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U.S. COURT OF APPEALS  
FOURTH CIRCUIT

July 16, 2007

Hon. Patricia S. Conner, Clerk  
United States Court of Appeals for the Fourth Circuit  
1100 E. Main Street, Suite 501  
Richmond, VA 23219-3517

RE: No. 07-1156, *United States v. John B. Kotmair, Jr., et al.*

Dear Ms. Connor:

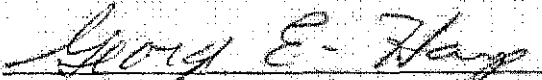
By letter dated July 3, 2007, the government introduced the unpublished decision in *U.S. v. Kahn*, 2007 WL 1723594 (11<sup>th</sup> Cir. 2007), and the case *U.S. v. Kahn*, 2006 WL 2037165 (M.D.Fla. 2006), purportedly under Federal Rule of Appellate Procedure 28(j). The government failed to give any reasons for citing this affirmation of a lower court case, in violation of FRAP 28(j). Its only explanation is that the case “is relevant to the argument at pages 20-23 and 33-42 of [its] brief.” (Also, contrary to the government’s claim, a copy of the circuit’s decision was not included with its letter, which violates FRAP 32.1(b)).

While FRAP 28(j) allows for the introduction of “pertinent and significant authorities,” unpublished opinions are not significant authorities. This Court disfavors citing even its own unpublished dispositions (prior to this year) except for establishing *res judicata*, estoppel, or the law of the case. (See Local Rule 32.1). Unpublished opinions are issued primarily for the parties to the case, and do not require detailed discussions of facts and issues, or as careful attention to the particularities of language.

Moreover, the factual circumstances of those cases are incomparable to those of the instant case. The circuit decision pertains to only one defendant in the action, Milton Baxley II, and mentions six enjoined activities by Baxley. Only one activity — writing corresponding to the IRS — bears even a superficial resemblance to the facts on appeal here.

Finally, and most importantly, there is nothing in the *Kahn* case reports to indicate that the issues SAPF has raised in the present suit were raised by *Kahn* (or defendant Baxley) or were decided by either the district or appeals courts. For the foregoing reasons, the unpublished decision from another circuit, cited by the government in its July 3, 2007 letter, is neither a pertinent nor significant authority, and should be disregarded.

Sincerely,



GEORGE E. HARP

Attorney, Save-A-Patriot Fellowship

cc: Carol Barthel, Attorney  
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