Slings, Arrows & the ACLU

By Glenn Oakley

The struggle for civil rights did not end with the marches and legislation of the 1960s and '70s. For some groups, like gays and lesbians, the fight against discrimination has only recently begun. Hispanics in Idaho remain a largely invisible minority. And dissenting voices in this basically conservative and homogeneous state are at times quashed by the majority. This section of FOCUS examines the state of civil rights in Idaho.

It isn't true that the ACLU defends only communists, atheists and pornographers. It defends neo-Nazis and right-wing fanatics, too.

Because it often represents individuals holding extreme points of view, the American Civil Liberties Union is arguably the most vilified and least understood organization in America. To the majority of its critics in Idaho, the ACLU is widely perceived as a liberal organization foisting its left-wing, out-of-touch views on communities that can get along fine without its interference, thank you very much.

The ACLU argues that it adheres to no single political agenda other than to defend what it perceives as the rights of the individual as protected by the Bill of Rights. Such a philosophy would seemingly make it the most honored organization in Idaho, where rugged individualism is mythologized. But the ACLU's perception of individual rights is often at odds with community mores and with what many people think of as common sense.

"The ACLU is to conserve the Bill of Rights," says Boise attorney and ACLU lobbyist Bruce Bistline. "In our minds we're the ultimate conservatives."

But in the process of protecting the Bill of Rights, says Bistline, "We work at the extremes," frequently representing unpopular people and their ideas.

In Idaho the 650-member ACLU chapter is directed by Jack Van Valkenburgh with the assistance of a half-time employee. During the legislative session, a full-time lobbyist is employed. Supported by donations, the staff works out of a small, cluttered office in downtown Boise. A stable of some 20 volunteer attorneys take on cases, with the occasional backing of ACLU regional attorneys based in Denver. The ACLU in Idaho has been active fighting anti-abortion legislation, representing inmates in cases over poor jailhouse conditions, representing employees in workers' rights cases, and fighting schools and local governments over separation of church and state issues.

Few of the issues the ACLU tackles ever end up in court. "We avoid litigation," says Van Valkenburgh. "It costs us money and it's a drain on our resources."

And although the ACLU has a reputation for being at odds with law-enforcement officials and local governments, Van Valkenburgh says officials have requested ACLU intervention to force a needed change in things like jail conditions. "Sometimes the sheriffs call us and ask us to sue them because the voters turned down the bond issue" for a new jail, he says.

But it is the more contentious, extreme cases for which the ACLU is best — or worst — known. The classic case of the ACLU
Ishiko's AOK director Jack
Van Valkenburgh is the target of
attacks by those who see the
organization as the devil
incarnate.
A steady source of heated commentary, the ACLU is the frequent subject of letters to the editor in the Idaho Statesman. Going to extremes no matter the cost occurred in 1978 when it defended the right of neo-Nazis to march through Skokie, Ill., a community where thousands of survivors and refugees from Hitler's concentration camps lived. Nationally, the ACLU lost thousands of members over that single case.

Van Valkenburgh says, “We aren’t popular because we defend individual rights, not majority rights.” To say the ACLU is unpopular in Idaho may be the essence of understatement. Hardly a week goes by without someone pillorying the ACLU in general and Van Valkenburgh in particular on the letters-to-the-editor page of the Idaho Statesman and other papers across the state. While lobbying ACLU causes in the Idaho Legislature, Bistline says the feeling of many legislators is, “This must be a good bill, the ACLU doesn’t like it.”

But nowhere in Idaho does the ACLU provoke as much resentment and even hatred as in the towns where it files lawsuits to halt school prayer or public displays of Christian beliefs. Separation of church and state — based on the First Amendment’s clause: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof” — has proven the most common and divisive issue handled by the ACLU in Idaho.

Three recent separation of church and state cases illustrate the reaction of communities when the ACLU intervenes.

In an ongoing case the ACLU, on behalf of Andrew Albanese, objected to a monument bearing the Ten Commandments on the Bannock County Courthouse lawn. Albanese, an Idaho State University student, was harassed and his volunteer attorney was fired from his law firm.

Attorney Bernard Zaleha of Boise and Albanese worked out a tentative compromise with the county commissioners to install a counterbalancing monument — one inscribed with Thomas Jefferson’s thoughts on religious freedom. That compromise, however, was rejected after the Idaho ACLU chapter consulted with Steven Pevar, the ACLU’s Denver attorney. This has reinforced the local views that the ACLU is an outsider organization imposing its views on the local people.

Bannock County Commission chairman Tom Katsilometes says, “I frankly think the ACLU out of Denver thinks Idaho is a state they can dictate policy to and run roughshod over without any problem.” He says the case has pretty much solidified different factions of our community under one banner, and that’s to not let the ACLU run local government.”

Katsilometes calls the charges that the monument violates separation of church and state, “Baloney. It is simply a historical monument that’s the basis of the laws we live under. We’ve had a gutful and we’re not going to put up with it.”

Katsilometes and the other commissioners have encountered Pevar before. He is, notes Katsilometes, “The same lawyer who took us to court over the jail. We had to cap our jail [inmate population], remove 60 prisoners.” He says the jailhouse lawsuit was “an aggravation to us,” but conceded, “there were some points to our jail being overcrowded. We got a bond issue to take care of it. But this is a totally different issue. This is totally frivolous.”

In another prominent and unresolved case, residents of Grangeville were stunned when the ACLU came to town in 1990 and told the school...
district it could not allow prayer at high school graduation ceremonies. "It was clear that a majority of residents were in favor of graduation prayer," states the literature of Citizens Preserving America's Heritage (CPAH), a group of Grangeville residents formed in response to the ACLU challenge. "A public meeting was held and the local Davids decided to stand up to the intimidating Goliath." The group retained Boise attorney Stanley Crow to file a friend-of-the-court brief on behalf of the school district to fight the ACLU. The president of CPAH, Jay Smith, says, "Here in Grangeville the students should not shed their religious freedom when they walk through the school doors." It is, he says, "a First Amendment right of the students to exercise freedom of religion.

"I don't think the government should force religion on anyone, but the students elected to have prayer," says Smith. "The school administration did not force this."

Furthermore, Smith and the CPAH label as fiction the notion that the writers of the Constitution and Bill of Rights wanted a total separation of church and state. "I feel part of the founding of our country was on religious grounds, to honor a supreme being," says Smith.

Smith's views make a lot of sense to many Idahoans, which may explain why school prayer remains common throughout the state and the ACLU has ongoing cases fighting it. But while his ideas may seem like common sense to many, the courts have repeatedly found them unconstitutional.

And, according to the ACLU, students voting on the issue of prayer does not make it any more constitutional. "Just as students could not vote to smoke marijuana at graduation, school officials cannot allow an illegal activity," says Pevar. The case is still undecided.

Two years ago the ACLU won a case forcing the Rockland School District in eastern Idaho to end its close ties with the Church of Jesus Christ of Latter-day Saints. The district had held Sunday classes in a school building during school hours, had posted church events on school bulletin boards, had held school functions at the local Mormon church and had held prayer at school events.

While the plaintiffs, Connie Brown and her daughter Joey Long, have won the case, they became pariahs of their own home town, ostracized by the 85-percent Mormon community who could see nothing wrong with carrying their religion into the schoolhouse. One of Rockland's teachers, Jon May, told the Idaho Statesman at the time, "We haven't run 'em out of town or anything, even though they tried to stab us in the heart."

But the residents did quit patronizing Brown's beauty shop. She was forced to close the business and go to work in nearby American Falls. Long, a high school student, transferred to a larger school in American Falls where her classmates would talk to her.

In a current prayer-in-school case in nearby Rexburg, the ACLU is fighting to keep the plaintiffs anonymous, fearing retaliation.

To the ACLU, separation of church and state is more than a spurious legality with which to harass religious communities. Alan Koford, Idaho ACLU chapter president and attorney on the Grangeville case, says, "Many people think that because the ACLU believes in separation of church and state, it is anti-religion and anti-God. Nothing could be further from the truth. ... Our point is simply that government should not endorse religious activities since such practice inevitably infringes upon the rights of those citizens who have different beliefs."

Bistline believes the heated reaction to these cases demonstrates how seemingly innocuous collusion between church and government can be oppressive to the minority that does not share in the same religion. When the dominant religious community is challenged, says Bistline, "we see the character of their feelings — and they're oppressive feelings."

Bistline says his experience with the ACLU has led him to wonder "whether people in this country really understand what freedom is. A lot of people who claim they don't want government involved in their life don't mind government involved in your life. They think the role of government is to make people behave the way they behave."

The ACLU is not always in face-offs with conservatives. Says Van Valkenburgh, "In their quest to do the right thing liberals can trample the Constitution just as easily as the conservatives."

The ACLU has defended adult bookstore owners in Garden City, based on First Amendment/free speech rights, even though some feminist groups seek censorship of pornography.

Similarly, the ACLU has had qualms about recent malicious harassment laws designed to protect minorities from hate crimes. The ACLU has generally supported the laws if they simply enhance punishment for violations of existing laws, says Van Valkenburgh, but opposed malicious harassment laws which create a separate category of crimes based on motive.

And showing its sometimes quirky, libertarian nature, the biggest internal debate among Idaho ACLU members is over the Second Amendment — the right to keep and bear arms. While the national organization has generally accepted court rulings which place limits on gun ownership, many ACLU members, particularly in Idaho, take a hard-line stance on the Second Amendment that would doom the National Rifle Association proud. In Idaho the ACLU has formed a task force to study the issue.

"I'll concede on almost any issue there are some within the ACLU who will disagree," says Van Valkenburgh. "The ACLU is a living, breathing organization and its policies evolve as well."