



Liberty Tree

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

By John Baptist Kotmair, Jr.

In the April issue, we left off in our tale of the seized property from the 1993 raid on SAPF and my home at the point where George Harp, a Fellowship member and attorney from Shreveport, Louisiana, had agreed to represent the Fellowship, while I represented myself, in a suit for the return of the seized property in the Federal District Court for the District of Maryland in Baltimore. The suit's outcome is the subject of the May issue of the *Liberty Tree*, and this issue as well. The details were published in two 1997 issues of the Save-A-Patriot Fellowship newsletter *Reasonable Action*, and the second article is reprinted below, continuing the never-ending saga of our struggle, and SAPF's work exposing the violations of law by the **Evil Trio**.

From *Reasonable Action*, Issue #228, 1997:

S.A.P. Throws *Monkey Wrench* Into Federal Prosecution

**Never-before-raised issue
baffles government attorneys**

If the Fellowship is not on the cutting edge in the battle to confine the IRS and other government agencies within the bounds of the law, I should like to know who is. This article is about two crucial issues that have been raised by the Fellowship, one of which (credible person) has been raised for the first time in history.

These two elements (receipt and credible person) are nothing more than commonsense components in our government of laws and not of men. Yet it takes an effort like the Save-A-Patriot Fellowship to bring these truths to light.

These crucial elements must be understood so that they may be used by innocent Americans in their efforts to thwart unlawful actions by government agencies and

agents, the IRS, the Justice Department, the judges and the courts. Properly understood and implemented, these two features within the rules of criminal procedure would go far in helping us to reclaim our original safety, privacy, and the presumption of innocence.

It seems *incredible*, but the issue of a *credible person* has never before been raised in the courts to the best of our knowledge. The law specifically requires that if a person (or his agent) from whose possession or premises the property was taken is not present, a *credible*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

SAVE-A-PATRIOT FELLOWSHIP *
Plaintiff * Civil Action No. MJG-95-935
vs. *
UNITED STATES OF AMERICA *
Defendant *
*

JUDGMENT

This action came on for trial before the Court on September 20, 1996, Honorable Marvin J. Garbis, United States District Judge presiding. On this date, the Court has issued its Memorandum of Decision in this case.

In view of the foregoing, Judgment is hereby entered in favor of Plaintiff Save-A-Patriot Fellowship against Defendant United States of America in the total amount of \$634.00 plus interest as provided by law, the parties to bear their own costs.

SO ORDERED this 18th day of December, 1996.

Marvin J. Garbis
United States District Judge

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person must be present in order for a lawful search and seizure to take place. This means a disinterested party must see to it that the search warrant is not executed in such a way as to abuse the rights of the potentially accused. Otherwise, who would be safe? Couldn't rogue government agents plant whatever evidence they please whenever their target victim is not at home or in their place of work? Given the present level of corruption in this national government, I'd say the scenario is at least probable.

Despite "Outcome-Based Education" there will still be many who can put two and two together in this narrow context. Perhaps the most familiar example of abuse facilitated by carefully excluding witnesses from the area subject to "creative search" is where DEA agents could possibly (insert tongue in cheek) be framing citizens in allegedly drug-related searches and seizures by dropping a bag of cocaine from the property room *here and there*. This seems at least a statistical probability when we consider that more than 90% of drug-related seizures do not result in convictions. If those accused in drug-related setups can be made aware of the *credible person* aspect required in lawful searches, perhaps more falsely accused victims can have bogus evidence thrown out so they can regain their property.

Pity the poor soul who would scrap the Fourth Amendment to support the phony "War on Drugs." The "War on Poverty" has practically impoverished the whole country.

BACKGROUND

If you understand tyranny, you know what injury can come from *general* warrants and **general** searches.

The Fourth Amendment should be all you need to read in order to understand the Framers' view of these things.

Amendment IV of the United States Constitution states: "The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

"The poorest man may, in his cottage, bid defiance to all forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter, the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement." — Wm. Pitt. (Quoted in the *Citizen's Rule Book*).

FEDERAL RULES OF CRIMINAL PROCEDURE WORK FOR US; *WORK FOR LIBERTY!*

The United States Code, in Title 18, Rule 41(d) [now (f)(1)(B)], requires that when an officer of the government executes a lawful search warrant, he must provide a receipt for what is seized according to the specific requirements of the warrant. This is a protection against general warrants, searches and seizures which were commonplace under the reign of George III prior to our Revolution.

We do proper honor to our ancestors when we study history well enough to avoid the mistakes that were made in the past. If our Founding Fathers warned us against something, we show ourselves fools by not heeding their prophetic advice. They knew the signs of tyranny and listed them well in our Declaration of Independence.

In addition, in the case of the Dec. '93 raid here, workers were excluded and John Kotmair was prevented from entering either the Fellowship headquarters or his residence. John's wife Nancy was forcibly confined to a chair in her living room while most of the IRS pilfering was being carried on out of her sight. Since both John and Nancy were prevented from witnessing the search and seizure; and since there was no *credible person* (or agent of the accused) present, the government's case became even more questionable. Perhaps these elements were under consideration when the Justice Department Attorney told John the government was abandoning the criminal investigation and prosecution of John.

The object of the Fellowship's MEMORANDUM OF AUTHORITIES ON THE LEGAL TERMS RECEIPT AND CREDIBLE PERSON was to have any and all alleged evidence previously seized from the Fellowship and from John Kotmair's residence in the IRS raid of Dec. 10, 1993 suppressed, and to have the immediate return of all Fellowship property since (in addition to many other important errors of law and lawful procedure) it had been seized under conditions that violated these important aspects of the federal rules of criminal procedure.

The IRS did not deny allegations that previously mentioned requirements were never addressed by them during the execution of the warrant. Therefore they stand as facts cognizable in a court of law.

The MEMORANDUM (prepared by the paralegal department here at the Fellowship) is a *work of art*. For that reason I am drawing heavily from a transcript and any remaining citations not quoted here will be inserted at the end of this article for your further study and edifi-

**"An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the United States Constitution. Accordingly, an [IRS] appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction."
26 CFR § 601.106(f)(1) (1999)**

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cation.

Our paralegal department also cited the fact that the Warrant itself referenced the necessary RECEIPT: “This requirement for a receipt is also clearly stated on the warrant which says, ‘... and if the person or property be found there to seize same, leaving a copy of this warrant and RECEIPT for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to me as required by law (emphasis added).’ The plaintiff was not given a receipt and the Magistrate did not demand that this requirement be followed.” A credible person is not just *anyone*, and it is certainly not the government’s agent. According to the Black’s Law definition shown here, the person must be of a certain calibre: *trustworthy and entitled to be believed. In law and legal proceedings, one who is entitled to have his oath or affidavit accepted as reliable, not only on account of his good reputation for veracity, but also on account of his intelligence, knowledge of the circumstances, and disinterested relation to the matter in question.*¹

Considering the requirement of the above impeccable credentials, it is no wonder John was incredulous at the proposition by Judge Garbis that one of the IRS agents could have served as a “credible person.”

John went on to point out that even though he could not vouch for the characters of the IRS agents in attendance, they could not be relied upon as a *credible person*, if only for the fact that none of them was *disinterested* — they were all agents of the defendant (the IRS). The U.S. Attorney offered no case law regarding the “credible person” issue.

The MEMORANDUM continues: “Furthermore ‘credible person’ is recognized in the following authorities:

TITLE 15 U.S.C. § 1990e: The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one **credible person other than the person making such inventory**, and shall be verified by the person executing the warrant.

USCS § 880: The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one **credible person other than the person making such inventory**, and shall be verified by the person executing the warrant.

26CFR § 1.871-4(d): Each such certificate, which shall contain, or be verified by, a written declaration that it is made under the penalties of perjury, shall be executed by some **credible person or persons**, other than the alien and members of his family, who have known the alien at least six months before the date of

execution of the certificate or certificates.

AM Jur 2D, SEARCHES AND SEIZURES § 152: It is provided by the Federal Rules of Criminal Procedure that the return on a search warrant is to be made promptly and is to be accompanied by a written inventory of any property taken; that the inventory is to be made in the presence of the applicant for the warrant and the person from whose property or premises the property was taken, if they are present, or in the presence of at least one **credible person other than the applicant for the warrant** or the person from whose possession or premises the property was taken, and is to be verified by the officer; and that the federal magistrate before whom the return is made shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

25 ALR FED 247: The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least **one credible person other than the applicant for the warrant** [Internal Revenue Service] or the person from whose possession or premises the property was taken, and shall be verified by the officer.

19 ALR FED 736: The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of **at least one credible person other than the person making such inventory**, and shall be verified by the person executing the warrant.

IRS TRIES TO FAKE IT

In their response to the Fellowship’s previous Complaint and demand for the return of the Fellowship property the IRS admits: “... The requirements of Rule 41 of the Federal Rules of Criminal Procedure were not met in that: (a) an inventory was not made in the presence of a ‘credible person;’ and (b) a copy of the warrant and a receipt for the property were not tendered.”

This may have been a *possum-like* maneuver. The IRS admitted it did not admit a “credible person” but also states in error that a copy of the warrant was not tendered (offered). Who knows? We are still amazed at the impossibility of assuming logical connections between IRS rhetoric and actions. To paraphrase Forrest Gump: IRS *HAPPENS!*

Whatever the reason for the obvious erroneous statement regarding a warrant and/or receipt, any ploy was most likely ruined by their own ineptitude. If they were worthy adversaries they wouldn’t always need the judiciary to bend over backwards to give them everything they ask for.

Our paralegal staff was capable of a “seizure” of its own in this case. The opportunity to have the IRS eat its

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1. All emphases in this article are added, unless otherwise noted.

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own words was something they could not pass up.

The MEMORANDUM continues ... "The plaintiff responded to this by saying: 'This statement attributed to the plaintiff's [S.A.P.'s] grounds for return of the property is correct except that the plaintiff never stated that he did not receive a copy of the warrant.' However, on page 5, in response to item C, the content of item C on page 3 is abandoned and it is pretended that the plaintiff claimed he did not receive a copy of the inventory and the defendants [IRS] go to great lengths to show that a copy of the inventory was provided. Obviously this is an attempt to avoid the fact that the inventory was not made before a CREDIBLE person and there was NO RECEIPT as required by Rule 41 (d). Strangely, the issue of *credible person* and the requirement for a receipt were noted on page 2 but not ADDRESSED on page 5. This is in violation of Federal Rules of Civil Procedure Rule 11(b).

"From the above, it is clear that the reason the defendants [IRS] did not respond to these issues is because they could not justify the deliberate violation of the law."

The MEMORANDUM concludes: "The fact that the defendants prevented plaintiff from witnessing the inventories, and also the fact that no "disinterested," "credible person" was sought to witness both inventories, [shows] the inventory is invalid and consequently the return on the search warrant is invalid.

"FOR THE FOREGOING REASONS, the plaintiff is entitled to relief, as the above facts show gross violation of Federal Rules of Criminal Procedure Rule 41 (d), and therefore the Search Warrant and affidavit should be declared invalid and ALL property should be returned immediately.

"Respectfully submitted this 29th day of September, 1994." John B. Kotmair, Jr. Plaintiff, 12 Carroll Street, Westminster, Maryland 21158.

The rest is history, as the saying goes. Judge Marvin

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Garbis subsequently ordered the return of all Fellowship property that had been seized from the Carroll Street headquarters and, in December of 1996, ruled in favor of the Fellowship. ♦

The District Court's decision established that the Fellowship was an association protected by the First Amendment, and for many years, this slowed and stymied the advance of the *Evil Trio*. Meanwhile, the public outcry against the lawless actions of the IRS caused Congress to react with the IRS Restructuring and Reform Act of 1998, which added some window-dressing due process procedures the IRS must implement before taking property from citizens. But the *Evil Trio* continued to work to undermine our Constitution and to decimate the people. In 2005, they came again and attacked the Fellowship through the Courts, seeking an injunction against activities protected by the First Amendment. That battle will be the subject of our next installment of this series, so stay tuned.



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