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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

10 DOES 1 – 4,

11 Plaintiffs,

12 vs.

13 United States Attorneys, District of Nevada,

14 Defendants.

Case No. 2:09-cv-01083-KJD-PAL

**DOES’ AMENDED MOTIONS TO  
INTERVENE, QUASH AND FOR  
PROTECTIVE ORDER**

16 Pursuant to Rule 24 of the Federal Rules of Civil Procedure and Rules 6 and 17(c)(2) of the  
17 Federal Rules of Criminal Procedure, DOES 1, 2, 3, and 4 hereby move to intervene in the  
18 matter of the subpoenas issued to the Review-Journal ((JGD:RR:IRS:jr)(2009R00818) and  
19 (EJ:BC:FBI:jr)(2009R00818)), and move to quash the subpoenas. Fed. R. Civ. P. 24(a); Fed. R.  
20 Crim. P. 6 (rule governing grand jury subpoenas); Fed. R. Crim. P. 17(c) (2) (“The court may  
21 quash or modify the subpoena if compliance would be unreasonable or oppressive.”). DOES  
22 also hereby move for a protective order. Fed. R. Civ. P. 57(b) (“...in all cases not provided for  
23 by rule, the district judges and magistrates may regulate their practice in any manner not  
24 inconsistent with these rules or those of the district in which they act.”).

26 **I. BACKGROUND AND SUMMARY OF ARGUMENT**

27 Assistant United States Attorney J. Gregory Damm (AUSA Damm) issued a grand jury  
28 subpoena (“First Subpoena”) on June 2, 2009 seeking information about each and every public

1 comment about an article posted on the Review-Journal's website<sup>1</sup> about a controversial ongoing  
2 federal tax trial in which he is serving as a prosecutor, *United States of America. Kahre et al.*  
3 (2:05-cr-121-DAE-RJJ) ("Kahre Case").<sup>2</sup> Mr. Kahre, the lead defendant, paid people who  
4 worked for him in gold and silver coins, and believes that the I.R.S. should assess taxes based on  
5 the face value of the coins rather than their market value. The article provoked much debate,  
6 with many commenters noting agreement with Mr. Kahre's position, great dislike of AUSA  
7 Damm, and more generally sharing their political opinions concerning the I.R.S. and the United  
8 States monetary system.<sup>3</sup> A few commenters instead noted agreement with the government.  
9 While many expressed their opinions in strong terms, not a single comment posted was criminal.  
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12 Subsequently, the U.S. Attorney's office narrowed its request.. On June 16, 2009, AUSA  
13 Johnson issued a subpoena seeking only identifying information concerning two commenters to  
14 the 6/17 LVRJ article. ("Second Subpoena" attached as Exhibit 5). The Second Subpoena is  
15 narrower and seeks "IP addresses used to register or make the postings, IP addresses associated  
16 with the session or posting times and dates, email addresses provided or recorded at the time of  
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19 <sup>1</sup> DOES do not have a copy of the First Subpeona, but its nature and scope is described by a  
20 June 7, 2009 op-ed written by Thomas Mitchell, the Editor of the Review-Journal. Mr. Mitchell  
21 quoted from the subpoena in part, explaining that it was issued during the week of June 1, 2009  
22 and demanded that the Review-Journal turn over all records pertaining to the postings, including  
23 "full name, date of birth, physical address, gender, ZIP code, password prompts, security  
24 questions, telephone numbers and other identifiers ... the IP address." See Exhibit 2, also  
25 available at <http://www.lvrj.com/opinion/47141327.html> (last checked June 14, 2009). In  
26 addition, AUSA Damm told the judge in the *Kahre* Case that he indeed issued such a subpoena  
27 Reporter Trans. Of Excerpt of Proceedings, June 9, 2009, Case 2:05-cr-121-DAE-RJJ, at 5:14-18  
28 (attached as Exhibit 3): "We subpoenaed the information that the Review-Journal may have  
regarding IP addresses and any other identifiers for the commenters that responded to the RJ  
article [about the *Kahre* case.]"

<sup>2</sup> Joan Whitely, *Employer's gold, silver payroll standard may bring hard time*, Las Vegas  
Review-Journal, May 26, 2009, <http://www.lvrj.com/news/46074037.html> ("LVRJ Article,")  
attached as Exhibit 4.

<sup>3</sup> The Review-Journal posts its articles on its website and allows the public to post comments.

1 registration or postings, methods of connecting and log files associated with postings.” The

2 Second Subpoena only seeks this identifying information for two comments:

- 3 • “Provider One” wrote on June 13, 2009 10:42 a.m.: I bid 10 Quatloos that
- 4 Christopher Maietta [one of the prosecutors in the Kahre case] does not celebrate
- 5 his next birthday<sup>4</sup>
- 6 • “Mike” wrote on May 26, 2009 11:05 AM: The sad thing is there are 12 dummies
- 7 on the jury who will convict him. They should also be hung along with the feds

8 *See* Exhibit 4. These comments are protected by the First Amendment, and while prosecutors

9 have wide latitude to issue grand jury subpoenas, they must still operate within the bounds of the

10 First Amendment. Here, the subpoenas both constitute an abuse of the grand jury process, and

11 are a thinly veiled threat to prosecute people for criticizing the government.

12 Regardless of one’s opinion of the commenters’ various points of view – or how they

13 chose to express themselves – the comments, most of which question the U.S. government and

14 its practices, are unquestionably protected speech. The value of anonymous political speech to

15 our country is even older than the Constitution: the Federalist Papers were produced using a

16 pseudonym. The United States Supreme Court has explained the importance of anonymity:

17 ... Anonymity is a shield from the tyranny of the majority... . It thus

18 exemplifies the purpose behind the Bill of Rights, and of the First

19 Amendment in particular: to protect unpopular individuals from

20 retaliation ... at the hand of an intolerant society.

21 *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995). The central reason for the

22 protection of anonymous speech is that speakers may fear retaliation by the government –

23 *retaliation such as the threat of prosecution implicit in a grand jury subpoena from a prosecutor*

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25 <sup>4</sup> It is noteworthy that the comment by “Provider One” was not made until after the date of the

26 First Subpoena. This, together with the breadth of the First Subpoena, supports the argument

27 that the AUSA’s motivation is not actually tracking down the people behind what it believes to

28 be threatening comments but instead is targeting critics of the government and AUSA Damm in

particular. Similarly, it is more appropriate that the Second Subpoena was issued under AUSA Johnson’s name rather than by AUSA Damm, but AUSA Damm’s involvement with the First Subpoena and the investigation of his own critics remains suspect.

1 *seeking your identity after you expressed criticism of the very same prosecutor.* Given that the  
2 comments are in fact protected political speech *and in no way revealing of any criminal activity,*  
3 it is impossible to imagine a legitimate purpose for either subpoena. This is highlighted by the  
4 fact that the First Subpoena was so broad that it sought the identity of each and every commenter  
5 to the May 26, 2009 article about the Kahre Case – which would strangely include even the  
6 commenters who agree with the government’s position. The only purpose of the subpoenas  
7 appears to be squelching public debate and disagreement with the government’s position.  
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10 The fact that AUSA Damm is the prosecutor in the Kahre Case makes this even more  
11 problematic: by issuing subpoenas seeking the identities of its critics, the government is sending  
12 the message that the government is considering punishing dissent. Even more dangerously, jurors  
13 that learn about the subpoena could be intimidated by the action and fear not agreeing with  
14 AUSA Damm that Mr. Kahre and his co-defendants should be convicted.<sup>5</sup> Indeed, the  
15 information was sought in the most public way possible: the subpoenas were issued to a  
16 newspaper, and of course AUSA Damm would have known that the First Subpoena would thus  
17 immediately become public. The chilling effect of the subpoenas on the commenters and other  
18 potential speakers is undeniable: intentionally or not, the government is sending a message that  
19 the price of speaking out against a government prosecution is compelled disclosure of the  
20 speakers’ identities and possible prosecution.  
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23 This type of reprisal for political speech is exactly what the First Amendment was  
24 designed to prevent, and this Court should not permit the use of the grand jury to chill speech.  
25 As the Ninth Circuit has explained, “ [i]t would be a cruel twist of history to allow the institution  
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27 <sup>5</sup> An alternate juror in the *Kahre* Case trial has already learned about the subpoena. (*See* Ex. 3,  
28 6/9/09 tr. at 7:16-19.) While Judge Ezra, the judge who is presiding over the trial, decided that  
the alternate juror had not learned enough details and did not need to be excused (Ex. 3 at 34:7-  
8), the fact that one juror did hear about one of the subpoenas highlights the potential danger.

1 of the grand jury that was designed at least partially to protect political dissent to become an  
2 instrument of political suppression.” *Burse v. U.S.*, 466 F.2d 1059, 1089 (9th Cir. 1992),  
3 *overruled in part on other grounds, In re Grand Jury Proceedings*, 863 F.2d 667, 669-70 (9th  
4 Cir. 1988). DOES respectfully request that the subpoena be quashed and that all necessary steps  
5 are taken to ensure that the public is free to engage in anonymous political speech.  
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## 7 **II. ARGUMENT**

### 8 **A. DOES Should Be Allowed to Intervene to Challenge the Subpoena.**

9 This Court has supervisory authority over the grand jury, and thus has the authority to  
10 allow DOES to intervene because they have legal standing. *See, e.g., In re Grand Jury*  
11 *Proceedings*, 814 F. 2d 61, 71 (1st Cir. 1987). While the Federal Rules of Criminal Procedure  
12 do not address intervention, the Federal Rules of Civil Procedure provide for intervention of  
13 right when the applicant “claims an interest relating to the property or transaction that is the  
14 subject of the action, and is so situated that disposing of the action may as a practical matter  
15 impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a). Courts have  
16 applied this rule in the grand jury context. *See, e.g., In re Grand Jury Proceedings, PHE, Inc.*,  
17 640 F. Supp. 149, 151 (E.D.N.C. 1986). Here, the civil intervention standard is met: DOES have  
18 important First Amendment interests at stake. Regardless of whether the civil standard applies,  
19 this Court has authority to allow intervention, and because of its authority over grand jury  
20 proceedings and its authority under Rule 57 of the Federal Rules of Criminal Procedure provide  
21 for the granting of intervention, as “[when] there is no controlling law ... [a] judge may regulate  
22 practice in any manner consistent with federal law.” Further, this Court need not even have a  
23 complainant with standing in order to act to prevent the abuse of the grand jury process detailed  
24 in this motion. *See Application of Iaconi*, 120 F. Supp. 589, 590 (D. Mass. 1954). At least one  
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1 Circuit has similarly indicated that the focus of the court should first fall on the extent of the  
2 abuse of the grand jury process.

3         The subpoenas constitute an abuse of the grand jury process and violate DOES'  
4 fundamental rights to engage in anonymous political speech. The DOES thus have standing to  
5 assert those rights and should be allowed to intervene in order to both vindicate their rights and  
6 prevent prosecutorial abuse. A litigant has standing to challenge the validity of a subpoena  
7 issued to another where he has sufficiently important, legally-cognizable interests in the  
8 information sought. *See, e.g., Gravel v. United States*, 408 U.S. 608, 609n.1 (1972) (senator  
9 asserting constitutional privilege allowed to intervene to move to quash subpoena to his  
10 assistant).<sup>6</sup> Being the speaker of sought-after communications, where the government's attempt  
11 to obtain them runs afoul of the Constitution, meets the standing requirements. The Third  
12 Circuit held that victims of an illegal wiretap had standing to move to quash a grand jury  
13 subpoena issued to person who made the interceptions because further disclosure to the grand  
14 jury of the contents of the intercepted communications violated their right to privacy. *In re*  
15 *Grand Jury*, 111 F.3d 1066, 1078-79 (3d Cir. 1997).

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19         Courts have explicitly held that third parties have standing to quash subpoenas in order  
20 protect similar First Amendment rights. *Local 1814, Int'l Longshoreman's Ass'n, AFL-CIO v.*  
21 *The Waterfront Commission of New York Harbor*, 667 F.2d 267, 270-71 (2nd Cir. 1981) (union's  
22 standing to enjoin enforcement of a subpoena issued to another party was "beyond dispute"  
23 because it was attempting to protect its members' First Amendment rights); *United States v.*  
24 *Citizens State Bank*, 612 F.2d 1091, 1094 (8th Cir. 1980) (alleged infringement of First  
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27 <sup>6</sup> Third parties must be allowed to assert their rights because the person to whom the subpoena is  
28 issued cannot be expected to risk contempt in order to protect the interests of the person whose  
information or documents are targeted. *See In re Grand Jury Subpoena Served Upon Niren*, 784  
F.2d 939, 941 (9th Cir. 1986).

1 Amendment rights may warrant limiting enforcement of an I.R.S. bank subpoena); *In re First*  
2 *Nat. Bank, Englewood, Colo.*, 701 F.2d 115, 117 (10th Cir. 1983) (petitioners had standing to  
3 raise First Amendment claims, notwithstanding that the subpoena in question was directed to  
4 their bank). Where the impropriety of the subpoena is egregious, that makes granting third party  
5 appropriate – even where third parties moving to quash were already under indictment. *In re*  
6 *Grand Jury Proceedings, Fernandez Diamante*, 814 F.2d 61, 67–68 (1st Cir. 1987) (allowing  
7 inditees standing to quash because of “the scope and gravity of the specific claims” raised and  
8 “the factual grounds alleged to support them” and omitting analysis of protected constitutional  
9 interests).

12 Nowhere is protection against government abuse and intimidation more critical than in  
13 the area of anonymous speech criticizing the government. The DOES should be allowed to act  
14 to protect their free speech rights.

15 **B. The DOES Should Be Able to Proceed Anonymously.**

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17 DOES must be able to proceed anonymously in order to avoid government retaliation for  
18 asserting their rights. In the civil context, “a party may preserve his or her anonymity in judicial  
19 proceedings in special circumstances when the party’s need for anonymity outweighs prejudice  
20 to the opposing party and the public’s interest in knowing the party’s identity.” *Does I–XXIII v.*  
21 *Advanced Textile Corp.*, 214 F.3d 1058, 01068 (9th Cir. 2000) (reversing district court order  
22 dismissing complaint for failure to disclose plaintiffs’ names, where immigrant-employee  
23 plaintiffs brought [Fair Labor Standards Act] claims against employer using pseudonyms to  
24 prevent termination and possible deportation). Here, the need for anonymity unquestionably  
25 outweighs the public interest in knowing DOES’ identities. To determine whether to allow a  
26 party to appear as a “doe” and proceed anonymously, courts consider the severity of the  
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1 threatened harm, the reasonableness of the anonymous party's fears, and the anonymous party's  
2 vulnerability to such retaliation. *Advanced Textile*, 214 F.3d at 1068.<sup>7</sup> The DOES' information is  
3 being sought for an already active criminal investigation – and just the threat of a criminal  
4 investigation is severe enough to warrant anonymity. *See Advanced Textile*, 214 F.3d at 1071.  
5 The DOES' fears of retaliatory prosecution (Does 1 - 4 Decl. at ¶ 7- 10) are reasonable.<sup>8</sup> The  
6 first subpoena was issued by AUSA Damm, the same prosecutor who is prosecuting the case that  
7 the DOES criticized and who is the subject of several comments. (Doe 1 Decl. at ¶ 4; Doe 2  
8 Decl. at ¶ 4; Doe 3 Decl. at ¶ 4; Doe 4 Decl. at ¶ 4.) DOES are extremely vulnerable because of  
9 the implicit threat of prosecution. Further, if DOES' identities are disclosed before the identities  
10 of the other commenters are discovered, then they will be extremely vulnerable to investigation  
11 by the government because they could be singled out for retaliation. *See Advanced Textiles*, 214  
12 F.3d at 1072. In contrast, given the lack of potential use in any conceivable legitimate  
13 investigation, the government faces no possible prejudice and any interest in disclosing the  
14 DOES' identities are more than outweighed. The public interest lies in ensuring that the  
15 constitutional rights of commenters are protected from an over-zealous prosecutor bent on  
16 chilling political speech about his unpopular case.

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21 **C. The Subpoena Should Be Quashed Because it Violates the Free Speech and  
22 Privacy Rights of Anonymous Commenters.**

23 This Court has the authority to regulate grand jury subpoenas issued by prosecutors. *See*,

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26 <sup>7</sup> This test has been applied in criminal cases. *See, e.g., U.S. v. Stoterau*, 524 F.3d 988, 1013 (9th  
27 Cir. 2008) (applying the balancing test from *Advanced Textile* and allowing accused sex offender  
28 to proceed anonymously, noting that “in exceptional cases where necessary to protect a person  
from injury or harassment, we have allowed the use of pseudonyms.”).

<sup>8</sup> Plaintiffs are not required to prove that defendants intend to carry out retaliation, just that a  
reasonable person would fear retaliation. *See Advanced Textile*, 214 F.3d at 1071.



1 *e.g., Hoffman v. United States*, 341 U.S. 479, 485 (1951) (prosecutors and courts are both duty  
2 bound to ensure that prosecutors' investigative powers are not abused, and are exercised wisely  
3 and in compliance with the Constitution as well as other limits). Although grand jury subpoenas  
4 are normally afforded a presumption of regularity, the subpoena is anything but regular. It is  
5 nothing but a measure by AUSA Damm to harass critics and squelch public discourse on the  
6 Review-Journal's website. Despite prosecutors' wide latitude to issue grand jury subpoenas,  
7 they must still operate within the bounds of the First Amendment. *See, e.g., Branzburg*, 408 U.S.  
8 665, 708 (1972) ("Grand juries are subject to judicial control and subpoenas to motions to quash.  
9 We do not expect courts will forget that grand juries must operate within the limits of the First  
10 Amendment as well as the Fifth."); *Burse*, 466 F.2d at 1082 ("No governmental door can be  
11 closed against the Amendment. No governmental activity is immune from its force. That the  
12 setting for the competition between rights secured by the First Amendment and antagonistic  
13 governmental interests is a grand jury proceeding is simply one of the factors that must be taken  
14 into account in striking the appropriate constitutional balance.").

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18 Where *any* governmental activity, including action taken under the auspices of a grand  
19 jury, "collides with First Amendment rights, the government has the burden of establishing that  
20 its interests are legitimate and compelling and that the incidental infringement upon First  
21 Amendment rights is no greater than is essential to vindicate its subordinating interests." *Burse*,  
22 466 F.2d at 1083. More specifically:

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When the collision occurs in the context of a grand jury investigation, the Government's burden is not met unless it establishes that the Government's interest in the subject matter of the investigation is "immediate, substantial, and subordinating," that there is a "substantial connection" between the information it seeks ... and the overriding governmental interest in the subject matter of the investigation, and that the means of obtaining the information is not more drastic than necessary to forward the

1 asserted governmental interest. The investigation must proceed  
 2 “step by step ... [and] an adequate foundation for inquiry must be  
 3 laid before proceeding in such manner as” may inhibit First  
 4 Amendment freedoms. [*Gibson v. Florida Legislative Investigation*  
 5 *Comm.*, 372 U.S. 551, 557; *see also Shelton v. Tucker*, 364 U.S.  
 6 479, 487-90 (1960)]... it is obliged to show that there is a  
 7 substantial possibility that the information sought will expose  
 8 criminal activity within the compelling subject matter of the  
 9 investigation.

10 *Id.* Other courts have held that a grand jury subpoena that invades First Amendment rights  
 11 cannot stand unless justified by a compelling governmental interest. *See, e.g., In re Grand Jury*  
 12 *Proceedings*, 776 F.2d 1099, 1102-03 (2d Cir.1985); *In re Grand Jury Subpoena for*  
 13 *Appearance of Patrick Faltico*, 561 F.2d 109, 111 (8th Cir. 1977); *In re Grand Jury Subpoena to*  
 14 *Amazon.com Dated August 7, 2006*, 246 F.R.D. 570, 572 (W.D. Wis., 2007); *In re Grand Jury*  
 15 *Subpoenas Duces Tecum*, 78 F.3d 1307, 1312 (8th Cir.1996); *In re Grand Jury Proceeding*, 842  
 16 F.2d 1229, 1233 (11th Cir.1988).<sup>9</sup> *But see In re Grand Jury 87-3 Subpoena Duces Tecum*, 955  
 17 F.2d 229, 232 (4th Cir.1992) (concluding that the above balancing test does not apply because  
 18 the Supreme Court declined to apply this test in both *Branzburg* and *University of Pennsylvania*  
 19 *v. EEOC*, 493 U.S. 182, 110 (1990) but also noting that test may apply where it alleged that the  
 20 subpoena is issued in bad faith). Further the Supreme Court has applied a heightened test in the  
 21 context of a legislative investigative subpoena that implicated fundamental speech rights. *Gibson*  
 22 *v. Florida Legislative Comm.*, 372 U.S. 539, 546 (1963) (“[I]t is an essential prerequisite to the  
 23 validity of an investigation which intrudes into the area of constitutionally protected rights of  
 24 speech, press, association and petition that the State convincingly show a substantial relation  
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 27 <sup>9</sup> Similarly, the heightened test has been applied in the context of other forms of subpoenas that  
 28 implicate fundamental expressive rights. *See, e.g., United States v. Comley*, 890 F.2d 539, 544  
 (1st Cir.1989); *In re First Nat’l Bank, Englewood, Colo.*, 701 F.2d 115, 118-19 (10th Cir. 1983);  
*Nat’l Commodity and Barter Ass’n (NCBA) v. United States*, 951 F.2d 1172, 1174 (10th Cir.  
 1991); *Brock v. Local 375, Plumbers Int’l Union*, 860 F.2d 346, 350 (9th Cir.1988).

1 between the information sought and a subject of overriding and compelling state interest.”); *see*  
2 *also U.S. v. R. Enterprises, Inc.*, 498 U.S. 292, 299 (1991) (“grand juries are not licensed to  
3 engage in arbitrary fishing expeditions”); *Pollard v. Roberts*, 283 F.Supp. 248, 256-57  
4 (D.E.D.Ark.), *Aff’d*, 393 U.S. 14, (1968) (per curiam) (regarding a subpoena duces tecum the  
5 Supreme Court stated that “disclosure of the identities of members of the group can be  
6 compelled only by showing that there is a rational connection between such disclosure and a  
7 legitimate governmental end, and that the governmental interest in the disclosure is cogent and  
8 compelling.”)

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11 No matter what the precise contours of the test are, the government cannot come close to  
12 showing any legitimate reason to harass the Review-Journal and its commenters, let alone any  
13 heightened test. Indeed, it is impossible to imagine how the subpoenas even meet the threshold  
14 requirement of logical connection between subpoenaed information and possible charges that  
15 could be the basis of a grand jury investigation. *See, e.g., Bursey*, 466 F.2d at 1076.<sup>10</sup> The  
16 speech that is burdened appears to be the very activity the government believes is criminal.  
17 However, the comments, as detailed below all constitute protected speech. They are in no way  
18 criminal, nor will they expose any criminal activity.

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21 The Supreme Court has expressed explicit disapproval of grand jury subpoenas  
22 constituting such “official harassment of the press” and has made clear that the First Amendment  
23 limits the power to issue grand jury subpoenas:

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25 <sup>10</sup> Even if First Amendment claims were not at stake, this Court could properly require the  
26 government to reveal the subject of the investigation. Because each DOE, just like subpoena  
27 recipients, “cannot put his whole life before the court in order to show that there is no crime to be  
28 investigated” *U.S. v. R. Enterprises, Inc.*, 498 U.S. 292, 301-202 (1991) (*quoting Marston’s Inc.*  
*v. Strand*, 114 Ariz. 260, 270, 560 P.2d 778, 788 (1977) (Gordon, J., specially concurring in part  
and dissenting in part)) this court is “justified in a case where unreasonableness is alleged in  
requiring the Government to reveal the general subject of the grand jury’s investigation before  
requiring the challenging party to carry its burden of persuasion.” *Id.* at 302.

1 Official harassment of the press undertaken not for purposes of law enforcement  
2 but to disrupt the reporter's relationship with his news sources would have no  
3 justification. Grand juries are subject to judicial control and subpoenas to motions  
4 to quash. We do not expect courts will forget that grand juries must operate within  
5 the limits of the First Amendment as well as the Fifth.

6 *Branzburg*, 408 U.S. at 707-708(1972). The subpoena does not operate within the limits of the  
7 First Amendment. It disrupts the Review-Journal's ability to host and promote open dialogue  
8 about current events and issues, including political dialogue regarding the government's actions,  
9 as well as the rights of anonymous commenters to participate in the free exchange provided by  
10 the *Review-Journal*. Worse, it sends the message to government critics that they will be  
11 criminally prosecuted for their dissent.

12 **1. The Comments Constitute Quintessential Political Speech, and Are**  
13 **Protected by the First Amendment.**

14 The government has the burden of showing that the speech at issue does not fall within  
15 the ambit of the First Amendment. "All speech, press, and associational relationships are  
16 presumptively protected by the First Amendment; the burden rests on the Government to  
17 establish that the particular expressions or relationships are outside its reach." *Burse*, 466 F.2d  
18 at 1082 (citing, among other cases, *Gooding v. Wilson* 405 U.S. 518 (1972)). The government  
19 could never make this showing here. The anonymous comments are quintessential examples of  
20 political speech, and are therefore "at the core of what the First Amendment is designed to  
21 protect." *Virginia v. Black*, 538 U.S. 343, 365 (2003). The comments express a wide range of  
22 deeply-held convictions regarding political issues at the heart of the retrial in the Kahre case.  
23 The majority of these anonymous commenters voice their support for Mr. Kahre and their  
24 outrage over the federal government's current taxation and monetary policies. For instance, a  
25 commenter posting under the pseudonym "RantNation" voices his disdain for the IRS and  
26 Federal Reserve by sarcastically suggesting that citizens "pay taxes on the value of the paper our  
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1 paycheck is printed on.” Ex. 4 (5/26/09 10:48 a.m. comment). Another commenter, posting  
 2 under the name “Thomas Jefferson,” states his belief that “the banking institutions are more  
 3 dangerous to our liberties than standing armies.” *Id.* (5/26/09 12:58 p.m. comment). A  
 4 commenter using the name “Don’t protest at the court” urged readers to “Write those letters!  
 5 PROTEST!” *Id.* (5/26/09 11:51 a.m. comment). Not all comments are of a pro-Kahre or anti-  
 6 government bent; another commenter, using the nom de plume “Pay My Taxes” showed strong  
 7 support for the prosecution, stating that “[t]he IRS and the US Department of Justice are the true  
 8 heroes in this story.” *Id.* (5/28/09 7:42 a.m. comment)

9  
 10 Because political discourse tends to invite and evoke emotional responses, some  
 11 commenters chose not restrain themselves to run-of-the-mill calls to change government policy.  
 12 Some comments appear to postulate, fantasize about, or even advocate armed rebellion against  
 13 the federal government. For instance, “Ingvend Storrs” alluded to such rebellion by stating it’s  
 14 “[t]ime for some 1776,” while a person using the pseudonym “Patrioit2012” wrote that “the time  
 15 will come for WAR against this criminal US Government ... [the military] along with the Police  
 16 and other criminal depts will be in the line of fire when we march!” *Id.* (5/27/09 12:15 a.m.  
 17 comment and 5/26/09 12:17 a.m. comment) A commenter named “Mike” went so far as to say  
 18 that “12 dummies on the jury who will convict [Kahre] ... should be hung along with the feds[.]”  
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 21 *Id.*

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 23 **2. The Comments At Issue Are Not Criminal, Nor Imaginably Relevant**  
 24 **to Any Potential Crime.**

25 While certain types of speech, such as incitements to criminal acts or true threats, are not  
 26 necessarily protected by the First Amendment,<sup>11</sup> none of the comments rises to the level of  
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28 <sup>11</sup> See *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940) (“[n]o one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot ...”); *Lovell v.*

1 criminal liability, nor do they reveal possible criminal activity that would be an appropriate  
2 target of a grand jury investigation. The Ninth Circuit has held that “speech that can reasonably  
3 be characterized as political rhetoric or hyperbole, particularly such speech not directed at  
4 specific individuals, is protected.” *Fogel v. Collins*, 531 F.3d 824, 830 (9th Cir. 2008). To  
5 determine whether a given expression is an unprotected “true threat” or protected political  
6 rhetoric, the court applies both an objective and subjective standard. *Id.* at 831. The “objective  
7 standard asks whether it is reasonably foreseeable to a speaker that the listener will seriously take  
8 his communication as an intent to inflict bodily harm.” *Id.* (quoting *Planned Parenthood of the*  
9 *Columbia/Willamette, Inc. v. Am. Coal. Of Life Activists*, 290 F.3d 1058, 1076 (9th Cir. 2002))  
10 (internal quotation marks omitted). The subjective standard applied by the Ninth Circuit requires  
11 “proof that the speaker subjectively intended the speech as a threat” in order to find that the  
12 speaker’s expression is an unprotected “true threat.” *Fogel*, 531 F.3d at 831 (quoting *United*  
13 *States v. Cassel*, 408 F.3d 622, 633 (9th Cir. 2005)). For both tests, the court examines the  
14 “totality of the message... in light of the full context available to someone observing [the  
15 expression].” *Fogel*, 531 F.3d at 831. *See also, Virginia v. Black*, 538 U.S. 343, 359 (2003)  
16 (“true threats” are statements where the speaker means to communicate a serious expression of  
17 an intent to commit an act of unlawful violence to a particular individual or group of  
18 individuals); *but see Watts v. United States*, 394 U.S. 705, 708 (1969) (“political hyperbole” is  
19 not a true threat).

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24 With respect to incitements, the First Amendment prohibits states from criminalizing  
25 speech advocating the use of force or lawless acts unless such advocacy is directed toward  
26 inciting or producing imminent lawless action and is likely to instantly incite or produce such

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28 *Poway Unified School Dist.*, 90 F.3d 367 (9th Cir. 1996) (holding that high schooler’s threat to  
“shoot someone” in front of a guidance counselor was not protected speech).

1 action. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). The Constitution requires that the  
2 speech be *aimed at causing an unlawful act* **and** that the speech is *likely to cause an imminent*  
3 *unlawful act*, because abstractly advocating for the necessity of force and violence is not the  
4 same as preparing a group for violent action and steeling it to such action. *Id.* at 448 (emphasis  
5 added). In sum, unless a statement is an actual threat by a speaker who intends to carry it out, or  
6 is an intentional incitement to act that causes public disorder, it is protected. *Id.* at 448-49.  
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8  
9 **a. Commentary criticizing trial proceedings are protected speech.**

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11 Unless commentary about judges, trials, jurors, or lawyers constitutes a “true threat” or  
12 “clear and present danger,” it is protected and is not criminal. In *Bridges v. California*, 314 U.S.  
13 252, 263, 270-71 (1941), the Court made clear that the First Amendment limited a court’s power  
14 to hold speakers in contempt, and that out-of-court publications were to be governed by the  
15 “clear and present danger” standard. The Court described the “clear and present danger”  
16 standard as ‘a working principle that the substantive evil [behind the speech] must be extremely  
17 serious and the degree of imminence extremely high before utterances can be punished’ (*id.* at  
18 263) because restrictions on speech concerning pending judicial proceedings are likely to impede  
19 discussion of important public issues “at the precise time when public interest in the matters  
20 discussed would naturally be at its height.” *Id.* at 268. Furthermore, the “clear and present  
21 danger” must be to the fair administration of justice itself, and not the public’s opinion of  
22 administration of justice. *See Pennekamp v. State of Florida*. 328 US 331, 347, 349 (1946)  
23 (finding that the associate editor of the Miami Herald could not be held in contempt of court for  
24 publishing two editorials criticizing the administration of criminal justice in certain cases  
25 pending before the court).  
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1 The Supreme Court further elaborated on this rule in *Wood v. Georgia*, 370 U.S. 375,  
2 384-85(1962), when it held that a court may not punish out-of-court statements critical of  
3 judicial actions, absent special circumstances showing an extremely high likelihood of serious  
4 interference with the administration of justice and that the statements presented a clear and  
5 present danger of such interference. In *Wood*, the town Sheriff wrote an editorial in the local  
6 newspaper criticizing a judge's decision to convene a grand jury to investigate block voting by  
7 the African-American community. He also sent a copy to the grand jury room. His editorial  
8 stated:  
9

10  
11 Whatever the Judges' intention, the action ...will be considered  
12 one of the most deplorable examples of race agitation to come out  
13 of Middle Georgia in recent years. At a time when all thinking  
14 people want to preserve the good will and cooperation between the  
15 races in Bibb County, this action appears either as a crude attempt  
16 at judicial intimidation of negro voters and leaders, or, at best, as  
17 agitation for a 'negro vote' issue in local politics...Negro people  
will find little difference in principle between attempted  
intimidation of their people by judicial summons and inquiry and  
attempted intimidation by physical demonstration such as used by  
the K.K.K.

18 *Id.* at 380. The Supreme Court found that by holding the Sheriff in contempt of court for  
19 expressing his personal ideas (however unprofessionally) on a matter that was presently before a  
20 grand jury, the lower court had abridged his liberty of free speech as protected by the First  
21 Amendment because his comments did not constitute an imminent threat to the administration of  
22 justice, despite the fact that he identified himself as the Sheriff in the copy sent to the grand jury  
23 rooms. *Id.* at 394-95.  
24

25 The First Amendment protects the right to speak out publicly against a criminal  
26 prosecution or against the government in general. See, e.g., *In re First Nat'l Bank, Englewood,*  
27 *Colo.*, 701 F.2d 115, 117 (10th Cir. 1983) (reversing district court's denial of motion to quash  
28 subpoena seeking bank records of two anti-tax organizations that had espoused dissident views



1 on the federal income tax system. The Ninth Circuit follows this reasoning as well. *See, e.g.*,  
 2 *Turney v. Pugh*, 400 F.3d 1197, 1204 (9th Cir. 2005) (noting in dicta that it would “intrude into  
 3 the realm of protected expression” to criminalize an “advertisement supporting a particular  
 4 outcome in a pending case (*e.g.*, ‘OJ Was Framed!’”).  
 5

6 **b. The comment regarding jurors is neither a true threat, nor an**  
 7 **incitement to violence.**

8 The transcript from the Kahre trial shows that AUSA Damm is particularly concerned  
 9 about a specific blog comment indicating that jurors “should be hung” if they find for the  
 10 government and AUSA Damm. (Ex. 3 at 9:16-23.)<sup>12</sup> The first and most obvious issue is the  
 11 extreme overbreadth of the First Subpoena and its inclusion of an incredible swath of protected  
 12 speech: if AUSA Damm was concerned with specific statements, why did he seek the identities  
 13 of each and every commenter to the May 24, 2009 article? This highlights the lack of legitimate  
 14 purpose for all the private information AUSA Damm is seeking, including IP addresses.  
 15

16 But even the comment of apparent concern to AUSA Damm is not a true threat and does  
 17 not indicate any clear and present danger. It does not constitute jury tampering,<sup>13</sup> in no way rises  
 18 to the level of criminal speech, and is fully-protected political rhetoric that cannot meet the “clear  
 19

20 \_\_\_\_\_  
 21 <sup>12</sup> The commenter, “Mike,” stated that the “12 dummies on the jury who will convict [Kahre] ...  
 22 *should* be hung along with the feds.” Ex. 4 (5/26/09 11:05 a.m. comment) (emphasis added).

23 <sup>13</sup> Jury tampering is prohibited under 18 U.S.C. 1503 which states in pertinent part: “whoever  
 24 corruptly, or by threats or force, or by any threatening letter or communication, endeavors to  
 25 influence, intimidate, or impede any grand or petit juror ... in the discharge of his duty ... shall  
 26 be punished...”. (emphasis added) Jury tampering is a specific intent crime and the prosecution  
 27 must show that a person acted willfully, knowingly and with specific intent to influence a juror.  
 28 *See United States v. Russell*, 255 U.S. 138, 143 (1921) (explaining the importance of the word  
 “endeavor” as: “The word of the section is ‘endeavor,’ ... it describes any effort or essay to  
 accomplish the evil purpose that the section was enacted to prevent.”); *U.S. v. Guzzino*, 810 F.2d  
 687, 696 (7th Cir. 1987)(“To prove a violation of section 1503, the government must show that  
 each defendant knew of the pending judicial proceeding and specifically intended to impede its  
 administration.”). None of the comments is jury tampering.

1 and present danger” standard required for criminalizing speech that represents a threat to the  
2 judicial process. *Pennekamp v. State of Fla.*, 328 U.S. 331, 332-33 (1946).

3 The language used, while crude, does not imply any further action from the commenter,  
4 which means there is no proof of his subjective intent to threaten. Simply because the  
5 commenter states that something bad *should* befall jury members who convict Mr. Kahre and his  
6 co-defendants does not mean that the commenter plans on setting in motion. Unlike in cases in  
7 which the court found a “true threat,” the language used by the commenter merely expresses a  
8 fantasy to the readers of the article, which no reasonable person could interpret as an actual  
9 threat to do harm. See *Watts v. United States*, 394 U.S. 705 (1969) (holding that the phrase “if  
10 they ever make me carry a rifle the first man I want in my sights is [then-president] L.B.J.”  
11 spoken at a political rally is protected political speech rather than a threat); *Fogel*, 531 F.3d 824,  
12 827, 831 (9th Cir. 2008) (finding that the words “I AM A FUCKING SUICIDE BOMBER  
13 COMMUNIST TERRORIST!” among other statements painted on appellant’s van did not  
14 constitute true threats); *cf.*, *United States v. Stewart*, 420 F.3d 1007, 1015 (9th Cir. 2005)  
15 (holding that expressing a desire to “string [a specific judge] up and cut her throat ... and make it  
16 like a copycat so that people would do the same thing” is a threat in the context of speaking with  
17 an undercover police officer posing as a hitman). The juror comment is surrounded by similarly  
18 fiery political speech, and is not directed at any particular person, it is clear from the context that  
19 no reasonable reader would take it as a true threat.

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24 As the United States Supreme Court noted in laying out the First Amendment test for  
25 interference with judicial process:

26 This essential right of the courts to be free of intimidation and  
27 coercion was held to be consonant with a recognition that freedom  
28 of the press must be allowed in the broadest scope compatible with  
the supremacy of order. A theoretical determinant of the limit for

1 open discussion was adopted from experience with other  
2 adjustments of the conflict between freedom of expression and  
3 maintenance of order. This was the clear and present danger rule.  
4 The evil consequence of comment must be ‘extremely serious and  
the degree of imminence extremely high before utterances can be  
punished.

5 *Pennekamp v. Florida*, 329 U.S. 331, 334 (1946).

6 Other cases construing the clear and present danger standard have generally reiterated the  
7 “true threat” standard, and made plain that criminalization of speech, even when intimidation is  
8 alleged, must meet the exacting and high standards for an imminent and direct threat. *See, i.e.*,  
9 *U.S. v. Cassel*, 408 F.3d 622, 636 (9th Cir. 2005) (analyzing statute criminalizing interference  
10 with federal land sale by intimidation under true threat standards). *See also Caribbean Intern.*  
11 *News Corp. v. Fuentes Agostini*, 12 F. Supp. 2d 206, 218-22 (D. P. R. 1998) (analyzing  
12 application of jury intimidation rules to critics in the press). The Supreme Court has noted that  
13 such commentary is punishable only if the risk of an unfair administration of justice is  
14 “extremely serious and the degree of imminence [is] extremely high.” *Landmark*, 435 U.S. at  
15 845 (*quoting Bridges*, 314 U.S. at 263). In borderline cases courts should rule in favor of  
16 allowing the commentary and preserving the freedom of public expression. *Pennekamp*, 328 U.S.  
17 at 347.

18 Indeed, in the *Cassel* case, the Ninth Circuit noted that not only must a threat be  
19 imminent and direct; it must be a clear threat of action *by the Defendant*.

20 For while the jury instruction correctly stated that “intimidation” involves  
21 “words and conduct that would put an ordinary, reasonable person in fear  
22 or apprehension,” it failed to specify that the statute requires “fear or  
23 apprehension” of injury inflicted *by the defendant*. Whether the threat is of  
24 injury to person or property, there is no doubt that it must be a threat of  
25 injury brought about-rather than merely predicted-by the defendant.  
26 Indeed, the First Amendment requires as much.

27 *Cassel*, 408 F.3d at 636-37 (internal citation omitted).

1 It is clear that the blog comment wishing that jurors “should be hung” in no way meets  
2 the high threshold for a true threat. Not only is this a *conditional* wish, which by definition  
3 cannot be imminent, but it is clear that the speaker has no intent to carry it out – only hopes, via  
4 hyperbolic rhetoric, that it would occur. Thus, none of the comments on the LVRJ Article rise  
5 to a level punishable under jury intimidation statutes, and the entirety of the communications  
6 sought are fully protected under the First Amendment.  
7

8 The fact that the comments at issue here, including the comment about jurors, are not  
9 criminal is highlighted by their context: website posts are often full of hyperbolic rhetoric,  
10 including concerning ongoing legal cases. Indeed, a review of the Review-Journal’s website  
11 reveals that this type of comment is commonplace. For instance, in response to the Nevada  
12 Supreme Court’s staying of William Castillo’s execution in 2007, a commenter named “Russ”  
13 stated that “it’s about time that Justice Mike Cherry and the ACLU should get the needle for  
14 letting the killer have free room and board and a color TV in his cell for the rest of his life.”  
15 Sean Whaley, *State's high court stays execution of Castillo*, Las Vegas Review-Journal,  
16 <http://www.lvrj.com/news/10571156.html?numComments=32> (10/16/07 12:35 p.m. comment).  
17 More recently, a person using the name “Jo” commented, in response to a story about alleged  
18 child murderer William Marshall: “Let me at this creep. I’ll forcibly penetrate him!!! And the  
19 mom too. Dirtbags!” Lynette Curtis, *21-MONTH-OLD’S DEATH: Toddler sexually assaulted*,  
20 Las Vegas Review-Journal, June 16, 2009,  
21 <http://www.lvrj.com/news/48145052.html?numComments=24> (6/16/09 11:27 a.m. comment).  
22 In response to the same story, “wildbill” wrote that Marshall “should have his d\*\*k [sic] cut off  
23 with a dull knife, shoved down his throught [sic], and then have his head banged against a wall  
24 until he is dead.” *Id.* (6/16/09 8:38 a.m. comment). Past commenters have even wished death  
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1 upon jury members' families, as a person named "Summerlin Res" wrote "[t]o the jury that let  
2 this person off with murder I hope his next victim will be one of your family members and not  
3 mine!" David Kihara, *Teen acquitted in slaying that led to LV police shooting*, Las Vegas  
4 Review-Journal, July 17, 2007, <http://www.lvrj.com/news/25549529.html?numComments=36>  
5 (7/17/07 11:06 a.m. comment). These comments show that vitriolic invective and the expression  
6 of violent fantasies are par for the course in Internet discourse, and that the comment about the  
7 jurors does not possibly rise to the level of a true threat.  
8

9  
10 **c. The comment regarding Christopher Maietta is not criminal**

11 Similarly, the comment about one of the prosecutors, AUSA Damm's co-counsel  
12 Christopher Maietta is also a run-of-the-mill Internet comment, albeit a crude one. A person  
13 posting under the pseudonym "Provider One" wrote, "I bid 10 Quatloos that Christopher Maietta  
14 does not celebrate his next birthday." Ex. 4 (6/13/09 10:42 a.m. comment). While this may  
15 appear to be an oblique threat, it is clear from the surrounding context that it is not a "true  
16 threat." First, it is typical of the vituperative nature of many posts on the Internet, as explained  
17 above. And, rather than reflecting any desire or plan by the speaker to harm AUSA Maietta, it  
18 merely states that the speaker is possibly willing to make a bet on whether someone will survive.  
19 But, it does not even seem to reflect a real willingness to bet: "quatloos" is not a slang term for  
20 actual currency, but rather a reference to an episode of the television series "Star Trek" which  
21 centered on a gladiatorial competition. Furthermore, "quatloos" is also a reference to the website  
22 [quatloos.com](http://www.quatloos.com), which bills itself as "a public educational website covering a wide variety of  
23 financial scams & frauds including ... tax scams ... and more..." <http://www.quatloos.com/> (last  
24 visited June 22, 2009). Because no such currency as "quatloos" even exists outside of televised  
25 fiction, and because "quatloos" is an obviously farcical reference to a website which promotes  
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1 views opposite to those purported to belong to the commenter, this statement cannot be  
2 considered a “true threat” directed toward AUSA Maietta.

3  
4 **a. Anonymous Speech Is Protected.**

5 The fact that the political commentary was made anonymously in no way changes the  
6 analysis. Partly in recognition of the tremendous role anonymous speech has played throughout  
7 the history of the United States, both the Ninth Circuit and the Supreme Court have long held  
8 that “an author’s decision to remain anonymous, like other decisions concerning omissions or  
9 additions to the content of a publication, is an aspect of the freedom of speech protected by the  
10 First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 342 (1995). *See also*  
11 *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 200 (1999) (striking down a Colorado  
12 law requiring petition circulators to wear identification); *Am. Civil Liberties Union of Nevada v.*  
13 *Heller*, 378 F.3d 979, 1002 (9th Cir. 2004) (invalidating statute that required election  
14 publications to reveal the names and addresses of financial backers).

15  
16  
17 **3. Speech Conveyed Via the Internet Is Protected Like Any Other  
18 Speech.**

19 The right to free speech is no less protected on the Internet than it is in the world of ink  
20 and paper. *See Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997) (“our cases provide  
21 no basis for qualifying the level of First Amendment scrutiny that should be applied to [the  
22 Internet]”). Federal courts, often invoking the crucial role anonymous speech played in the  
23 formation of the Constitution, have recognized that unmasking anonymous Internet speakers via  
24 the discovery process in civil lawsuits impermissibly infringes on speakers’ First Amendment  
25 rights. One federal court has stated that “the constitutional rights of Internet users, including the  
26 First Amendment right to speak anonymously must be carefully safeguarded.” *Doe v.*  
27 *2TheMart.com Inc.*, 140 F.Supp.2d 1088, 1097 (W.D. Wash., 2001).

1 As the Electronic Frontier Foundation, a non-profit organization dedicated to preserving  
2 civil liberties on the internet, explains:

3 Many people don't want the things they say online to be connected with their  
4 offline identities. They may be concerned about political or economic retribution,  
5 harassment, or even threats to their lives. Whistleblowers report news that  
6 companies and governments would prefer to suppress; human rights workers  
7 struggle against repressive governments; parents try to create a safe way for  
8 children to explore; victims of domestic violence attempt to rebuild their lives  
9 where abusers cannot follow.

10 Instead of using their true names to communicate, these people choose to speak  
11 using pseudonyms (assumed names) or anonymously (no name at all). For these  
12 individuals and the organizations that support them, secure anonymity is critical.  
13 It may literally save lives.

14 <http://w2.eff.org/Privacy/Anonymity/> (last checked June 11, 2009).

15 **4. The Subpoena Should Be Quashed In Order to Protect These**  
16 **Important Free Speech Rights.**

17 Courts act to limit grand jury powers in order to protect First Amendment rights. In  
18 *Burse*, 466 F.2d at 1083, the Ninth Circuit found that, even where a threat to kill the President  
19 was involved, grand jury inquiries into peripheral subjects infringed witnesses' rights of  
20 associational privacy and had an impermissibly chilling effect upon freedom of the press. Just as  
21 is the case here, the grand jury sought, in part, the identity of people responsible for certain  
22 anonymous statements. *Id.* at 1085.<sup>14</sup> The Ninth Circuit held that the First Amendment forbade

23 <sup>14</sup> *Burse* involved an investigation of the Black Panther Party launched when, in 1969, a  
24 member of the Party stated "We will kill Richard Nixon" during a public speech. *Id.* at 1065.  
25 The Party then reprinted the speech in its weekly newspaper and printed a pamphlet allegedly  
26 inciting mutiny in Vietnam. A grand jury investigation was launched to determine who the "we"  
27 that planned to kill the President was, and extended to an investigation as to the people involved  
28 with the creation and distribution of the newspaper and pamphlet. *Id.* at 1066-1071. Arguing  
that the Black Panther Party advocated for the direct overthrow of the government by force and  
violence, the government repeatedly questioned two members of the staff of the newspaper and  
moved to compel them to answer detailed questions about the publications and the organization  
that they refused to answer, claiming both First and Fifth Amendment protection. *Id.*

1 requiring the witnesses to disclose who was involved with the creation of the newspaper article  
2 and pamphlet because the mere existence of the statements did not support an inference of any  
3 criminal intent. *Id.* at 1087-88

4  
5 More recently, in *U.S. v. Citizens State Bank*, 612 F.2d 1091, 1093 (8th Cir. 1980), the  
6 Eighth Circuit considered a challenge by the United States Taxpayer's Union (USTA), a tax-  
7 opposition group and one of its officers, to an I.R.S. subpoena issued to their bank. After seeing  
8 a newspaper article listing the name of a spokesperson for the "Liberty Amendment," an attempt  
9 to change the taxation system, and recognizing him as a tax protestor, an I.R.S. agent launched  
10 an investigation of the spokesperson, and issued a subpoena for the bank records of UTSA and  
11 the spokesperson. *Id.* at 1093. Citizens Bank refused, and the I.R.S. moved to enforce the  
12 subpoena, and UTSA and its spokesperson intervened, claiming that the release of the documents  
13 would violate their First Amendment rights to free association because it called for, among other  
14 things, membership information. *Id.* at 1093. The district court ordered enforcement, and the  
15 Eighth Circuit reversed, holding that the district court erred in refusing to consider the First  
16 Amendment issues, noting the "vital relationship" between privacy and the ability First  
17 Amendment rights to association and privacy. *Id.* at 1094. (citing and quoting *NAACP v.*  
18 *Alabama*, 357 U.S. 449 (1958). The Eighth Circuit remanded, directing that compelled  
19 disclosure would only be permissible if the government makes the requisite showing of  
20 compelling need. *Id.* at 1094-95.

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24 *In re Grand Jury Subpoena to Amazon.com Dated August 7, 2006*, 246 F.R.D. 570 (W.D.  
25 Wis., 2007) involved a similar request for private information: a grand jury subpoena was issued  
26 to Amazon.com in a tax evasion and mail/wire fraud investigation involving the sale of books.  
27 *Id.* at 571. The grand jury initially sought the identities of thousands of customers, but later  
28



1 reduced the scope to a representative sample. *Id.* Amazon refused to identify any customers,  
2 arguing that the customers had a First Amendment right to maintain the privacy of their reading  
3 choices. *Id.* at 572. The court agreed, and found that it “must consider this right when  
4 determining whether to require Amazon to comply with the grand jury subpoena.” *Id.* at 572. It  
5 described the issue at hand:  
6

7 This presents a legitimate First Amendment concern. The subpoena is troubling  
8 because it permits the government to peek into the reading lists of law-abiding  
9 citizens while hunting for evidence against somebody else. In this era of public  
10 apprehension about the scope of the USAPATRIOT Act, the FBI’s (now-retired)  
11 “Carnivore” Internet search program, and more recent highly-publicized  
12 admissions about political litmus tests at the Department of Justice, rational book  
13 buyers would have a non-speculative basis to fear that federal prosecutors and law  
14 enforcement agents have a secondary political agenda that could come into play  
15 when an opportunity presented itself.

16 *Id.* at 572-73. The court required the government to demonstrate that its investigation was valid,  
17 given the First Amendment implications. Then, once the government did so, the court developed  
18 a process for seeking volunteer customers to aid in the genuine investigation, to ensure that the  
19 government would never learn the identities of the customers who did not want their identities  
20 revealed, *Id.* at 572-74. The court thus balanced the First Amendment rights with a  
21 demonstrated legitimate government need.

22 Here, as in *Amazon* and in *Citizens Bank*, the subpoena allows the government to pry into  
23 protected First Amendment territory. The commenters’ identities, just like the identities of  
24 Amazon’s readers and the information about UTSA, are protected.<sup>15</sup> This includes IP addresses.

25 \_\_\_\_\_  
26 <sup>15</sup> While the Supreme Court, in *Branzburg v. Hayes*, 408 U.S. 665 (1972), rejected attempts by  
27 reporters to refuse to reveal the identity of confidential sources to a grand jury in order to protect  
28 their newsgathering ability and based on First Amendment arguments (668-71), the case is  
entirely distinguishable. First, its holding is limited to the proposition that the First Amendment  
does not allow a reporter to refuse to answer valid grand jury questions about the criminal  
conduct of his source, or evidence thereof. *Id.* at 697, 708-709. Second, *Branzburg* did not

1 Further, while the First Amendment is not an absolute right and may be balanced against  
2 legitimate purposes behind grand jury actions, here there is *no* legitimate purpose that could  
3 possibly outweigh the important free speech claims at stake. Indeed, the speech the subpoena  
4 infringes upon appears to be the imaginary “crime” that the government is investigating.<sup>16</sup>  
5

6  
7 foreclose First Amendment claims, even under similar circumstances. Indeed, as noted and  
8 quoted above, the *Branzburg* decision, its outcome notwithstanding, makes abundantly clear that  
9 grand juries operate within the limits of the First Amendment and are subject to judicial control.  
10 *Id.* at 707. Third, *Branzburg* did not involve the same type of First Amendment rights at issue  
11 here, rights of anonymous speakers criticizing the government. Fourth, unlike here, there was no  
12 evidence of harassment or any other improper purpose by the government, and the *Branzburg*  
13 court noted that “grand jury investigations if instituted or conducted other than in good faith,  
14 would pose wholly different issues for resolution under the First Amendment.” *Id.* at 707. Fifth,  
15 finally, and perhaps most importantly, here there is no crime that the government could possibly  
16 be seeking to investigate.

17  
18 <sup>16</sup> In the civil context, a number of courts have granted motions to quash subpoenas seeking  
19 similar information in order to protect the free speech rights of anonymous speakers. In *Doe v.*  
20 *2TheMart.com Inc.*, 140 F.Supp.2d 1088, 1097-98 (W.D. Wash., 2001), a federal district court  
21 granted a motion to quash a subpoena which would reveal the identities of a company’s  
22 anonymous critics. The court expressed its concern that stripping Internet users of their  
23 anonymity “would have a significant chilling effect on Internet communications and thus on  
24 basic First Amendment Rights.” *Id.* at 1093. Similarly, the New Jersey Superior Court  
25 emphatically stated that “people who have committed no wrong should be able to participate  
26 online without fear that someone who wishes to harass or embarrass them can file a frivolous  
27 lawsuit and thereby gain the power of the court’s order to discover their identity.” *Dendrite*  
28 *International, Inc. v. Doe No. 3*, 775 A.2d 756, 767 (N.J. Super. Ct. App. Div., 2001) (ruling that  
discovery process could not be used to unmask anonymous Internet commenters absent a  
showing of actual harm). Likewise, the Supreme Court of Delaware reversed an order  
compelling the release of an anonymous blogger’s identity in part due to fears that “[a]fter  
obtaining the identity of an anonymous critic through the compulsory discovery process, a  
defamation plaintiff who either loses on the merits or fails to pursue a lawsuit is still free to ...  
simply seek revenge or retribution.” *Doe v. Cahill*, 884 A.2d 451, 457 (Del. Supr. 2005)  
(holding that a defamation plaintiff must show that his claim could survive summary judgment  
before being allowed to use discovery process to reveal the identities of his anonymous  
defendants). Grand jury subpoenas presents no less of a threat to the right to speak  
anonymously. Indeed, they pose a much greater threat. After all, the targets of this subpoena  
may find themselves subject to criminal charges and imprisonment. Because none of the  
comments found on the *Journal-Review* website could possibly be construed as threats or  
incitement to violence that do not merit constitutional protection, the authors of those comments  
are entitled to the fullest protection of the First Amendment, which includes the protection of  
their identities and their IP addresses.

1 Protecting anonymity is especially important in the arena of political speech, as it both  
2 allows a controversial opinion to be evaluated on its merits without being tainted by the mere  
3 identity of the opinion-holder, and it allays “fear of economic or official retaliation [and] ...  
4 concern about social ostracism[.]” *McIntyre*, 514 U.S. at 341-42. This fear is being borne out  
5 here. The commenters not only face the threat of being unmasked, but also the threat of criminal  
6 charges, simply for strongly expressing their views regarding the Federal Reserve, taxation, and  
7 Kahre Case. The subpoena threatens to chill the very type of controversial speech that the First  
8 Amendment is designed to protect, and it should be quashed.

11 **D. The Subpoena Constitutes Abuse of the Grand Jury Process, and Should Also Be**  
12 **Quashed On Those Grounds.**

13 The first subpoena sought identifying information about each and every commenter on  
14 the LVJR Article. While it appears that the government has now narrowed its current request,  
15 given the breadth of the first subpoena, it is impossible to see the effort to uncover the identity of  
16 critics as anything but an attempt to squelch criticism and dissent. It is noteworthy that at the  
17 time of the first subpoena, the second comment targeted by the revised subpoena had not yet  
18 even been posted. This suggests that rather than targeting comments he feels do constitute real  
19 threats, AUSA Damm is on a campaign to discover the identities of his critics.

21 AUSA Damm’s role as prosecutor in the Kahre Case and the fact that he is criticized in  
22 many comments is an “indicative sequence of events demonstrating an irregularity” that calls for  
23 this Court to intervene. *United States v. Jackson*, 863 F. Supp. 1449, 1453 (D. Kan. 1994)  
24 (citation and internal quotation marks omitted). Given the breadth of the subpoena, and lack of  
25 relationship to any conceivable legitimate end, this is especially so.  
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1 While “mere inconvenience not amounting to harassment does not justify judicial  
2 interference with the functions of the grand jury,” courts do have “inherent power over their  
3 process to prevent abuse, oppression and injustice.” *United States v. Gurule*, 437 F.2d 239, 241  
4 (10th Cir. 1970) (citation and internal quotation marks omitted); *see also Hoffman v. United*  
5 *States* (1951) 341 U.S. 479, 485 (1951) (prosecutors and courts are both duty bound to ensure  
6 that prosecutors’ investigative powers are not abused, and are exercised wisely and in  
7 compliance with the Constitution as well as other limits). Indeed, courts should exercise their  
8 considerable discretion in this area with care and an eye to preventing prosecutorial abuse, in  
9 light of the fact that grand jury subpoenas “are issued pro forma with no prior court approval”  
10 and thus “are instrumentalities of the United States Attorney’s office although issued under the  
11 district court’s name and for the grand jury.” *In re Grand Jury Subpoena*, 829 F.2d 1291, 1296-  
12 97 (4th Cir. 1987).

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15 Further, a prosecutor should exercise care to divide conflicting and competing roles, such  
16 as his role in the trial versus his role in these subpoenas. *See, e.g., United States v. Raphael*, 786  
17 F. Supp. 355, 359 (S.D.N.Y. 1992) (ordering government to produce grand jury transcripts for  
18 inspection, and noting disapprovingly that “the same prosecutors ... are responsible for the Grand  
19 Jury subpoenas at issue” as well as the related trials); *see also United States v. Kovaleski*, 406 F.  
20 Supp. 267, 270 (E.D. Mich. 1976) (quashing grand jury subpoena for impermissible purpose, in  
21 part because “[t]he same Assistant United States Attorney was involved in the perjury  
22 investigation and the trial”); *United States v. Shaygan*, No. 08-20112-CR, 2009 WL 980289, at  
23 \*12-14, 19, 23 (S.D. Fla. 2009) (sanctioning AUSAs for unethical conduct, including breaching  
24 “taint wall” between a prosecution and a collateral investigation into “witness tampering”). This  
25 Court should take appropriate steps to remedy potential prosecutorial abuse.  
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1 **E. This Court Should Grant Relief That Fully Protects DOES' First Amendment**  
 2 **Rights, Including a Protective Order.**

3 DOES and other commenters are aware of the subpoenas because the Review-Journal  
 4 published articles about them. (See Ex. 1-2); (Doe 1 Decl. at ¶ 11; Doe 2 Decl. at ¶ 11; Doe 3  
 5 Decl. at ¶ 11; Doe 4 Decl. at ¶ 11.) Thus, granting the motion to quash will make clear to the  
 6 public that their free speech and privacy rights have been protected, and that the government  
 7 does not have *carte blanche* to monitor its critics going forward. Even if information about some  
 8 commenters has already been delivered to the government – and even if the subpoena has been  
 9 withdrawn – that would not moot this motion because a court can still grant the DOES  
 10 appropriate relief. Rule 57 of the Federal Rules of Criminal Procedure give district court judges  
 11 and magistrates wide latitude to fashion appropriate relief. Fed. R. Crim. P. 57(b) (“Procedure  
 12 When There Is No Controlling Law”) (“A judge may regulate practice in any manner consistent  
 13 with federal law, these rules, and the local rules of the district....”).<sup>17</sup> See also *Church of*  
 14 *Scientology of California v. United States*, 506 U.S. 9, 13, (1992) (appeal of summons issued by  
 15 IRS not moot even though tapes sought by summons had been produced because court could  
 16 render partial relief by ordering the return or destruction of the tapes); *In re Grand Jury*  
 17 *Subpoenas Duces Tecum*, 78 F.3d 1307, 1310-11 (8th Cir.1996); *In re Grand Jury Subpoenas*  
 18 *Dated December 7 and 8*, 40 F.3d 1096, 1100 (10th Cir.1994).

19 Here, granting the motion to quash will provide the public with assurances that their  
 20 rights have been protected. Even if the subpoena is modified, for example, commenters have no  
 21 way of knowing whether their information has been disclosed. Further, this Court should order  
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 27 <sup>17</sup> Under the provisions regarding protective orders in the discovery context, the rules provide  
 28 that “[a]ny time the court may, for good cause, deny, restrict, or defer discovery or inspection, or  
 grant other appropriate relief. The Court may permit a party to show good cause by a written  
 statement that the court will inspect *ex parte*.” Fed. R. Crim. P. 16(d)(1). Here, there is good  
 cause given the First Amendment concerns.

1 any information already provided to the government should be ordered destroyed. Finally, the  
2 government should be barred from using any information obtained – directly or indirectly –  
3 through the subpoena, and from again violating commenters’ First Amendment rights. Thus, a  
4 protective order should prohibit the government from issuing subpoenas to any Internet Service  
5 Provider (ISP) to obtain information about anonymous commenters’ IP addresses, and from  
6 using any information obtained. Finally, a protective order should bar future subpoenas to the  
7 Review-Journal seeking such information.  
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9  
10 **III. CONCLUSION**

11  
12 For all the foregoing reasons and in the interests of justice, the subpoenas should both be  
13 quashed. Further, all appropriate steps should be taken to protect the rights of people to  
14 comment anonymously.  
15

16 Respectfully submitted, this 22nd day of June, 2009,

**Formatted:** Font: Times New Roman, 12 pt

17 By: \_\_\_\_\_ /s/  
18 Margaret A. McLetchie  
19 Nevada Bar No. 10931  
20 **ACLU OF NEVADA**  
21 732 S. Sixth Street, Suite 200A  
22 Las Vegas, NV 89101  
23 (702) 366-1902  
24 *Attorneys for DOES 1-4*  
25  
26  
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DECLARATION OF DOE 1

1  
2  
3 On June 15, 2009, I declare under the penalty of perjury that the following statement is true  
4 and correct:

5 1. I am a client of the ACLU of Nevada.

6 2. I am one of the persons who posted an online anonymous comment in response to the  
7 Las Vegas Review Journal's May 26, 2009 online article entitled Employer's gold, silver payroll  
8 standard may bring hard time: 'This is a case about money, greed and fraud,' by Joan Whitely. The  
9 article is about an ongoing criminal case in which the main defendant, Robert Kahre, is being  
10 prosecuted for paying his employees with legally-circulating gold and silver U.S. coins. Mr. Kahre  
11 used the face value of the coins for tax purposes and is now facing 57 counts of income tax evasion,  
12 tax fraud and criminal conspiracy.

13 3. I feel strongly about the issues raised by the case and by the subsequent actions of the  
14 government in the case.

15 4. I posted my comment because I wanted to share my political opinion of the case with  
16 the general public and I wanted to engage others in debate and discourse about the case in general  
17 and about the prosecution specifically. I feel that the issues that have arisen affect not only those  
18 specifically involved with the case, but all citizens in general. Others had posted comments both for  
19 and against the case and I wanted my opinion to be heard.

20 5. The ability to post anonymously is important to me in order to fully exercise my First  
21 Amendment right to engage political speech about controversial issues without fear of retaliation.

22 6. To leave a comment about the article, I scrolled to the bottom of the screen to the  
23 section titled "Leave Your Comment." The Review-Journal website required me to enter a name and  
24 an email address in order to post a comment. I used a pseudonym to preserve my anonymity. It is  
25 a common practice to post on sites like the Review-Journal site using pseudonyms. When I posted  
26 my comment, I did not expect that the Las Vegas Review Journal would share any information about  
27 me.

28 7. I am concerned that, if the government obtains information they can identify me the  
government will launch an investigation against me because of my remarks.

1           8.       I believe the Grand Jury Subpoena is in retaliation for the critical comments I posted  
2 on the web in order to stifle further comment on the case, and that if they do obtain my information  
3 they will investigate and try to find something to prosecute me for, or otherwise use governmental  
4 power to stifle criticism by myself and others.

5           9.       I believe this Grand Jury Subpoena and the threat of a criminal investigation is a  
6 violation of my First Amendment right to engage in anonymous political speech and commentary.

7           10.      This threat has caused me to be concerned about posting any more comments on the  
8 Review-Journal's website about the Kahre case, the Grand Jury Subpoena or other controversial  
9 topics. I am very interested in political issues and often have opinions that are critical of the  
10 government and expressing them publicly and engaging in public discourse is important to me, but  
11 I am afraid to anonymously post on other websites or communicate in other media where the  
12 government may be able to figure out who I am.

13           11.      My identifying information is currently being sought by the Grant Jury Subpoena.  
14 I know this because I read another article in the Las Vegas Review Journal published on June 7, 2009  
15 entitled "Subpoena Seeks Names -- and Lots More -- Of Web Posters," by Thomas Mitchell. The  
16 article said that Review Journal had been served with a Grand Jury Subpoena from the U.S.  
17 attorney's office demanding that it turn over all records pertaining to comments posted about the  
18 May 26, 2009 article about the Kahre tax case. The Grand Jury Subpoena is seeking the "full name,  
19 date of birth, physical address, gender, ZIP code, password prompts, security questions, telephone  
20 numbers and other identifiers" of those posters, of which I am one.

21           12.      I declare, under penalty of perjury, that I am the "Doe 1" referenced in the foregoing  
22 "Declaration of Doe 1" and that all the statements contained therein are made by me and are true and  
23 correct to the best of my knowledge.

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DECLARATION OF DOE 2

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3 On June 15, 2009, I declare under the penalty of perjury that the following statement is true  
4 and correct:

5 1. I am a client of the ACLU of Nevada.

6 2. I am one of the persons who posted an online anonymous comment in response to the  
7 Las Vegas Review Journal's May 26, 2009 online article entitled Employer's gold, silver payroll  
8 standard may bring hard time: 'This is a case about money, greed and fraud,' by Joan Whitely. The  
9 article is about an ongoing criminal case in which the main defendant, Robert Kahre, is being  
10 prosecuted for paying his employees with legally-circulating gold and silver U.S. coins. Mr. Kahre  
11 used the face value of the coins for tax purposes and is now facing 57 counts of income tax evasion,  
12 tax fraud and criminal conspiracy.

13 3. I feel strongly about the issues raised by the case and by the subsequent actions of the  
14 government in the case.

15 4. I posted my comment because I wanted to share my political opinion of the case with  
16 the general public and I wanted to engage others in debate and discourse about the case in general  
17 and about the prosecution specifically. I feel that the issues that have arisen affect not only those  
18 specifically involved with the case, but all citizens in general. Others had posted comments both for  
19 and against the case and I wanted my opinion to be heard.

20 5. The ability to post anonymously is important to me in order to fully exercise my First  
21 Amendment right to in engage political speech about controversial issues without fear of retaliation.

22 6. To leave a comment about the article, I scrolled to the bottom of the screen to the  
23 section titled "Leave Your Comment." The Review-Journal website required me to enter a name and  
24 an email address in order to post a comment. I used a pseudonym to preserve my anonymity. It is  
25 a common practice to post on sites like the Review-Journal site using pseudonyms. When I posted  
26 my comment, I did not expect that the Las Vegas Review Journal would share any information about  
27 me.

28 7. I am concerned that, if the government obtains information they can identify me the  
government will launch an investigation against me because of on my remarks.

1           8.       I believe the Grand Jury Subpoena is in retaliation for the critical comments I posted  
2 on the web in order to stifle further comment on the case, and that if they do obtain my information  
3 they will investigate and try to find something to prosecute me for, or otherwise use governmental  
4 power to stifle criticism by myself and others.

5           9.       I believe this Grand Jury Subpoena and the threat of a criminal investigation is a  
6 violation of my First Amendment right to engage in anonymous political speech and commentary.

7           10.      This threat has caused me to be concerned about posting any more comments on the  
8 Review-Journal's website about the Kahre case, the Grand Jury Subpoena or other controversial  
9 topics. I am very interested in political issues and often have opinions that are critical of the  
10 government and expressing them publicly and engaging in public discourse is important to me, but  
11 I am afraid to anonymously post on other websites or communicate in other media where the  
12 government may be able to figure out who I am.

13           11.      My identifying information is currently being sought by the Grant Jury Subpoena.  
14 I know this because I read another article in the Las Vegas Review Journal published on June 7, 2009  
15 entitled "Subpoena Seeks Names – and Lots More – Of Web Posters," by Thomas Mitchell. The  
16 article said that Review Journal had been served with a Grand Jury Subpoena from the U.S.  
17 attorney's office demanding that it turn over all records pertaining to comments posted about the  
18 May 26, 2009 article about the Kahre tax case. The Grand Jury Subpoena is seeking the "full name,  
19 date of birth, physical address, gender, ZIP code, password prompts, security questions, telephone  
20 numbers and other identifiers" of those posters, of which I am one.

21           12.      I declare, under penalty of perjury, that I am the "Doe 2" referenced in the foregoing  
22 "Declaration of Doe 2" and that all the statements contained therein are made by me and are true and  
23 correct to the best of my knowledge.

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DECLARATION OF DOE 3

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On June 16, 2009, I declare under the penalty of perjury that the following statement is true and correct:

1. I am a client of the ACLU of Nevada.
2. I am one of the persons who posted an online anonymous comment in response to the Las Vegas Review Journal's May 26, 2009 online article entitled Employer's gold, silver payroll standard may bring hard time: 'This is a case about money, greed and fraud,' by Joan Whitely. The article is about an ongoing criminal case in which the main defendant, Robert Kahre, is being prosecuted for paying his employees with legally-circulating gold and silver U.S. coins. Mr. Kahre used the face value of the coins for tax purposes and is now facing 57 counts of income tax evasion, tax fraud and criminal conspiracy.
3. I feel strongly about the issues raised by the case and by the subsequent actions of the government in the case.
4. I posted my comment anonymously because I wanted to remain anonymous. I feel that the issues that have arisen affect not only those specifically involved with the case, but all citizens in general. Others had posted comments both for and against the case and I wanted my constitutional guarantee of privacy to be upheld.
5. The ability to post anonymously is important to me in order to fully exercise my First Amendment right to engage in political speech about controversial issues without fear of retaliation.
6. To leave a comment about the article, I scrolled to the bottom of the screen to the section titled "Leave Your Comment." The Review-Journal website required me to enter a name and an email address in order to post a comment. I used a pseudonym to preserve my anonymity. It is a common practice to post on sites like the Review-Journal site using pseudonyms. When I posted my comment, I did so with the expectation of a guarantee of privacy.
7. I am concerned that, the government has no right to inquire so they can identify me the government and launch an investigation against me because of my remarks.
8. I believe the Grand Jury Subpoena is in retaliation for the critical comments I posted on the web in order to stifle further comment on the case, and that if they do obtain my information

1 they will investigate and try to find something to prosecute me for, or otherwise use governmental  
2 power to stifle criticism by myself and others.

3 9. I believe this Grand Jury Subpoena and the threat of a criminal investigation is a  
4 violation of my First Amendment right to engage in anonymous political speech and commentary.

5 10. This threat has caused me to be concerned about posting any more comments on the  
6 Review-Journal's website about the Kahre case, the Grand Jury Subpoena or other controversial  
7 topics. I am very interested in political and other issues and often have opinions that may not be in  
8 favor of the government and expressing them publicly and engaging in public discourse is important  
9 to me, but I am afraid to anonymously post on other websites or communicate in other media where  
10 the government may be able to figure out who I am.

11 11. My identifying information is currently being sought by the Grant Jury Subpoena.  
12 I know this because I read another article in the Las Vegas Review Journal published on June 7, 2009  
13 entitled "Subpoena Seeks Names – and Lots More – Of Web Posters," by Thomas Mitchell. The  
14 article said that the Review Journal had been served with a Grand Jury Subpoena from the U.S.  
15 attorney's office demanding that it turn over all records pertaining to comments posted about the  
16 May 26, 2009 article about the Kahre tax case. The Grand Jury Subpoena is seeking the "full name,  
17 date of birth, physical address, gender, ZIP code, password prompts, security questions, telephone  
18 numbers and other identifiers" of those posters, of which I am one.

19 12. I believe I have the right to speak freely about any topic or issue, via computer or  
20 otherwise, without fear of retaliation or vindictiveness in regard to my constitutional rights

21 13. I declare, under penalty of perjury, that I am the "Doe 3" referenced in the foregoing  
22 "Declaration of Doe 2" and that all the statements contained therein are made by me and are true and  
23 correct to the best of my knowledge.

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DECLARATION OF DOE 4

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3 On June 22, 2009, I declare under the penalty of perjury that the following statement is true  
4 and correct:

5 1. I am a client of the ACLU of Nevada.

6 2. I am one of the persons who posted an online anonymous comment in response to the  
7 Las Vegas Review Journal's May 26, 2009 online article entitled Employer's gold, silver payroll  
8 standard may bring hard time: 'This is a case about money, greed and fraud,' by Joan Whitely. The  
9 article is about an ongoing criminal case in which the main defendant, Robert Kahre, is being  
10 prosecuted for paying his employees with legally-circulating gold and silver U.S. coins. Mr. Kahre  
11 used the face value of the coins for tax purposes and is now facing 57 counts of income tax evasion,  
12 tax fraud and criminal conspiracy.

13 3. I feel strongly about the issues raised by the case and by the subsequent actions of the  
14 government in the case.

15 4. I posted my comment because I wanted to share my political opinion of the case with  
16 the general public and I wanted to engage others in debate and discourse about the case in general  
17 and about the prosecution specifically. I feel that the issues that have arisen affect not only those  
18 specifically involved with the case, but all citizens in general. Others had posted comments both for  
19 and against the case and I wanted my opinion to be heard.

20 5. The ability to post anonymously is important to me in order to fully exercise my First  
21 Amendment right to engage political speech about controversial issues without fear of retaliation.

22 6. To leave a comment about the article, I scrolled to the bottom of the screen to the  
23 section titled "Leave Your Comment." The Review-Journal website required me to enter a name and  
24 an email address in order to post a comment. I used a pseudonym to preserve my anonymity. It is  
25 a common practice to post on sites like the Review-Journal site using pseudonyms. When I posted  
26 my comment, I did not expect that the Las Vegas Review Journal would share any information about  
27 me.

28 7. I am concerned that, if the government obtains information they can identify me the  
government will launch an investigation against me because of my remarks.

1           8.       I believe the Grand Jury Subpoena is in retaliation for the critical comments I posted  
2 on the web in order to stifle further comment on the case, and that if they do obtain my information  
3 they will investigate and try to find something to prosecute me for, or otherwise use governmental  
4 power to stifle criticism by myself and others.

5           9.       I believe this Grand Jury Subpoena and the threat of a criminal investigation is a  
6 violation of my First Amendment right to engage in anonymous political speech and commentary.

7           10.      This threat has caused me to be concerned about posting any more comments on the  
8 Review-Journal's website about the Kahre case, the Grand Jury Subpoena or other controversial  
9 topics. I am very interested in political issues and often have opinions that are critical of the  
10 government and expressing them publicly and engaging in public discourse is important to me, but  
11 I am afraid to anonymously post on other websites or communicate in other media where the  
12 government may be able to figure out who I am.

13           11.      My identifying information is currently being sought by the Grant Jury Subpoena.  
14 I know this because I read another article in the Las Vegas Review Journal published on June 7, 2009  
15 entitled "Subpoena Seeks Names – and Lots More – Of Web Posters," by Thomas Mitchell. The  
16 article said that Review Journal had been served with a Grand Jury Subpoena from the U.S.  
17 attorney's office demanding that it turn over all records pertaining to comments posted about the  
18 May 26, 2009 article about the Kahre tax case. The Grand Jury Subpoena is seeking the "full name,  
19 date of birth, physical address, gender, ZIP code, password prompts, security questions, telephone  
20 numbers and other identifiers" of those posters, of which I am one.

21           12.      I declare, under penalty of perjury, that I am the "Doe 4" referenced in the foregoing  
22 "Declaration of Doe 4" and that all the statements contained therein are made by me and are true and  
23 correct to the best of my knowledge.

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**DECLARATION OF ALLEN LICHTENSTEIN**

I, Allen Lichtenstein, declare under the penalty of perjury that the following statement is true and correct:

1. I am General Counsel for the ACLU of Nevada and I represent DOES 1, 2, 3 and 4 in this action.
2. As the declarations submitted by DOES 1, 2, 3 and 4 attest, the DOES face serious, immediate, injury, loss, and damage if the Grand Jury Subpoena issued by the U.S. Attorney(07-2-1431, June 16, 2009 EJ:BC:FBI:jr (2009R00818))) is not quashed.
3. I have the signature pages for the declarations of Does 1, 2, 3 and 4 on file, and can attest that, each of the declarations, while submitted anonymously, has been signed under penalty of perjury.

Dated this 22nd day of June, 2009

  
Allen Lichtenstein

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EXHIBIT 1

EXHIBIT 1



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## **Review-Journal resists subpoena for names of readers who posted views**

By JOAN WHITELY  
LAS VEGAS REVIEW-JOURNAL

Free speech collides with fair trial.

Review-Journal readers who posted online their views about a federal criminal tax trial are the target of a sweeping federal grand jury subpoena asking for information so that authorities may identify who they are and where they live.

The Review-Journal plans to file later this week a motion to quash the subpoena, and the American Civil Liberties Union has posted its own online solicitation asking those who posted whether they would like the ACLU to legally represent them.

The newspaper received the subpoena on June 2, and Editor Thomas Mitchell revealed the existence of the subpoena in a June 7 column.

This past week the grand jury subpoena, which is separate from the ongoing trial but was signed by one of the prosecutors involved in the tax trial, was the topic of discussion between the trial judge and attorneys, revealing for the first time a possible motive for the subpoena.

The newspaper's subpoena does not explain why the U.S. attorney's office wants to know who commented on the case, but prosecutors told federal Judge David Ezra that they issued it out of concern for jurors' safety, because some comments hinted at acts of violence.

Las Vegas business owner Robert Kahre and others face federal tax fraud charges for paying contractors with gold and silver U.S. coins based on the precious metal value of the coins but using the much lower face value of the coins for tax purposes.

As of 9 p.m. Monday, 173 comments were listed below the May 26 Review-Journal article about the trial. Many comments deal with the trial and its principal players. Others were posted after the subpoena arrived.

The subpoena bears the name of U.S. Assistant District Attorney J. Gregory Damm, who is part of the government team prosecuting Kahre and three others on charges that include tax evasion, fraud and criminal conspiracy.

Jury members, Damm and Christopher Maietta, another government attorney, are the subjects of online comments that might be construed as threats.

On Thursday, the ACLU of Nevada also posted below the article an offer to help people who feel threatened by the subpoena. Allen Lichtenstein, general counsel of the civil rights organization, said it

has received "several" inquiries.

Mitchell said the paper is resisting the sweeping nature of the subpoena, noting that anonymous speech is "a fundamental and historic part of this country," citing the Federalist and Anti-Federalist Papers that argued for passage and against passage of the nation's Constitution as an example. All were written under pseudonyms. He said the paper would consider cooperating if specific crimes or real threats were presented.

Interest in the Kahre case appears to run counter to a remark that Ezra made during a hearing to prepare for jury selection. If "CSI: Tax" were a television crime show, it wouldn't pull much audience, he said.

In the case, the government contends the defendants operated illegally, out of greed. The defense contends they had an honest but mistaken understanding of tax laws, and therefore had no criminal intent.

Many used the newspaper Web site to say the U.S. government has turned socialist, the nation's monetary system encourages deficit spending and guarantees inflation, or the Internal Revenue Service has to be reformed or abolished.

In addition to requesting the names of people who posted, the subpoena also tells the newspaper to supply the writers' gender, birth date, physical address, telephone number, Internet service provider, IP address, credit card numbers and more.

The reason for the subpoena came up in court, outside the jury's presence, after an alternate juror sent a note to Ezra, explaining that his spouse had told him to avoid a certain talk radio station, which was discussing the trial. Ezra retained the alternate after he determined the man did not know any details of the broadcast.

Ezra said this past week in court that he would not be handling the subpoena. However, "anytime we get people writing ... that if a particular verdict isn't reached, that jurors ought to come to physical harm -- that's no good. And if somebody wants to investigate that, that's their perfect right."

One commentator said, "The sad thing is there are 12 dummies on the jury who will convict him. They should be hung along with the feds."

Another writer suggested supporting Kahre with a public protest at the courthouse. A third writer advised moving it across the street from the courthouse, or to the local IRS office, to avoid court security officers.

Kahre has been gaining an opinionated Internet audience after an armed team from several law enforcement agencies raided several of his business locations -- including his sister's home office -- in 2003 to collect evidence for the tax case.

Readers' online feedback, mostly anonymous, is almost entirely pro-Kahre. Some comments personally attack Damm. One, for example, calls him a "socialist, fascist Mormon" and a "Nazi moron."

David Heller, senior staff lawyer at the Media Law Resource Center in New York, characterized the subpoena as "heavy-handed" and "bizarre."

"Federal prosecutors do have very wide latitude in investigating crimes," he said. "Even so, their power isn't unlimited." Some of the online comments struck Heller as "loose slang and hyperbolic language" rather than authentic threats to juror safety.

To ensure safety but still allay the concern about violating writers' First Amendment rights, the Justice

Department could have avoided a blanket subpoena and sought instead only authors of specific comments, defense attorney Michael Kennedy said June 9 in court.

The subpoena might entail "mixed motives due to the personal animosity between the parties," the New York media lawyer said after he heard a description of several court actions that have pitted Kahre against Damm, going back several years.

After the raid in 2003 -- but before Kahre's 2005 indictment -- Kahre and several of his workers sued Damm, two IRS agents and others who had helped plan or execute it. That civil matter is on hold until after the criminal trial.

In February 2007, Kahre sued Damm and agents of the FBI and IRS, alleging they conducted themselves during the investigation in a way that constitutes a criminal pattern. Judge Ezra dismissed the complaint in December, but Kahre appealed and the 9th U.S. Circuit Court of Appeals heard oral arguments on Friday.

Kahre, his sister and a former assistant are standing trial for how they handled their own income taxes as well as their roles in Kahre's unique payroll system. Kahre paid workers at his six trade-related businesses in \$50 gold or silver dollar coins. Those minted after 1985 are allowed to circulate as money. He also allowed workers to immediately exchange the coins for paper currency, as determined by the coins' investment value.

Two years ago, Damm prosecuted a similar tax case against nine defendants, including Kahre, on more than 160 counts. The trial ended with no convictions and four acquittals.

Five defendants were only partially acquitted, and two of them were dropped from the indictment that generated this trial.

Contact reporter Joan Whitely at [jwhitely@reviewjournal.com](mailto:jwhitely@reviewjournal.com) or 702-383-0268.

**Find this article at:**

<http://www.lvrj.com/news/48145032.html>

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**EXHIBIT 2**

**EXHIBIT 2**

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## THOMAS MITCHELL: Subpoena seeks names -- and lots more -- of Web posters

*"Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced."*

### -- Justice Louis Brandeis

Free speech should be practiced only by those who are ready to deal with the consequences, which just might include a knock on the door by a friendly federal investigator wanting to know if you posted an anonymous comment on a Web site. Were you advocating violence or confessing to breaking the federal tax laws?

This is not a hypothetical.

On May 26 the Review-Journal published an article about an ongoing federal tax evasion trial. The primary defendant, Las Vegan Robert Kahre, stands accused of tax fraud for using the rather inventive argument that he could pay people in U.S. minted gold and silver coins based on their precious metal value but for tax purposes use their face value, which is many times less.

The story was posted on our Web site. When last I checked nearly 100 comments were appended to it, running the gamut from the lucid to the ludicrous.

This past week the newspaper was served with a grand jury subpoena from the U.S. attorney's office demanding that we turn over all records pertaining to those postings, including "full name, date of birth, physical address, gender, ZIP code, password prompts, security questions, telephone numbers and other identifiers ... the IP address," et (kitchen sink) cetera.

Tantamount to killing a gnat with an A-bomb.

There was no indication what they were looking for or what crime, if any, was being investigated, just a blanket subpoena for voluminous and detailed records on every private citizen who dared to speak about a federal tax case.

Sure, some of the comments were a bit rough, but criminal?

One person who signed himself "Louis D. Brandeis" called federal prosecutor Greg Damm, whose name is on the subpoena, "evil incarnate and everything that is against the American justice system."

"Christian Patriot" wrote a couple days later, "I suggest we go back to a gold and silver standard, which would immediately wipe out the national debt, not charge us interest for their toilet paper, or better yet, I'll trade you eggs for milk. Tax that if you will."

"Randall" wrote, "If it is legal tender, value of said legal tender it set by the gov and stamped on the face.

"Maybe the Government should be on trial."

Read them yourself at <http://www.lvrj.com/news/46074037.html>.

These comment posters are not reporters; they have no shield law protection, especially since Congress has yet to pass the pending federal shield law. A grand jury can subpoena just about anyone for any reason.

But what time, effort and tax-funded expenses are being expended by the U.S. attorney's office to track down a bunch of posturing blowhards squandering their Fifth Amendment right against self-incrimination?

My first instinct is to fight the subpoena tooth and nail. After all, John Peter Zenger was just the printer who published anonymous essays critical of the colonial governor. His jury nullified the existing law and freed him.

On the other hand, if someone were to confess to a real and specific crime on our Web site, I'd give him up at the drop of a hat.

Bottom line: We could fight the federal subpoena, at considerable expense, and lose. Our attorneys are now trying to see if we can limit the scope of the information sought.

What the prosecutors don't appear to understand is that we don't have most of what they are seeking. We don't require registration. A person could use a fictitious name and e-mail address, and most do. We have no addresses or phone numbers.

To add prior restraint to the chilling effect of the sweeping subpoena, we were warned: "You have no obligation of secrecy concerning this subpoena; however, any such disclosure could obstruct and impede an ongoing criminal investigation. ..."

I wonder if Thomas Jefferson could have been subpoenaed when he wrote from Paris in 1787: "The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants. It is its natural manure."

The Sedition Act wasn't passed until 12 years later. I thought it had since been repealed.

Thomas Mitchell is editor of the Review-Journal and writes about the role of the press. He may be contacted at 383-0261 or via e-mail at [tmitchell@reviewjournal.com](mailto:tmitchell@reviewjournal.com). Read his blog at [lvrj.com/blogs/mitchell](http://lvrj.com/blogs/mitchell).

**Find this article at:**

<http://www.lvrj.com/opinion/47141327.html>

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EXHIBIT 3

EXHIBIT 3



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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**  
**THE HON. DAVID A. EZRA, U.S. DISTRICT JUDGE,**  
**PRESIDING**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROBERT DAVID KAHRE, et al. )  
 )  
Defendants. )  
\_\_\_\_\_ )

**Case No.**  
**2:05-cr-121-DAE-RJJ**  
  
**\*\*\*ORIGINAL\*\*\***

**REPORTER'S TRANSCRIPT OF EXCERPTED PROCEEDINGS**

**June 9, 2009**

**APPEARANCES: (See page 2)**

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1     **LAS VEGAS, NEVADA; JUNE 9, 2009; 10:09 A.M.**

2   **--oOo--**

3   **P R O C E E D I N G S**

4                     **THE COURT:**   Okay.  Let's let  
5   everybody get about a three or four-minute  
6   bathroom break and we'll bring the jury back.

7                     We have something, Alternate Juror  
8   (purposely redacted).  So we will take a few  
9   minutes, and I have to figure it out.  
10   Something about he heard secondhand or  
11   thirdhand from his wife about something in the  
12   case, something about someone is subpoenaing  
13   something for the case.

14                    **MR. KENNEDY:**  Your Honor, there was  
15   an editorial in the Las Vegas Review-Journal  
16   on Sunday which commented in the editorial  
17   section on the First Amendment implications of  
18   the government subpoena for everyone on  
19   the blog site.  That's, I believe, what this  
20   juror --

21                    **THE COURT:**  Did it have anything to  
22   do with this?

23                    **MR. KENNEDY:**  Yes.  It mentioned that  
24   the subpoena had Mr. Damm on it; that they are  
25   seeking all information about all bloggers.

1 And the Review-Journal editorial said that  
2 this was an affront to the First Amendment. I  
3 think I may have a copy here.

4 THE COURT: Whose subpoena is it?

5 MR. KENNEDY: The government's  
6 subpoena. Apparently -- I haven't seen the  
7 subpoena, obviously, you know. I read the  
8 editorial.

9 THE COURT: You subpoenaed the  
10 bloggers?

11 MR. KENNEDY: Yes. I think I have a  
12 copy of the article somewhere here, Your  
13 Honor. I have it at home.

14 MR. DAMM: We subpoenaed the  
15 information that the Review-Journal may have  
16 regarding IP addresses and any other  
17 identifiers for the bloggers that responded to  
18 the RJ article.

19 MR. COHAN: By the way, a grand jury  
20 subpoena, Your Honor.

21 MR. KENNEDY: Your Honor, I can hand  
22 up a black and white copy of it. It was in  
23 the Sunday editorial section.

24 (Document handed to the Court.)

25 (Pause in the proceedings.)

1 THE COURT: All right. Well, I, of  
2 course, am not involved in this in any way,  
3 shape or form and I didn't know about it until  
4 two seconds ago, but -- and I have no control  
5 over the grand jury.

6 MS. RASMUSSEN: May I address the  
7 Court?

8 THE COURT: Yeah. And it has no  
9 impact on this case other than to the effect  
10 that it might -- we want to make sure the jury  
11 isn't somehow influenced by it.

12 MS. RASMUSSEN: Well, Your Honor, I  
13 would request the document that's just been  
14 handed to you, which is a copy of  
15 Thomas Mitchell's editorial which was  
16 published in the Review-Journal on Sunday,  
17 June 7th, be made a part of the record in this  
18 case to the extent that it be made a clerk's  
19 exhibit. And I ask it be an exhibit because I  
20 think it evidences the kind of tyranny that we  
21 have been dealing with all along in this case.  
22 And I am sure that the government will  
23 probably say they are not going to talk to you  
24 about it because it's an ongoing grand jury  
25 investigation, but here it is blatantly

1 obvious what's going on.

2           There was an article published about  
3 this case on May 26 and there were comments  
4 written on a blog that Mr. Damm doesn't like  
5 because they were negative about Mr. Damm and  
6 the IRS. So now Mr. Damm himself, because  
7 it's quite clear that the grand jury subpoena  
8 that was received by the Review-Journal was  
9 signed by Greg Damm, is going to investigate.  
10 And who knows what he is going to do next  
11 about all the people who have made comments  
12 about him that he doesn't like. And this is  
13 sort of the way it's been from the very  
14 beginning, and I think that the Court ought to  
15 be concerned about it.

16           Obviously, now we have to address the  
17 issue with the alternate juror who has read  
18 the article and how we are going to proceed in  
19 that regard. But I think that this should be  
20 made a clerk's exhibit so that it is part of  
21 the record in our case. Obviously, we don't  
22 have standing. And if the Review-Journal is  
23 going to quash the grand jury subpoena, that's  
24 a separate issue. And you are right to the  
25 extent that it's not related to our case, but

1 it is related to our case to the extent that  
2 it involves this prosecutor, the subject  
3 matter of this case, and the ongoing  
4 discrimination and vindictiveness that we seem  
5 to suffer at the hands of Mr. Damm.

6 THE COURT: All right.

7 MS. RASMUSSEN: May we make it a  
8 clerk's exhibit?

9 THE COURT: Not yet.

10 MR. COHAN: I have one thing to add  
11 in this connection.

12 THE COURT: I am sure of that.

13 MR. COHAN: I'll make it as brief as  
14 I can, Your Honor. You can trivialize it if  
15 you wish before you even hear it.

16 THE COURT: I didn't trivialize it.  
17 I said, I'm sure you do.

18 MR. COHAN: The day after the motion  
19 that I filed to disqualify Mr. Damm, the order  
20 was denying the motion to disqualify, I  
21 received an audit notice from the IRS. I was  
22 audited by the IRS, but only about gold and  
23 silver that I had received. We complied with  
24 the request for the documents and produced  
25 everything. It was the quickest audit in



1 history. I was exonerated that very day. But  
2 I just that thought you ought to be aware that  
3 such things happen and that Mr. Damm, at least  
4 inferentially, must have had some role, and/or  
5 Mr. Halper, in initiating that audit because I  
6 don't think that's a coincidence, Your Honor.

7 THE COURT: Okay. All right.

8 Mr. Damm?

9 MR. DAMM: Your Honor, I suppose I  
10 should be flattered by the degree of influence  
11 that Mr. Cohan attributes to me, but in all  
12 actuality, I have no control over the Internal  
13 Revenue Service. I have no control over  
14 audits. It didn't even occur to me that  
15 anyone should audit Mr. Cohan for any reason.

16 What did concern me and does concern  
17 me are some of the blog entries and the tenor  
18 of those entries, as I have made this Court  
19 aware. One of the most serious or perhaps the  
20 most serious blog entry was directed at the  
21 jurors themselves and indicated that if the  
22 jurors were to find any of the defendants  
23 guilty, they should be hung.

24 THE COURT: Yeah. That concerned the  
25 Court greatly.

1 MR. DAMM: And, Your Honor, nobody's  
2 interested any more in a fair trial than I am.  
3 If anything's to be made a part of the record,  
4 and I have no objection to that, I think it  
5 should be a full record, we should include the  
6 original article, all of the blog entries, and  
7 certainly I have no objection to this  
8 editorial. But let's make it a full record if  
9 we are going to do that.

10 THE COURT: Okay. You can be seated,  
11 Ms. Rasmussen. I don't need to hear any more  
12 about it.

13 MS. RASMUSSEN: I have no objection  
14 to the blog entries, the original article.

15 THE COURT: Okay. Let me say this.  
16 My job here is to remain neutral, but I  
17 think -- and I will order it as a clerk  
18 exhibit -- not to go into the jury in any way,  
19 it's certainly not going to be a permanent  
20 record of this case -- all of the material  
21 that Mr. Damm has outlined which includes the  
22 editorial, but all of the previous editorials.  
23 But not because they show government tyranny  
24 or the Court is in any way buying into that  
25 suggestion, but simply because of my concern

1 that the process here and what effect it may  
2 or may not have upon the jury or any effort to  
3 influence this jury one way or the other.

4 I certainly understand the  
5 Review-Journal's editorials concern about the  
6 government subpoenaing records with respect to  
7 people who write in letters to the editor or  
8 blog entries or something of that kind. There  
9 is no stronger defender of the First Amendment  
10 than me. I got a lot of heat recently for  
11 striking down a provision of Nevada's -- not  
12 Nevada's, but Clark -- not Clark County's, but  
13 the City of Las Vegas's ordinance to preclude  
14 people from expressing themselves in this  
15 mall that -- what do they call that mall  
16 again? That area downtown?

17 MR. KENNEDY: Fremont Street.

18 THE COURT: Fremont Street. And I  
19 got a lot of heat from that for striking that  
20 down. And it's not the first time I have  
21 stricken -- I struck part of it down, and then  
22 I just struck the whole thing recently.

23 Now, to my surprise, apparently the  
24 government did not -- the city government did  
25 not appeal; they accepted my ruling. But it

1 wasn't -- you know, there were a lot of people  
2 that were unhappy with me for doing that,  
3 including my friend, Oscar Goodman, wasn't  
4 particularly thrilled with me. But that's  
5 life, you know. That ordinance impeded on the  
6 First Amendment and it should not have stood  
7 the way it was, even though I think I can  
8 understand where they were coming from. I  
9 mean, it's not a pleasant thing to have people  
10 accosted on the street. But it was just a bad  
11 ordinance. And I have struck down many  
12 similar laws over the years.

13 My concern here, however, is that it  
14 is a federal crime and a very serious one to  
15 attempt in any way, shape or form to threaten  
16 or obstruct or impede a jury in either a civil  
17 or criminal case. And we had an incident here  
18 for which I am not passing blame, but for  
19 which found its way into the newspaper, a  
20 sidebar, where the government's unsuccessful  
21 Batson challenge was broadcast.

22 And then we had a what was apparent  
23 to the Court is an orchestrated effort to  
24 present information that was very negative  
25 about the government and very positive about

1 the defense. That's fine. I mean, people can  
2 orchestrate that effort. That's a First  
3 Amendment right they have, so long as their  
4 effort is not directed at threatening the jury  
5 or intimidating a jury into reaching a  
6 particular verdict.

7 And comments like, "if jurors find  
8 somebody guilty, they should all be taken out  
9 and hung," could well be a criminal comment.  
10 If it can be shown that it was done with the  
11 intent to influence the jury to try to compel  
12 them by threat to reach a particular verdict,  
13 it's a crime.

14 So if there is a grand jury  
15 investigation into whether or not somebody  
16 intentionally placed a blog entry for the  
17 express purpose of attempting to threaten the  
18 jury into reaching a particular verdict,  
19 that's a legitimate grand jury inquiry.

20 If the purpose of the grand jury  
21 inquiry is just a fishing expedition, then I  
22 would suggest not. I don't know. I am not  
23 behind the grand jury inquiry. I didn't know  
24 about it until just now. And I don't know  
25 what the grand jury inquiry is and, quite

1 frankly, I am not entitled to know what it is.  
2 I know about the subpoena because the subpoena  
3 has been made public.

4 But this is not a trivial matter.  
5 Somebody writing in and saying, you know, if  
6 the jury reaches a verdict of conviction, they  
7 should be hung, is really no different than  
8 saying, you know, if President Obama does X, Y  
9 or Z, he should be killed. That's a crime,  
10 too. So I think we have to be very, very  
11 careful when we say that there is no basis to  
12 be concerned here or that this is simply  
13 government demagoguery or something of the  
14 sort.

15 If, really, had the comments had just  
16 been of a more neutral nature in the sense  
17 that they supported Mr. Kahre in his efforts  
18 and that the government's terrible and, you  
19 know, everybody should be able to pay in gold  
20 coins and the money is worth this or that,  
21 fine, you know; and then if the government was  
22 chasing people down and issuing subpoenas, I  
23 think I would be very concerned about that.  
24 But where somebody writes in and says, jurors  
25 should be hung if they don't reach a

1 particular verdict, that's a threat, in my  
2 book. And that goes well beyond simply saying  
3 the government is bad and Mr. Kahre is good,  
4 no matter how strident that language may take.  
5 So I am not so quick to suggestion that the  
6 government doesn't have something to look into  
7 here.

8 Now, how they look into it and  
9 whether they are doing something here that's  
10 broader than it should be or whether it's  
11 counterproductive, I am not going to opine  
12 about that.

13 My job is to ensure that both sides  
14 get a fair trial, the government and the  
15 defense. And I would be just as unhappy and  
16 just as concerned if we had a blog entry which  
17 said if any juror that convicts -- that  
18 acquits, rather, Mr. Kahre should be hung or  
19 killed, I would be just as concerned. It's  
20 not who it's directed at. It's the fact that  
21 it was directed at the jury. I should say not  
22 who it's about. It's the fact it was directed  
23 at the jury and they were basically told this  
24 in that entry that if they don't reach a  
25 particular verdict, then, you know, maybe some

1 consequences should follow.

2 And, you know, we don't -- in our  
3 society to today, it's not like it was a  
4 hundred years ago. We don't take language  
5 like that so lightly. You know, we just had  
6 somebody jailed in Honolulu for making a  
7 threat against the president. Somebody could  
8 say, well, you know, gee whiz, that's kind of  
9 silly. How could this guy in Honolulu ever  
10 reach President Obama in Washington, D.C., or  
11 wherever he was overseas? You know, we take  
12 these threats very seriously in this country  
13 because of the -- because of what happens.  
14 And in a state where it is not against the law  
15 for people to own a variety of personal  
16 firearms, and so ready access to firearms is  
17 there -- I think even people can walk around  
18 with concealed firearms, can't they, in  
19 Nevada?

20 MR. KENNEDY: Absolutely.

21 MR. DAMM: Yes, with a permit.

22 THE COURT: Okay. And I am not  
23 saying that's wrong, but they can.

24 So where you get a situation like  
25 that and guns are readily available and you



1 get somebody writing into a blog and says  
2 that, you know, we ought to hang people if  
3 they reach a particular verdict, whether it be  
4 a verdict of -- listen, you know, my concern  
5 in cases -- I've got a capital murder case  
6 coming up where the defendant is accused of  
7 torturing and murdering his infant daughter.  
8 And my concern in that case is to make sure  
9 that the jury isn't so inflamed by the very  
10 facts of it that he doesn't get a fair trial.  
11 And that's not going to be easy.

12 So I think when all is said and done  
13 here, I want to try to keep the jury as far  
14 away from this kind of publicity as possible.  
15 You want to make a record of it, let's make a  
16 record of it, but let's also make a record of  
17 the fact this judge is concerned anytime we  
18 get people writing into newspapers in the  
19 community saying that if a particular verdict  
20 isn't reached, that jurors ought to come to  
21 physical harm. That's no good.

22 And if somebody wants to investigate  
23 that, that's their perfect right, and they can  
24 determine whether it was just idle chatter or  
25 whether somebody really intended to do

1 something about it, or whether that comment  
2 was made in a way that it was intended to get  
3 to the jury and influence them corruptly. And  
4 that's not for me to decide.

5 Okay. Now, people need to use the  
6 rest room, you can use the rest room and come  
7 back. We can bring the juror in and I'll voir  
8 dire.

9 MR. KENNEDY: With respect to the  
10 Court's comments, the concern I would have  
11 with this jury -- I am not privy to the  
12 government subpoena, so I have no inside  
13 information other than what the editorial  
14 said. I listened to the Court's comments and  
15 they are well taken in a narrow sense. But  
16 the gist of the article was not the narrowness  
17 that the Court looked at one comment, but it  
18 was the broad-sweeping subpoena of everyone.  
19 To the extent that a juror sees that, then  
20 they understand the power of the government to  
21 sweep everyone under their investigation which  
22 can influence any jury. And I have had had  
23 some strong comments said about me on a blog,  
24 but I have yet had anyone seek a subpoena.

25 So my concern in this trial is the

1 idea that, I understood the editorial, if you  
2 are looking to do surgery with a scalpel, you  
3 don't go in broad-sweeping every IP address of  
4 everyone who made legitimate comments. So I  
5 understood that was the gist of the editorial.  
6 My concern is if a juror has seen that, then  
7 that influences them about their decision  
8 making.

9 THE COURT: Okay. I don't know the  
10 scope of the editorial and I don't know that  
11 the person who wrote this article is that  
12 familiar with it either.

13 MS. RASMUSSEN: Your Honor, I don't  
14 even have a microphone here, and that's why I  
15 keep coming up here. And I don't know why we  
16 don't have a microphone. But this is why I  
17 think we need to make these documents a  
18 record. I have no objection --

19 THE COURT: Ms. Rasmussen, I have  
20 already said we are going to do that.

21 MS. RASMUSSEN: Okay. But in  
22 supporting what Mr. Kennedy is saying, you  
23 know, it was a subpoena for anyone and  
24 everyone who said things about Mr. Damm that  
25 he probably doesn't like, about the IRS,

1 people have an absolute First Amendment right  
2 to criticize the political process.

3 THE COURT: They do not have a First  
4 Amendment right to threaten juries.

5 MS. RASMUSSEN: No, but I  
6 understand -- I agree with what Mr. Kennedy is  
7 saying. That's one comment. I can assure  
8 you, you should see the things people say  
9 about us and our clients in a lot of other  
10 kinds of cases that we do. When we defend  
11 people who are accused of murder and sexual  
12 offenses, people say horrible things about us.  
13 Here is the difference, though. We don't have  
14 grand jury subpoena power. They would say  
15 it's public opinion -- so it is an issue this  
16 Court ought to at least have some concern  
17 about. I am incredibly concerned that the  
18 government is displaying this kind of power,  
19 and I think we need to decide what we are  
20 going to do with the alternate juror who has  
21 brought the note to your attention.

22 THE COURT: Okay. You know what,  
23 Ms. Rasmussen? I have been a federal judge  
24 for 21 years. If you think that I am unaware  
25 of members of the public making hostile

1 comments about people, you are sadly mistaken.  
2 It happens. It happens to me and it happens  
3 to virtually -- heck, in this case we have  
4 allegations that Mr. Kahre himself wrote a  
5 letter. I don't know whether he did or he  
6 didn't. But the allegation is that he wrote a  
7 letter in which he suggested that certain  
8 judges in this courthouse should be chained  
9 and sold into slavery.

10 MS. RASMUSSEN: Your Honor, I can't  
11 even respond to that because I have no idea  
12 what you are talking about. But you are  
13 suggesting my client did something improper,  
14 so...

15 THE COURT: No, I am not suggesting  
16 anything. I said I don't know whether he said  
17 it or he didn't say it or for what purpose he  
18 said it. But you are telling me about people  
19 saying things that are threatening and are  
20 negative. It happens; okay? I know it. I am  
21 well aware of it.

22 MS. RASMUSSEN: Okay.

23 THE COURT: All right? All I am  
24 saying is this: There was some comment in  
25 this case on the blog that could, if the

1 intent was there, could be a federal crime.

2 MS. RASMUSSEN: And that's why I want  
3 the whole blog, all 35 pages of it, to be made  
4 part of the record.

5 THE COURT: All right. I have  
6 already said I am going to do that,  
7 Ms. Rasmussen.

8 MS. RASMUSSEN: Okay.

9 THE COURT: All right? But I don't  
10 see here the kind of -- you know, I mean, the  
11 government sees this from one -- the  
12 government sees here, from their viewpoint, an  
13 articulated effort -- from their viewpoint, an  
14 articulated effort by the defense to influence  
15 this jury.

16 MS. RASMUSSEN: By the defense?

17 THE COURT: Yes.

18 MS. RASMUSSEN: Excuse me. Where is  
19 this by the defense? There has been no  
20 accusation that anyone at this table has  
21 participated in any blog.

22 THE COURT: No. I would agree with  
23 that directly. But their allegation was, if  
24 you remember, Ms. Rasmussen, that the  
25 sidebar --

1 MS. RASMUSSEN: I was in Atlanta when  
2 that conversation took place.

3 THE COURT: All right. Well, I'm  
4 sorry that you were, but you were. But the  
5 allegation was we had a sidebar, and then what  
6 happened at the sidebar was leaked the very  
7 next day and it found its way onto the blog.  
8 Now, the only way that could have happened is  
9 if somebody who had participated in that  
10 sidebar got the information to someone who  
11 then passed it on.

12 Now, as I said at the time, I wasn't  
13 making any allegations. I don't know how it  
14 happened, but it happened.

15 Now, from their perspective -- their  
16 perspective, not my perspective, now -- from  
17 their perspective, this was an orchestrated  
18 effort. Your side has a different  
19 perspective, okay.

20 MS. RASMUSSEN: Absolutely.

21 THE COURT: All right. But they have  
22 a perspective and you have a perspective. I  
23 don't take, you know, a role in endorsing  
24 either.

25 MS. RASMUSSEN: And you shouldn't

1 take a role in endorsing the government's  
2 investigation of defense counsel while we are  
3 defending our clients in the middle of trial.

4 THE COURT: Who is investigating  
5 defense counsel?

6 MS. RASMUSSEN: Well, you know, this  
7 grand jury subpoena.

8 THE COURT: Ms. Rasmussen, look, if  
9 you are making an effort here to try to blow a  
10 balloon into an airship, it isn't going to  
11 happen here. All right? All we have here is  
12 a subpoena that was issued to the newspaper.  
13 We don't -- if Mr. Damm had issued a subpoena,  
14 and I don't even know whether he was behind  
15 the grand jury -- I have no idea. It could  
16 have been somebody else.

17 MS. RASMUSSEN: Yes. The article  
18 said he signed the grand jury subpoena. And,  
19 you know, it's troubling, Your Honor, because  
20 we visited the issue --

21 THE COURT: Did he subpoena you?

22 MS. RASMUSSEN: Pardon me?

23 THE COURT: Have you been subpoenaed?

24 MS. RASMUSSEN: No. I'm just telling  
25 you --



1 THE COURT: Have any of the lawyers  
2 been subpoenaed?

3 MS. RASMUSSEN: No.

4 THE COURT: So defense counsel have  
5 not been subpoenaed.

6 MS. RASMUSSEN: No.

7 THE COURT: All right. If defense  
8 counsel had been subpoenaed in the middle of  
9 this trial, I can assure you you would get a  
10 very different reaction from me.

11 MS. RASMUSSEN: How would we know,  
12 frankly, that he isn't doing subpoenas for  
13 interception of our e-mails based on his  
14 concept that there is some threat to the jury?

15 THE COURT: A very famous Ninth  
16 Circuit judge once said, we are not getting  
17 into fantasy land. I don't know and you don't  
18 know. And we are not going to speculate. I  
19 have no evidence of that at all, and neither  
20 do you, and I think it's highly unlikely. So  
21 you can be seated, Ms. Rasmussen.

22 MS. RASMUSSEN: Thank you, Your  
23 Honor. I am concerned about not having a  
24 microphone at the table. Thank you.

25 THE COURT: We only have so many

1 microphones here.

2 MR. KENNEDY: Your Honor, my concern  
3 with the jury and the alternate that brought  
4 it to the Court's attention is this: The  
5 Court said, okay, the government has a theory  
6 about this. The problem that I have --

7 THE COURT: A theory about what?

8 MR. KENNEDY: The sidebar  
9 communication that the Court just mentioned,  
10 that the government has a theory. The Court's  
11 comments just a couple of seconds ago.

12 THE COURT: That's right. I think  
13 Mr. Damm expressed that theory.

14 MR. KENNEDY: All right. Now, I  
15 doubt if the Review-Journal would have written  
16 an editorial if the subpoena was narrowly  
17 tailored to the individual that the Court made  
18 the comments about. The concern that I have  
19 for the jury, and I am trying to keep it to  
20 today's thing, is the editorial is in response  
21 not to the fact that there was a subpoena.

22 THE COURT: Mr. Kennedy, I don't  
23 know. I suspect -- you know, I have been  
24 around this business long enough. I suspect  
25 that what we have here is the government

1 having a sense that there is some kind of a  
2 concerted effort going on here, and the  
3 concerted effort of course can change into  
4 conspiracy. It depends upon what people are  
5 doing and how they are doing it. So I don't  
6 know whether they are looking for a pattern.

7 MR. KENNEDY: Precisely.

8 THE COURT: I have no idea. But as  
9 long as they don't subpoena you and as long as  
10 there is at least some basis for them to do  
11 what they are doing, and there is --

12 MR. KENNEDY: And the concern that I  
13 have is that I understand the Court's  
14 comments, and we are trying to try this case  
15 inside the courtroom. But if you send a  
16 subpoena to the Review-Journal in the middle  
17 of trial seeking every IP address, every  
18 person, everything, you're almost guaranteeing  
19 an editorial from a newspaper about First  
20 Amendment rights, which now has us with a  
21 juror reading that, when our concern is to try  
22 to keep the publicity down.

23 So to the extent that there is that  
24 understanding, the easiest way to get an  
25 editorial is to send a blanket subpoena

1 requesting everything. And that's the concern  
2 that I have.

3 THE COURT: Mr. Kennedy, I, you know,  
4 have been around long enough to understand  
5 where you are trying to point the Court. I am  
6 not going there, all right, because you have  
7 no evidence and they have no evidence. Nobody  
8 has any evidence at all. I mean, if I had  
9 evidence that the leak from sidebar was done  
10 corruptly and with the intent to influence the  
11 jury, I promise you my reaction to that would  
12 have been very different than it was. But I  
13 have no evidence of that.

14 And if I had evidence that Mr. Damm  
15 had issued the subpoenas for the purpose of  
16 trying to corruptly influence the jury one way  
17 or the other, I can promise you my actions  
18 would be very different than they are today.  
19 But I have no evidence of that at all.

20 There is a reasonable basis for the  
21 government to be concerned about at least a  
22 few of the comments in the blog which were,  
23 you know, quite threatening. And because they  
24 were directed at a jury in an ongoing federal  
25 criminal case, they are of concern to me. And

1 as I told you before, and I meant this  
2 sincerely, had that comment been, "if Mr.  
3 Kahre is acquitted, we need to hang these  
4 jurors," I would be every bit as concerned as  
5 I am, "if Mr. Kahre is convicted, we have to  
6 hang the jurors." It doesn't make any  
7 difference.

8           When we have people out there making  
9 not even veiled threats, direct threats at  
10 jurors about what could happen to them if a  
11 particular result is not reached in a criminal  
12 case pending before me, I am concerned about  
13 it. But I have no direct evidence that any of  
14 that has reached the jury. I have no indirect  
15 evidence that any of that has reached the  
16 jury. In fact, quite the opposite. I  
17 carefully voir-dired the jury to find out if  
18 they had read that, and they had not. So I am  
19 convinced that the jury is still pristine.

20           Now, this fellow has heard something  
21 about this, not about the other stuff.

22           MR. KENNEDY: Correct.

23           THE COURT: But about this. I will  
24 voir dire him. I will determine whether or  
25 not he has been tainted. If he has, I will

1 dismiss him from the jury and then we will  
2 excise out the problem before it spreads.  
3 Okay? So that's what we are going to do. But  
4 I am going to do it in such a way that I don't  
5 create more problems than I solve by injecting  
6 into him evidence that may not be there. I  
7 need to find out what he heard and whether it  
8 will influence him. And then we will send him  
9 back out, we will confer and make a decision  
10 as to whether he should stay or go.  
11 Fortunately, he is an alternate.

12 MR. KENNEDY: Agreed.

13 THE COURT: Five-minute recess.

14 (Recess taken.)

15 THE CLERK: All rise.

16 (Discussion held off the record.)

17 THE CLERK: Judge, shall I get the  
18 jury?

19 (Pause in the proceedings.)

20 THE CLERK: All rise for the juror.

21 THE COURT: Why don't you just sit in  
22 the first seat. First of all, would you like  
23 to give us your name so we can have it for the  
24 record.

25 ALTERNATE JUROR: (Purposely

1 redacted).

2 THE COURT: When we took a break --  
3 and I want to, first of all, thank you for  
4 bringing that to Ms. Lam's attention. You  
5 mentioned something to her. Would you tell me  
6 exactly what it is that you said.

7 ALTERNATE JUROR: Yes. Last --  
8 yesterday evening, I was already home, my wife  
9 called me. She was driving. She was  
10 listening to public record, an AM channel.  
11 There was a news story concerning the RJ  
12 article that you addressed a couple of weeks  
13 back --

14 THE COURT: Yes.

15 ALTERNATE JUROR: -- concerning the  
16 trial. And she just said that it was on the  
17 news, letting me know about that; that there  
18 was some additional conversations about the  
19 e-mails, I guess, that were posted in the  
20 newspaper after that article.

21 THE COURT: Did she tell you any  
22 specifics about the e-mails?

23 ALTERNATE JUROR: No, sir.

24 THE COURT: She didn't.

25 ALTERNATE JUROR: No. She just said

1 that the attorney general was contacting the  
2 paper about it, and just letting me know so I  
3 wasn't listening to the same station.

4 THE COURT: Okay. Did she tell you  
5 anything more specific than that?

6 ALTERNATE JUROR: No, sir. She knows  
7 not to.

8 THE COURT: Okay. Given what you  
9 heard from your wife, does that in any way  
10 make you lean one way or the other in this  
11 case? Does it influence you in any way?

12 ALTERNATE JUROR: No, sir, because I  
13 don't know what anything was about.

14 THE COURT: Okay. So you were very  
15 careful not to --

16 ALTERNATE JUROR: Oh, yeah.

17 THE COURT: -- not glean any of the  
18 specifics about it.

19 ALTERNATE JUROR: She knows more not  
20 to say anything about it. She just wanted to  
21 make me aware so that I didn't listen to the  
22 same channel and listen to the same story.

23 THE COURT: All right. So you do not  
24 feel this in any way has impaired your ability  
25 to be fair and impartial to either side?



1 ALTERNATE JUROR: No, sir.

2 THE COURT: Have you said anything to  
3 your fellow jurors about this?

4 ALTERNATE JUROR: I just let them  
5 know there was a story out there so that they  
6 were aware that, you know, to --

7 THE COURT: Did you tell them  
8 anything about the specifics of the story?

9 ALTERNATE JUROR: No. No, because I  
10 don't know what the story was about or  
11 anything. I just wanted them to be aware,  
12 much like you had told us about the news  
13 article, so that they would be aware not to  
14 listen to it.

15 THE COURT: So they would be aware to  
16 stay away from the newspapers and so forth.

17 ALTERNATE JUROR: Well, and talk  
18 radio.

19 THE COURT: It's always good to stay  
20 away from talk radio, for many reasons. All  
21 right. Thank you very much. You can go back.  
22 Thank you so much. Thank you again for  
23 bringing that to my attention.

24 ALTERNATE JUROR: Not a problem.

25 THE COURT: Please be real careful to

1 be sure to remind your wife not to say  
2 anything to you. Okay?

3 ALTERNATE JUROR: You betcha.

4 THE COURT: Okay. Thanks.

5 (Thereupon, the alternate juror was  
6 excused and exited the courtroom.)

7 THE COURT: Okay. Well, he doesn't  
8 know anything. He didn't get anything. All  
9 he got is basically what we used to refer to  
10 in the service as a heads-up from his wife not  
11 to listen to the radio. And, apparently, all  
12 the stuff that we have been arguing about he  
13 didn't hear anything about. So I don't  
14 personally see any reason why he should be  
15 discharged as a juror.

16 MR. DAMM: I concur, Your Honor.

17 THE COURT: Anybody from the defense  
18 feel he should be discharged?

19 MR. KENNEDY: I don't believe that he  
20 should be discharged, Your Honor, but my  
21 concern is he shared the communication  
22 regarding the radio. So we are now beyond  
23 just the editorial.

24 THE COURT: Okay. All that he  
25 said -- I will query the jury when they come

1 back in. All that he said was he told them  
2 not to listen to the radio, that's all,  
3 because he was aware that there was some story  
4 out there. That's very different from  
5 communicating to -- sorry, Ms. Kahre. You can  
6 be seated. In fact, you can all be seated.

7 MR. KENNEDY: Thank you.

8 THE COURT: It's a very different  
9 thing if he had indicated that he had shared  
10 the substance, but he didn't hear anything --  
11 if he had heard something and then shared the  
12 substance of it, all right. So I gather that  
13 no one moves for his removal. I will just  
14 indicate to the jury again that they need to  
15 remain vigilant about staying away from any  
16 publicity. And I will ask them whether any of  
17 them have heard anything or read anything or  
18 seen anything about the trial, just to be  
19 sure. And if somebody raises their hand, then  
20 I'll voir dire them.

21 Okay. Bring them back in.

22 (The jury enters the courtroom.)

23 THE COURT: All right. The Court  
24 would note the presence of the ladies and  
25 gentlemen of the jury, as well as counsel, the

1 defendants and, of course, the government and  
2 its case agents.

3 Ladies and gentlemen, one of our  
4 alternate jurors indicated, as he should have,  
5 that he had been advised by his wife that  
6 there was some story -- fortunately, she was  
7 good about not telling him what the story was  
8 about -- that indicated some reference to this  
9 case or some matters that might have touched  
10 on this case. And he indicated that he passed  
11 on the information to you to watch out for any  
12 type of media that might be out there,  
13 including the radio.

14 Have any of you, other than what I  
15 have just referenced to you, heard anything or  
16 seen anything or come in contact with any  
17 publicity about this case at all?

18 (Jurors responded in the negative.)

19 THE COURT: I want to be sure none of  
20 you might have heard that, as the gentleman's  
21 wife heard on the radio. As we all indicate,  
22 you've got to be real careful about the public  
23 radio stations. Now, the National Public  
24 Radio is certainly not going to pick up  
25 anything about this, NPR. But the local

1 public radio might have news stories and there  
2 might be some -- especially the local AM talk  
3 people, you've got to really be careful to  
4 stay away from that because those people make  
5 a living creating controversy about any and  
6 everything. And I am not saying that it's  
7 good, bad or otherwise. And I listen to some  
8 of it myself, quite frankly, in my car. I  
9 don't have any problem listening to talk  
10 radio. But when you are involved in a trial  
11 like this and there are issues out there, who  
12 knows what they are going to grab onto; right?

13 So just be super careful. Okay?

14 Thanks.

15 Okay. All right. Your next witness,  
16 Mr. Damm?

17 (Conclusion of excerpted  
18 proceedings.)

19 -ooOoo-

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I hereby certify that pursuant to Section 753,  
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EXHIBIT 4

EXHIBIT 4

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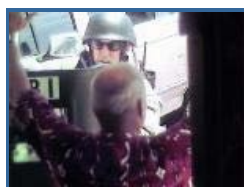
# Employer's gold, silver payroll standard may bring hard time

## 'This is a case about money, greed and fraud'

By JOAN WHITELY



Robert Kahre allowed but did not force workers who received their pay in gold coins, such as this one, to immediately exchange coins for paper dollar bills. The coin's denomination appears on its reverse side. Las Vegas Review-Journal file photo



Armed members of several law enforcement agencies raided Robert Kahre's business locations on May 29, 2003, to obtain records used to indict and prosecute defendants for federal tax crimes. The image, from a security camera, shows a piece of the action at one of his warehouses. Photo courtesy Robert Kahre



Robert Kahre, a 1980 graduate of Rancho High, unsuccessfully sued the Internal Revenue Service in 2002. Now he is on trial in federal court in Las Vegas,

LAS VEGAS REVIEW-JOURNAL

Robert Kahre, who owns numerous construction businesses in Las Vegas, is standing trial on 57 counts of income tax evasion, tax fraud and criminal conspiracy. If convicted on most counts, he could live out his life in prison.

But attorney William Cohan paints Kahre as an American "hero" who believes his payroll system helped keep the U.S. monetary system sound, and was also a form of legal tax avoidance.

A self-made entrepreneur, Kahre, 48, paid his workers in gold and silver coin, and said they could go by the coins' face value -- rather than the much higher market value of their precious metal content -- for federal tax purposes. He did not withhold taxes from their wages, and he provided the same payroll system to 35 outside clients, which were other local businesses.

Judge David Ezra is presiding over the criminal trial, which began May 19 in U.S. District Court. Joining Kahre as defendants are his longtime girlfriend, a sister who works in his businesses, and a former business assistant.

Three of the four present defendants were among the

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charged with tax evasion.  
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nine people tried  
on similar charges  
two years ago, but  
no convictions

resulted. In the 2007 trial, four others of the nine defendants, including Kahre's mother, were entirely acquitted. Two individuals were only partially acquitted, but dropped from the indictment that forms the basis for the trial before Ezra.

This time around, the only new defendant is Danille Cline, Kahre's girlfriend of 19 years, and the stay-at-home mother of his four children. The government claims she obstructed the Internal Revenue Service by allowing Kahre to place several homes in her name, thus attempting to conceal his assets.

Cline's former brother-in-law, Thomas Browne, also was indicted this time, for his role as broker in some of the real estate transactions, but has since reached a plea bargain. He is expected to testify against the defendants.

"This is a case about money, greed and fraud." The line appeared on screen in court during the government's opening statement by Christopher Maietta, a trial lawyer from the Washington, D.C., office of the Department of Justice.

According to the government, Kahre and others concocted a fraudulent cash payroll "scheme" and then peddled it to other Las Vegas contractors. Defendants did not report to the IRS any payments made to workers, "either at the true amount or at the bogus amount, ... being the face value of the coin or coins," according to the indictment.

The now-suspended payroll service handled about \$114 million over six years, according to court records. Between 17 and 25 percent of that went to Kahre or his workers; the rest went to the 35 client businesses to pay their workers, court records show.

The government did not indict most of the outside businesses or their personnel as co-conspirators with Kahre; although on May 6, Daniel McCartan of Action Concrete, which was one of Kahre's payroll clients, was finally sentenced in connection with a plea agreement reached in December 2006. McCartan received five months in prison and five months of home detention for one count of tax evasion.

Kahre contends his workers had agreed to be independent contractors, so he did not have to withhold taxes for them. His six businesses are in the trades of painting, drywall, tiling, plumbing, heating-cooling and electrical work.

Further, the \$50 gold coins and the silver dollars Kahre used for payroll are designated by Congress as legal tender, so people are entitled to value them at their stamped denominations, he also contends. Taken at face value, each defendant's annual coin income placed him below the threshold for filing a federal tax return.

Earlier cases on the question of how to value gold or silver coins have focused on collectible coins that had been pulled from circulation but still have value as property, according to the defense. Kahre used coins minted after 1985, which are allowed to circulate.

"It's not whether what Mr. Kahre did was *legal* under the law," defense attorney Michael Kennedy told the jury in his opening statement. "It's whether he *believed* what he did was legal," in the absence of explicit instructions by the IRS -- on its Web site, in its publications or in response to written correspondence from Kahre -- on how to value post-1985 gold or silver coins.

"We're not here to determine if moneys are owed," said Kennedy on behalf of his client, Lori Kahre, who had relied on her brother's tax theory. A tax mistake is different from a tax crime, so the IRS can still use administrative channels to force the defendants to pay back taxes, Kennedy has noted in the past.

A sincere, but mistaken understanding of the tax-filing process is different from adopting a "pretextual" belief system in order to dodge taxes, Ezra acknowledged in court Wednesday.

Cohan described Kahre's payroll system as a "boycott of the Federal Reserve." But when the lawyer attempted to elaborate on Kahre's view that the nation has debased its paper currency by abandoning its former gold standard, Ezra added, "We're not here to convince the jury that the ... (U.S.) monetary system belongs to an international cabal."

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**Name:**

**Email:**

**COMMENTS :**  
**(word count limit is 300)**

Current Word Count:

Note: Comments made by reporters and editors of the Las Vegas Review-Journal are presented with a yellow background.

**More About Money** wrote on *June 09, 2009 03:26 AM*:

There is a good article on money at [www.independentamerican.org](http://www.independentamerican.org)

**Pat Tillman** wrote on *June 08, 2009 08:59 PM*:

The US is Rome. The last thing an empire does is invade Afghanistan.

The IRS should be treated like tax collectors throughout history.

DC needs to be nuked to save the nation.

Beware foreign entanglements --Gen Washington.

Permitting the government to print money allows them to wage foreign wars. Do the math.

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**Mr. Sam** wrote on *June 08, 2009 06:57 PM*:

J Cortez wrote:

"... The Fed board and open market committee at the top are federal government entities ..."

NO, the Fed board and FOMC are not government. Check out the job application section and there is no civil service exam and they talk about their private non-govt 401k plan. Even better, file a FOIA request for the internal FOMC meeting minutes and you will be denied because they aren't gov't.

"They would not exist without government mandate."

TRUE they have a government authorized monopoly. It's not right, though it is true. Congress outsourced money and interest rates to the private Federal Reserve.

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**The Real McDuck** wrote on *June 08, 2009 11:10 AM*:

Kahre didn't do anything wrong. The powers that be are upset that one of the proles found a loophole in their corrupt and immoral monetary system, and are now trying to make an example out of him.

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**FRN's aren't Real Money** wrote on *June 07, 2009 09:57 PM*:

Only 1 out of 10,000 fools realizes that inflation steals their wealth.

Gold is Money.

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**Fair and Balanced Fred** wrote on *June 07, 2009 08:30 PM*:

Oh, and by the way, if you are looking for the absolute BEST attorney to represent you against the federal government, especially federal government representatives with personality disorders, click here:

<http://www.mdryovage.com/>

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**obushma** wrote on *June 07, 2009 08:18 PM*:

feds are after all of you now - read this!

<http://www.lvrj.com/opinion/47141327.html>

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**Fair and Balanced Fred** wrote on *June 07, 2009 08:09 PM*:

Anyway, the obvious response is clear. Contact Nevada's elected officials in our federal House and Senate about our concerns of a D.A. gone wild.

Believe me, once the D.A.'s office starts getting a handful of these Congressional inquiries, that will throw a wet blanket over its disordered personality ambitions. Trust me. I worked for the government.

The Honorable Shelley Berkley  
U.S. House of Representatives  
405 Cannon House Office Building  
Washington, DC 20515-4708  
Phone: (202) 225-5965  
Fax: (202) 225-3119  
Toll free: (877) 409-2488

The Honorable Dean Heller  
U.S. House of Representatives  
125 Cannon HOB  
Washington, DC 20515  
202-225-6155 (Office)  
202-225-5679 (Fax)

The Honorable United States Senate Majority Leader, Harry Reid  
522 Hart Senate Office Bldg  
Washington, DC 20510  
Phone: 202-224-3542

Fax: 202-224-7327  
Toll Free for Nevadans:  
1-866-SEN-REID (736-7343)

The Honorable United States Senator John Ensign, Washington D.C. Office  
119 Russell Senate Building  
Washington, D.C. 20510  
Phone: (202) 224-6244  
Fax: (202) 228-2193  
TTY: (202) 228-3364

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**Fair and Balanced Fred** wrote on *June 07, 2009 06:47 PM*:

I began my professional career in federal government, and believed in my Agency's mission. I was gung ho. Once I got there, I discovered very few others were. Perhaps they were padding years of military duty for the federal pension at the end of the road, or maybe they just did not care, or maybe they had personality disorders.

I have NEVER, EVER, seen so many people with personality disorders in management positions as I did in federal service.

In federal service, people with personality disorders get themselves into such trouble as their bosses "lateral" them into another sub-department. If that's not possible, they get PROMOTED! Either way, they become SEP, somebody else's problem. Why do you think postal workers go nuts after years of harassment by managers with personality disorders.

In the private sector such personality disorders affect the bottom line and are usually, eventually dealt with.

In the public sector there is no bottom line, and the taxpayer never knows.

It is quite possible that the D.A. in question has a personality disorder. We could depose its co-workers for more evidence about its character.

It's tough to win against a federal law enforcement officer as they tend to mesmerize juries. If they say "the sun rises in the west" juries tend to believe these lackey law enforcement providers, even the head baggage overseer at an airport (who six weeks before was a greeter at Wal-Mart).

Also, the Agencies' general counsel (lawyers / JAGs) tend to be the laziest and dumbest of the dumb. Why should they care? They have a job for life, and their main challenge is to manipulate their boss with a personality disorder.

In the Fed, there is no bottom line and the PD boss is lateraled or PROMOTED.

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**Other Than Money?** wrote on *June 07, 2009 10:02 AM*:

The most interesting thought about this whole thing is this: According to the IRS, not Congress, if you receive gold and/or silver coins minted since 1986AD that are "other than money" you are supposed to calculate their value at fair market value.

So if you calculate those coins in the fair market value using legal tender gold coins minted since 1986AD then what is their fair market value?

And how can they be considered to be "other than money" if the courts and the IRS accept them as money?

I received the following letter from

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224  
June 19, 2008

"A taxpayer that receives property (other than money) as compensation for services must include in gross income the fair market value of the property at the time of receipt."

OTHER THAN MONEY?

FAIR MARKET VALUE as calculated in irredeemable FRNs or President dollar coins or Liberty Silver Dollars.

The letter from the IRS refers to  
Stoecklin v. C.I.R. 865 F.2d 1221  
C.A.11,1989 and Cordner v. U.S. 671 F.2d 367 C.A.Cal., 1982.

Both of these cases were about silver coins minted BEFORE 1986. The Stoecklin case started in 1985 so he was calculating his income in pre-1985 silver dollars that were no longer being minted.

Kahre used ONLY post 1985 silver and gold dollars.

Naturally the difference is as great as night and day or as different as a taxpayer (a person that has accepted a government created right to have an income) and a non-taxpayer (a person that has not accepted a Congressionally created right). (see Northern Pipeline Const. Co. v. Marathon Pipe Line Co.

458 U.S. 50, 83, 84, 1982) Then ask yourself if taxcourt is a particularized tribunal because if it is you can't go there UNLESS you accepted a Congressionally created right.

**Dee** wrote on *June 07, 2009 05:24 AM*:

Could you please forward this to the FBI. I would like to ask them why they are not investigating the death rate of children in Las Vegas which has quadrupled over last year Just a thought, perhaps that would be a better expenditure of our tax dollars. Thanks.

**Fair and Balanced Fred** wrote on *June 07, 2009 02:48 AM*:

Hey, US District Attorney, investigate THIS. Think dirty, you'll get it.

**Chris Felzke** wrote on *June 05, 2009 06:39 PM*:

What law are these people accused of breaking? We have a RIGHT to contract with anyone we choose and trade our labor for whatever we want. The subcontractors were paid for their services and were free to pay any amount the IRS assessed against them. The US government had the coins minted and issued them and dictated the amount and weight,size and shape of them...now they're ILLEGAL? Has the US gov't RECALLED them? (they DID recall the 1933 \$20 gold pieces) The persons who accepted this form of payment was free to REFUSE it and demand FRNs (federal reserve notes) were they not? If receiving payment in this form is illegal then so is receiving ALL benefits (health insurance,IRA contributions,ANY trade arrangements etc) The IRS doesn't have a legal leg to stand on. The 16th amendment authorizes taxes on income FROM whatever source derived,not the source itself. If the source were taxable they would tax it. We would receive a ASSESSMENT for income taxes every year. Instead we are ASKED to file a tax RETURN (RETURN of taxes COLLECTED) and ASSESS ourselves. A SSN is REQUIRED to pay taxes which is also voluntary. If social security number was mandatory we would be ISSUED a number. Instead we have to APPLY for a number. Our income tax comes from the 1909 corporation excise tax act. It is a tax on PROFITS. Since these people have broken no laws their best defense should be to ask what law they've broken (court of law)and proceed accordingly.

**Larry** wrote on *June 03, 2009 01:00 PM*:

Citizen:

- 1) You can't spell ("mackrel"?)
- 2) You are a sheep.
- 3) You are a shill for the government.
- 4) "We" have the FBI because "we" can't get rid of them without lots of bloodshed.
- 5) You, sir, are the one who is "NUTS" (sic). I certainly would NOT want you next to me in a foxhole in the revolution to come. Or maybe I would, so I could make sure you didn't make any mistakes.

**J Cortez** wrote on *June 03, 2009 10:38 AM*:

It is unfortunate that some of the commenters that support the man's use of gold have a warped view of what the IRS and the Federal Reserve actually are. I would ask them to study more and read non-conspiracy theorist books on the subject.

The IRS is not a corporation, it is wholly a federal agency. The Fed on the other hand is a mix of government and private. The Fed board and open market committee at the top are federal government entities, while the Fed regional banks are private. The Fed and the IRS come directly from government power, not corporate. They would not exist without government mandate. There is much to dislike and distrust about both, and it would be preferable to abolish both. But here is no evil corporation controlling things, just as there is no illuminati either.

According to my understanding of the law, Robert Kahre, the man in question, legally used he gold coins and committed no fraud in regard to them. I hope the IRS stops hassling him for a crime that is totally victimless.

**Citizen** wrote on *June 03, 2009 07:38 AM*:

Holy Mackrel, reading the posts from some of the below "nuts" make you really understand why we have the FBI and law enforcement to protect us from these goofy SOB's spouting this anti tax nonsense! These people are out of their minds and I have no doubt practice what they have posted! They are out there and they are NUTS!

**stove** wrote on *June 01, 2009 04:13 PM*:

Un friggin'believable.

Where are the common people when force is needed to stop the govcrims from this unlawful arrest?

This man needs our support!

**Joseph** wrote on *June 01, 2009 01:12 PM*:

There is no disputing the legal tender status,, and face value of gold and silver coins,,,, the fact that the face value is low is a choice of the issuing country/government,,,, this man has committed no crime and ,, he is a victim of a tyranny.....

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**cyberbian** wrote on *June 01, 2009 12:55 AM*:

Actually once the lawyer based his prosecution on the man's belief that his approach was legal or tax evasion, he opened the door for the defendants belief system. Yes he was there to discuss his belief that the U.S. Monetary system had been taken over by a Cabal, you can't have your cake and eat it too.

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**Christian Patriot** wrote on *May 31, 2009 08:39 AM*:

Since the Federal Reserve Board is not Federal, nor a Reserve, neither a Board, but a select group of private banksters of the Rothschild's Illuminati, not sanctioned by the US Constitution, their useless toilet paper, allows inflation, deflation, recession, depression, hidden taxation and overt taxation, which they call normal business cycles, in other words, it is robbery by force and deception, how can we continue to support such a farce?

Then they have the audacity to pass into law the Social Security and rob us of another 13% of our hard earned income. Now they want a UN mandated World Tax, enough is enough.

I suggest we go back to a gold and silver standard, which would immediately wipe out the national debt, not charge us interest for their toilet paper, or better yet, I'll trade you eggs for milk. Tax that if you will.

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**Louis D. Brandeis** wrote on *May 30, 2009 09:41 AM*:

Galt,

This case is mostly about a very wicked man named Greg Damm. He is the prosecutor for the government. He violated Kahre's rights early on and is being sued by Kahre in a Bivens action but the civil case cannot go forward until the criminal trial gets done so even though there was no conviction in the last case Damm is STILL protecting himself and other government agent criminals from civil prosecution.

Damm is a Mormon that is/was working with a Mormon IRS agent. Mormons have a story about evil men called Gadianton Robbers. Damm is a Gadianton Robber. Damm is a Marxist collection agent. Damm's religion is Marxism and he is working to establish that religion for his Satanic masters.

Damm cares nothing about law or about honesty or an honest money system. He cares about Covering His Own @ \$ #.

He is no better than any Nazi prosecutor that was tried for war crimes. He is evil incarnate and everything that is against the American justice system.

Kahre is just a victim of our "legal tender" system where the dollar is not defined by our criminal Congress, criminal IRS system.

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**Galt** wrote on *May 30, 2009 05:14 AM*:

So government stamps a coin with "\$20" and then expects us to believe it's worth fifty times that much? If this gentleman is found guilty, his jury will have declared the Fed's are openly lying.

But they don't have to go to that extreme. There's a whole lot more evidence already in place to show that government people lie whenever their lips move.

It's a kind of double-sided coin. Aren't there rules in Las Vegas against that kind of trickery?

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**doug** wrote on *May 29, 2009 08:56 PM*:

this is nothing more than the government wanting revenge and confiscating all the assets due to their failure to do so 2 years ago. I hope everyone of the defendants are acquitted on all charges and the internal reaming service is sued for harassment.

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**Zach** wrote on *May 29, 2009 11:01 AM*:

Just wanted to make amends on a false statement I made. I had posed the question... "I wonder what would happen if the government showed up to give a no-knock warrant raid and the community turned out in force(with firearms) to repel them?"

I was wrong and I admit it.

Turns out that the IRS isn't a government agency at all. It is a private corporation.

Basically a collection firm for the European Banking interests that actually control our policies and laws.

I would love to hear what protections are in place to prevent the Federal Deposit Insurance Corporation (FDIC) from going bankrupt? Or the IRS for that matter.

I truly believe we lost our War for Independence from Great Britain when we created the Federal Reserve Bank in 1913. The winners of that war was not the American People it was the European money changers. (bankers)

If you research your history you will find the same banking family's behind the financing of both sides of every major war for at least the last 300 years.

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**Zach** wrote on *May 29, 2009 09:07 AM*:

"This is a case about money, greed and fraud." The line appeared on screen in court during the government's opening statement by Christopher Maietta, a trial lawyer from the Washington, D.C., office of the Department of Justice.

LOL. Since when is it legal to use the presence of deadly force to collect debt.

It is only a matter of time before these idiots "hit" someone who knows how to "hit" back.

I wonder what would happen if the government showed up to give a no-knock warrant raid and the community turned out in force(with firearms) to repel them?

---

**Trust** wrote on *May 29, 2009 09:06 AM*:

JFC

Kennedy is correct. YOU see the IRS code is so complicated that even if you do not obey it but just believe you were doing it right you have not committed a crime.

That is why you must "willfully" violate the tax code or you have not committed a crime.

The problem with this is of course the fact that if the code is not clear and unequivocal the citizen is exempt according to the U.S. Supreme Court.

Therefore EVERYONE IS exempt because NO ONE can understand the code including the people that write it.

And the Bankers are indeed the criminals but Robert Kahre is a slave trying to break free from the bankers tyranny and religion of fiat economics. This is nothing but a Spanish Inquisition with the Religion of Marxism being the Inquisitors.

2nd plank of the Marx Communist Manifesto is a graduated income tax and Marxism is a religion.

The Encyclopedia of the World's Religions includes a chapter on Marxism, declaring that it meets all the essential requirements of a religion. See R. C. Zaehner, "Dialectical Materialism," in R. C. Zaehner, ed., Encyclopedia of the World's Religions (New York: Barnes and Noble Books, 1997).

To Theresa,

They are desperate. If Americans can calculate IRS Marxist religious taxation in Silver and or gold dollars minted since 1986 then their fiat money system cannot be properly regulated. People will stop using it and their fraud will fail.

By the way. Did I mention that Prosecutor Greg Damm is a Gadianton Robber Mormon?

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**Theresa** wrote on *May 29, 2009 07:57 AM*:

Hmmm the IRS is taking someone to court over the constitutional verified method of payment? IE Coins produced by the US Mint under direction from the only legal controlling authority? It is strange to have the IRS make sure the use of Worthless Federal Reserve notes instead of The constitutionally guaranteed form of payment of debt The US Coin. Interesting!

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**JFC** wrote on *May 29, 2009 07:55 AM*:

"It's not whether what Mr. Kahre did was legal under the law," defense attorney Michael Kennedy told the jury in his opening statement.

Are you kidding me? Did he really say that?

Our government won't go after the biggest thieves in history (the banks who became investment firms and legally screwed up, and melted down our economy), but they will go after this one man... WTF?

I thought justice was blind, not deaf and dumb.

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**Louis D. Brandeis** wrote on *May 28, 2009 08:04 PM*:

The government is SO desperate that Senator Bennett (another Gadianton Robber Mormon like Prosecutor Damm (by their fruits ye shall know them) lied and said the court ruled he was guilty of "tax avoidance." Tax avoidance is not a crime and the court/jury did not convict Kahre.

Senator Bennett is a LIAR and seeking to cover his own financial crimes against Americans just like Demon Damm

"In this case, the court ruled that Mr. Kahre was guilty of tax avoidance for not declaring the fair market value of the coins in his possession."

Sincerely, Robert F . Bennett, United States Senator from Utah, October 2, 2007 RFB:nc

Fair market value? As calculated in what? The value on the coins established BY CONGRESS? OR FRNs established by nothing?

"I live in Alexandria, Virginia. Near the Supreme Court Chambers is a toll bridge across the Potomac. When in a rush, I pay the dollar toll & get home early. However, I usually drive outside the downtown section of the city and cross the Potomac on the free bridge. This bridge was placed outside the downtown Washington DC area to serve a useful social service getting drivers to drive the extra mile & help alleviate congestion during the rush hour. If I went over the toll bridge and through the barrier without paying the toll, I would be committing tax evasion. If, however, I drive the extra mile & drive outside the city of Washington to the free bridge, I am using a legitimate, logical & suitable method of tax avoidance, & I am performing a useful social service by doing so. For my tax evasion, I should be punished. For my tax avoidance, I should be commended. The tragedy of life today is that so few people know that the free bridge even exists."

Justice Louis D. Brandeis

Commend Kahre!

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**Truth** wrote on *May 28, 2009 07:48 PM*:

Steve,

9 jurors disagreed with his "doom" last trial.

If a man gives assets to his "girlfriend" that he considers to be his wife because he thinks that the government has no right to interfere in a religious ceremony (1st amendment)so that she is financially protected then that is legal? You bet it is.

Are trusts legal? The IRS hates them and always tries to paint anyone with a trust as a criminal. The Rockefellers have trusts but then they are rich and control the Federal Reserve so the IRS leaves those criminals alone since they don't hassle their boss/owner.

What we all want to know,and the government refuses to tell us is what do we judge the value of the financial dealings in. Dollars? or irredemable federal reserve notes?

American Jurisprudence, Volume 36, A§ 8  
[T]he term "dollar" means money, since it is the unit of money in this country, and in the absence of qualifying words, it CANNOT mean promissory notes or bonds or other evidences of debt. (27 Ohio Jur pp . 125, 126, A§ 3), (United States v . Van Auken, 96 US 366, 24 L ed 852)

Black's Law, Second Pocket Edition (1996)  
Federal reserve note. The paper currency in circulation in the United States. The notes are issued by the Federal Reserve Banks, are effectively non-interest-bearing promissory notes payable to bearer on demand, and are issued in denominations of \$1, \$5, \$10, \$20, \$50, \$100, \$500, \$1,000, \$5,000, and \$10,000.

Payable in WHAT, Steve? Dollars? What's a dollar, Steve? It isn't a FRN.

And HI Prosecutor Damm. Hope to see you at church with my picket sign soon. LOL

I can't wait till Mr. Kahre get's to sue you in the Civil Biven's Case you filthy criminal Gadianton Robber Mormon Individual Representing Satan AKA IRS.

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**Truth** wrote on *May 28, 2009 07:33 PM*:

MeanStreaks

Great analogy about the beanie babies!

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**marxbites** wrote on *May 28, 2009 12:47 PM*:



Pay My Taxes ????

Sheesh, get a life you ignorant traitor to American freedom.

You are a perfect example of 100 yrs of Bismark style compulsory state indoctrination.

Choose presidential candidate CFR member A (Obama)

or CFR member B (McCain)

Same goes with EVERY election since Wilson

We coulda had a Ron Paul you nitwits who voted for BHO or McCaniac

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**marxbites** wrote on *May 28, 2009 12:41 PM*:

In 1967, Rand published her non-fiction book, *Capitalism, the Unknown Ideal*. In it, she included *Gold and Economic Freedom*, the essay by Alan Greenspan which appears below. Drawing heavily from Murray Rothbard's much longer *The Mystery of Banking*, Greenspan argues persuasively in favor of a gold standard and against the concept of a central bank.

Can this be the same Alan Greenspan who today chairs the most important central bank of them all? Again, you might be surprised. R.W. Bradford writes in *Liberty* magazine that, as Fed chairman, "Greenspan (once) recommended to a Senate committee that all economic regulations should have fixed lifespans. Senator Paul Sarbanes (D-Md.) accused him of 'playing with fire, or indeed throwing gasoline on the fire,' and asked him whether he favored a similar provision in the Fed's authorization. Greenspan coolly answered that he did. Do you actually mean, demanded the senator, that the Fed 'should cease to function unless affirmatively continued?' 'That is correct, sir,' Greenspan responded."

Bradford continues, "The Senator could scarcely believe his ears. 'Now my next question is, is it your intention that the report of this hearing should be that Greenspan recommends a return to the gold standard?' Greenspan responded, 'I've been recommending that for years, there's nothing new about that. It would probably mean there is only one vote in the Federal Open Market Committee for that, but it is mine.'" -- Editor, *The Gilded Opinion* ]

THIS ESSAY is a MUST read for ALL Americans:

<http://www.usagold.com/gildedopinion/greenspan.html>

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**Steve** wrote on *May 28, 2009 11:39 AM*:

Interestingly he did not need to report face value on ee's unless face value exceeded the minimum for reporting. He'll prevail on that one.

The ee's though who will be hit for unpaid taxes (undoubtedly) can go back and claim two things: First: Minimum wages were not paid, so back payment is still due them. Second: Taxes were not withheld therefore they will not be responsible for un-withheld taxes related to this employment.

All in all... "jail time" "Marks of dishonesty" such as "hiding funds in the gf's houses" will work against any claim that he believed his claims.

He's doomed.

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**jcn50** wrote on *May 28, 2009 10:23 AM*:

Of course, it's always the others whom are greedy... So which is the most greedy in this story?.. The DoJ, or workers like Kahre?...

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**MeanStreaks** wrote on *May 28, 2009 10:05 AM*:

This is about money, greed, and fraud of the UNITED STATES GOVERNMENT.

They change the rules when they feel like it to suit their own purposes.

Income tax is voluntary. Silver and gold has a face value printed on it. The intrinsic value is the same as buying a beenie baby for \$5 and selling for \$100 on ebay.

So why don't they arrest beenie baby people.

Nothing in this country makes any sense at all anymore!

Heaven help the innocent who do not see the tyranny of the Government.

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**it actually says** wrote on *May 28, 2009 08:14 AM*:

it is voluntary to pay taxes

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**get answers** wrote on *May 28, 2009 08:08 AM*:

Pay My Taxes,

Ubi jus incertum, ibi jus nullum. Where the law is uncertain, there is no law.

The majority of the last jury disagreed with you 9-3.

The 9th circuit disagreed with you about the irs being heroes and allowed Kahre's civil case to go forward because these criminal brown shirt jackbooted thugs acted unlawfully.

You cannot tell me the law Kahre violated and you cannot tell me what the legal definition of a dollar is.

So what law requires me to file?

What law tells me what taxable income is?

What law tells me what to calculate the value of my income?

What law tells me what a dollar is?

"I guess you will have to go to jail. If that is the result of not understanding the Income Tax Law I shall meet you there. We shall have a merry, merry time, for all our friends will be there. It will be an intellectual center, for no one understands the Income Tax Law except persons who have not sufficient intelligence to understand the questions that arise under it."-Senator Elihu Root, 1913 debate regarding the first eighty-eight page income tax act

Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language... Spreckels Sugar Refining Co. v. McClain,192 U.S. 397 (1904)

Let me point this out now. Your income tax is 100 percent voluntary and your liquor tax is 100 percent enforced tax. Now the situation is as different as day and night. Consequently, your same rules just will not apply... -Dwight E. Avis, Head of ATF, IRS 1953

It is a miserable state of things where the law is vague and uncertain. Res est misera ubi jus est

Anyone that believes the law is written in clear language is a voluntary slave or a tyrant.

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**get answers** wrote on *May 28, 2009 07:50 AM*:

An voice

yes

and the best way to get a federal rep to respond is to snailmail them at the local office.

after you get a response keep figuring out who else to ask. then send your copies to the irs and demand an answer telling you exactly what a dollar not legal tender, is.

include this

Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid... Spreckels Sugar Refining Co. v. McClain,192 U.S. 397 (1904)

and include the Nevada statute on perjury and tell them you must 'know' what the word dollar means exactly? or you will not be able to file a 1040 without committing perjury.

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**Pay My Taxes** wrote on *May 28, 2009 07:42 AM*:

The IRS and the US Department of Justice are the true heroes in this story. The free riders who believe the laws do not apply to them are being held responsible for their actions. As justice unfolds the assets of these unpatriotic law breakers will be taken and these folks will go to prison. The uneducated flakes and nuts that support them will have something new to write about when they cash their welfare checks.

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**howard** wrote on *May 28, 2009 02:38 AM*:

first off, get it right! its a "trust fund tax" not an income tax, if you try and go to court without doing that, you will lose every time. If anyone doubts what i say, show me a case where anyone has won a tax evasion case? if there were any, thats the city I would want to have been tried, i was convicted in 1992 in south Florida.

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**jim** wrote on *May 27, 2009 11:38 PM*:

I HAD TO GO TO THE IRS BECAUSE THEY DIDNTFILE MY 2003 TAX RETURN. THEY ARE DOING THIS

NOW. AUDITING FOR YEARS PAST, THINKING YOU WILL NOT HAVE THE RECEIPTS. SINCE THEY DIDNT FILE IT. EVEN THOUGH THEY HAD IT, THEY CLAIMED I OWED 7700, ON 13,000, SO THEY ATTACHED MY SOCIAL SECURITY=. SO I WENT TO THE SAN ANTONIO OFFICE AND SAID (AFTER THEY TOLD ME THEY COULDN'T HELP ME) THAT THERE WAS A CLOOEGE OFFERING 10,000 DOLLARS TO THE PERSON WHO COULD SHOW THEM THE STATUTE SAYING INCOME TAX WAS LEGAL.  
I WAS TOLD THEY DIDNT HAVE IT.  
I SAID, "YOU MEAN TO TELL ME YOU DONT HAVE A COPY OF THE LAW, AND YOU'RE COLLECTING FOR THE FEDERAL RESERVE?"  
THEY AGAIN RESPONDED NO. SO I ASKED THEM WHERE ONE COULD OBTAIN THIS DOCUMENT, AND THEY RESPONDED, IN THE PROCEDURES. I SAID I HAD LOOKED THERE AND COULD NOT FIND ANYTHING TO MATCH MY QUERY. I SAID I NEEDED THE MONEY, COULD THEY PLEASE LOOK AGAIN, AND I WAS ESCORTED OUT OF THE BUILDING BY THE GUARD.  
I WISH I WORKED FOR A COLLECTION AGENCY AND COULD CARRY A GUN!!!!

ABOLISH THE ILLEGAL FEDERAL RESERVE!

**An voice** wrote on *May 27, 2009 11:21 PM*:

Someone wrote :

'if you REALLY want to protest then start writing letters to your congresscritters DEMANDING to know what a dollar is.

Write to the governor and your State Assemblymen and Senators. Write the Nevada Treasurer and the US Treasurer. You will be SHOCKED when you get the responses. No one knows ....

Write those letters! PROTEST!

Letter writing and sending can be time-consuming but effective, especially when hand delivered or nailed to a door. But I put it to you that since we are all only seperated by several degrees of each other, there is a more direct alternative to writing letters. Verbally asking questions, to those you know in power when you get the chance to see them, 'what is a dollar now that a specific weight of silver is no longer a dollar?' These direct questions to those in power whenever and wherever you see them will reverberate, like the questions here reverberate to the general public. When enough people begin asking these direct leaders, industry captain's, their spouses, associates, etc, a critical mass will be reached, inevitably bringing to bear some strong peer-pressure on the most thick-skinned of these individuals to come to terms with their part in this facade, this farce.

**Lupus Yonderboy** wrote on *May 27, 2009 08:59 PM*:

"If the American people ever allow private banks to control the issue of their money, first by inflation and then by deflation, the banks and corporations that will grow up around them (around the banks), will deprive the people of their property until their children will wake up homeless on the continent their fathers conquered." - Thomas Jefferson

"In God We Trust, All others pay cash."

**Riley** wrote on *May 27, 2009 08:43 PM*:

'It's time to wake up from this fascist nightmare'

**Satan** wrote on *May 27, 2009 08:16 PM*:

That last line by Judge David Ezra is very revealing: ..'(U.S.) monetary system belongs to an international cabal."

**Rob O'Loughlin** wrote on *May 27, 2009 07:57 PM*:

Legal is NOT Law. Stop believing this fictitious legalese nonsense:

John Harris - 'It's an illusion'  
<http://www.tpuc.org/node/558>

The IRS and Police etc. are engaged in criminal activity. As are the politicians and judiciary.

This farce is going to end by whatever means it takes.

**Oli** wrote on *May 27, 2009 05:56 PM*:

A popularity contest was not what Ms. Whitely was after! Mr. Kahre deserves to run this country! Finally, a person who has the integrity, strength, Perseverance and bravery to fight for what was and is right! I'm a coward for knowing how corrupt our gov't truly is and standing by....Thank you Mr. Kahre for fighting for ALL of us!!!! Here's an interesting article to read-<http://www.tax-freedom.com/ta24000.htm>

**Bill** wrote on *May 27, 2009 02:33 PM*:

I went to my local Bank. They had \$5 or about in American Silver Eagles \$1 Coins. 7,1921 and earlier Morgan Silver Dollars. Standing Liberty Halfs along with other pre 1965 Coins. They only charged me Face value for all the Coins. To round it off to the \$29 ammount they added a few extra quarters. Everyone was happy. I still have them in a Tube to remember the best deal I got from a Bank!!!

**Marilee Guinan** wrote on *May 27, 2009 01:17 PM*:

This man is brilliant and should be applauded for his ability to legally and morally circumvent the fraud called the Federal Reserve. Yes, we should rally the courthouse and circulate this article for all patriots to see. It's about time law abiding, freedom loving intellectuals unite and rally to preserve what our Founding Fathers established for the benefit of mankind.

**if federal reserve is a private company with secret stock holders** wrote on *May 27, 2009 10:42 AM*:

how come federal reserve can tell judges what to do, and make laws. when they are a private company and violate the constitution while doing so.

**what about this** wrote on *May 27, 2009 10:39 AM*:

<http://answers.yahoo.com/question/index?qid=20081004160253AAXh9pI>

**Vincent Brian** wrote on *May 27, 2009 09:41 AM*:

That there is no law requiring you to pay taxes misses the point. When you sign up for a bank account with a bank that is a member of the Federal Reserve system, you effectively become a branch of the Fed yourself, and you agree to abide by the policies of this private corporation. This includes paying interest (tax) for the use of their privately issued credit. FDR alluded to this in 1933 around the time HJR192 was passed, when he stated something to the effect of "if we can get the people to make deposits in these new accounts, we will have made progress". He was alluding to the use of Fed notes vs. constitutional money such as US notes.

In theory there is nothing unconstitutional about this, because the constitution also guarantees the sanctity of contracts. One could argue however that without full disclosure there is only implied consent. Lack of full disclosure can be considered fraud, and fraud negates consent.

The issue here should be pretty cut and dried though as long as no Fed banks were involved in any of the transactions. The coins are minted by the US Treasury and have nothing to do with the Fed.

**George** wrote on *May 27, 2009 08:51 AM*:

The fraud is clearly on the part of the Federal Reserve and the US Treasury. The Constitution is quite clear on the matter.

**Willie** wrote on *May 27, 2009 07:26 AM*:

The nice thing is if you agree to work as an independent contractors at the lower face value then that's what you'd pay income taxes on. A 2003 silver dollar is worth \$20. So if my usual pay is \$20/hour and I agree to work for \$1 silver dollar then I might get money back from the government for making wages below the poverty line. Sweeet. Now that's how to can the FED. Cut off the snakes head. Yesss!

**Willie** wrote on *May 27, 2009 07:20 AM*:

Can the FED!!

**TwoSenseWorth** wrote on *May 27, 2009 06:32 AM*:

The research titled "The Tax That Never Was," a study which demonstrated that the income tax amendment was never properly ratified, was used as precedent to exonerate a defendant in a previous similar case, was it not? And the Constitution states ". . . make any Thing but gold and silver Coin a Tender in Payment of Debts; . . ." Federal Reserve Notes are not included.

**Ingvend Storrs** wrote on *May 27, 2009 12:15 AM*:

A multi-jurisdictional, armed task force complete with Ninja outfits & boom-boom grenades, huh? Is it

time to wake up from this fascist nightmare?

Time for some 1776.

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**michael hoaglan** wrote on *May 26, 2009 11:37 PM*:

we should organize a protest around the court house,  
show outrage,  
this man is a patriot,

---

**Eric Nordstrom** wrote on *May 26, 2009 06:02 PM*:

Edward C. Noonan - Good point (Constitution is dead)

I would also add that the Constitution has not been in use since before 1933 and perhaps since 1913. The reason is due to perpetual crisis and emergency powers.

See: [http://www.pyrabang.com/view.php?ref=Welcome&post\\_id=31260](http://www.pyrabang.com/view.php?ref=Welcome&post_id=31260)

Also, get an account on PyraBang - tons of fantastic information.

Welcome page: <http://pyrabang.com/go/welcome>

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**Chip Lightmen** wrote on *May 26, 2009 05:30 PM*:

Wish he was my boss. My jerk boss only paid in US paper bills AND he took taxes out.

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**Audit The Fed** wrote on *May 26, 2009 04:47 PM*:

The Federal Reserve is not a government agency, it is an international cartel of bankers. This cartle acts COUNTER to the citizens of the united states. Example? a mere 400 billion dollars (or more if you count only tax payers) would have given every family in the united states 50,000. this would have reduced consumer debts, stimulated businesses on a grand scale, and benefitted the banks DIRECTLY when the money got redeposited into the banks! But no; the system is about uppere tier greed. we the tax payers of the US are now paying for INTERNATIONAL banking bailouts, so the numbers are in the trillions, and counting.

So the US taxpayers are paying for the mistakes of britain, france, even chinese central bankers. now our corrupt political system enforces the federal reserve.

If you find yourself on a jury where the plaintiff is a bank or the IRS; always rule against them. no matter what. god bless.

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**Jason** wrote on *May 26, 2009 04:19 PM*:

Haven't you seen the movie: America: Freedom to Fascism?

Director's Authorized Version - 1:51:16 - May 5, 2007  
<http://www.freedomtofascism.com>

<http://video.google.com/videoplay?docid=-1656880303867390173>

It's pretty clear that there is NO LAW that requires Americans to pay an income tax. The Supreme Court has ruled consistently on this.

Another great resource for maintaining your freedom from tyranny:

<http://www.famguardian.org/>

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**willam** wrote on *May 26, 2009 03:53 PM*:

the reason he is in court is if he is seen to be allowed to do this others will follow. its all about the gov getting money into their coffers by hook or by crook(maybe thats why it says in god we trust on the green-back because its the federal reserves god, ). the federal reserve banking system is being challenged and is fighting back. it knows its corrupt but is using this as a warning to any would be constitutionist usurpers of its illegal powers. under the US constitution its legal to pay in gold and silver coin the fed cant have it both ways either, they are above the constitution or they are subject to it.

---

**Julia** wrote on *May 26, 2009 03:24 PM*:

Their is more fraud than you know.

There are TWO federal court systems in this country. The District Court of the United States and The United States District Court. These are different.

The phrase "District Court of the United States" refers to federal courts for the state zone; and the phrase "United States District Court" refers to federal courts for the federal zone.

We have this on the authority of the Supreme Court of the United States, most notably in the cases of American Insurance Company v. 356 Bales of Cotton, and Balzac v. Porto Rico [sic].

Look it up.

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**Randall** wrote on *May 26, 2009 03:10 PM*:

If it is legal tender, value of said legal tender it set by the gov and stamped on the face. Maybe the Government should be on trial.

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**Julia** wrote on *May 26, 2009 03:10 PM*:

Federal Reserve Notes are NOT taxable. They are obligations of the United States to the Federal Reserve and those obligations are not taxable by law. The congressional record confirms that FRNs are the MEASURE of the tax owed not the SUBJECT of the tax.

To understand the tax system the first question you must ask is since FRNs are not taxable "What is the SUBJECT or OBJECT" of the tax. Good luck getting an answer to that question.

I suggest you read INVISIBLE CONTRACTS by George Mercier. His theory states that you owe taxes because you have voluntarily taken benefits from the government and if you have taken a benefit you owe the tax.

Knowing EXACTLY was is being taxed is critical to a defense. How can you know if a tax is owed if you don't know how that liability is incurred?

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**genesisjim** wrote on *May 26, 2009 02:40 PM*:

I'm just praying that this jury comes to its sovereign senses. Jury nullification is the fix for this miscarriage. Anyone of the comments posted so far is far more lucid than even one phrase of dialectical madness uttered by the prosecution in this (mis)-trial.

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**Peter Duveen** wrote on *May 26, 2009 02:30 PM*:

There are dollar-denominated federal reserve notes, which are called dollars but are not dollars. Dollars are a certain amount of gold, I think something like 1/42 of an ounce of gold. (The value of the dollar was changed at least twice, from 1/35 oz, before Nixon stopped redeeming dollars in gold. That's the best I can make of it. Because the fed notes are legal tender, they supposedly must be accepted at their face value. Fact is, the government got caught in the web it wove to catch us, and this guy saw it and heroically followed it to its logical conclusion.

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**SoundPolitics** wrote on *May 26, 2009 02:27 PM*:

"CONGRESS IS NOT LIMITED."

I'll disagree here. Congress has the power granted by the Constitution and no other. For instance, Congress has the power to coin money and regulate the value thereof, but the Constitution gives Congress no power to declare any money a legal tender. In my opinion, the 10th Amendment clearly implies that Congress has no power to declare legal tender - but the Hamiltonian Statist point of view had won out on that debate in 19th century SC cases.

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**Popcorn and a Moive** wrote on *May 26, 2009 02:14 PM*:

I took my wife to see Star Trek last night. What a great movie. And what a great value.

Before I went I took two 2006 U.S. legal tender silver dollar coins and exchanged them at a coin dealer for 35 irredeemable green legal tender notes.

To my surprise the Movie theater took them without so much as a how do you do just like they were REAL MONEY.

We picked up a big tub of popcorn and some candy and a drink too. All for the value of 2 legal tender silver dollars.

What a country! What a movie!

And all for \$2. That is less than I used to pay in the 1960s.

And with Gas prices at 7.5 gallons for a single dollar I mean how can anyone be complaining.

Did you know you can buy a nice new 2500 sq. ft. home home for 10,000 silver dollars right now?

That is less than in the 60s too!

Too bad so many of you deal in those nearly worthless FRNS.

Wise up and free yourself. Use real money to calculate what you spend and earn. Prices are GOING DOWN BIG TIME!

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**intoitall** wrote on *May 26, 2009 02:13 PM*:

GOT GOLD? SILVER? FOOD? WATER? AMMO?

BETTER GET SOME!

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**Richard** wrote on *May 26, 2009 01:39 PM*:

What is happening in the Country, first there is no such thing as tax on Income, or regulation as far as I can see. I hope they fight this and win it. Now they want to charge you for thinking or what you might have been thinking, My God how do they know what you are thinking in the first place. its like going to jail because you might commit a crime. We must all fight, and fight back hard. And the paper money is worth only 5 cents. we don't have any GOLD to back the paper.

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**Truth** wrote on *May 26, 2009 01:24 PM*:

Da Man,

Independent Contractors can agree to work for free or be paid in car parts or gold coins or worthless paper notes or Enron Stock or GM stock. There is no minimum wage laws on Independent Contractors and the States cannot interfere in the right to contract.

And the State of Nevada says you must pay the sales tax on a Silver Dollar Coin or a Gold \$50 coin exactly at the rate on Federal Reserve Notes.

We could all reduce our Sales tax costs dramatically if a store would open that allowed for ONLY gold or silver coins to be used to buy things there. You could buy 4 EXPENSIVE new tires for your car for \$50 and the tax would be \$3.75 and you could pay the tax in non-silver quarters.

A 980 dollar suit judged by FRNs would now be a \$50 2007 US legal tender coins is now just \$50. So the tax would be about \$3.75 instead of \$73.50 and you could pay the \$3.75 in FRNS because the State of Nevada MUST accept BOTH at the same face value.

Quite the scam, isn't it? A scam by the Banks and Congress that is.

You see this is what the government gets for NOT defining what a dollar is.

If they were honest then this would not even be a consideration. It is the government fraud and the Federal Reserve Fraud that creates these discrepancies. NOT Kahre.

Just have Congress tell us all what a dollar is and then all of the problems you list GO AWAY. Blame your corrupt government for NOT following the Constitution. Congress is REQUIRED to define the value of our money and they REFUSE to do so so that they can bailout Banks with notes and not dollars.

You cannot just print up a silver dollar.

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**showmethemoney** wrote on *May 26, 2009 01:23 PM*:

Audit the Federal Reserve then END THE FED.

Support HR 1207

I hope this man wins, I have seen on someone's website what that the state of Nevada recognises what Kahre is doing paying his employees in this manner is correct.

The Federal Reserve does not want COMPETITION! That is all this is about, controlling the supply of money, and making us pay interest on the supply of the money to the international bankers.

That is EXACTLY what this trial is about!

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**Matt** wrote on *May 26, 2009 01:10 PM*:

If they have to pay income tax based on the value of the medium that their money is printed on, I'll be glad to pay my own income taxes based on the value of the paper that my money is printed on.

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**recticuli** wrote on *May 26, 2009 01:04 PM*:

First and foremost Gold is the legal monetary of the realm. the FRN 'fiat' curenry has no intrinsic value.

I hope these people win!! They never should have been put on trial over such phoney charges... They dropped paragraph (a) on the 1040 form years ago. If someone has a 1040 from the sixties.. They should post it across the net...

---

**Truth** wrote on *May 26, 2009 01:03 PM*:

Nice try Sue,

That was before 1986 and they were using gold coins no longer in circulation. They were "property" and not "legal tender".

Coins since 1986 are legal tender and have the EXACT same value TO THE GOVERNMENT at the Post office or Court or payment of a fine.

Do you know what you get for a silver dollar at the U.S. Post Office. TWO First Class stamps and change.

Bobby Kahre paid the filing fee for his Bivens civil suit against the IRS criminals in Federal Court in Gold and silver dollars and the COURT accepted them at face value.

If the Court can accept them at face value why can't the Citizens (you know...serfs) that Kahre's owes money too accept them at face value?

The IRS also accepts them at face value. So why can't I?

And what do I use to calculate the value of a 1899 gold \$50 coin with? Do I use silver dollars minted since 1986 or gold coins minted in 2007 or a Federal Reserve Note printed in 1918?

When the government can tell me what a dollar is then I will tell them how many dollars in income I have (if required by law which in most cases it is not). Until they tell me I CANNOT tell them BECAUSE I DON'T KNOW WHAT A DOLLAR IS.

And neither do you.

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**Thomas Jefferson** wrote on *May 26, 2009 12:58 PM*:

I believe that banking institutions are more dangerous to our liberties than standing armies. If the American people ever allow private banks to control the issue of their currency, first by inflation, then by deflation, the banks and corporations that will grow up around [the banks] will deprive the people of all property until their children wake-up homeless on the continent their fathers conquered. The issuing power should be taken from the banks and restored to the people, to whom it properly belongs.  
endthefed.com  
infowars.com

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**recticuli** wrote on *May 26, 2009 12:52 PM*:

Pretty sad when this rogue IRS entity is allowed, by a rogue criminal justice system to systematically extort money from businesses and people. To this day I have yet to find where provisions were made in the CONSTITUTION for such an entity called the IRS...I have yet to find the LAW that a person, an individual must file a 1040 form.

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**Edward C. Noonan** wrote on *May 26, 2009 12:51 PM*:

None of this matters...Since we have an illegal alien, a non-citizen, a non-American sitting in the White House, the Constitution is DEAD!

We have no president so the Constitution cannot be enforced. Until we solve the lack of leadership, all is for naught. This judgement is void since the the Federal government is without a head. Chaos is what we have.

Barry Soetoroe (aka Barack Obama) (aka illegal alien) CANNOT BE A PRESIDENT if he is NOT an American and is NOT a citizen!

He and his mom gave up their citizenship when the moved to Indonesia and did not reapply for citizenship when Soetoro returned to America. And he continually refuses to prove his is a CITIZEN!

If the Constitution is now dead, whether we use gold or FRNs is a lesser matter. Neither are Constitutional law at this point.

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**What is a dollar?** wrote on *May 26, 2009 12:50 PM*:

american made

"a dollar is still a dollar"? W T F?

REALLY? Which one. The FRN is not a dollar. It is a note that can be redeemed in dollars but not gold or silver dollars.



So if a dollar is still a dollar then please give us the legal definition of a dollar. NOT legal tender. Just the simple law that defines what a dollar is.

Five silver dollars have a different value than a \$5 gold coin. If you have 4 \$10 gold coins they weigh one ounce but so does 1 \$50 gold coin. So which one is a dollar? It takes about 17 FRNS to exchange them for a silver dollar minted since 1986 and currently "legal Tender coins" but it takes 98 FRNS to exchange for a \$5 gold legal tender coin currently being minted by the US Mint.

So what is the value of a U.S. dollar since a "dollar is still a dollar." Is it calculated in Euro? That would mean the EU defines what a dollar is and not Congress. Is it a Canadian Dollar or a New Zealand Dollar?

It can be anything. Congress is not limited to gold or silver. Only the States are. Congress could make a dollar 1 ten trillionth of the gross national product as denominated on paper notes printed by Congress to be made redeemable in tax credits or any part of the US Gross National Product.

CONGRESS IS NOT LIMITED.

So since you know that "a dollar is still a dollar" please let us know what a dollar is.

Just give us the law written by Congress. They are the only ones that are allowed to define what a dollar is in the USA and THEY HAVE NOT DONE SO FOR DECADES.

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**SUE** wrote on *May 26, 2009 12:45 PM*:

<http://bulk.resource.org/courts.gov/c/F3/26/26.F3d.923.92-16265.html>

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**Da Man** wrote on *May 26, 2009 12:45 PM*:

I think it's a good idea but I see some problems. For example, if you truly use the face value are then you paying below minimum wage? A \$50 gold coin for a week is only about \$1 an hour. And then at some point, the workers have to sell the coins at which point they should be recognizing a gain between face and market. The IRS and states would mainly lose just on social security / unemployment taxes on the face versus market value of the coins.

Maybe it would be better to pay normally with market value dollars and do a payroll deduction for the market value of the coins you give out.

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**Gold Coins** wrote on *May 26, 2009 12:38 PM*:

It's amazing that it continued for six years.

Hope it's ok, but I've referenced part of this story on my site [here](#). I've also stumbled and bookmarked your article. It's very interesting. Thanks :)

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**Truth** wrote on *May 26, 2009 12:33 PM*:

Kim,

The Congress does allow this form of payment. The IRS doesn't but only after what Kahre has done. These coins are 100% legal tender. The law even says the modern One Ounce Silver coin has the "value" of a "dollar." So how can it be MORE than a dollar?

Is an FRN a dollar? NOPE! It is to be redeemable in dollars. So W T F is a dollar?

You can pay in chicken eggs or rocks if you want to and then the "value" is to be judged by the "value" of DOLLARS?

W T F is a dollar?

Anyone? Anyone?

NO ONE KNOWS! So how can anyone be liable to pay a tax since the Supreme Court said it had to be imposed in CLEAR and unequivocal language?

"Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid..." Spreckels Sugar Refining Co. v. McClain, 192 U.S. 397 (1904)

The reason why is because the system is voluntary.

"Let me point this out now. Your income tax is 100 percent voluntary and your liquor tax is 100 percent enforced tax. Now the situation is as different as day and night. Consequently, your same rules just will not apply..." -Dwight E. Avis, Head of ATF, IRS -House Ways and Means Subcommittee Hearings -1953

How do you volunteer? You get a voluntary Social Security Number and you become "federal personnel."

Unvolunteer yourself. Stop using THEIR SSN. Sue under the RFRA! Fight back. Stop filing forms you DON'T UNDERSTAND.

Be men and not serfs. But most of you won't because slavery is safer. Until the "voluntary" trains comes.

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**american made** wrote on *May 26, 2009 12:24 PM*:

The real problem for the government here is the precedent it will set if in fact this man is found to be operating under the "law". This is what they are afraid of. Legal Precedent.

The fundamental problem of a gold or silver standard is that there is not enough gold or silver to back the required trillions of FRN's while still allowing for required growth of GDP. Gold and silver would become extremely expensive as more money is created than gold or silver is dug up.

The only thing that really gives value to American FRN's is the international currency conversion rate. If the fed prints trillions. . a dollar is still a dollar. . but when you convert it for goods overseas, you get a different valuation based on the conversion rate.

Ultimately this guy is bringing to front and center the question of what is a dollar? A \$50 gold eagle is legal tender and although it says dollars. . Dollars are not federal reserve notes.

In the big picture, the trick for the government is to define a dollars worth based on "something" while still allowing for growth. Until this is done, fiat money will forever be the the product of a "financial product" and not a product of a tangible good. RL

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**Patriot2012** wrote on *May 26, 2009 12:17 PM*:

Clearly...the time will come for WAR against this criminal US Government. They have changed the laws for their own good. I call out to all our Military branches to take over our government now! Otherwise...you along with the Police and other criminal depts will be in the line of fire when we march!

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**Warren Raftshol** wrote on *May 26, 2009 12:07 PM*:

An appeal to the jury to nullify this nonsense should be made.

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**Kim** wrote on *May 26, 2009 12:03 PM*:

It amazes me that the US government has not allowed this form of payment already. These coins are stamped with a dollar value, are put out by law, and when adjusted for inflation come out to be the actual amount of money we are making. Our system of money is designed to steal wealth from the people of this nation in such a surreptitious manner as only a few will be able to understand. I hope he wins in court and the Government has to restore to him all that it has taken.

Kim

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**Don't protest at the court** wrote on *May 26, 2009 11:51 AM*:

Thomas Goss

DO NOT try to protest at the courthouse. You can be arrested. It is considered to be jury tampering.

If you want to picket find out where prosecutor Greg Damm goes to a Mormon church and protest there.

Protest at the IRS building.

Protest at the Tax Court building across the street. DON'T protest at the courthouse!

Freedom of speech is NOT ALLOWED THERE.

If you REALLY want to protest then start writing letters to your congresscritters DEMANDING to know what a dollar is.

Write to the governor and your State Assemblymen and Senators. Write the Nevada Treasurer and the US Treasurer. You will be SHOCKED when you get the responses. No one knows.

Look for the words: "legal tender" when they describe Federal Reserve Notes. Watch how they NEVER call FRNs dollars but only "legal tender." Watch them point to court cases saying you have to pay taxes WHEN YOU NEVER ASKED THAT QUESTION. Watch them sidestep the issue by telling you you will have to contact your own attorney or the Legislative Counsel Bureau. So contact them and you will find out that NO ONE knows what a dollars is BECAUSE Congress has not defined what it is and ONLY Congress can do that.

You know what a pound, an ounce, quart, inch, foot, yard and a centimeter are.

So WHAT IS A DOLLAR?! A dollar is to be a unit of measurement but is currently undefined. It used to

be a specific weight of silver. NOT ANY MORE. Now it is NOTHING. Totally undefined. A FRAUD!

If a foot was not 12 inches and 1/3 of a yard but changed at a bankers whim then what is a foot? Is it more or less than 12 inches and what if an inch is not 1/12 of a foot?

Write those letters! PROTEST!

---

**Joel** wrote on *May 26, 2009 11:36 AM*:

Exactly! This is a case about money, greed and fraud. By the US Government!!!

The government lets the banksters control the money (illegally according to the Constitution). We taxpayers then borrow money from the banksters (the fed) and pay interest! Absurd!

Money, Greed and Fraud - US Govt.

Read Pieces of Eight by Edwin Vieira for a great understanding of money and what our Constitution intended.

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**Jury members** wrote on *May 26, 2009 11:34 AM*:

Mike,

The last jury did not convict him. This is the 2nd trial. NINE jury members wanted to acquit him and only 3 GOVERNMENT employees on the jury voted to convict.

Pray that this jury has a few honest members on it. The Defense thinks it is a pretty good jury. The government tried to remove a black man from this jury just because he was black and the judge did not allow him to be removed. THANK GOD! Naturally the prosecution does not want a black man on the jury because most blacks understand how evil criminals run the government so they don't trust them. Many whites are moronic serfs and don't understand the system is evil.

The government is desperate to convict Kahre because he is exposing their fraud.

WHAT IS A DOLLAR?

He is also suing them under a Bivens action. Kahre is suing DAMM the prosecutor, IRS agents and FBI agents. They are scared to death because their crimes will be exposed. The 9th circuit is allowing the civil trial to go ahead after the criminal trial ends. THE IRS and DAMM ARE SCARED!

And the last trial Judge, Jones, was removed from the case by the 9th. He criticized the jury for not convicting Kahre. Talk about NOT being impartial. This judge is better and more fair.

By the way in the last trial the prosecutor DAMM was a Mormon. So was the IRS agent and the Judge and the magistrate. The Mormon Mafia!

But there are also Mormons fighting against these evil Mormon Mafia government members. At least one of the defense lawyers is a Mormon. So were some of the researchers fighting these criminals IRS agents.

Please pray for God to open the minds of the jury to the TRUTH. The only criminals in this case work for the government.

---

**What is a Dollar?** wrote on *May 26, 2009 11:19 AM*:

RantNation.

Exactly! But what do we judge the value of the paper by? What do we judge the value of the silver or gold or ANYTHING by?

If the U.S. monetary measurement AKA "Dollar" does not have an established value (as required by the Constitution) then what do we use as a measurement?

Can you imagine if you were contracted to build a house 30 measurements by 40 measurements by 15 measurements but they would not tell you what the length of a measurement was? HOW BIG IS IT? How small?

What is a dollar?

2. A coin or note worth one dollar.  
The American Heritage Dictionary

So it is a not or coin WORTH a dollar?

Dollar is the STANDARD... A Measurement!

So a silver dollar minted since 1986AD is currently worth 18 Federal Reserve Notes and 18 FRNs are worth 7.5 gallons of gas so a silver dollar is worth 7.5 gallons of gas?

Or is an FRN worth .4 gallons of gas?

So if I have income of paid with a \$50 gold coin minted since 1986AD is it worth \$50 or 980 Federal

Reserve Notes which I know are not dollars but only notes because Senator Ensign AND the US Treasury told me that FRNs are NOT DOLLARS?

How do I claim, under penalties of perjury, that I have \$980 in income if I was paid just \$50 when I KNOW that FRNs are NOT dollars?

To EVERY person that thinks I am a criminal because I don't file a 1040 tax return well I think you ARE a criminal if you DO file because YOU are committing perjury which is a felony.

You are also a traitor to America as you are supporting the enemies of America and the #1 and #2 terrorists in the US today are the IRS and the Federal Reserve Banksters.

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**Eric Nordstrom** wrote on *May 26, 2009 11:10 AM*:

IRS forcing a Federal Income Tax on a man's wages is illegal. The illusion that paying taxes as a patriotic activity is a fraud.

Constitution only affords Congress to COIN money. Any other form such as the paper dollar is not money. It is a Federal Reserve Note. Paper, not COIN.

The Federal Reserve System and especially the IRS needs to be flushed down the toilet. Now.

They are two of the greatest blemishes on America and to our Republic.

We should all take the IRS to court as the criminal, not the reverse.

---

**goldmint** wrote on *May 26, 2009 11:10 AM*:

Wish somebody would pay me in gold! Where do I sign up?

---

**Mike** wrote on *May 26, 2009 11:05 AM*:

The sad thing is there are 12 dummies on the jury who will convict him.They should be hung along with the feds

---

**Thomas Goss** wrote on *May 26, 2009 10:56 AM*:

Organize Protests at the court house to show the Jury there are others that support what this person has gone.

100% Legal...

Issue resolved. doesn't like what they are doing!

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**RantNation** wrote on *May 26, 2009 10:48 AM*:

If they want his employees to pay taxes on the value of the gold he gave them, perhaps we should all pay taxes on the value of the paper our paycheck is printed on.

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**God does not create fiction** wrote on *May 26, 2009 10:47 AM*:

The courts are a complete fraud and operate in contrary to our creator's will.

Download, The Extortion System of the Ruling Elite.

[www.freedomfiles.org/extortion.pdf](http://www.freedomfiles.org/extortion.pdf)

Courts are imaginary pirate ships afloat on an imagenary Sea. Your NAME is a ship floating there for them to plunder. It is piracy on land.

---

**libertea** wrote on *May 26, 2009 10:34 AM*:

Too bad he didn't buy a gun and some ammo with his gold to defend his life, liberty, and property.

Google:

fiat currency

the creature from jeckyll island

money masters

---

**What is a Dollar?** wrote on *May 26, 2009 10:26 AM*:

Captain Obvious,

If it was a crime to hire independent Contractors without licenses then why does the Constitution of the USA say: Section. 10. No State shall... make...Law impairing the Obligation of Contracts...?

Obviously you are only a captain and not some one actually in charge of the obvious. Obviously the State of Nevada cannot make a law impairing the obligation of contracts BUT IT TRIES TO.

Kahre just read the Constitution and believed it. And he was never charged with that non-crime.

I have not filed in over 30 years. I have asked Senator Ensign, Assemblyman Beers, the governor, the State Treasurer, the Secretary of State, the U.S. mint etc. what the legal definition of a dollar is and GUESS WHAT? NO ONE KNOWS.

One thing they agree on: A Dollar is NOT a Federal Reserve Note. So please Captain O tell me how I can sign a 1040 form under penalties of perjury saying I had XXXX number of "dollars" in "income(?)" when I do not know what a dollar is?

Look up the statute in Nevada in NRS chapter 199 Nevada on PERJURY AND SUBORNATION OF PERJURY and you will see that if you do not KNOW it to be true then it is the same as knowing you don't know, and is, therefore, perjury.

Every Nevadan that files a 1040 return commits perjury. EVERYONE. I am not allowed by my religion to commit perjury so I don't file, let alone the FACT that it is voluntary anyway.

The entire IRS code is in violation of the Religious Freedom Restoration Act for anyone that does not want to be a member of the MARXIST RELIGION.

Bobby Kahre is a hero. Congress should be on trial for treason for allowing America's greatest enemy to be in control of their FIAT monetary scheme. BAILOUT TREASON!

**Kane** wrote on *May 26, 2009 10:12 AM*:

Ms. Whitely amuses me trying to feign outrage of her readers with "this case is about money, greed, and fraud". Lets see, how many trillions of dollars did off shore bankers with their Fed govt lackeys steal from American Taxpayers last fall. Such hypocrisy? How about the Tim Geithner "honest mistake" defense not paying his taxes for years. Where's his "hard time" Miss White-ly?

**The Coming Depression** wrote on *May 26, 2009 09:47 AM*:

Just another tactic for the government to have TOTAL control of their "workers". GOLD and SILVER are legal tender coins. The Federal Reserve must be abolished. Its ok for the gov. to make fake money though.

**William** wrote on *May 26, 2009 09:44 AM*:

I hear ya mark! This man was doing a good thing for his clients and this country, end the fed!

**History Guy** wrote on *May 26, 2009 09:39 AM*:

Constitution for the United States of America  
Article 1, Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

There are crimes here - they're called Federal Reserve Notes and state Bills of Credit aka state debt.

**mark** wrote on *May 26, 2009 07:07 AM*:

"This is a case about money, greed and fraud." The line appeared on screen in court during the government's opening statement by Christopher Maietta, a trial lawyer from the Washington, D.C., office of the Department of Justice.  
The lust for money, greed and fraud are traits of the US govt.

**wake up** wrote on *May 26, 2009 07:00 AM*:

<http://www.youtube.com/watch?v=WjGy9gjcoIo>

**refresh your memory** wrote on *May 26, 2009 06:59 AM*:

<http://www.5min.com/Video/How-the-Federal-Reserve-Created-the-US-Recession-39529721>

**captain obvious** wrote on *May 26, 2009 06:13 AM*:

It is illegal for a contractor to pay employees as sub-contractors. This would put all of his employees in violation of working without a contractors lic, and he would be fined for hiring unlicensed contractors. Just saying



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EXHIBIT 5

EXHIBIT 5

# United States District Court 7-2-1431

DISTRICT OF NEVADA

TO:

Las Vegas Review Journal

## SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

PERSON  DOCUMENT(S) OR OBJECT(S)

**YOU ARE COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.**

PLACE  LLOYD D. GEORGE COURTHOUSE 333 Las Vegas Boulevard South Las Vegas, Nevada 89101	COURTROOM  DATE AND TIME June 23, 2009
---	---

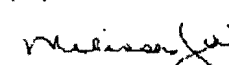
**YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):**

### SEE ATTACHMENT

**Please Enclose a Copy of this Subpoena with the Returned Documents IN LIEU OF PERSONAL APPEARANCE, THESE RECORDS MAY BE MAILED TO THE ASSISTANT UNITED STATES ATTORNEY, IN CARE OF TERRIE MURRAY, AT THE ADDRESS REFLECTED BELOW. IF ORIGINAL DOCUMENTS, PLEASE SEND VIA REGISTERED MAIL.**

Please see additional information on reverse

**This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.**

CLERK  LANCE S. WILSON (BY) DEPUTY CLERK  	DATE  June 16, 2009 EJ:BC:FBI:jr (2009R00818)
--	---

This is subpoena is issued on behalf of the United States of America



GREGORY A. BROWER  
United States Attorney

NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY  
**ERIC JOHNSON**  
Assistant United States Attorney  
333 Las Vegas Blvd. South, Suite 5000  
Las Vegas, Nevada 89101  
(702) 388-6336 OR 800-539-8002

\*if not applicable, enter "none"



## **ATTACHMENT TO GRAND JURY SUBPOENA**

### **SUBPOENA SENT TO:**

**LAS VEGAS REVIEW JOURNAL**

### **RECORDS REQUESTED:**

All information or records regarding the identification of the computers used to make the following posts and the individuals making the following posts to the article entitled "Employer's Gold, Silver Payroll Standard May Bring Hard Time," dated May 26, 2009, and located at [www.lvrj.com/news/46074037.html?numComments+74](http://www.lvrj.com/news/46074037.html?numComments+74) :

**Mike** wrote on May 26, 2009 11:05 AM: The sad thing is there are 12 dummies on the jury who will convict him. They should be hung along with the feds

**Provider One** wrote on June 13, 2009 10:42 AM: I bid 10 Quatloos that Christopher Maietta does not celebrate his next birthday.

These records include, but are not limited to, IP addresses used to register or make the postings, IP addresses associated with the session or posting times and dates, email addresses provided or recorded at the time of registration or postings, methods of connecting and log files associated with postings.

**UNITED STATES ATTORNEY'S OFFICE  
DISTRICT OF NEVADA**

**333 Las Vegas Blvd. South, Suite 5000  
Las Vegas, Nevada 89101  
(702) 388-6336  
FAX (702) 388-6418**

**FAX COVER SHEET**

**TO: Roger Myers  
1-415-268-1999**

**FROM: Eric Johnson, AUSA**

**TELEPHONE: (702) 388-6336  
FAX: (702) 388-6418**

**SENT BY: Judy (702) 388-6558**

**DATE: June 16, 2009 (1:05pm)**

**NUMBER OF PAGES SENT (NOT INCLUDING THIS COVER SHEET)**

**SPECIAL INSTRUCTIONS:**