Bonus

From The American Legion, May 2005

A cross to honor fallen World War I veterans is covered up in the Mojave National Preserve after legal pressure from the ACLU.
Christine Wenzel

The Law Against Values

Attorney Rees Lloyd argues the ACLU should not collect profits from taxpayer-funded fees.

In a remote area of the Mojave Desert, atop a rock outcrop, stands a lone cross. Just two pipes tied together, it was erected by a private citizen in 1934 to honor the service of World War I veterans. But when President Clinton issued an order incorporating the site into the Mojave National Preserve, the American Civil Liberties Union saw a golden opportunity. In 2000, the organization filed a federal suit on behalf of retired Forest Service employee Frank Buono of Oregon, who claims to suffer a civil-rights violation every time he drives back to California and sees the cross. A district court ruled for the ACLU and ordered the cross removed.

So far, due to Civil Rights Act, 42 U.S. Code Section 1988, the ACLU has made $63,000 in attorney fees off the case. Although Rep. Jerry Lewis, R-Calif., succeeded in passing legislation swapping land with a private owner and placing the cross on private land, to be cared for by veterans, the ACLU is back in court trying to nullify the deal as a First Amendment violation.

Rees Lloyd
Los Angeles Daily Journal

Longtime civil-rights attorney Rees Lloyd believes Congress never intended such abuse of the law. A past commander of San Gorgonio Post 428 in Banning, Calif., he authored American Legion Resolution 326, which calls on Congress to amend 42 U.S.C. Section 1988 and end judges' authority to award attorney fees in cases brought to remove or destroy religious symbols. In a recent interview, Lloyd explained the purpose of the law and how the ACLU exploits it to impose a secular agenda.

The American Legion Magazine: *What is 42 U.S.C. Section 1988, and how does the ACLU profit from it?*

Rees Lloyd: The Civil Rights Attorney Fee Act was intended to provide an incentive to attorneys to take on representation of victims of civil-rights violations who could not afford legal counsel and thereby to fulfill the promise of the Civil Rights Act and

certain specified federal statutes. Instead, its good intentions have been exploited by the ACLU to reap enormous profits through what I believe is manifestly *in terrorem* – terrorizing – litigation to enforce its secular political, cultural and social will on elected officials and the American people by lawsuits attacking Boy Scouts and every symbol of America's religious history and heritage in the public square.

While the language of 42 U.S.C. Section 1988 is simple, it has been used and abused by the ACLU, as construed by other unelected lawyers, i.e., judges, who hand out enormous hourly attorney fees to the ACLU in such a way as to defeat the intent of elected representatives of the American people, Congress, and to terrorize elected officials at local levels to cower and surrender.

Q. *How much has the ACLU received through taxpayer-funded attorney's fees?*
A: The ACLU, posturing to the public that it acts on principle and pro bono, in the public interest and without fee, in fact has raked in enormous profits in lawsuits brought under the "establishment clause."

These lawsuits are nationwide, coast to coast, and run literally into millions of dollars in the pockets of the ACLU in "attorney fee awards" – although in fact neither the ACLU nor its mascot plaintiffs have incurred any actual attorney fees.

As a onetime ACLU staff attorney, I know that the ACLU recruits attorneys to take on its cases without fee, and that the ACLU does not charge attorney fees to the persons it uses as plaintiffs.

Large firms often provide attorneys from their pro bono units at no cost to the ACLU; the mascot plaintiffs of the ACLU in fact pay no attorney fees; lawsuits to destroy religious symbols, particularly the Christian cross, are as easy as shooting ducks in a barrel as judges follow precedent, in "judge-made law" pertaining to the meaning of the "establishment clause"; and the ACLU achieves its secular political aims, laughing all the way to the bank.

As to the total amount reaped by the ACLU, I do not know of any definitive study that has gathered up all the attorney-fee awards granted to the ACLU across the nation. It is, however, in the millions.

Q: *Why won't judges deny these fees to the ACLU?*
A: Congress did not require judges to award attorney fees under 42 U.S.C. Section 1988. Congress made attorney-fee awards purely discretionary. Judges have interpreted that to mean that a prevailing party is to receive "reasonable" attorney fees, even if there are in fact no actual attorney fees. "Market rate" is used. In large cities, that can be a starting point of about $350 an hour.

So, in practice, what is a "reasonable" attorney fee? Whatever one lawyer, i.e., a judge, wants to give to another lawyer, taxpayers be damned.

As far as is known, not one single judge has ever simply dared to say "no" to the ACLU. Why should they? They are

The Civil Rights Attorney Fee Act, 42 U.S.C. 1988

"In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title ... [other statutes omitted] the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

Eighty-five years of the ACLU

1920 – Socialist Roger Baldwin (right) founds the American Civil Liberties Union as a nonpartisan organization devoted to the defense of civil liberties guaranteed in the U.S. Constitution.

1925 – The ACLU represents plaintiff John T. Scopes in a trial challenging a Tennessee law prohibiting teachers from giving lessons on evolution in state-supported schools and universities.

1940 – Because so many ACLU members have communist affiliations, the organization is criticized as a communist front. It bars from leadership positions anyone supporting totalitarianism.

1943 – In *West Virginia State Board of Education v. Barnette*, the U.S. Supreme Court declares the board's resolution ordering students and teachers to salute the flag as unconstitutional.

1954 – The ACLU files an amicus brief in *Brown v. Board of Education*, in which the Court rules that school segregation denies equal protection of the law to black students and is unconstitutional.

1963 – In *Abington School District v. Schempp*, the Court rules that the "establishment clause" forbids

lawyers handing taxpayer funds to other lawyers; the fox is in the chicken coop.

Congress should take back the authority it gave to award such fees and forbid them in cases under the "establishment clause." If such cases must be brought by the ACLU, it should have at least the decency to pay its own way.

"The ACLU is the advance guard of secular totalitarianism in America. I am thankful that The American Legion is finally exposing the ACLU. Their hordes of lawyers have bullied everyday, hardworking Americans far too long."

– Retired U.S. Army Maj. Gen. Patrick Brady, recipient of the Medal of Honor and board chairman of the Citizens Flag Alliance, Inc.

Q: *Hasn't the ACLU done some good in the past? When did it cross the line?*
A: I am not an inveterate ACLU-hater. I believe that the ACLU, in the past, did much good, and still can, in defending freedom of speech, which I believe was its primary mission. Many of the early free-speech cases, especially in the area of labor when unions were forming, were won by ordinary working people defended by the ACLU. That I respect and admire.

While I respect that early work of the ACLU, I believe whatever good it did in the past has been vitiated by the harm it has done in the present by its fanatical secularism and apparent abandonment of common sense.

I was admitted to the bar in November 1979 and worked at the ACLU for approximately two years. At that time, there was not a "church-state project" and if there was a focus of "separation of church and state," I was not aware of it, perhaps because of my concentration on rights in the workplace.

But then Hollywood money came in to fund church-state litigation at the ACLU of Southern California. Norman Lear and other millionaires poured money into the ACLU. That influx of Hollywood money, I believe, marked what I now perceive as a crossing of the line into fanatical secular attacks on every symbol of America's religious history and heritage in the public square.

Q: *Many charge the ACLU with being "anti-Christian." Is this true?*
A: The ACLU is much too politically correct to ever be expressly or rhetorically anti-Christian. It would react with horror to the suggestion that it is impure. But it is objectively anti-Christian. It is indicted by what it does, not by what it says.

The ACLU is quintessentially secular. I totally disassociate myself from attacks on the ACLU that say it is a Jewish organization with an anti-Christian bias. The ACLU's faith is not in Judaism, it is in secularism.

It has to be recognized that the ACLU's mission is political. It is an organization of elitists convinced of their sincerity, goodness, intelligence and right to social-engineer American culture and government without ever having to be elected by the people they would govern, and to accomplish their purpose through people like themselves: equally elitist lawyers sitting as judges over mere mortals.

What common sense would dictate a lawsuit against that lone cross in the Mojave Desert honoring World War I veterans? And persecuting the Boy Scouts? The philosopher George Santyana once said, "Fanaticism is the doubling of passion, while halving reason." There you have modern ACLU fanaticism.

state-mandated reading of the Bible or recitation of prayer in public schools.

1966 – In *Miranda v. Arizona*, the ACLU argues that suspects in custody have a right to a lawyer and the right not to incriminate themselves.

1973 – The ACLU places a full-page ad in *The New York Times* calling for President Nixon's impeachment. The ad invites readers to join, and more than 25,000 new members sign up.

1978 – In *Village of Skokie v. National Socialist Party*, the U.S. Supreme Court rules that the Nazi Party cannot be prohibited from marching peacefully simply because of the content of its message.

1983 – In *City of Akron v. Akron Center for Reproductive Health*, the ACLU's Reproductive Freedom Project challenges a state ordinance restricting access to abortions.

1985 – Alabama's statute allowing time for "voluntary prayer" is ruled an unconstitutional endorsement of religion by a state.

1987 – In *Edwards v. Aguillard*, the ACLU challenges a Louisiana law allowing the teaching of "creation science." The Court declares the law unconstitutional, holding that the law's original purpose was

Res. 326 (National Convention, 2004)

Urges Congress to amend 42 U.S.C. Section 1988, to expressly preclude the courts from awarding attorney fees under that statute, in lawsuits brought to remove or destroy religious symbols.

The Boy Scouts are not the enemy of America. Veterans and memorials that mark their service to the nation are not the enemies of America. Symbols of our American religious history and heritage in the public square are not threats to our American freedom. Those symbols which the ACLU now so fanatically attacks are but reminders of our American roots, our American heritage, the foundation from which this magnificent edifice of American freedom arose.

Q: *Can 42 U.S. Code 1988 be changed?*
A: Congress must take the lead to clarify 42 U.S.C. 1988 to exclude lawsuits related to acknowledgement of God. Besides The American Legion, many organizations desire to see the statute modified, such as CourtZero.org, Alliance Defense Fund, Thomas More Law Center, American Center for Law and Justice, The Rutherford Institute and Stop the ACLU Coalition.

In the 108th Congress, on Nov. 21, 2003, U.S. Rep. John Hostettler, R-Ind., introduced a bill, H.R. 3609, titled "Public Expression of Religion Act of 2003" that would restrict remedies under 42 U.S.C. 1988 in establishment clause litigation to injunctive relief. The congressman intends to reintroduce the bill in the 109th Congress.

Q: *American Legion Res. 326 calls for Congress to reform 42 U.S. Code 1988. What can Legionnaires do to help?*
A: American Legion Resolution 326, Preservation of the Mojave Desert World War I Memorial, is a concrete measure with which we can stand up to the ACLU and not merely complain. It calls on Congress to amend 42 U.S.C. 1988 to rescind the authority to award attorney fees it gave to judges in cases under the "establishment clause" to "remove or destroy religious symbols."

All Legionnaires, all veterans, all Americans, should unite behind this simple measure, across party and ideological lines, to demand reform and to end this abuse by which the ACLU has waged war against the Boy Scouts, all symbols of our American religious heritage, and now even veterans memorials.

No one should doubt the threat that the ACLU's lawsuit against the Mojave Desert veterans memorial represents: it is the first time in history that private parties have been allowed to sue a veterans memorial to remove a religious symbol. The same legal principles the court followed under the "establishment clause" to order that solitary cross in the desert removed are applicable to all the crosses and Stars of David in our national cemeteries, and the 9,000 at Normandy Beach.

Communicate with your post, district, area, department and National Commander Thomas P. Cadmus. Communicate your support to amend this law to your elected officials. Demand to know where they stand on the issue.

Interview: Matt Grills

Article design: Doug Rollison

"clearly to advance the religious viewpoint."

1989 – In *Texas v. Johnson*, the Court rules that burning the U.S. Flag is symbolic speech protected by the First Amendment.

In *Allegheny County v. Greater Pittsburgh ACLU*, the Court rules that nativity scenes alone cannot be displayed on courthouse steps.

1992 – In *Lee v. Weisman*, the Court rules that clergy-led prayer as part of an official public-school graduation ceremony violates the "establishment clause."

1996 – In *United States v. Virginia*, the Court rules that Virginia Military Institute's exclusion of women denies equal protection under the law.

1999 – In just 20 years, the ACLU's income grows from $3.9 million to a record $45 million. Its endowment fund grows from $780,000 to $41 million.

2000 – In *Santa Fe Independent School District v. Doe*, the Court rules that student-initiated prayer on state-run school ground at football games violates the "establishment clause."

Sources: Lectlaw.com, ACLUprocon.org, others