



LIBERTY TREE

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Another day, Another (REAL) dollar

Feds get ZERO convictions in tax case involving gold & silver

Commentary by Jim Kerr

In early 2005, Robert Kahre of Las Vegas was indicted on charges of willful failure to pay taxes, tax evasion, and conspiracy to attempt to evade paying taxes. The feds indicted lots of other people too, including his girlfriend, mother, sister, brother, and workers in his businesses, from painting to drywall companies.¹

What was their crime? It appears that Kahre paid his employees, and employees of other businesses with whom he contracted, in gold, silver or cash. No federal taxes were withheld and wages were not reported to the IRS.

There's no question that the issue of lawful money (gold and silver) is a sticky one, but the feds had a hard time sticking it to Kahre *et al.* On September 17, 2007, the federal jury *refused* to convict nine defendants charged with 189 counts of various tax crimes. Four were acquitted of all charges. Three were found not guilty by way of hung juries, and two were partly acquitted, with the jury hung on other counts.

According to Michael Kennedy, the federal public defender for Kahre's sister, the IRS has never before provided guidance on how to handle gold and silver coins that circulate, and "If that's the case, we're not going to take someone's liberty from them, on something that a (certified public accountant) with a master's degree doesn't even know. That's a scary country, and I

don't live in that country."²

Federal judge kept jury from knowing the law

The "Honorable" Judge Robert C. Jones wrote, in his ORDER regarding a *Motion in Limine to Preclude Defense Based Upon Gold and Silver U.S. Coins*:

"Because the law clearly holds that the coins' fair market value was reportable income, they cannot argue that the law did not require them to report the difference between the coins' face and fair market values. ... Accordingly, the Court will not allow Defendants to present any arguments that the law allows them to exclude from income the coins' fair market value or to otherwise argue what the relevant tax law holds. Defendants will only present a good faith defense that they believed they could report the income they did for the limited purpose of negating the relevant mens rea³ required, but Defendants cannot argue their belief was actually correct."

If Judge Jones were honest, he would have dismissed all charges, because the Constitution authorizes Congress only to "coin Money, regulate the Value thereof;"⁴ and Congress has authorized the issue of gold and silver coins that are legal tender for all debts, public and private.

Title 31 U.S.C. § 5112(a) states in relevant part:

"The Secretary of the Treasury may mint and issue only the following coins: (7) A fifty dollar gold coin that is 32.7 millimeters in diameter,

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1. Five people pled guilty, but this story is about the folks who had their day in court.

2. See *Las Vegas Review Journal*, "Four-month trial ends with no convictions," at www.lvrj.com/news/9893062.html. Some of the direct quotes from jury members and lawyers in this story were reported in this article.

3. Latin for "guilty mind". The state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime; criminal intent or recklessness. *Black's Law Dictionary*, 7th ed.

4. See Article I § 8 cl. 5 of the Constitution.

"Wouldn't you like to indict the person who just sued you?" — *San Diego defense attorney William Cohan.*

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weighs 33.931 grams, and contains one troy ounce of fine gold."

Other denominations are enumerated in § 5112, such as a twenty dollar gold coin that contains one-half troy ounce of fine gold. Subsection 5112(e) provides for a silver dollar that contains .999 fine silver.

Proof that the coins are legal tender with a fixed value can be had by taking one of these contemporary, U.S. minted, ounces of gold to a bank, and asking the clerk to convert the coin into fiat currency. You will not be able to convince them to give you anything more than fifty fiat "dollar bills."

By withholding the law from the jury, and knowingly giving the jury erroneous instructions, Judge Jones sabotaged the nine defendants' best defense, *the law*, and left them only with a "*Cheek*" defense, which is essentially trying to convince a jury that you *believed* you weren't breaking the law, or that you didn't know what the law was.

IRS terrorism

I would be quite happy to take a substantial cut in pay if I were paid in one-ounce gold eagles. I'm sure most people would, because gold, unlike Federal Reserve Notes, is ultimately inflation-proof. Of course, such payment is competition for the Federal Reserve Bank, and moreover, highlights the worthlessness of the paper bills the Bank issues. That's why the IRS and the Federal Reserve don't like these coin-minting laws, and "*have erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance.*"⁵

Kahre's case file demonstrates this rather well. The IRS staged an armed raid in 2003 on several of Kahre's local businesses; more than 20 employees and family members were handcuffed and held at gunpoint; detainees included an 85-year-old man and a 14-year-old boy. Some of the victims of this act of terrorism were held in direct sunlight on a 106-degree day. Kahre was also arrested on a state warrant by an IRS agent who didn't have jurisdiction.

Kahre's RICO suit against federal prosecutor J. Gregory Damm (yes, that's his real name), IRS agents and police officers involved in the raid has not been dis-

missed. In 2004, Judge Philip Pro ruled that Damm is *not* entitled to absolute immunity in the matter of the raid, and in 2005, the 9th Circuit rejected Damm and the IRS agents' appeal. Three weeks later, Damm secured the first tax indictment against Kahre. Since Damm is a defendant in two federal lawsuits filed by Kahre, he should have recused himself from the case instead.⁶

"Wouldn't you like to indict the person who just sued you?" commented San Diego attorney William Cohan, who is representing Kahre, to the *Las Vegas Review-Journal*.

Willfulness "very hard to prove"

According to David Ramirez, jury foreman, the jurors got stuck on the question of whether the government had proved defendants intentionally violated tax law: "Oh my God, the willfulness is very hard to prove, as we found out. That was the hard part, especially in the conspiracy charge."

Nonetheless, all nine defendants won. This is a major victory for the cause of liberty in these troubled times. Of course, the prosecuting team wasn't pleased. Ramirez reported: "The head was hanging down, the shoulders were low." He said "shocked" was the term some prosecutors used to describe themselves when they talked to him after the trial.

Damm declined to say whether the government will retry any of the five defendants on the charges that resulted in a hung jury. Of course, if the prosecutor brings those defendants to trial again for those found not guilty by hung juries, he will be in violation of the United States Constitution. Crimes of that type are called "sedition." (See "Innocents in Jeopardy," page 3).

Want more zeros for the feds?

This story has not been reported in the major media, and has gotten only local press in Las Vegas. The media blackout once again prevents the people from understanding their own laws, and being able to make the right decisions with respect to lawful money and the proper application of the income tax laws.

It is evident that stories with this type of "happy ending" would be a lot more common if we get our radio effort going while we still have time — before unfavored political speech is totally banned. Imagine if most citizens knew about jury nullification, for instance! Juries would cease to be the geldings they mostly are today. If more seditious prosecutors and IRS agents became "shocked" by jury verdicts in this way, they would be forced back under the law. Or maybe some of them would have to get a real job.



5. See the Declaration of Independence.

6. These details were obtained from an article by William N. Griggs at freedominourtime.blogspot.com/2007_03_01_archive.html.



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INNOCENTS IN JEOPARDY

*If a trial results in a "hung" jury, you're free, right?
Think again.*

The presumption of innocence is the bedrock of our justice system. Most will readily acknowledge that unless the guilt of an accused party is established by a unanimous jury, the accused must still be presumed innocent.

Not as readily acknowledged is the flip side of this premise: when a jury does *not* reach a unanimous verdict of guilt, the presumption of innocence demands the accused be judged innocent.

Any honest person will admit that in our system of justice, an accused's guilt is merely a conclusion of law made by each and every juror. It follows, then, that the accused *must be acquitted* of all charges for which *any single juror* was not convinced of his guilt.

Unfortunately, this aspect of the presumption of innocence has never caught on with America's judiciary. Rather, judges early on took to the idea of a "hung jury" being an interruption in the carriage of justice. That is, they considered unanimous decisions necessary in all cases—whether guilty or innocent. In this way, the stringent standard by which a person must be convicted was grafted onto the finding of innocence as well. This disregards the whole purpose of unanimous convictions: *to prevent the conviction of an innocent person.*

The difficulty involved in convincing twelve of a man's peers of his guilt is a cornerstone of the justice

*"Nor shall any person be subject to the same of-
fense to be twice put in jeopardy of life or limb."*

— Fifth Amendment to the Constitution

system. Holding the determination of a man's innocence to that same degree of difficulty subverts that purpose.

In this light, it should be recognized that the verdict of a jury can be only one of two all-encompassing, yet mutually exclusive, conditions: *guilty* or *not guilty*. Either all twelve jurors are convinced beyond a reasonable doubt that the accused is indeed *guilty*, or he is, by default, *not guilty*. There can be no middle ground—no other options. The very fact that any juror was not convinced of guilt is the proof that the presumption of innocence was not overcome.

It seems so simple, yet the judiciary doesn't see it that way. When judges encounter "hung" juries, they routinely declare the entire proceeding to be a *mistrial*, necessitating a repeat performance. This violates the guarantee of the Fifth Amendment that no person be put twice in jeopardy of life and limb for the same offense.

A 'manifest necessity' to undermine our rights

The seminal Supreme Court decision concerning a hung jury was in 1824, in *United States v. Perez*. This case has never been overturned. Justice Joseph Story addressed the question: could a man be tried a second time for the same offense, when the jury in his first trial was discharged for being unable to come to a unanimous decision? Justice Story said yes, and rationalized:

"[T]he facts constitute no legal bar to a future trial. The prisoner has not been convicted or acquitted, and may again be put upon his defence.

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We think, that in all cases of this nature, the law has invested Courts [] with the authority to discharge a jury from giving any verdict, whenever, in their opinion [] there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated.... after weighing the question with due deliberation, we are of the opinion, that such a discharge constitutes no bar to further proceedings, and gives no right of exemption to the prisoner from being again put upon trial."

In deciding a person could be tried again when the first jury was unable to reach a verdict, Story abandoned the concept of the presumption of innocence. He drew a distinction between being *tried* twice and being *put in jeopardy* twice; but failed to explain the difference. More recently, the supreme court justified this by claiming the jeopardy attached to the first trial isn't terminated by dismissing a deadlocked jury; that the same jeopardy continues on through the second, and presumably, any subsequent trials. A blind man could see through such self-serving logic.

If at first you don't convict ... just try again

Many Patriots followed the trials of Dick Simkanin on a host of charges relating to his understanding that the law did not require him to withhold taxes from his workers' pay. In his case, the government had to resort to multiple trials in order to finally obtain a conviction. The first attempt was declared a mistrial because the jury could not reach a unanimous verdict—according to an unofficial poll of the jury members, eleven jurors favored acquittal and only one was for conviction. Some have concluded that the lone holdout may have been a government plant—put there to insure that there would be no acquittal.

Since the supreme court has always taken the position that a mistrial does not constitute 'jeopardy' for the purposes of double jeopardy protection, the government has increasingly relied on the declaration of a "mistrial" in order to continue prosecuting the accused, over and over, until they obtain (or stack) a jury willing to convict.

Naturally, conducting numerous trials in this man-

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ner reduces the time in which courts can attend to other matters and drains the coffers of the government. But money is no object: the government can confiscate it from the citizenry, or print up more, as need be. Meanwhile, the accused are bled dry by this process, especially if incarcerated while awaiting trial, and so unable to earn a living.

All of this works to subvert the power of juries to nullify bad laws, the only exception being when ALL jurors are aware of that power, and reach a unanimous verdict of not guilty. While one juror is enough to prevent a conviction (or an acquittal), it is not enough to put an end to the whole ordeal.

Just as the sun always rises in the east, the government always finds ways to consolidate power. This time, they have usurped the power of the single juror, by eliminating the chance that he could force an acquittal of an accused, while simultaneously using hung juries to their benefit.

The presumption of innocence today is mostly a remembrance of things past. Continuous erosion of the principle over the years, particularly in the courts, is choking the life out of it. How can you warn your friends and fellow Americans that their innocence is in jeopardy? By working to ensure SAPF's radio network becomes a reality, so that we can broadcast the warning across this land.

