Liberty Tree

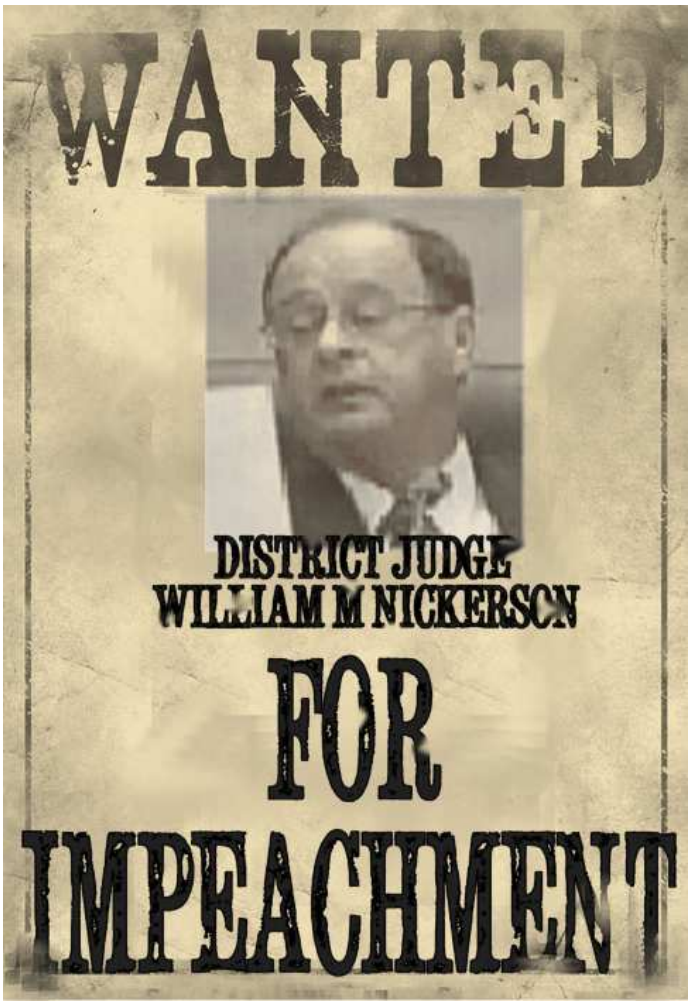
Vol. 18, No. 7 — July 2016

Federal Judiciary — Oligarchy Hit-Men!!! Part XV

By Dick Greb

In last month's installment of the continuing saga of the tyrannical actions of the Evil Trio — the Internal Revenue Service, the Department of Justice, and the federal courts — we finished our discussion of the IRS' raids on the Save-A-Patriot Fellowship's offices and the home of John Kotmair, and the subsequent law suit instituted to secure the return of the Fellowship's property. Ultimately, Federal District Court Judge Marvin Garbis ordered the return of Fellowship funds that had been seized from SAP headquarters (the computers and other office equipment had long since been returned by the IRS), but just as significant was Garbis' ruling that the Fellowship existed, and naturally could continue to exist, as an unincorporated association.

This favorable aspect of the decision in the case may well have been a factor in the subsequent years of relative quiet from active harassment by the Evil Trio, but that quiet was broken in May 2005, when the government filed an injunction suit against the Fellowship and against John personally. The purpose of this suit was obviously to put an end to our efforts to educate our members, and the public at large, about the U.S. Constitution and our country's founding principles, particularly with respect to the limits on its taxing authority. They also wanted to prevent us from assisting our members in their dealings with the 'legalized plunderers' at the IRS, and thereby remove another thorn in the government's side.



Playing with a stacked deck

The supposed legal basis for the injunction was extremely flimsy, but we knew going in that it would be a tough fight. Several courts had already granted similar injunctions against other Patriots and groups, proving that the system was willing to subvert federal law, justice, and the supreme law of the land — the Constitution — in order to trample on our rights. The bottom line of course is that it is never a fair fight, since the government always gets to be the judge of its own cause, and as it most often does, upholds its own tyrannical actions.

We will take a look at some of the issues involved in the injunction suit here, but to really understand the whole matter, and see the depths to which the Evil Trio

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will go to accomplish their nefarious deeds, I would suggest that you study the case for yourself. To this end, we have posted the entire docket on the Save-A-Patriot Fellowship website (www.save-a-patriot.org/doj/doj.html). Every document filed by both parties can be found there by simply clicking on the links in each docket listing. By following along with the pleadings, you will be able to see the arguments presented by each side, as well as their respective responses to said arguments, and the court's decisions on those pleadings. Then you can judge for yourself whether justice was done.

As mentioned above, the fact that most determined the outcome of this injunction suit was that the government got to both prosecute the case and decide it too. The judiciary, represented by U.S. District Judge William M. Nickerson, rather than being an impartial arbiter between the opposing parties, instead worked hand in glove with the Justice Department, represented by trial attorney Thomas M. Newman, to arrive at the result which both desired — to squelch the First Amendment rights of the Fellowship and its founder. It simply can't be overstated: the government didn't prevail because it had the more compelling argument, or had better legal support for its positions — because, in truth, it had neither. Rather, it prevailed only because Judge Nickerson was willing to ignore the Justice Department's lack of legal support for its positions, lack of cogent argument, and even its lack of evidence, in his quest to extinguish the lawful political speech of the Fellowship.

Doing whatever it takes

One of the most glaring defects in the complaint for injunction was that the Fellowship was not engaged in any unlawful activities. But the government wasn't about to let that fact deter them from their nefarious deeds, so they used inapplicable statutes and concocted ridiculous rationalizations to try to make them fit the situation.

The major premise of the complaint was that SAPF was violating §6700 — written to penalize people who make false statements about the tax benefits derived from investing in tax shelters they are trying to sell. Naturally, since the Fellowship was not selling any tax shelters, nor any other kind of investment, this statute could not lawfully apply. So, the government pretended that membership in the Fellowship was the tax shelter. But there was still a problem. The false statements prohibited by §6700 were only those "with respect to ... securing of any other tax benefit ***by reason of holding an interest in the entity or participation in the plan or arrangement.***"[1] When we showed that none of the alleged false statements cited by the government relate to tax benefits derived from membership in the Fellowship, Nickerson merely swept such legal requirements aside, claiming:

> 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. [2]

Black's Law Dictionary, 1st edition (1891) defines "implication" as: "Intendment or inference, ***as distinguished from the actual expression of a thing in words***." Thus, Judge Nickerson explicitly admits in his memorandum of law in support of the injunction that SAPF did NOT actually make the only type of false statements that the statute prohibits, yet declares that we violated the statute nevertheless! How is that for corruption?

The exception that threatens to swallow the right

One of the cornerstones of the Evil Trio's campaign of censorship centered on the misuse of the term "commercial speech." The reason for this is that the courts have carved an exception from the 1st Amendment's right to free speech, just like they've whittled away piece after piece of all of our other inalienable rights, until there is nothing left of them but shadows. For this particular exception, the courts have claimed the authority to regulate commercial speech. According to Black's Law Dictionary (5th Edition):

> **Commercial speech doctrine**. Speech that was categorized as "commercial" in nature (i.e. ***speech that advertised a product or service for profit*** or for business purpose) was formerly not afforded First Amendment freedom of speech protection, and as such could be freely regulated by statutes and ordinances. *Valentine v. Chrestensen*, 316 U.S. 52, 62 S.Ct. 920, 86 L.Ed. 1262. This doctrine, however, has been essentially abrogated. *Pittsburgh Press Co. v. Pittsburgh Comm. on Human Rights*, 413 U.S. 376 [other citations omitted].

As the quote makes clear, the Supreme Court has limited the meaning of "commercial speech" to "commercial advertisements," and thus, it is only *false advertising* which can be prohibited. And even in that limited sphere, the court has since retreated from that position. In *Va. Pharmacy Bd. v. Va. Consumer Council*, 425 U.S. 748 (1976), Justice Harry Blackmun, announced its purported demise:

> There can be no question that, in past decisions, the Court has given some indication that commercial speech is unprotected. In *Valentine v. Chrestensen, supra*, the Court ... concluded that,

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1. 26 U.S.C.§6700(a)(2)(A). Emphases added, and internal citations omitted, throughout.
2. See "Memorandum (Document 68)," page 12.

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although the First Amendment would forbid the banning of all communication by handbill in the public thoroughfares, it imposed "no such restraint on government as respects purely commercial advertising." Further support for a "commercial speech" exception to the First Amendment may perhaps be found in *Breard v. Alexandria*, 341 U. S. 622 (1951), where the Court upheld a conviction for violation of an ordinance prohibiting door-to-door solicitation of magazine subscriptions. The Court reasoned: "The selling . . . brings into the transaction a commercial feature," and it distinguished *Martin v. Struthers, supra*, where it had reversed a conviction for door-to-door distribution of leaflets publicizing a religious meeting, as a case involving "no element of the commercial." ... **Since the decision in *Breard*, however, the Court has never denied protection on the ground that the speech in issue was "commercial speech." ... Last term, in *Bigelow v. Virginia*, 421 U.S. 809 (1975), the notion of unprotected "commercial speech" all but passed from the scene**.

But, once again, Nickerson wasn't about to let legal precedence, or justice, or even the Constitution stand in the way of his predetermined outcome. In his memorandum, he simply proclaimed:

Defendants contend that the statements

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The DECLARATION of INDEPENDENCE

Few documents can be said to have had such a profound effect on the relationship between a people and their government as the American Declaration of Independence.

Proclaiming the intended purpose of the declaration, Richard Henry Lee of Virginia offered a resolution to the Continental Congress which read:

> ***Resolved, that these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved.***

The American colonists' action of declaring independence and the right of the people to participate in their own governance was a significant progression from the foundation of inclusion of the Barons, in establishing some limits on the powers of the King, which the Magna Carta established over 500 years before.

How America broke away from the King of England is not as important as *why* America broke away from the King. Jefferson penned one of the most quoted and most significant sentences in the English language within the Declaration of Independence when writing:

> ***We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.***

Because these self-evident truths are unalienable Rights given by our Creator, no executive (king or president), no legislature (Congress or Parliament), and no judge can ever take those rights away.

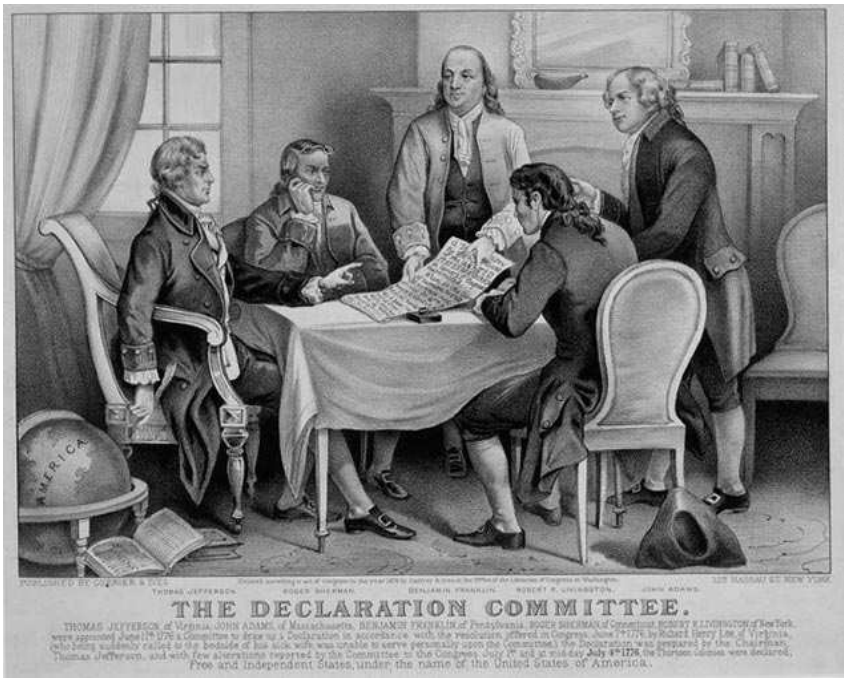
Two hundred years ago, to challenge a tyrannical king by invoking a higher power and purpose than the king, you were signing your own death warrant.

In full acknowledgement of the seriousness of the actions they were taking, the signers of our Declaration of Independence added language which read:

> ***[W]ith a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.***

Freedom, once purchased at such a precious cost, must be defended at any cost.

— Michael D. Smigiel, Sr.
Former Delegate to the Maryland
House of Delegates, 36th District



On June 11, 1776, the appointed delegates began to draft the Declaration of Independence: Thomas Jefferson of Virginia, John Adams of Massachusetts, Benjamin Franklin of Pennsylvania, Roger Sherman of Connecticut, and Robert Livingston of New York. The final was printed on July 4, 1776, by John Dunlap of Philadelphia.

On July 8, Col. John Nixon of the Philadelphia Committee of Safety read it aloud at the State House. Bells were rung all that day in Philadelphia. In Baltimore, on July 29, the town was illuminated and the "Effigy of our late King was carted through the town and committed to the flames amidst the acclamations of many hundreds. The just reward of a Tyrant." Such spirit against tyranny is direly needed today.

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on SAPF's website and in its other publications constitute speech protected by the First Amendment and, therefore, cannot be enjoined. Because ***much of the speech, however, relates to the sale of SAPF products and services, it is commercial speech*** and it is well established that commercial speech, if fraudulent, can be enjoined. *Schiff,* 379 F.3d at 630; *Estate Preservation,* 202 F.3d at 1106. ***Because Defendants' representations about the tax laws and the efficacy of their products is clearly fraudulent***, that speech can be enjoined without running afoul of the First Amendment. See *Estate Preservation*, 202 F.3d at 1106 (collecting cases enjoining similar conduct).[3]

Piercing the illusion

Notice Nickerson's sleight of hand in his logic. First he lumps together all speech published by SAPF and John as "commercial speech" because *much* of it "relates to the sale of SAPF products and services." Of course, he never bothers to clarify either how much is "much," or how it relates to the sale of anything, and he certainly never refers to such speech as *advertising*, since that would reveal his duplicity. Next, he gives the doctrine, citing the similar railroading of Irwin Schiff as justification, whereby *fraudulent* commercial speech (remember, this is simply advertising) can be enjoined. And now watch closely, because this is where Nickerson makes our rights disappear right before our eyes. He lawlessly concludes that "[b]ecause Defendants' *representations about the tax laws* ***and*** *the efficacy of their products* is clearly fraudulent, that speech can be enjoined." Did you catch that? He equated "representations about the tax laws" with "commercial advertising" just so he could prohibit it!

Clearly, the opinions and beliefs professed by John and the Fellowship about the tax laws are not advertising, and therefore, they can not fall within the commercial speech doctrine, even if those opinions and beliefs could be proven to be wrong. And yet, no proof was even offered into evidence to try to prove any of those beliefs to be false. What's more, Nickerson's claim that the "efficacy of their products is clearly fraudulent" is itself the only example of fraud seen here. Nickerson earlier acknowledged that in its complaint, the government alleged certain statements had been made by the Fellowship which *it already knew* had been made by other persons, and those were the only statements which could even be construed as advertising.

To make matters even worse, Nickerson made his proclamation that "much" of SAPF's materials were commercial speech without ever having seen the majority of them. For example, John's 12-hour lecture series "Just The Facts" and his book *Piercing The Illusion* were never even put into evidence, yet Nickerson somehow divined their contents and determined that they could be banned as *false advertising*! And that, ladies and gentlemen, is how the government steals your rights – through a combination of obfuscation, manipulation of language, and outright corruption.[4] It all seems so wizardly when it happens, but just like with any magician's trick, once you break it down, the truth becomes much easier to see.

And the truth is this: the Evil Trio is not above lying, cheating, and abusing the power of their offices and positions to get what they want. In fact, it's so common, it could honestly be said to be their *modus operandi*. When they wanted to silence those who, like John Kotmair and the Save-A-Patriot Fellowship, work to expose their corruption and lies, no level of underhandedness was too low for them. And if and when they decide that you are making too many waves for their own good, they won't hesitate to turn that tyranny loose on you as well. [5]

That being said, however, the censorship by way of the Trio's ill-gotten injunction gave the Fellowship the impetus to concentrate their efforts into Liberty Works Radio Network. Through LWRN, we are still able to expose people to our nation's founding principles, and how we're abandoning them now. Help to support those efforts by regularly listening to LWRN programs, and calling into the live shows with your own comments and questions, as well as your financial support. And encourage others to do the same. There's no way to know how long this window of opportunity will remain open. So, as they say, "Make hay while the sun is shining."

Watch for the next installment of this continuing saga in next month's Liberty Tree.

Liberty Works Radio Network

NEEDS YOU TO DONATE TODAY!!!

If you have been donating — PLEASE DON'T STOP — if you know others of like-mind, please enlist their help!!! It does not take much, just $5 or $10 a month — SO PLEASE PRAY ABOUT IT, AND CONTACT THE FELLOWSHIP TODAY!!!

3. *Ibid*., page 19.

4. It must be noted here that in spite of its high-minded proclamation in the *Virginia Pharmacy Board* case quoted above, the issuance of the injunction against Kotmair and SAPF was appealed all the way to the U.S. Supreme Court, which had the opportunity to reverse this violation of the Constitution. Instead, it refused to hear the case, thereby effectively upholding this prior restraint on political speech, under the guise of 'commercial speech.'

5. I'm reminded of Carl Klang's song "Heaven's Under Siege" — "they murdered Vicki Weaver, just like they'll murder me or you."