

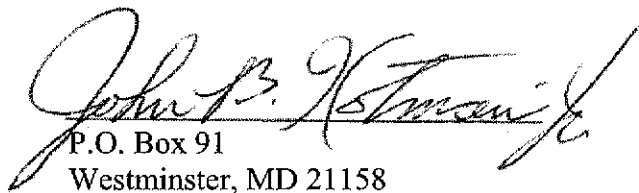
IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. WMN05CV1297
)
JOHN BAPTIST KOTMAIR, JR.,)
et al.,)
)
Defendants.)

DEFENDANTS' MOTION FOR NEW TRIAL

Defendants Save-A-Patriot Fellowship and John Baptist Kotmair, Jr., for the reasons set forth in the attached memorandum and exhibits, move this Court to set a trial to resolve contested issues of material fact and to determine which elements of fact are properly part of the record upon which findings should be made.

Respectfully submitted on this 13th day of December, 2006.


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/s/ George Harp
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CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing "Defendants' Motion for New Trial" was sent to counsel for the plaintiff, Thomas Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, by first class U.S. Mail with sufficient postage affixed this 14th day of December, 2006.

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
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v.)	Civil No. WMN05CV1297
)	
JOHN BAPTIST KOTMAIR, JR.,)	
and SAVE-A-PATRIOT FELLOWSHIP,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR NEW TRIAL

COME NOW, Defendants John Baptist Kotmair Jr., *pro se*, and Save-A-Patriot Fellowship, represented by its counsel, George Harp, and move for a hearing to be scheduled to review the contested issues of material fact presented in Plaintiff's Motion for Summary Judgment; and for this Court to amend its final decision and order filed November 29, 2006; and for this states as follows:

Federal Rules of Civil Procedure Rule 52 and 59.

Portions of this Court's Order appear to be contingent upon factual conclusions:

- (1) not supported by any evidence in the record of this action;
- (2) based on documentation, affidavits and other material evidence that were either untimely or improperly made part of the record, contrary to the provisions of the Federal Rules of Civil Procedure and Federal Rules of Evidence; or,
- (3) based on facts which are disputed.

Consequently, this matter was not ripe for granting Plaintiff's motion for summary judgment,

because of the existence of these contested issues of material facts. See FRCP Rule 56 governing summary judgment. In the interest of justice, a hearing to resolve these contested issues of material fact is proper; and for that, Defendants invoke FRCP Rule 59(a), which states:

“Rule 59. New Trials; Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.”

After a hearing, where the Court makes its factual conclusions, and there are no longer any substantially contested issues of material fact, Defendants then move to invoke the provisions of FRCP Rule 52(a), which states:

“Rule 52(b) Amendment. On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings--or make additional findings--and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.”

Thus, this rule gives this Court the authority to amend its findings, and amend this Court's injunction order accordingly.

Improper findings of facts.

The first finding of fact that is unsupported by any evidence in the record is the finding that Defendants acted fraudulently. No evidence has been introduced into the record to establish the necessary element of an intent to deceive that would support a finding of fraud. In 1996, Judge Garbis of this Court stated “I don't think anybody can deny the sincerity of Mr. Kotmair. I mean we can only disagree with him of course. We can't deny his sincerity.” See Exhibit 2. As Judge Garbis determined,

the positions espoused by Defendants represent their sincerely held beliefs with respect to the meaning, applicability and operation of the tax laws. Any statements in connection with such beliefs are protected by the First Amendment's guarantee of free speech. Even if those beliefs are ultimately found to be false, that still doesn't make them fraudulent, absent the element of intent to deceive. There being no evidence of fraud (nor even particularized allegations of it, as required by Rule 9(b)) introduced into the record, all of the Court's findings of fraud are without evidentiary basis. Therefore, Defendants are entitled to a new trial on all issues of fraud.

Likewise, the evidence in the record is not sufficient to support a finding that any of the statements are false. Certain statements were merely alleged to be false by Plaintiff from the beginning, and found so by the Court at the end, without any evidence to support that any of those statements are actually false. Defendants are entitled to a hearing on this issue, in order to present evidence to support their position that they are not making any false statements.

It is submitted that this point illustrates the necessity for specificity in the findings that any particular statement is false or fraudulent. If Defendants are not given notice of the specific statements found to be false, then they will be unable to clear themselves of the possibility of contempt. That is, if Defendants are not informed as to what is false and why, they cannot know what they need to change, nor how to change it so that it will be true. It has always been Defendants' intent to disseminate true information, but if they don't know the precise speech found to be false, they are denied the opportunity to change the speech so that it's true, or to remove *only* the offending speech from their materials. This situation puts Defendants in the position that they must stop speaking altogether or risk the penalties of criminal contempt. Consequently, Defendants challenge the sufficiency of evidence to support any finding that any of their speech is actually false, and request a hearing to decide the issue.

Commercial speech.

On page 19 of its memorandum, this Court made a finding that “Because much of the speech, however, relates to the sale of SAPF products and services, it is commercial speech.” The Court did not elucidate the nature or extent of the relationship necessary between speech and the sale of products or services in order to turn protected speech into unprotected fraudulent commercial speech. Certainly, the Supreme Court recognizes that speech does not become commercial speech merely because it is sold. See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976). In fact, when the Supreme Court first distinguished commercial speech, in *Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942), they identified it as commercial advertising. That court continues to hold that commercial speech is expression that does no more than propose a commercial transaction. See *Cincinnati v. Discovery Network*, 507 U.S. 410, 423 (1998); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66 (1983); *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1143 (App. 9th Cir. 1998); see also *Pittsburg Press Co. v. Pittsburg Com. On Human Relations*, 413 U.S. 376, 385 (1973); *Virginia State Board Of Pharmacy v. Virginia Citizens Consumer Council*, *supra*, at p. 772.

This Court has found that “much” of the newsletters, books, videos, and website constituted commercial speech, and as such, was enjoined, if fraudulent. The issues of whether any speech was in fact false or fraudulent has been addressed, *supra*. But Defendants also challenge the sufficiency of the evidence to support a finding that “much” of SAPF’s speech is in fact commercial speech. It must first be noted that only a fraction of the material that SAPF makes available was ever introduced into the record of this case: SAPF’s Member Handbook; one page of the book *Piercing the Illusion*, and five *Reasonable Action* newsletters, dating back to 1998 and 1999. This small fraction of SAPF’s materials cannot support a finding that “much” of its material is commercial speech. Certainly, there is no evidentiary basis to make any finding with respect to SAPF’s *Just The Facts* video series, since not one

minute of that 12-hour video was entered into evidence. Likewise, a single page of a 350-page book is not sufficient to support a finding that “much” of *Piercing the Illusion* is commercial speech. The Court fails to specify any particular language contained on that lone page which was found to be commercial speech, let alone fraudulent commercial speech. In the *Reasonable Action* newsletters, there was no specific finding of fraudulent commercial speech identified in any of them either.

IRC § 6700.

The next finding of fact that this Court made which is not supported by evidence in the record is its finding that Defendants engage in conduct violative of IRC § 6700. A necessary element of any such violation is the making of false statements with respect to the availability of tax benefits as a result of participation in the tax shelter. Not only was there no finding of fact that any particular statement made by Defendants was false, this Court admitted in its memorandum that none had been identified. “While Defendants may argue that the tax benefits it promotes are potentially available to any American citizen, *implicit* in SAPF’s sale of its forms, letters, and ‘paralegal’ services is the *representation* that only those that follow SAPF’s plan will be able to reap those benefits.” (Docket 68, p. 12)[emphasis added] That the Court specifically finds only an *implicit representation* shows that no explicit *statements* were made that are enjoined under IRC § 6700. Notably, the statements that the Court lists on page 13 of its memorandum clearly do not relate to benefits that accrue as a result of membership. Thus, there is no evidence in the record that can support a finding that Defendants ever made any statement which falsely claimed that participation in the Fellowship would result in any tax benefit whatsoever.

Further, the excerpts quoted by the Court on page 12, *id.*, do not even show an implied representation that any *tax benefits* result from membership in the Fellowship. The statements, in context, say only that Defendants know the administrative processes of the Internal Revenue Service,

and can help members to invoke the proper administrative remedy if and when the IRS comes calling.¹ That SAPF “touts the advantages to its members of employing SAPF’s services,” and that such services are only available to members, does not even support a finding that *only* Fellowship members can avail themselves of such remedies, let alone that any tax benefit accrues to anyone as a consequence of becoming a member. In other words, these statements say only that SAPF can help members (but only members) invoke the proper remedies, not that they are the only ones who can do so. Nevertheless, even if the term “tax benefits” could be construed so broadly so as to include the services SAPF offers exclusively to its members, the record still contains no evidence that any false statements have ever been made with respect to the availability of those services.

This Court also found that “SAPF represents that these products and services, if used as SAPF instructs, will enable members to legally stop paying income tax on their ‘U.S.-source income.’” However, there is no evidence in the record that supports such a finding. Nowhere have Defendants claimed that anything they offer—not membership itself, nor any letter, affidavit, etc.—will enable anyone to stop paying income tax. Kotmair, in his affidavit in support of Defendant’s summary judgment motion, testified to that fact.² Since Defendants recognize that the establishment of liability for taxes is a function of the legislative power, they have never claimed that anything other than such laws could affect one’s responsibilities under the law. Here again, there is a disputed issue of material fact whether Defendants have made any such representations.

¹ “But of course, whether or not those requirements prevent the IRS from hurting someone depends entirely upon whether or not the individual in question makes the proper responses, protests and/or requests that are necessary to obtain relief. Do you know the specific remedy for any given IRS inquiry? Probably not! But more important, if you don’t know what they are, then how can you possibly pursue them? When we represent you, that is exactly what we do. We request the remedy that is available under the law. So you ask: “Does this make the IRS go away?” No — not necessarily! But then, it is NOT intended to make the IRS go away!” Membership Handbook, p. 21.

Kotmair's representative status.

This Court found that Kotmair “misrepresent[s his] authority to represent others before the IRS,” claiming that he “admits ... that he is no longer eligible to practice before the Internal Revenue Service”³ However, Kotmair admitted no such thing; his affidavit states that he received notice that his representation number had been revoked, but that no such revocation could be sustained without the opportunity for a hearing, which was neither offered nor given. This Court characterizes Kotmair's position as “yet another example of Defendants simply insisting that the law is what they say it is, regardless of compelling authority to the contrary.” And yet, the fact remains that Circular 230, “Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service,” clearly states, at § 10.50(a):

“The Secretary of the Treasury, or his or her delegate, *after notice and an opportunity for a proceeding*, may censure, suspend or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable, fails to comply with any regulation in this part, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand. (Emphasis added)

Since the prerequisite condition of notice and opportunity for hearing was never satisfied, Kotmair's representative status was not revoked. There is a genuine issue of disputed material fact with respect to such alleged revocation, requiring a hearing to determine it. Likewise, the Court's finding that Defendants make false statements concerning such representation is based on the same disputed material fact.

Member Assistance Program.

The Court enjoins Defendants' Member Assistance Program (MAP), without ever making a finding that it violates any law. MAP's stated purpose is to help “restore the lives of fellow members

² See Docket 54, Exhibit 1, ¶7.

who have been hurt when their property is lost or stolen due to *illegal* action by various IRS employees.” (Member Handbook, p. 5) [emphasis added] The program is based on the knowledge that, even though our tax laws have been written to favor citizens, the government, in its zeal for ever more revenue, sometimes attacks people who have not violated any law. Certainly, there is nothing in the record to associate MAP’s insurance-like protection with either IRC §§ 6700 or 6701. As justification, the Court refers to SAPF’s Member Handbook, which speaks of a hypothetical situation of a MAP claim with 100,000 members, but this situation has never existed in real life. No evidence was introduced that supports a finding that anyone, in fact, has ever been incited to violate the law because of MAP.

Interference with the administration of internal revenue laws.

On page 1 of its Permanent Injunction Order, the Court made the finding that “Defendants have engaged in conduct that interfered with the enforcement of the internal revenue laws.” Likewise, on page 18 of its memorandum, the Court states: “[I]t is without question that Defendants are violating the tax laws and interfering with the administration of those laws.” However, the Court never found any specific instances of actual interference, nor does it allude to any. Generalizations about the effect of SAPF’s advocacy for its members should not be sufficient to make the finding of interference.

Likewise, it would be just as unreasonable to say that responding to notices sent by the IRS, even if such responses cause the IRS to send a reply, amounts to an impediment or interference of the administration or enforcement of the tax laws. If IRS practices and policies mandate that its employees respond to all correspondence from taxpayers, then such response becomes part of their administrative duties, not an impediment to them. To find that availing oneself of procedural due process, including any and all available appeal procedures, impedes the administration of the tax laws is to stand due process on its head. The IRS has not been impeded by any action taken by SAPF or its members. The

³ See FN 6, page 13, Docket 68, which cites Kotmair’s affidavit, introduced with Defendant SAPF’s

fact is, any “extra administrative steps” required of the government would be virtually the same, even if the members had done nothing at all in response to the IRS’ notices. The bottom line is that no evidence has been introduced, nor even allegations made, that Defendants have ever prevented or hindered any IRS agent, officer, or other employee from performing his administrative or enforcement duties.

Giving advice.

This Court’s order to provide the government with a list of SAPF members appears to be based on an underlying premise that Defendants provide advice to members, particularly advice not to file returns or pay taxes. The only evidence offered to support this allegation was one statement, taken out of context, from a 1992 instruction sheet that accompanied Affidavits of Revocation and Rescission. See Docket 43, Exhibit 22. The context of the statement⁴ is that filing state or federal income tax forms after the filing of the affidavit would *invalidate the affidavit*. Rather than advising any action, this is merely a statement concerning the likely effect of filing such returns upon the previous action of making an affidavit. There is no other evidence in the record to support a finding that Defendants have advised anyone to take any action whatsoever. In fact, Agent Metcalfe, in his deposition, admitted that SAPF’s Member Handbook actually shows that members are presumed to have already determined for themselves whether or not they have any requirement to file returns or are liable to pay any tax. See Exhibit 1, Metcalfe deposition, 77:10 - 80:9. Likewise, Kotmair testified in his affidavit⁵ that Defendants do not “advise anyone what they or anyone else can or cannot do, we merely cite what the written law says.” The Member Handbook,⁶ relied on by the Court in many of its findings, also states on page 9:

“However, neither our staff nor our Independent Representatives can tell you

summary judgment motion.

⁴ “You cannot file an IRS Form W-4 with an employer, or any other IRS or state income tax forms, once you execute and forward the *affidavit* to whomever. In fact, the filing of any IRS or state income tax form(s) with anybody will invalidate the *affidavit*.” (Emphasis in original)

⁵ See Docket 54, Exhibit 1, Kotmair affidavit, ¶40.

⁶ Docket 43, Exhibit 1A, p.9.

whether or not you are required to file a return or pay a tax. YOU are the only person who can make this determination. Once a prospective member has made that decision, the staff can act accordingly. Since you have joined SAPF, *we assume that you* have studied the IR Code and *have determined that your activities are not the subject of the tax* under United States Code (USC) Title 26 (Internal Revenue Code) *and that the law does not require you to file a return or pay an income tax.* We also assume that you have made a correct decision and that you are in compliance with the law.” (Emphasis added)

Finally, in its summary judgment motion, Plaintiff introduced a deposition transcript from Thurston Bell’s case⁷, whereby Raymond Berglund, when questioned about the type of advice he had gotten from SAPF (by way of Bell), confirmed that fact as well. He said: “Contacting Save a Patriot was consent that you believed in what they were touting. ... [I]t was already assumed that I believed the same things that Save a Patriot was propagating.” When asked, “Do you remember what role Save a Patriot played in your decision not to file?” he answered, “Other than providing information that agreed with how I felt, that’s the only role they played.”

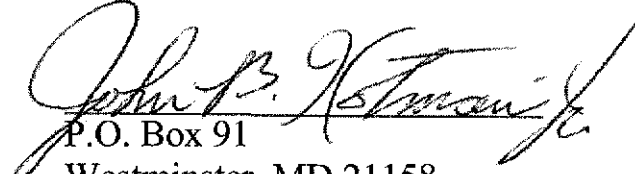
Wherefore, the issue of whether or not Defendants advise members, or anyone else, not to file returns or pay taxes is a disputed issue of fact, and Defendants are therefore entitled to a hearing on this issue.

Conclusion.

When rendering its final decision and order, this Court made findings of fact that are not sufficiently supported by the evidence made part of the record of this case, or are based upon disputed issues of material facts .

WHEREFORE, the Defendants pray that this Court alter its findings consistent with the factual record of this case, order that a hearing be scheduled for the purpose of reviewing the contested issues of material fact, and modify its final order consistent with the findings of fact that this Court makes after said hearing.

Respectfully submitted on this 13th day of December, 2006.


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/s/ George Harp
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CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing "Memorandum in Support of Defendants' Motion for New Trial" was sent to counsel for the plaintiff, Thomas Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, by first class U.S. Mail with sufficient postage affixed this 14th day of December, 2006.

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⁷ Docket 45, Exhibit 1, pp. 1-3.

IN THE UNITED STATES DISTRICT COURT FOR
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *
Plaintiff *
VS. * Civil No.:
JOHN BAPTIST KOTMAIR, JR., et al. * WMN 05 CV 1297
Defendant *
* * * * *

DEPOSITION OF:

Gary Metcalfe

The deposition of Gary Metcalfe was taken on behalf of the Defendants on Thursday, March 16, 2006, commencing at 10:05 a.m. at the U.S. Attorney's Office, 32 South Charles Street, Baltimore, Maryland before Lynne Livingston, a Notary Public.

Exhibit 1

1 PROCEEDINGS

2 WHEREUPON,

3 Gary Metcalfe,

4 the witness called for examination, having

5 been first duly sworn, was examined and

6 testified as follows:

7 EXAMINATION

8 BY MR. HARP:

9 Q Mr. Metcalfe, my name is George Harp

10 and I represent Save-A-Patriot Fellowship and

11 John Kotmair, Jr., here, pro se.

12 And we have Mr. Tom Newman here

13 that's representing the government in this

14 matter.

is For the record, could you state your

16 name and address, please?

17 A It's Gary Metcalfe, and I prefer to

18 use the address of the IRS office down here

19 and let them send me any correspondence.

20 Q That's fine.

21 A which case it would be in

22 care of Joan Rowe, IRS, care of Joan Rowe, 31

23 Hopkins Plaza, Room 1040, Baltimore, Maryland

24 21203.

1 the investigation or actions against
2 individuals. The assessment of taxes or --

3 MR. KOTMAIR: And those letters
4 actually --

5 THE DEPONENT: Whatever.

6 MR. KOTMAIR: Actually impede that.

7 THE DEPONENT: No, because they're
8 disregarded. But you're still --

9 MR. KOTMAIR: There's no --

10 THE DEPONENT: But it's still the
11 idea that, you know, you get this letter. I
12 mean it's an attempt to impede.

13 MR. KOTMAIR: That's fine.

14 THE DEPONENT: I mean, and the idea
15 if you get the letter and you respond to it
16 and you say, hey, you know, this individual's
17 not authorized to represent you, then that's
18 impeding it because it's causing, you know,
19 an extra administrative step or steps.

20 MR. KOTMAIR: Do you know if the
21 service ever actually gave me an appeal
22 hearing for them not recognizing my number
23 that they issued to me?

24 THE DEPONENT: No, I don't know.

1 MR. KOTMAIR: Okay. No other
2 question.

3 BY MR. HARP: Okay. I guess at this
4 point, Mr. Newman, if we don't have any
5 objections we've got these exhibits here we
6 can tender to the court reporter to attach to
7 the deposition.

8 Off the record a second.

9 (Off the record)

10 MR. KOTMAIR: You testified earlier
11 to Exhibit Number 4 saying that we made
12 determinations and that the fellowship that
13 is represented the law in a certain way.
14 Could you read that for me and show me
15 exactly where that says that.

16 THE DEPONENT: (Reads) Since you
17 have joined the SAPF we assume that you have
18 studied the internal revenue code and have
19 determined that your --

20 MR. KOTMAIR: Now who's making the
21 determination there, us or the person who's
22 joining?

23 THE DEPONENT: You're telling the
24 person that's -- in my interpretation of this

1 the member who has joined has studied the
2 internal revenue code and made a
3 determination of their activities, that their
4 activities are not subject to the internal
5 revenue code --

6 MR. KOTMAIR: Prior to joining,
7 right? Is that what that says?

8 THE DEPONENT: I would say that this
9 is after joining because this is out of your
10 membership kit so this is something they got
11 after they joined correctly.

12 MR. KOTMAIR: I'm saying this is
13 saying, this is --

14 THE DEPONENT: Since you have joined
15

16 MR. KOTMAIR: Read it again. You
17 tell me --

18 THE DEPONENT: Okay. Since you have
19 joined SAPF-

20 MR. KOTMAIR: All right.

21 THE DEPONENT: We are assuming you
22 have studied the internal revenue code and
23 have determined your activities are not
24 subject to tax under the internal revenue

1 code.

2 MR. KOTMAIR: All right. Now who
3 made that determination, them or us?

4 THE DEPONENT: Okay. They have made
5 that determination.

6 MR. KOTMAIR: Okay. But before you
7 just said we made a determination and told
8 them about it. Now read on.

9 THE DEPONENT: Okay. (Reads) and
10 that the law does not require you to file a
11 return or pay income tax. We also assume
12 that you have made a correct decision and
13 that we are in compliance with the law.

14 MR. KOTMAIR: Well, who made -

15 THE DEPONENT: But we also assume
16 that you have made a correct decision and you
17 are in compliance with the law. Nevertheless
18 new members are often surprised when one of
19 our staff asks for a clarification of their
20 beliefs regarding illegal requirements to
21 file.

22 MR. KOTMAIR: All right. Now, who
23 made the determination.

24 THE DEPONENT: They did.

1 MR. KOTMAIR: Okay. It wasn't us at
2 all.

3 THE DEPONENT: But now is --

4 MR. KOTMAIR: It wasn't us according
5 to that language, right. They made all the
6 determinations.

7 MR. NEWMAN: You're asking him about
8 a person that doesn't exist. This is just a
9 written document. It doesn't make sense.

10 MR. KOTMAIR: Well, understanding.

11 MR. NEWMAN: It says what it says.

12 MR. KOTMAIR: Okay. It says what it
13 says. We don't want to misquote it, that's

14

15 THE DEPONENT: Okay.

16 MR. KOTMAIR: All right.

17 BY MR. NEWMAN:

18 Q I think that you already stated this,
19 Mr. Metcalfe, but I just want to ask you
20 again, the documents that we had marked in
21 the previous deposition that are being
22 presented today which are one, two, three, up
23 to 9, you have never seen before today or
24 don't remember seeing before today?

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 SAVE-A-PATRIOT FELLOWSHIP *
4 Plaintiff *
5 *
6 vs. * MJG 95-935
7 USA *
8 Defendants *

9

10 + + + + +

11 Hearing was held in the above referenced case
12 on September 20, 1996 before the Honorable Marvin J.
13 Garbis.

14

15 A P P E A R A N C E S

16 For the Plaintiffs:

17 George Harp, Esquire

18

19 For the Government:

20 Gregory Hrebiniak, Esquire

21

22 Reported by:

23 Barbara J. Shaulis,

24 Official Court Reporter

25

1 circumstances of where it was located and where it was
2 possessed, you know, might have some probative value,
3 but the direct testimony, everybody is in agreement it
4 did not -- it all belonged to the fellowship.

5 THE COURT: You are an attorney and you can
6 answer a little different than Mr. Kotmair. Wouldn't
7 you agree when he goes to the grocery store and buys a
8 box of Wheaties, that is his, that box of Wheaties is
9 his. It is not -- it is fueling him to carry on the
10 great work of the fellowship, but so is whatever you
11 had for breakfast fueling you to do your business.
12 You don't think about -- you should pardon the
13 expression in this case, deducting from the tax return
14 that I am sure you file Mr. Harp, I am not asking you.
15 Your breakfast helps you to be a better lawyer.

16 MR. HARP: Your Honor, for a normal
17 circumstance and the normal situation and the normal
18 client, Mr. Hrebiniak's argument may have some merit
19 but --

20 THE COURT: I realize we don't have any of
21 that.

22 MR. HARP: We don't have that here.

23 THE COURT: I don't think anybody can deny
24 the sincerity of Mr. Kotmair. I mean we can only
25 disagree with him of course. We can't deny his

1 sincerity.

2 MR. HARP: I mean --

3 THE COURT: Or at least his consistency.

4 MR. HARP: Your Honor, the Court has had
5 other dealings with Mr. Kotmair in the past and
6 irrespective of whatever the feelings the Court or the
7 government may have about him, I don't think anybody
8 has ever been able to find any kind of reproach
9 whatsoever about his dedication and what he has done
10 over the years.

11 THE COURT: I think there is no contest about
12 his sincerity and his consistent statement of views
13 that are consistent. That is his way of looking at
14 the world.

15 MR. HARP: And Mr. Hrebiniak characterized, I
16 think wrongfully that the Save-A-Patriot fellowship is
17 loosely organized, and from what I know about it, it
18 is not. I would be inclined to describe it more as
19 compartmentalized rather than loosely organized. But
20 the reasons they have had to do that over the years, I
21 think probably these warrants that were issued out
22 here in 93 is main good evidence of some of the
23 problems they have had or potential problems they had
24 from time to time. All of the assets we are talking
25 about to, whether it be these collectible coins or