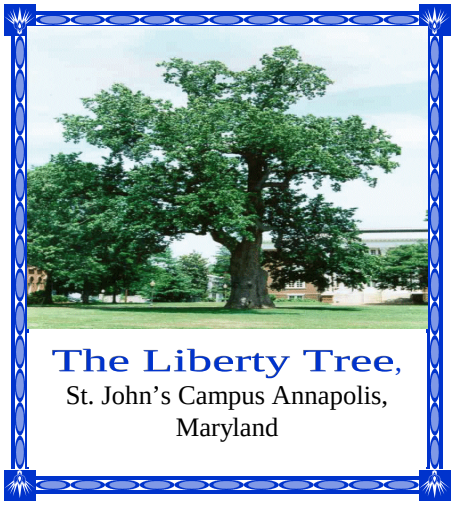


The Liberty Tree,
St. John's Campus Annapolis, Maryland


# LIBERTY TREE

**Vol. 8, No. 7 — June, 2006**


"Contrariwise," continued Tweedledee, "if it was so, it might be; and if it were so, it would be,but as it isn't, it ain't. That's logic."

—*Alice Through the Looking Glass*, by Lewis Carroll

# SIMPLE LOGIC

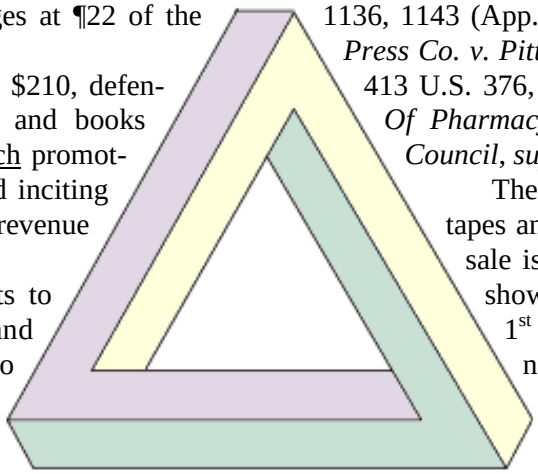
*This article is adapted from SAPF's Motion for Summary Judgment.*

A considerable portion of the Department of Justice's ("DOJ") case is based on the allegation that SAPF is a business, and therefore enjoys less protection from the First Amendment's free speech clause. However, the fact that SAPF is an unincorporated First Amendment political organization causes the DOJ's argument to collapse like a house of cards.

The Supreme Court essentially equates "commercial speech" with "commercial advertising." This is important, since the DOJ alleges at ¶22 of the Complaint:

> "22. For prices ranging from $5 to $210, defendants sell videotapes, audiotapes, and books that contain false commercial speech promoting their schemes and directing and inciting customers to violate the internal revenue laws." [Emphasis added]

In other words, the DOJ's attempts to equate videotapes, audiotapes and books—which have not been shown to contain any advertising (let alone false advertising)—with "commercial speech." This appears to be based on an erroneous construction of the term "commercial speech," as if that term applies to any kind of speech that is ultimately offered for sale. However, this completely subverts the meaning given to the term by the Supreme Court. Indeed, the Supreme Court recognized in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976) that:



This impossible figure illustrates the DOJ's concept of free vs. commercial speech in its IRC 6700 injunction suit.

> "Speech likewise is protected even though it is carried in a form that is 'sold' for profit, (citations omitted) and even though it may involve a solicitation to purchase or otherwise pay or contribute money. *New York Times Co. v. Sullivan, supra; NAACP v. Button*, 371 U.S. 415, 429, 83 S.Ct. 328, 335-336, 9 L.Ed.2d 405, 415-416 (1963)."

Moreover, 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.

The speech found in the books, videotapes and audiotapes that SAPF offers for sale is purely political speech which, as shown below, is fully protected by the 1st Amendment. Political speech is not magically transformed into commercial speech merely because it is sold. Rather, commercial speech remains the same as originally distinguished by the Supreme Court in *Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942)—that is, *advertising*.

Common sense may also be relied upon to understand this principle. Membership organizations of all types—National Rifle Association, National Association for the Advancement of Colored People, Parent-Teacher Associations, among others, for example—raise operating

*(Continued from page 1)*

funds by selling things, yet this does not make them businesses. In fact, it is hard to imagine how any advocacy group could fund their operations except by way of donations or sales of some sort.

SAPF's political speech, in the form of books, videotapes, audiotapes and newsletters, cannot be restricted under the false pretense that it is commercial speech. Furthermore, The DOJ has provided no evidence that any of the material referred to in ¶22 contains commercial speech, let alone *false* commercial speech. Therefore, The DOJ is not entitled to the injunctive relief it seeks with respect to SAPF's sale of such materials, as such injunction would amount to a prior restraint on SAPF's protected political speech. Indeed, the Supreme Court has stated, in *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976):

> "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on rights under this amendment."

See also, *Heller v. New York*, 413 U.S. 483, 491 (1973). ("Any system of prior restraints of expression comes to Supreme Court bearing heavy presumption against its constitutional validity."); *Capital Cities Media, Inc. v. Toole*, 463 U.S. 1303 (1983); *New York Times Co. v. U.S.*, 403 U.S. 713 (1971); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).

However, the fact that political speech is sought to be enjoined—prior restraint of expression—compounds the unlawfulness of the DOJ's attempt to enjoin SAPF.

**Political speech enjoys the full protection of the First Amendment**

It cannot be reasonably disputed that Save-A-Patriot Fellowship is a political advocacy organization. All the publications of SAPF demonstrate this. Moreover, it does not exist for the purpose of turning a profit. SAPF must rely on both sales and donations to fund its advocacy and educational activities. Thus, like the membership organizations mentioned above, SAPF is not a business, but a *bona fide* political organization.

The fact that SAPF sells books, publications and services does not make it a "business" and is therefore insufficient to render its activities "commercial speech." See *Helfron v. International Society for Krishna Consciousness*, 452 U.S. 640, 647 (1981); *Gaudiya Vaishnava Society of City of San Francisco*, 952 F.2d 1059, 1063 (App. 9th Cir. 1990). Indeed, *Black's Law Dictionary* (6th ed.) defines "commercial speech doctrine" thusly:

> "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 purposes) 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. This doctrine, however, has been essentially abrogated. *Pittsburg Press Co. v. Pittsburg Comm. On Human Rights,* 413 U.S. 376; *Bigelow v. Virginia,* 421 UY.S. 809; *Virginia State Brd. of Pharmacy v. Virginia Citizen Council,* 425 U.S. 748."

Indeed, in *Valentine v. Chrestensen*, *supra*, the court recognized "commercial speech" as being nothing more than false advertising:

> "We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising."

*Black's* 7th edition adds this:

> "Commercial Speech. Communication (such as advertising and marketing) that involves only the commercial interests of the speaker and the audience, and is therefore afforded lesser First Amendment protection than social, political, or religious speech."

Looking into *Black's Law Dictionary* (4th ed.), we see "political" defined (in part) thusly:

> "Pertaining or related to the policy or the administration of government, state or national. *People v. Morgan,* 90 Ill. 558. Pertaining to, or incidental to, the exercise of the functions of government; relating to the management of affairs of state; as political theories; of or pertaining to the exercise of rights and privileges or the influence to which individuals of a state seek to determine or control its public policy."

Moreover, the constitutional protection does not turn upon "the truth, popularity or social utility of the ideas and beliefs which are offered." *NAACP v. Button*, 371 U.S. 415, 445 (1963). SAPF's speech enjoys the full protection of the First Amendment, just like that of any single citizen would—or a collection of citizens, such as the members of SAPF.

Wherefore, as a matter of law, the DOJ's injunction suit against the Fellowship must fail.

It is strange that these DOJ people (enemies from within) work so tirelessly to diminish our First Amendment protections (and our liberties generally), when it is *their* children too, that are the victims of their efforts. If only our accusers were as acquainted with logic as Tweedledee.

# Save-A-Patriot Fellowship

## is an Unincorporated First Amendment Political Association

### — and the United States District Court for Maryland knows this.

The U. S. District Court for the District of Maryland—the court hearing the current injunction suit against SAPF, found that SAPF was an unincorporated association, and not a business, nine years ago in *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996). The court stated:

> *The Government contends, at the threshold, that the SAP Fellowship is not an organization at all, but is solely a name used by Kotmair for his own 'sole proprietorship' operation. The Court does not agree, even through it is readily apparent that Kotmair is the major figure in the Fellowship. As noted above, the evidence established that there is an organization and not simply an operation by Kotmair personally. The SAP Fellowship, and not Kotmair personally, leased the Office. There are members, other than Kotmair, who engage in Fellowship activities. This Court observes, also, that the I.R.S. itself, quite appropriately, returned to the Office the operating assets seized from the Office … In sum, the Court finds as a fact that the SAP Fellowship is an unincorporated association (not just an alter ego or sole proprietorship of Kotmair), has members, and does things through persons in addition to Kotmair.*

Furthermore, when the United States of America appealed this Court's decision in 1997, the government thereafter moved for dismissal of its appeal, "with prejudice." The United States Court of Appeals granted the government's motion and issued an order dismissing the appeal.

Having established that this court has previously determined SAPF is not an alter ego or sole proprietorship of Kotmair, it is a matter of well-established law that Kotmair should be dismissed from this action due to the doctrine of *res judicata*. The government has already litigated this issue, and lost.

Courts are uniform in their recognition and application of the doctrine of *res judicata.* The United States Supreme Court stated, in *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299, 37 S.Ct. 506, 507, 61 L.Ed. 1148:

> *[The] doctrine of res judicata is not a mere matter of practice or procedure .... It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts ....*

Moreover, in *Federated Department Stores, Inc., et al. v. Moitie*, 101 S.Ct. 2424, 452 U.S. 394, 69 L.Ed.2d 103 (1981), the United States Supreme Court stated:

> *There is little to be added to the doctrine of res judicata as developed in the case law of this Court. A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Commissioner v. Sunnen, 333 U.S. 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898 (1948); Cromwell v. County of Sac, 94 U. S. 351, 352-353, 24 L.Ed. 195 (1877). Nor are the res judicata consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. Angel v. Bullington, 330 U.S. 183, 187, 67 S.Ct. 657, 659, 91 L.Ed. 832 (1947); Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 60 S.Ct. 317, 84 L.Ed. 329 (1940); Wilson's Executor v. Deen, 121 U.S. 525, 534, 7 S.Ct. 1004, 1007, 30 L.Ed. 980 (1887). As this Court explained in Baltimore S.S. Co. v. Phillips, 274 U. S. 316, 325, 47 S.Ct. 600, 604, 71 L.Ed. 1069 (1927), an 'erroneous conclusion' reached by the court in the first suit does not deprive the defendants in the second action 'of their right to rely*

> ***Res judicata*** [Latin "a thing adjudicated"] 1. An issue that has been definitely settled by judicial decisions. 2. An affirmative defense barring the same parties from litigation a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been — but was not — raised in the first suit. * The three essential elements are (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties. Restatement (2nd) of Judgments §0167 17, 24 (1982).
>
> —Black's Law Dictionary, 7th ed.

# "Inciting criminal behavior" -vs- Christian charity

The DOJ contends that our Membership Assistance Program constitutes an enticement for members of the Fellowship to violate tax laws. I guess the DOJ reasons it thusly: "I know...I will join SAPF, stop filing, and if I am lucky, the DOJ will indict me for willful failure to file. Then, for each year I'm in jail, I can put in for membership assistance, and hit the jackpot!!!" Yes, of course, that is ridiculous, but that is just the premise that the DOJ bases its "inciting criminal behavior" theory upon.

We must not neglect the Christian charity aspect of membership assistance. For example, the member that was wrongfully imprisoned for "willful failure to file" wrote to us stating:

*"...I hope the Fellowship survives. I now, more than ever, see the importance of its survival. Without it, survival for my family would have been non-existent. [My] family has not offered to help. My wife is crippled in her feet and has extreme difficulty walking or standing. She has a terrible time standing long enough to get the dishes washed. Thanks for all of you for everything and the Fellowship can depend upon a monthly contribution from my home as soon as I am able to return there and find work…."*

Inciting criminal behavior indeed! It appears that the DOJ would prefer that this family get tossed out on the street!

Another member writes:

*"Thank you so much for the card of encouragement and thanks for all the prayers, and thanks for assisting my wife...with words of guidance and support.*

*"It gives me great strength to see the core foundation of people in SAPF to care for one member and his family, therefore I will continue to stand against the Giant (IRS) for all members till one day when God leads us to Victory.*

*"Again, thanks for the support and the financial support for my family."*

In the words of a current Christian slogan: What would Jesus do?

---

*(Continued from page 3)*

*upon the plea of res judicata.... A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause [of action].' We have observed that '[t]he indulgence of a contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of res judicata to avert.' Reed v. Allen, 286 U.S. 191, 201, 52 S.Ct. 532, 534, 76 L.Ed. 1054 (1932).*

Nothing has changed over the years with respect to this doctrine. Therefore, the court should grant Summary Judgment on behalf of Kotmair individually, and remove him from the injunction suit. If this happens, the DOJ's case will be ruined, because it is contingent upon John "doing business as" SAPF. And, as shown in the companion article, SAPF's speech will have to be deemed "political speech" which still enjoys the full protection of the First Amendment.

## Legal costs exacerbate SAPF's financial problems

The contrived financial inflation and legal defense costs are exacerbating the Fellowship's ongoing financial problems. As members know, we keep all the Fellowship fees low to be affordable to all Patriotic Americans who become members. This practice of pricing Fellowship member services leaves barely enough to pay for upkeep and keeping the doors open, and the current cost of the latest IRS/DOJ attack is straining our ability to exist. Please do not allow these false accusers to win by default. Whatever you can send to prevent your Fellowship's doors from closing for good will prevent such an occurrence. We know you will not let us down. Thank you.