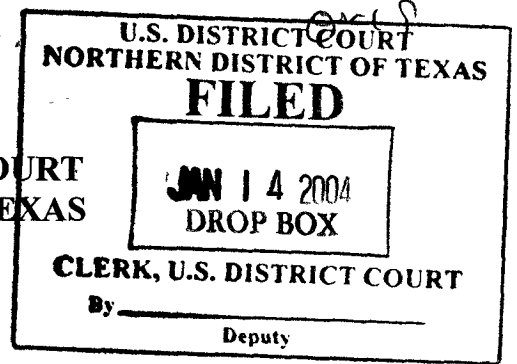


ORIGINAL

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



UNITED STATES OF AMERICA §  
v. §  
RICHARD MICHAEL SIMKANIN (01) §

Criminal No.: 4:03-CR-188-A

**DEFENDANT SIMKANIN'S MOTION FOR NEW TRIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Defendant, Richard Michael Simkanin, in the above numbered and entitled cause and files this Motion for New Trial and for cause would show as follows:

1. Social Security is voluntary - The Defendant objected in trial to the Court's incorrect statement of law in front of the jury, to the effect, that the Social Security system was a mandatory participation system. That statement of the Court was incorrect. Because the Defendant's defense was a good faith reliance on a variety of sources including the below listed government documents, some of which the Defendant tried to introduce into evidence or use as the basis for eliciting testimony, and some of which were on the Web site of the "We the People" Foundation, the Defendant considers the Court's statement as highly prejudicial. Further, the Court's granting the motion in limine as to all the defense exhibits and specifically excluding, for example, the GAO report (Exhibit 9), which proves that the Social Security system is a voluntary system, deprived the Defendant of his Sixth

Amendment right to present evidence, his Sixth Amendment right to a fair trial, his Sixth Amendment right to effective counsel and his Fifth Amendment right to Due Process.

Further, the Court severely restricted the evidence of various Internal Revenue Code definitions such as “income,” “employee,” “taxpayer,” etc. These questions were designed to support the Defendant’s good faith belief that he was not required to file an income tax return for himself or to withhold Social Security or Medicare taxes from his employees. Curtailing the evidence on these subjects undercut the ability of the Defendant to prove his good faith basis for his actions and for his belief. Additionally, the below Exhibits show the good faith basis of the Defendant and these documents appeared on the “We the People” Web site which the Defendant relied on. Further, "There is no provision which specifically and unequivocally requires an individual to pay income taxes," as stated in a letter from Senator Inouye's office, listed below and attached hereto as Exhibit 5.

2. **Incorporation by reference** - The Defendant hereby incorporates by reference all of the legal argument as to each of the following documents described below:

3. **No one required to get a Social Security number** - A letter dated January 10, 1986 that states, “Social Security is a voluntary system in that no one is required to get a number.” This is a letter from the Department of Health and Human Services and specifically the Social Security Administration from Penny Payton, Claims Representative (Exhibit 1).

4. **No law making Social Security number mandatory** - A letter from the Social Security Administration with the Health and Human Services addressed to U.S. Senator

Alphonse M. D'Amato from Sidney Sirota, District Manager, dated May 17, 1988 which states, among other things, "There is no law which makes the Social Security number mandatory" (Exhibit 2)

5. **No Social Security law requiring Social Security number** - A letter on the letterhead of United States Senator Lloyd Bensen, dated September 16, 1981 addressed to Mr. Troy Barclay which states, among other things, "There is no Social Security law requiring that one have a number, but the IRS Tax Code (Sec. 6109, Subsection (a)) stipulates that taxpayers shall utilize their Social Security numbers when filing tax returns" (Exhibit 3)

6. **Definition of word "state" varies** - A letter on the letterhead of U.S. Congressional Representative Barbara B. Kenneley, dated January 24, 1996, addressed to a constituent, which letter states, with regard to legislation which she introduced, that she "checked with legislative counsel and a congressional research service about the definition [of] the word state.... According to these legal experts, the definitions are not the same. The term state in 26 U.S.C. Code 3121 (e) specifically includes only the named U.S. territories and possessions of the District of Columbia, Puerto Rico, the Virgin Islands, Guam and American Samoa." This is relevant to the jurisdictional claim of my client, Mr. Simkanin, with regard to the limited jurisdiction of the federal government when it comes to those sections regarding withholding in the Internal Revenue Code (Exhibit 4).

7. **Congressional Research Service finds no provision to require individual to pay**

**income taxes** - The letter on United States Senate letterhead of June 26, 1989 from the office of Senator Daniel L. Inouye, written by Mark L. Foreman, legislative correspondence, and addressed to Mr. Fred M. Ortiz, which states, among other things, that “based on the research performed by the Congressional Research Service, there is no provision which specifically and unequivocally requires an individual to pay income taxes” (Exhibit 5)

8. **Social Security Administration Web page states “Social Security Act does not require person to have a Social Security number”** - A page from the Web site of the Social Security Administration, which has now been taken down, which states, “The Social Security Act does not require a person to have a Social Security number (SSN) to live and work in the United States, nor does it require an SSN simply for the purpose of having one. However, if someone works without an SSN, we cannot properly credit their earnings for the work performed.” At the bottom of this paper, which is “Page 1 of 1,” shows the Internet source of the document being the electronic information system of the Social Security Administration and the rest of the information shows their electronic path which leads to Chapter 18, Section 11 (Exhibit 6).

9. **No Federal law or regulation requiring employee to obtain Social Security number for employment purposes** - A letter on the letterhead of the Social Security Administration, Region 5, Dallas, Texas, dated April 23, 1997 by Susan Mariano, a social insurance specialist and addressed to Mr. Gerald Hitt with a copy sent to the District Director of the Internal Revenue Service which states, “This is in response to your inquiry dated

March 24, 1997 to Mr. Paul Coggins, U.S. Attorney, Northern District of Texas. We are not aware of any Federal law or regulation that requires an employee to obtain a Social Security number before hiring an employee or for employment purposes” (Exhibit 7)

10. Need OMB approved number for form to request information from a taxpayer A Request for an OMB number (Office of Management and Budget Review), is the process that a government agency must go through in order to obtain a number for their forms or for an individual form. Without an OMB approved number, a government agency cannot legally request information from a taxpayer. In order to get a number or a series of numbers for different government documents, the agency must present a “Request for OMB Review” and explain the purpose of the OMB number and the purpose of the document. As you can see on the second page of the document entitled Request for OMB Review dated January 29, 1987, the box number 24 states as follows, “Respondent’s [citizens’] obligation to comply (check the strongest obligation that applies). The first box is marked “voluntary;” the second box is marked “required to obtain or retain a benefit;” the third box is marked “mandatory.” Remember, this is a request for approval for the “Application for a Social Security number card” (see space no. 4 on page 1 of the “Request for OMB Review”). What is going on here is that the Social Security Administration is asking for approval for their SS5 form, Application for a Social Security number card, and in the process they have to tell the office of management and budget whether the obligation to comply with this by a citizen is voluntary, required or keep a benefit, or whether it is mandatory. The Social Security

Administration checked that it was “required to obtain or retain a benefit,” which is box number 2, not that it was mandatory which is consistent with all the other opinion letters (Exhibit 8).

The Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, and the Privacy Act, 5 U.S.C. § 552a, also require that all government forms requesting information from citizens have a valid OMB issued number whereby the citizen can assure himself that compliance with both of those two Acts (Privacy and Paperwork Reduction) have been complied with, and that it is, in fact, a legal, government form. The applicant for the OMB approval is, as you can see, “DHHS/SSA” which stands for the Department of Human Services Social Security Administration. The particular office within those agencies is “The Office of Retirement and Survivors Insurance” which is the actual name given to Social Security, according to the Internal Revenue Code, a copy of which I have attached to the OMB request so that you can see that that name is the name we commonly refer to as Social Security even though the formal name is “Old Age Survivors Disability Insurance.”

11. **GAO report documents voluntary nature of Social Security** - GAO report documenting the counties in Texas where the teacher did not participate in the Social Security system and the result of that study. This GAO report is further evidence that participation in the Social Security system is voluntary and not mandatory (Exhibit 9)

12. **Erroneous IRS Web site** - The word “erroneous” from *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916), describes the very incorrect statement that the *Brushaver*

opinion condemned but that is carried on the IRS Web site: The IRS Web site states that the income tax is a direct tax which *Brushaver* states is an “erroneous” conclusion (*Brushaber v. Union Pacific R. Co.*, 240 US 1 (1916), see Exhibit 10). Further, the IRS Web site states that the direct tax of the income tax is “not apportioned” which is a contradiction in terms because by constitutional definition under Art. 1 § 2 clause 3, all direct taxes must be apportioned. This shows that the IRS Web site is misinforming the public with regard to this fundamental, legal principle which is constitutionally based by telling the public (1) that the income tax is a direct tax and (2) that the income tax is a direct tax which does not have to be apportioned. The truth is, according to *Brushaver*, that it is an indirect tax and that is why it does not have to be apportioned.

13. **Brushaber opinion** - The *Brushaber* opinion is attached as an Exhibit because it shows quite clearly that the IRS Web site is incorrect with regard to its statement as to the income tax being a direct tax.

WHEREFORE PREMISES CONSIDERED, the Defendant respectfully prays that this motion be, in all things, granted.

Respectfully submitted,

ARCH C. McCOLL, III  
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2000 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201-4761  
(214) 979-0999

By: 



**CERTIFICATE OF CONFERENCE**

I, ARCH C. McCOLL, III, do hereby certify that on the 14<sup>th</sup> day of January 2004, I was (able) (unable) to communicate with Mr. David Jarvis, the Asst. U.S. Attorney for the Northern District of Texas, Fort Worth Division, Fort Worth, Texas, with regard to this Motion For New Trial who (agreed) (disagreed) (had no objection) (took no position) (was unavailable) regarding the Motion for New Trial.

  
\_\_\_\_\_  
ARCH C. McCOLL, III

**CERTIFICATE OF SERVICE**

I, ARCH C. McCOLL, III do hereby certify that on the 14<sup>th</sup> day of January 2004, a true and correct copy of Defendant's Motion for New Trial has been (facsimile-transmitted) (hand-delivered) (mailed by U.S. Mail) (overnighted) to Mr. David Jarvis, Asst. U.S. Attorney for the Northern District of Texas, Fort Worth Division, Fort Worth, Texas, at the latest address listed in the Texas "Blue Book" Legal Directory, or in the Martindale-Hubbell Attorney Directory, which address was verified with a telephone call from my office, and also sent by U.S. Mail to all other counsel for the additional parties, if any, as shown in the attachment or below.

  
\_\_\_\_\_  
ARCH C. McCOLL, III

**FIAT**

This matter is hereby set down for a hearing in this, the \_\_\_\_\_ Court for the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ m. o'clock.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.