

# MEMORANDUM #1

TO: THE MEMBERS OF THE GRAND JURY  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

FROM: RICHARD SIMKANIN

SUBJECT: PRESENTATION OF EXCULPATORY EVIDENCE  
DEMONSTRATING MY GOOD FAITH UNDERSTANDING OF THE  
LAW AND IN OPPOSITION TO THE GOVERNMENT'S PROPOSED  
SECOND SUPERSEDING INDICTMENT

## Background

With respect, earlier this year, I was not given the chance to appear before you, the Grand Jury, as you considered what the U.S. Attorney (Mr. Jarvis) was telling you about me and as you weighed your decision to issue an initial indictment against me and then, months later, as you weighed Mr. Jarvis' request that you issue a (first) superceding indictment.

Had I been more aware of my Rights and not been prevented by Mr. Jarvis from appearing before you (as I was able to do with the grand juries of 2001 and 2002), I would have conveyed to you, for your consideration, the information contained in and attached to this memorandum.

As you may know, my appearances before the two prior grand juries were related to these same charges. I can only surmise that Mr. Jarvis' failure to get the prior grand juries to indict me was due to the fact that I was able to appear before those grand juries and present my exculpatory evidence.

As you know, the initial and first superceding indictments were issued by this grand jury, allowing Mr. Jarvis to bring me to trial for: 1) failing to turn over to the IRS money my workers earned while working for my company and, instead, turning over to my workers all of the money they earned while working for my company, and allowing each worker to decide what amount of tax he or she was legally liable to pay (identified as a felony under 26 USC 7202); and 2) the charge of applying to the IRS for a refund, on behalf of my workers, of moneys withheld by my company from the paychecks of my workers in the years 1997 through 1999 (identified as a felony under 18 USC 287).

As you may know, a trial was conducted on these charges last month. Just as with the two prior grand juries, the trial jury did not agree with Mr. Jarvis; a mistrial was declared because the jury could not reach a unanimous decision. Reportedly, the jurors voted 11 to 1 for acquittal.

Now, after all this time and following the mistrial, Mr. Jarvis is seeking a second superceding indictment, asking the grand jury: 1) to add a misdemeanor, charging me with failure to file a personal tax return (Form 1040) for the years 1997 through 2001 (identified not as a felony, but as a misdemeanor, under 26 USC 7203); and 2) to add more quarters to the time I turned my workers' earnings over to my workers rather than to the IRS (this relates to the charge under 7202).

With the utmost respect to you, and with the records, books and documents contained in and attached to this memo, I hope to convey to you, the grand jury, that during all the times relevant to Mr. Jarvis' charges against me, I acted in good faith, and responsibly, in reaching the decisions I reached.

With respect, I point your attention to the word "willful," which is included in both Section 7202 and Section 7203. According to the U.S. Supreme Court, in order for someone to be indicted and then convicted under 7202 and 7203, it has to be shown that the person charged with **willful** failure to turn over to the IRS the earning of his workers, and/or **willful** failure to file a tax return, did NOT act in good faith.<sup>1</sup> In *Cheek* the court held that a defendant is entitled to be **acquitted**, "if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief or misunderstanding is objectively reasonable."<sup>2</sup> In other words, even if the conclusions I reached about the internal revenue laws, and the action I took, after my good-faith, due diligence investigation (see below) were unreasonable (which has not been proven to be the case), I cannot be found guilty of any crime – this according to the Supreme Court, which reversed the willful failure to file conviction of Mr. Cheek, based on his good faith effort.

I apologize for the length of this memo, but under the circumstances and considering what I have already been put through and what is at stake I trust you will understand and will take the time to read and carefully consider the exculpatory information I am conveying. Please do not hesitate to ask questions, if necessary, of either myself, or Mr. Jarvis, in the presence of the other.

I believe you will agree, now that you have had a chance to hear from me, that I acted in good faith (the test the Supreme Court, in *Cheek*, mandated must be applied in cases such as mine), and that Mr. Jarvis should not be allowed to proceed with this enforcement action unless and until the IRS and the Department of Justice answer the questions I and thousands of other law abiding citizens, acting through the We The People Foundation for Constitutional Education, Inc. (see below), have presented to them.

On the strength of the information I am conveying to you, I respectfully request that you not only deny Mr. Jarvis' application for a second superceding indictment, but that you withdraw the initial and first superceding indictments.

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<sup>1</sup> See *Cheek v. U.S.*, 498 U.S. 192 (1991)

<sup>2</sup> See *Cheek v. U.S.*, 498 U.S. 192 at pg 202.

## Statement of the Facts: 1995 through 1998

1. In 1995, I decided to personally find an answer to a question my accountant could not answer.
2. In the course of my investigation into the internal revenue laws, I researched and studied a vast array of records, books and documents, and developed what is probably one of the most comprehensive private libraries on the Internal Revenue Code and its regulations.<sup>3</sup>
3. I was very disturbed by what I learned from my research of the Internal Revenue Laws and the related Code Sections, including the following:
  - a. I had been misled to believe that people had to supply me with a social security number before they could be allowed to work for me, which is clearly not true.<sup>4</sup>
  - b. I had been misled to believe that my workers were compelled to submit a federal W-4 withholding certificate in order to work for me, which is clearly not true.<sup>5</sup>
  - c. I had been misled to believe that neither my company, nor my workers could terminate a W-4 withholding certificate, which is clearly not true.<sup>6</sup>
  - d. I had been misled to believe that my workers fit the definition of “employee” under the internal revenue laws, which is clearly not true.<sup>7</sup>
  - e. I had been misled to believe that my company was a “withholding agent,” under the internal revenue code, which is clearly not true.<sup>8</sup>
  - f. I had been misled to believe that my personal earnings as well as the earnings of my workers were taxable under the internal revenue laws, which is clearly not true.<sup>9</sup>
  - g. I had been misled to believe that my company was required to make returns or statements of payments to my workers, which is clearly not true.<sup>10</sup>
  - h. I had been misled to believe that my workers were compelled to participate in the Social Security entitlement program, which is clearly not true.<sup>11</sup>
  - i. I had been misled to believe that the internal revenue laws define what is meant by “income” which is clearly not true.<sup>12</sup>

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<sup>3</sup> See the photos of my library, which is located in the break room at my plant, attached as Exhibit \_\_\_\_\_.

<sup>4</sup> See the March 18, 1999 letter from Charles Mullen, Director Office of Public Inquiries of Social Security Administration.

<sup>5</sup> See 31 CFR 215.2(n) (1), 215.6, 215.9 and 215.11. See also 26 USC 3402 (p)(3)(A).

<sup>6</sup> See 26 CFR 31.3402(p)-1(b)(2).

<sup>7</sup> See 26 USC 3401(c), 3121(d), and 3306 (i).

<sup>8</sup> See 26 USC 7701(a)16, 26 CFR 301.7701-16 and 26 USC 1441 through 1446, 6201, and 6301.

<sup>9</sup> See 26 CFR 1.863-1(c) and 26 CFR 1.861-1.

<sup>10</sup> See 26 USC 6401.

<sup>11</sup> See Railroad Retirement Board v. Alton Railroad Co., 295 U.S.330.

<sup>12</sup> See Eisner v. Macomber, 252 U.S. 189,206

- j. I had been misled to believe that the word “income” means a worker’s wages or earnings from his or her labor, instead of what the Supreme Court has consistently defined the word “income” to mean, which is “profit gained through the sale or conversion of capital assets”.<sup>13</sup>
  - k. I had been misled to believe that the IRS had legislative and territorial jurisdiction over my company and me, which is clearly not true.<sup>14</sup>
  - l. I learned that according to the federal Court of Appeals, filing an individual tax return is voluntary (not compelled)<sup>15</sup>.
4. Having learned all this, I repeatedly wrote to the IRS and to my elected representatives, to let them know what I had learned and to ask them if the results of my investigations and due diligence was incorrect, and if I really was required to withhold from the paychecks of my workers and if I really was liable to file a tax return and to pay the tax.<sup>16</sup> **I received no response.** Some of my letters may have been somewhat terse in tone (especially as time went on without any response from those I was contacting), but I felt I had been duped and brainwashed by my government and I was angry at that.
5. In 1997 I was in a quandary. After filing and paying the individual income tax since I was a boy in high school (not knowing why, but blindly doing so because I had been led to believe everyone was required to do so), I now had what I believed to be irrefutable evidence that my company was NOT required to withhold and I was NOT required to file an individual tax return – i.e., that the income tax was fraudulent in its origin and definitely illegal in its operation and enforcement – **and the government would not answer my questions or otherwise justify its behavior.**
6. I decided, based on my due diligence, coupled with the government’s failure to respond to my inquiries, that I would stop filing and paying the tax.
7. Between 1997 and 1999, I was deeply troubled by the fact that I was contributing to the fraud of the income tax by continuing to withhold earnings from the paychecks of my workers, even though I knew there was no law requiring me to do so. By the summer of 1999, I was deeply disturbed over the withholding issue. I knew I was forcing my workers to do something the

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<sup>13</sup> See *Stratton v. Howbert*, 231 U.S. 399,414; *Doyle v. Mitchell*, 247 U.S. 179,185; *So. Pacific v. Lowe* 247 U.S. 330; *Eisner v. Macomber*, 252 U.S. 189 and *Merchants Loan v. Smeitanka*, 255 U.S. 509. See also House Report No. 1337; Senate Report No. 1622; U.S. Code Congressional and Administrative News, 83<sup>rd</sup> Congress, 2<sup>nd</sup> Session, pages 4155 and 4802, respectively (1954).

<sup>14</sup> U.S. Constitution, Article I, Section 8, clause 17; *U.S. v. Lopez*, 514 U.S. 549 (1995), *Adams v. U.S.* 319 U.S. 312 (1943), and 40 U.S.C 255 (now 3111 and 3112).

<sup>15</sup> See *U.S. v. Conklin* WestLaw 504211, (10<sup>th</sup> Circuit, 1994), wherein the court held, “The [5<sup>th</sup> Amendment] protects against compelled testimonial communications...,” meaning filing a tax return is voluntary.

<sup>16</sup> See copies of the letters I wrote attached as Exhibit 16.

law did not require me, or them, to do. I also knew I was violating God's law.<sup>17</sup>

8. *Then, beginning in May of 1999, all that I had learned locally, in Bedford Texas, was being reinforced in a powerful way at the national level. My decision to stop withholding, on January 1, 2000, from the paychecks of my workers, was influenced by what happened in 1999, in Washington DC, which was all part of a nationwide process by thousands of People who were now officially and formally setting forth their grievances under the Petition Clause of the First Amendment to the Constitution of the United States of America, and seeking a response from the federal government to the exact same incongruities that I had unearthed! The process of Petitioning the government for Redress of Grievances relating to the operation of the income tax system was managed and led by the We The People Foundation for Constitutional Education, Inc., under the chairmanship of Robert L. Schulz. In 1999, I became a signatory to and supporter of the Petition for Redress of Grievances relating to the income tax system.*

#### Statement of the Facts: 1999

9. Accompanying this Memorandum #1 to the Grand Jury is Memorandum #2 to the Grand Jury. Memorandum #2 presents, in detail (complete with evidentiary documents, books and records), all the activities relating to the Petition for Redress of Grievances – that is, the **ongoing** attempt by the people of this country to obtain answers from their servant government to some very legitimate questions regarding the income tax system, and the **ongoing** refusal by the government to respond or to justify its behavior, except through bullying actions such as this proceeding.
10. I am distributing a copy of Memorandum #2 to each of the 23 members of this grand jury. There are 62 exhibits attached to Memorandum #2. For obvious reasons, I am providing to the Grand Jury only one full set of the 62 exhibits. However, for reasons explained below, I am providing each member of this Grand Jury with a copy of a few of those 62 exhibits: M, N, O, P, T and TT.
11. Again, the national Petition for Redress of Grievances relating to the income tax system got underway early in 1999. With it, all the conclusions I had reached based on the information I had unearthed was being reinforced, my decision to stop filing a tax return in 1997 was being reinforced and the

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<sup>17</sup> “Honor the Lord with thy substance, and with the first fruits of all thine increase.” Proverbs 3:9;  
“...and I will be a swift witness... against those that oppress the hireling in his wages...” Malachi 3:5;  
“Behold, the hire of the laborers who have reaped down your fields, which is of you kept back by fraud, crieth: and the cries of them which have reaped are entered into the ears of the Lord...” James 5:4.

decision I was coming to in 1999– that is, to stop withholding the earnings of my workers on January 1, 2000 - was also being reinforced.

12. Below, in this Memorandum #1, I present to the Grand Jury a brief description of the events that occurred in 1999, together with a copy of the evidentiary material for each member of the Grand Jury. Please note, these 1999 events are also discussed in Memorandum #2, but due to the fact that they occurred BEFORE (and influenced) my decision to stop withholding, they are particularly significant.

13. **The May 5, 1999 letter to Clinton, Hastert, Lott and Rossotti.**

On May 5, 1999, a process of petitioning the federal government for a Redress of Grievances relating to the federal income tax system was initiated by Robert Schulz in his capacity as Chairman of the We The People Foundation for Constitutional Education, Inc. (“WTP”). A very respectfully drawn letter was delivered to the IRS Commissioner Charles Rossotti, President Clinton, Senate Majority Leader Lott and Speaker Hastert. Enclosed with each letter were copies of three research reports, including the reports by Joseph Banister (a Certified Public Accountant who had recently been forced to resign from his position as a Special Agent in the Criminal Investigation Division of the IRS because he asked his superiors at the IRS for answers to questions he developed about the IRS’s authority to force people to file a tax return and to pay the income tax). The IRS refused to answer Mr. Banister’s questions or even discuss his concerns; Bill Benson, a former agent of the Illinois Department of Revenue who had obtained certified and notarized copies of all the official documents relating to the ratification of the 16<sup>th</sup> (Income Tax) Amendment to the U.S. Constitution, proving that the state legislators had violated their state constitutions in ratifying the income tax amendment to the federal constitution, and that fraud was committed by the Secretary of State in erroneously declaring that the amendment had been properly and legally ratified by  $\frac{3}{4}$  of the state legislatures; and Bill Conklin, a college professor who had recently obtained a decision from the 10<sup>th</sup> circuit Court of Appeals that held that filing a tax return was voluntary. WTP wrote that they were sponsoring an academic symposium on July 1<sup>st</sup> and 2<sup>nd</sup>, that the authors of these research reports would be there to present the methodology and conclusions of their research, and that "We respectfully request that you, as the elected heads of the Executive and Legislative branches, identify the people with the best legal minds to argue against these conclusions and have those people participate in the symposium." A copy of the May 5, 1999 letter is attached as [Exhibit M](#). Not one of the recipients of that letter bothered to respond – they did not even acknowledge receipt of the invitation!

14. **The June 4, 1999 letter to Clinton, Hastert, Lott and Rossotti.**

The Petition process continued with WTP's June 4, 1999 letter to IRS Commissioner Rossotti, and Messrs. Clinton, Lott, and Hastert with its reminder: "We continue to await word from you as to the identity of the knowledgeable people that will represent the federal government at the symposium and who will argue against the conclusions of Messrs. Banister, Benson and Conklin." A copy of the June 4, 1999 letter is attached as [Exhibit N](#). Not one of the recipients of that letter bothered to respond.

15. **The C-Span broadcast on July 2, 1999.**

The symposium was held as planned. **C-SPAN broadcast the event live on national television and rebroadcast the event 4 or 5 times in the following days.** The broadcast included the presentations by Messrs. Banister, Benson, Conklin and by Lowell Becraft (the attorney from Huntsville, Alabama). Messrs. Rossotti, Clinton, Lott, and Hastert not only decided not to identify anyone to participate in the discussions to contradict the authors if their presentations were incorrect, they decided not to even acknowledge their receipt of the invitations. A copy of the C-SPAN tape is attached as [Exhibit O](#).

As a result of the government's failure to appear at the July symposium, the question arose from the audience, live on C-SPAN, "What does a free people do when they have evidence that the government may be abusing its power and will not justify its behavior?" Schulz, who was moderating the event, answered the question on national television. He said that the People would meet again, in November 1999 at the National Press Club, that WTP would again invite the government to send its experts to address the evidence and answer the questions, and that if the government again ignored the People's Petition for Redress the People would then decide on the appropriate next step that could be taken by the People to deal with the seemingly fraudulent and illegal operation of the income tax system. It was said that WTP would try again, at that time and place, to get the government to answer the questions that had been raised by the various tax law researchers.

16. **The October 13, 1999 letter to Clinton, Hastert, Lott and Rossotti.**

The process of the People's Petition for Redress of Grievances relating to the federal income tax continued with an October 13, 1999 letter to Messrs. Rossotti, Clinton, Hastert, and Lott, wherein Schulz wrote that in light of the preponderance of the evidence and the absence of any response or rebuttal arguments by the government, another conference had been scheduled for November 13, 1999 for the purpose of preparing a "Remonstrance," and that "We would welcome any written statement from any official from the political branches of the government." A copy of the

October 13, 1999 letter is attached as [Exhibit P](#). Not one of the recipients of the October 13th letter bothered to respond – they did not even acknowledge receipt of the letter.

17. **The Remonstrance (The Initial Petition for Redress of Grievances).**

On November 13, 1999, scores of people from sixteen states assembled at the National Press Club in DC. They decided on the appropriate next step to take in the process of Petitioning the government for a Redress of Grievances regarding the federal income tax system. They put the finishing touches to a written Petition for Redress of Grievances, which they called a "Remonstrance" – a strongly worded statement of grievances to be submitted to the government. Those present at the conference signed the Remonstrance and decided that it would be served on the leaders of all three branches of the federal government on April 13, 2000. A copy of the Remonstrance is attached as [Exhibit T](#). Note: The Petition for Redress (Remonstrance) was served on Clinton, Hastert and Lott on April 13, 2000. The meetings were videotaped. Promises were made for the experts from the IRS, DOJ, House Ways and Means and Senate Finance to attend a meeting in June, 2000, to answer the People's questions about the fraudulent origin and illegal operation and enforcement of the income tax system. However, those promises were broken.

## THE CITIZENS' TRUTH-IN-TAXATION HEARING

18. A Truth-in-Taxation hearing occurred on February 22-23, 2002, two years after I stopped withholding. However, at the hearing, tax attorneys, a constitutional attorney, CPAs, three former IRS agents and two tax law researchers testified under oath that the income tax is fraudulent in its origin and illegal in its operation and enforcement. Most of the evidence presented by these credentialed tax professionals (court decisions, statutes, regulations, official reports, etc.) was known to me at the time I stopped filing in 1997 and stopped withholding in January, 2000. See [Exhibit TT](#), which contains a CD-ROM copy of the full record of the Citizens' Truth-In-Taxation hearing, including a certified transcript of the hearing and hundreds of documents and thousands of pages of evidence (all cited by the witnesses as they answered questions under oath – **the same questions the government to this day has refused to answer!**). NOTE: While I am distributing 23 copies of the CD-ROMs for the Grand Jury members, I am also distributing 15 copies of a VHS recording of the Citizens' Truth-In-Taxation Hearing to the Grand Jury for the benefit of those members who do not have access to a computer or who otherwise would prefer to view a taped recording of the hearing.

## CONCLUSION

I believe you will agree, now that you have had a chance to hear from me, that I acted in good faith and that Mr. Jarvis and the IRS should not be allowed to proceed with their arbitrary attempt to suppress and punish me simply because

they believe I am dangerous to their power. Please, do not allow the government to proceed with this inquisition, unless and until the IRS and the Department of Justice answer the questions I and thousands of other law abiding citizens have been trying to get them to answer.

On the strength of the information I have conveyed to you, I respectfully request that you not only deny Mr. Jarvis' application for a second superceding indictment, but that you withdraw the initial and first superceding indictments.

To have been found guilty during the recently concluded trial (which ended in a hung jury) of the charges Mr. Jarvis has brought against me, Mr. Jarvis needed to prove to the jury that I acted recklessly and in bad faith – i.e., that I am simply anti-tax and a “tax protestor” who just didn't want to pay taxes. Mr. Jarvis was not able to convince the jury of that because it is not true. The truth is, I am a law-abiding citizen, who has always paid taxes that I was legally required to pay. I just don't like the government reaching into my pocket or the pockets of the hard working men and women who work for me to force us to pay a tax on our labor that we are not required to pay, and when I question the government about these violations of our unalienable and constitutional rights, my inquiries are answered with repeated injuries.

Thank you for your consideration.