

ORIGINAL

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

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION
2009 SEP 18 PM 4:13
CLERK OF COURT

United States of America,

Plaintiff,

v.

Richard M. Simkanin

Defendant.

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

**RULE 16 REQUESTS FOR DISCLOSURE AND
INSPECTION OF DOCUMENTS - PART II**

DEFENDANT RICHARD M. SIMKANIN BY AND THROUGH HIS ATTORNEY OF RECORD Arch C. McColl III, requests disclosure and inspection of all records or documents specified herein pursuant to Federal Rules of Criminal Procedure 16 et. seq.

1. FRCP Rule 16(a) Government's Disclosure (1) Information Subject to Disclosure (A) Defendant's Oral Statement. Defendant respectfully requests any evidence of oral statements made to any government employees, investigators, law enforcement and any witnesses with or without a grant of immunity, the government intends to call in their case-in-chief to whom defendant may have made an oral statement "before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial." FRCP 16(a)(1)(A)
2. FRCP Rule 16 (a)(1)(B) "Defendant's Written or Recorded Statement" including but not limited to (iii) the defendant's recorded testimony before a grand jury relating to the charged offense." FRCP 16(a)(1)(b)(iii)

3. FRCP Rule 16 (a)(1)(C) Organizational Defendant. Statements from any and all persons whom the government contends were associated with the defendant as part of an organization (corporation, business, or otherwise), “ who the government contends that the person making the statement: (i) was legally able to bind the defendant regarding the subject of the statement because of that person’s position as the defendant’s director, officer, employee, or agent; or (ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person’s position as the defendant’s director, officer, employee, or agent.” FRCP 16(a)(1)(C)(i & ii) To that end, Defendant would respectfully request that portion of the grand jury testimony of any and all persons who testified in the above-referenced capacity as a “director, officer, employee or agent”.
4. FRCP Rule 16(a)(1)(D) Defendant’s Prior Record.
5. FRCP Rule 16(a)(1)(E) Documents and Objects. Defendant appreciates the government’s “open discovery” policy and production of documents regarding the government’s case in chief. Additionally, Defendant has been advised, “the government does intend to introduce evidence pursuant to Rule 404(b) of the Federal Rules of Evidence. In this regard, the government intends to offer evidence to establish that the defendant has not filed a personal tax return for any year since 1991; that the defendant committed the same conduct for tax year’s 1994 and 1995 that is alleged in the indictment, and that the defendant was the subject of a civil action by the IRS. In the event that the material for these years of 1994 and 1995 rival those of 1996 et. seq., defendant may be respectfully requesting a continuance to complete this additional discovery.
6. FRCP Rule 16(a)(1)(F) Reports of Examinations and Tests. Defendant appreciates and acknowledges, “...The government has not conducted any scientific tests, physical

examination or mental examination.”

7. FRCP Rule 16(a)(1)(G) Expert Witnesses. Defendant respectfully requests whether the government plans to call Special Agent Allan McGowan as an expert witness? If so, then defendant requests copies of any statements Mr. McGowan may have made regarding this case within the purview of this Rule, specifically grand jury testimony. Defendant also respectfully requests whether the government plans to call any employee, accountant, bookkeeper or outside consultant or independent contractor, or other entity as an expert on the management and control, if any, of any organization? If so, then defendant requests copies of any statements those person(s) may have made regarding this case within the purview of this Rule, specifically grand jury testimony.
8. FRCP Rule 16 (b) Defendant’s Disclosure. Defendant intends to also present (1) Information Subject to Disclosure including (A) Documents and Objects...(B) Reports of Examinations and Tests...(C) Expert Witnesses...when ...the government complies ...and when ...the government requests” FRCP 16(b)(1)(A)(B)(C)
9. FRCP Rule 16(c) Continuing Duty to Disclose. Defendant respectfully requests that the government promptly provide any material at any time that “it discovers additional evidence or material before or during trial.” FRCP 16(c). Defendant will make every effort to do likewise.
10. With respect the Jencks Act 18 U.S.C. 3500, defendant hereby request that that material be made available no later than seven business days before trial.
11. With respect to Giglio-v-United States, 405 U.S. 150; 92 S.Ct. 763 (1972) defendant hereby request any evidence of agreements or promises, or any reason for bias of any witness.
12. Permit defendant to inspect and copy or photograph all records or documents concerning,

as “document” and “concerning” are defined in Exhibit A that are maintained in the Privacy Act System of Records for Richard M. Simkanin within the U. S. Department of the Treasury that would purport to allege that the defendant has a *tax liability* to the federal government and/or showing that the defendant is required to file any *form* with the federal government.

13. Permit defendant to inspect and copy or photograph the Form 9131 that was required to be transmitted to the Department of Justice prior to the initiation of the Grand Jury investigation in compliance with Tax Division Directive No. 96; Delegation of Authority to Authorize Grand Jury Investigations, as that directive and requirement is specifically described and explained in the United States Attorney’s Manual Title 6 Sections 120 and 121 collectively, to authorize and empower a grand jury investigation of a specific tax crime authorized to be prosecuted by the Tax Division of the United States Attorneys Office.
14. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, that would show the direct referral of the to the United States Attorney was for one of the matters specifically listed in USAM CRM 6-4.23, to wit:

6-4.243 Review of Direct Referral Matters

The direct referral program is designed to promote the rapid prosecution of matters that constitute an imminent drain on the U.S. Treasury. Because immediate action is often required, IRS is authorized to refer the following categories of matters directly to the United States Attorney for prosecution:

- A. Excise taxes -- all 26 U.S.C. and 18 U.S.C. offenses involving taxes imposed by Subtitles C, D and E, except Chapter 24;
- B. Multiple filings of false and fictitious returns claiming refunds (18 U.S.C. Secs. 286 and 287) -- all offenses wherein taxpayer files two or more returns for a single tax year claiming false refunds, excluding return preparers who falsify returns to claim refunds and cases involving false or fictitious claims for refund which are

- submitted to the Internal Revenue Service through the Electronic Filing (ELF) program.
- C. Trust fund matters (26 U.S.C. Secs. 7215 and 7512) -- offenses involving alleged violations of the trust fund laws;
 - D. "Ten percenter" matters (26 U.S.C. Sec. 7206(2)) -- when arrest occurs contemporaneously with the offense;
 - E. Returns (IRS Form 8300) relating to cash received in a trade or business pursuant to 26 U.S.C. Sec. 6050I (26 U.S.C. Secs. 7203 and 7206 only). *See* DOJ Tax Division Directive No. 87-61 (Feb. 27, 1987).

Please include all documents that show the CATEGORY of the alleged criminal activity that was assigned to the defendant.

15. Permit defendant to inspect and copy or photograph any and all documents concerning, as "document" and "concerning" are defined in Exhibit A, that would show that approval was secured by the Assistant Attorney General, Tax Division to present the second (2002), and then a third (2003) grand jury. *See* USAM CRM 6-245 (B) **Grand Jury No Bill**. ("Once a grand jury returns a no bill or otherwise acts on the merits in declining to return an indictment, the same matter (i.e., same transaction or event and the same putative defendant) must not be presented to another grand jury or represented to the same grand jury without first securing the approval of the Assistant Attorney General, Tax Division. Ordinarily such approval will not be given in the absence of additional or newly discovered evidence or a clear circumstance of a miscarriage of justice.") Please include in the documents the "newly discovered evidence" or "clear circumstance of miscarriage of justice" that it was argued warranted presentation to a second and third grand jury in the *forum shopping* of the case.

16. Permit defendant to inspect and copy or photograph any and all documents concerning, as "document" and "concerning" are defined in Exhibit A, that is the *analysis of the investigation* by the grand jury to the Tax Division, United States Attorney as required by USAM CRM 6-4.242 **Recommendation Following a Grand Jury Investigation**. ("At

the conclusion of a grand jury investigation authorized by or on behalf of the Tax Division, the United States Attorney conducting the investigation should submit an analysis of the investigation to the Tax Division and recommend either that charges be brought or prosecution be declined. If nontax charges are recommended, the analysis must explain how these nontax charges relate to the tax charges. A copy of the proposed indictment or information should accompany the analysis. In addition to the United States Attorney's analysis, all relevant exhibits generated during the course of the grand jury investigation, the transcript of the proceedings, and the SAR must be submitted.”) Please include documents that show that the analysis, all relevant exhibits and the transcript of the proceeding were sent to Tax Division in Washington D.C. between the time the defendant was dismissed without allowing his testimony on June 19, 2003 and the time he was *arrested* at 8 AM on June 20, 2003.

17. Permit defendant to inspect and copy or photograph the *Acceptance of Jurisdiction* pursuant to 40 USC § 255, as mandated by the U. S. Supreme Court in Adams et al. v. United States, 319 U.S. 312 (1943). In that case federal jurisdiction was barred in a criminal case arising from an act in a federal fort committed by a soldier during wartime on land to which the federal government had taken title. The U. S. Supreme Court held that federal jurisdiction over the location where the alleged crime was committed was determined NOT to have been *accepted* by the U. S. Attorney General to transfer jurisdiction to the federal government pursuant to the mandate of 40 USC § 255. *See also*, U. S. Attorney’s Manual 9-664.
18. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, wherein the content demonstrates that it was determined that the defendant’s activities were located in a federal area subject

to the prosecutorial jurisdiction of the federal government as those places are specifically listed in 18 USC § 7; and that jurisdiction has been accepted as required by 40 USC § 255, or, that it has been determined that alleged criminal conduct falls within the proscriptions of prosecutions allowed by the U. S. Attorney as clearly described in the U. S. Attorney Manual, Title 9, CRM 662 (interstate commerce, mail, federal insurance), and as those limitations are defined and explained by CRM 663, 664, and 665.

19. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, wherein the content demonstrates that it was determined that the Department of the Treasury and/or the Department of Justice was authorized by Congress to exercise the authority of its office outside the District of Columbia in exception to the statutory injunction applied at 4 USC § 72, especially for the prosecution of any alleged tax law violation that is specifically excluded from the list of crimes that can be prosecuted by the U. S. Attorney outside the strictly defined and limited territorial jurisdiction of the federal government as that limitation is defined in the U. S. Attorney Manual Title 9 CRM 662, 663, 664, 665.

20. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, relative to the prosecution against the defendant wherein the content demonstrates a determination that an entity known as the “*United States of America*”, 48 USC §§ 874, 1406f, has standing to bring a criminal prosecution against the defendant. Please include any and all documents with references to any law or statute that allows for such an entity to have standing to initiate a criminal prosecution or for the Department of Justice of the federal government to act on behalf of such an entity to initiate a criminal prosecution of any kind.

21. Disclose to the defendant a written summary of testimony the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case in chief at trial, reasonably describing the witnesses' opinions, the bases and the reasons therefore, and the witnesses' qualifications, as required pursuant to Fed. R. Crim. Pro. Rule 16 (a) (1) (E).

22. Permit defendant to inspect and copy or photograph all documents concerning, as "document" and "concerning" are defined in Exhibit A, intended for use by the government as evidence in chief at trial or that was provided to the grand jury that proves that the defendant:

- a) KNEW he had a duty to collect and pay over a F.I.C.A. tax;
- b) Communicated with the IRS that he was discontinuing collecting or withholding from the wage of his employees;
- c) KNEW that the funds sought via the filing of Amended Forms to the IRS were filed with knowledge that the defendant had was making a "*false claim*" as that term is specifically defined in the False Claim Act codified at 31 USC § 3729 and referenced in 18 USC § 287.

23. Permit defendant to inspect and copy or photograph all documents concerning, as "document" and "concerning" are defined in Exhibit A, intended for use by the government as evidence in chief at trial or that were provided to the grand jury that provide any lawful basis or certified assessment for any alleged tax liability claimed to be owed by any of the employees referenced in the indictment. These records/documents would include all documents that determined the lawful basis for all assessments, computations and the actual basis for the assessments and computations. Also include for

inspection and copying the proof of service to Defendant Simkanin of any and all certified assessments of any tax liability of these employees.

24. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A that are the responsive documents provided by the government as an explanation to the defendant for denying his request for refund as provided for in § 3505 in IRS Restructuring Reform Act of 1998.

25. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A wherein the *specie currency* (1.10.1 Federal Constitution) of the FUNDS SOUGHT via F.I.C.A., or Medicare Taxes, from wages of the employees referenced in the indictment, had been *specifically determined* to be the FORM of the FUNDS that the defendant was required by the IRC to collect. 31 USC § 5118.

26. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A of the “employees” referenced in the indictment, that are *records* required to be maintained by the Department of the Treasury or any of its agencies pursuant to the Privacy Act of 1974 that are “necessary and relevant to accomplish a purpose required to be accomplished by the Department of the Treasury pursuant to statute or executive order of the president,” 5 USC 552a(e)(1), specifically with regard to any *tax liability* and/or requirement to file a *form* to the Department of the Treasury. Please include the *records* that show the Code Section of the specific excise tax (source of taxable activity) in Subchapter D or E of the IRC that *imposes a tax* on each individual employee. Please include the *records* that show the Form Number of the *specific form* that it has been determined that “employees” are required to file.

27. With regard to the Request in ¶ 24 above, please include records specifying the statute or executive order as mandated by 5 USC 552a(e)(5) that demonstrates and proves that NOTICE was served upon the defendant and the *employees referenced in the indictment* that the Department of the Treasury had been determined a specific Statute or Executive Order required them to pay F.I.C.A taxes and required the defendant to withhold F.I.C.A taxes. Please include proof of service of each of these *determination documents (Privacy Act Records)* on the defendant and the *employees referenced in the indictment*.
28. With regard to the Request in ¶ 25 above please include all records that would be the determination documents showing **what tax** was to be paid. Please include all *records* that show **what code section** of the Internal Revenue Code of 1986 imposes the payment of the **specific tax** to be paid by the defendant per the mandate of United States v. Menk, 200 F. Supp. 784, (S.D. Ind. 1966). These records should include proof of service of each of these *determination documents* on the defendant. *See also Tyler v US*, 397 F2d 565, (§7203 was used to convict the defendant of willful failure to file excise tax returns required by §4401 and §4411); US v Stavros, 597 F2d 108; Edwards v US, 321 F2d 324; US v Sams, 340 F2d 1014; Scaglione v US, 396 F2d 219; US v Magliano, 336 F2d 817; Rutherford v US, 264 F2d 180; US v Gaydos, 310 F2d 833; US v Sette, 334 F2d 267; US v Simon, 241 F2d 308; US v Wilson, 214 FSUP 629; US v Willoz, 449 F2d 1321, (§7206 was relied upon for a conviction of willfully making a false statement on a wagering form required by §4412 and §4401).
29. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A being *records* of the defendant that are required to be maintained pursuant to the Privacy Act of 1974 that made the determination about the defendant with such accuracy, relevance, timeliness, and

completeness as was reasonably necessary to insure fairness to the defendant that he was required by statute or executive order to file a “**Form**” that has been promulgated by the Office of Management and Budget (OMB) pursuant to the SF-83 request filed with the OMB by the Department of the Treasury as mandated by the Paperwork Reduction Act of 1980. These records should contain information describing the specific regulation listed in 26 CFR 602.101 that was *clearly applicable to the defendant* showing the requirement of the defendant to provide a collection of specific information on a *specific form* promulgated by the OMB. The *Form* should be an OMB *APPROVED* form that as published in the Federal Register. Please include *proof* that the Form was APPROVED by the OMB pursuant to the Paperwork Reduction Act, and *proof* that the Form was published in the Federal Register on a specific date and time.

30. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A that are Privacy Act *records* of the “employees” referenced in the indictment that are representative of any account, transcript of account or other computer records, or records of any kind allegedly showing tax liability for the “employees” referenced in the indictment or any “*taxpayer entity*” created by the IRS using the first four letters of the last name of the “employee” in conjunction with the Social Security Number of the “employee.” These records would include any “Entity Modules”, “Entity Specific Transcripts” or any and all other computer records maintained on any legal “entity” alleged to be associated with the defendant for which the defendant has been determined to be liable for debts [F.I.C.A., Medical Taxes] owed by the legal entity, including but not limited to all documents known as **Individual Master File (IMF) for years 1995 to the present for the “employees” referenced in the indictment.** Please include all records showing that the “employees” referenced in the

indictment were noticed of the *creation of the legal entity* and the determination documents maintained by the IRS showing that the “employees” referenced in the indictment are individually liable for any amounts alleged to be owed by the *legal entity*. See IRM 30(55)2(1)(b)(c) IMF Operations Manual and IRS Special Agents Handbook 334.112.

31. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A that show that any activity in which the defendant is involved or associated is in any way effectively connected to or licensed by the United States government or falls under any activity known to be within the jurisdiction of the federal government.
32. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A that show that the Congress of the United States has enacted any law that is authorized to be cited as 26 USC in direct conflict with the clear language of 1 USC § 204 that only authorizes titles passed into law by Congress to be cited as “U.S.C.” and specifically states in the NOTES to 1 USC § 204 that the separate code (administrative) that was enacted as the Internal Revenue Code of 1954 is to be cited as IRC. Please include all documents that would have been known by the defendant to exist that imposed a duty upon him by a Title that has not been enacted into law.
33. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A showing that the Department of the Treasury determined that the defendant was a “**person**” who could be prosecuted for an IRC § 7202 [53 Stat 145 (b)] violation clearly defined and limited to IRC § 7343 [53 Stat 145 (c)] defined as the “officer or employee of a corporation, or a member or

employee of a partnership, who as such officer member or employee is under a DUTY to **withhold** as specified in 53 Stat 143, the Statute at Large parent of IRC § 3402. Please include all documents showing that the defendant was served with notice of such status as **withholding agent** in any capacity as corporate or partnership officers, employees or members who had a duty to perform a specific act required by the SECTIONS in Subchapter C, 53 Stat Sections 103 - 373.

34. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A that show the IRS has determined that the defendant is a “**Withholding Agent**” as that term is specifically defined in IRC § 7701(16) or 53 Stat 3797 (16).
35. Permit defendant to inspect and copy or photograph all documents concerning, as “document” and “concerning” are defined in Exhibit A that show that the defendant has “employees” from which he was required to withhold for activities specified in IRC §§ 1441, 1442 or 1443 or 1461.
36. Permit defendant to inspect the formal Delegation of Authority Order for Allan G. McGowan, beginning with the President, through the Secretary of the Treasury, linking all officials in the chain of command between them and the position held by Special Agent Allan G. McGowan.
37. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A that provide the **names** and the respective social security numbers of the employees referenced in the indictment.
38. With regard to the individuals identified in Request # 35, permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A that would show that any of those employees is *required* by the

Social Security Act to have a social security number to live or work in Texas. Please include the specific section of the Social Security Act that makes it mandatory to have a social security number to live and work in Texas.

39. With regard to the individuals identified in Request # 35, permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A Determination document that show that the employer of any of these employees is required to have F.I.C.A. taxes, medical taxes or income taxes withheld by their employer
40. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A confirming that the Secretary of Treasury, or his delegate, conveyed to the OMB, or any other governmental office, that prove the Form 1040 or the Form 941 has been published in the Federal Register. *See* 26 CFR 601.702 (“**Effect of Failure to Publish** . . . any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or effect a person’s rights.”); *U.S. v. Reinis* 794 F. 2d 506 (9th Cir. 1986) (reversed a district court conviction for failure of the defendant to complete a "currency transaction reporting form" (IRS Form 4789) on the finding that there was no requirement to complete the form where the form was never promulgated pursuant to the rulemaking requirements of the Administrative Procedure Act. 5 U.S.C.A. § 553"); *U.S. v. \$200,000*, 590 F. Supp. 866 (1984) ([The] Currency Reporting form (IRS Form 4790) claimant failed to fill out, was void and invalid. The Currency Reporting Form as a 'rule' under Administrative Procedures Act, should have been published in Federal Register and should have been subject to APA notice and comment procedures, and since Form was not constructively published sufficiently to satisfy APA procedural requirements, Form

was a nullity with respect to Claimant . . . and the Form is invalid unless and until it is properly published in the Federal Register pursuant to APA requirements. For agency requirement to be considered a valid 'rule,' three conditions must be satisfied: 'rule' must be within agency's granted power, it must be issued pursuant to proper administrative procedures and it must be reasonable as a matter of due process. 5 U.S.C.A. 551; U.S.C.A. Const. Amend. 5."

41. Permit defendant to inspect and copy or photograph any and all documents concerning, as "document" and "concerning" are defined in Exhibit A, that are the underlying work sheets showing how the amounts arrived at in the indictment were calculated and copies of all the documents relied on for those calculations so that the math and the calculations can be checked by the defendant's experts.
42. Permit defendant to inspect and copy or photograph any and all documents concerning, as "document" and "concerning" are defined in Exhibit A, as regard to Counts 1 through 12, provide the documents that show compliance with the *implementing* federal regulation in the Code of Federal Regulations that is *inextricably intertwined* with 26 U.S.C § 7202 and is promulgated to thereunder showing Government compliance with those applicable federal regulations. *See* Administrative Procedures Act 5 USC § 552; United States v. Mersky, 361 U.S. 431, ("The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other."); California Banker's v. Shultz, 416 U.S. 21, 26, ("We think it is important to note that the Act's civil and criminal penalties attach only upon violation of the regulations promulgated by the Secretary [of the Treasury]; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone.)

43. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, with regard to Counts 13 through 27, provide the notice that was sent to Richard Simkanin denying his request for a return of his funds.
44. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, showing Mr. Simkanin was given notice of his right to appeal that above stated denial by the Government to the U.S. Tax Court in Washington, D.C., and that Mr. Simkanin had a period of two (2) years to perfect that appeal.
45. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, with showing that Mr. Simkanin paid all the *funds* in issue in Counts 13 through 27;
46. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, referred to in the indictment as it relates to Counts 1 through 12, namely, *a copy of § 3402, entitled “Requirement of Withholding.”*
47. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, that is an official publication of the IRS that explains § 3402 entitled *“Requirement of Withholding.”*
48. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, all the Government forms specified in the pamphlet that explains § 3402 entitled *“Requirement of Withholding.”*
49. Permit defendant to inspect and copy or photograph any and all documents concerning, as “document” and “concerning” are defined in Exhibit A, sent to Mr. Simkanin that explain

to him his duty to collect and pay over to the Internal Revenue Service the Federal Income taxes, Medicare taxes and Federal Insurance Contributions Act taxes, in accordance with § 3402 entitled "Requirement of Withholding."


50. Permit defendant to inspect and copy or photograph any and all documents concerning, as "document" and "concerning" are defined in Exhibit A, that provide official proof that Robert Rubin, the Secretary of the Treasury, signed the Oath as Secretary of the Treasury and that Lloyd Bentsen signed the Oath as Secretary of the Treasury. It appears, based on the *Response* to the FOIA request filed on this subject, that from 1993 until late 1999 when Lawrence Summers replaced Robert Rubin as Secretary of the State, there was no legal authority for the collection of any federal tax because neither Secretary of the Treasury had signed an Oath of Office. The Oath of Office is a legal predicate to the collection of a tax, § 6301, that *only* the Secretary of Treasury is authorized to do.

51. All disclosures, documents or otherwise, are requested to be:

- a) Base-labeled; and
- b) Indexed by Response to the Number of the request as per Federal Rules of Document Production and produced in such a manner as to allow Defendant Simkanin to know exactly what document will be used in what manner to prove the government's case at trial.

Wherefore defendant respectfully requests that said discovery requests, pursuant to the authority of Fed. R. Crim. Pro. 16 be produced by the government.


Respectfully submitted,



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214-979-0999

CERTIFICATE OF CONFERENCE

I, ARCH C. McCOLL, III, do hereby certify that on Wednesday, September 17, 2003, undersigned Counsel had a face-to-face meeting with Mr. David Jarvis regarding this motion and the issues were discussed in full with Mr. Jarvis, the Assistant U.S. Attorney for the Northern District of Texas, Fort Worth Division, Fort Worth, Texas who (agreed) (disagreed) (had no objection) (took no position) regarding this motion.



ARCH C. McCOLL, III

CERTIFICATE OF SERVICE

I, ARCH C. McCOLL, III do hereby certify that on the 18th day of September, 2003, a true and correct copy of the above instrument has been sent by (facsimile-transmitted) (hand-delivered) (mailed by U.S. Mail) (overnighted) to Mr. David Jarvis, the Assistant U.S. Attorney for the Northern District of Texas, For Worth Division, Fort Worth, Texas, 801 Cherry Street, Unit 4, Burnett Plaza, Ste. 1700, Fort Worth, Texas 76102.



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____.

JUDGE PRESIDING