



# ACLU

## CIVIL LIBERTIES NEWS

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AMERICAN CIVIL LIBERTIES UNION  
of MINNESOTA

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### Straights and Gays for Equality wins permanent injunction against Osseo School District

In July, our cooperating attorneys filed a motion with the District Court asking for a partial summary judgment in our lawsuit to protect the rights of a high school gay-straight alliance group, Straights and Gays for Equality. Our motion argued that the court should rule in our favor on our Federal Equal Access Act and First Amendment claims without the need for a trial. We asked the court to make permanent our hard-fought preliminary injunction. A hearing on our motion was held in mid-September and the court granted the motion shortly thereafter.

In her September 25 order, Federal District Court Judge Ericksen held that the Osseo School District violated the Federal Equal Access Act by providing preferential treatment to at least four non-curricular student groups: Cheerleading, Synchronized Swimming, Spirit Council and Black Achievers. The Equal Access act requires schools to treat all non-curricular student groups equally. The court issued a permanent injunction, meaning that SAGE will be treated the same as other groups at the school.

The ACLU-MN filed the lawsuit in September 2005 following nearly two years of discussions with the school district over its policy toward the student group. *(continued on page 7)*

### Kenneth Tilsen receives Earl Larson Award

On Thursday, November 8, 2007 at the Minneapolis Club, the Board of Directors of the American Civil Liberties Union of Minnesota and 2007 award committee presented the 11th annual Earl Larson Award to Kenneth Tilsen. Throughout his



*From l to r, Chuck Samuelson (executive director, Ken Tilsen, Therese Marso (president of the board)*

life Tilsen has been an active supporter of what he described as “political and social movements for change.” Ken practiced law in the Twin cities from 1950 to 1994 and became known as a “protest” attorney by becoming a leader in defending draft resisters, being chief legal coordinator for Wounded Knee, and defending the students in the University of Minnesota Morrill Hall takeover. He authored the book, *Judging the Judges* about the judges in the Minneapolis District and their decisions regarding draft resisters during the Vietnam War.

“Our community is blessed to have Ken Tilsen and the ideals that he has fought for present in our midst. The ACLU of Minnesota is excited and honored that Ken has agreed to accept this award.” *(continued on page 7)*

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# From the President

## Therese Marso



### The smallest kid in the tent

Instead of the usual Presidential column, here is an article written by Robert Sykora, who is a board member of the ACLU-MN:

I once spent time in a summer camp for Catholic kids where your place in the pecking order was set by your capacity to engage in brutality. My place was pretty low.

In a tent full of angry boys I found myself facing a situation that required courage and integrity, and willingness to step forward to help an underdog. I failed. I think of this failure now that Congress is considering the Employment Nondiscrimination Act (ENDA). Here's why.

My summer camp experience is at the root of my strong desire to honor and respect the underdog. The underdog in our tent was a kid named Joey, who was just a bit more misfit than I. While we each attracted abuse by the bigger kids who felt they owned the place, Joey's tortures were much more brutal than my own. Not only did I not stand up for Joey, I joined in his mistreatment. Why? The pack had identified its runt, and I was happy it wasn't me.

I was, however, the second-smallest kid in the tent. When Joey blew, he came after me alone. There were fists. Screams. Smashed noses. We slugged and punched

and rolled out of the tent and into the underbrush. This was wonderful blood sport for the other campers, who squealed like peasants at a rooster fight. Joey and I beat each other with every bit of strength we could summon. Then, panting and covered with blood and shredded leaves and tears and spit, we declared it a draw. We both lost.

Forty-four years later, I'm reminded of Joey when I hear that transgendered peoples' right to a fair workplace might be negotiated away to make ENDA more palatable to the majority. In such a bargain, ENDA would protect gay, lesbian and bisexual people from unfair discrimination on the job. Gay, lesbian and bisexual people, coming out of a history of job discrimination and legalized abuse, are by this deal offered a chance at fairness only if we're willing tacitly to endorse the mistreatment of our transgender allies. Transgender folks would be treated like the runt of the litter. Once again, the smallest kids in the tent would be pitted against each other.

Just about the same time Joey and I were clobbering each other in the north woods, Martin Luther King was composing his Letter from a Birmingham Jail. "Injustice anywhere is a threat to justice everywhere", he wrote.

I wish those words had guided me then.

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# From the Executive Director

Charles "Chuck" Samuelson



## Strategic planning

### Need for funding

The ACLU of Minnesota has long been aware of the need to begin a formal planning process. Like most groups and individuals, I have always managed to find myself too busy to "spend" the time to plan not only what we wanted to do but also how we were going to achieve them.

However, Wally Hilke, one of our board members, has pushed us to give more than lip service to the need to plan our future and our future needs. Thanks to him and to the able committee of board members he has recruited, we are in the middle of the beginning of our long range planning process.

We ask that you join in this process by completing the form on our website, [www.aclu-mn.org](http://www.aclu-mn.org). Please tell us what we are doing well and poorly and what you think our goals and objectives for the near (3-5 years) future should be. You can be anonymous or you can give us your name, but if you don't want us to contact you we won't!

On another and related note, we could use your financial support. Now is the traditional giving time of year, and the ACLU-MN Foundation is in need of generous financial support from all of us.

You may want to think of your support to the ACLU-MN Foundation as an investment in individual freedom. The programs that your investment supports – public education and litigation – will benefit those of us today but will pay their biggest dividends in the future. The right we enjoy today exists because of past victories. So please help us to not only plan for, but also to enable our future!



**CREATE A LEGACY OF LIBERTY**  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION

Create a legacy of liberty by investing in the future of the ACLU Foundation through a planned gift such as a bequest or life income plan. Join over 2,000 ACLU supporters who have become members of *The DeSilver Society* by making a legacy gift.

#### A Legacy Gift Can:

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Your gift will provide the ACLU Foundation, at the national and local level, the resources it needs to protect civil liberties for future generations.

**For more information, please contact:**  
**ACLU Foundation Office of Gift Planning**  
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**Toll-Free: (877) 867-1025 E-mail: [DeSilver@aclu.org](mailto:DeSilver@aclu.org)**

**Our Annual Report is now available, if you would like to request a copy, please send an email with your name and address to [mmiller@aclu-mn.org](mailto:mmiller@aclu-mn.org) with "annual report" in the subject line.**

**The annual report is also available online. You can find it at [www.aclu-mn.org](http://www.aclu-mn.org).**

## Legal update

### ACLU and ACLU-MN file amicus curiae brief on behalf of Idaho Senator Larry Craig

The ACLU-MN and the National ACLU submitted a joint friend-of-the-court brief to the Fourth District Court urging it to allow Senator Larry Craig to withdraw his guilty plea because the secret sting operation used to arrest him was likely unconstitutional.

Our brief argued that the government can arrest people for soliciting public sex only if it can show beyond doubt that the sex was to occur in public. Solicitation for private sex, regardless if it occurs in a bar or a restroom, is protected speech under the First Amendment. When free speech rights come into play, police enforcement actions must be "carefully crafted" so that they don't unnecessarily ensnare people who are engaging in constitutionally protected speech. We argued that the secret sting operation used by the police to arrest Senator Craig was not "carefully crafted" because there are more effective means of deterring public sex. For example, posting a sign that the restroom is being monitored is an effective means of deterring public sex without risking trampling on free speech rights and illegally trapping someone who might not intend to have sex in public in the first place. In fact, many law enforcement agencies, including the Minneapolis Police Department and the U.S. Department of Justice, recommend signs rather than secret sting operations as enforcement mechanisms.

The ACLU and ACLU-MN submitted its brief because of our concern that the real motive behind secret sting operations like the one that resulted in Senator Craig's arrest is not to stop people from inappropriate activity. It is to make as many arrests as possible – arrests that sometimes unconstitutionally trap innocent people. Although Senator Craig has not always been a great friend of civil liberties, our client is really the First Amendment. We believe that government should make public restrooms safe for all, but it should do so in a manner that is designed to stop inappropriate behavior, rather than destroying the lives of people who might have no intention of doing anything illegal.

*“Although Senator Craig has not always been a great friend of civil liberties, our client is really the 1st amendment”*

### ACLU-MN urges county jails to respect the religious rights of Native American inmates

The ACLU-MN has been receiving complaints from Native American inmates detained in four different county jails regarding their rights to practice their religion. Inmates have reported that they are being denied the ability to possess medicine bags, have access to sacred herbs including tobacco, sage and sweetgrass, to conduct smudging for purification, and to participate in pipe and sweat lodge ceremonies. While medicine bags had previously been allowed in some facilities, they have apparently now been completely banned in at least two facilities.

We contacted all four counties with our concern about the restrictions. The right of inmates to exercise their religion is protected by the First Amendment, the Minnesota Constitution and the Federal Religious Land Use and Institutionalized Persons Act. The medicine bag is a sacred item for Native American inmates and wearing it around one's neck is a central tenet of their religion. The ability to possess sacred herbs and to purify themselves through smudging are equally important to Native American spirituality. We believe that the restrictions being placed on Native American inmates impose unjustifiable burdens on their religious practices. In addition, most facilities provide significant opportunities for Christian worship, suggesting that Christianity is receiving preferential treatment in violation of the Establishment Clause.

Our letter urges the four counties to follow the lead of other prison systems that provide for ample opportunities to meet the religious needs of their Native American inmates. Although the First Amendment right to free exercise of religion is deferential to prison and jail officials, under the Minnesota Constitution and the Federal Religious Land Use and Institutionalized Persons act, substantial burdens on an individual's religious beliefs or practices must be the least restrictive means of serving a compelling government interest. We concede that security is a compelling government interest; however, the fact that other correctional facilities are able to accommodate the religious needs of their Native American inmates suggests that the four counties are not using the least restrictive means of meeting their security needs.

# From the ACLU

*Rebecca Rand*  
*Minnesota's National Delegate*



## National board meeting

The ACLU National Board met October 20 –21 in New York. As the agenda was being adopted a motion was made to reserve time to discuss the impeachment of President Bush and Vice President Cheney. The motion was defeated on a tie vote.

Elections were held for National Advisory Committee, the slate proposed by the nominating committee was elected with Reverend James Lawson, Jr being elected as chair. Reverend Lawson was present at the meeting and is an eloquent and impressive presenter of civil liberties principals.

We also elected officers and general counsel to the National Board and in a “surprising turn of events” Nadine Strossen agreed and was elected unanimously to serve as president for the coming year.

Board members looked on with glazed expressions as the Patent Committee began their report, but gradually moved to the edge of our chairs hands waving for attention. The committee is charged with reviewing and revising policy in this area and is only in the beginning stages of its’ work. Bio-technology and communications technology pose unique civil liberties issues, as does the move from inventors to multi-national corporations as the holders of patents.

We also heard interim reports on the Electronic Voting and fundraising practices and the communications department gave us an in-depth account of their work. We especially liked the “sheep” ad, featuring two adorable sheep posed in front of the capitol, one with an ear tag reading “Pelosi” and one with a tag reading “Reid”.

We were encouraged to see the movie “Rendition” with Joaquin Phoenix and Reese Witherspoon, de

spite it’s bad reviews, for it’s accurate portrayal of extraordinary rendition. I attempted to catch it between adjournment and my outbound flight, but getting confused in a giant multi-plex on Times Square ended up at “30 Days of Night” DO NOT see that.

The board, following the recommendations of the search committee, chose St. Louis, Missouri as the sight of the next Biennial to be held June 3 –9 2009. Mark your calendars!



**When Democratic leaders follow along with  
Bush's plan to cavedrop on Americans,  
it's B A A A A A A A D.**

When America elected a new Congress in 2006, we expected the Congressional leadership to stand up to George Bush, to fight to restore the civil liberties we had lost in the previous six years. Instead, this summer, Harry Reid and Nancy Pelosi caved to yet another Bush assault on our freedoms. They've enabled a revision of the Foreign Intelligence Surveillance Act (FISA) that unbelievably gives new powers to the Attorney General, new powers to eavesdrop on American citizens without any meaningful court or Congressional oversight. We don't need sheep protecting the Bill of Rights. We need lions.

**It's time for Congress to stop following and start leading.  
Our constitutional freedoms are at stake.**



To learn more, visit [www.aclu.org](http://www.aclu.org)

# Greater Minnesota Racial Justice Project Update

The Greater Minnesota Racial Justice Project receives many calls from native people most of whom are enrolled in one of three reservations, White Earth, Leech Lake and Red Lake. Despite their different locations, they all cite similar incidents involving racial profiling and over enforcement by local police officers.

For example, in March 2007 a sixty-one-year-old enrolled White Earth member who resides in the White Earth Reservation, was driving in the City of Cass Lake in Cass County and realized he was being followed by a car with bright lights. He soon found out who it was when the red lights went on and he was pulled over.. The Cass County deputy did not give a reason to him on why he was being stopped. The deputy walked up to the vehicle and the first question he asked was how much he had to drink; this man does not drink. In fact he has been sober for decades and was a valued elder in the White Earth band.

This individual complied with the officer and provided his drivers' license; the deputy checked and found no wants or warrants. The gentleman and the deputy argued and the officer arrested him and charged him with drunken driving.

The elder was taken to the Cass County Jail in Walker, MN, where he was held overnight. His insulin and high blood pressure medications were taken from him. He was not allowed his phone call. He requested the Cass County jailer to take him to a hospital because he needed his medication, but no one provided assistance during his stay at the jail. He was released the next evening without being charged.

Since this incidence this individual has filed a complaint with the ACLU and we have contacted Cass County Sheriff Randy Fischer. The sheriff contacted the elder and mailed him an incidence report.

The ACLU of Minnesota, through the Greater Minnesota Racial Justice Program, has worked for the past 3 years to represent Native Americans with the police establishment and has created bridges between Native Americans, the courts and law enforcement.

As part of its program, the ACLU of Minnesota has agreed to house a newly formed nonprofit organization called the Regional Native Public Defense Corporation (RNPDC). The mission of the RNPDC is to provide high quality legal services to people of White Earth and Leech Lake Reservations. Services are provided through the

Public Defender Application process. The GMRJP continues to provide complaint intake services and to operate our court monitoring program.

## *You're Invited to Our Holiday Open House*

*Hosted by*

**Greater MN Racial Justice Project,  
ACLU-MN  
&  
Regional Native Public Defense  
Corporation**

*303 Railroad Street, Bemidji,  
MN, 56601*

*~in the warehouse~*

***Thursday, December 6<sup>th</sup>,  
2007***

***3:00 ~ 7:00pm***

*Hot cider ~ coffee ~ tea ~ cookies*

*If you have any questions or would like  
more information please contact*

***218~444~2285***

### ARE YOU THE PARENT OF A STUDENT ACTIVIST?



Has your son or daughter stood up for:

- RACIAL JUSTICE    EQUALITY
- FREE SPEECH    TOLERANCE
- HUMAN RIGHTS

If so, please contact us about the **ACLU STUDENT ACTIVIST SCHOLARSHIP PROGRAM**. 15 high school seniors from across the country will each be awarded a \$5,000 college scholarship for their dedication to preserve our civil liberties.

Those students will then become part of an elite "class" of student activists, whose talents and passion will be fostered by the ACLU National office.

**CONTACT US FOR  
MORE INFORMATION**



To apply for the scholarship download and fill out a scholarship application from [www.aclu-mn.org](http://www.aclu-mn.org). The application must be turned into the ACLU-MN office by November 30th. Submit the application to 450 N Syndicate, Suite 230, St. Paul, MN 55104; email [jkooren@aclu-mn.org](mailto:jkooren@aclu-mn.org) or fax 651-647-5948. Questions? Contact Jana Kooren at 651-645-4097 x123

*SAGE, continued from front page*

We succeeded in obtaining a preliminary injunction requiring the school to treat SAGE the same as other non-curricular groups such as Cheerleading and Synchronized Swimming. The injunction was upheld by the Eighth Circuit Court of Appeals.

The September 25 decision is important because it reinforces the right to equal treatment for groups like SAGE. This ruling will allow them to continue their important work to promote tolerance and to ensure that traditionally marginalized students feel safe and valued at school. In addition, it may embolden students around the state to stand up for their rights when they are violated by schools that try to stifle their speech.

Osseo School District has since appealed the permanent injunction to the court of appeals. No court date has been set yet for the appeal.

The cooperating attorneys in the case are Tom Kayser, Dave Pinto and Genevieve Zimmerman of the law firm Robins, Kaplan, Miller & Ciresi, L.L.P.

Two new members were nominated and approved to serve on the board of directors of the ACLU of Minnesota.

### Melanie Benjamin

Melanie Benjamin is currently serving her second four-year term as Chief Executive of the Mille Lacs Band of Ojibwe Indians. Ms. Benjamin holds degrees from Minneapolis Vocational Technical Institute and Bemidji State University. Ms. Benjamin has served on many boards and organizations including, Affordable Housing Advisory Council of the Federal Home Loan Bank of Des Moines, Indian Law Resource Center, Bemidji State University Alumni Board of Directors, Secretary of the National Indian Gaming Association, to name a few.

### Chief Judge Anita Fineday

Chief Judge Anita Fineday is currently a Chief Judge for the White Earth Band of Ojibwe and an Associate Judge for the Leech Lake Band of Ojibwe. Chief Judge Fineday graduated with a Bachelor of Arts from Indiana University, a Juris Doctorate from University of Colorado, and a Masters in Public administration from John F Kennedy School of Government at Harvard University. She previously taught at University of Minnesota and Bemidji State University. She has served on the board of the Minneapolis American Indian Center and is currently on the board of the Regional native Public Defense Corporation to name a few.

*Earl Larson, continued from front page*

says Executive Director Charles Samuelson. The award is named after the ACLU of Minnesota's founder, the late Federal Judge Earl Larson. ACLU of Minnesota created an award in his name 11 years ago as a lifetime achievement award for an attorney in the Twin Cities who has worked to defend civil liberties. Earl Larson received the first award, followed by Peter Dorsey, Lynn Castner, Leonard Lindquist, James Shannon, Walter Mondale, Rosalie Wahl, Doug Hall, Jack Davies, and Michael Goldner.

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