

TO: JUDGE

FR: BARBARA

RE: SYNANON V. U.S., NO. 82-2303

DA: MONDAY, AUGUST 15, 1983

Synanon is suing to regain its tax ~~ex~~<sup>em</sup>pt status, which was revoked after an IRS audit. Currently before the court are 1) ripe cross-motions for summary judgment, with opposition and replies; 2) defendant's motion to produce information on hidden and destroyed evidence or, in the alternative, to dismiss (ripe as of Aug. 11); and 3) plaintiff's motion to suppress three affidavits underlying the government's motion to produce. This court stayed discovery last January pending resolution of defendant's summary judgment motion.

Synanon is also involved in Superior Court litigation before Judge Braman. Trial in that case is scheduled for Sept. 12, 1983, and Judge Braman intends to grant Synanon's unopposed motion to depose Bette Fleishman, a former Synanon member whose affidavit details systematic destruction and concealment of subpoenaed documents and tapes. Because Fleishman was granted criminal immunity in our case and may be called to testify, Judge Braman is considering tailoring his order to protect the interests of the witness and this court. In a letter dated Aug. 11, he asked for "some notion of the approximate time schedule presently contemplated" for district court action. Judge Braman has provided a partial transcript of the Aug. 10th Superior Court hearing into the deposition issue, at which Thomas Lawler appeared to protect U.S. interests.

### Defendant's Motion to Produce

Defendant's motion seeks immediate production of information, alleging Synanon has engaged in violent acts and attempted to conceal its activities by destroying and hiding subpoenaed evidence as well as by committing and suborning perjury. In the alternative, it seeks dismissal on the merits. The government's argument rests on the recently decided Bob Jones University case with its "public benefit" requirement for tax-exempt status: "the purpose of a charitable trust may not be illegal or violate established public policy."

Synanon's memorandum in opposition to the motion to produce is not entirely clear, although it advances several arguments:

- 1) since the government essentially seeks discovery, it must pursue the usual channels -- requests to produce, interrogatories, depositions, etc. -- before filing a motion, thereby giving Synanon an opportunity to comply and/or raise specific objections;
- 2) U.S. attorneys are improperly cross-fertilizing simultaneous civil and criminal investigations; and
- 3) the affidavits of former Synanon members (Fleishman, Mullen, and Arbiter) must be excluded because plaintiff had no chance to cross-examine.

Plaintiff also makes a personal attack on U.S. attorney Guy Goodwin, who is involved in the criminal investigation of Synanon. As a fallback position if the court decides to grant the government's motion, Synanon seeks an opportunity to depose the affiants.

### Recommendations:

1. Ask defendant's counsel to respond to the three arguments enumerated above, orally or in a reply memorandum.
2. Decide whether Ms. Fleishman should be deposed and, if so, how to coordinate it with the pending Superior Court action.

Summary of pending motions:

3/15 defendant's motion for summary judgment  
5/11 opposition  
7/11 reply

5/11 plaintiff's cross-motion for summary judgment  
7/11 opposition  
8/11 reply

7/11 defendant's motion to produce or dismiss  
8/11 opposition (deny or continue)

8/11 plaintiff's motion to suppress affidavits