

Carrying the Torch—Fall 2004

Table of Contents

An interview with Bob Barr	2
“What kind of American are you?”	6
ACLU President to speak in Indianapolis	8
Student and Membership Conference	9
Bill of Rights fund-raising campaign	10
Legislative Highlights	11
Litigation Highlights	12
Join the Torchbearers’ Society	15

The *Torch* gets a makeover

As you may have noticed by now, *Carrying the Torch* has undergone a makeover courtesy of our new volunteer Andy Fry, a former award-winning designer for Indianapolis’ NUVO Newsweekly and now a co-director of Antfarm Design. The new format is less expensive for ICLU, is much more environmentally friendly, and has the feel and look of a newsmagazine. We hope you’ll like the new look as much as we do!

Carrying the Torch is published quarterly by the Indiana Civil Liberties Union Foundation, Inc., 1031 East Washington Street, Indianapolis, Indiana, 46202, (317)635-4059. info@iclu.org

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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Civil liberties are the bedrock of conservatism

An interview with Bob Barr

BY MARC D. ALLAN

Bob Barr knows what you're thinking: It seems incongruous that a red-meat conservative like him would be working as a consultant for the American Civil Liberties Union.

He is, after all, the former congressman who authored the Defense of Marriage Act defining marriage as the union of a man and a woman. He is a National Rifle Association board member. And he's still on the warpath against Bill Clinton, roughly six years after he helped lead the Republican effort to impeach the former president over the Lewinsky scandal. (His new book is *The Meaning of Is: The Squandered Impeachment and Wasted Legacy of William Jefferson Clinton.*)

But as Barr will tell you, in this interview and when he delivers the keystone speech at the ICLU's annual dinner Oct. 9, civil liberties are the bedrock of true conservatism. Government should be neither too big nor too powerful. "I wish more of my conservative colleagues understood that," he said in a telephone interview with *Carrying the Torch*. "Very few of them seem to."

Barr said his work with the ACLU really began as a freshman congressman in 1995 on issues such as the anti-terrorism act proposed following the Oklahoma City bombing and issues that came before the House Judiciary Committee. These days, his main focus is the Patriot Act, something he voted

for but says he wouldn't do again. "I, certainly, am not arguing that the government shouldn't, in limited circumstances where it can justify it, have extraordinary powers," Barr said. "But not as a matter of course, and not without justifying it and not without having to answer before a court."

He praises the ACLU for educating people about the contents of the Patriot Act, an effort that has resulted in more than 300 local governments around the country going on record either against the law or in favor of some limitations.

Give Barr a chance and he's happy to do his own educating. "Law enforcement did largely have powers to do things that it now can do under the Patriot Act," he said. "Prior to the Patriot Act, it simply had to justify them. Their use was very limited, but they did have the power they needed. With regard to [suspected 9/11 hijacker Zacharias] Moussaoui, the government could have applied for a warrant to gain access to his computer and they almost certainly would have been allowed to. But they made a bad decision not to.

"Yet the administration says we couldn't have done that before the Patriot Act and therefore we have to



Former Congressman Bob Barr is an avowed conservative whose leadership in privacy matters has led New York Times columnist William Safire to call Barr “Mr. Privacy.”

have this power. And if anybody supports limiting that power, they’re helping the terrorists. It’s important for the public to understand that that’s not the case.”

Here’s more of what the former Georgia congressman had to say:

Q: I’m sure there are people who would think of this as a strange-bed-fellows relationship. Is it?

A: It certainly appears to be on the surface. But what’s happened over the last couple of decades—and it seems to have accelerated greatly since 9/11—is, government has become so big, so powerful and so hungry for more power that it’s sort of compressed the ideological spectrum so that the right and the left—the true right and the true left—have come together to try to protect what little privacy and civil liberty we have left. That has, in large measure, accounted for the coming together of the right and the left on these issues, particularly since 9/11.

Q: Your fellow representatives in Congress must have known that you were involved with the ACLU. Did they think that was odd? Did you get grief over that?

A: No. They may have thought that, some of them, but it certainly wasn’t something that was relayed to me. I think they probably realize early on that it wouldn’t have mattered if that had relayed it to me or not. It certainly wasn’t going to change the way I operate or the allies I sought in trying to protect our liberties. And I think it’s important to realize that as with any organization, I don’t agree with everything the ACLU does, and vice versa. But it’s a sign of real maturity on the part of everyone involved that organizations and individuals are willing to put aside differences to work together with allies on key issues to try to protect our liberties. We’ll leave these other issues to fight another day, but not let our disagreement on certain issues stand in the way of working together on those issues in which we do agree.

Q: Your bottom line on this, I take it, is that government is getting too much power.

A: It has too much and it’s getting even worse. It just seems to have an insatiable appetite for power.

Q: Talk about the Patriot Act. What do you think of that?

A: It was a good idea, but it simply sweeps far too broadly. And the way it’s been used in the years since 9/11 really illustrates that our fears at the time—even though I wound up voting for it, something I would not do if I had that vote to cast over again—were legitimate. It’s been used in cases that have nothing whatsoever to do with terrorism. It’s being used as part

of a broad range of powers the government is seeking. When you look at it in conjunction with these other things, such as CAPPs 2 [the traveler-surveillance system] and TIA [Total Information Awareness] Matrix [a collection of information about every American citizen], it takes on a whole different character that's even more dangerous.

What we're trying to do, those of us who are concerned about this, is simply go back and say, Let's make some adjustments and try to get this thing back to what it was intended to be in the words of the administration, and that is a piece of legislation that would be used to fight terrorism. And to put back into the equation at least some notion of judicial oversight, which has been largely taken out.

ICLU Student-Membership Conference and Annual Dinner

Featuring keynote speaker former Congressman Bob Barr and an all-day conference with plenary sessions on "Church and State" and "Balancing National Security and Civil Liberties," with workshops on the USA Patriot Act, Religion in Public Policy, Gay Rights & Marriage, and much more.

Where: Union Station Crowne Plaza Hotel, Indianapolis

When: Saturday, October 9.

Conference 8:30 a.m. to 6:30 p.m.,

Reception 6 p.m. to 7 p.m., Dinner

Seating 7:30 p.m.

Tickets: \$35 for conference only, \$75 for dinner only, \$150 for dinner and reception, \$175 all day

For more information, contact Susan Smith, (317) 635-4059, ext. 233, susan.smith@iclu.org

Q: So if you were rewriting the law, how would you rewrite it?

A: I would start where the Safe Act does, and that is to place limitations on the use of the extraordinary powers of the Patriot Act, such as your Section 215, which makes it much easier for the government to secure access to evidence against individuals without linking the particular individual to suspected criminal activity—the so-called library provision. Place limitations on the scope of sneak-and-peek provisions. And place limitations on the broad powers to secure information via administrative subpoenas or national security letters that the Patriot Act provides.

Q: Did you vote for it because you got swept up in the 9/11 aftermath?

A: No. I voted for it because I listened too much to the supporters of it in the administration and in the Congress and based my support on assurances that it would be used in a much more limited way than it has been. And also because none of us fully realized the extent of government power that would be sought after 9/11, such as the CAPPs 2 and the TIA Matrix. Had I known it was going to be not just the Patriot Act but the Patriot Act in conjunction with these other things, I would have taken a much, much dimmer view of the Patriot Act itself. It's also been very disappointing, in the years since the Patriot Act was enacted, the lack of forthrightness on the part of the administration to explain its use, to defend it properly and answer questions about it.

Q: I'm sure you've heard the argument about the Patriot Act that goes, "I have nothing to hide so I don't care if government comes into my home unannounced." How do you respond to that?

A: People certainly should care. If they value freedom, they should care because privacy is the essence of freedom. I frequently quote Ayn Rand on that issue, that the freedom to be left alone, the freedom to be able to make your own decisions and have your own property is the foundation of civilization itself. It's very naïve for them to take that attitude, although a lot of them do nowadays.

Who's to judge whether you've done something wrong? In your mind, you may not have, but in the mind of some government bureaucrat or government law-enforcement official, they may think otherwise. That's a problem. Information can be misinterpreted. Information can be wrong. And if government has the absolute power to gather evidence and information on you and then interpret it as it will, mistakes or otherwise, you certainly do have something to worry about, even if in your mind you may have done nothing wrong.

Q: The head of the Indiana Civil Liberties Union, Fran Quigley, has said that civil liberties are, at their essence, a conservative issue, that there's nothing more conservative than protecting the Constitution. Would you agree?

A: I would definitely agree, and simply say that I wish more of my conservative colleagues understood that. Very few of them seem to.

Q: Why do you think that is?

A: Part of it is, they get wrapped up in so many other issues in the Congress and in the administration. They don't want to make waves, they want to please their colleagues, they want to please a Republican president and support a Republican president. I think they also underestimate the power of government and take a rather

Bob Barr on the Ten Commandments

Torch: Are you in agreement with the ACLU about things like the posting of the Ten Commandments in public buildings?

Bob Barr: No. In some instances, yes. I'm not trying to waffle on it. Generally speaking, I find I have no problem with a judge or public official having a display of the Ten Commandments. In some instances, that can go overboard, such as in Alabama. I have no problem with a reasonable posting of the commandments in a judge's office. But it can be taken to such an extreme that I do think it presents some public policy issues.

narrow historic view and don't realize that the powers they give to an administration they support are going to be used by future administrations that they don't support. These things can come back to bite them.

Q: I wonder if it's because it's a hard issue to explain to people. When you say you want to fight terrorism, everybody is for that. But not everybody will understand the nuances, as you explained it, with regard to searching your house.

A: That definitely is part of the problem. It does take a little bit of thought, a little bit of time to explain and link the dots together so that people understand that we're talking about something here that's very important to them and it does affect them. It takes a little bit of time to do that, and time is something that a lot of people don't want to devote to these fundamental constitutional issues nowadays.

Marc Allan is a proud member of the ICLU.

“What kind of American are you?”

ICLU members are real patriots

BY FRAN QUIGLEY

Note: One of the many pleasant experiences I have enjoyed as the new executive director is reaping the benefits of ICLU's statewide reputation for integrity and honesty. Because of that reputation, the following article is one of several I have been able to place on ICLU's behalf in newspapers throughout the state. Other articles from ICLU can be found at our Web site, www.iclu.org.



FRAN
QUIGLEY

Once I became the new executive director of the Indiana Civil Liberties Union, I quickly grew accustomed to occasional bouts of widespread unpopularity. Controversy comes with the job description, of course, because our mission to protect the Bill of Rights leads the ICLU to defend those who are at risk of being trampled by a tyranny of the majority.

When we stand up for Hoosiers with dissenting political or religious views, or when we stand up to protect those whose poverty or illness leaves them without political power, ICLU confronts the awesome power of government.

And when we oppose the President or the Governor or the General Assembly, my phone rings and my e-mail in-box fills up with messages from angry Hoosiers asking me variants of the same question: “What kind of American are you?” It is a question that seems to be asked more often at times like these, when our country is at war. For dissenters and their defenders, our patriotism is at issue.

Well, at the ICLU, we have an answer to that question.

We are patriots. Patriots think all Americans should be free to express their dissent from the foreign policy pursued by the President, even during wartime. Patriots think we should preserve our precious rights to freedom and privacy, even in times of real or perceived national emergency. Patriots think international agreements like the Geneva Conventions are to be honored, even if they seem temporarily inconvenient to our short-term interests.

Real patriots stand up in the face of popular opinion. At the ICLU, we are the kind of Americans who care enough about this country to ask it to change and who are optimistic enough about this country to think it will. We are optimistic about the country in part because of the principles of the Bill of Rights that define us as a free people.

What kind of Americans are we? We are the kind of Americans who believe in the 1st Amendment to the United States Constitution, which guarantees the right to freedom of speech, to peaceable assembly and to petition the government for redress. So we are proud that the ICLU is going to court

with an Evansville man, who was actually arrested and thrown in jail simply for holding a protest sign outside an appearance by Vice President Cheney.

We are the kind of Americans who believe in the 4th Amendment to the United States Constitution, which protects us from unreasonable search and seizure. So we are proud that the ICLU is representing young peace activists who seek justice after their home and meeting place were searched by Indianapolis police officials, without a warrant, in the course of a multi-day attempt to intimidate and suppress protests at last summer's meeting of the National Governors Association.

We are the kind of Americans who believe in the 5th Amendment right to due process of law, and the 6th Amendment right to assistance of counsel. So we are proud that the ACLU has supported the Supreme Court challenges to President Bush's unilateral decisions to hold U.S. citizens in an indefinite legal limbo called "unlawful combatant" status without charges or right to trial and to detain hundreds of people in Guantanamo Bay without charges, formal rights or access to lawyers.

We are the kind of Americans who believe in the principle articulated in the 8th Amendment right to be free from cruel and unusual punishment. So we are proud that the ACLU has filed suit against the Bush administration for unlawfully denying requests for information and suppressing evidence of the abuses we now know occurred in the Abu Ghraib prison in Iraq.

We are the kind of Americans who believe in the 14th Amendment right to equal protection under the laws. So we are proud that the ICLU has stood up in opposition to the post-9/11 racial profiling that resulted in hundreds of Muslim men being rounded up and jailed without charges, and most of them then deported. Several people from Evansville, including U.S. citizens, were among those swept up in the discriminatory raids.

A joke going around says that there are three good reasons why Iraq, in the process of recreating its government, should just copy the U.S. Constitution. Reason number one is that some very wise people wrote the document. Reason number two is that the document has served the U.S. well for more than 200 years. And reason number three is that the Iraqis might as well have our Constitution, since the current administration doesn't use it anymore anyway.

That's a good joke, but not true. At least not if we at the ICLU can help it.

Because we are the kind of Americans who will go out behind John Ashcroft's office, dig through the trash bin and retrieve the battered and soiled Bill of Rights. And when we retrieve it, we will hold it high as we use it to restore our country to the free and just nation it was designed to be.

Fran Quigley is the executive director of the Indiana Civil Liberties Union, www.iclu.org.

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ACLU President and New York Law School Professor Nadine Strossen

ACLU President Nadine Strossen to speak in Indianapolis

Nov. 16 debate focuses on national security and civil liberties

The Indiana Civil Liberties Union, along with the Jewish Community Relations Council, Butler University and the Indiana University School of Law-Indianapolis, will host a program on the topic of “Balancing Civil Liberties and National Security in an Age of Terror” at 7 p.m. Tuesday, Nov. 16. Nadine Strossen, president of the ACLU and professor of law at New York Law School, and Herb London, president of the Hudson Institute, will debate the topic.

“Justice means that each and every right and liberty in our Constitution must be as strong in a time a crisis as in a time of peace,” Strossen wrote shortly after 9/11. “We cannot sacrifice equality

or privacy or basic checks and balances without eroding justice for all.”

The free event will be held in the Reilly Room of Atherton Union on Butler University’s northside Indianapolis campus. Professor Strossen and Dr. London will also pen competing essays in an issue of *The Indianapolis Star* preceding the forum.

“The timing is ideal for a public and informed discussion of this topic,” says ICLU executive director Fran Quigley. “Especially in the weeks after the election and in the midst of continuing debate over the Patriot Act, ‘enemy combatants’ designation and Guantanamo Bay detentions, we welcome Nadine to town to make the case for why the ACLU is more important than ever.”

ICLU second annual Student and Membership Conference Oct. 9

Stellar lineup of speakers and panelists to precede annual dinner

The ICLU is combining our fall student conference with our annual dinner to create a must-attend event open to all ICLU members and the community at large.

Current and former members of Congress and the state General Assembly, representatives from think tanks and universities, along with the ICLU's vaunted legal team and their clients, will highlight the day's proceedings. Here is the still-evolving lineup for Saturday, Oct. 9. To register for the low cost of \$35, contact Susan Smith at (317) 635-4059, ext. 233.

8:30 - 9 a.m. Registration

9 - 9:45 a.m. Plenary session:
"Maintaining the Separation of Church & State"—ICLU Legal Director Ken Falk

10 - 10:45 a.m. Panel discussions:

- Gay Rights and Marriage—Plaintiffs in the ICLU right-to-marry case of *Morrison v. Sadler*; members of Indiana General Assembly opposed to same-sex marriage invited
- Religion in Public Policy—Sheila Kennedy, professor, IU School of Public and Environmental Affairs; Indiana Rep. John Day; Reba Wooden, coordinator, Humanist Friendship Group of Central Indiana
- Education and Religion—Jacquelyn Suess, ICLU staff attorney; Laura McGinley, successful complainant in Avon High School graduation prayer case; attorney Bill Wilson

11 - 11:45 a.m. Panel discussions
(second offering of those listed above)

Noon - 1:15 p.m. Lunch and address by U.S. Rep. Julia Carson (D-Indianapolis)

1:30 - 2:15 p.m. Plenary session:
"Balancing National Security and Civil Liberties"—Sagamore Institute Senior Fellow John Clark

2:45 - 3:30 p.m. Panel discussions:

- The USA Patriot Act—Former U.S. Congressman Bob Barr; Kent Eastwood, prosecutor, Marion County Drug Court
- Search, Seizure and Privacy Rights—IU School of Law Professor Novella Nedeff; plaintiffs in the ICLU cases involving the suppression of activism by Solidarity Bookstore Collective; representative from Marion County Prosecutor's office (invited)

- Prisoner Rights—IU School of Law Professor Mary Mitchell; Randy Koester of the Indiana Department of Correction; law student and military combat veteran Mark Nicholson

3:45 - 4:30 p.m. Panel discussions
(second offering of those listed above)

5 - 6:30 p.m. Organizational Workshop—ICLU student members; Matt Bowles, American Civil Liberties Union post-9/11 coordinator

Bill of Rights fund-raising campaign kicks off

It is fall again, which means that the ICLU is kicking off our annual Bill of Rights fund-raising campaign.



HAMID
KASHANI



NORA
HIATT

As you can see in the pages of this and every issue of the *Torch*, and on our Web site every day, we have every right to be proud of our work at the ICLU. Our legal team brings successful constitutional challenges to forums up to and including the U.S. Supreme Court. Our staff and volunteers provide vital public education to students and community groups about our constitutional rights.

We live in the era of the USA Patriot Act and unprecedented prospects for technological surveillance into private lives. This is a critical time in our

country's history to stand up for the civil liberties that define our national character, so we are proud to be the volunteer leaders of the ICLU.

Please remember ICLU in your annual giving. You can use the envelope included in this issue of *Carrying the Torch*, or you can make your gift on our Web site, www.iclu.org.

The important work of defending the constitution does not happen without generous contributions. The ICLU's efforts on behalf of freedom and liberty would not be possible without your donation, and we can't continue this vital work without your continued support.

Thank you so much for being there when we need you.

Hamid Kashani is the president of ICLU and Nora Hiatt is chair of the ICLU Foundation

Jacqueline Ayers is ICLU's new associate director

Jacqueline Ayers, ICLU's new associate director, brings an impressive array of skills and experiences to the ICLU. A May 2004 graduate of the Indiana University School of Law-Indianapolis, Jacqueline clerked for the Equal Employment Opportunity Commission and participated in an internship in Ghana during her law school years, as well as serving as the vice president for the Black Law Students Association.

Jacqueline also served as a legislative assistant with the Hoosier State Press Association for two sessions of the Indiana General Assembly. She will focus on ICLU's community education and outreach, including chapter development and legislative advocacy.

Governor Kernan makes history by commuting death sentence

The Indiana General Assembly has not been in session since early spring, but Indiana civil libertarians have not been able to rest. A historic death penalty decision, the unrelenting federal attack on privacy rights and the continued debate over same-sex marriage demand vigilance in the preservation of civil liberties.

Acting on the recommendation of the Indiana Parole Board, which unanimously voted to spare Darnell Williams' life, Governor Joe Kernan in July became the first Indiana governor to stop an execution in nearly a half-century. The Parole Board voted 5-0 to recommend that Kernan grant Williams' request to commute his sentence to life in prison without parole for a 1986 double-murder. Kernan did so on July 2, seven days before Williams' scheduled execution.

It was the first time clemency was granted in an Indiana capital case since the death penalty was reinstated in 1977. Evidence that Williams was not the triggerman was so compelling that the trial prosecutor and six jurors urged his life be spared, yet the Indiana Supreme Court approved Williams' execution. But the ICLU, the ACLU and a variety of death penalty opponents vigorously urged Governor Kernan to spare Williams' life.

A growing element of ICLU advocacy

is the ability of visitors to our Web site (www.iclu.org) to send messages directly to lawmakers within seconds. Visitors to the site can send Governor Kernan a thank-you message for sparing the life of Darnell Williams, a don't-you-dare message to the President and congressional

Visitors to our Web site (www.iclu.org) can send messages directly to lawmakers within seconds.

representatives about Patriot Act II, and an expression of appreciation to Indiana House Speaker John Gregg for standing up to politically motivated forces of bigotry by refusing to allow the passage of a constitutional amendment banning same-sex marriage.

From January to the middle of August this year, more than 1,400 messages have been sent to lawmakers from the ICLU Web site, already exceeding the total sent in all of 2003. Lawmakers and their staff confirm that this type of constituent feedback really works. Be sure to check the site for more legislative alert opportunities, or e-mail ICLU Vice President for Legislation Joan Laskowski (joanlas@aol.com) to receive direct e-mails of legislative alerts.

Litigation Highlights

The Indiana Civil Liberties Union maintains an active and ambitious in-house litigation docket, more so than nearly any ACLU affiliate in the country. The key role that ICLU Legal Director Ken Falk and staff attorneys Jacquelyn Bowie-Suess and Katy Yang-Page play in the preservation of justice in Indiana is well-demonstrated by a series of case developments since the last issue of Carrying the Torch. (For regular updates on ICLU litigation, be sure to check www.iclu.org.)

ICLU Wins Court Rulings in School Fees Case

The Indiana Civil Liberties Union won an appellate court victory May 28 in a case that could significantly change Indiana practices on school funding.

The Indiana Court of Appeals struck down an annual fee charged by the Evansville-Vanderburgh School Corporation to all students, including some ICLU clients whose families had such limited income that they were eligible for free school lunch programs. The annual fee revenue was put in EVSC's general fund and was used to fund such things as school nurses, counselors and alternative education programs.

Writing for the majority in the case of *Nagy v. Evansville-Vanderburgh School Corporation*, Judge Patrick Sullivan agreed with the ICLU's argument that the fee violated Article 8 Section 1 of the Indiana Constitution, which guarantees public schools "wherein tuition shall be without charge."

The Court held that "tuition" in Article 8 Section 1 meant "the services of a teacher or instruction" as well as "those functions and services which are by their very nature essential to teaching." In its ruling, the Court questioned a 1974 case which had held that it was constitutional to charge textbook

rental fees. It was not necessary to overrule this earlier case to rule in ICLU's favor in the Nagy case, but the Court clearly indicates the textbook fee case was wrongly decided. Indiana is one of only 10 states that require student textbook fees, according to the Indiana Department of Education, and many lawmakers and educators have criticized the practice over the years.

The EVSC asked the Indiana Supreme Court to review the case, which may lead to a decision on the constitutionality of the controversial textbook fees as well.

ICLU Suit Strikes Down State Curfew Law—Again

On July 23, U.S. District Court Judge John Tinder granted the ICLU's request for a preliminary injunction striking down Indiana's juvenile curfew law. The judge ruled the law that bans most minors from staying out past 11 p.m. on weeknights and 1 a.m. on weekends is unconstitutional because it violates parents' rights to make decisions about their children.

Although Indiana's curfew law contains exemptions for minors who are out because they are working or engaged in other protected activities, there is no exception for a minor who is out with parental permission.

“It is parents who are in position to make the best decisions,” Judge Tinder wrote, saying those decisions include whether their minor children are mature and responsible enough to be out during curfew hours. Judge Tinder’s decision also noted that Indianapolis Police Department statistics show that curfew hours are not a peak time for crime.

This decision marks the third time a court has struck down Indiana’s curfew law since 2000. This case challenges the curfew law passed by the Indiana General Assembly in March 2004 after the 7th Circuit Court of Appeals struck down an earlier revision.

The ICLU’s clients in the current case are the mother and sister of Colin Hodgkins, who became the subject of the initial curfew lawsuit after he was arrested in 1999 as he left a Steak n Shake restaurant three minutes after curfew. Hodgkins had been out after curfew with parental permission, a situation that occurs routinely.

“It is a fundamental right of a parent to say it’s OK to go to the prom or walk the dog,” Ken Falk, ICLU’s legal director, told the *Indianapolis Star*.

Indianapolis officials have indicated they will appeal the decision and intend to continue to enforce the city’s curfew ordinance, which was not the subject of the court ruling and which includes an exception for minors out during curfew with parental permission.

The ICLU owes a debt of gratitude to Foundation Board member Tom Miller and the Hodgkins family, whose diligence and generosity has allowed us to continue the unusually lengthy and frustrating process of re-litigating the curfew issue time and again.

*ICLU Files Suits to Protect
Free Speech Rights of Baptist Preacher
and Muncie Camper*

In a pair of lawsuits that demonstrate the ICLU’s commitment to protecting the free speech rights of all types of messengers, the ICLU has filed actions on behalf of a southern Indiana Baptist preacher and a Muncie camper who would like to display a Confederate flag at his campsite leased from the City of Muncie.

In the first case, on behalf of Pastor John Lewis and the Old Paths Baptist Church, the Indiana Civil Liberties Union filed suit against the City of Scottsburg to stop city officials’ unconstitutional limitations of the church members’ rights to free speech.

In the suit filed in July in U.S. District Court for the Southern District of Indiana, the ICLU states Pastor Lewis and members of the church he heads, the Old Paths Baptist Church, have been repeatedly threatened with arrest and or citation by the Scottsburg Police Department. Members of the church, including Pastor Lewis, periodically demonstrate in Indiana towns concerning various subjects, including abortion issues.

Scottsburg police told Pastor Lewis they are concerned about the possible reaction of listeners who hear plaintiffs’ message, which is delivered on city sidewalks through megaphones providing moderately amplified sounds that are no louder than passing traffic.

“Pastor Lewis and his church members were ordered to stop, not because there was some ordinance they were violating or that the noise rose to the level of disorderly conduct, but because the police were concerned that the persons hearing the message might react against it,” said

ICLU Legal Director Ken Falk. "This appears to be a classic case of a 'heckler's veto,' which is unconstitutional."

In the second lawsuit, filed in August, ICLU represents Tommy Wallace and others who lease campsites from the City of Muncie but were told their Confederate, Native American and Dale Earnhardt flags were not acceptable, even as the Mayor of Muncie told media representatives and campers that U.S. flags and POW/MIA flags were allowed. The official policy violates the First Amendment in that the city is effectively censoring viewpoints and messages the local government deems unacceptable. At press time for *Carrying the Torch*, the mayor of Muncie has changed his order and is now banning all flags, ordering the removal of U.S. flags from dozens of campsites.

The ICLU has consistently opposed racism and defended the reproductive rights of women in the courts, the General Assembly and the Statehouse. But muzzling a contrary view is not the American way. "Whether we agree with all of the statements of Pastor Lewis and his followers, or the message many people take from the Confederate flag, is irrelevant," said ICLU executive director Fran Quigley. "The ICLU is dedicated to preserving the rights of religious expression and free speech for all Hoosiers."

ICLU Files Suits to Protect Foster Children

By taking quick action in a Marion County Juvenile Court case entitled *In re the H Children*, the ICLU prevented a dangerous and chaotic scenario that would have clogged Indiana's child welfare system and possibly jeopardized the safety of thousands of vulnerable Hoosier children.

On behalf of a class of all foster children in Indiana, the ICLU sought to enjoin portions of a new state law, HEA 1194, which was scheduled to go into effect on July 1. Although portions of the new law required that the child welfare authorities obtain a federal background check before children removed from their homes could be placed with relatives, the FBI interprets federal law as prohibiting it from disclosing this information for this purpose.

As a result, without a preliminary injunction, as of July 1 it would have been impossible to place foster children with relatives, the most common and often best placement option. Once it became clear that the law required an impossibility, the State of Indiana agreed to a preliminary injunction, which was entered on June 30. The injunction will remain in effect until the General Assembly fixes the law or July 1, 2005, whichever comes first.



Ken Falk

**ICLU Legal
Director Ken Falk
on Pastor Lewis:
"This appears to
be a classic case of
a 'heckler's
veto,' which is
unconstitutional."**

Invest in Liberty

Please Join the
Torchbearers' Society



CRIS
HALTER

Last year, you probably received a bright yellow brochure inviting you to join the Torchbearers' Society. (If you did not get a brochure and would like one, all you have to

do is notify the ICLU office.)

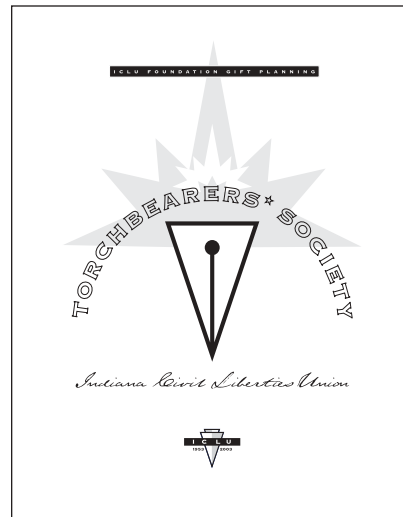
The members of the Torchbearers' Society are those dedicated freedom lovers who have remembered the ICLU Foundation in their will, named the ICLU Foundation as the beneficiary of an insurance policy or an individual retirement account or otherwise made the ICLU Foundation part of their financial or estate planning.

It is my privilege to chair the ICLU's planned giving committee, which developed and oversees the Torchbearers' Society. And I am happy to report that already we have learned that many of you have made provisions for the ICLU Foundation in your financial or estate plans.

This leaves me with two tasks.

The first is to say thank you to the folks who have remembered the ICLU Foundation in their estate planning. Your generosity will make it possible for the ICLU to bear liberty's torch for many years to come. We are grateful beyond words for your support. Thank you.

The second task is to urge those of you who have made the ICLU Foundation a



part of your estate or financial plans but have not yet notified the ICLU of the fact to do so. When you stand up as a member of the Torchbearers' Society, you send a strong signal that, even in these troubled times, the Bill of Rights will be defended.

And if you have not made the ICLU Foundation a part of your estate or financial plans but are interested in doing so—and becoming a member of the Torchbearers' Society—please contact the ICLU's Planned Giving Committee at:

ICLU Planned Giving
1031 E. Washington Street
Indianapolis, IN 46202
(317) 635-4059, ext. 239
torchbearers@iclu.org

Your support will allow the ICLU to keep liberty's torch high so that its flame may light the path for future generations. There are few better legacies than that.

Cris Halter is a partner at Halter-Ferguson Financial, Inc., a member of the ICLU Foundation Board and chair of the Planned Giving Committee.

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