed, merely to change counsel. Certainly, this was in part her motive, but clearly there was much more afoot.

Ms. Quaintance had a very effective attorney at the time the statements were made and, as a result of his effectiveness, Mary Helen Quaintance became dissatisfied. The assertions made by Mary Helen Quaintance in her statements, of which she now complains, were not necessary in asserting her Sixth Amendment right to counsel. The Sixth Amendment does not guarantee a defendant the choice of counsel, but only the right to an effective one. Mary Helen Quaintance disagreed with her attorney's strategy and wantonly made her own bed with her statements. Therefore, said filings are not violative of the Sixth Amendment.

Defendant's "constitutional" argument is without merit and should be discarded.

B. The Statements Are Certainly Admissible Pursuant to Fed. R. Evid. 801(d)(2) or 804(b)(3).

Defendant's second argument is merely a hybrid of the first. Her *Crawford* analysis is flawed in that her statements do not implicate the Sixth Amendment. In the case at bar it would be the rules of evidence which would be "run roughshod over" if the statements are disallowed. Since the defendant's Sixth Amendment rights were never implicated by her filings, there is no friction between the Sixth Amendment and the Federal Rules of Evidence. The defendant continues to assert that the bulk of her statements were made

in an attempt to exercise his Sixth amendment right to assistance of counsel. (Doc. 349 at 6). The defendant's "shotgun" analysis seeks to rationalize her imprudent actions; as with the proverbial square peg in the round hole, it just doesn't fit.

There is no question as to the voluntariness of the statements made by Mary Helen Quaintance in her filings. The statements are not made subject to custodial interrogation while she is represented by counsel. Ms. Quaintance's election not to avail herself of her attorney's assistance should not impinge on the government's utilization of admissible non-hearing statement pursuant to Fed. R. Evid. 801(d)(2)(A).

Defendant's footnote 1 [Doc. 349 at 7] further clouds the matter in that it relies, at least in part, on "a co-defendant's statement as evidence of a defendant's participation in the crime", citing *United States v. Moskowitz*, 215 F.3d 265, 269 (2d Cir. 2000). This analysis does not apply to the case at bar.

C. Defendant's Final Argument Fails Since Defendant's Statements Are Not Tantamount to a Hybrid Representation.

It is true that the Court never authorized Mary Helen Quaintance to proceed *pro se*. It is also true that her then-attorney had no idea that his client would act as she did. This is not a hybrid representation, but it is a statement against interest, and/or admission of a party opponent, plain and simple.

3. CONCLUSION

Defendant's situation is of her own making. Her motive in making the statements in her filing is an attempt at martyrdom and legal suicide. The government is sympathetic with her current counsel, but that which has gone before cannot be undone. All relief

sought by the Defendant should be denied and the government, if it chooses, should be allowed to use Mary Helen Quaintance's judicial admissions against her.

Respectfully submitted,

GREGORY J. FOURATT
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Electronically filed on 8/7/08
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I HEREBY CERTIFY that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to opposing counsel of record on this date.

Electronically filed
LUIS A. MARTINEZ
Assistant United States Attorney

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