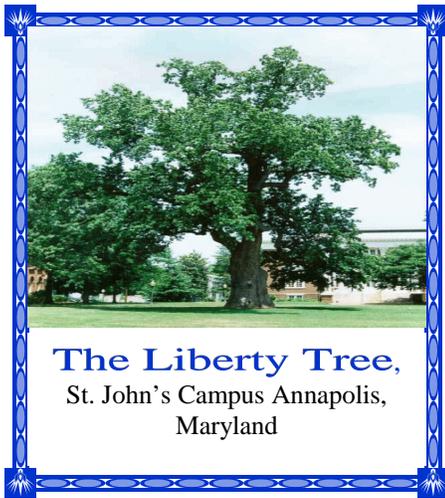


LIBERTY TREE

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It's Not Over— Until It's Over

by John Baptist Kotmair, Jr.



Ever since I gave up my home-building business in 1979 and began promoting the Cause of Liberty full time, I've believed my efforts were within the Lord's Will. Throughout the years, many things have happened to support this belief. When I was incarcerated from August of 1982 through January 1984, we trusted the Lord, and the needs of my wife were met daily by unsolicited gifts through the mail. In fact, she had a surplus of 2,200 FRNs, which was used to start the Save-A-Patriot Fellowship. The Fellowship, by the Lord's Grace, has served the Cause of Liberty for twenty-two years. Many times over those twenty-two years, when there was a desperate need for funds to keep the Fellowship going, they were provided.

I am convinced that it was by His Hand that we received warning—from inside the IRS—in July of 1993, of the coming raid on the Fellowship, giving us five months to prepare for that raid, which came on December 13, 1993. Because of this preparation, we were able to remodel the Fellowship offices, re-equip with computer hardware and software, and be back up and running all within 13 days after the raid.

I am convinced that it was by His Hand that the United States Attorney dropped the criminal investigation of me. Likewise, when, in 1996, the Federal District Judge ruled that the Fellowship was an unincorporated association which comes under the protection of the First Amendment to the United States Constitution; and that as such, it has no requirement to keep books and records for government agencies. That judge also ruled that I was NOT doing business as SAPF, but was merely

the Fiduciary and a member of the Fellowship.

Even the experience with Liberty Works Radio Network revealed the Hand of the Lord. Through its failure we gained experience, contacts and a more workable plan for success in our current radio network effort. LWRN gave us the means to start Xtreme Talk Radio Network, which we are at present working to expand.

Yes, the Hand of the Lord is visible even in this present attack on our ability to educate our fellow Americans to the CLEAR AND PRESENT DANGER they face from the enemies of our Constitutional Liberties lurking in our own government.

On June 13, 2003, the IRS invited me to meet with them on July 2, 2003 in Frederick, Maryland to discuss "... possible action under Sections 6700 and 7408 of the Internal Revenue Code relating to penalties and an injunction action for promoting abusive tax [shelters] schemes." After meeting with the IRS agents, I reviewed § 6700 of the IR Code and presented an affidavit to the IRS that I was not in violation of the provisions of the code section.

Two years later, on May 13, 2005, the Department Of "Justice" filed a complaint for a permanent injunction against John Baptist Kotmair, Jr., and Save-A-Patriot Fellowship alleging that "SAPF, an unincorporated association," and Kotmair, "doing business as SAPF and NWRC ... organize and sell tax-fraud schemes designed to assist customers in evading their federal tax liabilities and interfering with the administration of the internal revenue laws." The complaint further stated that "Defendants [Kotmair

and SAPF] employ a staff, whom they refer to as paralegals and caseworkers, that assist them in organizing and selling tax-fraud schemes” and “market their tax-fraud schemes through the websites www.save-a-patriot.org, www.taxfreedom101.com, and www.taxtruth4u.com and through their newsletters *The Tax Freedom 101 Report* and *Reasonable Action*.”

Thus, the DOJ’s complaint completely ignored the findings of fact made in the Federal District Court’s 1996 ruling regarding the Fellowship and myself.

In a telephone conversation with Anne Norris Graham, DOJ attorney, required by the rules, I asked her who the government’s witnesses were, she replied: “John Kotmair,” indicating there were no other witnesses. From that response, we concluded that they really believed that they would find some kind of wrong-doing through the discovery process, for there were no specific statements within the complaint which would run afoul of either IRC §§ 6700 or 6701.

Consequently, when the discovery was over, they were no farther along then they were before it. In fact, they lost ground, because some of the alleged wrong-doing was found only on the two websites not belonging to the Fellowship. A few weeks before the discovery period was over, the DOJ was desperately calling Fellowship members trying to find one that would say that we advised them, among other things, to stop filing tax returns. But after hundreds of calls, they were unable to come up with even one such admission. Even a couple of disgruntled members did not give them the results they sought.

In a pretrial conference call, the judge indicated that there would be no need for a trial, and that each party should file a dispositive motion. The motions were filed, as reported in an earlier Liberty Tree. We were quite comfortable, since in circumstances such as existed in this case, it usually means the plaintiff did not prove the allegations, and the complaint would be dismissed. If there was any substantial reason to believe any of the allegations to be true, there has to be a trial for the plaintiff to present its evidence, and for the defendant to disprove it through cross examination. Therefore, because there exists a conflict of material facts, the rules call for a trial to

be held.

When we found the injunction order on PACER, (an Internet tool to review court dockets), we were very disheartened, for such a judge’s order under the existing circumstances was purely a raw act of tyranny, totally outside the established practices of Due Process.

The only thing open to us was to file three motions to the District Court. One for a trial, due to the fact that conflicting issues of material facts existed; a second motion asking the Court to specify what the wrongful act or acts we were ordered to cease performing were, since the injunction order did not identify any specific violations of §§ 6700 or 6701; and the third for a stay of the injunction for the duration of the preceding motions.

From past experience, and considering the attitude of the judge, I was of the opinion that the judge would not rule on any of the motions, and particularly the motion for a stay, until after the due date of compliance of the order, thereby making all the motions moot. For this reason, we decided to petition the Fourth Circuit Court of Appeals for a Writ of Supervisory Control to stay the injunction order if the District Court judge failed to do so before the time of compliance.

The morning of the 19th of December, the day before we were to comply, we called the clerk of the Fourth Circuit Court of Appeals to obtain the information to monitor that court’s docket regarding the writ. The clerk informed us that there was no need to monitor the docket, as the District Court judge was called, that he was going to rule on the motion for a stay right after lunch. It is my firm belief, judging from his bias in his memorandum in support of the injunction, that without the prompting from the Court of Appeals the motion to stay would never have been granted.

WHAT CONCLUSIONS CAN BE DRAWN FROM THESE PAST EVENTS?

1. The District Court’s injunction order is far beyond any such order to date. It completely obliterates any First Amendment protections of *free speech* and *free press*.
2. The District Court in ordering the permanent

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injunction without a trial of the conflicting material facts violated the rules of the court and other Due Process protections.

3. The District Court's lack of specificity in its injunction order gives credence to the fact that the DOJ's complaint accuses the defendants of doing things they do not do, and did not find any such violation of law during their discovery fishing expedition.

4. By the Fourth Circuit Court of Appeals actions in contacting the District Court, it can be presumed that they were not willing to rubber stamp such far-reaching judicial sophistry.

5. Because of the Fourth Circuit Court of Appeals refusal to rubber stamp the District Court's injunction order, we are hopeful that they may grant an appeal of the District Court's denial of the trial motion, and order a trial in the District Court.

Wherefore, if a trial takes place in District Court, it will clearly be revealed that there is no evidence to support the allegations that SAPF and I violate any abusive tax shelter laws; and a possible adverse ruling by the District Court may just be overturned on appeal in the Fourth Circuit Court.

WHAT WOULD BE THE CONSEQUENCES IF WE LOSE IN BOTH COURTS?

If we do not prevail in either Court, the Fellowship will still be able to function as an unincorporated association under the First Amendment, as that status is not changed in any way by the present Court action. The District Court ruling in 1996 has not, and will not be overturned by this present case.

By granting our motion for specifying what it is we are required to stop doing, the District Court will have to tell us precisely what that is. Even though time has taught us not to be surprised by what today's courts do, we are anxious to see what it is we are doing wrong.

If the Court orders the end of the Member Assistance Program (MAP), all that means is SAPF HQ is forbidden to mail MAP assessments to the membership. Whether the members individually take it on their own to help one another has nothing to do with the forbidden MAP assessments for

there would be no alleged "plan" or "arrangement."

The Court has already, in its memorandum, admitted that it does not believe it has the power to order the end of the Privacy Act requests on behalf of the members. It only contends it has the authority to order the IRS appeal correspondence, because, in the words of the Court, it impedes the operation of the IRS.

The Court would have to name the Fellowship educational materials that could not be sold or even given away, and state the reason.

If we are ordered to turn over the membership lists, the results will be far from negative. During the discovery process, it was revealed that the DOJ already has the names of the members, many simply because we were handling their IRS correspondence, and others by means not really known to us, but could be from such things as mail covers.

The question regarding the turning over of the membership list is: What happens if we don't? The primary thing that would happen is that within a few months, the Fellowship would be shut down. This would occur simply because after I was sent to jail for contempt of court, then the next member of the staff who refused to comply would be sent to jail, and so on, until there were no more left to be lock up. If this happens, WHO REALLY WINS?

There is only one reason the enemies of the Constitution in government want our membership list—because of the psychological chilling effect it has on people's will to resist tyranny. This is so not just with present members, but also on those considering joining the Fellowship.

WHAT SHOULD WE DO?

We should pray to the Lord that He keeps His protective Hand over us as He has done in the past. And if that be not His Will, pray that He keeps the Fellowship intact for such projects as the radio network. Moreover, we are in urgent need of your financial support, what with the legal expenses of defending our Fellowship and diminished revenues. Please send whatever donation you can, be it large or small. Finally, pray that He gives each of us the strength and courage to continue contending until His return. For *Together We Stand—Or—Separately You Will Be Stood On!!*



HYPOCRISY!

An editorial by Jim Kerr

If Satan is the father of lies, then certainly hypocrisy is another favored child. In his most recent filing, DOJ Tax Division Attorney Thomas Newman, in his "United States' Response in Opposition to Defendants' Motion for New Trial" (filed Dec. 29, 2006) states: "*In addition, Defendants must stop engaging in conduct that interferes with the administration and enforcement of the internal revenue laws, and stop instructing others to violate the tax laws, including offering 'insurance-like' coverage to customers to violate the income tax laws.*"

In our "Memorandum in Support of Defendant Save-A-Patriot Fellowship's Motion for Summary Judgment," we pointed out that the "...court can take notice that incarceration or confiscation of one's property can cause substantial hardship for one's family, and assisting those in such circumstances is essentially an extension of Christian charity. * * * It is beyond reason and logic that this could be construed to encourage anyone to commit a crime. This court can also take notice of the fact that actual insurance policies (not to be confused with 'insurance-like protection'), termed 'professional liability insurance,' are offered to government employees, which pay for their legal defense against tort claims and judgments awarded against them (Exhibit 16). Revenue Agent Metcalfe testified about such insurance policies being available to Internal Revenue Service employees. (Metcalfe deposition, 45:6-46:24.) Surely, Plaintiff would not claim that IRS employees are encouraged to commit torts by the offer of such insurance."

That's right! IRS agents have insurance to protect them from the consequences of their crimes. Does this incite IRS agents that have this insur-

ance, to commit crimes? Probably so.

Maybe some of our members remember the incident that took place in Nevada, where an IRS agent assaulted a taxpayer merely for the fact that he wanted evidence of a legitimate tax liability. The taxpayer offered to pay the alleged liability immediately upon receiving this verification. This ques-

"All animals are equal, but some animals are more equal than others"

A proclamation by the pigs who control the government in the novel *Animal Farm*, by George Orwell.

tion so enraged IRS agent Wiley Davis that he assaulted the taxpayer, who was taken to the hospital.

I don't know if agent Wiley Davis had this insurance or not, or whether the insurance would cover the expenses incurred as the result of his crime; but I guess that never mattered,

because the government refused to hold agent Wiley Davis responsible for his crime. I guess some people are more equal than *We the People*.

That the enemies of liberty in positions of governmental authority are fighting so relentlessly these days, to squelch our political speech, tells us that they are worried. On the bright side, this is a sign that our tireless labors to get the government back under the law is having substantial positive effect. And this is all the more reason that you should support our Fellowship with your prayers and financial support.

Will the Fourth Circuit uphold the ruling that Membership Assistance a/k/a/ Christian Charity is forbidden to our members? Will they decide that our political speech is equally protected with the free speech the Communist Party enjoys? Inquiring minds want to know!



From the December 2001 Idaho Observer:

Las Vegas police respond to assault at October IRS hearing
Cops put cuffs away and leave scene after discovering IRS agent, not the Citizen, committed the assault
LAS VEGAS -- October 2, 2001, collection due process hearing transcripts in the case of Keith Milbourn reveal that IRS Team Manager Wiley Davis, without provocation, threw a chair at Ken Nicholson. Las Vegas Police arrived and left the scene after determining that the Citizen, not the IRS agent, had been assaulted. * * * [T]he transcript reads, "IRS Agent Wiley Davis jumps out of his chair, unprovoked, physically assaults Mr. Ken Nicholson, turning his chair upside down, causing Mr. Nicholson to drop to the floor, grabbing Mr. Nicholson physically by the arm and chest, continued scuffling in the hall just outside the door, Agent Wiley Davis jumps back in the conference room grabs Mr. Nicholson's suitcase-like briefcase and throws it, striking (sic) Mr. Nicholson in the torso area." * * * Transcripts of the hearing and witness statements prove that Davis assaulted Nicholson and hospital reports prove that Nicholson sustained injuries as a result of the assault. Despite a complaint lodged by Nicholson with Las Vegas police October 8, the state refuses to file criminal assault charges against Davis. * * * Since the Oct. 2 hearing, the IRS has sent Milbourn an "Urgent notice of a \$500 fine that will be attached to his property for eventual seizure.

