

# *Carrying the Torch*—Spring 2005

## Table of Contents

ICLU Awarded Constitutional Education Grant	2
“A Decidedly Un-Patriot-ic Act”	4
Ken Falk Honored by State Bar Association	6
ICLU FAQs	7
How the ICLU Didn’t Steal Christmas	9
Racial Profiling Project Launched	10
Legislative Highlights	12
Litigation Highlights	15
Hypocrisy in the Treatment of Guantanamo Prisoners	18

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*Carrying the Torch* attempts to keep ICLU members, as well as the community at large, abreast of state and national civil liberties developments and, in turn, the work the ACLU/ICLU does in defense of liberties guaranteed to all citizens by the U.S. Constitution, Bill of Rights and the Indiana Constitution.

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Subscriptions by membership \$20, \$35, \$50, \$75 and up, entitle individuals to one year of *Carrying the Torch* and *Civil Liberties*, the national ACLU news publication. Institutions may subscribe to *Carrying the Torch* for \$15 per year.

# ICLU Awarded Grant for “What Are My Rights?” Program

*Outreach to Students, Recent Immigrants Planned*

**T**he Efroymsen Fund of the Central Indiana Community Foundation has awarded the ICLU a first-ever grant of \$20,000 to support the creation of a “What Are My Rights?” program for community education and outreach. The grant will allow the ICLU to design and implement a civil liberties curriculum for at-risk high school youth and recent adult immigrants.

As the state’s premier defender of the Bill of Rights, the ICLU receives hundreds of requests each year asking for us to make presentations about the individual freedoms protected by the constitution. The need for constitutional rights education was never more apparent than after a recent study by the Knight Foundation of more than 100,000 high school students showed that one third of the students felt the First Amendment went “too far” in granting free speech and one half thought that the government should have the right to approve news stories.

The ICLU plans to use the

grant resources to produce curriculum materials, including a DVD, for use in this instruction. Also, a key part of the outreach will be to train and empower our many talented volunteers, including attorneys, teachers and librarians, in making these “What Are My Rights?” presentations in their own Indiana communities. If you are interested in being a volunteer presenter for the “What Are My Rights?” program, please contact ICLU Associate Director Jacqueline Ayers at [j.ayers@iclu.org](mailto:j.ayers@iclu.org), or 317-635-4059, ext. 227.

*The ICLU expresses our deep appreciation for the generosity of the Efroymsen family.*

# ICLU Lawyers Council Launched

**B**y virtue of their professional training, attorneys have a unique understanding of the United States Constitution’s critical role in the protection of American democracy. Attorneys appreciate the importance of the Bill of Rights in preserving the freedoms that define the character of our nation.

So a steering committee of Indiana lawyers headed by co-chairs Norman Lefstein, Dean Emeritus and Professor at Indiana University School of Law—Indianapolis, and Carol Seaman, vice president of Bloomington-based Cook Group, Inc., have reaffirmed their commitment to protecting the Bill of Rights by founding the new ICLU Lawyers Council. Over 60 lawyers in the legal academic, non-profit and business communities have stepped forward to insure that civil liberties are thoughtfully and vigorously protected in Indiana.

There are a variety of roles for members of the ICLU Lawyers

Council, including encouraging tax-deductible financial support for the ICLU Foundation among members of the bar, providing counsel to lawmakers on civil liberties issues, acting as cooperating attorneys handling ICLU litigation and participating in the “What Are My Rights?” program.

Attorneys can become a member of the ICLU Lawyers Council by contributing \$200 annually to the ICLU Foundation. To receive a formal invitation letter please contact Jacqueline Ayers, ICLU Associate Director, by email: [j.ayers@iclu.org](mailto:j.ayers@iclu.org) or by phone: 317.635.4059 x.227.



*Carol Seaman and Norman Lefstein, co-chairs of the Lawyers Council Steering Committee*

# “A Decidedly Un-Patriot-ic Act”

*Patriot Act goes too far; it's time for changes*

*The following appeared in The Indianapolis Star and several other newspapers across the state.*



FRAN  
QUIGLEY

In the federal lawsuit of Doe and American Civil Liberties Union v. Ashcroft, Judge Victor Marrero of the Southern District of New York emphatically agreed with a conclusion reached by a growing and bipartisan group of lawmakers and citizens: The USA Patriot Act goes too far. In response to a lawsuit brought on behalf of an Internet service provider by the ACLU, the judge blocked the U.S. Department of Justice from issuing National Security Letters, perhaps the most frightening component of the notorious Patriot Act.

Saying that “democracy abhors undue secrecy,” Judge Marrero ruled that the constitutional guarantees of free speech and freedom from unreasonable search and seizure were violated by the Patriot Act provision giving the government unchecked authority to

obtain sensitive customer records from Internet service providers and other businesses without judicial oversight. These companies could be ordered to provide customer names, addresses and credit card data, along with details of their Internet use.

This particular Patriot Act provision is worded so broadly that it could effectively be used to obtain the names of customers of Web sites such Amazon.com, eBay, a political organization’s membership list, or even the names of sources that a journalist has contacted by e-mail. Even worse, the law’s “gag order” provision means any business whose records are seized by the government is barred from disclosing to anyone that the search had occurred.

The government power to use National Security Letters was vastly expanded by the Patriot Act. Where once the government could use this extraordinary power only when the person targeted was thought to be a

spy or terrorist, now the FBI can obtain information about anyone at all, as long as it says it believes the records sought are related to foreign intelligence or a terrorism investigation. But because no judge ever reviews the demand for private information, there is no guarantee that even that minimal requirement is met.

Responses to a Freedom of Information Act request by the ACLU showed that the government might have used the broad powers of this statute hundreds of times since 9/11.

It is important to realize that we can all be concerned about the Patriot Act and still be supportive of law enforcement officials. Federal agents help keep us and our families safe, sometimes at risk to their own safety, and we all should be grateful for their dedication. But, like all of us, federal officials can be wrong. Evidence of that fallibility can be found in the Evansville case of Tarek Al Basti and seven other Egyptian Americans who were

wrongfully arrested in the wake of 9/11, as well as recent wrongful terrorism allegations and arrests in cases from Florida to Oregon to Idaho.

When mistakes are made by government officials invested with the awesome power to search our private records and make arrests, innocent lives can be forever harmed, and the country's core principle of freedom suffers a devastating blow. That is why the drafters of the U.S. Constitution carefully created a democracy where no president or his police force has the ability to invade our privacy without obtaining approval from a court. That is

also why Judge Marrero struck down the Patriot Act's effort to erase judicial review of government invasion into our privacy.

Judge Marrero's decision is likely to be appealed, and Republican leadership in the U.S. House of Representatives is in the midst of a disturbing attempt to expand the Patriot Act.

**When mistakes are made by government officials invested with the awesome power to search our private records and make arrests, innocent lives can be forever harmed, and freedom suffers a devastating blow.**

There would be nothing less patriotic for Congress to do than to increase government's unchecked spying powers. The Patriot Act is part of an ignoble, if understandable, American tradition of temporarily sacrificing civil liberties in a fearful response to threats to our national security. We did it with the Alien and Sedition Acts in

the early 19th century, the suspension of habeas corpus during the Civil War, the internment of Japanese-Americans in World War II and the McCarthyism era of the Cold War. But all of those mistakes were eventually corrected when cooler heads prevailed, and we have reached that time of reflective wisdom in the aftermath of 9/11.

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## Ken Falk Honored With State Bar Association Public Service Award

ICLU Legal Director Ken Falk has been selected as the 2004 winner of the Indiana State Bar Association's Appellate Practice Section's public service award, named after the section's late chair David Hamacher. The award "recognizes high moral character and ethical standards, service to the community, and peacemaking qualities."

Ken came to the ICLU in 1996 after spending 19 years representing low-income clients at Legal Services Organization of Indianapolis and leads a legal



*Ken Falk*

team that accepts one of the most ambitious dockets of any ACLU affiliate in the country.

Ken, who is also an adjunct professor at the Indiana University School of Law—Indianapolis, has litigated cases at every level of the judicial system, up to and including the United States Supreme Court. On behalf of the ICLU, Ken won a 2000 decision in the case of *City of Indianapolis vs. Edmond*, where the Supreme Court struck down the City of Indianapolis' drug interdiction roadblocks.

# FAQ'S about ICLU

All civil libertarians know the experience of having to explain the notion of freedom of speech and religious expression to skeptical friends and family members. Beyond the basic issues of freedom, we've found that even some of our most loyal members have questions about the organization. Here are answers to some of the Frequently Asked Questions (FAQ's) about ICLU.



NORA  
HIATT

## **What exactly is the relationship between the ACLU and the ICLU?**

The ICLU is one of 50 state or regional affiliates of the American Civil Liberties Union. Our agreement with the ACLU is that most Indiana donations and some Indiana membership fees are shared with the ACLU, and we work with ACLU on some of our public education, litigation and legislative advocacy efforts.

## **Why does the ICLU share membership dues with the ACLU?**

There's always a challenge in balancing the financial needs of state and local chapters of a national organization. Because the ICLU is a relatively strong statewide chapter, we believe that one of our

responsibilities is providing much needed support for smaller and newer chapters around the country. After all, we all have the same goal: protecting civil liberties.

## **Why do I receive so many mailings from the ACLU?**

The ACLU has a larger budget to do mailings and telemarketing. Further, part of our agreement with the ACLU is that local chapters will focus their contact with members in the areas of education and chapter-related news and events.

But that doesn't mean that the Indiana Civil Liberties Union doesn't value your membership just as much. If you joined the ACLU as a result of one of those mail or phone solicitations, you're automatically a member of the ICLU as well, and we welcome your membership. Please continue to renew, since the ICLU doesn't

get a share of those dues until your third year in the organization. We at ICLU regularly update our website, [www.iclu.org](http://www.iclu.org), and have started a new monthly E-Newsletter to give you more regular information from your state organization. Please send a message to [j.ayers@iclu.org](mailto:j.ayers@iclu.org) if you would like to receive our E-Newsletter.

**When I give a gift to the ICLU, where does that money go?**

Annual gifts to the ICLU are shared with the national organization, to support its national litigation and education projects, and to strengthen smaller chapters. Unsolicited designated gifts to the Indiana Civil Liberties Foundation are not shared with the ACLU.

**I would like to include the ICLU in my will. How does that work?**

There are a number of simple and economical ways you can make a bequest to the ICLU. You can make the organization a beneficiary of an insurance policy or investment plan. You can amend your will to include the ICLU as a beneficiary. There are several other ways, depending on the complexity of your estate.

If you'd like a member of our staff or Foundation to sit down with you

to discuss specifics, please call Executive Director Fran Quigley (635-4059, ext 239) or send an e-mail to [fran.quigley@iclu.org](mailto:fran.quigley@iclu.org).

**Why do I hear more from the ACLU than the ICLU?**

The ICLU focuses its communication with members on regular newsletters outlining current education and litigation projects, updates on our website ([www.iclu.org](http://www.iclu.org)), as well as notices of large events such as our annual dinner. As noted above, the ACLU focuses more of its efforts on awareness and expanding the national base of membership, which benefits all civil libertarians.

**Why has my membership expired?**

One of the mailings we have agreed to let the ACLU send is routine notices about expiring memberships. Feel free to call (317-635-4059, ext. 233) or email Susan Smith ([susan.smith@iclu.org](mailto:susan.smith@iclu.org)) if you would like to know the status of your membership. You may also hear from the ACLU about your membership status. Remember that an Indiana resident's membership with the ACLU or ICLU automatically makes you a member of both organizations.

### **How does ICLU decide what cases to accept for representation?**

In the mail, on the phone and over the internet, we receive over 800 requests for assistance each month, and several volunteers help our legal staff sort through these requests. Of course, with a legal staff of just two full-time attorneys, we can only take on a small fraction of these cases. Our priorities are defending Hoosiers from government actions that violate the Bill of Rights, which leads us to have an

active docket of cases involving freedom of speech, free religious expression, equal protection and due process rights of children and people with disabilities, and prisoners' rights to be free of cruel and unusual punishment. Our current docket can be viewed on-line at <http://www.iclu.org/legal/curent.asp>.

Thanks for joining me as a volunteer supporter of ICLU!

*Nora Hiatt is Chair of the ICLU Foundation Board of Directors*

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## *How the ICLU Didn't Steal Christmas*

'Twas the season for falsehoods, apparently. Some conservative Christian groups, especially one called the Alliance Defense Fund, celebrated the holiday season by running a vigorous anti-ACLU campaign alleging that we are doing things like fighting to remove the phrase "Merry Christmas" from public schools, that we are denying Christians the use of public facilities that are open to other groups, and that we are preventing Christians from expressing their faith in the workplace.

Of course, these allegations are false and a clear attempt by these groups to try to raise money for themselves.

In case you are ever confronted with this propaganda and are moved to confuse the messenger with the facts, here are some recent examples of the many, many times the ACLU and ICLU have defended the rights of religious expression for all, including Christians:

- **The ICLU is currently defending the rights of a Baptist minister to preach his message on public streets in southern Indiana.**
- **The ACLU of Nebraska is defending a church facing eviction by the City of Lincoln.**
- **After the ACLU intervened on behalf of a Christian Valedictorian, a Michigan high school agreed to stop censoring religious yearbook entries.**
- **In 2003, the ACLU of Massachusetts defended students who were punished for distributing candy canes with religious messages.**
- **In 2002, the ACLU of Pennsylvania filed a discrimination lawsuit over denial of a zoning permit for an African American Baptist church.**

Tell whoever asks if the ICLU is trying to steal Christmas that we wish them happy holidays!

# Racial Profiling Project Launched

*ICLU Publishes Report in Indianapolis Newspapers*

In a report to be published in the Indianapolis newspapers Indianapolis Recorder and NUVO Newsweekly in late March, ICLU researchers Fran Quigley, Jacqueline Ayers and Elizabeth Stull will reveal the results of a multi-month study of potential racial bias in Indianapolis' felony drug arrests and prosecutions.



JACQUELINE  
AYERS

Although African Americans make up only 24% of the Marion County population and research shows that the level of drug use is equal across ethnic categories, the ICLU found that 71% of the felony drug defendants were African American. Several incidents of Indiana racial profiling are recounted in the report.

Charles Moose, former police chief of Portland, Oregon and Montgomery, Maryland, and famed for catching the "D.C. Snipers" told ICLU, "History shows us that there are three bad things that have happened to African Americans: the first was slavery, the second was discrimination,

and the third is bad policing."

ICLU's study follows detailed reviews of police agencies across the country that show that people of color are more likely to be stopped, detained and searched than are white Americans. "This accounts for why so many minority citizens can recount a story of being stopped for nothing more than the color of their skin," says Georgetown University law professor David Cole. "For all practical purposes, they simply do not enjoy the same constitutional protections that white citizens do."

Check our website, [www.iclu.org](http://www.iclu.org), at the end of March for the full report and updates on ICLU's latest steps to address racism in the criminal justice system.

## **Recent ICLU Litigation on Racial Profiling**

### **NAACP and David Smith vs. The City of Carmel (1997)**

A class action suit filed in U.S. District Court on behalf of the Indianapolis chapter of the NAACP, an African American Indiana State Trooper Sergeant and the class of racial minorities who had been unlawfully stopped in Carmel. Settlement included agreement by the City of Carmel to videotape traffic stops, enact written standards for lawful stops and conduct annual training on lawful traffic stops.

### **John Doe et al. vs. City of Indianapolis (1998)**

A class action suit filed in U.S. District Court on behalf of African American youth who had been stopped, searched, confined, photographed and questioned at the Circle Centre Mall by members of the

Indianapolis Police Department's Metro Gang Task Force. Settlement included expungement of any information obtained from the plaintiffs, and a promise by the defendants that "in creating criminal intelligence information, they will comply with all requirements of federal and state law and the Indiana and United States Constitutions."

### **Brian Gaddie vs. City of Indianapolis (1997)**

A suit filed in state court on behalf of a 28-year-old African American man who was arrested and handcuffed at gunpoint by Indianapolis Police Department officers in the Glendale Mall parking lot for allegedly stealing the new car he was sitting in. Mr. Gaddie owned the car and was picking up his mother from her job at L.S. Ayres. Settlement included an apology by the IPD officer.

## **ICLU's E-Newsletter Debuts!**

December saw the debut of the Indiana Civil Liberties Union's E-Letter. The E-Letter will be delivered free monthly with news about the defense of civil liberties, and will be supplemented by occasional alerts when breaking news happens about civil liberties issues. Since Carrying the Torch is published in print only a few times a year, the E-Letter is a great way to keep up on ICLU events and accomplishments.

If you or someone you know would like to receive updates and alerts from the ICLU, please e-mail ICLU Associate Director Jacqueline Ayers at [j.ayers@iclu.org](mailto:j.ayers@iclu.org).

# The 2005 General Assembly Session

*Highlights as of Early February*

BY JOAN LASKOWSKI, VICE PRESIDENT FOR LEGISLATION

**F**or a session that leaders say will be primarily focused on solving Indiana's economic problems, there still is an abundance of bills that impact civil liberties. So far, the ICLU has identified 104 bills that it will support, oppose or monitor.



JOAN  
LASKOWSKI

At this writing, we're in the early days of a session that need not end before April 29. There's not much action to report, but there are intimations of the direction of future action.

Gays and lesbians who want recognition of their committed relationships and women who want to control their reproductive lives seem particularly targeted.

Of the many state marriage resolutions filed, Senator Brandt Hershman's SJR 7 is the one that will move. It is the same as the resolution that was overwhelmingly passed by the Senate last year but that House Speaker Patrick Bauer steadfastly refused to bring to a vote. This year,

House Speaker Brian Bosma has reportedly promised that a vote will take place.

SJR 7 includes language barring the conferring of even "the legal incidents of marriage" (presumably, domestic partnership benefits) upon non-heterosexual couples. Such an amendment would be the only provision in the Indiana Constitution that would establish unfairness. It would require that committed couples, who have lived together a long time, learned to compromise, shared their finances, dealt with adversity, perhaps raised a family, would be denied the protections and benefits of marriage unless they were heterosexual. The harm to such couples, and to any children involved, is enormous. The harm to society,

which benefits from stable, long-lasting committed relationships, is severe.

The campaign against same-sex families is not confined to the marriage amendment. SB 541 would invalidate universities' domestic partner health benefits. And, at a time when there are many children needing loving homes, SB 580 and SB 585 would forbid same-sex couples from becoming adoptive or foster parents.

There is unusual variety in the bills restricting reproductive rights. As in previous years, there are bills with such strict and unnecessary structural requirements that only one or two abortion facilities in the state would qualify. There are many other bills harassing reproductive choice. HB 1675 requires a doctor performing an abortion on a woman who is at least 20 weeks pregnant to tell her that an anesthetic or other painkiller is available for the fetus and that

insurance may or may not cover the service. SB 76 requires offering a woman the chance to view an ultrasound image of the fetus and to hear the fetus's heartbeat before an abortion. HB 1101 and HB 1755 would put pregnant drug addicts at risk of incarceration rather than treatment.

SB 166 would require a fetal development curriculum in public schools. HB 1690 legislates viability at 20 weeks.

Senators Vi Simpson and Luke Kenley's SB 572 provides an alternative approach to reproductive decision-making. It would require the office of Medicaid policy and planning to apply for a demonstration waiver to extend Medicaid coverage to include family planning services.

Another intimation of future action are the bills the members are eager to sign onto as co-authors.

Representative Woody Burton's HB 1029, authorizing an "In God We Trust" license plate, has picked up 77 representatives

**At a time when there are many children needing loving homes, SB 580 and SB 585 would forbid same-sex couples from becoming adoptive or foster parents.**

as co-authors. Senator Michael Young's SB 332, requiring a daily opportunity for students to recite the Pledge of Allegiance and observe a moment of silence, now includes the names of 34 senators.

A further intimation is the speed of scheduling for a committee hearing. Representative Eric Turner's HB 1429 requires the department of correction to provide a transitional dormitory with faith-based programming at every maximum and medium security facility in the state. Although there is no evidence that religious programs are any more effective than any others, this measure would use public funds to impose perhaps unwanted religious messages on prisoners seeking any alternative to lockup. The bill has already gotten a hearing.

Jacqueline Ayers, our Associate Director, and our lobbyists Kathryn Williams and Paul Chase are working tirelessly on our entire range of issues, from

Criminal Justice to Voting Rights. But we need your help.

To read a summary and the ICLU position on a particular bill, and for a direct link to your state senator or representative, go to the ICLU website [www.iclu.org](http://www.iclu.org), click through Legislative → Legislative Action Center → Issues and Legislation → Current Legislation and then click on the name of the bill. A shortcut is to go to <http://capwiz.com/iclu/issues/bills/?type=ST> and then click on the name of the bill you want to write about.

For alerts on bills needing urgent action, if you've not already done so, join the other activists on the

ICLU's online Bill of Rights Lobby. (Write "Subscribe BORL" in the subject field and post to [joanlas@aol.com](mailto:joanlas@aol.com).)

Legislators hear constantly from those who are hostile to civil liberties. Now the voices of the defenders of freedom must command attention.

**Senator Michael Young's SB 332, requiring a daily opportunity for students to recite the Pledge of Allegiance and observe a moment of silence, now includes the names of 34 senators.**

# ICLU Litigation Update

*Defending Voting Rights, Rights of the Disabled and the Protection Against Cruel and Unusual Punishment*

ICLU's legal team of director Ken Falk, staff attorney Jacquelyn Suess and paralegal Kandy Kendall have kept up their usual frenetic pace of responding to the hundreds of complaints ICLU receives each week. For a full listing of ICLU's docket, check our website at [www.iclu.org/legal/current.asp](http://www.iclu.org/legal/current.asp).

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## *Voting Rights*

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In December, the ICLU filed suit on behalf of Bruce Jones, a father of two Indianapolis Public Schools students, who seeks the ability to vote on the question of whether the school district should be allowed to issue a bond to renovate several IPS schools.

Bruce Jones is a resident of the IPS school district and his children attend IPS schools. Mr. Jones is very interested in IPS and would like to participate in the remonstrance/petition process. But, under current Indiana law, Mr. Jones is blocked from participating because he is not a property owner. Mr. Jones rents his apartment.

"The interest of Mr. Jones in this election is understandable and certainly not unusual," said

Ken Falk. "Persons who are not property owners are nevertheless acutely interested in the outcome of the petition/remonstrance process for many reasons: they have students in IPS, they are renters who will have their rent increased because of the increase in property taxes occasioned by the need to pay for the bond, and they are citizens who recognize the importance of maximizing educational opportunity of youth."

Indiana law allows school corporations to impose taxes for the purpose of financing the renovation of school facilities. However, if 250 owners of real property within the school district file an application for a petition and remonstrance process, the school district may

not impose taxes or pay the debt service unless it prevails in a petition and remonstrance process. Indiana law limits participation in the remonstrance/petition process to owners of real property within the school district.

“This obvious discrimination between property owners, who are given the right to participate, and non-property owners, who cannot participate, is unconstitutional because it violates the equal protection clause of the United States Constitution,” said Falk.

The IPS remonstrance/petition process is complete, but the suit, filed in Marion County Superior Court, is ongoing.

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*Disability Rights*

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On behalf of a client who struggled to get access to justice while confined to a wheelchair, the ICLU has sued to have the Washington County Courthouse come into compliance with the requirements of the Americans with Disabilities Act.

There is no elevator in the Washington County courthouse, so a disabled person entering the basement of the courthouse via a ramp will see a number of door bells to ring to have the people in

the county offices above come down to help. But when our client wanted to do some research concerning a defendant he had sued in small claims court, the clerk’s office indicated that they could not help him.

Our client was unable to climb the stairs to get to the office and the files, and found the bathrooms on the basement floor are also not accessible for a person with disabilities. The case is the latest in a string of suits ICLU has filed to compel ADA compliance in Indiana counties.

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*Rights of Prisoners and the Mentally Ill*

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In January, the ICLU filed suits challenging conditions in the Indiana Department of Corrections’ notorious “SHU” and Pendleton Correctional Facility.

Conditions in the SHU in western Indiana’s Wabash Valley Correctional Facility, one of the state’s most restrictive prison units, have led four mentally ill inmates to kill themselves and others to hallucinate, rip chunks of flesh from their bodies, rub human excrement on themselves and attempt suicide. Human Rights Watch, a U.S.-based human rights monitoring organization, issued a 1997

report condemning conditions there, saying, “In some cases the suffering that results is so great that the treatment must be condemned as torture.”

Four mentally ill inmates in the unit have committed suicide since 2000. One hanged himself, another set himself on fire, a third cut his wrists and throat, and the fourth swallowed a cloth and choked to death. “Locking up prisoners with mental illness in small, windowless cells is psychological torture,” said Ken Falk. “Confinement for lengthy periods of time in 24-hour isolation would compromise even a healthy person’s sanity.”

The ICLU also sued the Indiana Department of Correction earlier in January, alleging that conditions in the frequent lockdowns at the Pendleton Correctional Facility amount to unconstitutionally cruel and unusual punishment.

For almost five months this spring and summer, over 400 prisoners on I-Complex at the Pendleton Correctional Facility were confined to 12 foot by 8

foot cells, locked behind metal doors and forced to share the small cell area with another inmate. The prisoners were blocked from leaving their cells at any time except for 3 shower breaks a week, each lasting 10 minutes.

The prisoners could not exercise during this period, nor during another one-week lockdown that occurred this December. They lived with their toilets six to eight inches from their bed, with no privacy curtains or cleaning supplies allowed.

**“The fact that these men committed a criminal offense is not an excuse for the State of Indiana to treat them in a way that most health departments would find unacceptable for dogs.”**

*—Ken Falk on conditions in the Pendleton Correctional Facility*

“The fact that these men committed a criminal offense is not an excuse for the State of Indiana to treat them in a way that most health departments would find unacceptable for dogs,” Falk said.

# “Glass House” Hypocrisy in U.S. Treatment of Guantanamo Prisoners

*The following column was published in late 2004 in The Indianapolis Star and other state newspapers.*



FRAN  
QUIGLEY

It was a dubious distinction for Indiana. Late last year, the day after news that International Red Cross inspectors reported that detainees at the U.S. Naval base in Guantanamo were subjected to torture, Indianapolis was the site of an example of “glass house” diplomacy by the Bush administration. Gen. Richard Myers, chairman of the Joint Chiefs of Staff, spoke at a news conference before a scheduled speech to the Economic Club of Indianapolis. Myers denied the U.S. has engaged in torture. But the general also said, “Let’s not forget the kind of people we have down there (in Guantanamo). These are the people that don’t know any moral values.”

Moral values? There was more than a little irony in the nation’s top military official invoking moral superiority in response to

the latest evidence that, when it comes to the treatment of prisoners, President Bush’s team has little concern about either adherence to the rule of law or the avoidance of hypocrisy. As has been too often the case in its prosecution of the war on terror, the Bush administration hurls stones at enemies while taking shelter in a glass house created by its own dubious morality and credibility.

The Red Cross findings, which include reference to prisoner beatings, come on the heels of a series of disturbing events, including:

- Pentagon complicity in war crimes committed against Iraqi prisoners at Abu Ghraib prison.
- Bush officials transferring prisoners to countries who used brutal torture methods to obtain intelligence sought by the U.S., and Justice Department memos advising the President on how to

ignore international agreements and federal law prohibiting torture. Those memos include one authored by the new Attorney General Alberto Gonzales referring to the Geneva Conventions as “quaint” and “obsolete.”

Those memos actually may explain General Myers’ insistence here in Indianapolis that “we certainly don’t think (the Guantanamo treatment) is torture.” The lawyers for the President have made the surreal and self-serving claim, contradicted by decades of explicit law, that inflicting extreme but impermanent pain does not amount to torture. Under the standard proposed by Bush’s lawyers, holding a prisoner’s head in a bucket of water to the brink of drowning, mock executions and food deprivation don’t meet the definition of torture.

Through the Geneva Conventions, federal anti-torture law and our own proud domestic legacy of conducting investigations and detentions with due process of law, the United States has committed to humane treatment for all captured soldiers or criminals, no

matter what their alleged moral failings.

Beyond the interests of mere due process and standards of decent behavior, mistreatment of prisoners is against the U.S. self-interest. Former American POW’s have argued passionately that the U.S. not participate in torture of captured prisoners, since the conventions against torture are our own captured soldiers’ best protection against abuse.

Especially since President Bush has explicitly cited Iraq’s torture chambers as justification for our invasion of that country, U.S. credibility is undercut whenever our leaders ignore the standards we insist our global neighbors adhere to. News that the self-proclaimed defender of freedom operates his own off-shore torture facility can’t help the cause of our exposed soldiers in Iraq or Afghanistan. Americans need to demand that the Bush administration hold itself to our own standards of justice and decency, and not hide behind excuses that the “moral values’ of the victims may somehow justify war crimes committed against them.

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