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

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.  
. 4:03-CR-188-A  
VS. .  
. .  
RICHARD MICHAEL SIMKANIN . January 5, 2004  
. 9:05 a.m.  
. . . . .

TRANSCRIPT OF PROCEEDINGS  
(Arraignment to Superseding Indictment and Docket Call)  
BEFORE THE HONORABLE JOHN H. MCBRYDE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: Mr. David L. Jarvis  
Assistant United States Attorney  
801 Cherry Street, Suite 1700  
Fort Worth, Texas 76102  
(817) 252-5200  
  
Mr. Robert A. Kemins  
U.S. Department of Justice  
717 North Harwood, Suite 400  
Dallas, Texas 75201  
(214) 880-9781  
  
For Defendant Simkanin: Mr. Arch C. McColl, III  
McColl & McColloch  
1601 Elm Street, Suite 2000  
Dallas, Texas 75201-4761  
(214) 979-0999  
  
Official Court Reporter: Eileen M. Brewer  
424 United States Courthouse  
501 West Tenth Street  
Fort Worth, Texas 76102-3637  
(817) 850-6661

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 PROCEEDINGS,

2 THE COURT: Okay. I'm next calling for arraignment  
3 on a second superseding indictment No. 4:03-CR-188-A, United  
4 States of America versus Richard Michael Simkanin. Mr. Jarvis  
5 is here for the government. Mr. McColl is here for the  
6 defendant.

7 State your full name for the record, Mr. Simkanin.

8 THE DEFENDANT: Richard Simkanin.

9 THE COURT: Is it Richard Michael Simkanin?

10 THE DEFENDANT: Richard Michael Simkanin.

11 THE COURT: Okay. Have you received a copy of the  
12 superseding indictment that was filed in this case on December  
13 17, 2003?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you read that and do you understand  
16 exactly what it charges you with?

17 THE DEFENDANT: Yes.

18 THE COURT: According to the information I have here,  
19 Counts 1 through 12 charge you with the offense of -- each  
20 charges you with the offense of willful failure to collect,  
21 account for, and pay over taxes due. Counts 13 through 27 each  
22 charges you with false claim against the United States, and  
23 Counts 28 through 30 each charges you with failure to file an  
24 individual income tax return. Do you understand that?

25 THE DEFENDANT: Yes.

U.S. DISTRICT COURT

1           THE COURT: Okay. Unless there's a waiver of the  
2 reading of the second superseding indictment, I'll ask that it  
3 be read aloud at this time.

4           (No response.)

5           THE COURT: Okay. Go ahead and read it.

6           MR. JARVIS: Indictment. The grand charges: At all  
7 times material to the indictment: Introduction. One. The  
8 Internal Revenue Code requires employers to pay the United  
9 States the employer's share of Federal Insurance Contribution  
10 Act taxes, FICA or social security taxes, and Medicare taxes  
11 owing on wages paid to employees.

12          Two. The Internal Revenue Code also requires employers to  
13 withhold from the wages of their employees, the employees'  
14 share of FICA taxes, Medicare taxes, and income taxes, to  
15 account for those taxes, and to pay the withheld amounts over  
16 to the United States.

17          Three. A person is responsible for collecting, accounting  
18 for, and paying over the employees' share of FICA, Medicare,  
19 and income taxes if he has the authority to exercise  
20 significant control over the employer's financial affairs,  
21 regardless of whether the individual exercised such control in  
22 fact.

23          Four. A person willfully violates his duty to collect,  
24 account for, and pay over FICA, Medicare, and income taxes if  
25 he knew of the duty and voluntarily and intentionally violated

1 that duty.

2           Five. On or about April 5, 1982, Arrow Custom Plastics,  
3 Inc., Arrow, was incorporated in the State of Texas, with its  
4 principal place of business in Bedford, Texas. From April of  
5 1982 when the company was formed, through and including the  
6 dates included in this indictment, Arrow was engaged in the  
7 business of the production of customized plastic molds for  
8 various manufacturers. At the time of incorporation, through  
9 and including the dates included in this indictment, Richard  
10 Michael Simkanin, Simkanin or the defendant, served in the  
11 capacity of president and chief executive officer of Arrow.

12           Six. From the date of Arrow's incorporation through  
13 approximately September 2001, Simkanin was the sole shareholder  
14 of Arrow Custom Plastics, Inc. Sometime in August of 2001,  
15 Simkanin was informed by the government that he must produce  
16 Arrow's corporate documents. Shortly after receiving notice to  
17 produce these corporate documents, in September of 2001  
18 Simkanin caused the dissolution of Arrow Custom Plastics, Inc.  
19 From about September 2001 through the dates included in this  
20 indictment, Simkanin continued to operate and control the  
21 business as a sole proprietorship under the name of Arrow  
22 Custom Plastics (Arrow).

23           Seven. Simkanin had the authority to exercise significant  
24 control over the financial affairs of Arrow. This fact made  
25 Simkanin responsible for collecting FICA, Medicare, and income

1 taxes from the wages of Arrow employees, accounting for those  
2 taxes, and paying those taxes over to the United States  
3 Treasury (through the IRS).

4       Eight. Prior to December 1999, Simkanin caused Arrow to  
5 withhold, account for, and pay over FICA, Medicare, and income  
6 taxes from the wages of Arrow employees.

7       Nine. In or about December 1999, and again in or about  
8 June of 2000, Simkanin called meetings for Arrow employees and  
9 informed them that Arrow would no longer withhold taxes from  
10 employee paychecks. Simkanin also encouraged employees to file  
11 amended tax returns and request refunds of taxes employees had  
12 previously paid.

13       Ten. Beginning sometime in or about late 1999 or shortly  
14 thereafter, Simkanin instructed Arrow's bookkeeper to no longer  
15 collect, account for, and pay over taxes from the wages of  
16 Arrow employees. On or about November 5, 1999, Simkanin told  
17 Arrow's accounting firm that effective January 1st, 2000, Arrow  
18 was no longer going to withhold taxes from the wages of Arrow's  
19 employees. On or about November 5, 1999, Arrow's accounting  
20 firm advised Simkanin against this course of action and sent  
21 Simkanin a copy of Section 3402 entitled "Requirement of  
22 Withholding." As a result of Simkanin's decision to not  
23 withhold taxes from January 1st, 2000, through the present,  
24 Simkanin was able to retain \$175,032 in taxes that Simkanin was  
25 obligated to pay as the employer's share of the taxes due.

1           Eleven. During the period beginning at least 1997 through  
2 the present, Simkanin took several steps to demonstrate  
3 Simkanin did not consider himself subject to the jurisdiction  
4 of the laws of the United States and the State of Texas.  
5 During this period, Simkanin also challenged the  
6 constitutionality of both federal and state laws.

7           Twelve. To demonstrate that he was not subject to the  
8 jurisdiction of the State of Texas, sometime on or before 1997  
9 Simkanin surrendered his Texas driver's license to the Texas  
10 Department of Motor Vehicles. However, Simkanin continued to  
11 operate a motor vehicle on the public streets and highways of  
12 Texas without a valid driver's license.

13           Thirteen. On or about February 12, 2002, Simkanin filed a  
14 Notice of Expatriation and Repatriation with the Secretary of  
15 Treasury as part of his effort to demonstrate he was a stranger  
16 to the laws of the United States and no longer subject to the  
17 laws of the United States. In this document, Simkanin also  
18 stated that certain tax laws of the United States violated the  
19 Constitution of the United States, and in this document  
20 Simkanin also stated he refused to support the present  
21 insurgent government and that his only allegiance was to the  
22 Texas Republic.

23           Fourteen. On or about February 18, 2002, Simkanin signed  
24 an affidavit which also stated he was not a Fourteenth  
25 Amendment citizen and was not within the jurisdiction of the

1 corporate United States and its instrumentalities.

2 Fifteen. Beginning on or about August of 2001, Simkanin  
3 posted a document on his website entitled "Foreign  
4 Jurisdiction" in which he stated the jurisdiction of the United  
5 States government is limited to the District of Columbia and  
6 military installations.

7 Sixteen. On or about March 2nd, 2001, Simkanin agreed to  
8 use his photo in a full-page advertisement in the newspaper USA  
9 Today in which the constitutionality of the tax laws of the  
10 United States were challenged.

11 Counts 1 through 12, wilful failure to collect, account  
12 for, and pay over taxes due. One, the allegations contained in  
13 paragraphs one through sixteen of the introduction are  
14 incorporated herein by --

15 THE COURT: I believe you left out part of the title.

16 MR. JARVIS: Excuse me, Your Honor. A violation of  
17 Title 26, United States Code, Section 7202.

18 One. The allegations contained in paragraphs one through  
19 sixteen of the introduction are incorporated herein by  
20 reference as though they were fully restated.

21 Two. On or about the dates listed below, in the Fort  
22 Worth Division of the Northern District of Texas, Richard  
23 Michael Simkanin, defendant, did willfully fail to collect,  
24 truthfully account for, and pay over to the Internal Revenue  
25 Service the federal income taxes, Medicare taxes, and Federal

1 Insurance Contribution Act taxes due and owing to the United  
2 States of America from the total taxable wages of Arrow  
3 employees for each quarter listed below in Counts 1 through 12  
4 respectively.

5 Count 1. Tax quarter ending date, March 31, 2000. Total  
6 wages subject to collection, \$240,217. Total taxes not  
7 collected, \$18,377.

8 Count 2. Tax quarter ending date, June 30, 2000. Total  
9 wages subject to collection, \$234,704. Total taxes not  
10 collected, \$17,955.

11 Count 3. Tax quarter ending date, September 30, 2000.  
12 Total wages subject to collection, \$236,928. Total taxes not  
13 collected, \$18,125.

14 Count 4. Tax quarter ending date, December 31, 2000.  
15 Total wages subject to collection, \$263,427. Total taxes not  
16 collected, \$20,152.

17 Count 5. Tax quarter ending date, March 31, 2001. Total  
18 wages subject to collection, \$233,309. Total taxes not  
19 collected, \$17,848.

20 Count 6. Tax quarter ending date, June 30, 2001. Total  
21 wages subject to collection, \$162,197. Total taxes not  
22 collected, \$12,480.

23 Count 7. Tax quarter ending date, September 30, 2001.  
24 Total wages subject to collection, \$165,738. Total taxes not  
25 collected, \$12,679.



1           Count 8. Tax quarter ending date, December 31, 2001.

2 Total wages subject to collection, \$177,689. Total taxes not  
3 collected, \$13,593.

4           Count 9. Tax quarter ending date, March 31, 2002. Total  
5 wages subject to collection, 146,217. Total taxes not  
6 collected, \$11,186.

7           Count 10. Tax quarter ending date, June 30, 2002. Total  
8 wages subject to collection, \$141,907. Total taxes not  
9 collected, \$10,856.

10          Count 11. Tax quarter ending date, September 30, 2002.  
11 Total wages subject to collection, \$144,610. Total taxes not  
12 collected, \$11,063.

13          Count 12. Tax quarter ending date, December 31, 2002.  
14 Total wages subject to collection, \$141,048. Total taxes not  
15 collected, \$10,790.

16          Total wages subject to collection for Counts 1 through 12,  
17 \$2,287,991. Total taxes not collected for Counts 1 through 12,  
18 \$175,032. Of this total amount of taxes due from employees,  
19 the employer, Simkanin, was also obligated to pay or match the  
20 same amount, \$175,032, which was the employer's 7.65 percent  
21 share of FICA and Medicare taxes. All in violation of Title  
22 26, United States Code, Section 7202.

23                   MR. JARVIS: Excuse me, Your Honor.

24                   (Brief pause.)

25                   MR. JARVIS: Counts 13 through 27, false claims

1 against the United States. One. The allegations contained in  
2 paragraphs 1 through 16 of the introduction are incorporated by  
3 reference herein as though they were fully restated.

4 Two. On or about January 28, 2000, in the Fort Worth  
5 Division of the Northern District of Texas, Richard Michael  
6 Simkanin, the defendant, as president of Arrow, did knowingly  
7 make and present and cause to be made and presented to the  
8 United States Treasury Department, through the Internal Revenue  
9 Service, 15 false claims against the United States, claiming  
10 the payment of refunds of the employer's share of FICA taxes  
11 and Medicare taxes paid by Arrow, and of the employees' share  
12 of FICA taxes, Medicare taxes, and income taxes collected from  
13 the employees, covering the period of March 1997 through  
14 December of 1999, each of which the defendant knew to be false,  
15 fictitious, and fraudulent, for each of Counts 13 through 27  
16 respectively.

17 Count 13. Form submitted, Amended Form 941. Period  
18 ending 3-31-97. Refund amount, \$18,120.

19 Count 14. Form submitted, Amended Form 941. Period  
20 ending 6-30-97. Refund amount, \$17,310.

21 Count 15. Amended Form 941. Period ending 9-30-97.  
22 Refund amount, \$16,517.

23 Count 16. Amended Form 941, dated 12-31-97. Refund  
24 amount, \$18,508.

25 Count 17. Amended Form 940-EZ. Period ending 12-31-97.

1 Refund amount, \$2,548.  
2 Count 18. Amended Form 941. Period ending 3-31-98.  
3 Refund amount, \$16,295.  
4 Count 19. Amended Form 941. Period ending 6-30-98.  
5 Refund amount \$17,616.  
6 Count 20. Amended Form 941. Period ending 9-30-98.  
7 Refund amount, \$18,677.  
8 Count 21. Form submitted, Amended 941. Period ending  
9 12-31-98. Refund amount, \$19,979.  
10 Count 22. Form submitted, Amended Form 940-EZ. Period  
11 ending 12-31-98. Refund amount, \$2,291.  
12 Count 23. Amended Form 941. Period ending 3-31-99.  
13 Refund amount, \$18,766.  
14 Counted 24. Amended Form 941. Period ending 6-30-99.  
15 Refund amount, \$19,049.  
16 Count 25. Amended Form 941. Period ending 9-30-99.  
17 Refund amount, \$22,829.  
18 Count 26. Amended Form 941. Period ending 12-31-99.  
19 Refund amount \$22,818.  
20 Count 27. Amended Form 940-EZ. Period ending 12-31-99.  
21 Refund amount, \$3,192.  
22 All in violation of Title 18, United States Code, Sections  
23 287 and 2.  
24 Counts 28 through 31, failure to file individual income  
25 tax returns, in violation of 26 United States Code Section

U.S. DISTRICT COURT

1 7203.

2 One. The allegations contained in paragraphs one through  
3 sixteen of the introduction are incorporated herein by  
4 reference as though they were fully restated.

5 Two. On or about the dates listed below, Defendant  
6 Richard Michael Simkanin, who was married and was a resident of  
7 Bedford, Texas, which is a community property state, had and  
8 received approximate gross income in the amounts listed below,  
9 such amounts computed on the community property basis, and by  
10 reason of such income, the law required the defendant to file a  
11 tax return with respect to income, following the close of the  
12 below listed calendar years and the below listed filing  
13 deadlines, to make such return to the District Director of the  
14 Internal Revenue Service for the Internal Revenue District of  
15 Dallas, at Dallas, Texas, or to the Director, Internal Revenue  
16 Service Center, at Austin, Texas, or other proper officer of  
17 the United States, stating specifically the items of his gross  
18 income and any deductions and credits to which he was entitled;  
19 and well knowing and believing all the foregoing, the defendant  
20 did willfully fail to make said income tax return to the said  
21 Director of the Internal Revenue Service, to said Director of  
22 the Internal Revenue Service Center, or to any other proper  
23 office of the United States, for each of Counts 28 through 31  
24 respectively.

25 Count 28. Calendar year, 1998. Filing deadline, April

1 15, 1999. Approximate gross income, \$42,933.

2 Count 29. Calendar year, 1999. Filing deadline, April

3 17, 2000. Approximate gross income, \$62,007.

4 Count 30. Calendar year, 2000. Filing deadline, April

5 16, 2001. Approximate gross income, \$189,750.

6 Count 31. Calendar year, 2001. Filing deadline, April

7 15, 2002. Approximate gross income, \$115,500.

8 All in violation of Title 26, United States Code, Section

9 7203.

10 THE COURT: How does the defendant plead to the

11 counts of the superseding indictment?

12 THE DEFENDANT: Not guilty.

13 THE COURT: Okay. You can be seated, Mr. Simkanin.

14 This case is scheduled to commence trial. How does the

15 government announce, ready or not ready?

16 MR. JARVIS: Your Honor, the government is ready to

17 proceed.

18 THE COURT: How does the defendant announce, ready or

19 not ready?

20 MR. McCOLL: Your Honor, we filed a motion for

21 continuance, and the Court denied it. And subject to that,

22 we're ready to proceed.

23 THE COURT: Okay. Incidentally, I received a motion

24 to dismiss, it looks like December the 31st. I'm not sure I

25 ruled on that, but I have reviewed it and I deny that motion.

1           Okay. Call your witnesses -- Have your witnesses come  
2 forward so I can identify who's here and administer the oath to  
3 them. That's -- I was referring to the government at that  
4 time.

5           MR. JARVIS: We have eleven witnesses right here,  
6 Your Honor.

7           THE COURT: Okay. Let's start with the one on my  
8 right. State your name.

9           MR. EASTMAN: Charles Phillip Eastman.

10          THE COURT: Help me find them on the list. He's No.  
11 6, I believe.

12          MR. JARVIS: Yes, Your Honor.

13          THE COURT: Okay. The next one.

14          MR. DEAN: Robert Dean.

15          MR. JARVIS: No. 5, Your Honor.

16          THE COURT: Next one.

17          MR. MORRIS: Louis Morris.

18          MR. JARVIS: No. 11, Your Honor.

19          THE COURT: Next one.

20          MR. WRIGHT: Ron Wright.

21          MR. JARVIS: Eighteen, Your Honor.

22          THE COURT: Next one.

23          MR. COOPER: Wayne Cooper.

24          MR. JARVIS: No. 3, Your Honor.

25          THE COURT: Next one.

1 MR. PERDUE: Randy Perdue.  
2 MR. JARVIS: Twelve, Your Honor.  
3 MS. CLEMONDS: Dianne Clemonds.  
4 MR. JARVIS: No. 2, Your Honor.  
5 THE COURT: Next one.  
6 MR. TAYLOR: Fred Taylor.  
7 MR. JARVIS: No. 15, Your Honor.  
8 THE COURT: Next one.  
9 MR. KELLY: James Kelly.  
10 MR. JARVIS: No. 8, Your Honor.  
11 THE COURT: Next one.  
12 MR. SHARP: Al Sharp.  
13 MR. JARVIS: Fourteen, Your Honor.  
14 THE COURT: Next one.  
15 MR. MCGOWAN: Allan McGowan.  
16 MR. JARVIS: No. 10, Your Honor.  
17 THE COURT: Next one.  
18 MR. JARVIS: That's it, Your Honor.  
19 THE COURT: Okay. I take it the government does not  
20 plan to call Curtis Clemonds?  
21 MR. JARVIS: That's correct, Your Honor.  
22 THE COURT: And the same as to Bob Fitch?  
23 MR. JARVIS: Yes, Your Honor, as well as Katherine  
24 Daum, No. 4.  
25 THE COURT: Okay. And the same as to Nancy

1 Spotser-Session?

2 MR. JARVIS: That's correct, Your Honor.

3 THE COURT: And the same as to Barbara Thomas?

4 MR. JARVIS: Yes, Your Honor.

5 THE COURT: The same as to Mike Weir?

6 MR. JARVIS: Yes, Your Honor.

7 THE COURT: Okay. All of the government witnesses  
8 who have been identified are still standing in front of me.  
9 Raise your right hands to be sworn as witnesses in this case.

10 (The witnesses are sworn.)

11 THE COURT: Okay. Why don't y'all -- You can return  
12 to your seats but don't leave the courtroom until I tell you  
13 that it's appropriate to do so. You can return to your seats  
14 at this time.

15 I'll ask that the defendant have the defense witnesses  
16 come forward at this time.

17 (Brief pause.)

18 THE COURT: Okay. Are these all of the witnesses,  
19 Mr. McColl?

20 MR. McCOLL: Yes, Your Honor.

21 THE COURT: Okay. Start with the one on my far  
22 right. What is your name?

23 MR. BANISTER: Joseph Banister.

24 THE COURT: Okay. Next one.

25 MR. ROSE: Larken Rose.



1 THE COURT: Okay. The next one.

2 MR. KOTMAIR: John Kotmair.

3 THE COURT: K-O-T-M-A-I-R?

4 MR. KOTMAIR: That's correct.

5 THE COURT: Okay. The next one.

6 MR. CAMP: Keith Camp.

7 THE COURT: Okay. The next one.

8 MS. OSBORN: Victoria Osborn.

9 THE COURT: Okay. The next one.

10 MR. SCHULZ: Robert Schulz.

11 THE COURT: Okay. The next one.

12 MR. STADTMILLER: John Stadtmiller.

13 THE COURT: Say that name again.

14 MR. STADTMILLER: Stadtmiller.

15 THE COURT: Oh, that was the subject of an amended --  
16 Did you file an amended witness list, Mr. McColl?

17 MR. McCOLL: It's being filed today, Your Honor. I  
18 don't think it's quite done yet. But it was the subject of our  
19 telephone conference.

20 THE COURT: Let me add him to the list we have.  
21 Let's see, on the subject it's character witness?

22 MR. McCOLL: Yes, sir.

23 THE COURT: Okay. Next.

24 MR. HASSELL: Alvin Hassell.

25 MR. McCOLL: Your Honor, this witness is being held

1 in reserve. The government has indicated they're not going to  
2 go into a certain area of testimony.

3 THE COURT: What?

4 MR. McCOLL: The government has said they're not  
5 going to go into a certain area of testimony, but he's here in  
6 case something changes on that.

7 THE COURT: Okay. He's not on the list.

8 MR. McCOLL: He was on the original list.

9 THE COURT: You mean he was on the motion for leave  
10 to amend --

11 MR. McCOLL: Yes, sir.

12 THE COURT: -- or on an original list?

13 MR. McCOLL: On the leave to amend, and we discussed  
14 it in the telephone conference.

15 THE COURT: Well, I'm not going to swear him at this  
16 time, because as far as I'm concerned he's not going to testify  
17 based on the previous discussion we've had.

18 MR. McCOLL: Yes, sir.

19 THE COURT: I'll leave it up to you what you want to  
20 do about him.

21 MR. McCOLL: Yes, sir.

22 THE COURT: I'm not going to swear him at this time.  
23 So you can return to the audience section at this time.

24 MR. McCOLL: Yes, sir.

25 THE COURT: Tell him he can return to the audience

1 section, or wherever he wants to go subject to your  
2 instructions.

3 MR. McCOLL: Thank you, Your Honor.

4 THE COURT: Okay. And what is your name?

5 MR. RIVERA: Eduardo M. Rivera.

6 THE COURT: Okay. I take it you're not planning to  
7 call witness Paul? Is that correct?

8 MR. McCOLL: Your Honor, he's the one that had  
9 medical problems before.

10 THE COURT: I'm asking if you're going to call him.

11 MR. McCOLL: I'm planning to call him.

12 THE COURT: Well, where is he?

13 MR. McCOLL: He is not here, Your Honor, but I am  
14 planning to call him.

15 THE COURT: Is he supposed to be here this morning?

16 MR. McCOLL: He is supposed to be here this morning,  
17 yes, sir.

18 THE COURT: Have you heard anything from him?

19 MR. McCOLL: Yes, sir. He's trying to get here.

20 THE COURT: Where is he? What's the situation?

21 MR. McCOLL: He's got something that's like  
22 Parkinson's disease.

23 THE COURT: No, I'm trying to find out where he is  
24 now. Is he in Houston or where is he now as far as you know?

25 MR. McCOLL: I believe it's called Lake of the Pines,

1 Your Honor.

2 THE COURT: Okay. And is he on his way up here?

3 MR. McCOLL: It's my understanding that he is.

4 THE COURT: He's en route as far as you know?

5 MR. McCOLL: As far as I know.

6 THE COURT: And how do you have that information?

7 MR. McCOLL: Just through conversations with my  
8 assistants who have been in touch with him.

9 THE COURT: Is the assistant here who has been in  
10 contact with him?

11 MR. McCOLL: No, sir.

12 THE COURT: Who is the assistant who has been in  
13 contact with him?

14 MR. McCOLL: Well, several people have, Your Honor.  
15 I'm not sure which one did.

16 THE COURT: Which one gave you the information that  
17 he was en route at this time?

18 MR. McCOLL: I'm not sure which one gave me that,  
19 Judge.

20 THE COURT: Okay. And I take it you're not going to  
21 be using Dave Champion?

22 MR. McCOLL: That's correct, Your Honor.

23 THE COURT: And you will not be using John Weaver?

24 MR. McCOLL: That's correct, Your Honor.

25 THE COURT: And you will not be using Charles Beall.

1 MR. McCOLL: That's correct.

2 THE COURT: Okay. And those of you whose --  
3 Banister, Rivera, Shultz, Rose, Kotmair, Osborn, and Camp --  
4 raise your right hands to be sworn.

5 (The witnesses are sworn.)

6 THE COURT: Okay. You can return to the audience  
7 section, or wherever it is that Mr. McColl has told you to be.  
8 But don't leave the courtroom yet.

9 Don't leave the courtroom yet. This is directed to all of  
10 the persons -- Does anybody want to invoke the rule?

11 (No response.)

12 THE COURT: Apparently not.

13 MR. McCOLL: We would, Your Honor.

14 THE COURT: The defendant has invoked the rule, so  
15 this is directed to all of you explaining what that means. The  
16 fact that the rule has been invoked means that you cannot be in  
17 the courtroom while another witness is testifying. It also  
18 means that you will not -- until you're excused as a witness,  
19 you will not discuss your testimony with anyone, other than an  
20 attorney or attorneys and then only when no one is present but  
21 that attorney or attorneys.

22 All of you are now subject to the jurisdiction of the  
23 Court by virtue of having been sworn as a witness. Therefore,  
24 you'll make yourself available to take the witness stand and  
25 testify whenever the attorney who has asked you to be here or

1 caused you to be here requests that you take the witness stand  
2 to testify. You'll follow the directions of the attorney who  
3 has caused you to be here relative to when you should be  
4 available to come to the witness stand.

5 Okay. With that, all of you are excused subject to  
6 whatever instructions you receive from the attorney who has  
7 caused you to be here.

8 Okay. I think we're to the point of having the jury panel  
9 come up. Is there anything else that either side thinks we  
10 need to deal with before we have the jury panel come up?

11 MR. McCOLL: Yes, Your Honor.

12 THE COURT: What is that, Mr. McColl?

13 MR. McCOLL: If I could approach the bench, Your  
14 Honor.

15 THE COURT: Yes.

16 MR. McCOLL: We have some motions, one of which is to  
17 have a jury consultant, Your Honor, to assist us.

18 (Brief pause.)

19 THE COURT: Okay. I've been handed four motions by  
20 Mr. McColl, each of which --

21 MR. McCOLL: Here's another one.

22 THE COURT: I've been handed five motions by  
23 Mr. McColl, each of which shows that it was filed around 8:30  
24 this morning.

25 Has the government received copies of these motions?

1           MR. JARVIS: Your Honor, earlier this morning we  
2 received a faxed, unsigned copy of what appear to be the same  
3 motions. I received them probably around 8:20 this morning.

4           THE COURT: Actually, one of these is called Motion  
5 For Jury Consultant to Sit at Counsel Table During Jury Trial.  
6 The other is actually a response. It's called Defendant's  
7 Response to Motion in Limine. Another one is Defendant's  
8 Motion in Limine for Second Trial. Another one is Defendant's  
9 Requested Jury Instructions, and the fifth one is Motion to  
10 Dismiss the Indictment Because of Improper Delegation by  
11 Congress to Internal Revenue Service. I overrule that motion.

12           By the way, on the earlier motion to dismiss, I'm granting  
13 the motion for late filing of it, but I'm denying that motion.  
14 I'm now denying your motion to dismiss. I'm denying the motion  
15 for jury consultant to sit at defense counsel's table. And let  
16 me look at the motion in limine.

17           (Brief pause.)

18           THE COURT: Well, I don't really interpret it as a  
19 motion in limine. I interpret it as a motion asking that the  
20 Court reconsider the ruling that the Court made in an earlier  
21 motion the government had filed, so --

22           MR. McCOLL: Well, there's a new subject, if the  
23 Court please. Tax protester, I don't believe was discussed,  
24 Your Honor.

25           THE COURT: Well, let me -- Why were these motions

1 just filed this morning, Mr. McColl? We had a deadline for  
2 filing motions that expired sometime back. Why were they only  
3 filed this morning?

4 MR. McCOLL: Well, Your Honor. I only got the  
5 motions in limine for the government on the last day --

6 THE COURT: I'm talking about your motions.

7 MR. McCOLL: Well, I was not able to respond on the  
8 last day -- the last business day before this trial is when I  
9 got the government's motion in limine. Your Honor, I would  
10 like to tender one more motion to the Court, if it please.

11 THE COURT: Okay. A sixth motion has been handed up  
12 to me. It's called Motion to Dismiss the Indictment for  
13 Failure to Comply With Rule 6(f). I deny that motion.

14 Okay. I'm looking now at Defendant's Motion in Limine For  
15 Second Trial.

16 (Brief pause.)

17 THE COURT: Okay. The part about cash withdrawals,  
18 does the government wish to respond to that? I've already made  
19 known my views on that, and unless it's relevant to the new  
20 counts of the indictment I don't see how it has relevance to  
21 this case.

22 MR. JARVIS: Yes, Your Honor. In addition to our  
23 argument that goes to intent and state of mind, we also believe  
24 it's critical for the government to be able to show on the new  
25 counts that the defendant had sufficient income to make a



1 filing of a return mandatory under the law.

2 THE COURT: Well, why does he have to -- Okay. I  
3 think it would bear on that, so I'll overrule the motion as to  
4 that.

5 MR. McCOLL: Your Honor, we would offer to stipulate  
6 that he had sufficient money.

7 THE COURT: If y'all can reach a stipulation that  
8 would cause that to become irrelevant, that's between you and  
9 the attorney for the government.

10 MR. McCOLL: Yes, sir.

11 THE COURT: So I'll leave it up to you to work that  
12 out if you can. As of this time I'm denying that part,  
13 element, of your motion in limine.

14 MR. McCOLL: Well, perhaps the easiest thing would be  
15 to stipulate to the income that --

16 THE COURT: Perhaps the thing to do is do what I  
17 said, and that is, try to work with the attorney for the  
18 government at an appropriate time to reach a stipulation.  
19 We're not going to deal with that at this point, Mr. McColl.  
20 You may be seated.

21 MR. McCOLL: Yes, sir.

22 THE COURT: I grant the motion in limine as to the  
23 mention of the "Texas Republic."

24 MR. JARVIS: Your Honor, excuse me. Make I speak to  
25 that?

1 THE COURT: Yes.

2 MR. JARVIS: It's in documents.

3 THE COURT: It's not Texas Republic. It's "Republic  
4 of Texas."

5 MR. JARVIS: Yes, Your Honor. There's no reference  
6 to the organization "Republic of Texas."

7 THE COURT: I'm granting the motion as to that. That  
8 means before you make any reference to that you'll approach the  
9 bench and ask the bench first.

10 MR. JARVIS: Yes, sir.

11 THE COURT: Ask the Court first for permission to do  
12 that.

13 I deny the motion in limine as to Item 3, the tax  
14 protester. And as I did the defendant, I instruct the  
15 government to inform all of its witnesses that the motion in  
16 limine has been granted to the extent that it has and instruct  
17 all of the witnesses not to make any reference to the matters  
18 to which the motion has been granted.

19 MR. JARVIS: Excuse me, Your Honor. Just to clarify,  
20 that's only the Texas Republic was the only part of the motion  
21 that was granted?

22 THE COURT: That's right, "Republic of Texas" was the  
23 only part of the motion that was granted.

24 MR. McCOLL: I think you -- didn't you grant the cash  
25 withdrawals, Your Honor?

1 THE COURT: Pardon?

2 MR. McCOLL: Didn't you grant the cash withdrawals,  
3 subject to our stipulation? In other words, we'll stipulate to  
4 the government's exhibit that shows he had income.

5 THE COURT: You can be seated, Mr. McColl. I've made  
6 a clear ruling on that.

7 MR. McCOLL: I guess I didn't understand the Court's  
8 ruling.

9 THE COURT: The ruling is that it's denied, your  
10 motion is denied as to cash withdrawals.

11 MR. McCOLL: Yes, sir.

12 THE COURT: Okay. I think that takes care of all of  
13 the newly filed motions.

14 MR. McCOLL: Your Honor, if the Court please. Could  
15 I respectfully ask that the Court reconsider the jury selection  
16 consultant based on my offer of proof that if I were able to  
17 have a hearing on this I would present the expert.

18 THE COURT: I've denied that motion, and I overrule  
19 your motion for reconsideration.

20 Okay. We're taking a recess while the jury panel is to be  
21 brought into the courtroom. And all of the persons in the  
22 courtroom who are not direct participants in the trial are to  
23 leave this floor of the courthouse at this time.

24 MR. McCOLL: Your Honor, one more thing. Before the  
25 jury comes in, could we have the leg irons removed, please,

1 from my client?

2 THE COURT: Yes, we'll do that. And you can move  
3 your chairs on this side of the table.

4 MR. McCOLL: I beg your pardon?

5 THE COURT: You can move your chairs on this side of  
6 the table.

7 Let me consult -- Come up here, David.

8 You can move your chairs on this side of the table. By  
9 the way, Mr. McColl, I notice that some of your prospective  
10 witnesses are not appropriately dressed. I'll ask that you see  
11 that that be done before they take the witness stand.

12 MR. McCOLL: Yes, sir.

13 (Court confers with U.S. Marshal.)

14 (Court in recess, 9:41 a.m.)

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16 CERTIFICATE

17 I certify that the foregoing is a correct transcript from  
18 the record of proceedings in the above-entitled matter. I  
19 further certify that the transcript fees format comply with the  
those prescribed by the Court and the Judicial Conference of  
the United States.

20

21 \_\_\_\_\_  
Eileen M. Brewer  
22 Official Court Reporter  
Texas CSR No. 3016  
23

\_\_\_\_\_  
Date

24

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U.S. DISTRICT COURT