

ORIGINAL (Mc)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION
2014 JUN -5 AM 8:32
CLERK OF COURT

UNITED STATES OF AMERICA §
v. §
RICHARD MICHAEL SIMKANIN §

CRIMINAL NO. 4:03-188-A

DEFENDANT’S REQUESTED JURY INSTRUCTIONS

COMES NOW, the Defendant RICHARD MICHAEL SIMKANIN, (“Simkanin”) by and through his attorney of record, Arch C. McColl, III, and files his Requested Jury Instructions and for cause would show as follows:

1. Jury Secrecy - Regarding the “secrecy of the verdict” the Fifth Circuit Pattern Jury Charges specifically state that, “Your deliberations will be secret. You will never have to explain your verdict to anyone.” “Jury deliberations are perhaps the most secret form of decision-making in the nation; the means of persuasion used by jurors on each other are never revealed.” *United States v. Gordon-Nikkar*, 518 F.2d 972, 977 (5th Cir. 1975).

In a Fifth Circuit case written by Judge Goldberg, he stated “The jury box is a holy place.” *United States v. Nell*, 526 F.2d 1223, 1229 (5th Cir. 1976).

2. Constitutional jury nullifications - *United States v. Leach*, 632 F.2d 1337 (5th Cir. 1980), the court stated that “Jury nullification – the right of a jury to acquit for whatever reasons even though the evidence supports a conviction – is an important part of the jury trial system guaranteed by the Constitution.” The jury should be so instructed.

3. **Defendant's theory of the case - right to separate an independent jury instruction** - The failure to instruct on Defendant's theory of defense, where the law and the evidence support such an instruction, is per se reversible error. *United States v. Zuniga*, 6 F. 3d 569, 571 (9th Cir. 1993).

4. **"Irrational belief" basis for good faith** - You are instructed that the Defendant's belief need not be objectively reasonable for you to find that he was in good faith and, further, that even an irrational belief may be the basis of a finding by you that the Defendant acted in good faith. You are further instructed that if you find, or have a reasonable doubt, that the Defendant acted in good faith, though his understanding of the tax laws was contrary to the official government interpretation, then you must find him not guilty. *Cheek v. U.S.*, 498 U.S. 192 (1991).

5. **In case of doubt** - You are instructed that in the interpretation of statutes levying taxes, it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the government, and in favor of the United States. *Gould v. Gould*, 245 U.S. 151 (1917); *United States v. Wigglesworth*, 2 Story, 369, Fed. CAS No. 16, 690; *American Net & Twine Co. v. Worthington*, 141 U.S. 468, 474; *Benziger v. United States*, 192 U.S. 38, 55.

WHEREFORE PREMISES CONSIDERED, the Defendant respectfully prays that his Requested Jury Instructions be, in all things, granted.

Respectfully submitted,



ARCH C. McCOLL

State Bar Number: 13431800

McCull & McCulloch

2000 Thanksgiving Tower

1601 Elm Street

Dallas, Texas 75201

(214) 979-0999

(214) 979-9090 Facsimile

CERTIFICATE OF SERVICE


I, ARCH C. McCOLL, III do hereby certify that on the 5th day of January, 2004, a true and correct copy of Defendant's Requested Instructions has been hand delivered to David Jarvis, Assistant U.S. Attorney for the Northern District of Texas, Fort Worth Division, Burnett Plaza, Ste. 1700, 801 Cherry Street, Fort Worth, Texas 76102-6882.



ARCH C. McCOLL, III

CERTIFICATE OF CONFERENCE

I, ARCH C. McCOLL, III, do hereby certify that on the 5th day of January, 2004, I was (able) (unable) to communicate with David Jarvis, the Assistant U.S. Attorney for the Northern District of Texas, Fort Worth Division, regarding the Defendant's Requested Instructions.



ARCH C. McCOLL, III