



ACLU

**AMERICAN CIVIL LIBERTIES UNION
of MINNESOTA**

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Hennepin County District Court Declares Minneapolis Photo-Cop Illegal

Minneapolis, MN – Hennepin County District Court Judge Mark Wernick invalidated a Minneapolis ordinance permitting the use of cameras to catch traffic violations, agreeing with the position presented by the Minnesota affiliate of the American Civil Liberties Union that the ordinance stood in violation of state law.

ACLU-MN volunteer attorneys Howard Bass and Chad Fancher filed the motion in early December seeking the courts opinion on the legality of the ordinance. The motion was filed on behalf of an individual who received a citation because his vehicle was alleged to have violated the ordinance.

“This ordinance presumes that the owner of a vehicle that is photographed is guilty and then puts the burden on the owner to prove that he or she was not the driver,” said ACLU-MN Executive Director Chuck Samuelson. “It turns the notion of Due Process on its head.”

the vehicle that was photographed going through the red light.

In addition, State law prohibits local traffic regulations from being in conflict with state law. The Minneapolis ordinance conflicts with state law because it shifts liability for traffic light violations from the driver to the owner. During the 2001 and 2003 Legislative Sessions, the Minnesota Legislature considered and rejected bills that would have allowed local governments to use automated cameras to enforce traffic regulations.

The Court also noted that violations could have far-reaching impacts on individuals including having the violation placed on the owner’s driving record and serving as a basis for having future moving violations charged as a misdemeanor rather than a petty misdemeanor. ACLU-MN volunteer attorney Howard Bass was pleased with the court’s decision. “This decision re-affirmed my faith in the Judiciary’s commitment to protecting Due Process.”

Last week the City of Minneapolis appealed Judge Wernick’s ruling. Briefs to the Court of Appeals will be due in late March and early April. ACLU-MN intends to pursue this matter aggressively.

Individuals who have received tickets may wish to request a continuance of their case until after the matter is resolved. Check the ACLU’s website at www.aclu-mn.org for updates on the case. If you have already paid a fine for a violation, you may wish to file a request to re-open a previously paid citation. Instructions for this procedure can be found on the Court’s website at:

<http://www.courts.state.mn.us/districts/fourth/TVB/tvbreopen.htm>.

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In its brief, ACLU-MN argued that in Minnesota petty misdemeanor prosecutions, the prosecutor has the burden of proof to show that an individual is guilty beyond a reasonable doubt. The Minneapolis ordinance relieves the prosecutor from the burden to prove that the owner was actually the driver of

From the President

Susan L. Jacobson



Why Bemidji?

One year ago this March 21st, a troubled youth killed nine people at Red Lake High School and then turned the gun on himself. As that anniversary came and went, the ACLU of Minnesota quietly celebrated its third year of service to the Native American community in northwestern Minnesota. We are in Bemidji because we want to eliminate the reasons that Mr. Weise felt he had no choice.

In Bemidji most of the inmates in the Beltrami County Jail are Indian. Yet American Indians comprise only about 20% of the city's population. The situation is similar in most of the other counties in the region (Cass, Hubbard, Mahnomen, Becker and Clearwater). While the region boasts many of the most beautiful lakes in Minnesota, the unemployment rate is incredibly high and the poverty rate is abysmal.

For several reasons, three years ago the ACLU of Minnesota decided that we needed to do something in that area. First, we felt that, for too long, defending civil liberties had been an urban phenomenon. In the cities, we could go to media outlets and tell our story to a broad audience. In the cities, there are groups of like-minded civil libertarians to provide support for our positions and for our plaintiffs, who must publicly stake themselves to those positions. And, in the cities you can find enough attorneys who can afford to take civil liberties cases. These elements do not exist in rural Minnesota.

Second, there had been a number of studies that showed an alarming racial disparity in Minnesota. According to one of these studies, men of color were 22 times more likely to be in prison than were white men. American Indian men, especially, were at much greater risk of jail time than were white men, and this was particularly true of Indian men in a rural environment.

We chose Bemidji because three major reservations intersect there: White Earth, Red Lake, and Leech Lake. Bemidji also has a relatively large urban Indian population. Finally, Bemidji is a commercial and media center for the region.

What has the ACLU of Minnesota accomplished in its three years of working for the rights of Native Americans in northwestern Minnesota? Because of us, Indians can use their tribal ID's to register to vote, and hundreds did so last November. Because of us, Indians are starting to get the same sentences as whites. And because of us, people like the young man from Red Lake can begin to hope that the despair that ended his life will be lifted. While we have done much, however, there is still so much more to do.

That is why we are in Bemidji.

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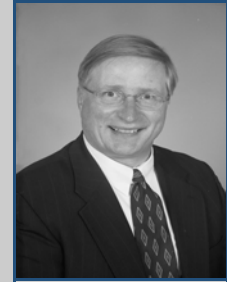
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From the Executive Director

Charles "Chuck" Samuelson



An Important Legislative Session

It is April, and this November our entire state leadership is up for election. But before we get to November 7, we have to have a legislative session and pass the bonding bill. Every politician is campaigning for re-election and there have been some very bad bills introduced (or at least talked about) in the first 30 days of the session. We are facing a flurry of such bills with more on their way. Some are unnecessary, some claim to be domestic security bills, some are anti-gay and lesbian, some violate church state separation and some just violate the rest of the Bill of Rights.

A bill was introduced in the House of Representatives that was designed to force Minnesotans to carry identification cards to vote. If they didn't have a driver's license, they could buy an identification card to "prove" who they were. We pointed out that a similar law in Georgia was declared un-constitutional just last year, but the bill made it to the House floor. Its future in the Senate is problematic. By the way, there were 8 possible cases of voter fraud in the last election. Six of them were people who had moved, but voted at their old polls. At the same time 30% of potential voters did not vote. We felt that the last item was the problem but the House disagreed.

Another bill we objected to was the Real ID. This bill

was proposed in order to codify Executive Branch actions turning the drivers license into an internal passport. The Executive Branch ruling was a result of bad federal law tying the state creation of a national ID card to Federal Highway fund money. This unnecessary bill doesn't need to be passed, because Minnesota is already in compliance with the federal bill. That didn't seem to matter as it too, passed in the House.

Finally we opposed the bill restricting protests at funerals. When we testified against this bill, we called it the Fred Phelps Full Funding Bill, and we said that we wouldn't get an opportunity to litigate against it. Fred Phelps would beat us to it and the legal fees he would get would fund his operations for years. We were not persuasive in the House but were more so in the Senate. The Senate's version of this bill is basically the Disorderly Conduct law. The fate of this bill will rest in conference committee.

As this is written there are more bills in committee hearings and many more to be voted on. But there is no doubt that November 7 casts an extremely long shadow on the proceedings at the State Capitol.

ENLIST AS AN ACTIVIST

There comes a time when everyone needs to join up. Send us an email at: lobby@aclu-mn.org and let us keep you in the loop.

NAME _____
STREET ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE (____) ____ - _____
EMAIL _____@_____.

You can mail this form to us or you can email the same information to us. We will put you on our activist list and contact you regularly with legislative and legal updates on ACLU issues.

Call to Annual Meeting

The American Civil Liberties Union of Minnesota, (ACLU-MN) will hold its 2006 Annual Meeting on Saturday, April 29, 2005, at 10:00 a.m. The meeting will be held at the Hamline University Law and Graduate School Conference Center, 536 Hewitt Avenue, Saint Paul, Minnesota.

The business of the Annual Meeting shall be for the Voting Members to receive nominations for the election to the Board of Directors, to consider and vote on resolutions which are recommendations to the board of Directors, and to consider and vote on proposed amendments to the Bylaws in accordance with the provisions of Section 8 of the ACLU-MN Bylaws.

NOMINATION PROCEDURES

Petitioner Nominations. Voting Members shall have the right to nominate directors by mailing such nominations to the President by the first day of the month of April immediately preceding the annual meeting of Voting Members. Such nominations must be accompanied by:

- a petition signed by at least twenty-five (25) Voting Members for each individual nominated;
- a statement by the nominee that she/he is willing to serve as a director; and
- an accurate, written biographical statement of the nominee which shall not be more than eight (8) typed lines of no more than sixty (60) characters per line.

COMMUNICATING WITH THE MEMBERSHIP

An ACLU-MN member may, at his or her own expense, have a designated commercial mailing house mail information to all or some of the Voting Members. Communications to the membership must be conducted by a blind mailing. There will be no censorship of the mailing piece either by the board or staff of the ACLU-MN.

AMENDMENTS TO THE BYLAWS

Both the Board of Directors and the Voting Members shall have the power to amend these Bylaws as follows:

Amendment by the Board. The power of the Board of Directors shall be subject to the power of the members with voting rights under Section 8.1.4 to adopt, amend or repeal Bylaws adopted, amended or repealed by the Board. The Board of Directors may amend the Bylaws by adopting a resolution setting forth the amendment by the affirmative vote of a majority of the members of the entire Board of Directors then in office. The Board of Directors may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of members, prescribing procedures for removing directors or filling vacancies in the Board of Directors, or fixing the number of directors or their classifications, qualifications, or terms of office.

Proposal by the Board. The Board of Directors may also propose an amendment to the Bylaws by adopting a resolution setting forth the proposed amendment and directing that it be submitted for adoption at a meeting of the members.

Proposal by Minority of the Board. An amendment to the Bylaws may also be proposed upon the (a) written resolution signed by any five (5) members of the Board or (b) written resolution signed by any two (2) members of the Board accompanied by the written endorsement of one hundred (100) Voting Members, and delivered to the Secretary.

Voting Member Proposal. An amendment to the Bylaws may also be proposed by written resolution by a Voting Member accompanied by the written endorsement of at least 150 Voting Members and delivered to the Secretary.

Call to Annual Meeting (cont.)

ELECTION OF DIRECTORS

These are nominations, by the Nominating Committee, for election or re-election of directors.

SHORT BIOGRAPHY OF THE NOMINEES

Timothy E. Branson — Tim Branson is a partner with Dorsey & Whitney. He received his J.D. from the University of Iowa and has argued many cases on behalf of ACLU-MN

Debra J. Flemming — Deb Flemming has had a long career working as a journalist. She received a B.A. in Journalism from the University of Minnesota and is also a board member of the Mid-America Press Institute.

Jeffrey J. Keyes — Jeff Keyes is a member of the Trade Regulation Section and Franchise Practice Group at Briggs and Morgan. He was recently named Minnesota Attorney of the Year for his pro-bono efforts. These efforts include litigation on human rights and death penalty issues, and an ACLU-MN case involving excessive force by the police.

Judge Jonathan L. Lebedoff — Judge Lebedoff was appointed as a United States Magistrate Judge on September 20, 1991. He was reappointed in 1999 and served through 2005. He received his J.D. from the University of Minnesota in 1963.

Jennifer L. Martin — Jennifer Martin has worked as a CPA for more than thirty years. She received her M.B.A. from the University of Denver and has also served as a board member of NARAL, Pro-Choice Minnesota

Todd A. Noteboom — Todd Noteboom is a partner with Leonard, Street & Deinard. He received his J.D. from the University of Denver, and was named a “Super Lawyer” by Minnesota Law and Politics. He has served as an ACLU-MN volunteer attorney in several cases.

Vance K. Opperman — Vance Opperman is the President and Chief Executive Officer of Key Investment, Inc. He is the former President of West Publishing Company and received his J.D. from the University of Minnesota in 1969. He was named to the 100 Most Influential Lawyers in America in 1991 by the *National Law Journal*, one of the top twenty-five winningest litigators in *Minnesota Lawyer* in 1991, and one of the nation's top litigators by the *National Law Journal* in 1992.

ACLU Freedom Files Airing Now

ACLU-MN has teamed up with the national organization to bring you even more Civil Liberties-themed, television programming. Look for the following shows on your local cable access system:

Civil Liberties Forum

- After Brown v. Board of Education
- Expanding the Executive, Shrinking Freedom
 - You and the Police
- Racial Profiling after 9/11

ACLU Freedom Files

- Beyond the Patriot Act
 - The Supreme Court
 - Dissent
 - Racial profiling
 - Religious Freedom

Legal / Legislative Update

Legal Update

Berg v. DEA

After months of legal wrangling, attorneys for Bonita Berg will finally be able to depose the two agents involved in what we allege was a racial profiling incident that is the basis of our complaint against the DEA. The Court also ordered the DEA to turn over documents relating to the factors used to stop individuals for the purposes of drug interdiction. The depositions and the turnover of the documents is on hold while the parties negotiate a satisfactory protective order that allows Ms. Berg's legal team to review the documents while protecting them from being disclosed to the public.

Juvenile Free Speech

ACLU-MN volunteer attorney Jordan Kushner filed a free speech brief in an appeal on behalf of a seventh-grader who was adjudicated a petty offender for drawing a cartoon with violent themes. The brief argues that our client should not have been found to have violated the state's disorderly conduct law because there was insufficient evidence to suggest that the pure speech of the cartoon constituted conduct prohibited by law. The brief also argues that the cartoon constituted protected speech for which he cannot be punished. The Minnesota Supreme Court has held that, as applied to pure speech, Minnesota's disorderly conduct law may only be applied to unprotected speech such as fighting words. Our client's cartoon was created as a therapeutic response to bullying that he had experienced at school. It did not fit the definition of fighting words and the Court did not determine that it fell into any other category of unprotected speech such as a "true threat". Arguments in the case are expected this summer and the Court will likely rule on the case this autumn.

ACLU, et. al. v. Kiffmeyer

A Consent Decree, entered into last fall has resolved the majority of our voting rights case against Secretary of State Kiffmeyer. The Consent Decree ensures that American Indian voters will be able to register to vote using their Tribal ID on the same par as a state-issued Driver's License. Voting is at the core of our representative democracy and this Consent Decree permanently removes a significant obstacle to voting for many American Indians in this state. The Consent Decree was the result of a 2004 lawsuit that was filed in Federal District Court against Secretary of State Kiffmeyer for failing to conform Minnesota election law with federal law, including the Help America Vote Act of 2002 (HAVA) and the Fourteenth Amendment right to Equal Protection. Minnesota law prohibited the use of a valid, federally-recognized tribal ID for election-day registration if the citizen did not live on a reservation. Additionally, if the voter's tribal ID did not include an address, Minnesota law prohibited acceptance of the ID together with a current utility bill to show the voter's current address. This in spite of the fact that the law allowed other forms of ID without a current address if provided with a current utility bill. We obtained a TRO shortly before the 2004

election, allowing individuals to register using a tribal ID whether or not they live on the reservation.

The remainder of the lawsuit relating to HAVA compliance was voluntarily dismissed without prejudice and the ACLU-MN will be working to get the legislature to adopt changes to state law to ensure full compliance.

Legislative Update

For a short bonding session, the Minnesota Legislature has been very busy dealing with important policy issues that will have significant impacts on civil liberties. The ACLU-MN has focused its work on a few key areas including voting rights, immigrant's rights, free speech, reproductive freedom and lesbian and gay rights. While we are actively opposing legislation that would suppress lawful, eligible voters, we are also supporting legislation that will make it easier for individuals to register to vote. In the Senate Elections Committee, we testified in favor of SF2976. The bill would make it easier for individuals to register to vote at the polling place. We support the bill because it will further Minnesota's long and proud tradition of encouraging voter turnout, and will reduce the barriers faced by eligible voters who wish to register and vote on election day. The bill would also serve to meet and exceed the Tribal ID requirements of the consent decree that we obtained in ACLU, et. al. v. Kiffmeyer discussed in our Legal Update.

We are also working to oppose a bill known as the "Governor's Omnibus Immigration Bill". In addition to codifying driver's license rules that serve to turn our driver's licenses into a de facto internal passport, the bill would require all driver's license photos to be compatible with facial recognition technology; it would forbid cities from telling their police not to inquire into an individual's immigration status; and it would create a state law enforcement task force to enforce federal immigration laws. We believe that having local law enforcement involved in federal civil immigration laws is inappropriate because it will make police officers' jobs more difficult if immigrant communities are fearful and distrust the police. In addition, because the vast majority of immigration laws are civil not criminal, it should be the province of the federal government to handle such matters and let the police concentrate on enforcing the state's criminal laws. Finally, police often do not have the necessary expertise or constitutional authority to enforce immigration laws.

All of the ACLU-MN testimony is posted on our website if you are interested in learning more about our legislative activities.

A Note From Audrey Thayer

An anonymous individual, who lived in Park Rapids, Minnesota, is just one person who has helped change years of negative history by aiding in the development of the Greater Minnesota Racial Justice Project (GMRJP). His case, turned ACLU-MN's gaze towards issues of race and racial inequality. Subsequently, it led to the formation of the GMRJP. This project is based in Northern Minnesota, a part of our state that prides itself in its unchanging, rural, isolated living. It is an area of Minnesota that for Indian people, has carried the name "Birmingham of the North" for many, many years.

It is my belief that racial justice issues are created from two different and distinct ideologies; one of kindness and open-mindedness, and the other of closed-mindedness and a pattern of unchanging thought and discourse about race. In Northern Minnesota we are promoting one over the other. We believe we can change the latter through education, litigation and legislation. Most of all, we are giving Indian people the idea that it is possible to create change; they are seizing a message of hope.

Clearly, there are purported differences in race that divide the Northern Minnesota culture. Nevertheless, peaceful co-existence is possible if both sides can learn to work together. The GMRJP strives to do this by developing interaction between the two ideologies. Whether it is community outreach, educational seminars, court-monitoring, or just listening and guiding an individual to the right resource, we are slowly making a difference. Certainly, forcing discussion of issues that have frequently been ignored or outright denied, is contentious work. We remain proud to have seized that mantle.

The daily work of the GMRJP is an important piece of the American Civil Liberties Union of Minnesota. For a population of people who believe it is their lot in life is to pay fines, be in court, go to jail, or die, such work is long overdue. In Washington DC, monuments have been built with stone and with pride to honor those with the power to shape history. For Native Americans in Northern Minnesota, there are also monuments of stone. Except in this case they are the county jails, state and federal prisons, and they are certainly devoid of pride.

The Greater Minnesota Racial Justice Project will ceaselessly work to change this.

Civil Liberties Tributes

In memory of Thomas Binger - Paul Redleaf

For Burt Garr, with hope of an excellent recovery - Paul Redleaf

In memory of Thomas Binger - Jim Manahan

If you wish to make a gift to the ACLU of Minnesota in the name of someone who is celebrating a milestone event, to honor their life, or simply to wish them well, give us a call. Contact Fatema Karim (651.645.4097, ex.120), our administrative aide and give her the name and address of the person you wish to honor, your name and address, and the amount you wish to donate; we will bill you. We will send the honoree (or their family) a letter indicating that a donation (without listing the amount) has been given to the ACLU of Minnesota in their name. Your name and address will be furnished to the honoree as well. You will receive a letter from the ACLU-MN indicating the amount of the gift. Donors of more than \$25 will be listed in the next newsletter, unless the donor wishes to remain anonymous.

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